TEXAS REGISTER

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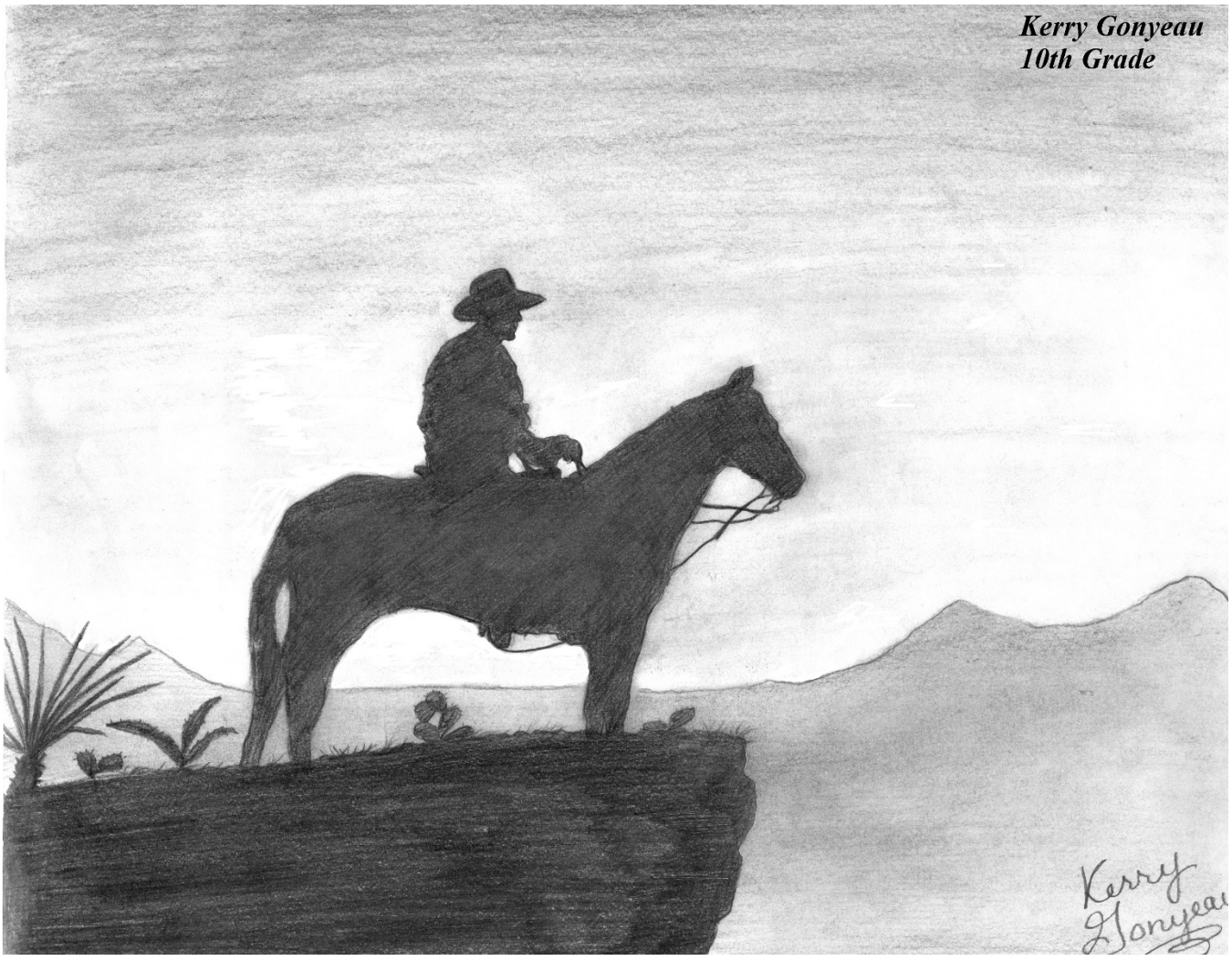

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but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

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

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Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register*'s Internet site:
http://www.sos.state.tx.us/open/index.shtml

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 512-463-5561. Or request a copy by email: register@sos.state.tx.us

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.
http://texasattorneygeneral.gov/og/open-government

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:
http://www.texas.gov

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Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

THE GOVERNOR

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

Appointments

Appointments for March 8, 2017

Appointed to the Public Safety Commission, for a term to expire at the pleasure of the Governor, Steven P. Mach of Houston as Chairman (replacing A. Cynthia "Cindy" Leon of Mission).

Appointments for March 10, 2017

Appointed to the Texas Historical Records Advisory Board, for a term to expire February 1, 2020, Diane J. "Jelain" Chubb of Austin (Ms. Chubb is being reappointed).

Appointed to the Texas Historical Records Advisory Board, for a term to expire February 1, 2020, Bobby R. "Bob" Glenn of Weatherford (replacing Nelson H. Balido of Boerne whose term expired).

Appointed to the Governor's Commission for Women, for a term to expire at the pleasure of the Governor, Karen H. Harris of Lakehills as Vice-Chairman (Ms. Harris is replacing Alejandra C. De la Vega-Foster of El Paso).

Greg Abbott, Governor

TRD-201701066

♦ ♦ ♦

Proclamation 41-3492

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, GREG ABBOTT, Governor of Texas, do hereby certify that wildfires that began on March 6, 2017, have caused a disaster in Gray, Hemphill, Lipscomb, Ochiltree, Roberts and Wheeler counties in the state of Texas.

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby declare a state of disaster in Gray, Hemphill, Lipscomb, Ochiltree, Roberts and Wheeler counties in the state of Texas.

Pursuant to Section 4 18.017 of the code, I authorize the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster.

Pursuant to Section 418.016 of the code, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor. However, to the extent that the enforcement of any state statute or administrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to protect life or property threatened by this declared disaster, I hereby authorize the suspension of such statutes and rules for the duration of this declared disaster.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

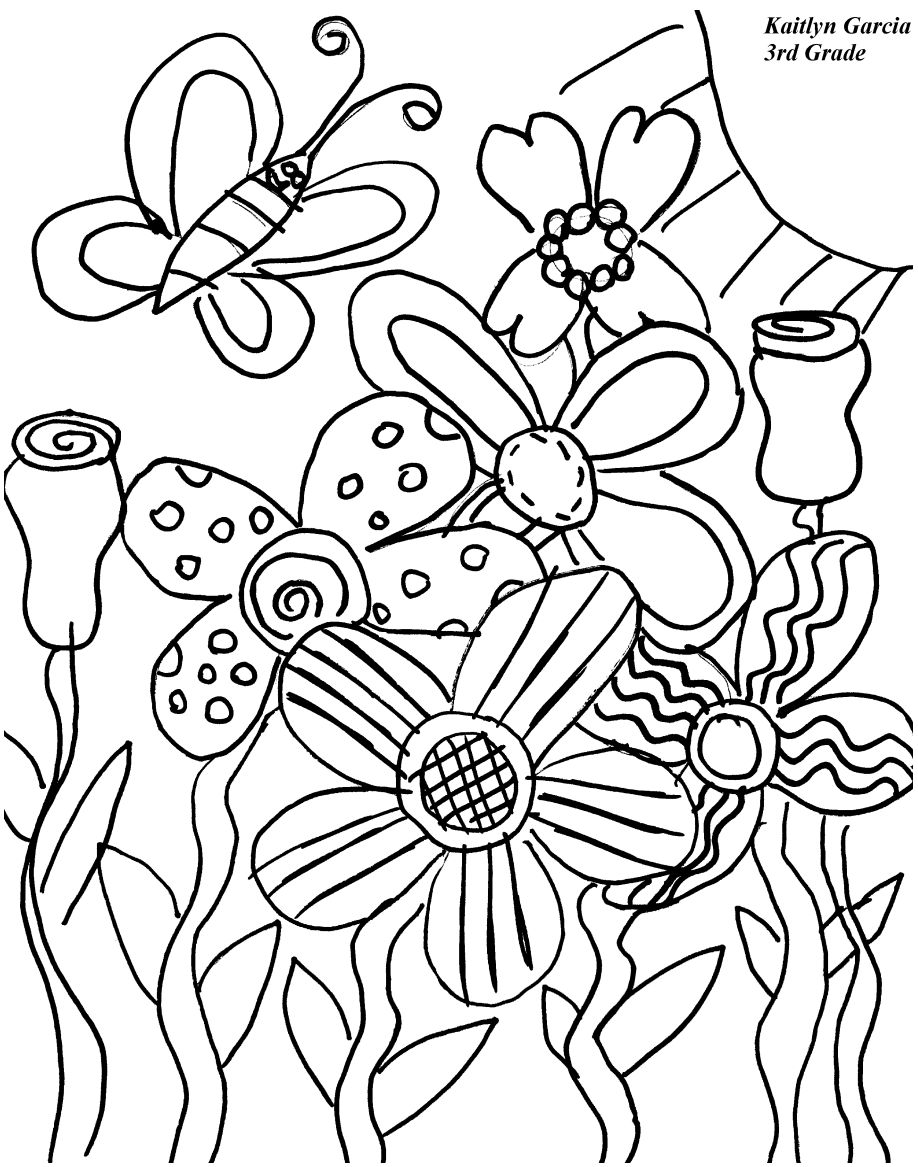
IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 11th day of March, 2017.

Greg Abbott, Governor

TRD-201701065

♦ ♦ ♦

Kaitlyn Garcia
3rd Grade



THE ATTORNEY GENERAL

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

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

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

Requests for Opinions

RQ-0153-KP

Requestor:

The Honorable Mark A. Gonzalez

Nueces County District Attorney

901 Leopard, Room 206

Corpus Christi, Texas 78401-3681

Re: Which party pays for the copy of the reporter's record filed with the trial court clerk pursuant to Rule of Appellate Procedure 34.6(h) (RQ-0153-KP)

Briefs requested by April 10, 2017

For further information, please access the website at www.texasattorneygeneral.gov or call the Opinion Committee at (512) 463-2110.

TRD-201701045
Amanda Crawford
General Counsel
Office of the Attorney General
Filed: March 13, 2017

♦ ♦ ♦

Opinions

Opinion No. KP-0135

The Honorable Daphne Session

Houston County Attorney

401 East Houston Avenue, 2nd Floor

Crockett, Texas 75835

Re: Whether time spent as a county employee may be considered in determining county longevity pay when the employee becomes an elected officer (RQ-0127-KP)

S U M M A R Y

Provided any longevity pay is earned after the adoption of the longevity policy, a court would likely conclude that a county's longevity pay policy for county officials may include the prior service of the individual as a county employee.

For further information, please access the website at www.texasattorneygeneral.gov or call the Opinion Committee at (512) 463-2110.

TRD-201701004
Amanda Crawford
General Counsel
Office of the Attorney General
Filed: March 10, 2017

♦ ♦ ♦

Opinions

Opinion No. KP-0136

The Honorable Richard Peña Raymond

Chair, Committee on Human Services

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether the State Long-Term Care Ombudsman may register a position and testify for or against legislation pending before the Texas Legislature (RQ-0130-KP)

S U M M A R Y

Chapter 101A of the Human Resources Code requires the State Long-Term Care Ombudsman to comment on and make recommendations about laws relating to long-term care facilities and services. Chapter 556 of the Government Code does not preclude the Ombudsman from performing her statutory duty to make such comments and recommendations. Accordingly, the State Long-Term Care Ombudsman may register a position and testify for or against legislation pending before the Texas Legislature to the extent necessary to perform her statutory duty.

For further information, please access the website at www.texasattorneygeneral.gov or call the Opinion Committee at (512) 463-2110.

TRD-201701069
Amanda Crawford
General Counsel
Office of the Attorney General
Filed: March 14, 2017

♦ ♦ ♦

Lizeth Rosas 8th Grade

TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by the Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39. Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

Advisory Opinion Request

The Texas Ethics Commission has been asked to consider questions regarding the reporting requirements and the legislative moratorium on contributions as applied to the misappropriation and return of legislative caucus contributions. **(AOR-620)**

The Texas Ethics Commission is authorized by section 571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 159, Local Government Code; (8) Chapter 36, Penal Code; (9) Chapter 39, Penal Code; (10) Section 2152.064, Government Code; and (11) Section 2155.003, Government Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

TRD-201701086
Seana Willing
Executive Director
Texas Ethics Commission
Filed: March 15, 2017

♦ ♦ ♦

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

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

The Texas Health and Human Services Commission (HHSC) proposes two new rules: §355.8023, concerning Reimbursement for Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS); and §355.8097, concerning Reimbursement for Physical, Occupational, and Speech Therapy Services. HHSC proposes to repeal and propose as new §355.8021, concerning Reimbursement for Home Health Services and Durable Medical Equipment, Prosthetics, Orthotics and Supplies. HHSC proposes amendments to §355.310, concerning Reimbursement Methodology for Customized Equipment; §355.7001, concerning Reimbursement Methodology for Telemedicine, Telehealth, and Home Telemonitoring Services; §355.8085, concerning Reimbursement Methodology for Physicians and Other Practitioners; §355.8441, concerning Reimbursement Methodologies for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Services; and §355.8581, concerning Reimbursement Methodology for Family Planning Services.

Background and Justification

The proposed new §355.8021 and §355.8023 separate home health services and durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) into unique rule sections and update outdated references to reflect current methodologies. As a result of these proposed changes, proposed changes for the following rules are administrative updates to rule references and formatting clean-up: §355.8581, §355.7001, and §355.301.

The proposed amendments to §355.8085 include additional language related to reimbursement for services provided by licensed psychology interns and fellows. As of January 1, 2017, Medicaid reimburses for services provided by licensed psychology interns and fellows; therefore, this rule is amended to reflect recent reimbursement updates.

The proposed new §355.8097 outlines the current reimbursement methodology for therapy services and defines the reimbursement percentage for services provided by therapy assistants at 70 percent of the rate for a licensed therapist. Medicaid currently reimburses for services provided by physical, occupational and speech therapy assistants at the same rate as a licensed therapist. This update is the only change with an estimated fiscal impact.

The proposed amendments to §355.8441 include updating rule references based on the changes outlined above and clarification of existing reimbursement methodologies.

All rule sections are updated to incorporate a reference to §355.201, concerning Establishment and Adjustment of Reimbursement Rates by the Health and Human Services Commission, which indicates that notwithstanding any other provision of Chapter 355, HHSC may adjust fees, rates, and charges paid for medical assistance as described under the provisions of §531.021(d) and (e) of the Texas Government Code.

Section-by-Section Summary

Proposed amended §355.310(a) and (b) update the reference to §355.8023, related to DMEPOS.

Proposed amended §355.310(c) adds a reference to §355.201, related to Establishment and Adjustment of Reimbursement Rates by the Health and Human Services Commission.

Proposed amended §355.7001(b) updates existing acronyms.

Proposed amended §355.7001(c) updates the reference to §355.8023, related to DMEPOS and other administrative updates.

Proposed amended §355.7001(g) adds a reference to §355.201, related to Establishment and Adjustment of Reimbursement Rates by the Health and Human Services Commission.

Proposed new §355.8021 describes the reimbursement methodology for home health nursing and aide services.

Proposed new §355.8021(a) - (c) clarifies existing Medicaid reimbursement methodologies for home health nursing and aide services.

Proposed new §355.8021(d) references rule §355.8097, related to Reimbursement for Physical, Occupational, and Speech Therapy Services..

Proposed new §355.8021(e) references rule §355.201, related to Establishment and Adjustment of Reimbursement Rates by the Health and Human Services Commission.

Proposed new §355.8023(a) was previously included in §355.8021 and summarizes Medicaid payment information for DMEPOS.

Proposed new §355.8023(b) outlines existing Medicaid reimbursement methodologies for DMEPOS.

Proposed new §355.8023(c) adds a reference to §355.201, related to Establishment and Adjustment of Reimbursement Rates by the Health and Human Services Commission.

Proposed amended §355.8085(a) deletes outdated text and replaces it with current reimbursement methodologies.

Proposed amended §355.8085(b) adds physical, occupational and speech therapy assistants and licensed psychological interns to the list of eligible providers.

Proposed amended §355.8085(c) updates existing acronyms.

Proposed amended §355.8085(d) deletes outdated information.

Proposed amended §355.8085(e) updates rule text for clarification purposes.

Proposed amended §355.8085(f) adds language for licensed psychology interns and fellows and specifies that they are reimbursed at 50 percent of the rate paid to a licensed psychologist.

Proposed amended §355.8085(g) adds a reference to rule §355.8097, related to Reimbursement for Physical, Occupational, and Speech Therapy Services.

Proposed amended §355.8085(h) adds a reference to rule §355.201, related to Establishment and Adjustment of Reimbursement Rates by the Health and Human Services Commission.

Proposed amended §355.8085(h) and (i), related to temporary enhanced reimbursement for certain specialists from January 1, 2013 to December 31, 2014, are deleted.

Proposed new §355.8097(a) defines to whom the rule applies for physical, occupational and speech therapy services provided by home health agencies, comprehensive outpatient rehabilitation facilities or outpatient rehabilitation facilities, independent therapists (including Early Childhood Intervention) and physicians and other practitioners.

Proposed new §355.8097(b) and (c) define the reimbursement methodologies for therapy services.

Proposed new §355.8097(d) adds rule references for therapy services provided by freestanding psychiatric facilities and outpatient hospitals.

Proposed new §355.8097(e) defines the reimbursement percentage for services provided by therapy assistants at 70 percent of the rate for a licensed therapist.

Proposed new §355.8097(f) adds a reference to §355.201, related to Establishment and Adjustment of Reimbursement Rates by the Health and Human Services Commission.

Proposed amended §355.8441(a)(2) updates the reference to §355.8023, related to DMEPOS.

Proposed amended §355.8441(a)(3) updates the reference to §355.8021, related to home health services and other administrative updates.

Proposed amended §355.8441(a)(4) updates rule text for clarification purposes.

Proposed amended §355.8441(a)(5), (a)(6) and (a)(7) update the references to rules related to therapy services to new §355.8097 for independently enrolled therapists, home health agencies, and comprehensive outpatient rehabilitation facilities (CORFs) and outpatient rehabilitation facilities (ORFs).

Proposed amended §355.8441(a)(11)(A) deletes outdated information.

Proposed amended §355.8441(a)(11)(C) deletes outdated information related to services provided from October 1, 2011 through February 29, 2012.

Proposed amended §355.8441(a)(12)(B) updates the reimbursement methodology for personal care services to reflect current practice.

Proposed amended §355.8441(b) adds a reference to §355.201, related to Establishment and Adjustment of Reimbursement Rates by the Health and Human Services Commission.

Proposed amended §355.8581(a) updates the reference to §355.8023, related to DMEPOS.

Proposed amended §355.8581(b) adds a reference to §355.201, related to Establishment and Adjustment of Reimbursement Rates by the Health and Human Services Commission.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that, for each year of the first five-years the proposed new rules and amendments will be in effect, there will be a cost savings to state government of $9,127,851 ($3,992,522 General Revenue (GR) and $5,135,329 Federal) for fiscal year (FY) 2017, $51,792,499 ($22,364,001 GR and $29,428,498 Federal) for FY 2018, $52,621,179 ($22,690,252 GR and $29,930,927 Federal) for FY 2019, $53,463,118 ($23,053,296 GR and $30,409,822 Federal) for FY 2020, and $54,318,528 ($23,422,149 GR and $30,896,379 Federal) for SFY 2021. Note that for FY 2017, approximately eight percent of therapy services are provided under fee-for-service Medicaid and 92 percent are provided under managed care. The portion of savings accruing to managed care for 2017 is dependent upon an adjustment of the managed care capitation rates; due to the timing of the rule change, it is possible there will not be time to adjust the managed care premiums for FY 2017.

There is no anticipated impact to costs and revenues of local governments as a result of enforcing or administering the rules as proposed.

Public Benefit and Cost

Pam McDonald, Director of Rate Analysis, has determined that for each year of the first five years the proposed new and amended rules are in effect, the expected public benefit will be the increased transparency that results from codifying program requirements into rule. An additional public benefit will be the determination of appropriate payment rates for therapy assistants.

Ms. McDonald has also determined that there are no probable economic costs to persons required to comply with the proposed new and amended rules.

HHSC has determined that the proposed new and amended rules will not affect a local economy. There is no anticipated negative impact on local employment.

Small BUSINESS and Micro-Business Impact Analysis

With the exception of proposed §355.8097 as outlined below, HHSC has determined that there will be no economic effect on small businesses or micro-businesses to comply with the proposed rules, as the rules merely codify existing practice.

HHSC has determined that the proposed addition of a rate methodology for therapy assistants under §355.8097 will have an economic effect on small businesses and micro-businesses. The proposed rate methodology indicates that reimbursement for services provided by a physical therapy assistant, occupational therapy assistant, or speech-language-pathologist assistant under the supervision of a licensed physical therapist,

licensed occupational therapist, or licensed speech-language pathologist will be equal to 70 percent of the fee paid to the licensed therapist for the same service. Prior to May 1, 2016, HHSC was unable to determine when a therapy service was provided by a therapy assistant, so services provided by therapy assistants were reimbursed at the same fee as services provided by a licensed therapist. HHSC can now determine when a therapy service was provided by a therapy assistant and is proposing to reimburse for these services at a lower rate than services provided by a licensed therapist because therapy assistant salaries are significantly less than licensed therapist salaries.

Under §2006.002 of the Texas Government Code, a state agency proposing an administrative rule that may have an adverse economic effect on small businesses must prepare an economic impact statement and a regulatory flexibility analysis. The economic impact statement estimates the number of small businesses subject to the rule and projects the economic impact of the rule on small businesses. The regulatory flexibility analysis describes the alternative methods the agency considered to achieve the purpose of the proposed rule while minimizing adverse effects on small businesses. The purpose of the proposed rule is to align the reimbursement for services provided by therapy assistants with current market costs.

It is unknown how many small businesses or micro-businesses this change may affect because therapy assistants are not currently enrolled in Medicaid; therefore, HHSC is unable to predict the effect on individual providers but anticipates there will be an impact.

HHSC considered four alternatives to establish a reimbursement methodology for therapy assistants.

Alternative 1: Under Alternative 1, HHSC would reduce the reimbursement rates for therapy assistants to 70 percent of the rate paid to a licensed therapist. This aligns the reimbursement rate for therapy assistants at 70 percent of the rate paid to a licensed therapist based on the salary information from the National Bureau of Labor and Statistics (BLS). The BLS salary data supports a ratio of 70 percent for therapy assistants when compared to licensed therapists.

Alternative 2: Under Alternative 2, HHSC would reduce the reimbursement rates for therapy assistants to 92 percent of the rate paid to a licensed therapist to mirror the current methodology for services provided by a physician assistant or nurse practitioner under the supervision of a physician.

Alternative 3: Under Alternative 3, HHSC would reduce the reimbursement rates for therapy assistants to 50 percent of the rate paid to a licensed therapist to mirror the current methodology for services provided by a licensed psychology intern or fellow under the supervision of a licensed psychologist.

Alternative 4: Under Alternative 4, HHSC would make no change to existing reimbursement structure.

HHSC selected the Alternative 1 methodology for the proposed rules. Alternative 1 more closely aligns the reimbursement rates for therapy assistants with costs based on BLS salary data. Alternatives 2 and 3 use existing Medicaid reimbursement percentages paid for other services, but were not selected due to a lack of data to support either over Alternative 1. Alternative 4 was not selected due to HHSC's obligation to set economically efficient Medicaid payment rates.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk 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 a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

Public Comment

Written comments on the proposal may be submitted to Megan Wolfe, Acute Care, Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 149030, MC-H400, Austin, Texas 78714-9030; by fax to (512) 730-7475; or by e-mail to RADAcuteCare@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register.*

Public Hearing

A public hearing is scheduled for April 12, 2017, at 9 a.m. (Central Time) in the Brown-Heatly Public Hearing Room, 4900 North Lamar Boulevard, Austin, Texas. Entry is through security at the main entrance of the building, which faces Lamar Boulevard. Persons requiring further information, special assistance, or accommodations should contact Amy Chandler at (512) 487-3419.

SUBCHAPTER C. REIMBURSEMENT METHODOLOGY FOR NURSING FACILITIES

1 TAC §355.310

Statutory Authority

The new and amended rules are proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under Texas Human Resources Code, Chapter 32.

The proposed new and amended rules affect Texas Human Resources Code, Chapter 32, and Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§355.310. Reimbursement Methodology for Customized Equipment.

(a) Reimbursement rates for customized power wheelchairs (CPWCs) and associated physical or occupational therapy evaluations provided under 40 TAC §19.2614 (relating to Customized Power Wheelchairs) are determined as follows:

(1) For CPWCs, rates are determined in accordance with §355.8023 [~~§355.8021(b)~~] of this title (relating to Reimbursement Methodology for [~~Home Health Services and~~] Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS)).

(2) For evaluations required for CPWCs under 40 TAC §19.2614(c), rates are determined in accordance with §355.313 of this title (relating to Reimbursement Methodology for Rehabilitative and Specialized Services).

(b) Reimbursement rates for customized adaptive aids and associated physical or occupational therapy evaluations provided under 40 TAC Chapter 17 (relating to Preadmission Screening and Resident Review) are determined as follows:

(1) For customized adaptive aids, rates are determined in accordance with §355.8023 [~~§355.8021(b)~~] of this title.

(2) For evaluations required for customized adaptive aids, rates are determined in accordance with §355.313 of this title.

(c) Fees for customized equipment are adjusted within available funding as described in §355.201 of this title (relating to Establishment and Adjustment of Reimbursement Rates by the Health and Human Services Commission).

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 13, 2017.

TRD-201701046
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: April 23, 2017
For further information, please call: (512) 707-6079

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SUBCHAPTER G. ADVANCED TELECOMMUNICATIONS SERVICES AND OTHER COMMUNITY-BASED SERVICES

1 TAC §355.7001

Statutory Authority

The new and amended rules are proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under Texas Human Resources Code, Chapter 32.

The proposed new and amended rules affect Texas Human Resources Code, Chapter 32, and Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§355.7001. Reimbursement Methodology for Telemedicine, Telehealth, and Home Telemonitoring Services.

(a) Eligible providers performing telemedicine medical, telehealth, or home telemonitoring services are defined in §354.1430 of this title (relating to Definitions), §354.1432 of this title (relating to Telemedicine and Telehealth Benefits and Limitations), and §354.1434 of this title (relating to Home Telemonitoring Benefits and Limitations).

(b) The Health and Human Services Commission (HHSC) reimburses eligible distant site professionals providing telemedicine medical services as follows:

(1) Physicians are reimbursed for their Medicaid telemedicine medical services in the same manner as their other professional services in accordance with §355.8085 of this title (relating to Reimbursement Methodology for Physicians and Other Practitioners).

(2) Physician assistants are reimbursed for their Medicaid telemedicine medical services in the same manner as their other professional services in accordance with §355.8093 of this title (relating to Reimbursement Methodology for Physician Assistants).

(3) Advanced Practice Registered Nurses (APRNs) [~~practice registered nurses~~] are reimbursed for their Medicaid telemedicine medical services in the same manner as their other professional services in accordance with §355.8281 of this title (relating to Reimbursement Methodology for Nurse Practitioners and Clinical Nurse Specialists).

(4) Certified nurse midwives are reimbursed for their Medicaid telemedicine medical services in the same manner as their other professional services in accordance with §355.8161 of this title (relating to Reimbursement Methodology for Midwife Services).

(c) HHSC reimburses eligible distant site professionals providing telehealth services as follows:

(1) Licensed professional counselors, including licensed marriage and family therapists, and licensed clinical social workers (including Comprehensive Care Program social workers) are reimbursed for their Medicaid telehealth services in the same manner as their other professional services in accordance with §355.8091 of this title (relating to Reimbursement to Licensed Professional Counselors, Licensed Clinical Social Workers, and Licensed Marriage and Family Therapists).

(2) Licensed psychologists (including licensed psychological associates) and psychology groups are reimbursed for their Medicaid telehealth services in the same manner as their other professional services in accordance with §355.8085 of this title.

(3) Durable medical equipment suppliers are reimbursed for their Medicaid telehealth services in the same manner as their other professional services in accordance with §355.8023 [~~§355.8021~~] of this title (relating to Reimbursement Methodology for [~~Home Health Services and~~] Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS)).

(d) Telemedicine and telehealth patient site locations, as defined in §354.1430 and §354.1432 of this title, are reimbursed a facility fee determined by HHSC.

(e) HHSC reimburses eligible providers performing home telemonitoring services in the same manner as their other professional services described in §355.8021 of this title (relating to Reimbursement Methodology for Home Health Services).

(f) Telemedicine medical services provided in a school-based setting by a physician, even if the physician is not the patient's primary care physician, will be reimbursed in accordance with the applicable methodologies described in subsection (b)(1) of this section and §355.8443 of this title (relating to Reimbursement Methodology for School Health and Related Services (SHARS)) if the following conditions are met:

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

(g) Fees for telemedicine, telehealth, and home telemonitoring services are adjusted within available funding as described in §355.201

of this title (relating to Establishment and Adjustment of Reimbursement Rates by the Health and Human Services Commission).

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: April 23, 2017
For further information, please call: (512) 707-6079

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SUBCHAPTER J. PURCHASED HEALTH SERVICES
DIVISION 2. MEDICAID HOME HEALTH PROGRAM

1 TAC §355.8021

Statutory Authority

The repeal of §355.8021 is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under Texas Human Resources Code, Chapter 32.

The proposed repeal affects Texas Human Resources Code, Chapter 32, and Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§355.8021. Reimbursement Methodology for Home Health Services and Durable Medical Equipment, Prosthetics, Orthotics and Supplies.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 14, 2017.

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Karen Ray
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SUBCHAPTER J. PURCHASED HEALTH SERVICES
DIVISION 2. MEDICAID HOME HEALTH AND DURABLE MEDICAL EQUIPMENT, PROSTHETICS, ORTHOTICS AND SUPPLIES (DMEPOS)

1 TAC §355.8021, §355.8023

Statutory Authority

The new rules are proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under Texas Human Resources Code, Chapter 32.

The proposed new rules affect Texas Human Resources Code, Chapter 32, and Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§355.8021. Reimbursement Methodology for Home Health Services.

(a) Authorized home health nursing and aide services provided to eligible Medicaid recipients are reimbursed the lesser of the billed amount or the Medicaid reimbursement rate established by HHSC.

(b) HHSC reviews the fees for nursing and aide services at least once every two years based upon:

(1) analysis of the Centers for Medicare & Medicaid Services fees for the same or similar services;

(2) analysis of Medicaid fees for the same or similar services in other states; and

(3) analysis of fees paid under commercial insurance for the same or similar services.

(c) HHSC may use data sources or methodologies other than those listed in subsection (b) of this section to establish Medicaid fees for home health services when HHSC determines that the methodologies in subsection (b) of this section are unreasonable or insufficient.

(d) Reimbursement for Physical, Occupational, and Speech Therapy Services is described in §355.8097 of this title (relating to Reimbursement for Physical, Occupational, and Speech Therapy Services).

(e) Fees for home health services will be adjusted within available funding as described in §355.201 of this title (relating to Establishment and Adjustment of Reimbursement Rates by the Health and Human Services Commission).

§355.8023. Reimbursement Methodology for Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS).

(a) Authorized items provided to eligible Medicaid recipients are reimbursed the lesser of the billed amount or the Medicaid reimbursement rate established by HHSC.

(b) HHSC reviews the fees for individual items at least every two years as follows.

(1) If Medicare reimburses for a durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) item, the Medicaid reimbursement rate is equal to, or a percentage of, the Medicare reimbursement rate for the procedure code. If HHSC determines that the Medicare reimbursement rate is insufficient, the methodologies in paragraphs (2) or (3) of this subsection apply.

(2) If Medicare does not reimburse for a DMEPOS item, other sources are used to determine the Medicaid payment rate as follows:

(A) analysis of Medicaid fees for the same or similar items in other states;

(B) eighty-two percent of the manufacturer's suggested retail price (MSRP);

(C) cost shown on a manufacturer's invoice submitted by the provider to HHSC; or

(D) analysis of fees paid under commercial insurance for the same or similar item or service.

(3) HHSC may use data sources or methodologies other than those listed in paragraph (2) of this subsection to establish Medicaid fees for DMEPOS when HHSC determines that those methodologies are unreasonable or insufficient.

(c) Fees for DMEPOS items are adjusted within available funding as described in §355.201 of this title (relating to Establishment and Adjustment of Reimbursement Rates by the Health and Human Services Commission).

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Karen Ray
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DIVISION 5. GENERAL ADMINISTRATION

1 TAC §355.8085, §355.8097

Statutory Authority

The new and amended rules are proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under Texas Human Resources Code, Chapter 32.

The proposed new and amended rules affect Texas Human Resources Code, Chapter 32, and Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§355.8085. Reimbursement Methodology for Physicians and Other Practitioners.

(a) Introduction. This section describes the Texas Medicaid reimbursement methodology that the Texas Health and Human Services Commission (HHSC) uses to calculate payment for covered services provided by physicians and other practitioners. [~~The reimbursement methodology facilitates a prospective payment system that is based on HHSC's determination of the adequacy of access to care.~~]

(1) There is no geographical or specialty reimbursement differential for individual services.

(2) HHSC reviews the fees for individual services at least every two years based upon [~~either~~]:

(A) analysis of Medicare fees for the same or similar item or service; [~~historical payments, with adjustments, to ensure adequate access to appropriate health care services; or~~]

(B) analysis of Medicaid fees for the same or similar item or service in other states; or [~~actual resources required by an economically efficient provider to provide each individual service.~~]

(C) analysis of commercial fees for the same or similar item or service.

(3) HHSC may use data sources or methodologies other than those listed in paragraph (2) of this subsection to establish Medicaid fees for physicians and other practitioners when HHSC determines that those methodologies are unreasonable or insufficient.

[~~(3) The fees for individual services and adjustments to the fees must be made within available funding.~~]

(4) Fees for these services are adjusted within available funding as described in §355.201 of this title (relating to Establishment and Adjustment of Reimbursement Rates by the Health and Human Services Commission).

(b) Eligible Providers. Eligible providers include:

(1) Providers of Laboratory and X-ray Services;

(2) Providers of Radiation Therapy;

(3) Physical, Occupational, and Speech Therapists;

(4) Physical, Occupational, and Speech Therapy Assistants;

(5) [~~(4)~~] Physicians;

(6) [~~(5)~~] Podiatrists;

(7) [~~(6)~~] Chiropractors;

(8) [~~(7)~~] Optometrists;

(9) [~~(8)~~] Dentists;

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

(11) [~~(10)~~] Licensed Psychological Associates;

(12) [~~(11)~~] Provisionally Licensed Psychologists;

(13) Licensed Psychological Interns and Fellows;

(14) [~~(12)~~] Maternity clinics; and

(15) [~~(13)~~] Tuberculosis clinics.

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

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

(5) HHSC--The Texas Health and [~~or~~] Human Services Commission or its designee.

(6) - (8) (No change.)

(d) Calculating the payment amounts. Subject to qualifications, limitations, and exclusions as provided in this chapter, payment

to eligible providers must not exceed the lesser of the provider's billed amount or the amount derived from the methodology described in this section. The fee schedule that results from the reimbursement methodology may be composed of both access-based fees (ABFs) and resource-based fees (RBFs).

(1) ABF methodology allows the state to:

(A) - (D) (No change.)

(2) An RBF is calculated using the following formula: RBF = (total RVU * CF), where RBF = Resource-Based Fee, total RVU = the sum of the three Relative Value Units that comprise the cost of providing individual Medicaid services, and CF = Conversion Factor.

(A) Except as otherwise specified, HHSC bases the RVUs that are employed in the Texas Medicaid reimbursement methodology upon the RVUs of the individual services as specified in the Medicare Fee Schedule. HHSC reviews any changes to, or revisions of, the various Medicare RVUs and, if applicable, adopts the changes as part of the reimbursement methodology within available funding.

(B) HHSC may develop and apply multiple conversion factors for various classes of service, such as obstetrics, pediatrics, general surgeries, and/or primary care services.

~~[(C) If funding is available and adjustments are made to the conversion factor(s), the adjustments may be based upon inflation, access, or both.]~~

~~*[(i)* To account for general inflation, HHSC adjusts the conversion factor by the forecasted rate of change of a specific inflation factor appropriate to physician or other professional services, the Personal Consumption Expenditures (PCE) chain-type price index, or some percentage thereof. To inflate the conversion factor for the prospective period, HHSC uses the lowest feasible inflation factor forecast that is consistent with the forecasts of nationally recognized sources available to HHSC at the time of preparation of the conversion factor(s).]~~

~~*[(ii)* Adjustments to the conversion factor may also be made to ensure adequacy of access as described in paragraph (1) of this subsection.]~~

(e) Reimbursement for physician-administered drugs, vaccines, and biologicals. In determining the reimbursement methodology for physician-administered drugs, vaccines, and biologicals, HHSC may consider information such as costs, utilization, data sufficiency, and public input. Reimbursement for physician-administered drugs, vaccines, and biologicals are based on the lesser of the billed amount, a percentage of the Medicare rate, or one of the following methodologies:

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

(6) HHSC may use other data sources or methodologies to establish [~~determine~~] Medicaid fees for physician-administered drugs, vaccines, and biologicals when HHSC determines that the above methodologies are unreasonable or insufficient.

(f) Reimbursement for services provided under the supervision of a licensed psychologist. Reimbursement for services provided under the supervision of a licensed psychologist by a licensed psychological associate (LPA) or a provisionally licensed psychologist (PLP) is reimbursed to the licensed psychologist at 70 percent of the fee paid to the licensed psychologist for the same service. Reimbursement for services provided under the supervision of a licensed psychologist by a licensed psychology intern or fellow are reimbursed at 50 percent of the fee paid to a licensed psychologist for the same service.

(g) Reimbursement for certain other providers. The descriptions for reimbursement of certain other providers are described in sections of this chapter.

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

(5) Reimbursement for Physical, Occupational, and Speech Therapy Services is described in §355.8097 of this title (relating to Reimbursement for Physical, Occupational, and Speech Therapy Services).

(h) Fees for services provided by physicians or other practitioners are adjusted within available funding as described in §355.201 of this title (relating to Establishment and Adjustment of Reimbursement Rates by the Health and Human Services Commission).

~~[(h) Temporary enhanced reimbursement for certain specialists. Notwithstanding any contrary provisions, a physician specializing in family medicine, general internal medicine, or pediatric medicine, who meets the self-attestation criteria, will receive enhanced payments for certain evaluation and management services and vaccine administration services performed from January 1, 2013, through December 31, 2014, in compliance with federal legislation enacted by the Patient Protection and Affordable Care Act.]~~

~~[(i) When determining payment rates for providers reimbursed at a percentage of the rate paid to a physician (M.D. or D.O.) for the evaluation and management services and vaccine administration services impacted by subsection (e) of this section, the base rate to which the percentage is applied is the applicable rate in effect on December 31, 2012. Provider types with rates governed by this subsection include physician assistants, certified nurse midwives, nurse practitioners, and clinical nurse specialists, as outlined in §§355.8093, 355.8161, and 355.8281 of this title (relating to Reimbursement Methodology for Physician Assistants; Reimbursement Methodology for Midwife Services; and Reimbursement Methodology for Nurse Practitioners and Clinical Nurse Specialists). These provider types are eligible for the applicable percentage of the enhanced payment described in subsection (h) of this section when billing under the direct supervision of an eligible provider as specified in subsection (h) of this section.]~~

§355.8097. Reimbursement Methodology for Physical, Occupational, and Speech Therapy Services.

(a) Introduction. This section describes the Texas Medicaid reimbursement methodology that the Texas Health and Human Services Commission (HHSC) uses to calculate payments for covered therapy services provided by home health agencies, comprehensive outpatient rehabilitation facilities or outpatient rehabilitation facilities, independent therapists (including Early Childhood Intervention) and physicians and other practitioners.

(b) HHSC reviews the fees for individual services at least every two years based upon:

(1) analysis of Medicare fees for the same or similar item or service;

(2) analysis of Medicaid fees for the same or similar item or service in other states; and

(3) analysis of fees paid under commercial insurance for the same or similar item or service.

(c) HHSC may use data sources or methodologies other than those listed in subsection (b) of this section to establish Medicaid fees for physical, occupational, and speech therapy services when HHSC determines that those methodologies are unreasonable or insufficient.

(d) Medicaid reimbursement methodologies for other applicable provider types are as follows:

(1) freestanding psychiatric facilities, under §355.8060 of this subchapter (relating to Reimbursement Methodology for Freestanding Psychiatric Facilities); and

(2) outpatient hospitals, under §355.8061 of this subchapter (relating to Outpatient Hospital Reimbursement).

(e) Reimbursement for services provided under the supervision of a licensed physical therapist, licensed occupational therapist, or licensed speech language pathologist. Reimbursement for services provided by a physical therapy assistant, occupational therapy assistant, or speech language pathologist assistant under the supervision of a licensed physical therapist, licensed occupational therapist, or licensed speech language pathologist is reimbursed at 70 percent of the fee paid to the licensed therapist for the same service.

(f) Fees for physical, occupational, and speech therapy services are adjusted within available funding as described in §355.201 of this title (relating to Establishment and Adjustment of Reimbursement Rates by the Health and Human Services Commission).

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Karen Ray
Chief Counsel
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DIVISION 23. EARLY AND PERIODIC SCREENING, DIAGNOSIS, AND TREATMENT (EPSDT)

1 TAC §355.8441

Statutory Authority

The new and amended rules are proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under Texas Human Resources Code, Chapter 32.

The proposed new and amended rules affect Texas Human Resources Code, Chapter 32, and Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§355.8441. Reimbursement Methodologies for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Services.

(a) The following are reimbursement methodologies for services provided under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program, delivered to Medicaid clients under age 21, also known as Texas Health Steps (THSteps) and the THSteps Comprehensive Care Program (CCP). Reimbursement methodologies for services provided to all Medicaid clients, including clients under age 21, are located elsewhere in this chapter.

(1) Counseling and psychotherapy services are reimbursed to freestanding psychiatric facilities in accordance with §355.8060 of this subchapter (relating to Reimbursement Methodology for Freestanding Psychiatric Facilities).

(2) Durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) are reimbursed in accordance with §355.8023 [~~the same manner as DMEPOS under home health services at §355.8021(b)~~] of this subchapter (relating to Reimbursement Methodology for [~~Home Health Services and~~] Durable Medical Equipment, Prosthetics, Orthotics and Supplies(DMEPOS)).

(3) Nursing services, including, but not limited to, private duty nursing, registered nurse (RN) services, licensed vocational nurse/licensed practical nurse (LVN/LPN) services, skilled nursing services delegated to qualified aides by RNs in accordance with the licensure standards promulgated by the Texas Board of Nursing, and nursing assessment services, are reimbursed the lesser of the provider's billed charges or fees established by the Texas Health and Human Services Commission (HHSC) for each of the applicable provider types as follows:

(A) Independently enrolled RNs and LVNs/LPNs, under §355.8085 of this subchapter (relating to Reimbursement Methodology for Physicians and Other Practitioners);

(B) Home health agencies (HHAs), under §355.8021 [~~§355.8021(a)~~] of this subchapter (relating to Reimbursement Methodology for Home Health Services); and

(C) Advanced Practice Registered Nurses (APRNs), under §355.8281(a) of this subchapter (relating to Reimbursement Methodology for Nurse Practitioners and Clinical Nurse Specialists).

(4) Physician Assistants (PA), [~~are reimbursed the lesser of the provider's billed charges or fees established by the Texas HHSC~~] under §355.8093 of this subchapter (relating to Reimbursement Methodology for Physician Assistants).

(5) Physical therapy services are reimbursed in accordance with the Medicaid reimbursement methodologies for the applicable provider type as follows:

(A) independently enrolled therapists, under §355.8097 [~~§355.8085~~] of this subchapter;

(B) HHAs, under §355.8097 [~~§355.8021(a)~~] of this subchapter;

(C) Medicare-certified outpatient facilities known as comprehensive outpatient rehabilitation facilities (CORFs) and outpatient rehabilitation facilities (ORFs), under §355.8097 [~~§355.8085~~] of this subchapter;

(D) freestanding psychiatric facilities, under §355.8060 of this subchapter; and

(E) outpatient hospitals, under §355.8061 of this subchapter (relating to Outpatient Hospital Reimbursement).

(6) Occupational therapy services are reimbursed in accordance with the Medicaid reimbursement methodologies for the applicable provider type as follows:

(A) independently enrolled therapists, under §355.8097 [~~§355.8085~~] of this subchapter;

(B) HHAs, under §355.8097 [~~§355.8021(a)~~] of this subchapter;

(C) CORFs and ORFs, under §355.8097 [~~§355.8085~~] of this subchapter;

(D) freestanding psychiatric facilities, under §355.8060 of this subchapter; and

(E) outpatient hospitals, under §355.8061 of this subchapter.

(7) Speech-language pathology services are reimbursed in accordance with the Medicaid reimbursement methodologies for the applicable provider type as follows:

(A) independently enrolled therapists, under §355.8097 [~~§355.8085~~] of this subchapter;

(B) HHAs, under §355.8097 [~~§355.8021(a)~~] of this subchapter;

(C) CORFs and ORFs, under §355.8097 [~~§355.8085~~] of this subchapter;

(D) freestanding psychiatric facilities, under §355.8060 of this subchapter; and

(E) outpatient hospitals, under §355.8061 of this subchapter.

(8) - (10) (No change.)

(11) Dental services are reimbursed in accordance with the following Medicaid reimbursement methodologies:

(A) Dental services provided by enrolled dental providers are reimbursed in accordance with §355.8085 of this subchapter. [~~The fees are calculated as access-based fees under §355.8085 of this subchapter and are based on a percentage of the billed charges (i.e., the usual-and-customary amount providers charge non-Medicaid clients for similar services) reported on Medicaid dental claims for each dental service, excluding billed charges that are less than or equal to the published Medicaid fee for that service.~~]

(B) Dental services provided by federally qualified health centers (FQHCs) are reimbursed in accordance with §355.8261 of this subchapter (relating to Federally Qualified Health Center Services Reimbursement).

[~~(C) For services provided from October 1, 2011, through February 29, 2012, publicly owned dental providers may be eligible to receive supplemental payments for fee-for-service dental claims. HHSC will calculate supplemental payments using the following methodology:~~]

~~(i)~~ ~~HHSC will select a commercial dental insurance carrier fee schedule that is utilized by the provider.~~]

~~(ii)~~ ~~For adjudicated claims, the maximum amount of supplemental payment an eligible dental provider may receive is calculated as the difference between the HHSC approved reimbursement amount from the Medicaid fee-for-service dental fee schedule and the corresponding reimbursement on the dental insurance carrier fee schedule selected in clause (A) of this subparagraph for the same procedure. The supplemental payment is calculated quarterly after the end of each federal fiscal quarter. The supplemental payment is contingent on receipt of funds as specified in clause (C) of this subparagraph.~~]

~~(iii)~~ ~~The funding for the state share of supplemental payments to a dental provider is limited to and obtained through intergovernmental transfers of funds from the governmental entity that owns and operates the dental provider. An intergovernmental transfer that is not received in the manner and by the date specified by HHSC may not be accepted.~~]

~~(iv)~~ ~~If a supplemental payment results in an overpayment or if the federal government disallows federal financial participation related to the receipt or use of supplemental payments under this section, HHSC may recoup an amount equal to the federal share of supplemental payments overpaid or disallowed. To satisfy the amount owed, HHSC may recoup from any current or future Medicaid payments.~~]

(C) [~~(D)~~] Subject to approval by the Centers for Medicare and Medicaid Services, for services provided on or after March 1, 2012, publicly owned dental providers may be eligible to receive Uncompensated Care payments for dental services under the Texas Healthcare Transformation and Quality Improvement 1115 Waiver. For purposes of this section, Uncompensated Care ("UC") payments are payments intended to defray the uncompensated costs of services that meet the definition of "medical assistance" contained in §1905(a) of the Social Security Act. HHSC will calculate UC payments using the following methodology:

(i) - (vi) (No change.)

(12) Personal care services (PCS) are reimbursed in accordance with the following Medicaid reimbursement methodologies for the applicable provider type:

(A) School districts delivering PCS under School Health and Related Services (SHARS) are reimbursed in accordance with §355.8443 of this division (relating to Reimbursement Methodology for School Health and Related Services (SHARS)); and

(B) Providers other than school districts delivering PCS are reimbursed as follows:

(i) PCS and PCS delivered in conjunction with delegated nursing services are reimbursed fees determined by HHSC. HHSC reviews the fees for individual services at least every two years based upon:

(I) analysis of Medicare fees for the same or similar item or service;

(II) analysis of Medicaid fees for the same or similar item or service in other states; or

(III) analysis of commercial fees for the same or similar item or service.

(ii) HHSC may use data sources or methodologies other than those listed in item (i) of this subparagraph to establish Medicaid fees for physicians and other practitioners when HHSC determines that those methodologies are unreasonable or insufficient.
[~~or its designee. The fees are determined using at least one of the following methods: a review of rates paid to providers delivering similar services; modeling using an analysis of other data available to HHSC; or a combination thereof, as determined appropriate by HHSC.~~]

(iii) [~~(ii)~~] PCS delivered through the Consumer Directed Services payment option are reimbursed in accordance with §355.114 of this chapter (relating to Consumer Directed Services Payment Option).

(b) Fees for EPSDT services are adjusted within available funding as described in §355.201 of this title (relating to Establishment and Adjustment of Reimbursement Rates by the Health and Human Services Commission)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Karen Ray
Chief Counsel
Texas Health and Human Services Commission
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DIVISION 30. FAMILY PLANNING

1 TAC §355.8581

Statutory Authority

The new and amended rules are proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under Texas Human Resources Code, Chapter 32.

The proposed new and amended rules affect Texas Human Resources Code, Chapter 32, and Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§355.8581. Reimbursement Methodology for Family Planning Services.

(a) Family planning services described in 25 TAC Chapter 56 (relating to Family Planning) are reimbursed as follows:

(1) For physician and other practitioner services, physician-administered drugs and biologicals, and the administration of immunizations, providers are reimbursed the lesser of:

(A) the provider's billed charges; or

(B) fees determined by the Texas Health and Human Services Commission in accordance with §355.8085 of this subchapter (relating to Reimbursement Methodology for Physicians and Other Practitioners).

(2) Durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) are reimbursed in accordance with §355.8023 [~~the same manner as DMEPOS under home health services at §355.8021(b)~~] of this subchapter (relating to Reimbursement Methodology for [~~Home Health Services and~~] Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS)).

(b) Fees for family planning services and items are adjusted within available funding as described in §355.201 of this title (relating to Establishment and Adjustment of Reimbursement Rates by the Health and Human Services Commission)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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TITLE 7. BANKING AND SECURITIES

PART 6. CREDIT UNION DEPARTMENT

CHAPTER 97. COMMISSION POLICIES AND ADMINISTRATIVE RULES
SUBCHAPTER A. GENERAL PROVISIONS

7 TAC §97.104

The Credit Union Commission (the Commission) proposes to repeal §97.104, concerning petitions for adoption or amendment of rules. This rule is being replaced by §7.500 which updates the rule and relocates it in a new subchapter entitled rulemaking for better transparency and ease of reference.

The repeal of the rule is proposed as a result of the Department's general rule review and informal comments from interested parties. The Department believes that greater clarity and ease of use could be achieved if the existing §97.104 was updated and relocated to a new subchapter.

Harold E. Feeney, Commissioner, has determined that for the first five year period the rule is repealed there will be no fiscal implications for state or local government as a result of repealing the rule.

Mr. Feeney has also determined that for each year of the first five years the rule is repealed, the public benefits anticipated as a result of repealing and replacing the rule will be ease of use by interested persons. There is no anticipated effect on small businesses as a result of repealing and replacing the rule. There is no economic cost anticipated to credit unions or individuals for repealing and replacing the rule.

Written comments on the proposal may be submitted in writing to Harold E. Feeney, Commissioner, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699 or by email to CUDMail@cud.texas.gov. To be considered, a written comment must be received on or before 5:00 p.m. on the 31st day after the date the proposal is published in the *Texas Register.*

The repeal is proposed under the provision of the Texas Finance Code,§15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code.

The specific sections affected by the proposed repeal are Government Code, §2001.021.

§97.104. Petitions for Adoption or Amendment of Rules.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 10, 2017.

TRD-201701030
Harold E. Feeney
Commissioner
Credit Union Department
Earliest possible date of adoption: April 23, 2017
For further information, please call: (512) 837-9236

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7 TAC §97.105

The Credit Union Commission (the Commission) proposes amendments to §97.105 concerning frequency of examination. The proposed amendments to §97.105 clarify that the annual examination requirement means credit unions must be examined at least once during each twelve-month period. The proposed amendments also provide specific authority for the Department to extend the annual examination intervals to 18 months without prior written approval of the Commission.

The amendments are proposed as a result of the Department's general rule review, under Tex. Government Code §2001.039, which was published in December 2016.

The proposed amendments help ensure that examination resources are appropriately and efficiently directed to credit unions commensurate with the credit union's size and risk profile.

Harold E. Feeney, Commissioner, has determined that for the first five year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended rule.

Mr. Feeney has also determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of enforcing the rule will be greater clarity of the rule. There will be no effect on small or micro businesses as a result of adopting the amended rule. There is no economic cost anticipated to the credit union system or to individuals for complying with the amended rule if adopted.

Written comments on the proposed amendments may be submitted in writing to Harold E. Feeney, Commissioner, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699 or by email to CUDMail@cud.texas.gov. To be considered, a written comment must be received on or before 5:00 p.m. on the 31st day after the date the proposal is published in the *Texas Register.*

The amendments are proposed under Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code and under Texas Finance Code §126.051, concerning examinations.

The specific section affected by the proposed amended rule is Texas Finance Code, §126.051.

§97.105. Frequency of Examination.

The department shall perform an examination of each credit union authorized to do business under the Act at least once during each 12-month period [~~year~~]. Annual examination intervals may be extended by the Department to a maximum 18 months, subject to safety and soundness considerations. Intervals between examinations shall not exceed 18 months, unless a longer interval is authorized in writing by the commission. In lieu of conducting an examination required by this rule, the commissioner in the exercise of discretion may accept examinations or reports from other credit union supervisory agencies or insuring organizations.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 10, 2017.

TRD-201701031
Harold E. Feeney
Commissioner
Credit Union Department
Earliest possible date of adoption: April 23, 2017
For further information, please call: (512) 837-9236

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SUBCHAPTER F. RULEMAKING

7 TAC §97.500, §97.501

The Credit Union Commission (Commission) proposes new Subchapter F of 7 TAC, Chapter 97. The new subchapter, entitled Rulemaking, contains two new rules which describe procedures for petitions to initiate rulemaking proceedings and hearings on proposed rules.

The new rules are proposed to comply with the provisions of Government Code §2001.021 and §2001.29, which requires a state agency to prescribe the procedures for the submission, consideration, and disposition of a petition to initiate rulemaking and provide an opportunity for a public hearing before the agency adopts a substantive rule.

Section 97.500, Petitions to Initiate Rulemaking Proceedings, replaces §97.104 that the Commission is concurrently proposing repeal as published elsewhere in this issue of the *Texas Register.* The new rule sets out the procedure for an interested person to petition the Department to initiate rulemaking proceedings.

Section 97.501, Hearings on Proposed Rules, is proposed to implement the provisions of Government Code §2001.029, which requires a state agency to grant an opportunity for a public hearing before it adopts a substantive rule if a public hearing is requested. The new rule authorizes the commissioner or his designee to hold these hearings and set appropriate hearing processes and procedures.

Harold E. Feeney, Commissioner has determined that for the first five year period the new rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed new rules.

Mr. Feeney has also determined that for each year of the first five years the proposed new rules are in effect, the public benefits anticipated as a result of enforcing the rules will be greater clarity and ease of use of the rules. There is no anticipated effect on small businesses as a result of adopting the new rules. There is no economic cost anticipated to credit unions or individuals for complying with the new rules if adopted.

Written comments on the proposal may be submitted in writing to Harold E. Feeney, Commissioner, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699 or by email to CUDMail@cud.texas.gov. To be considered, a written comment must be received on or before 5:00 p.m. on the 31st day after the date the proposal is published in the *Texas Register.*

The new rules are proposed under the provisions of the Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and

Title 3, Subchapter D of the Texas Finance Code, and under Government Code §2001.021 and §2001.029, which directs the Commission to adopt rules for an interested person to petition the Department to initiate rulemaking proceedings and provide an opportunity for a public hearing before the agency adopts a substantive rule.

The specific section affected by the proposal rule is Government Code §2001.021 and §2001.029.

§97.500. Petitions to Initiate Rulemaking Proceedings.

(a) Petitions to initiate rulemaking proceeding pursuant to Government Code, §2001.021, must be submitted to the Department in writing. A petition must include:

(1) a brief explanation of the proposed rule;

(2) the full text of the proposed rule, and, if the petition is to amend an existing rule, the text of the rule that clearly identifies any words to be added or deleted from the existing text by underlining new language and striking through language to be deleted; and

(3) a concise explanation of the legal authority to adopt the proposed rule, including a specific reference to the particular statute or other authority that authorizes it.

(b) When the Department receives a rulemaking petition, the Department shall review it for compliance with the requirements of subsection (a) of this section. If the petition is determined to comply, the Department shall notify the applicant that the petition has been accepted for filing and will be processed in accordance with Government Code, §2001.021(c). If it is determined the petition does not comply with subsection (a), the Department shall notify the applicant in writing of all deficiencies found and give the petitioner an opportunity to cure them by filing an amended petition. If no amended petition curing the deficiencies is filed with the Department by 5:00 p.m. on the 15th calendar day following the date that the Department mailed a notice of deficiencies to the petitioner, the petition shall be deemed denied for the reasons stated in the deficiency notice without the necessity of further action.

(c) If the petition is accepted for filing, within 60 days of the date that a petition is accepted for filing, the Department must either deny the petition for reasons stated in writing or initiate a rulemaking proceeding.

§97.501. Hearing on Proposed Rules.

(a) The Department shall grant an opportunity for a public hearing before adoption of any substantive rule as required by Government Code, §2001.029(b), or other applicable statute.

(b) The hearing may be held by the commissioner or by any other person designated by the commissioner. In the exercise of discretion, the commissioner may impose reasonable time limits on presentation of evidence and argument, determine the order of the presentations, and conduct the hearing in a manner suitable to the particular proceeding. Public hearings on proposed rules are neither contested cases nor full legal adversary proceedings. Ex parte prohibitions do not apply.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 10, 2017.

TRD-201701028

Harold E. Feeney
Commissioner
Credit Union Department
Earliest possible date of adoption: April 23, 2017
For further information, please call: (512) 837-9236

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TITLE 16. ECONOMIC REGULATION

PART 8. TEXAS RACING COMMISSION

CHAPTER 311. OTHER LICENSES
SUBCHAPTER B. SPECIFIC LICENSES

16 TAC §311.104

The Texas Racing Commission proposes an amendment to 16 TAC §311.104, Trainers. The section relates to the qualifications and experience required to be licensed as a trainer and to the obligations of trainers. There are two changes proposed in the amendment. The first change would require trainers to provide a current list to the licensing office of all of the trainer's employees present on the backside during the period of lockdown, and to notify the licensing office within 72 hours of initiating or learning of any change. It would also prohibit trainers from signing an application as the employer of a licensee that the trainer does not actually employ. The second change would require a trainer, upon the suspension, revocation or denial of the trainer's license, to notify each owner for whom he or she trains horses of the suspension, revocation or denial.

Chuck Trout, Executive Director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for local or state government as a result of enforcing the new rule.

Mr. Trout has determined that for each year of the first five years that the new rule is in effect the anticipated public benefit of the first change will be to improve the ability of the Commission to limit access to a racetrack's backside to those who have an actual need to be present. The identification of those who may be present on the backside will also enhance the Commission's ability to implement an effective random human drug testing program. The anticipated public benefit of the second change will be to ensure that owners are aware of significant rule violations by their trainers and are given the opportunity to transfer their horses to new trainers.

The amendment will have no adverse economic effect on small or micro-businesses and therefore preparation of an economic impact statement and a regulatory flexibility analysis is not required.

There are no negative impacts upon employment conditions in this state as a result of the proposed amendment.

The amendment will have no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, and greyhound training industry.

All comments or questions regarding the proposed amendment may be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Mary Welch, Assistant to the Executive Director for the Texas Racing Commission,

at P.O. Box 12080, Austin, Texas 78711-2080, telephone (512) 833-6699, or fax (512) 833-6907.

The amendment is proposed under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which requires the Commission to adopt rules for conducting greyhound and horse racing involving wagering and rules to administer the Act, and §7.02, which requires the Commission to specify by rule the qualifications and experience required for each category of occupational license.

The amendment implements Texas Revised Civil Statutes Annotated, Article 179e.

§311.104. Trainers

(a) - (f) (No change.)

(g) Trainer Employees.

(1) A horse trainer shall provide a list to the Commission of all of the trainer's employees on association grounds during the period of continuous security service under §309.154(a)(1) (relating to Stable or Kennel Area.) The list shall include each employee's name, occupation and occupational license number. The trainer shall notify the Commission in writing within 72 hours of initiating or learning of any change.

(2) A trainer may not sign an application as the employer of a licensee that the trainer does not actually employ.

(3) [~~(1)~~] A trainer may not employ an individual who is less than 16 years of age to work for the trainer on an association's grounds.

(4) [~~(2)~~] A trainer may not employ a jockey to prevent the jockey from riding in a race.

(h) (No change.)

(i) Suspended, Revoked or Ineligible Horse Trainers.

(1) Upon the suspension, revocation or denial of a trainer's license, the trainer shall notify each owner for whom he or she trains horses of the suspension, revocation or denial.

(2) [~~(1)~~] A person may not assume the responsibilities of a horse trainer who is ineligible to be issued a license or whose license is suspended or revoked if the person is related to the trainer within the first degree of consanguinity or affinity.

(3) [~~(2)~~] A person who assumes the care, custody, or control of the horses of a suspended, revoked or ineligible horse trainer may not:

(A) receive any compensation regarding those horses from the suspended, revoked or ineligible trainer;

(B) pay any compensation regarding those horses to the suspended, revoked or ineligible trainer;

(C) solicit or accept a loan of anything of value from the suspended, revoked or ineligible trainer; or

(D) use the farm or individual name of the suspended, revoked or ineligible trainer when billing customers.

(4) [~~(3)~~] A person who assumes the care, custody, or control of the horses of a suspended, revoked or ineligible trainer is directly responsible for all financial matters relating to the care, custody, or control of the horses.

(5) [~~(4)~~] On request by the Commission, a suspended, revoked or ineligible trainer or a person who assumes the care, custody, or control of the horses of a suspended, revoked or ineligible trainer shall permit the Commission to examine all financial or business records to ensure compliance with this section.

(j) - (k) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 13, 2017.

TRD-201701038
Mark Fenner
General Counsel
Texas Racing Commission
Earliest possible date of adoption: April 23, 2017
For further information, please call: (512) 833-6699

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TITLE 22. EXAMINING BOARDS

PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 463. APPLICATIONS AND EXAMINATIONS

22 TAC §463.5

The Texas State Board of Examiners of Psychologists proposes an amendment to §463.5, Application File Requirements. The proposed amendment is being offered to align the rule with recommendation 3.8 in the Sunset Staff report.

Darrel D. Spinks, Executive Director, has determined that for the first five-year period the proposed amendment will be in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the rule.

Mr. Spinks 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 to help the Board protect the public. There will be no economic costs to persons required to comply with this rule. There will be no effect on small businesses or local economies.

Comments on the proposed amendment may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register.* Comments may also be submitted via fax to (512) 305-7701, or via email to *brenda@tsbep.texas.gov.*

The amendment is proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§463.5. Application File Requirements.

To be complete, an application file must contain whatever information or examination results the Board requires. Unless specifically stated otherwise by Board rule, all applications for licensure by the Board must contain:

(1) An application and required fee(s);

(2) Official transcripts indicating the date the degree required for licensure was awarded or conferred. Transcripts must be sent directly to the Board's office from all colleges/universities where post-baccalaureate course work was completed;

(3) Documentation that applicant has complied with Board Rule §463.14 of this title (relating to Written Examinations);

[(4) Three acceptable reference letters from three different psychologists, two of whom are licensed or were licensed at the time of applicant's training and none of whom are related to the applicant within the second degree of affinity or within the second degree of consanguinity. The reference letters must be dated no earlier than six months prior to the date the application is received by the Board;]

(4) [(5)] A criminal history record check of the applicant from the Texas Department of Public Safety and the Federal Bureau of Investigation;

(5) [(6)] Supportive documentation and other materials the Board may deem necessary, including current employment arrangements and the name of all jurisdictions where the applicant currently holds a certificate or license to practice psychology; and

(6) [(7)] A written explanation and/or meeting with the Board or a committee of the Board, prior to final approval, if the application file contains any negative reference letters.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 9, 2017.

TRD-201700947
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: April 23, 2017
For further information, please call: (512) 305-7706

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22 TAC §463.9

The Texas State Board of Examiners of Psychologists proposes an amendment to §463.9, Licensed Specialist in School Psychology. The proposed amendment is being offered to align the rule with recommendation 3.8 in the Sunset Staff report.

Darrel D. Spinks, Executive Director, has determined that for the first five-year period the proposed amendment will be in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the rule.

Mr. Spinks 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 to help the Board protect the public. There will be no economic costs to persons required to comply with this rule. There will be no effect on small businesses or local economies.

Comments on the proposed amendment may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register.* Comments may also be submitted via fax to (512) 305-7701, or via email to brenda@tsbep.texas.gov.

The amendment is proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§463.9. Licensed Specialist in School Psychology.

(a) Application Requirements. A completed application for licensure as a specialist in school psychology includes the following, in addition to the requirements set forth in Board rule §463.5 of this title (relating to Application File Requirements):

(1) Documentation of an appropriate graduate degree; and

(2) Documentation from the National School Psychologists' Certification Board sent directly to the Board indicating the applicant holds current valid certification as a Nationally Certified School Psychologist (NCSP); or documentation of the following sent directly to the Board:

(A) transcripts that verify that the applicant has met the requirements set forth in subsection (b) of this section;

(B) proof of the internship required by subsection (c) of this section if the applicant did not graduate from either a training program approved by the National Association of School Psychologists (NASP) or a training program in school psychology accredited by the American Psychological Association (APA); and

(C) the score that the applicant received on the School Psychology Examination sent directly from the Education Testing Service.[; and]

[(3) Reference letters from three different individuals licensed as psychologists or specialists in school psychology, or credentialed in school psychology in their respective jurisdictions.]

(b) Training Qualifications.

(1) Applicants for licensure as a specialist in school psychology who hold a valid NCSP certification or who have graduated from a training program approved by the National Association of School Psychologists or accredited in School Psychology by the American Psychological Association will be considered to have met the training and internship requirements of this rule.

(2) Applicants for licensure who do not hold a valid NCSP certification, or who did not graduate from a training program approved by the National Association of School Psychologists or accredited in School Psychology by the American Psychological Association, must have completed a graduate degree in psychology from a regionally accredited academic institution. Applicants applying under this paragraph must have completed, either as part of their graduate degree program or after conferral of their graduate degree, at least 60 graduate level semester credit hours from a regionally accredited academic institution. A maximum of 12 internship hours may be counted toward the 60 hour requirement. For purposes of this rule, a graduate degree in psychology means the name of the candidate's major or program of studies is titled psychology. Applicants applying under this paragraph must submit evidence of graduate level coursework as follows:

(A) Psychological Foundations, including:

(i) biological bases of behavior;

(ii) human learning;

(iii) social bases of behavior;

(iv) multi-cultural bases of behavior;

(v) child or adolescent development;

(vi) psychopathology or exceptionalities;

(B) Research and Statistics;

(C) Educational Foundations, including any of the following:

(i) instructional design;

(ii) organization and operation of schools;

(iii) classroom management; or

(iv) educational administration;

(D) Assessment, including:

(i) psychoeducational assessment;

(ii) socio-emotional, including behavioral and cultural, assessment;

(E) Interventions, including:

(i) counseling;

(ii) behavior management;

(iii) consultation;

(F) Professional, Legal and Ethical Issues; and

(G) A Practicum.

(c) Completion of internship.

(1) Applicants must have completed a minimum of 1200 hours, of which 600 must be in a public school. A formal internship or other site-based training must be provided through a formal course of supervised study from a regionally accredited institution of higher education in which the applicant was enrolled or be obtained in accordance with Board rule §463.11(c)(1) and (c)(2)(C) of this title (relating to Licensed Psychologist). The internship in the public school must be supervised by an individual qualified in accordance with Board rule §465.38 of this title (relating to Psychological Services in the Schools). Internship which is not obtained in a public school must be supervised by a licensed psychologist. No experience with a supervisor who is related within the second degree of affinity or within the second degree by consanguinity to the person, or is under Board disciplinary order, may be considered for specialist in school psychology licensure. Internships may not involve more than two sites (a school district is considered one site) and must be obtained in not less than one or more than two academic years. These individuals must be designated as interns. Direct, systematic supervision must involve a minimum of one face-to-face contact hour per week or two consecutive face-to-face contact hours once every two weeks with the intern. The internship must include direct intern application of assessment, intervention, behavior management, and consultation, for children representing a range of ages, populations and needs.

(2) Applicants must have completed an internship with a minimum of 1200 hours. The internship must also meet the following criteria:

(A) At least 600 of the internship hours must have been completed in a public school.

(B) The internship must be provided through a formal course of supervised study from a regionally accredited institution of higher education in which the applicant was enrolled; or the internship must have been obtained in accordance with Board rule §463.11(d)(1) and (d)(2)(C) of this title.

(C) Any portion of an internship completed within a public school must be supervised by a Licensed Specialist in School Psychology, and any portion of an internship not completed within a public school must be supervised by a Licensed Psychologist.

(D) No experience which is obtained from a supervisor who is related within the second degree of affinity or consanguinity to the supervisee may be utilized.

(E) Unless authorized by the Board, supervised experience received from a supervisor practicing with a restricted license may not be utilized to satisfy the requirements of this rule.

(F) Internship hours must be obtained in not more than two placements. A school district, consortium, and educational co-op are each considered one placement.

(G) Internship hours must be obtained in not less than one or more than two academic years.

(H) An individual completing an internship under this rule must be designated as an intern.

(I) Interns must receive no less than two hours of supervision per week, with no more than half being group supervision. The amount of weekly supervision may be reduced, on a proportional basis, for interns working less than full-time.

(J) The internship must include direct intern application of assessment, intervention, behavior management, and consultation, for children representing a range of ages, populations and needs.

(3) Paragraph (2) of this subsection, along with all of its subparts, shall take effect, supersede, and take the place of paragraph (1) of this subsection on September 1, 2017.

(d) Additional Requirements. In addition to the requirements of subsection (a) through (c) of this section, applicants for licensure as a specialist in school psychology must meet the requirements imposed under §501.255(a)(2) - (9) of the Psychologists' Licensing Act.

(e) Examinations. Applicants must take the National School Psychology Examination and obtain at least the current cut-off score for the NCSP certification before applying for licensure as a specialist in school psychology. Following approval to sit for Board exams, an applicant must take and pass the Jurisprudence Examination within the time required by Board rule §463.19.

(f) Trainee Status.

(1) An applicant for the specialist in school psychology license who has not yet passed the Board's Jurisprudence Examination, but who otherwise meets all licensing requirements under this rule, may practice in the public schools under the supervision of a Licensed Specialist in School Psychology, as a trainee for not more than one year.

(2) A trainee status letter shall be issued to an applicant upon proof of licensing eligibility, save and except proof of passage of the Board's Jurisprudence Examination.

(3) An individual with trainee status is subject to all applicable laws governing the practice of psychology.

(4) A trainee's status shall be suspended or revoked upon a showing of probable cause of a violation of the Board's rules or any law pertaining to the practice of psychology, and the individual may be made the subject of an eligibility proceeding. The one year period for trainee status shall not be tolled by any suspension of the trainee status.

(5) Following official notification from the Board upon passage of the Jurisprudence Examination or the expiration of one year, whichever occurs first, an individual's trainee status shall terminate.

(6) An individual practicing under trainee status must be designated as a trainee.

(g) Provision of psychological services in the public schools by unlicensed individuals. An unlicensed individual may provide psychological services under supervision in the public schools if:

(1) the individual is enrolled in an internship, practicum or other site based training in a psychology program in a regionally accredited institution of higher education;

(2) the individual has completed an internship that meets the requirements of this rule, and has submitted an application for licensure as a Licensed Specialist in School Psychology to the Board that has not been denied, returned, or gone void under Board rule §463.2 of this title (relating to Application Process; or

(3) the individual has been issued a trainee status letter.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 9, 2017.

TRD-201700948
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: April 23, 2017
For further information, please call: (512) 305-7706

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22 TAC §463.10

The Texas State Board of Examiners of Psychologists proposes an amendment to §463.10, Provisionally Licensed Psychologists.

The proposed amendment will eliminate the reference letter requirement for provisional licensure in accordance with Management Recommendation No. 3.8 on pg. 24 of the Sunset Commission Staff Report. The proposed amendment will also restrict the issuance of provisional trainee status letters to one per applicant, so as to avoid the potential for fraud and abuse, and will serve to eliminate unnecessary language in subsection (d).

Darrel D. Spinks, Executive Director, has determined that for the first five-year period the proposed amendment will be in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the rule.

Mr. Spinks 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 to help the Board protect the public. There will be no economic costs to persons required to comply with this rule. There will be no effect on small businesses or local economies.

Comments on the proposed amendment may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Ste 2-450, Austin, Texas 78701, within 30 days of publication of this proposal in the *Texas Register.* Comments may also be submitted via fax to (512) 305-7701, or via email to *brenda@tsbep.texas.gov.*

The amendment is proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§463.10. Provisionally Licensed Psychologists.

(a) Application Requirements.

(1) An application for provisional licensure as a psychologist includes, in addition to the requirements set forth in Board rule §463.5 of this title (relating to Application File Requirements), an official transcript which indicates that the applicant has received a doctoral degree in psychology. Additionally, the applicant must meet the requirements of §501.255 of the Psychologists' Licensing Act.

(2) An application for provisional licensure as a psychologist may be filed up to sixty days prior to the date the applicant's doctoral degree is officially conferred, but remains subject to Board rule §463.2 of this title (relating to Application Process).

(b) Degree Requirements.

(1) The applicant's transcript must state that the applicant has a doctoral degree that designates a major in psychology. Additionally, the doctoral degree must be from a program accredited by the American Psychological Association or from a regionally accredited institution.

(2) The substantial equivalence of a doctoral degree received prior to January 1, 1979, based upon a program of studies whose content is primarily psychological means a doctoral degree based on a program which meets the following criteria:

(A) Post-baccalaureate program in a regionally accredited institution of higher learning. The program must have a minimum of 90 semester hours, not more than 12 of which are credit for doctoral dissertation and not more than six of which are credit for master's thesis.

(B) The program, wherever it may be administratively housed, must be clearly identified and labeled. Such a program must specify in pertinent institutional catalogs and brochures its intent to educate and train professional psychologists.

(C) The program must stand as a recognizable, coherent organizational entity within the institution. A program may be within a larger administrative unit, e.g., department, area, or school.

(D) There must be a clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines. The program must have identifiable faculty and administrative heads who are psychologists responsible for the graduate program. Psychology faculty are individuals who are licensed or provisionally licensed or certified psychologists, or specialists of the American Board of Professional Psychology (ABPP), or hold a doctoral degree in psychology from a regionally accredited institution.

(E) The program must be an integrated, organized sequence of studies, e.g., there must be identifiable curriculum tracks wherein course sequences are outlined for students.

(F) The program must have an identifiable body of students who matriculated in the program.

(G) The program must include supervised practicum, internship, field or laboratory training appropriate to the practice of psychology. The supervised field work or internship must have been a minimum of 1,500 supervised hours, obtained in not less than a 12 month period nor more than a 24 month period. Further, this requirement cannot have been obtained in more than two placements or agencies.

(H) The curriculum shall encompass a minimum of two academic years of full-time graduate studies for those persons who

have enrolled in the doctoral degree program after completing the requirements for a master's degree. The curriculum shall encompass a minimum of four academic years of full-time graduate studies for those persons who have entered a doctoral program following the completion of a baccalaureate degree and prior to the awarding of a master's degree. It is recognized that educational institutions vary in their definitions of full-time graduate studies. It is also recognized that institutions vary in their definitions of residency requirements for the doctoral degree.

(I) The following curricular requirements must be met and demonstrated through appropriate course work:

(i) Scientific and professional ethics related to the field of psychology.

(ii) Research design and methodology, statistics.

(iii) The applicant must demonstrate competence in each of the following substantive areas. The competence standard will be met by satisfactory completion at the B level of a minimum of six graduate semester hours in each of the four content areas. It is recognized that some doctoral programs have developed special competency examinations in lieu of requiring students to complete course work in all core areas. Graduates of such programs who have not completed the necessary semester hours in these core areas must submit to the Board evidence of competency in each of the four core areas.

(I) Biological basis of behavior: physiological psychology, comparative psychology, neuropsychology, sensation and perception, psycho-pharmacology.

(II) Cognitive-affective basis of behavior: Learning, thinking, motivation, emotion.

(III) Social basis of behavior: social psychology, group processes, organizational and system theory.

(IV) Individual differences: personality theory, human development, abnormal psychology.

(J) All educational programs which train persons who wish to be identified as psychologists will include course requirements in specialty areas. The applicant must demonstrate a minimum of 24 hours in his/her designated specialty area.

(3) Any person intending to apply for provisional licensure under the substantial equivalence clause must file with the Board an affidavit showing:

(A) Courses meeting each of the requirements noted in paragraph (2) of this subsection verified by official transcripts;

(B) Information regarding each of the instructors in the courses submitted as substantially equivalent;

(C) Appropriate, published information from the university awarding the degree, demonstrating that in paragraph (2)(A)(J) of this subsection have been met.

(c) An applicant for provisional licensure as a psychologist who is accredited by Certificate of Professional Qualification in Psychology (CPQ) or the National Register or who is a specialist of ABPP will have met the following requirements for provisional licensure: submission of an official transcript which indicates the date the doctoral degree in psychology was awarded or conferred, and submission of documentation of the passage of the national psychology examination at the doctoral level at the Texas cut-off score.[; ~~and submission of three acceptable reference letters.~~] All other requirements for provisional licensure must be met by these applicants. Additionally, these applicants must provide documentation sent directly from the qualifying entity to the Board office declaring that the applicant is a current member in the organization and has had no disciplinary action from any state or provincial health licensing board.

(d) Trainee Status for Provisional Applicants.

(1) An applicant for provisional licensure who has not yet passed the EPPP and Jurisprudence Examination, but who otherwise meets all provisional licensing requirements and is seeking to acquire the supervised experience required by §501.252(b)(2) of the Psychologists' Licensing Act, may practice under the supervision of a Licensed Psychologist as a provisional trainee for not more than two years.

(2) A provisional trainee status letter shall be issued to an applicant upon proof of provisional licensing eligibility, save and except proof of passage of the EPPP and Jurisprudence Examination. However, a provisional trainee status letter will not be issued to an applicant who was issued a provisional trainee status letter in connection with a prior application.

(3) An individual with trainee status is subject to all applicable laws governing the practice of psychology.

(4) A provisional trainee's status shall be suspended or revoked upon a showing of probable cause of a violation of the Board's rules or any law pertaining to the practice of psychology, and the individual may be made the subject of an eligibility proceeding. The two years period for provisional trainee status shall not be tolled by any suspension of the provisional trainee status.

(5) Following official notification from the Board upon passage of the EPPP and Jurisprudence Examination, or the expiration of two years, whichever occurs first, an individual's provisional trainee status shall terminate.

~~[(6) This subsection, along with all of its subparts, shall take effect on September 1, 2016.]~~

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 9, 2017.

TRD-201700949
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: April 23, 2017
For further information, please call: (512) 305-7706

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PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 501. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER C. RESPONSIBILITIES TO CLIENTS

22 TAC §501.75

The Texas State Board of Public Accountancy (Board) proposes an amendment to §501.75, concerning Confidential Client Communications.

Background, Justification and Summary

The amendment to §501.75 allows CPAs to turn over the records of their former client to a successor entity.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit Cost Note

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be clarification of the application of confidentiality and the requirement of a licensee to notice the loss of control over client records.

There will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business and Micro-Business Impact Analysis

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses or micro-businesses because the amendment does not impose any duties or obligations upon small businesses or micro-businesses, therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis is not required.

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on April 24, 2017.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§501.75. Confidential Client Communications.

(a) Except by permission of the client or the authorized representatives of the client, a person or any partner, member, officer, shareholder, or employee of a person shall not voluntarily disclose information communicated to him by the client relating to, and in connection with, professional accounting services or professional accounting work rendered to the client by the person. Such information shall be deemed confidential. The following includes, but is not limited to, examples of authorized representatives:

(1) the authorized representative of a successor entity becomes the authorized representative of the predecessor entity when the predecessor entity ceases to exist and no one exists to give permission on behalf of the predecessor entity; and

(2) an executor/administrator of the estate of a deceased client possessing an order signed by a judge is an authorized representative of the estate.

(b) The provisions contained in subsection (a) of this section do not prohibit the disclosure of information required to be disclosed [~~by~~]:

(1) by the professional standards for reporting on the examination of a financial statement and identified in Chapter 501, Subchapter B of this title (relating to Professional Standards);

(2) by applicable federal laws, federal government regulations, including requirements of the PCAOB;

(3) under a summons or subpoena under the provisions of the Internal Revenue Code of 1986 and its subsequent amendments, a summons under the provisions of the Securities Act of 1933 (15 U.S.C. Section 77a et seq.) and its subsequent amendments, or a summons under the provisions of the Securities Exchange Act of 1934 (15 U.S.C. Section 78a et seq.) and its subsequent amendments, the Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes); [~~or under a court order signed by a judge if the summons or the court order:~~]

[~~(A) is addressed to the license holder;~~]

[~~(B) mentions the client by name; and~~]

[~~(C) requests specific information concerning the client.~~]

(4) under a court order signed by a judge if the court order:

(A) is addressed to the license holder;

(B) mentions the client by name; and

(C) requests specific information concerning the client.

(5) [~~(4)~~] by the public accounting profession in reporting on the examination of financial statements;

(6) [~~(5)~~] by a congressional or grand jury subpoena;

(7) [~~(6)~~] in investigations or proceedings conducted by the board [~~Board~~];

(8) [~~(7)~~] in ethical investigations conducted by a private professional organization of certified public accountants;

(9) [~~(8)~~] in a peer review; or

(10) [~~(9)~~] in the course of a practice [a] review by another CPA or CPA firm for a potential acquisition in conjunction with a prospective purchase, sale, or merger of all or part of a member's practice if both firms enter into a written nondisclosure agreement with regard to all client information shared between the firms.

(c) The provisions contained in subsection (a) of this section do not prohibit the disclosure of information already made public, including information disclosed to others not having a confidential communications relationship with the client or authorized representative of the client.

(d) A person in the client practice of public accountancy shall take all reasonable measures to maintain the confidentiality of the client records and shall immediately upon becoming aware of the loss of, or loss of control over, the confidentiality of those records notify the client affected in writing of the date and time of the loss if known. Loss includes a cybersecurity breach or other incident exposing the records to a third party or parties without the client's consent or the loss of the client records or the loss of control over the client records. Persons have a responsibility to maintain a back-up system in order to be able to immediately identify and notify clients of a loss. [~~Interpretive comment. The definition of a successor entity does not include the purchaser of all assets of an entity.~~]

(e) Interpretive comment. The definition of a successor entity as referenced in subsection (a)(1) of this section does not include the purchaser of all assets of an entity.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 10, 2017.

TRD-201701011
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: April 23, 2017
For further information, please call: (512) 305-7842

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CHAPTER 511. ELIGIBILITY
SUBCHAPTER D. CPA EXAMINATION

22 TAC §511.80

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.80, concerning Granting of Credit.

Background, Justification and Summary

The amendment to §511.80 will allow a three month extension to the normal 18 months that an applicant for the CPA certificate may retain their exam grade, to address the delay caused by the exam restructure.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit Cost Note

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a fair application of the rule allowing 18 months before a passing score on the CPA exam will expire.

There will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business and Micro-Business Impact Analysis

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses or micro-businesses because the amendment does not impose any duties or obligations upon small businesses or micro-businesses, therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis is not required.

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on April 24, 2017.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§511.80. Granting of Credit.

(a) The board shall grant credit to an applicant for the satisfactory completion of a section of the UCPAE provided the applicant earns a passing score on the section as determined by board rule. The credit shall be valid for 18 months from the actual date of notification of passing score results.

(b) An applicant must pass the remaining sections within the next 18 months. Should an applicant's exam credit be invalidated due to the expiration of 18 months without earning credit on the remaining sections, the applicant remains qualified to take the examination.

(c) An applicant receiving and retaining credit for every section on the UCPAE, within an 18-month period, subject to the limitations imposed by the Act, shall be considered by the board to have completed the examination and may make application for certification as a CPA.

(d) An applicant who has received and retained credit for any or all sections on the UCPAE may transfer such credits to another licensing jurisdiction if the applicant pays in advance a transfer fee set by board rule as identified in §521.7 of this title (relating to Fee for Transfer of Credits).

(e) An applicant who has credit on the UCPAE that will expire between April 1, 2017 and September 30, 2018 will have a three-month extension of the credit.

(f) An applicant who took the UCPAE from April 1, 2017 through May 31, 2017 and receives credit will have a three-month extension for the credit through March 31, 2019.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 10, 2017.

TRD-201701012
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: April 23, 2017
For further information, please call: (512) 305-7842

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CHAPTER 512. CERTIFICATION BY RECIPROCITY

22 TAC §512.1

The Texas State Board of Public Accountancy (Board) proposes an amendment to §512.1, concerning Certification as a Certified Public Accountant by Reciprocity.

Background, Justification and Summary

The amendment to §512.1 adds a provision for good moral character as a basis for reciprocity for the CPA certificate in Texas.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit Cost Note

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be to clarify the application of moral character to licensure.

There will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business and Micro-Business Impact Analysis

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses or micro-businesses because the amendment does not impose any duties or obligations upon small businesses or micro-businesses, therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis is not required.

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on April 24, 2017.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§512.1. Certification as a Certified Public Accountant by Reciprocity.

(a) The certificate of a "certified public accountant" shall be granted by reciprocity to an applicant who is qualified under §901.259 of the Act (relating to Certification Based on Reciprocity) or §901.260 of the Act (relating to Certificate Based on Foreign Credentials) and is of good moral character as described in §901.253 of the Act (relating to Character Investigation). The applicant must provide [~~has provided~~] in the application for reciprocity the names of all the jurisdictions in which the applicant is or has been certified and/or licensed and [~~has provided~~] all disciplinary actions taken or pending in those jurisdictions.

(b) An applicant from a domestic jurisdiction demonstrates that he meets the requirements for certification by reciprocity by:

(1) satisfying one of the following conditions:

(A) the applicant holds a certificate or license to practice public accountancy from a domestic jurisdiction that has been determined by the board pursuant to §512.2 of this chapter (relating to National Association of State Boards of Accountancy Verified Substantially Equivalent Jurisdictions) as having substantially equivalent requirements for certification; or

(B) the applicant holds a certificate or license to practice public accountancy from a domestic jurisdiction that has not been determined by NASBA and the board to have substantially equivalent certification requirements but has had his education, examination and experience verified as substantially equivalent to those required by the UAA by NASBA; or

(C) the applicant meets all requirements for issuance of a certificate set forth in the Act; or

(D) the applicant met the requirements in effect for issuance of a certificate in this state on the date the applicant was issued a certificate or license by another domestic jurisdiction; or

(E) after passing the UCPAE, the applicant has completed at least four years of experience practicing public accountancy within the ten year period immediately preceding the date of application in this state; and

(2) meeting CPE requirements applicable to certificate holders contained in Chapter 523 of this title (relating to Continuing Professional Education).

(c) An applicant from a foreign jurisdiction demonstrates that he meets the requirements for certification by reciprocity by:

(1) holding a credential that has not expired or been revoked, suspended, limited or probated, and that entitles the holder to issue reports on financial statements issued by a licensing authority or professional accountancy body of another country that:

(A) regulates the practice of public accountancy and whose requirements to obtain the credential have been determined by the board to be substantially equivalent to the requirements of education, examination and experience contained in the Act; and

(B) grants credentials by reciprocity to applicants certified to practice public accountancy by this state;

(2) receiving that credential based on education and examination requirements that were comparable to or exceeded those required by the Act at the time the credential was granted;

(3) completing an experience requirement in the foreign jurisdiction that issued the credential that is comparable to or exceeds the experience requirement of the Act or has at least four years of professional accounting experience in this state;

(4) passing an international qualifying examination (IQEX) covering national standards that has been approved by the board; and

(5) passing an examination that has been approved by the board covering the rules of professional conduct in effect in this state.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 10, 2017.

TRD-201701013
J. Randal (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: April 23, 2017
For further information, please call: (512) 305-7842

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22 TAC §512.2

The Texas State Board of Public Accountancy (Board) proposes an amendment to §512.2, concerning NASBA Verified Substantially Equivalent Jurisdictions.

Background, Justification and Summary

The amendment to §512.2 adds a comma in subsection (a).

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit Cost Note

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a more streamlined rule.

There will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business and Micro-Business Impact Analysis

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses or micro-businesses because the amendment does not impose any duties or obligations upon small businesses or micro-businesses, therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis is not required.

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on April 24, 2017.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§512.2. NASBA Verified Substantially Equivalent Jurisdictions.

(a) NASBA's National Qualification Appraisal Service may verify that the education, examination and experience requirements for certification of another domestic jurisdiction are comparable to or exceed the education, examination and experience requirements for certification contained in the UAA, and the board finds that the education, examination and experience requirements for certification contained in the UAA are comparable to or exceed the education, examination and experience requirements for certification contained in the Act.

(b) The board designates each domestic jurisdiction verified by NASBA as being substantially equivalent pursuant to subsection (a) of this section as an approved domestic jurisdiction for certification by reciprocity under this chapter and for registration of out-of-state practitioners with substantially equivalent qualifications under Chapter 513 of this title (relating to Registration).

(c) An applicant who has a valid certificate to practice as a CPA from a domestic jurisdiction that has not been verified as substantially equivalent to the UAA by NASBA may obtain a verification from NASBA's National Qualification Appraisal Service that the applicant's education, examination and experience are comparable to or exceed

the education, examination and experience requirements for certification contained in the UAA.

(d) The board shall consider an applicant whose education, examination and experience have been verified by NASBA to be substantially equivalent as being from an approved substantially equivalent domestic jurisdiction for certification by reciprocity under this chapter and for registration of out-of-state practitioners with substantially equivalent qualifications under Chapter 513 of this title.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 10, 2017.

TRD-201701014
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: April 23, 2017
For further information, please call: (512) 305-7842

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22 TAC §512.4

The Texas State Board of Public Accountancy (Board) proposes an amendment to §512.4, concerning Application for Certification by Reciprocity.

Background, Justification and Summary

The amendment to §512.4 mirrors the new language found in §511.22 and §511.162.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit Cost Note

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a clarification of the application process.

There will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business and Micro-Business Impact Analysis

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses or micro-businesses because the amendment does not impose any duties or obligations upon small businesses or micro-businesses, therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis is not required.

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on April 24, 2017.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§512.4. Application for Certification by Reciprocity.

(a) An applicant seeking certification by reciprocity must apply for certification on a form prescribed by the board. The application must be accompanied by the requisite fee and shall include written authorization from the applicant empowering the board to obtain all information concerning the applicant's qualifications and present standing.

(b) An applicant for certification by reciprocity from a domestic jurisdiction that has not been approved as being substantially equivalent by both NASBA and the board must submit the following along with the completed application form and requisite fee to be processed:

(1) an interstate exchange of information form documenting the credits under the domestic jurisdiction of origin;

(2) an executed oath of office stating support of the Constitutions of the United States and of the State of Texas and their laws and the rules of the board;

~~[(3) documentation of qualifying work experience if applying under §901.259(a)(1)(E) of the Act (relating to Certification Based on Reciprocity);]~~

~~[(4) if not applying under §901.259(a)(1)(E) of the Act, official college transcripts;]~~

~~[(5) a recent photograph of the applicant;]~~

(3) [~~(6)~~] evidence of completion of an examination on the board's Rules of Professional Conduct;

(4) [~~(7)~~] evidence of completion of 120 hours of CPE during the last three years, including a board-approved four-hour ethics course; in compliance with Chapter 523 of this title (relating to Continuing Professional Education);

(5) [~~(8)~~] evidence of completion of the board's procedure to investigate the moral character of applicants in accordance with the established fingerprint process that accesses the Federal Bureau of Investigation (FBI) database and the Texas Department of Public Safety - Crime Records division files [~~an FBI fingerprint card to be used for a criminal background investigation~~]; and

(6) [~~(9)~~] any other information requested by the board.

(c) An applicant for certification by reciprocity from a domestic jurisdiction that has been approved as being substantially equivalent by both NASBA and the board must submit the following along with the completed application form and requisite fee to be processed:

(1) a certificate of good standing as a CPA from a domestic jurisdiction approved by both NASBA and the board as being substantially equivalent;

(2) if requested, a certificate of verification of substantial equivalency of the domestic jurisdiction of origin from NASBA;

(3) an executed oath of office stating support of the Constitutions of the United States and of the State of Texas and their laws and the rules of the board;

[~~(4) a recent photograph of the applicant;~~]

(4) evidence of completion of an examination on the board's Rules of Professional Conduct;

(5) evidence of completion of 120 hours of CPE during the last three years, including a board-approved four-hour ethics course [~~on the board's Rules of Professional Conduct~~]; in compliance with Chapter 523 of this title (relating to Continuing Professional Education);

(6) evidence of completion of the board's procedure to investigate the moral character of applicants in accordance with the established fingerprint process that accesses the Federal Bureau of Investigation (FBI) database and the Texas Department of Public Safety - Crime Records division files [~~an FBI fingerprint card to be used for a criminal background investigation~~]; and

(7) any other information requested by the board.

(d) An applicant for certification by reciprocity from a foreign jurisdiction that has been approved as being substantially equivalent by both U.S. IQAB and the board must submit the following along with the completed application form and requisite fee to be processed:

(1) a certificate of good standing of credentials to practice public accountancy from the foreign jurisdiction of origin;

(2) an executed oath of office stating support of the Constitutions of the United States and of the State of Texas and their laws and the rules of the board;

[~~(3) a recent photograph of the applicant;~~]

(3) [~~(4)~~] evidence of a passing grade on the IQEX;

(4) [~~(5)~~] evidence of a passing grade on a board approved examination on the board's Rules of Professional Conduct;

(5) [~~(6)~~] evidence of the completion of a board-approved four-hour ethics course;

(6) [~~(7)~~] evidence of completion of the board's procedure to investigate the moral character of applicants in accordance with the established fingerprint process that accesses the Federal Bureau of Investigation (FBI) database and the Texas Department of Public Safety - Crime Records division files [~~an FBI fingerprint card to be used for a criminal background investigation~~]; and

(7) [~~(8)~~] any other information requested by the board.

(e) All correspondence and supporting documentation submitted to the board shall be in English or accompanied by a certified translation into English of such documents.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 10, 2017.

TRD-201701015
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: April 23, 2017
For further information, please call: (512) 305-7842

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22 TAC §512.5

The Texas State Board of Public Accountancy (Board) proposes an amendment to §512.5, concerning Examination Authorization.

Background, Justification and Summary

The amendment to §512.5 clarifies that an applicant needs a passing score.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit Cost Note

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefit expected as a result of adoption of the proposed amendment will be a more streamlined rule.

There will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business and Micro-Business Impact Analysis

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses or micro-businesses because the amendment does not impose any duties or obligations upon small businesses or micro-businesses, therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis is not required.

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on April 24, 2017.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be

impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§512.5. Examination Authorization.

The board approves a passing score on the IQEX, written and graded by the AICPA as a measure of professional competency satisfactory to obtain a Texas certificate by reciprocity from a foreign jurisdiction.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 10, 2017.

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: April 23, 2017
For further information, please call: (512) 305-7842

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CHAPTER 513. REGISTRATION
SUBCHAPTER A. REGISTRATION OF CPAS OF OTHER STATES AND PERSONS HOLDING SIMILAR TITLES IN FOREIGN COUNTRIES

22 TAC §513.1

The Texas State Board of Public Accountancy (Board) proposes an amendment to §513.1, concerning Registration of Foreign Practitioners with Substantially Equivalent Qualifications.

Background, Justification and Summary

The amendment to §513.1 incorporates language from proposed repealed rules §513.2 and §513.3.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit Cost Note

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a clarification of the application process for a foreign applicant to be certified.

There will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business and Micro-Business Impact Analysis

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses or micro-businesses because the amendment does not impose any duties or obligations upon small businesses or micro-businesses, therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis is not required.

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on April 24, 2017.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§513.1. Registration of Foreign Practitioners with Substantially Equivalent Qualifications.

(a) An individual who holds a valid certificate or other credential issued by a foreign jurisdiction that allows the individual to practice public accountancy in the issuing jurisdiction may, if that certificate or credential remains in good standing in the issuing jurisdiction, be registered [~~make application for registration~~] with the board. [~~upon a prescribed form. The application must be accompanied by the requisite fee and must include written authorization empowering the board to obtain all information concerning the applicant's qualifications and the requirements for licensing by the issuing foreign jurisdiction.~~]

(b) A foreign practitioner registered with the board shall be allowed to use the title "Certified Public Accountant of _____" (indicating the foreign jurisdiction that issued his credential), or may use the title held in the foreign jurisdiction that issued his credential, provided that the foreign jurisdiction is indicated. This title may not be used unless followed by the name of the foreign jurisdiction.

(c) A foreign practitioner registered with the board must comply with the board's Code of Professional Conduct.

(d) A foreign practitioner registered with the board must renew his registration and license annually in the manner provided for renewal of a license in the Act. The registered foreign practitioner must submit a certificate verifying the continued existence of his foreign certificate or other credential in good standing from the foreign jurisdiction of origin with each renewal. A registration and license issued under §901.355 of the Act (relating to Registration for Certain Foreign Applicants) is

automatically revoked if the foreign practitioner does not continue to hold a current certificate or other credential from the foreign jurisdiction of origin.

(e) Interpretive comment: The provisions of this chapter are no longer applicable to foreign applicants wishing to provide accounting services in Texas. Foreign applicants shall apply for certification by reciprocity pursuant to Chapter 512 of this title (relating to Certification by Reciprocity) and §901.259 of the Act (relating to Certification Based on Reciprocity).

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 10, 2017.

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: April 23, 2017
For further information, please call: (512) 305-7842

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22 TAC §513.2

The Texas State Board of Public Accountancy (Board) proposes the repeal of §513.2, concerning Application for Registration of Foreign Practitioners.

Background, Justification and Summary

The repeal of §513.2 is necessary because the rule is no longer applicable.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed repeal is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the repeal.

Public Benefit Cost Note

Mr. Treacy has determined that for the first five-year period the repeal is in effect the public benefits expected as a result of adoption of the proposed repeal will be a more streamlined chapter.

There will be no probable economic cost to persons required to comply with the repeal and a Local Employment Impact Statement is not required because the proposed repeal will not affect a local economy.

Small Business and Micro-Business Impact Analysis

Mr. Treacy has determined that the proposed repeal will not have an adverse economic effect on small businesses or micro-businesses because the repeal does not impose any duties or obligations upon small businesses or micro-businesses, therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis is not required.

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on April 24, 2017.

The Board specifically invites comments from the public on the issues of whether or not the proposed repeal will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed repeal is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The repeal is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§513.2. Application for Registration of Foreign Practitioners.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 10, 2017.

TRD-201701018
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: April 23, 2017
For further information, please call: (512) 305-7842

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22 TAC §513.3

The Texas State Board of Public Accountancy (Board) proposes the repeal of §513.3, concerning Board Approval of Foreign Practitioner Registration.

Background, Justification and Summary

The repeal of §513.3 is necessary because the rule is no longer applicable.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed repeal is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the repeal.

Public Benefit Cost Note

Mr. Treacy has determined that for the first five-year period the repeal is in effect the public benefits expected as a result of adoption of the proposed repeal will be a more streamlined chapter.

There will be no probable economic cost to persons required to comply with the repeal and a Local Employment Impact State-

ment is not required because the proposed repeal will not affect a local economy.

Small Business and Micro-Business Impact Analysis

Mr. Treacy has determined that the proposed repeal will not have an adverse economic effect on small businesses or micro-businesses because the repeal does not impose any duties or obligations upon small businesses or micro-businesses, therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis is not required.

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on April 24, 2017.

The Board specifically invites comments from the public on the issues of whether or not the proposed repeal will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed repeal is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The repeal is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§513.3. Board Approval of Foreign Practitioner Registration.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 10, 2017.

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: April 23, 2017
For further information, please call: (512) 305-7842

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SUBCHAPTER B. REGISTRATION OF CPA FIRMS

22 TAC §513.10

The Texas State Board of Public Accountancy (Board) proposes an amendment to §513.10, concerning Firm License.

Background, Justification and Summary

The amendment to §513.10 deletes an unnecessary rule reference and clarifies who within a firm must supervise attest services.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit Cost Note

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be clarification of the requirements for firm licensure.

There will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business and Micro-Business Impact Analysis

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses or micro-businesses because the amendment does not impose any duties or obligations upon small businesses or micro-businesses, therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis is not required.

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on April 24, 2017.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§513.10. Firm License.

(a) A [~~Except as provided for in §501.81(d) of this title (relating to Firm License Requirements),~~ a] firm providing attest services or using the titles CPAs, CPA Firm, Certified Public Accountants, Certi-

fied Public Accounting Firm, Auditing Firm, or a variation of any of those titles shall do so only through a licensed firm.

(b) To be eligible for a firm license, the firm must show:

(1) that a majority of the ownership of the firm, in terms of both financial interests and voting rights, belongs to individuals who hold certificates issued under this chapter or are licensed as a CPA in another state; or

(2) that when the firm ownership includes professional organizations, as defined in §301.003(7) of the Texas Business Organizations Code, the professional organizations must be owned by individuals that hold a certificate issued under this chapter or are licensed in another state; and

(3) that all attest services performed by the firm in this state are under the supervision of an individual within the firm who holds a certificate issued by the board or by another state that has not been suspended or revoked.

(c) Financial interests shall include but shall not be limited to stock shares, capital accounts, capital contributions, and equity interests of any kind. Financial interests also include contractual rights and obligations similar to those of partners, shareholders or other owners of an equity interest in a legal entity.

(d) Voting rights shall include but shall not be limited to any right to vote on the firm's ownership, business, partners, shareholders, management, profits, losses and/or equity ownership.

(e) Interpretive comment: A licensee offering non-attest services as defined in §901.005 of the Act (relating to Findings; Public Policy; Purpose) through an unlicensed firm in accordance with §501.81(d) of this title may not use the CPA designation in the unlicensed firm's name. For example: John Smith may not use the firm name "John Smith, CPA" unless the firm is licensed by the board.

(f) Interpretive comment: §901.351(a) of the Act (relating to Firm License Required), §501.81(a) of this title and subsection (a) of this section require a firm license in order to use the [~~title~~] CPA designation except as provided for in §501.81(d) of this title.

(g) Interpretive comment: A professional organization includes a professional corporation or professional limited liability company.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 10, 2017.

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: April 23, 2017
For further information, please call: (512) 305-7842

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22 TAC §513.13

The Texas State Board of Public Accountancy (Board) proposes an amendment to §513.13, concerning Certification of Corporate Franchise Tax Status.

Background, Justification and Summary

The amendment to §513.13 revises language in subsection (b) to match language in subsection (a).

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit Cost Note

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a more streamlined rule.

There will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business and Micro-Business Impact Analysis

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses or micro-businesses because the amendment does not impose any duties or obligations upon small businesses or micro-businesses, therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis is not required.

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on April 24, 2017.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§513.13. Certification of Texas [~~Corporate~~] Franchise Tax Status.

(a) Each firm subject to the Texas franchise tax must certify in its application for a firm license that its Texas franchise taxes are current.

(b) The making of a false statement as to Texas [~~corporate~~] franchise tax status on any license application or renewal as described

in subsection (a) of this section is grounds for suspension or revocation of the license.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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TRD-201701021
J. Randal (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: April 23, 2017
For further information, please call: (512) 305-7842

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22 TAC §513.15

The Texas State Board of Public Accountancy (Board) proposes an amendment to §513.15, concerning Firm Offices.

Background, Justification and Summary

The amendment to §513.15 clarifies the exemption requirement of Texas residency for resident managers.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit Cost Note

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a more streamlined rule.

There will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business and Micro-Business Impact Analysis

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses or micro-businesses because the amendment does not impose any duties or obligations upon small businesses or micro-businesses, therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis is not required.

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on April 24, 2017.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§513.15. Firm Offices.

(a) A certified public accountancy firm must hold a license for each office located in Texas.

(b) Each office of a firm must be under the direct supervision of a resident manager who is a resident of Texas. Exempted from the requirement of Texas residency is a resident manager who spends a majority of the work week in Texas as the firm's [~~on-site in the office for which the licensee is the firm~~] resident manager. A resident manager may be an owner, member, partner, shareholder, or employee of the firm and must be licensed under the Act.

(c) A resident manager may supervise more than one office provided that the firm's application for issuance or renewal of the firm license or registration identifies each of the offices the resident manager will supervise.

(d) A resident manager is responsible for the supervision of professional services and may be held responsible for the violations of the Act or Rules for the activities of each office under his supervision.

(e) Interpretive comment: The exemption provided for in subsection (b) of this section is intended to address licensees residing outside of Texas but are able to commute to the Texas office for which the licensee is the firm resident manager on a routine and regular basis.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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TRD-201701022
J. Randall (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: April 23, 2017
For further information, please call: (512) 305-7842

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CHAPTER 514. CERTIFICATION AS A CPA

22 TAC §514.3

The Texas State Board of Public Accountancy (Board) proposes an amendment to §514.3, concerning Replacement Certificates.

Background, Justification and Summary

The amendment to §514.3 deletes unnecessary language.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit Cost Note

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a more streamlined rule.

There will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business and Micro-Business Impact Analysis

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses or micro-businesses because the amendment does not impose any duties or obligations upon small businesses or micro-businesses, therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis is not required.

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on April 24, 2017.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§514.3. Replacement Certificates.

(a) Replacement certificates may be issued by the board in appropriate cases and upon payment by the CPA of the fee as determined by the board in §521.11 of this title (relating to Fee for a Replacement Certificate). A certificate holder is specifically prohibited from possessing more than one Texas certificate as a CPA.

(b) When a replacement certificate is requested, the certificate holder must [~~return the original certificate or~~] submit an [~~a sworn~~] affidavit describing the occurrence that necessitated the replacement certificate.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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TRD-201701023
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: April 23, 2017
For further information, please call: (512) 305-7842

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CHAPTER 515. LICENSES

22 TAC §515.3

The Texas State Board of Public Accountancy (Board) proposes an amendment to §515.3, concerning License Renewals for Individuals and Firm Offices.

Background, Justification and Summary

The amendment to §515.3 deletes the word "toll."

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit Cost Note

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a more streamlined rule.

There will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business and Micro-Business Impact Analysis

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses or micro-businesses because the amendment does not impose any duties or obligations upon small businesses or micro-businesses, therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis is not required.

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on April 24, 2017.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small busi-

nesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§515.3. License Renewals for Individuals and Firm Offices.

(a) License renewals for individuals shall be as follows:

(1) Licenses for individuals have staggered expiration dates based on the last day of the individual's birth month. The license will be issued for a 12-month period following the initial licensing period.

(2) An individual's license will not be renewed if the individual has not earned the required CPE credit hours, has not completed all required parts of the renewal or has not completed the affidavit affirming the renewal submitted is correct.

(3) At least 30 days before the expiration of an individual's license, the board shall send notice of the impending license expiration to the individual at the last known address according to board records. Failure to receive notice does not relieve the licensee from the responsibility to timely renew nor excuse, [~~toll,~~] or otherwise affect the renewal deadlines imposed on the licensee.

(b) License renewal requirements for firm offices shall be as follows:

(1) Licenses for offices of firms have staggered expiration dates for payment of fees, which are due the last day of a board assigned renewal month. All offices of a firm will have the same renewal month. All offices of a firm will be issued a license for a 12-month period following the initial licensing period.

(2) At least 30 days before the expiration of a firm's office license, the board shall send notice of the impending license expiration to the main office of the firm at the last known address according to the records of the board. Failure to receive notice does not relieve the firm from the responsibility to timely renew nor excuse, [~~toll,~~] or otherwise affect the renewal deadlines imposed on the firm.

(3) A firm's office license shall not be renewed unless the sole proprietor, each partner, officer, director, or shareholder of the firm who is listed as a member of the firm and who is certified or registered under the Act has a current individual license. This does not apply to firms providing work pursuant to the practice privilege provisions of this title.

(4) If a firm is subject to peer review, then a firm's office license shall not be renewed unless the office has met the peer review requirements as defined in Chapter 527 of this title (relating to Peer Review).

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 10, 2017.

TRD-201701024
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: April 23, 2017
For further information, please call: (512) 305-7842

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22 TAC §515.4

The Texas State Board of Public Accountancy (Board) proposes an amendment to §515.4, concerning License Expiration.

Background, Justification and Summary

The amendment to §515.4 replaces the word "will" with "shall."

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit Cost Note

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a more streamlined rule.

There will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business and Micro-Business Impact Analysis

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses or micro-businesses because the amendment does not impose any duties or obligations upon small businesses or micro-businesses, therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis is not required.

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on April 24, 2017.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the

proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§515.4. License Expiration.

(a) Failure to submit to the board a completed renewal notice, the renewal fee and any other required documents before the license expiration date shall [~~will~~] result in the expiration of the individual's or the firm's license(s).

(b) Failure to submit to the board a completed renewal notice, the renewal fee and any other required documents for three consecutive years may result in the revocation of the individual's certificate.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 10, 2017.

TRD-201701025
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: April 23, 2017
For further information, please call: (512) 305-7842

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22 TAC §515.5

The Texas State Board of Public Accountancy (Board) proposes an amendment to §515.5, concerning Reinstatement of a Certificate or License in the Absence of a Violation of the Board's Rules of Professional Conduct.

Background, Justification and Summary

The amendment to §515.5 clarifies the process by which an individual, in the absence of a violation of a Rules of Professional Conduct, can reinstate their license.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit Cost Note

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be clarification of the process for reinstatement of a license.

There will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business and Micro-Business Impact Analysis

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses or micro-businesses because the amendment does not impose any duties or obligations upon small businesses or micro-businesses, therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis is not required.

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854, no later than noon on April 24, 2017.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses; if the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted, finally describe how the health, safety, environmental and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§515.5. Reinstatement of a Certificate or License in the Absence of a Violation of the Board's Rules of Professional Conduct.

(a) An individual whose license has been expired for 90 days or less may renew the license by paying to the board a renewal fee that is equal to 1 1/2 times the normally required renewal fee.

(b) An individual whose license has been expired for more than 90 days but less than one year may renew the license by paying to the board a renewal fee that is equal to two times the normally required renewal fee.

(c) An individual whose license has been expired for at least one year but less than two years may renew the license by paying to the board a renewal fee that is equal to three times the normally required renewal fee.

(d) An individual whose license has been expired for two years or more may obtain a license by paying all renewal fees including late fees.

(e) An individual whose license has been suspended or certificate [~~expired four or more years and whose certificate has been~~] revoked for the voluntary non-payment of the annual license fees, the voluntary non-completion of the annual license renewal, or the voluntary non-completion of the board required CPE may[~~, upon a showing of good cause,~~] be administratively reinstated by complying with the

board's CPE requirements pursuant to Chapter 523 of this title (relating to Continuing Professional Education), and

(1) by paying all renewal fees including late fees, or

(2) [~~(1)~~] upon showing of good cause, entering into an Agreed Consent Order that reinstates the certificate and permits the issuance of a conditional license with the agreement to pay all required fees by a certain date. [~~; and~~]

[~~(2) agreeing to comply with the board's CPE requirements pursuant to Chapter 523 of this title (relating to Continuing Professional Education).~~]

[~~(f) An individual whose certificate has been voluntarily surrendered or voluntarily resigned, absent a board disciplinary action and whose license has been expired four or more years may, upon a showing of good cause, be administratively reinstated by:~~]

[~~(1) entering into an Agreed Consent Order that reinstates the certificate, and permits the issuance of a conditional license with the agreement to pay all required fees by a certain date; and~~]

[~~(2) agreeing to comply with the board's CPE requirements pursuant to Chapter 523 of this title.~~]

(f) [~~(g)~~] An individual who was revoked under §901.502(3) or (4) of the Act (relating to Grounds for Disciplinary Action), has moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of submitting a complete application may obtain a new license without reexamination by:

(1) providing the board with a complete application including evidence of the required licensure;

(2) demonstrating that the out of state license is no more than 90 days beyond the normal expiration date of the license;

(3) paying the board a fee that is equal to two times the normally required renewal fee for the license; and

(4) meeting the other requirements for licensing.

(g) [~~(h)~~] If the certificate, license, or registration was suspended, or revoked for non-payment of annual license fees, failure to complete the annual license renewal, or failure to comply with §501.94 of this title (relating to Mandatory Continuing Professional Education), upon written application the executive director will decide on an individual basis whether the renewal fees including late fees must be paid for those [~~the license~~] years [~~of suspension or revocation~~] and whether any fee exemption is applicable.

(h) [~~(i)~~] Interpretive Comment: Effective September 1, 2015, when calculating the renewal fee provided for in subsections (a) - (d) of this section, the professional fee that was required by §901.406 and §901.407 of the Act (relating to Fee Increase and Additional Fee) will no longer be included in the renewal fee. However, when calculating any renewal fees accrued prior to September 1, 2015, the professional fee that was required by §901.406 and §901.407 of the Act will be included in the renewal fee.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 10, 2017.

TRD-201701026

J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: April 23, 2017
For further information, please call: (512) 305-7842

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PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. GENERAL PROVISIONS SUBCHAPTER F. REQUIREMENTS FOR EDUCATION PROVIDERS, COURSES AND INSTRUCTORS FOR QUALIFYING EDUCATION

22 TAC §535.64

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.64, Content Requirements for Qualifying Real Estate Courses, in Chapter 535, General Provisions.

The proposed amendments to §535.64 allows credit for an elective qualifying course that is an advanced version of a qualifying course listed in the rule or a combination course consisting of a variety of subject matter topics from qualifying courses listed in the rule.

Kerri Lewis, General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the section. There is no significant anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the section. There is no anticipated significant economic cost to persons who are required to comply with the proposed amendments.

Ms. Lewis also has determined that for each year of the first five years the section as proposed is in effect, the public benefit anticipated as a result of enforcing the section will be greater variety of elective courses for new agents while maintaining the topic guidance established for better quality and relevance that has been set out in the rule.

Comments on the proposal may be submitted to Kerri Lewis, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register.*

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this proposal are Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

§535.64. Content Requirements for Qualifying Real Estate Courses.

(a) (No change.)

(b) Elective qualifying courses. To be approved by the Commission, the following elective qualifying courses must contain the content outlined below:

(1) Property Management, which shall contain the following topics, the units of which are outlined in the PROPM-0, Qualifying Real Estate Course Approval Form, Property Management, hereby adopted by reference:

(A) Professional Property Management - 120 minutes;

(B) Feasibility of Property Management - 90 minutes

(C) Marketing Plan - 60 minutes;

(D) Management Operations - 130 minutes;

(E) Owner Relations - 120 minutes;

(F) Market Analysis and Management of Housing - 95 minutes;

(G) Leases - 100 minutes;

(H) Tenant Relations - 115 minutes;

(I) Federal, State and Local Laws - 230 minutes;

(J) Maintenance and Construction - 90 minutes;

(K) Commercial Property Management - 150 minutes;

(L) Risk and Environmental Issues - 110 minutes; and

(M) Safety and Security Issues for Property Managers and Staff - 90 minutes;

(2) Real Estate Marketing, which shall contain the following topics, the units of which are outlined in the REM-0, Qualifying Real Estate Course Approval Form, Real Estate Marketing, hereby adopted by reference:

(A) Real Estate Marketing - 80 minutes;

(B) The Marketing Concept - 80 minutes

(C) Marketing Research and Data Analysis - 150 minutes;

(D) Prospecting and Target Marketing - 80 minutes;

(E) Technology and Online Marketing - 100 minutes;

(F) Social Media Marketing - 120 minutes;

(G) Product and Pricing Strategies -180 minutes;

(H) Compensation Models - 60 minutes;

(I) Characteristics of a Successful Sales Agent - 150 minutes;

(J) Understanding Clients - 90 minutes;

(K) Negotiating and Selling Skills - 120 minutes;

(L) Steps to Executing Agreements - 50 minutes; and

(M) State and Federal Laws - 90 minutes;

(N) Ethics and Real Estate Professionalism - 150 minutes;

(3) Real Estate Math, which shall contain the following topics, the units of which are outlined in the REMath-0, Qualifying Real Estate Course Approval Form, Real Estate Math, hereby adopted by reference:

(A) Introduction to Real Estate Math - 150 minutes;

(B) Review of Mathematical Logic Formulas - 150 minutes;

(C) List Price, Sales Price and Net Price - 50 minutes;

(D) Property Mathematics - 120 minutes;

(E) Appreciation & Depreciation - 60 minutes;

(F) Real Estate Taxes - 100 minutes;

(G) Mathematics of Real Estate Finance - 400 minutes;

(H) Appraisal Methods - 100 minutes;

(I) Closing Statements - 180 minutes;

(J) Investment Analysis - 90 minutes;

(K) Commercial Lease Calculations - 100 minutes;

(4) other than Property Management, Real Estate Marketing, and Real Estate Math meet the requirements of §1101.003 of the Act; [~~or~~]

(5) Residential Inspection for Real Estate Agents (or equivalent), which shall include but is not limited to:

(A) repair-related contract forms and addenda;

(B) inspector and client agreements;

(C) inspection standards of practice and standard inspection report form;

(D) tools and procedures;

(E) electromechanical systems (plumbing, heating, air conditioning, appliances, energy-saving considerations); and

(F) structures (lot and landscape, roofs, chimney, gutters, paved areas, walls, windows and doors, insect damage and storage areas)<u>; or</u>[-]

<u>(6) A 30 hour advanced course on any qualifying course subject matter or a combination of several different qualifying course subject matter topics as set out in subsections (a) and (b) of this section.</u>

(c) - (d) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 8, 2017.

TRD-201700873
Kerri Lewis
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: April 23, 2017
For further information, please call: (512) 936-3092

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 101. GENERAL AIR QUALITY RULES

SUBCHAPTER H. EMISSIONS BANKING AND TRADING

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §§101.300, 101.302 - 101.304, 101.306, 101.370, 101.372 - 101.374, and 101.376.

If adopted, the amended sections will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the state implementation plan (SIP).

Background and Summary of the Factual Basis for the Proposed Rules

The Emissions Banking and Trading (EBT) program rules in Chapter 101, Subchapter H include market-based programs that provide sites with additional flexibility for complying with air regulations, such as the offset requirements in nonattainment new source review (NNSR) permits or the unit-specific emission limits in various state rules. Two of the EBT programs are voluntary programs designed to incentivize emissions reductions beyond regulatory requirements. In 1993, the commission adopted the emission reduction credit (ERC) rules in Subchapter H, Division 1 to allow sources in nonattainment areas to generate, bank, trade, and use credits from permanent reductions in emissions. In 1997, the commission adopted the discrete emission reduction credit (DERC) rules in Subchapter H, Division 4 to allow sources throughout the state to generate, bank, trade, and use credits from emission reductions that exceed regulatory requirements.

Because the programs are market-based, the costs associated with trades of credits are not controlled. In response to recent increases in the cost and lack of availability of credits, there has been considerable interest from the regulated community for alternatives that facilitate credit generation and for flexibility in credit use, including options provided in the existing EBT rules that have historically not been used. Specifically, there has been interest in generating credits by reducing emissions from area (nonpoint) and mobile sources. However, staff research on the feasibility of generating area and mobile source credits indicated the need to address issues associated with ensuring that area and mobile source credits would meet EPA and Federal Clean Air Act (FCAA) requirements.

As part of a prior rulemaking, based on the identified implementation issues, on December 10, 2014, the commission proposed to remove the provisions for generating ERCs and DERCs from area and mobile sources. The commission requested comment on the proposed removal and the associated impacts of removing the potential for generation of area source credits. Additionally, the commission requested comment from individuals who support retaining an area source credit program specifically regarding suggestions for how an area source ERC or DERC program could be implemented in a manner consistent with EPA and FCAA requirements and minimize the burden to applicants. The commission subsequently received significant public comment opposing the removal of these area and mobile source credit provisions and, although the commission asked for ideas for how we might implement the area or mobile source generation, none were received. At the June 3, 2015 agenda, the commission retained the rules that allow area and mobile sources to generate credits. The commission emphasized that significant issues remain with generating credits from area and mobile sources in a manner consistent with federal requirements. In addition, the commission directed staff to identify potential viable options for generating credits from area and mobile sources or bring the issue back before them for potential removal. The commission also indicated that interested parties should engage with staff to discuss issues and potential options that would help to make retaining the area and mobile source generation of credits feasible. In meeting the commission's direction, staff worked with external parties, including the EPA, to identify a potentially viable solution for some area and mobile sources to generate credits. Staff also held open-participation meetings in July and December of 2016 to present potentially viable approaches for area and mobile sources credit generation. Input from the meetings and received comments were taken into consideration in developing the proposed rulemaking.

Generating Credits from Area Sources

To meet federal requirements, ERCs must be generated from emissions reductions that are demonstrated to be real, quantifiable, permanent, enforceable, and surplus to the SIP and all applicable rules, and DERCs must be generated from reductions that are real, quantifiable, and surplus to the SIP and all applicable rules. Though the existing rules allow an area source to generate emissions credits, the current methods for quantifying and authorizing area emissions make it challenging to demonstrate that the emissions reductions from area sources relied on for credits meet federal requirements.

Under the existing EBT rules, an area source is a stationary source that is not required to submit an annual emissions inventory (EI) under §101.10 based on the quantity of emissions from the source (e.g., an account that emits less than 10 tons per year (tpy) of volatile organic compounds or 25 tpy of nitrogen oxides in an ozone nonattainment area). Examples of area sources include, but are not limited to, upstream oil and gas production, small painting operations, gasoline stations, dry cleaners, and residential fuel combustion. Although emissions from individual area sources are relatively small, area sources are numerous enough to collectively emit significant quantities and must be accounted for in SIP planning and modeling. Area sources are too small and/or too numerous to be inventoried individually. For this reason, emissions from area sources are typically estimated using county level information such as population, emission factors, and activity or production data. County-level emission estimates pose difficulties in demonstrating that a particular emission reduction from area sources is surplus to the emissions in the SIP modeling.

To effectively implement an area source EBT program, area source applicants would be required to submit facility-specific emissions information with their application to be eligible to generate credits. To generate an ERC, an area source would be required to make the emissions reductions federally enforceable through permitting actions or other federally enforceable means. Many of these area sources are typically authorized with a permit by rule, which may not currently require registration. Satisfying these requirements may create a significant regulatory and financial responsibility for these area sources, which are typically small businesses. Additionally, processing and modeling these individual sources would be extremely resource intensive due to the significant number of sources.

The commission is proposing to revise the rules to implement an area source program that is consistent with EPA and FCAA federal requirements. The commission requests comment on the proposed revisions and their potential impact on the generation of area source credits. Comments focusing on how the proposed

area source program might influence specific industry types or sectors are also requested.

Generating Credits from Mobile Sources

The existing rules allow a mobile source to generate ERCs from emissions reductions that are demonstrated to be real, quantifiable, permanent, enforceable, and surplus to the SIP and all applicable rules, and DERCs from reductions that are real, quantifiable, and surplus to the SIP and all applicable rules.

Mobile sources are categorized as on-road and non-road sources. The on-road sources include automobiles, buses, trucks, and other vehicles traveling on local and highway roads. Non-road sources are any mobile combustion sources typically used off road, such as locomotives, marine vessels, off-road motorcycles, snowmobiles, lawn/garden equipment, and farm, construction, and industrial equipment.

The mobile source EI used in attainment demonstration SIP revisions relies on historical and future-year emission estimates. Since there are several million mobile sources in the state, it is unrealistic to have source-specific emission estimates in the SIP for each one. Also, since there is no registration database for non-road equipment, it is impossible to obtain a comprehensive set of source-specific data such as individual equipment owners, hours of use, model years of new purchases, ages of in-use equipment, etc. Instead, the commission uses computer models, such as the EPA's Motor Vehicle Emission Simulator and Texas NONROAD, to estimate the emissions from mobile sources based on fleet-average characteristics. The models used account for emissions reductions from mobile sources that are subject to the EPA rules for engine manufacturers. For these sources, the future-year emission estimates are usually lower than the historical emissions because of the ongoing fleet turnover benefits from replacing older higher-emitting engines with newer lower-emitting units that meet more stringent standards. Proving that an emission reduction from a specific mobile source is surplus to the SIP and not accounted for through fleet turnover poses challenges for potential applicants.

Federal law allows only the EPA and the State of California to establish engine certification standards for mobile sources. In the 1990s, when the EBT rules were first adopted, it was feasible to generate ERCs and DERCs from mobile sources because California standards were more stringent than the EPA standards, and there was not a requirement for California-certified vehicles or equipment to be used in Texas. However, changes in federal emission standards have essentially aligned the EPA and California standards in regards to emissions certification for mobile sources. In addition, the burden of meeting on-road vehicle and non-road equipment emission standards falls with the manufacturer and not the purchaser. As long as the vehicle or equipment met the standards in place at the time it was manufactured, the owner may operate it in most parts of Texas for years without demonstrating that the equipment consistently meets the original emissions certification standards, although annual emissions testing is required for certain on-road sources in some areas.

The commission is proposing to revise the rules to implement a mobile source program that addresses the legal and technical issues with generating credits from mobile sources. The commission requests comment on the proposed revisions and their potential impact on the generation of mobile source credits.

Meeting Federal Requirements: Surplus

The proposed rulemaking would revise the EBT Program rules in Chapter 101 to address the implementation issues associated with crediting emissions reductions from area and mobile sources. The proposed rules would ensure that area and mobile source credits are surplus to the emissions estimates used for SIP modeling by accounting for uncertainty in verifying the SIP emissions for an individual source. This uncertainty in verifying SIP emissions is produced by non-point EI estimation techniques, which do not quantify emissions on a source-level basis, and by mobile source fleet turnover assumptions used in the SIP.

The EPA requires source-specific integrity elements to be a part of any Economic Incentive Program, like the commission's EBT program (*See* Improving Air Quality with Economic Incentive Programs EPA-452/R-01-001). During the development of the proposed rule amendments, questions were raised about what makes emissions surplus for purposes of generating emission credits. Surplus means that source-specific emissions reductions proposed for credit generation are not relied upon in the current SIP, or are not required by some other legal requirement, like a consent decree. Specifically, baseline emissions cannot exceed emissions in the most recent modeling in the attainment demonstration or the EI for other types of SIP revisions.

These emissions are represented in an attainment demonstration primarily in the EI. The EI can be broken down into the point source EI, the area (nonpoint) source EI, and the mobile source EI. Due to different requirements for the different types of sources, each EI is developed differently. Point sources are required to keep records and report their actual emissions for the point source EI on an annual basis to the TCEQ. The area source EI is developed from activity data, surveys, and population-based estimates; consequently, this EI has more general information about the types of area (nonpoint) sources located in the nonattainment area instead of source-specific information. The mobile source EI is developed from EPA models and refined by the state. The inputs for these models are developed from various contract activities and surveys. Just as in the area source EI, the mobile EI does not contain specific information about specific sources; rather it has more general information about the types of mobile sources located in the nonattainment area.

To generate credits, facilities must demonstrate that the achieved emissions reductions are surplus to the emissions accounted for in the attainment demonstration (that they are "surplus to the SIP"). For facilities at point sources, this generally means the emissions that are reported to the commission and included in the EI that is used in the attainment demonstration modeling for the nonattainment area. Therefore, a facility at a point source may not generate a credit for more emissions than were included in the attainment demonstration EI for that particular facility. For area and mobile sources, however, the comparison is more complicated because these sources are not individually accounted for in the SIP EI. Instead, the commission has come up with strategies in this proposed rulemaking to address these issues.

For area and mobile sources, the proposed rule has a two-tiered system to provide flexibility for sources that may want to generate credits, while ensuring that any reductions used to generate credits are surplus to the SIP, as required. First, the proposed rule will limit the total amount of credits that are available from the represented area and mobile source inventories in the applicable nonattainment area. Reserving a portion of the area and mobile EI that will not be eligible for credit generation en-

sures that the commission does not issue credits in excess of emissions estimates utilized in the SIP. The second tier requires the total amount of credits an individual area or mobile source can generate from their emission reduction to be adjusted based on the reduction strategy and the quality of emission estimation data. This accounts for the uncertainty in area and mobile source emission estimates as well as potentially different recordkeeping and reporting requirements for these sources. Unlike point sources, area sources (as defined in the EBT rules) and mobile sources do not have to report annual emissions to the commission. Additional requirements are being instituted for mobile sources, which have an inherently limited useful life that is already specifically accounted for in the mobile source EI through factors such as fleet turnover, which ultimately result in future emissions reductions.

Meeting Federal Requirements: Real, Permanent, Enforceable, and Quantifiable

The proposed rules would ensure that the reductions used to generate area and mobile source credits are real by restricting credit generation from inelastic sources (i.e., gas stations, dry cleaners, restaurants, etc.) and disallowing credit generation from certain activities that do not result in actual emissions reductions, such as the replacement of a mobile source that is not capable of being operated as intended. To account for the potential overall increase in nonattainment area emissions from shifting activity to meet market demand vacated by a source that generated credits, the proposed rules also require an adjustment to the issued credits. The proposed rules would ensure that the reductions used to generate area and mobile source credits are permanent and enforceable by requiring that credited reductions are certified through federally enforceable agency documentation processes. The proposed rules would ensure that area and mobile source credits are quantifiable by accounting for the uncertainty in the emission calculation techniques proposed for area and mobile sources.

Section by Section Discussion

General Revisions

The commission proposes grammatical, stylistic, and other non-substantive changes to update the rules in accordance with current *Texas Register* style and format requirements, improve readability, establish consistency in the rules, and conform to the standards in the Texas Legislative Council Drafting Manual, August 2016. These non-substantive changes are not intended to alter the existing rule requirements in any way and are not specifically discussed in this preamble. The commission is requesting comment on any instance where these proposed non-substantive corrections would inadvertently change the requirements in the commission's existing rules.

Division 1: Emission Reduction Credit Program

§101.300, Definitions

An amendment to §101.300(4), the definition for "Baseline emissions," is proposed for more consistent use of terminology. The proposed amendment would conform the definition to the program's current practice of assessing credit generation possibilities based on the emissions reduction at a particular facility.

The definition for emission reduction at §101.300(9) is proposed to be modified for clarity.

The definitions for Historical adjusted emissions," "Mobile emission reduction credit," "Mobile Source," and "Mobile source baseline emissions" at §101.300(14) - (16) and §101.300(18), respectively, are proposed to be amended to facilitate program implementation by increasing consistency in the procedures used for stationary and mobile sources. The revised definition for historical adjusted emissions would apply to both stationary and mobile sources. The revised definition for mobile emission reduction credit (MERC) requires that MERCs be expressed in tenths of a tpy and allows MERCs to be generated from groups of mobile sources. A mobile source is defined as any source included in the agency EI under the mobile source category, and mobile source baseline emissions are defined as the lowest of the source's historical adjusted emissions or SIP emissions.

A definition of "Point source" is proposed to be added as §101.300(21) to specify sources that are not area or mobile. A point source is defined as any facility included in the agency's EI under the point source category.

A definition of "Primarily operated" is proposed to be added as §101.300(22) to specify how to determine when a mobile source is operated often enough in a specific nonattainment area for reductions to be creditable. To provide operators some flexibility while still focusing program activity on sources that impact the relevant air shed, mobile sources are proposed to be considered primarily operated in a specific nonattainment area if at least 85% of their activity occurs in that area. The commission seeks comment on this and possible other approaches for addressing that mobile sources eligible for generating credits be primarily operated within the relevant nonattainment area.

A definition for "Projection-base year" is proposed to be added as §101.300(23) to clarify the year in which a point source facility must be in operation in order to potentially qualify to generate an emissions credit. The subsequent definitions would be renumbered accordingly.

At renumbered §101.300(26), the definition of "Real reduction" is proposed to be revised to clarify that reductions from the following are not creditable: lowering the permit allowable emission limit without a physical change or change in method of operation; shifting a vent gas stream, or other pollution or waste stream, to another site; a mobile source that is not capable of being operated as intended; or a change in the emissions factor or emissions calculation equation. The purpose for this proposed revision is to ensure that emissions from credited reductions are real and do not return to the air shed from the generating source or by redirecting the source of the emissions to another site.

At renumbered §101.300(30), the definition of "State implementation plan (SIP) emissions" is proposed to be replaced to clarify that the definition applies to facilities at point or area sources and to mobile sources. The proposed changes to this definition are not intended to alter how SIP emissions are determined for point sources, except in cases without an applicable SIP revision. For newly designated nonattainment areas, in the interim before a SIP revision has been submitted for that area, the SIP emission year would be the year of the National Emissions Inventory (NEI) most recently submitted to the EPA prior to that area's nonattainment designation. It should be noted that any credits generated prior to a SIP revision for a newly designated nonattainment area could potentially be devalued if the SIP submission for that nonattainment area relies on a different emissions year.

The proposed changes would establish that, for area and mobile sources, SIP emissions are actual emissions in the year of the latest TCEQ-generated NEI used to support the applicable SIP revision. In addition, the definition of SIP emissions is proposed

to be revised to specify that, for area and mobile sources, credits will only be generated for actual emissions from each source, as verified by records provided with the application. Emission credits will not be issued beyond the amount of actual emissions from a source during the latest NEI year used to support modeling in the applicable SIP revision, not to exceed any applicable local, state, or federal requirement, as calculated using the best available data. For example, the latest NEI year used to support SIP modeling for both the Dallas-Fort Worth (DFW) and Houston-Galveston-Brazoria (HGB) nonattainment areas is from 2014. Thus, the SIP emissions for an area or mobile source would be the source's actual emissions from Calendar Year 2014. As such, an area or mobile source must have been operational during 2014 to be eligible for credit generation under the current applicable SIP revision.

For the area, on-road mobile, and non-road mobile source categories, the commission proposes to reduce the total amount of SIP emissions eligible for credit generation to mitigate uncertainties associated with the emission estimates, which are generally not based on source-specific data. In practice, the commission would determine the SIP emissions available for potential credit generation by reducing the total value in the applicable SIP revision by: 25% for area (excluding residential) and non-road mobile sources (75% of SIP emissions for these categories is available for credit generation); and 15% for the on-road mobile source category (85% of SIP emissions for this category is available for credit generation). After the initial set-aside is accounted for, the commission would make the pool of remaining emissions available for credit generation.

Finally, the SIP emissions definition is proposed to be revised to establish that the applicable SIP revision for determining the SIP emissions will be set in the order of SIP revisions listed in proposed §101.300(30)(B) and (E). This will facilitate program implementation by setting the applicable SIP revision for area and mobile sources in a manner that is consistent with the treatment of point sources.

§101.302, General Provisions

Amended §101.302(a)(1) and (2) is proposed to facilitate program implementation by increasing consistency in the procedures used for stationary and mobile sources as both types of emission credits (ERCs and MERCs) are proposed to be eligible for inter-pollutant trading as provided by §101.306(d).

Amended §101.302(b)(1) and (3) is proposed to clearly specify that facilities at both point and area sources are eligible to generate emission credits. Language is proposed to be added in §101.302(c)(1) - (3) to specify that the following types of sources cannot generate credits: residential sources; sources that do not have records to support approved or approvable methods to quantify emissions; on-road mobile sources that are not part of an industrial, commercial, nonprofit, institutional, or municipal/government fleet, and mobile sources that do not primarily operate within a specific nonattainment area; resulting in the subsequent requirements being relettered. These categories are proposed to be restricted from generating credits as these sources are not expected to meet the federal requirements regarding emissions reductions being real, surplus, and quantifiable. An exception is provided to the ineligibility requirement related to primarily operating in a specific nonattainment area to allow flexibility for generating credits from marine and locomotive sources that use capture and control emissions reduction systems.

Under proposed §101.302(c)(2), the types of records expected include documentation of the characteristics taken into consideration to estimate emissions, such as activity level, emission flow rate, pollutant concentration, etc. The approved or approvable methods required would include previously EPA-approved protocols or protocols submitted to EPA for approval under relettered §101.302(e).

Section 101.302(d)(1) and (2) is proposed to be revised to introduce the acronyms ERC and MERC in this section. To ensure creditable emissions reductions are surplus as required, language is proposed to be revised at relettered §101.302(d)(1)(C) and (2)(C) - (E) to specify, respectively, that individual facilities and mobile sources cannot generate credits unless the reduction occurred during or after the SIP emissions year and the sources were operated in the applicable nonattainment area during the SIP emissions year.

To ensure creditable emissions reductions are quantifiable as required, language is proposed to be added as §101.302(e)(1)(C) to specify that, except as specified in §101.302(e)(1)(A) and (B), the owner or operator of a source subject to 30 TAC Chapter 106 or a permit issued under 30 TAC Chapter 116 must use the required testing and monitoring methodologies that apply to its facilities to show compliance with the applicable requirements; resulting in the subsequent subparagraphs being relettered.

To facilitate efficient program implementation, language is added as proposed §101.302(f)(1) to specify that the minimum credit the commission will issue will be 0.1 tpy. An individual area source facility, aggregated fugitive emissions, or aggregated mobile sources (for the same pollutant and reduction date) incapable of generating at least 0.1 tpy of credit after all adjustments are applied cannot generate emission credits. It is also proposed that fugitive emissions or mobile source emissions aggregated to meet the requirement that emission reductions be certified for at least 0.1 ton per year must be represented on the same application and will have an application deadline and credit expiration date determined by the earliest emission reduction date among the aggregated sources.

Language is added as proposed §101.302(f)(2) to facilitate program implementation by increasing consistency in the procedures used for ERCs and MERCs. In §101.302(f)(3), a citation is updated to reflect proposed changes elsewhere in the rule.

To assist in facilitating efficient submittal and processing of credit applications language is added as proposed §101.302(g) to specify that, beginning January 1, 2018, all credit applications must be electronically submitted through the State of Texas Environmental Reporting System (STEERS) unless an applicant receives prior approval from the executive director for an alternative form of application submission, that the executive director may specify monitoring, testing, recordkeeping, or other requirements, and that the generator must comply with all conditions specified by the executive director once the credit is certified. The records required could include documentation of the characteristics taken into consideration to estimate emissions, such as activity level, emission flow rate, pollutant concentration, etc. For area and mobile sources without New Source Review permits, credit certification may be contingent upon implementation of monitoring, testing, recordkeeping, and reporting that would be documented and made federally enforceable as special conditions in an EBT certification form. Lack of compliance with a special condition documented in an EBT certification form constitutes a violation and could result in an enforcement action against the credit generator, including

but not limited to, the need to provide additional emissions reductions to replace the voided emissions credits. For example, if an emissions credit is issued for the removal of a vehicle from a specific nonattainment area, and the vehicle is later discovered back in that area, the generator would be considered in violation of a federally enforceable special condition listed in their EBT certification. In this case, the generator could be liable to replace the emissions credits and potentially be subject to other penalties for noncompliance.

To ensure that creditable emissions reductions are permanent and enforceable as required, language is added as proposed to §101.302(i) to specify that records necessary to verify the certified emissions reduction must be kept for a minimum of five years. This is intended to include records associated with the credit generation application as well as any records required to demonstrate implementation of any monitoring, testing, or other special conditions included on an EBT certification. Maintaining these records is necessary to show on-going compliance with a credit-related special condition and the credit generator may be required to create records for the life of the reduction strategy. For example, an EBT certification may require on-going tracking of vehicle usage for the useful life of the credit-generating vehicle by the credit generator. The generator in this case would be required to maintain records of the vehicle usage for five years after the date each record was created. For records in conjunction with the ERC life being expanded to 72 months, the records associated with generating the ERC would be required to be kept for six years and this requirement would be annotated on the EBT certification.

A change in relettered §101.302(n)(2) is proposed to use consistent units throughout the rules and implement consistent requirements regarding emission credits being issued for no less than 0.1 tpy, which is proposed to apply after any adjustments.

§101.303, Emission Reduction Credit Generation and Certification

To ensure creditable emissions reductions are real and not associated with the shifting of activity from one source to another, language is added as proposed §101.303(a)(2)(D). The proposed requirement would disallow credit generation from the shutdown of area source types that are inelastic, highly interchangeable, and driven by population needs. The assessment of what constitutes a source that is driven by population needs will consider characteristics such as, but not limited to, whether this type of source commonly closes when population declines in its vicinity or if this source ceased operations, would another source of this type open to meet population needs. This requirement is proposed for area sources because the regulatory requirements are potentially less stringent for the markets they serve. In many cases, there are more significant economic (capital cost) or regulatory (emission offset, registration requirements, etc.) requirements for markets served by point sources making it less likely that a new source will readily open (and re-introduce emissions) to meet market demand created from the closure of another source. Examples of source categories that the commission considers to be inelastic sources include gas stations, restaurants, dry cleaners, and concrete batch plants. However, the commission cannot provide an exhaustive list of all possible inelastic area sources at this time. The commission seeks comment on the types of sources that should not be eligible to generate credits due to their being inelastic in terms of population needs. Additionally, the commission acknowledges that owners of area sources need a reasonable means of knowing which area sources are eligible for credit generation and which are not. However, using the rulemaking process to include the list of inelastic sources that would not be eligible for credit generation and then amending that list as needed would be impracticable. Therefore, the commission proposes in subparagraph (D) that the executive director shall maintain a list of area sources considered to be inelastic and not eligible for credit generation. The proposal envisions a process in which the list of inelastic area source types will be made available to the public on the commission's website; any person may submit a written petition to the executive director requesting to add or remove a category from the list; within 60 days of receiving a petition the executive director will prepare a draft revised list or propose denial of the petition by preparing a draft denial statement supporting denial of the petition; the executive director would make the draft revised list, or draft denial statement, available for public comment for 30 days; within 30 days of the public comment period ending, the executive director will issue a proposed final list or a proposed final denial statement for consideration and approval by the commission; the commission will approve, modify, or deny the proposed revisions to the list of inelastic area sources categories made by the executive director; the commission will approve, modify, or remand to the executive director for further consideration a recommendation to deny a petition submitted by the executive director; and an ERC would not be issued or denied for an area source category petitioned to be added or removed from the inelastic list until final determination of the petition is made by the commission. The commission envisions that the initial list of inelastic area source types of gas stations, restaurants, dry cleaners, and concrete batch plants, and source types that are added or deleted based on received comments for this rulemaking, would be published as part of this rulemaking.

In §101.303(b)(2), language changes are proposed to specify that the activity and emission rate used to calculate historical adjusted emissions must be determined from the same two consecutive calendar years for facilities at both point and area sources. Proposed language is added to require that the "lookback" for area sources be the five years immediately before the emissions reduction is achieved unless detailed operational records are available for more than five years. The lookback period for an area source may be up to ten years immediately before the emissions reduction when detailed operational records are available for those years. If an applicant has ten years of detailed records, the lookback period could be ten years, but if the applicant only has eight years of detailed records, then the lookback period would only be eight years. This distinction between the lookback period for point and area sources is intended to ensure that the air shed realizes actual emissions reductions from the actions used to generate credits by reducing the circumstances in which credits could be issued for inherent emissions reductions and to address the uncertainties associated with emissions estimations for area sources, which are generally not required to have a case-by-case air authorization or perform annual EI reporting.

As §101.303(c) is proposed to be expanded, existing §101.303(c) is relettered as §101.303(c)(1) for clarity. Language is proposed to be added as §101.303(c)(2) to establish a 15% adjustment to the amount of credits generated for area source shutdown actions, with a proposed minimum reduction of 0.1 tpy. Language is proposed to be added as §101.303(c)(3) to establish a 15% adjustment for records to support approved alternative methods to quantify emissions (minimum 0.1 tpy reduction). No adjustment would be required when the area

source has the same type of emissions records that are required to be maintained by regulation or authorization for a facility operating as a point source or as a component of a point source. Language is proposed to be added as §101.303(c)(4) to establish that the total combined adjustment shall be at least 0.1 tpy and no more than 20%, if the facility is subject to an adjustment based on both the reduction strategy being a shutdown and the quality of the data used to quantify the emissions. The total adjustment is limited to 20% to prevent the adjustment from becoming a disincentive to participation in credit generation. As with the exclusion of inelastic (highly interchangeable) area sources whose activity is driven by population needs, the adjustment to the quantity of credits issued for the shutdown of an individual area source is proposed as a means to account for the potential overall increase in nonattainment area emissions from potential shifting of activity. This adjustment is proposed to account for the possibility that some unanticipated or undetected shifting of emissions may occur from the shutdown of sources that are not inelastic. The adjustment to the quantity of credits issued based on the quality of the data used to determine the emissions is proposed as a means to account for the uncertainty associated with emissions estimation techniques for area sources.

In §101.303(d)(1), language reorganization and changes are proposed to specify that applications for ERCs must be signed by an authorized account representative and submitted no more than two years after the reduction in the facility's actual emissions occurs in most cases. The existing provisions of §101.303(d)(1) regarding review to determine creditability and certification of reductions are proposed to be relocated to a proposed §101.303(d)(1)(A).

The revised language at §101.303(d)(1)(B) is proposed to facilitate program implementation by ensuring that credit generation possibilities are assessed based on when the emissions reduction occurs at a particular facility in most cases.

To facilitate program implementation, the facility-specific emissions reduction date would be used to set both that facility's credit application deadline and the credit expiration date in most cases. For example, when an oil and gas production site ceases operation, the emissions from the various facilities (compressors, dehydrators, and sweeteners, tanks, fugitives, etc.) usually end at different times, potentially resulting in multiple credit application deadlines and expiration dates. Specifically, when gas production stops, the compressor, dehydrator, and sweetener would soon stop being used and emitting. The crude oil, condensate, and produced water tanks would stop having flash gas and working loss emissions soon after production stops, but breathing losses would continue until they are cleaned or removed. Breathing losses would decline after the product or waste is removed, corresponding to the final disposition date reported to the Railroad Commission of Texas. After that, the only breathing losses would be from residual material volatizing. Fugitive emissions would continue until piping is drained. The date each facility's emissions ended would set that facility's credit application deadline and expiration date. The generator could choose to consolidate the credits into one application and/or ERC certificate by using the earliest emission reduction date if all the grouped facilities use the same baseline years. Well plugging may be completed after the application deadline. However, to ensure compliance with the federal requirements for demonstrating that credited emissions reductions are real and permanent, the closure of individual facilities at an oil and gas production site that is ceasing operations cannot be credited until the well is plugged.

The credit application deadline and expiration date would be set in the same manner as described earlier when emissions are reduced at an individual facility that is part of a site with on-going operations. For example, if a tank at an oil and gas production site that is still producing is taken out of service and the material is piped to another authorized tank, the emission reduction associated with the first tank's removal, less any emissions increase from the second tank, could be credited. In this case, because operations are on-going, well plugging would not be required.

The commission is proposing incentives for emission credit generation from oil and gas production sites that expeditiously plug wells. To encourage expedited oil and gas well plugging, the proposed rule includes a limited exception, at §101.303(d)(1)(C), to the standard requirements for credit application deadlines. Proposed §101.303(d)(1)(C) also provides an exception to the standard credit life when specific criteria are met. Oil and natural gas production is a significant portion of the Texas economy and is highly dependent on the price volatility of oil and natural gas, leading in some cases to operators abandoning wells without plugging them. The problem of abandoned unplugged wells is a state priority primarily addressed by the Railroad Commission of Texas through bonding requirements which provide funding for state directed plugging for abandoned wells that are causing or may cause pollution. Because abandoned wells have potential environmental consequences to air and groundwater in addition to other nuisance conditions, the commission has determined that it is appropriate to provide additional incentives in the emission banking and trading program to assist in mitigating the number of wells that are abandoned and not plugged.

The proposed provision at §101.303(d)(1)(C) allows credit generation applications for facilities affected by a complete production site shutdown to be submitted two years after the site's production well is plugged (as opposed to two years after the individual facility's emission reduction date) when the well is plugged in accordance with the technical specifications required by the Railroad Commission of Texas and when the plugging is completed within one year of final production being reported to the Railroad Commission of Texas. Emission credits certified under this exception are proposed to be available for use for 72 months from the date well plugging is completed. The "lookback" for establishing historical adjusted emissions would be set based on the same date used to set the credit application deadline and expiration. Use of the well plugging date instead of each facility's individual emission reduction date to set the credit application deadline and expiration date provides significant flexibility and efficiency to the applicant. In addition, the opportunity for an additional year of use may add to the market value of the credit.

The proposed provisions at §101.303(d)(1)(D)(i) and (ii) would establish the following temporary application deadline provisions for area source facilities: for emissions reductions that occurred after June 1, 2013 and prior to January 1, 2015, the application for ERCs must be submitted by December 31, 2017; and for emissions reductions that occurred between January 1, 2015 and January 1, 2017, the application for ERCs may be submitted up to three years after the reduction in the facility's actual emissions occurs. As proposed in §101.303(d)(1)(D)(iii), these temporary application deadline extensions would no longer apply after December 31, 2019. Proposed §101.303(d)(1)(D)(iv) would allow emission credits certified under these temporary application deadline extensions or certified for area source emission re-

ductions occurring and included on an application submitted, but not acted on, before January 1, 2017 to be available for use for 72 months from the date of the emission reduction in lieu of the 60 months outlined in §101.309(b)(2).

These temporary extensions of the credit application deadline and availability are proposed to support the transition to the proposed requirements, which provide a viable path for processing area and mobile source credit applications. The proposed specific dates are based on the anticipated effective date of this proposed rule revision and the timeframe in which review of area and mobile source credit generation applications has been deferred. In December 2014, the commission proposed to remove the provisions for generating ERCs and DERCs from area and mobile sources and the agency has not processed area and mobile source credit generation applications since that time. Some potential applicants have communicated that they did not invest in developing credit generation application materials because the agency is not processing area and mobile source applications.

Prior to the December 2014 proposed rule revisions, the deadline for application submission was 180 days from the emission reduction. Thus, emission reductions that occurred prior to June 1, 2013 should have already been included in a submitted application by the point at which the deferral of application processing began, so an extension of the application deadline is not appropriate for these situations. The end date for emissions reductions covered by §101.303(d)(1)(D)(i) (January 1, 2015) and the application deadline for emissions reductions covered by §101.303(d)(1)(D)(i) (January 1, 2018) are based on the intention of providing potential applicants who may have been influenced by the deferral of application review since December 2014 with a reasonable amount of time to prepare a technically complete application following the completion of this rulemaking.

The additional year proposed to be allowed for emissions reductions that occurred between January 1, 2015 and January 1, 2017 in §101.303(d)(1)(D)(ii) is included to facilitate program implementation. While potential applicants with emission reductions in this time period may be able to prepare adequate applications by the two-year application deadline based on the requirements in this proposal, it is anticipated that providing additional application preparation time after rule adoption to those who may have been influenced by the deferral of application review will result in more technically complete application packages, facilitating efficient review. As the market value of a credit can be influenced by the time remaining until the credit expires, the temporary credit availability extension proposed at §101.303(d)(1)(D)(iv) is included to avoid penalizing applicants influenced by the deferred application processing.

The temporary extensions of the credit application deadlines and availability are intended to improve the viability of credit generation for applicants influenced by the deferred application processing. The commission does not expect that these limited exceptions to the standard application and credit use deadlines would result in adverse air quality impacts because they would result in only a small number of credits being generated (given the requirement for the timing of the emission reduction and the limited timeframe for the exceptions). In addition, the commission expects that any air quality impacts of these limited exceptions would be minimal because all area and mobile source applications that experienced deferred application review will be subject to the requirements adopted as a result of this rulemaking.

In §101.303(d)(2), citations are updated to reflect proposed changes elsewhere in the rule.

Language is proposed in §101.303(d)(3)(E) to clarify that the requirement to include self-reported EI data for the years used to determine the SIP and historical adjusted emissions is only for point sources, as area sources are not required to report to the EI.

In §101.303(d)(4)(C), language changes are proposed to replace agreed orders with a new EBT certification form to make credited emissions reductions enforceable. The new form would be required whenever a New Source Review permit is not available to document the special conditions associated with the creditable emissions reduction and may be used with a Form APD-CERT when a Form APD-CERT is used to certify an emissions limit. The EBT certification form is being proposed to facilitate more efficient program implementation rather than the use of agreed orders, which require individual commission actions.

Point and area source applicants that are not authorized by a New Source Review permit and use Form APD-CERT to certify an emissions limit for credit generating purposes would now be required to submit that form via the commission's e-permitting system. This new requirement, to submit the Form APD-CERT via the commission's e-permitting system, facilitates credit generation application processing since the e-permitting system automatically assigns a registration number to the applicant. The certification made in a permit modification or on Form APD-CERT and an EBT certification form makes the reductions federally enforceable.

§101.304, Mobile Emission Reduction Credit Generation and Certification

Language is proposed to be revised at §101.304(a)(1) to make MERC requirements be consistent with ERC requirements, which allow the executive director, instead of the commission, to approve an ERC certification.

Language is proposed to be added as §101.304(a)(2)(D) to specify that MERCs cannot be generated from the shutdown or replacement of a mobile source unless that source is rendered permanently inoperable or permanently removed from North America to ensure that the credited emissions reduction is real and permanent. Allowing the operators of a mobile source to make the source permanently inoperable or permanently removed from North America provides flexibility for resale while minimizing the risk to the requirement that the credit emissions reduction be real and permanent.

Language is proposed to replace existing §101.304(b)(2) with proposed subsection (b)(2), and added as proposed §101.304(b)(3) and (4), to specify the timing and location considerations for setting the SIP and historical adjusted emissions for a mobile source. These restrictions are proposed to ensure that credited emissions reductions meet the requirements to be real in terms of the relevant air shed by limiting baseline emissions to those that occurred within a specific nonattainment area. Existing §101.304(b)(3) is renumbered as subsection (b)(5).

The mobile source historical adjusted emissions must be determined from the activity and emission rates for the same two consecutive calendar years. Language is proposed to require that the lookback be the five years immediately before the emissions reduction is achieved unless detailed operational or emissions

records are available for more than five years. The lookback period for a mobile source may be up to ten years immediately before the emissions reduction when detailed operational records are available for those years and do not demonstrate decreasing use due to vehicle age or inoperability. If an applicant has eight years of detailed operational records, the lookback period would only be eight consecutive years. The proposed lookback period requirement for mobile sources is intended to ensure that the air shed realizes actual emissions reductions from the actions used to generate credits by reducing the circumstances in which credits could be issued for inherent emissions reductions (such as diminished use of an older vehicle) and to address the uncertainties associated with emission estimation for mobile sources, which are not required to have an air authorization or perform annual EI reporting. In addition, it is proposed that a single year of data might be used with executive director approval for vehicles with less than two years use in the nonattainment area. The subsequent paragraph would be renumbered.

Language is proposed to be revised in §101.304(c) to specify that strategic emissions are based on when the source is operating in a specific nonattainment area. The revision also adds adjustments to the MERC calculation related to the reduction strategy being a shutdown or the quality of the data used to quantify the emissions. The revisions to §101.304(c) are proposed as a means to account for the potential overall increase in nonattainment area emissions from shifting activity and to account for the uncertainty associated with emissions estimation methods for mobile sources.

Language is proposed to be added as §101.304(c)(1) to establish a reduction of 15% or 0.1 tpy, whichever is greater, to the amount of credits generated for mobile source shutdown actions. Language is proposed to be added as §101.304(c)(2) to establish a reduction of 15% or 0.1 tpy, whichever is greater, for records supporting approved alternative methods for quantifying emissions. Language is proposed to be added as §101.304(c)(3) to establish that the total combined reduction would be 20% or 0.1 tpy, whichever is greater, if the mobile source is subject to an adjustment based on both the reduction strategy being a shutdown and the quality of the data used to quantify the emissions. The total adjustment is limited to 20% to prevent the adjustment from becoming a disincentive to participation in credit generation. The adjustment to the quantity of credits issued for the shutdown of a mobile source is proposed as a means to account for the potential overall increase in nonattainment area emissions from shifting of activity. The adjustment to the quantity of credits issued based on the quality of the data used to determine the emissions is proposed as a means to account for the uncertainty associated with emissions estimation techniques for mobile sources.

In §101.304(e)(1), language reorganization and changes are proposed to specify that applications for MERCs must be signed by an authorized account representative and submitted no more than two years after the reduction in the mobile sources actual emissions occurs in most cases. The existing provisions of §101.304(e)(1) regarding review to determine creditability and certification of reductions are proposed to be relocated to §101.304(e)(1)(A).

The proposed provision at §101.304(e)(1)(B) would conform the application deadline requirement to the program's current practice of assessing credit generation possibilities based on when the emissions reduction occurs for the mobile sources.

The proposed provisions at §101.304(e)(1)(C)(i) and (ii) would establish the following temporary application deadline provisions for mobile sources: for emissions reductions that occurred after June 1, 2013 and prior to January 1, 2015, the application for MERCs must be submitted by December 31, 2017; and for emissions reductions that occurred between January 1, 2015 and January 1, 2017, the application for MERCs may be submitted up to three years after the reduction for the mobile sources actual emissions occurs. As proposed in §101.304(e)(1)(C)(iii), these temporary application deadline extensions would no longer apply after December 31, 2019. Proposed §101.303(e)(1)(C)(iv) would allow emission credits certified under these temporary application deadline extensions or certified for mobile source emission reductions occurring and included on an application submitted, but not acted on, before January 1, 2017 to be available for use for 72 months from the date of the emission reduction in lieu of the 60 months outlined in §101.309(b)(2).

The proposed provisions in §101.304(e)(1)(C)(i) - (iv) for mobile sources are consistent with the proposed changes in §101.303(d)(1) for area sources. As discussed in the Section by Section Discussion portion of this preamble regarding §101.303(d)(1), the proposed limited extensions for credit applications and availability are intended to support the transition to the proposed requirements, which provide a viable path for processing area and mobile source credit applications. As with proposed §101.303(d)(1), the dates in proposed §101.304(e)(1) are based on the anticipated effective date of this rule revision and the timeframe in which area and mobile source credit application review has been deferred following the December 2014 commission proposal to remove the provisions for area and mobile source ERCs and DERCs.

The temporary extensions of the credit application deadlines and availability are intended to improve the viability of credit generation for applicants influenced by the deferred application processing. The commission does not expect that these limited exceptions to the standard application and credit use deadlines would result in adverse air quality impacts because they would result in only a small number of credits being generated (given the requirement for the timing of the emission reduction and the limited timeframe for the exceptions). In addition, the commission expects that any air quality impacts of these limited exceptions would be minimal because all area and mobile source applications that experienced deferred application review will be subject to the requirements adopted as a result of this rulemaking.

In §101.304(e)(2), language changes are proposed to update references.

Language is proposed to be added as §101.304(e)(3) to specify that the amount of credits issued for an individual mobile source will be adjusted based on its remaining useful life to ensure the credits are surplus to the fleet turnover assumptions used in the applicable SIP revision. The amount of credits certified for the mobile source emissions reduction is proposed to be annualized over 25 years. This requirement is proposed based on program experience that most credits are used to comply with stationary source offset requirements. The 25 years used to annualize the total emissions reductions is a reasonable amount of time that represents the expected operation of a generic point source. This process simplifies program implementation by ensuring that MERCs are eligible to be used as offsets, the most common use. The expected remaining useful life is determined based on assumptions included in the applicable SIP revision,

such as, but not limited to, parameters used in the on-road mobile model and in the Texas non-road model for calculating fleet turnover. While the commission anticipates that nearly all types of mobile sources are reflected in the models, any mobile source not reflected in these models will be handled on a case-by-case basis, as approved by the executive director.

Language is proposed to be added as §101.304(e)(4) to provide an exception to the requirements to consider the expected remaining useful life of the mobile source and to annualize the emissions reduction over 25 years if a capture and control system is used to reduce mobile source emissions. Section 101.304(e)(4)(A) establishes that, for these capture and control system projects, as appropriate, the MERC calculation would consider: the mobile source emissions that are not captured; any emissions not controlled by the system; and any emissions caused by or as a result of operating and/or moving the system. Section 101.304(e)(4)(B) is proposed to require that the initial owner of the MERCs is the owner or operator of the capture and control system. The provisions in §101.304(e)(4) are proposed to facilitate program implementation regarding use of capture and control systems for mobile sources as stakeholders have expressed interest in using these types of controls, which have historically been primarily applicable to stationary sources. The subsequent subparagraphs would be renumbered.

Language changes are proposed to renumbered §101.304(e)(5) to remove the name of the application form (to avoid future rulemaking if the name changes), clarify that the application is to be signed by an authorized account representative, and require that the supporting documentation include records to characterize the source's historical adjusted and SIP emissions estimates.

In renumbered §101.304(e)(6), language changes are proposed to specify that an EBT certification form will replace agreed orders as the method to document special conditions associated with credited emissions reductions, such as, but not limited to, written certification and photographs when a replaced or shutdown mobile source is made permanently inoperable, for an on-road mobile source, a certified or duplicate Texas Nonrepairable Vehicle Title when a replaced or shutdown mobile source is made permanently inoperable, and a bill of sale and bill of lading when a replaced or shutdown mobile source is permanently removed from North America. The EBT certification form is proposed to be the mechanism to ensure emissions reductions from mobile sources are permanent and federally enforceable as it will ease program implementation relative to the use of agreed orders for this purpose.

§101.306, Emission Credit Use

In existing §101.306(c)(1) and (2), there are different deadlines for submitting an application to use ERCs and MERCs. The differences arose in the previous rule project because the provisions for MERCs were not changed when the repeal of §101.304 was not adopted. However, there is no reason to have different deadlines for applications for using ERCs and MERCs, so the commission proposes to remove the provisions specific only to MERCs and to make the provisions for ERCs apply to both ERCs and MERCS. Similarly, the provisions added in the prior rulemaking on restrictions of the earliest date that a use application can be submitted are needed for MERCs for the same reasons they are needed for ERCs: the applicant must have the emission credit in the portfolio of the site where the offsets are needed for the use application to be processed; and to avoid circumvention of the provision of emission credits expiring, applicants would not be allowed to submit an application for using emission credits as offsets until an application for the permit or amendment is determined to be administratively complete. Additionally, the requirement to identify the MERCs to be used as offsets before permit issuance would be deleted to allow additional time for obtaining the MERCs and to avoid the need to modify the permit if different MERCs are used as offsets than were originally intended. A deadline for submitting a MERC use application before the start of operation, rather than before construction as in existing §101.306(c)(2)(A), would be consistent with NNSR requirements for the new or modified facility to obtain offsets before beginning operation. It is also consistent to remove the requirement in existing §101.306(c)(2)(A) for users to identify MERCs prior to permit issuance because this is not a requirement in the commission's NNSR permit program in Chapter 116, Subchapter B. However, any facility using MERCs as NNSR offsets could not start operation until the use of the MERCs as an offset is approved, as is provided for ERCs. The provision in existing §101.306(c)(2)(B) would be removed because the provision that users must keep records is also in §101.302. With these proposed changes, §101.306(c)(1) no longer differentiates between ERC and MERC use applications and existing paragraph (3) would be renumbered as paragraph (2).

In §101.306(d), the commission proposes to expand the inter-pollutant use of ERCs to include MERCs by replacing the acronym "ERCs" with the term "emission credits" throughout the subsection. The restriction on inter-pollutant use of emission credits as offsets for NNSR permits, the requirements for modeling to demonstrate that the overall air quality and the regulatory design value in the nonattainment area of use will not be adversely affected by the substitution (as required under the FCAA), and the requirement that the user receive approval from the executive director and the EPA before inter-pollutant use occurs are retained for both types of emission credits.

Division 4: Discrete Emission Credit Program

§101.370, Definitions

An amendment to §101.370(4), the definition for "Baseline emissions," is proposed for more consistent use of terminology. The proposed amendment would conform the definition to the program's current practice of assessing credit generation possibilities based on the emissions reduction at a particular facility.

The definition for emission reduction at §101.370(10) is proposed to be modified for clarity.

The definition of "Generation period" at §101.370(13) is proposed to be revised to apply to both DERCs and mobile discrete emission reduction credits (MDERCs).

The definitions for "Historical adjusted emissions," "Mobile discrete emission reduction credit," "Mobile Source," and "Mobile source baseline emissions" at §101.370(15) - (17) and (19), respectively, are proposed to be amended to facilitate program implementation by increasing consistency in the procedures used for stationary and mobile sources. The revised definitions would make historical adjusted emissions apply to both stationary and mobile sources, MDERCs be expressed in tenths of a ton and be generated from groups of mobile sources, a mobile source can be any source included in the agency's EI under the mobile source category, and mobile source baseline emissions the lowest of the source's historical adjusted emissions or SIP emissions.

A definition of "Point source" is proposed to be added as §101.370(22) to specify sources that are not area or mobile.

A definition of "Primarily operated" is proposed to be added as §101.370(23) to specify how to determine when a mobile source is operated often enough in a specific nonattainment area for reductions to be creditable. As discussed elsewhere in the Section by Section Discussion of this preamble related to ERCs, mobile sources are proposed to be considered primarily operated in a specific nonattainment area if at least 85% of their activity occurs in that area.

A definition for "Projection-base year" is proposed to be added as §101.370(24) to clarify the year in which a point source facility must be in operation in order to potentially qualify to generate an emissions credit. The subsequent definitions would be renumbered.

At renumbered §101.370(27), the definition of "Real reduction" is proposed to be revised to clarify that reductions from the following are not creditable: lowering the permit allowable emission limit without a physical change or change in method of operation; shifting a vent gas stream, or other pollution or waste stream, to another site; a mobile source that is not capable of being operated as intended; or a change in the emissions factor or emissions calculation equation. The purpose for this proposed change is to ensure that emissions from credited reductions are real and do not return to the air shed from the generating source or by redirecting the source of the emissions to another site.

At renumbered §101.370(31), the definition of "State implementation plan (SIP) emissions" is proposed to be revised to clarify that the definition applies to facilities at point or area sources and to mobile sources. The proposed changes to this definition are not intended to alter how SIP emissions are determined for point sources. The proposed changes would establish that, for area and mobile sources, SIP emissions are actual emissions in the year of the latest TCEQ-generated NEI used to develop modeling included in the applicable SIP revision.

In addition, the definition of SIP emissions is proposed to be revised to specify that, for area and mobile sources, credits will only be generated for actual emissions from each source, as verified by records provided with the application. Emission credits will not be issued beyond the amount of actual emissions from a source during the latest NEI year used to support modeling in the applicable SIP revision, not to exceed any applicable local, state, or federal requirement, as calculated using the best available data. For example, the latest NEI year used to support SIP modeling for both the DFW and HGB nonattainment areas is 2014. Thus, the SIP emissions for an area or mobile source would be the source's actual emissions from Calendar Year 2014. As such, an area or mobile source must have been operational during 2014 to be eligible for credit generation under the current applicable SIP revision.

For the area, on-road mobile, and non-road mobile source categories, the commission proposes to reduce the total amount of SIP emissions eligible for credit generation to mitigate uncertainties associated with the emission estimates, which are generally not based on source-specific data. In practice, the commission would determine the SIP emissions for potential credit generation by reducing the total value in the applicable SIP revision by: 25% for area (excluding residential) and non-road mobile sources (75% of SIP emissions for these categories is available for credit generation); and 15% for the on-road mobile source category (85% of SIP emissions for this category is available for credit generation). After the initial set-aside is accounted for, the commission would make the pool of remaining emissions available for credit generation.

Finally, the definition is proposed to be revised to establish that the applicable SIP revision for determining the SIP emissions will be set in the order of SIP revisions listed in proposed §101.370(31)(B) and (E). This will facilitate program implementation by setting the applicable SIP revision for area and mobile sources in a manner that is consistent with the treatment of point sources.

§101.372, General Provisions

Amended §101.372(a)(1) and (a)(2), and the deletion of existing §101.372(a)(2) are proposed to facilitate program implementation by increasing consistency in the procedures used for stationary and mobile sources as both types of discrete emission credits (DERCs and MDERCs) are proposed to be eligible for inter-pollutant trading as provided by §101.376.

Amended §101.372(b) is proposed to clearly specify that point, area, and mobile sources are eligible to generate discrete emission credits. Language is proposed to be added as §101.372(c) to specify that the following types of sources cannot generate credits: residential sources; sources that do not have records to support approved or approvable methods to quantify emissions; on-road mobile sources that are not part of an industrial, commercial, nonprofit, institutional, or municipal/government fleet; and mobile sources that do not primarily operate within the nonattainment area. These categories are proposed to be restricted from generating credits as the sources cannot be expected to meet the federal requirements regarding emissions reductions being real, surplus, and quantifiable. An exception is provided to the ineligibility requirement related to primarily operating in a specific nonattainment area to allow flexibility for generating credits from marine and locomotive sources that use capture and control emissions reduction systems. The subsequent subsections would be relettered.

Under proposed §101.372(c)(2), the types of records expected include documentation of the characteristics taken into consideration to estimate emissions, such as activity level, emission flow rate, pollutant concentration, etc. The approved or approvable methods required would include previously EPA-approved protocols or protocols submitted to EPA for approval under relettered §101.372(e).

To ensure creditable emissions reductions are surplus as required, language is proposed to be revised at relettered §101.372(d)(1)(C) and (2)(B) - (D) to specify, respectively, that individual facilities and mobile sources cannot generate credits unless the reduction occurred during or after the SIP emissions year and the sources were operated in an applicable nonattainment area during the SIP emissions year.

To ensure creditable emissions reductions are quantifiable as required, language is proposed to be added as §101.372(e)(1)(C) to specify that, except as specified in §101.372(e)(1)(A) and (B), the owner or operator of a source subject to 30 TAC Chapter 106 or a permit issued under 30 TAC Chapter 116 must use the required testing and monitoring methodologies that apply to its facilities to show compliance with the applicable requirements. The subsequent subparagraphs would be relettered.

To assist in facilitating efficient submittal and processing of credit applications, language is proposed to be added at §101.372(f) to specify that beginning January 1, 2018 all credit applications must be electronically submitted through STEERS unless an applicant receives prior approval for an alternative form of application submission.

To facilitate efficient program implementation, language is proposed to be added at relettered §101.372(g)(1) to specify that an individual area source facility, aggregated fugitive emissions, and aggregated mobile sources (for the pollutant and reduction date) incapable of generating at least 0.1 ton of credit after all adjustments are applied cannot generate discrete emission credits. It is also proposed that fugitive emissions or mobile source emissions aggregated to meet the requirement that emission reductions be certified for at least 0.1 ton must be represented on the same application and will have an application deadline date determined by the earliest emission reduction date among the aggregated sources.

§101.373, Discrete Emission Reduction Credit Generation and Certification

In §101.373(b)(2), language changes are proposed to specify that the emission and activity rates used to calculate historical adjusted emissions must be determined from the same two consecutive calendar years for facilities at both point and area sources. Language is proposed to require that the "lookback" for area sources be the five years immediately before the emissions reduction is achieved unless detailed operational records are available for more than five years. The lookback period for an area source may be up to ten years immediately before the emissions reduction when detailed operational records are available for those years. If an applicant has ten years of detailed records, then the lookback period could be ten years, but if the applicant only has eight years of detailed records, then the lookback period could only be eight years. This distinction between the lookback for point and area sources is intended to ensure that the air shed realizes actual emissions reductions from the actions used to generate credits by reducing the circumstances in which credits could be issued for inherent emissions reductions and to address the uncertainties associated with emission estimation for area sources, which are generally not required to have a case-by-case air authorization or perform annual EI reporting.

Language is proposed to be added as §101.373(c)(2) to establish a credit reduction of 15% or 0.1 ton, whichever is greater, for records to support approved alternative methods for quantifying emissions. No reduction would be required when records for quantifying emissions are the same type of records that are required to be maintained by regulation or authorization for a facility operating as a point source or as a component of a point source. The adjustment to the quantity of credits issued based on the quality of the data used to determine the emissions is proposed as a means to account for the uncertainty associated with emissions estimation techniques for area sources. These proposed changes would result in the subsequent paragraphs being renumbered.

In §101.373(d)(1), language changes are proposed to specify that the application must be signed by an authorized account representative. References are updated in §101.373(d)(2). In addition, language is proposed in §101.373(d)(3)(F) to clarify that the requirement to include self-reported EI data for the years used to determine the SIP revision and historical adjusted emissions is only for point sources as area sources are not required to report to the EI.

§101.374, Mobile Discrete Emission Reduction Credit Generation and Certification

Language is proposed to be added to §101.374(a)(1) to clarify that the number of years that an emissions reduction can be used for generating MDERCs is limited by the expected remaining useful life of the mobile source. As described previously in the preamble for MERCs, the expected remaining useful life is generally determined based on assumptions included in the applicable SIP revision, such as, but not limited to, parameters used in the on-road mobile model and in the Texas non-road model to calculate fleet turnover. An exception to the requirement to consider the expected remaining useful life of the mobile source is included if a capture and control system is used to reduce mobile source emissions.

Language is proposed to be replaced at §101.374(b)(2) and added as §101.374(b)(3) and (4) to specify the timing and location considerations for setting the SIP and historical adjusted emissions for a mobile source. These restrictions are proposed to ensure that emission reductions meet the requirements to be real in terms of the relevant air shed.

The mobile source historical adjusted emissions must be determined from the emission and activity rates during the same two consecutive calendar years. Language is proposed to require that the lookback be the five years immediately before the emissions reduction is achieved unless detailed operational records are available for more than five years. The lookback period for a mobile source may be up to ten years immediately before the emissions reduction when detailed operational records are available for those years and do not demonstrate decreasing use due to vehicle age or inoperability. If an applicant has eight years of detailed records, then the lookback period would be eight consecutive years. The proposed lookback period requirement for mobile sources is intended to ensure that the air shed realizes actual emissions reductions from the actions used to generate credits by reducing the circumstances in which credits could be issued for inherent emissions reductions (such as diminished use of an older vehicle) and to address the uncertainties associated with emissions estimation for mobile sources, which are not required to have an air authorization or perform annual EI reporting. In addition, it is proposed that a single year of data might be used with executive director approval for vehicles with less than two years use in a nonattainment area. The subsequent paragraph would be renumbered.

Language is proposed to be added in §101.374(c)(1) to establish a reduction of 15% or 0.1 tons, whichever is greater, to the amount of credits generated for mobile source shutdown actions. Language is proposed to be added in §101.374(c)(2) to establish a reduction of 15% or 0.1 tons, whichever is greater, for records supporting approved alternative methods for quantifying emissions. Language is proposed to be added in §101.374(c)(3) to establish that the total combined adjustment shall be at least 0.1 tons and no more than 20% if the mobile source is subject to an adjustment based on both the reduction being a shutdown and the quality of the data used to quantify the emissions. The total adjustment is limited to 20% to prevent the adjustment from becoming a disincentive to participation in credit generation. The adjustment to the quantity of credits issued for the shutdown of a mobile source is proposed as a means to account for the potential overall increase in nonattainment area emissions from the shifting of emissions location. The adjustment to the quantity of credits issued based on the quality of the data used to determine the emissions is proposed as a means to account for the uncertainty associated with emissions estimation techniques for mobile sources.

Language is proposed to be added as §101.374(c)(4) to establish that for capture and control system projects, as appropriate,

MDERCs calculation would consider: the mobile source emissions that are not captured; any emissions not controlled by the system; and any emissions caused by or as a result of operating and/or moving the system. In addition, §101.374(c)(4) proposes to require that the initial owner of the MDERCs is the owner or operator of the capture and control system. The provisions in §101.374(c)(4) are proposed to facilitate program implementation regarding use of capture and control systems for mobile sources as stakeholders have expressed interest in using these types of controls, which have historically been primarily applicable to stationary sources.

In §101.374(e)(1), the proposed changes include substituting the generic wording "application form designated by the executive director" in place of the specific form name and designation (to avoid future rulemaking if the name changes), as well as requiring the application to be signed by an authorized account representative. Proposed language also includes replacing "discrete emission reduction strategy activity has been completed, or" with "end of the generation period," replacing "the first" with "each," and removing the last sentence to simplify the requirement to submit an application to generate MDERCs within 90 days after each 12-month generation period and 90 days after the generation period ends, regardless of length. This submission schedule is consistent with the definition of "generation period" in the current and revised rules because each generation period cannot exceed 12 months. A separate application is needed to generate MDERCs from each generation period.

In §101.374(e)(2), the reference would be changed due to the referenced subsection being relettered. Language changes are proposed to §101.374(e)(3) to remove the name of the application form (to avoid future rulemaking if the name changes), clarify that the application must be signed by an authorized account representative, and to require that supporting documentation be provided with the credit generation application form.

§101.376, Discrete Emission Credit Use

In existing §101.376(a)(6), the acronym "DERC" would be replaced with the term "discrete emission credit" to clarify that neither DERCs or MDERCs can be used before the credits are available in the compliance account of the use site.

The commission proposes to remove existing §101.376(b)(2)(C) for the same reasons as discussed previously in the Section by Section Discussion portion of this preamble regarding the changes to §101.306(c)(1) and (2). This change would have the provisions for DERCs in existing §101.376(b)(2)(D), which would be relettered as §101.376(b)(2)(C), apply to both DERCs and MDERCs by removing the phrase "for the use of DERCs" in existing §101.376(b)(2)(D); these provisions would require the user of MDERCs used as offsets to submit an application form specified by the executive director at least 90 days before the start of operation and before continuing operation for any subsequent period for which the offset requirement was not covered under the initial application. The proposed changes align the MDERC and DERC submission requirements; these proposed submission requirements would also be consistent with corresponding provisions in the ERC Program.

In §101.376(c)(4), the phrase "DERC or mobile DERC" would be changed to "discrete emission credits" for consistency with the phrasing in the rest of the section. In §101.376(d)(1)(B)(ii) and (iii), the commission proposes to remove the acronym "DERC" because both DERCs and MDERCs can be used for compliance with the Mass Emissions Cap and Trade Program and as offsets for new source review permits. For consistency with subparagraph (B), the term "discrete emission credit" would be removed from §101.376(d)(1)(B)(iv). In §101.376(d)(1)(B)(viii) - (x), the phrasing relating to credits that will be acquired is proposed to be removed because it conflicts with the provision in §101.376(a)(6) that credits must be in the compliance account of the site before use occurs.

In the existing equations in §101.376(d)(2)(A)(i) and (ii) and (d)(2)(C), the commission proposes to change the designation of the variable "DERCs" to "DECs" for clarity. The calculations can be used for either DERCs or MDERCs, so the general term for the credits is more appropriate, and this change will have no effect on the use of the equations.

The reference to "commission" at §101.376(e)(3), is proposed to be changed to "executive director" to conform with current rule drafting policy.

In §101.376(g), the commission proposes to expand the inter-pollutant use of DERCs (i.e., the substitution of a credit certified for one ozone precursor for the other precursor) to include MDERCs by replacing the acronym "DERCs" with the term "discrete emission credits" throughout the subsection. The restriction on inter-pollutant use of discrete emission credits to offsetting for NNSR permits, the requirements for modeling to demonstrate that the overall air quality and the regulatory design value in the nonattainment area of use will not be adversely affected by the substitution (as required under the FCAA), and the requirement that the user receive approval from the executive director and the EPA before inter-pollutant use occurs are retained for both types of discrete emission credits.

Fiscal Note: Costs to State and Local Government

Jeffrey Horvath, Analyst in the Chief Financial Officer's Division, determined that for the first five-year period the proposed rules are in effect, fiscal implications, which may be significant, are anticipated for the agency. No fiscal implications are expected for other units of state or local government as a result of administration or enforcement of the proposed rules.

The proposed rules would revise the EBT rules to ensure credit generation from area or mobile sources meet the requirements of the FCAA. If adopted, the revisions will be submitted to the EPA as a revision to the SIP. Participation in the EBT program is voluntary and transactions related to emission credits would only take place if there was economic benefit for affected emissions sources.

The current EBT rules define several market-based programs that provide sites additional flexibility to comply with air regulations. The EBT rules allow an area or mobile source to generate ERCs and DERCs from emission reductions that are demonstrated to be real, quantifiable, permanent, enforceable, and surplus to the SIP and all applicable rules.

Emission credits (ERCs, MERCs, DERCs and MDERCs) can be traded freely and have values that vary greatly over time, among areas, and by pollutant. ERCs and MERCs are certified and traded in units of tpy while DERCs and MDERCs are certified and traded simply as tons.

Generally, the proposed rules are anticipated to make it easier for owners of area and mobile sources to generate emission credits. While this opportunity theoretically exists under current rule language, it has rarely been feasible due to implementation issues.

Some provisions in the proposed rulemaking may have potential fiscal impacts relative to current requirements for those few entities with area and mobile sources that are now able to participate. However, because this is a free-market program, estimating costs or cost savings is challenging to predict and would be different for various entities. The proposed rulemaking would affect emissions sources only if they choose to participate in the EBT program.

The following proposed provisions may have fiscal impacts for entities that choose to participate.

The definition of "Real reduction" is proposed to be revised to clarify that crediting reductions that result from: lowering the permit allowable emission limit without a physical change or change in method of operation; shifting a vent gas stream, or other pollution or waste stream, to another site; a mobile source that is not capable of being operated as intended; or a change in the emissions factor or emissions calculation equation.

Area and mobile sources are prohibited from generating emission credits if: the reduction occurred before the SIP emissions year and the facility or mobile source did not operate in the applicable nonattainment area during the SIP emissions year; the individual facility or aggregated mobile sources cannot generate at least 0.1 tpy for ERCs/MERCs and 0.1 tons for DERCs/MDERCs of credit after all adjustments required in the rule are applied; the source is residential in nature; there are not verifiable records with approved or approvable methods to quantify emissions for the source; the emissions reduction is created with an on-road mobile source that is not part of an industrial, commercial, nonprofit, institutional, or municipal/government fleet; the emissions reduction is created with a mobile source that does not operate primarily within the relevant nonattainment area; the emissions reduction is in place beyond the expected remaining useful life of a mobile source; the emissions reduction occurs due to the shutdown of an inelastic source that is related to population needs including, but not limited to, gas stations, restaurants, dry cleaners, and concrete batch plants; or, the emissions reduction occurs from the shutdown or replacement of a mobile source unless that source is rendered permanently inoperable or permanently removed from North America.

For area sources, the historical adjusted emissions must be based on the average annual actual emissions from any consecutive two years within the five years immediately preceding the emissions reduction unless detailed operational records are available to demonstrate the facility's level of activity and emission rate for up to the preceding ten years. If detailed operational records are available then the lookback period for the historical adjusted emissions could be up to ten years.

For mobile sources, baseline emissions must be determined from two consecutive calendar years selected from the five consecutive years immediately before the emissions reduction is achieved unless detailed operational records are available for up to the preceding ten years. If detailed operational records are available and do not demonstrate decreasing use due to vehicle age or inoperability, then the lookback could be up to ten years before the emissions reductions.

The amount of credits associated with a given mobile source emissions reduction will be based on the remaining useful life of the generating source, annualized over 25 years (i.e., a fixed amount of time that represents the expected operation of a generic point source) to make the credit effective for the life of the applicable user facility. The expected remaining useful life will be determined based on assumptions included in the applicable SIP revision; otherwise, it will be determined on a case-by-case basis if approved by the executive director.

For sources generating credits from a shutdown, the amount of credits generated will be adjusted to account for the potential overall increase in nonattainment area emissions from shifting emissions to another location by a reduction of 15%. The amount of credits generated will be adjusted to account for the quality of the data used to quantify the emissions. The adjustment will be: no adjustment for the same type of records that are required to be maintained by regulation or authorization for a facility operating as a point source or as a component of a point source; or 15% reduction for verifiable records with approved alternative methods. If the facility or mobile source is subject to an adjustment based on both the reduction strategy being a shutdown and the quality of the data used to quantify the emissions, the total combined adjustment will be a reduction of no more than 20%.

For area sources, the owner or operator of a facility would be required to use the relevant testing and monitoring methodologies required under Chapter 106 or Chapter 116 to show compliance. Because these sources are already required to comply with these requirements, the proposed rulemaking would have no fiscal impact.

Beginning January 1, 2018, a credit application must be submitted through STEERS unless the applicant receives prior approval from the executive director for an alternative form of application submission. Submitting an application electronically may result in minor savings for potential applicants both in time and cost (postage and other minor costs associated with submitting hard copy applications).

Credit generators may be required to meet monitoring, testing, or other special conditions included on the newly required Form EBT-CERT, submitted as part of the credit application. For mobile source credits, the Form EBT-CERT may contain special conditions including, but not limited to, written certification and photographs when a replaced or shutdown mobile source is made permanently inoperable, for an on-road mobile source, a certified or duplicate Texas Nonrepairable Vehicle Title when a replaced or shutdown mobile source is made permanently inoperable, and a bill of sale and bill of lading when a replaced or shutdown mobile source is permanently removed from North America. There are no fiscal impacts associated with this proposed change. Additional monitoring, testing, recordkeeping, and other requirements may be a condition of a participant receiving a credit under the current rule. The proposed rulemaking only provides an additional mechanism for that process and provides additional specificity for mobile sources as to what some of those conditions may be.

In addition to expanding the opportunity for area and mobile sources to generate credits, the proposed rulemaking also includes changes that provide greater flexibility for the use of emission credits, such as expanding the ability to use credits for one type of pollutant for emission increases of another pollutant. The proposed rules also provide potential applicants more flexibility regarding the timeline for submitting credit generation applications in certain circumstances.

Under the proposed rulemaking, an increase in workload is anticipated for the agency from reviewing area and mobile source credit generation and use applications. In addition, there would be an increase in the number of air authorizations to be amended or reviewed from permitted or registered facilities. The workload

increase estimate is based on the assumption that additional EBT applications will be received (estimated to be approximately 100) per year. The EBT Program has historically processed primarily point source applications, and additional ERC and DERC applications from area and mobile sources is expected to increase the workload by one third to one half. However, it is difficult to anticipate the number or complexity of applications that will be voluntarily submitted.

It is expected that five additional full-time equivalents (FTEs) would be needed for the additional workload. Costs for the FTEs and necessary capital equipment are estimated to be approximately $272,080 in the first year the rules would be in effect and $245,680 each year thereafter. The agency has requested the legislature provide additional funding in its Legislative Appropriations Request for the coming biennium.

No fiscal implications are expected for units of state or local government although governmental entities could be affected if these entities have creditable emissions and find economic benefit from participating in this voluntary program. This includes government-owned fleets, airports, waste management facilities, waste water treatment facilities, and others.

Public Benefits and Costs

Mr. Horvath also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be the potential for more participation in the EBT programs as a result of the increased flexibility from the proposed rule revisions. If this is indeed the case, the increase in the generation and use of credits could reduce emissions and improve air quality.

In general, the proposed rules are not anticipated to result in fiscal implications for businesses or individuals. The proposed rules apply only to voluntary programs. The proposed rulemaking may increase the number of eligible sources that can generate, buy, trade, or sell emission credits. Any fiscal implications associated with the increase in the number of eligible sources are very complex and difficult to determine as emission credits have values that vary greatly over time, among areas, and by pollutant. The agency is also not able to predict the number of applications, the specific types of sources, the types of credits, the current and/or future value of credits, as well as a number of other factors.

Participants in the program may have compliance requirements to ensure that emissions reductions associated with credits are real, enforceable, and meet all other requirements of the programs. Such compliance requirements could include monitoring, testing, and recordkeeping and would have costs associated with them. However, these requirements are part of the existing EBT rules for emission credits. The proposed rulemaking would only provide an additional mechanism, a certification form (Form EBT-CERT) by which these requirements would be made enforceable. With regard to mobile sources, the proposed rulemaking would provide more specificity regarding what some of these requirements may be. As such, there is no fiscal impact associated with the proposed changes.

Submitting an application electronically (via STEERS) may result in minor savings for potential applicants both in time and cost (postage and other minor costs associated with submitting hard copy applications). Some of the proposed revisions to the ERC and DERC rules could make it easier to generate credits, which could be used for NNSR offset requirements or sold on the open market.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated due to the implementation or administration of the proposed rules for the first five-year period the proposed rulemaking is in effect for small or micro-businesses. The proposed rulemaking is intended to make it easier for owners of area and mobile sources, including those who are small businesses, to participate in the EBT voluntary programs and obtain an economic benefit from creditable emissions. It is not known how many small or micro-businesses may choose to participate, but for those that do, any new regulatory requirements would be the result of their choice to participate in the EBT programs based upon their determination that such participation would be in their best economic interest.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules do not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

Local Employment Impact Statement

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

Draft Regulatory Impact Analysis

The commission reviewed the proposed rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed rulemaking does not meet the definition of a "major environmental rule" as defined in that statute, and in addition, if it did meet the definition, would not be subject to the requirement to prepare a regulatory impact analysis. A "major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed rules amend a voluntary program to generate emission reduction credits to improve the flexibility and functionality of these rules, and do not impose requirements that regulated entities must participate in the program. Additionally, the proposed rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule, which are listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225, applies only to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

The EBT rules in Chapter 101, Subchapter H define several market-based programs that provide sites with additional flexibility for complying with air regulations, such as the offset requirements in NNSR permits or the unit-specific emission limits in various state rules. These programs include the ERC Program

rules in Division 1 that allow sources in nonattainment areas to generate, bank, trade, and use credits from permanent reductions in emissions and the DERC Program rules in Division 4 to allow sources statewide to generate, bank, trade, and use credits from reductions in emissions below regulatory requirements. Because these programs are market-based, the costs associated with trades of credits and allowances are not controlled. In recent years, the cost of credits has risen substantially. In response, there has been significant interest in the regulated community for alternatives that facilitate generation and for flexibility in use. This increased interest has uncovered several implementation issues in the existing EBT rules. This rulemaking proposes to revise the EBT rules in Chapter 101 to respond to these issues and improve the workability and functionality of the rules.

The proposed rulemaking implements requirements of 42 United States Code (USC), §7410, which requires states to adopt a SIP that provides for the implementation, maintenance, and enforcement of the National Ambient Air Quality Standard (NAAQS) in each air quality control region of the state. While 42 USC, §7410 generally does not require specific programs, methods, or reductions in order to meet the standard, the SIP must include enforceable emission limitations and other control measures, means or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this chapter (42 USC, Chapter 85, Air Pollution Prevention and Control). The provisions of the FCAA recognize that states are in the best position to determine what programs and controls are necessary or appropriate in order to meet the NAAQS. This flexibility allows states, affected industry, and the public, to collaborate on the best methods for attaining the NAAQS for the specific regions in the state. Even though the FCAA allows states to develop their own programs, this flexibility does not relieve a state from developing a program that meets the requirements of 42 USC, §7410. States are not free to ignore the requirements of 42 USC, §7410, and must develop programs to assure that their contributions to nonattainment areas are reduced so that these areas can be brought into attainment on schedule. The proposed rulemaking will revise the EBT rules in Chapter 101 to respond to issues with flexibility and use of the rules, and to improve the workability and functionality of the rules.

The requirement to provide a fiscal analysis of proposed regulations in the Texas Government Code was amended by Senate Bill (SB) 633 during the 75th Legislature, 1997. The intent of SB 633 was to require agencies to conduct a regulatory impact analysis of extraordinary rules. These are identified in the statutory language as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program, or are adopted solely under the general powers of the agency. With the understanding that this requirement would seldom apply, the commission provided a cost estimate for SB 633 concluding that "based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application." The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted proposed rules from the full analysis unless the rule was a major environmental rule that exceeds a federal law.

As discussed earlier in this preamble, the FCAA does not always require specific programs, methods, or reductions in order to meet the NAAQS; thus, states must develop programs for each area contributing to nonattainment to help ensure that those areas will meet the attainment deadlines. Because of the ongoing need to address nonattainment issues, and to meet the requirements of 42 USC, §7410, the commission routinely proposes and adopts SIP rules. The legislature is presumed to understand this federal scheme. If each rule proposed for inclusion in the SIP was considered to be a major environmental rule that exceeds federal law, then every SIP rule would require the full regulatory impact analysis contemplated by SB 633. This conclusion is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board (LBB) in its fiscal notes. Since the legislature is presumed to understand the fiscal impacts of the bills it passes, and that presumption is based on information provided by state agencies and the LBB, the commission believes that the intent of SB 633 was only to require the full regulatory impact analysis for rules that are extraordinary in nature. While the SIP rules will have a broad impact, the impact is no greater than is necessary or appropriate to meet the requirements of the FCAA. For these reasons, rules adopted for inclusion in the SIP fall under the exception in Texas Government Code, §2001.0225(a), because they are required by federal law.

The commission has consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature has revised the Texas Government Code but left this provision substantially unamended. It is presumed that "when an agency interpretation is in effect at the time the legislature amends the laws without making substantial change in the statute, the legislature is deemed to have accepted the agency's interpretation." *Central Power & Light Co. v. Sharp,* 919 S.W.2d 485, 489 (Tex. App. Austin 1995), writ denied with per curiam opinion respecting another issue, 960 S.W.2d 617 (Tex. 1997); *Bullock v. Marathon Oil Co.,* 798 S.W.2d 353, 357 (Tex. App. Austin 1990, no writ). *Cf. Humble Oil & Refining Co. v. Calvert,* 414 S.W.2d 172 (Tex. 1967); *Dudney v. State Farm Mut. Auto Ins. Co.,* 9 S.W.3d 884, 893 (Tex. App. Austin 2000); *Southwestern Life Ins. Co. v. Montemayor,* 24 S.W.3d 581 (Tex. App. Austin 2000, pet. denied); and *Coastal Indust. Water Auth. v. Trinity Portland Cement Div.,* 563 S.W.2d 916 (Tex. 1978).

The commission's interpretation of the regulatory impact analysis requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of "substantial compliance." The legislature specifically identified Texas Government Code, §2001.0225, as falling under this standard. The commission has substantially complied with the requirements of Texas Government Code, §2001.0225.

The specific intent of the proposed rulemaking is to revise the EBT rules in Chapter 101 to respond to issues with flexibility and use of the rules and to improve the workability and functionality of the rules. The proposed rulemaking does not exceed a standard set by federal law or exceed an express requirement of state law. No contract or delegation agreement covers the topic that is the subject of this proposed rulemaking. Therefore, this proposed rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b), because the proposed rulemaking does not meet the definition of a "major environmental rule," and also does not meet any of the four applicability criteria for a major environmental rule.

The commission invites public comment regarding the draft regulatory impact analysis determination during the public comment period. Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission completed a takings impact assessment for this rulemaking action under Texas Government Code, §2007.043. The primary purpose of the rulemaking is to revise the EBT rules in Chapter 101 to respond to issues with flexibility and use of the rules, and to improve the workability and functionality of the rules. Promulgation and enforcement of the amendments will not burden private real property. The rules do not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Additionally, the ERCs and DERCs that would be affected by these rules are not property rights (see §101.302(k) and §101.372(l)). Because these credits are not property, rules that revise how these credits are generated and used does not constitute a taking. Consequently, this rulemaking action does not meet the definition of a takings under Texas Government Code, §2007.002(5).

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process. The commission reviewed this proposed rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the proposed amendments are consistent with CMP goals and policies. The CMP goal applicable to this rulemaking action is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(1)). No new sources of air contaminants will be authorized and the revisions will maintain the same level of emissions control as previous rules. The CMP policy applicable to this rulemaking action is the policy that the commission's rules comply with federal regulations in 40 Code of Federal Regulations (CFR), to protect and enhance air quality in the coastal areas (31 TAC §501.14(q)). This rulemaking action complies with 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this rulemaking action is consistent with CMP goals and policies.

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

Effect on Sites Subject to the Federal Operating Permits Program

The requirements of 42 USC, §7410 are applicable requirements of 30 TAC Chapter 122. Facilities that are subject to the Federal Operating Permits Program will be required to obtain, revise, reopen, and renew their federal operating permits as appropriate in order to include the proposed rules.

Announcement of Hearings

The commission will hold public hearings on this proposal in Houston on April 18, 2017 at 2:00 p.m. in the Auditorium of the Texas Department of Transportation located at 7600 Washington Avenue; in Arlington on April 19, 2017 at 10:00 a.m. in the Transportation Council Room at North Central Texas Council of Governments located at 616 Six Flags Drive; and in Austin on April 20, 2017 at 2:00 p.m. in Building E, room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearings are structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearings; however, commission staff members will be available to discuss the proposal 30 minutes prior to each hearing.

Persons who have special communication or other accommodation needs who are planning to attend a hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Derek Baxter, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www1.tceq.texas.gov/rules/ecomments/.* File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2016-041-101-AI. The comment period closes on April 24, 2017. Copies of the proposed rulemaking can be obtained from the commission's website at *http://www.tceq.texas.gov/rules/propose_adopt.html.* For further information, please contact Guy Hoffman, Air Quality Planning, (512) 239-1981 or *guy.hoffman@tceq.texas.gov.*

DIVISION 1. EMISSION CREDIT PROGRAM

30 TAC §§101.300, 101.302 - 101.304, 101.306

Statutory Authority

The amended sections are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, TWC, §5.103, concerning Rules, and TWC, §5.105, concerning General Policy, that authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The rulemaking is proposed under THSC, §382.002, concerning Policy and Purpose, that establishes the commission's purpose to safeguard the state air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; THSC, §382.014, concerning Emission Inventory, that authorizes the commission to require a person whose activities cause air contaminant emissions to submit information to enable the commission to develop an emissions inventory; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, that authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; and THSC, §382.021, concerning

Sampling Methods and Procedures, that authorizes the commission to prescribe the sampling methods and procedures to determine compliance with its rules. The amended sections are also proposed under THSC, §382.023, concerning Orders, and THSC, §382.036, concerning Cooperation and Assistance. The rulemaking is also proposed under Federal Clean Air Act (FCAA), 42 United States Code, §§7401, *et seq.,* which requires states to submit state implementation plan revisions that specify the manner in which the national ambient air quality standard will be achieved and maintained within each air quality control region of the state.

The proposed amendments implement THSC, §§382.002, 382.011, 382.012, 382.014, 382.016, 82.017. 382.021, 382.023, and 382.036.

§101.300. Definitions.

Unless specifically defined in the Texas Clean Air Act or in §3.2 or §101.1 of this title (relating to Definitions), the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition, the following words and terms, when used in this division, have the following meanings, unless the context clearly indicates otherwise.

(1) Activity--The amount of activity at a facility or mobile source measured in terms of production, use, raw materials input, vehicle miles traveled, or other similar units that have a direct correlation with the economic output and emission rate of the facility or mobile source.

(2) Actual emissions--The total emissions during a selected time period, using the facility's or mobile source's actual daily operating hours, production rates, or types of materials processed, stored, or combusted during that selected time period.

(3) Area source--Any facility included in the agency emissions inventory under the area source category.

(4) Baseline emissions--The facility's emissions, in tons per year, [~~occurring~~] before implementation of an emission reduction [~~strategy~~] calculated as the lowest of the facility's historical adjusted emissions or state implementation plan emissions.

(5) Certified--Any emission reduction that is determined to be creditable upon review and approval by the executive director.

(6) Curtailment--A reduction in activity level at any facility or mobile source.

(7) Emission credit--An emission reduction credit or mobile emission reduction credit.

(8) Emission rate--The facility's rate of emissions per unit of activity.

(9) Emission reduction--A [~~An actual~~] reduction in actual emissions from a facility or mobile source.

(10) Emission reduction credit--A certified emission reduction, expressed in tenths of a ton per year, that is created by eliminating future emissions and quantified during or before the period in which emission reductions are made from a facility.

(11) Emission reduction strategy--The method implemented to reduce the facility's or mobile source's emissions beyond that required by state or federal law, regulation, or agreed order.

(12) Facility--As defined in §116.10 of this title (relating to General Definitions).

(13) Generator--The owner or operator of a facility or mobile source that creates an emission reduction.

(14) Historical adjusted emissions--The [~~facility's~~] emissions occurring before implementation of an emission reduction strategy and adjusted for any local, state, or federal requirement, calculated using the following equation.

Figure: 30 TAC §101.300(14)

[~~Figure: 30 TAC §101.300(14)~~]

(15) Mobile emission reduction credit--A certified emission reduction from a mobile source or group of mobile sources, expressed in tenths of a ton [~~tons~~] per year, that is created by eliminating future emissions and quantified during or [~~and~~] before the period in which reductions are made from that mobile source or group of mobile sources.

(16) Mobile source--A source included in the agency's emissions inventory under the mobile source category [~~On-road (highway) vehicles (e.g., automobiles, trucks, and motorcycles) and non-road vehicles (e.g., trains, airplanes, agricultural equipment, industrial equipment, construction vehicles, off-road motorcycles, and marine vessels)~~].

(17) Mobile source baseline activity--The level of activity of a mobile source based on an estimate for each year for which the credits are to be generated. After the initial year, the annual estimates should reflect:

(A) the change in the mobile source emissions to reflect any deterioration in the emission control performance of the participating source;

(B) the change in the number of mobile sources resulting from normal retirement or attrition, and the replacement of retired mobile sources with newer and/or cleaner mobile sources;

(C) the change in usage levels, hours of operation, or vehicle miles traveled in the participating population; and

(D) the change in the expected useful life of the participating population.

(18) Mobile source baseline emissions--The mobile source's actual emissions, in tons per year, occurring prior to a mobile emission reduction strategy calculated as the lowest of the historical adjusted emissions or state implementation plan emissions [~~product of mobile source activity and the mobile source emissions rate not to exceed all limitations required by applicable local, state, and federal rules and regulations~~].

(19) Mobile source baseline emission rate--The mobile source's rate of emissions per unit of mobile source baseline activity during the mobile source baseline emissions period.

(20) Permanent--An emission reduction that is long-lasting and unchanging for the remaining life of the facility or mobile source. Such a time period must be enforceable.

(21) Point source--A facility included in the agency's emissions inventory under the point source category.

(22) Primarily operated--When the activity is at least 85% within a specific nonattainment area.

(23) Projection-base year--The year of the emissions inventory used to project or forecast future-year emissions for modeling point sources in a state implementation plan revision.

(24) [~~(21)~~] Protocol--A replicable and workable method of estimating emission rate or activity level used to calculate the amount of emission reduction generated or credits required for facilities or mobile sources.

(25) [~~(22)~~] Quantifiable--An emission reduction that can be measured or estimated with confidence using replicable methodology.

(26) [~~(23)~~] Real reduction--A reduction in which actual emissions are reduced. Emissions reductions that result from any of the following are not considered a real reduction:

(A) lowering the allowable emission limit in a permit without a physical change or change in method of operation;

(B) shifting a vent gas stream or other pollution or waste stream to another site;

(C) a mobile source that is not capable of being operated as intended; or

(D) a change in an emissions factor or emissions calculation equation.

(27) [~~(24)~~] Shutdown--The permanent cessation of an activity producing emissions at a facility or mobile source.

(28) [~~(25)~~] Site--As defined in §122.10 of this title (relating to General Definitions).

(29) [~~(26)~~] State implementation plan--A plan that provides for attainment and maintenance of a primary or secondary national ambient air quality standard as adopted in 40 Code of Federal Regulations Part 52, Subpart SS.

(30) State implementation plan (SIP) emissions--SIP emissions are determined as follows.

(A) For point sources, SIP emissions are facility-specific values based on the emissions data in the state's annual emissions inventory (EI) for the year used to develop the projection-base year inventory for the modeling included in an attainment demonstration (AD) SIP revision, used for the attainment inventory for a maintenance plan SIP revision, or used in an EI SIP revision, as applicable under subparagraph (B)(i) - (iii) of this paragraph. For area and mobile sources, SIP emissions are calculated values based on actual operations during the latest triennial National Emissions Inventory (NEI) year used to support an AD SIP revision, used for the attainment inventory for a maintenance plan SIP revision, or used in an EI SIP revision, as applicable under subparagraph (B)(i) - (iii) of this paragraph. For point, area, and mobile sources located in a nonattainment area without an applicable SIP as determined under subparagraph (B)(i) - (iii) of this paragraph, SIP emissions are based on the year of the most recent NEI submitted to the United States Environmental Protection Agency (EPA) preceding that area's nonattainment designation for the current National Ambient Air Quality Standard (NAAQS).

(B) The applicable SIP revision must be for the nonattainment area where the facility is located, or for mobile sources where the mobile source is primarily operated, and must be for the criteria pollutant, or include the precursor pollutant, for which the applicant is requesting credits. The applicable SIP revision is:

(i) an AD SIP revision or a maintenance plan SIP revision, whichever was most recently submitted to the EPA for the current NAAQS;

(ii) if the SIP revisions identified in clause (i) of this subparagraph have not been submitted to the EPA, an AD SIP revision or a maintenance plan SIP revision, whichever was most recently submitted to the EPA for an earlier NAAQS issued in the same averaging time and the same form as the current NAAQS; or

(iii) if the SIP revisions identified in clauses (i) and (ii) of this subparagraph have not been submitted to the EPA, the most recent EI SIP revision submitted to the EPA.

(C) The total amount of SIP emissions available for credit generation will be set for area, non-road mobile, and on-road mobile source categories.

(i) Total creditable area source emissions are 75% of the total area source emissions excluding residential area sources in the applicable SIP revision.

(ii) Total creditable non-road mobile source emissions are 75% of the total non-road mobile source emissions in the applicable SIP revision.

(iii) Total creditable on-road mobile source emissions are 85% of the total on-road mobile source emissions in the applicable SIP revision.

(D) The SIP emissions for a facility or mobile source may not exceed any applicable local, state, or federal requirement.

(E) The year used to determine SIP emissions is as specified in subparagraph (A) of this paragraph, unless a different year is specifically identified otherwise by the commission in the most recent SIP revision adopted after December 31, 2017.

[~~(27) State implementation plan (SIP) emissions--The emissions data in the state's emissions inventory (EI) required under 40 Code of Federal Regulations Part 51, Subpart A for the year used to represent the facility's emissions in a SIP revision. The applicable SIP revision must be for the nonattainment area where the facility is located and must be for the criteria pollutant, or include the precursor pollutant, for which the applicant is requesting credits. The SIP emissions may not exceed any applicable local, state, or federal requirement. A facility's SIP emissions are determined from the EI year that:~~]

[~~(A) was used to develop the projection-base year inventory for the modeling included in an attainment demonstration (AD) SIP revision or the attainment inventory for a maintenance plan SIP revision, whichever was most recently submitted to the United States Environmental Protection Agency (EPA) for the current National Ambient Air Quality Standard (NAAQS);~~]

[~~(B) if the SIP revisions identified in subparagraph (A) of this paragraph have not been submitted to the EPA, was used to develop the projection-base year inventory for the modeling included in an AD SIP revision or the attainment inventory for a maintenance plan SIP revision, whichever was most recently submitted to the EPA for an earlier NAAQS issued in the same averaging time and the same form as the current NAAQS;~~]

[~~(C) if the SIP revisions identified in subparagraphs (A) and (B) of this paragraph have not been submitted to the EPA, corresponds to the EI for the most recent EI SIP revision submitted to the EPA; or~~]

[~~(D) if the SIP revisions identified in subparagraphs (A) - (C) of this paragraph have not been submitted to the EPA, corresponds to the EI that will be used for the EI SIP revision that will be submitted to the EPA.~~]

(31) [~~(28)~~] Strategic emissions--A facility's or mobile source's new allowable emission limit, in tons per year, following implementation of an emission reduction strategy.

(32) [~~(29)~~] Surplus--An emission reduction that is not otherwise required of a facility or mobile source by any applicable local, state, or federal requirement and has not been otherwise relied upon in the state implementation plan.

(33) [~~(30)~~] User--The owner or operator of a facility or mobile source that acquires and uses emission credits to meet a regulatory requirement, demonstrate compliance, or offset an emission increase.

§101.302. General Provisions.

(a) Applicable pollutants.

(1) An emission [~~reduction~~] credit [~~(ERC)~~] may be generated from a reduction of a criteria pollutant, excluding lead, or a precursor of a criteria pollutant for which an area is designated nonattainment.

(2) An emission credit [~~ERC~~] generated from the reduction of one pollutant or precursor may not be used to meet the requirements for another pollutant or precursor, except as provided by §101.306(d) of this title (relating to Emission Credit Use).

[~~(2) Reductions of criteria pollutants, excluding lead, or precursors of criteria pollutants for which an area is designated nonattainment, may qualify as mobile emission reduction credits (MERCs). MERCs generated from reductions of one pollutant may not be used to meet the requirements for another pollutant, unless urban airshed modeling demonstrates that one ozone precursor may be substituted for another, subject to executive director and United States Environmental Protection Agency (EPA) approval.~~]

(b) Eligible generator categories. The following categories are eligible to generate emission credits:

(1) facilities, including both point and area sources;

(2) mobile sources; and

(3) any facility, including both point and area sources, or mobile source associated with actions by federal agencies under 40 Code of Federal Regulations Part 93, Subpart B, Determining Conformity of General Federal Actions to State or Federal Implementation Plans.

(c) Ineligible generator categories. The following categories are not eligible to generate emission credits:

(1) residential area sources;

(2) facilities or mobile sources that do not have records for approved or approvable methods to quantify emissions;

(3) on-road mobile sources that are not part of an industrial, commercial, nonprofit, institutional, or municipal/government fleet; and

(4) mobile sources that are not primarily operated within a specific nonattainment area with the exception of marine and locomotive sources that use capture and control emissions reduction systems.

(d) [~~(c)~~] Emission credit requirements.

(1) An emission reduction credit (ERC) [~~ERC~~] is a certified emission reduction that:

(A) must be enforceable, permanent, quantifiable, real, and surplus;

(B) must be surplus at the time it is created, as well as when it is used; and

(C) must occur after the [~~year used to determine the~~] state implementation plan (SIP) emissions year for the facility. Individual facilities that were not operated during the SIP emissions year may not be used to generate ERCs.

(2) Mobile emission reduction credits (MERCs) are certified reductions that meet the following requirements:

(A) reductions must be enforceable, permanent, quantifiable, real, and surplus;

(B) the certified reduction must be surplus at the time it is created, as well as when it is used;

(C) in order to become certified, the reduction must have occurred after the SIP [~~most recent year of~~] emissions year [~~inventory used in the SIP~~];

(D) the reduction must be from a mobile source that operated during [~~source's annual emissions prior to the emission credit application must have been represented in the emissions inventory used in~~] the SIP emissions year. [~~; and~~]

[~~(E) the mobile sources must been included in the attainment demonstration baseline emissions inventory.~~]

(3) Emission reductions from a facility or mobile source that are certified as emission credits under this division cannot be recertified in whole or in part as credits under another division within this subchapter.

(e) [~~(d)~~] Protocol.

(1) All generators or users of emission credits shall use a protocol that has been submitted by the executive director to the United States Environmental Agency (EPA) [~~EPA~~] for approval, if existing for the applicable facility or mobile source, to measure and calculate baseline emissions. If the generator or user wishes to deviate from a protocol submitted by the executive director, EPA approval is required before the protocol can be used. Protocols must be used as follows.

(A) The owner or operator of a facility subject to the emission specifications under §§117.110, 117.310, 117.410, 117.1010, 117.1210, 117.1310, 117.2010, or 117.2110 of this title (relating to Emission Specifications for Attainment Demonstration; Emission Specifications for Eight-Hour Attainment Demonstration; and Emission Specifications) shall use the testing and monitoring methodologies required under Chapter 117 of this title (relating to Control of Air Pollution from Nitrogen Compounds) to show compliance with the emission specification for that pollutant.

(B) The owner or operator of a facility subject to the requirements under Chapter 115 of this title (relating to Control of Air Pollution from Volatile Organic Compounds) shall use the testing and monitoring methodologies required under Chapter 115 of this title to show compliance with the applicable requirements.

(C) Except as specified in subparagraphs (A) and (B) of this paragraph, the owner or operator of a facility subject to the requirements under Chapter 106 of this title (relating to Permits by Rule) or a permit issued under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) shall use the testing and monitoring methodologies required under Chapter 106 of this title or a permit issued under Chapter 116 of this title to demonstrate compliance with the applicable requirements.

(D) [~~(C)~~] The executive director may approve the use of a methodology approved by the EPA to quantify emissions from the same type of facility or mobile source.

(E) [~~(D)~~] Except as specified in subparagraph (D) [~~(C)~~] of this paragraph, if the executive director has not submitted a protocol for the applicable facility or mobile source to the EPA for approval, the following requirements apply:

(i) the amount of emission credits from a facility or mobile source, in tons per year, will be determined and certified based on quantification methodologies at least as stringent as the methods

used to demonstrate compliance with any applicable requirements for the facility or mobile source;

(ii) the generator shall collect relevant data sufficient to characterize the facility's or mobile source's emissions of the affected pollutant and the facility's or mobile source's activity level for all representative phases of operation in order to characterize the facility's or mobile source's baseline emissions;

(iii) the owner or operator of a facility with a continuous emissions monitoring system or predictive emissions monitoring system in place shall use this data in quantifying emissions;

(iv) the chosen quantification protocol must be made available for public comment for a period of 30 days and must be viewable on the commission's website;

(v) the chosen quantification protocol and any comments received during the public comment period must be submitted to the EPA for a 45-day adequacy review; and

(vi) quantification protocols may not be accepted for use with this division if the executive director receives a letter objecting to the use of the protocol from the EPA during the 45-day adequacy review or the EPA adopts disapproval of the protocol in the *Federal Register*.

(2) If the monitoring and testing data specified in paragraph (1) of this subsection is missing or unavailable, the generator or user shall determine the facility's emissions for the period of time the data is missing or unavailable using the most conservative method for replacing the data and these listed methods in the following order:

(A) continuous monitoring data;

(B) periodic monitoring data;

(C) testing data;

(D) manufacturer's data;

(E) EPA Compilation of Air Pollution Emission Factors (AP-42), September 2000; or

(F) material balance.

(3) When quantifying actual emissions in accordance with paragraph (2) of this subsection, the generator or user shall submit the justification for not using the methods in paragraph (1) of this subsection and submit the justification for the method used.

(f) [~~(e)~~] Credit certification.

(1) The amount of emission credits in tons per year will be determined and certified to the nearest tenth of a ton per year. Credits will not be issued for an individual facility, fugitive emissions from aggregated facilities, or aggregated mobile sources that cannot generate at least 0.1 ton per year of credit after all adjustments are applied. Fugitive emissions or mobile source emissions aggregated to meet the requirement that emission reductions be certified for at least 0.1 ton per year must be represented on the same application and will have an application deadline and credit expiration date determined by the earliest emission reduction date among the aggregated sources.

(2) The executive director shall review an application for certification to determine the credibility of the reductions. Each ERC or MERC certified will be assigned a certificate number. A new number will be assigned when an ERC or MERC is traded or partly used. Reductions determined to be creditable and in compliance with all other requirements of this division will be certified by the executive director.

(3) The applicant will be notified in writing if the executive director denies the emission credit application. The applicant may submit a revised application in accordance with the requirements of this division. If a facility's or mobile source's actual emissions exceed any applicable local, state, or federal requirement, reductions of emissions exceeding the requirement may not be certified as emission credits. An application for certification of emission credit from reductions quantified under subsection (e)(1)(E) [~~(d)(1)(D)~~] of this section may only be approved after the EPA's 45-day adequacy review of the protocol.

(g) Credit application submission and conditions.

(1) Beginning January 1, 2018, an application to certify credits must be submitted through the State of Texas Environmental Reporting System (STEERS) unless the applicant receives prior approval from the executive director for an alternative means of application submission.

(2) As a condition for the certification of a credit, the executive director may specify monitoring, testing, recordkeeping, or other requirements through an Emissions Banking and Trading Certification of Emission Reductions Form (Form EBT-CERT), or other forms considered equivalent by the executive director.

(3) The generator must comply with all conditions specified in a Form EBT-CERT, or other forms considered equivalent by the executive director, once the credit is certified.

(h) [~~(f)~~] Geographic scope. Except as provided in §101.305 of this title (relating to Emission Reductions Achieved Outside the United States), only emission reductions generated in nonattainment areas can be certified. An emission credit must be used in the nonattainment area in which it is generated unless the user has obtained prior written approval of the executive director and the EPA; and

(1) a demonstration has been made and approved by the executive director and the EPA to show that the emission reductions achieved in another county or state provide an improvement to the air quality in the county of use; or

(2) the emission credit was generated in a nonattainment area that has an equal or higher nonattainment classification than the nonattainment area of use, and a demonstration has been made and approved by the executive director and the EPA to show that the emissions from the nonattainment area where the emission credit is generated contribute to a violation of the national ambient air quality standard in the nonattainment area of use.

(i) [~~(g)~~] Recordkeeping. The generator shall maintain a copy of all notices and backup information submitted to the executive director and all records required or necessary to verify the certified emissions reduction for a minimum of five years. The user shall maintain a copy of all notices and backup information submitted to the executive director from the beginning of the use period and for at least five years after. The user shall make the records available upon request to representatives of the executive director, EPA, and any local enforcement agency. The records must include, but not necessarily be limited to:

(1) the name, emission point number, and facility identification number of each facility or any other identifying number for each mobile source using emission credits;

(2) the amount of emission credits being used by each facility or mobile source; and

(3) the certificate number of emission credits used for each facility or mobile source.

(j) [~~(h)~~] Public information. All information submitted with notices, reports, and trades regarding the nature, quantity, and sales price of emissions associated with the use, generation, and transfer of an emission credit is public information and may not be submitted as

confidential. Any claim of confidentiality for this type of information, or failure to submit all information, may result in the rejection of the emission credit application. All nonconfidential information will be made available to the public as soon as practicable.

(k) [~~(i)~~] Authorization to emit. An emission credit created under this division is a limited authorization to emit the pollutants identified in subsection (a) of this section, unless otherwise defined, in accordance with the provisions of this section, 42 United States Code, §§7401 *et seq.,* and Texas Health and Safety Code, Chapter 382, as well as regulations promulgated thereunder. An emission credit does not constitute a property right. Nothing in this division may be construed to limit the authority of the commission or the EPA to terminate or limit such authorization.

(l) [~~(j)~~] Program participation. The executive director has the authority to prohibit a person from participating in emission credit trading either as a generator or user, if the executive director determines that the person has violated the requirements of the program or abused the privileges provided by the program.

(m) [~~(k)~~] Compliance burden. A user may not transfer their compliance burden and legal responsibilities to a third-party participant. A third-party participant may only act in an advisory capacity to the user.

(n) [~~(l)~~] Credit ownership. The owner of the initial emission credit shall be the owner or operator of the facility or mobile source creating the emission reduction. The executive director may approve a deviation from this subsection considering factors such as, but not limited to:

(1) whether an entity other than the owner or operator of the facility or mobile source incurred the cost of the emission reduction strategy; or

(2) whether the owner or operator of the facility or mobile source lacks the potential to generate 0.1 [~~1/10~~] ton per year of credit after all adjustments are applied.

§101.303. Emission Reduction Credit Generation and Certification.

(a) Emission reduction strategy.

(1) An emission reduction credit (ERC) may be generated using one of the following strategies or any other method that is approved by the executive director:

(A) the permanent shutdown of a facility that causes a loss of capability to produce emissions;

(B) the installation and operation of pollution control equipment that reduces emissions below baseline emissions for the facility;

(C) a change in a manufacturing process that reduces emissions below baseline emissions for the facility;

(D) a permanent curtailment in production that reduces the facility's capability to produce emissions; or

(E) pollution prevention projects that produce surplus emission reductions.

(2) An ERC may not be generated from the following strategies:

(A) reductions from the shifting of activity from one facility to another facility at the same site;

(B) that portion of reductions funded through state or federal programs, unless specifically allowed under that program; [~~or~~]

(C) reductions from a facility without state implementation plan (SIP) emissions; or[~~.~~]

(D) reductions from the shutdown of specific types of inelastic area sources that are driven by population needs. The executive director shall maintain a public list of area source categories determined to be inelastic categories.

(i) The list of inelastic area source categories will be made available to the public on the commission's website.

(ii) Any person may submit a written petition requesting that the executive director add or remove a category from the list.

(iii) Within 60 days of receiving a petition under clause (ii) of this subparagraph, the executive director shall prepare a draft revised list or propose denial of the petition by preparing a draft denial statement supporting denial of the petition.

(iv) The executive director may on its own motion propose revisions to the list by preparing a draft revised list.

(v) The executive director's draft revised list, or draft denial statement, under clauses (iii) and (iv) of this subparagraph shall be made available for public comment for 30 days.

(vi) Within 30 days of the public comment period ending, the executive director shall issue a proposed final list or a proposed final denial statement for consideration and approval by the commission.

(vii) The commission shall approve, modify, or deny the proposed revisions to the list of inelastic area sources categories made by the executive director under clauses (iii) and (iv) of this subparagraph.

(viii) The commission shall approve, modify, or remand to the executive director for further consideration a recommendation to deny a petition submitted by the executive director under clause (iii) of this subparagraph.

(ix) The shutdown of an area source category that falls into one of the categories on the list under clause (i) of this subparagraph is ineligible for emissions reduction credit generation.

(b) ERC baseline emissions.

(1) The baseline emissions may not exceed the facility's SIP emissions.

(2) The activity and emission rate used to calculate the facility's historical adjusted emissions must be determined from the same two consecutive calendar years [~~selected from the ten consecutive years immediately before the emission reduction is achieved~~].

(A) For point sources, the historical adjusted emissions must be based on two consecutive calendar years from the ten consecutive years immediately before the emissions reduction is achieved.

(B) For area sources, the historical adjusted emissions must be based on two consecutive years from the five consecutive years immediately before the emissions reduction is achieved unless detailed operational records are available for more than five years. The historical adjusted emissions may be determined from two consecutive calendar years up to six to ten consecutive years immediately before the emissions reduction is achieved when detailed operational records are available for those years.

(3) For a facility in existence less than 24 months or not having two complete calendar years of activity data, a shorter period of not less than 12 months may be considered by the executive director.

(c) ERC calculation.

(1) The quantity of ERCs is determined by subtracting the facility's strategic emissions from the facility's baseline emissions, as calculated in the following equation.

Figure: 30 TAC §101.303(c)(1)

[~~Figure:~~ ~~30 TAC §101.303(c)~~]

(2) For area sources generating credits from the permanent shutdown of a facility, the amount of ERCs calculated will be reduced by 15% or 0.1 ton per year, whichever is greater.

(3) For area sources, the amount of ERCs calculated will be adjusted to account for the quality of the data used to quantify the emissions. The adjustment will be:

(A) no reduction for the same type of records that are required to be maintained for a facility operating as a point source; or

(B) 15% or 0.1 ton per year, whichever is greater, reduction for records supporting alternative methods approved according to §101.302(e) of this title (relating to General Provisions).

(4) If the facility is subject to both of the adjustments in paragraphs (1) and (2) of this subsection, the total combined adjustment to the amount of ERCs issued will be a reduction of 20% or 0.1 ton per year, whichever is greater.

(d) ERC certification.

(1) The owner or operator of a facility with potential ERCs shall submit an application form specified by the executive director and signed by an authorized account representative as specified in subparagraphs (A) - (D) of this paragraph [~~to the executive director an application for ERCs no more than two years after the implementation of the emission reduction strategy~~].

(A) Applications will be reviewed to determine the credibility of the reductions. Reductions determined to be creditable will be certified by the executive director and an ERC will be issued to the owner.

(B) The application for ERCs must be submitted no more than two years after the facility's emissions reduction date, except as provided by subparagraphs (C) and (D) of this paragraph.

(C) The application for ERCs from all facilities affected by a complete site shutdown of an oil and gas production site may be submitted no more than two years after the site's production well is plugged in accordance with requirements of the Railroad Commission of Texas if the plugging is completed within one year of final production being reported to the Railroad Commission of Texas. Emission credits certified under this exception will be available for use for 72 months from the date well plugging is completed in lieu of the provisions outlined in §101.309(b)(2) of this title (relating to Emission Credit Banking and Trading).

(D) For an area source facility, the application for ERCs may be submitted as follows.

(i) For emission reductions that occurred after June 1, 2013 and prior to January 1, 2015, the application for ERCs must be submitted by December 31, 2017.

(ii) For emissions reductions that occurred between January 1, 2015 and January 1, 2017, the application for ERCs may be submitted up to three years after the facility's emissions reduction date.

(iii) The application deadline exceptions specified in clauses (i) and (ii) of this subparagraph no longer apply after December 31, 2019.

(iv) Emission credits certified under the application deadline exceptions specified in clauses (i) and (ii) of this subparagraph or certified for area source emission reductions occurring before and included on an application submitted, but not acted on, before January 1, 2017 shall be available for use for 72 months from the date of the emission reduction in lieu of the provisions outlined in §101.309(b)(2) of this title.

(2) ERCs must be quantified in accordance with §101.302(e) [~~§101.302(d)~~] of this title [~~(relating to General Provisions)~~]. The executive director shall have the authority to inspect and request information to assure that the emissions reductions have actually been achieved.

(3) An application for ERCs must include, but is not limited to, a completed application form specified by the executive director signed by an authorized representative of the applicant along with the following information for each pollutant reduced at each applicable facility:

(A) a complete description of the emission reduction strategy;

(B) the amount of ERCs generated;

(C) for volatile organic compound reductions, a list of the specific compounds reduced;

(D) documentation supporting the activity, emission rate, historical adjusted emissions, SIP emissions, baseline emissions, and strategic emissions;

(E) for point sources, emissions inventory data for [~~each of~~] the years used to determine the SIP emissions and historical adjusted emissions;

(F) the most stringent emission rate and the most stringent emission level, considering all applicable local, state, and federal requirements;

(G) a complete description of the protocol used to calculate the emission reduction generated; and

(H) the actual calculations performed by the generator to determine the amount of ERCs generated.

(4) ERCs will be made enforceable by one of the following methods:

(A) amending or altering a new source review permit to reflect the emission reduction and set a new maximum allowable emission limit;

(B) voiding a new source review permit when a facility has been shut down; or

(C) for any facility without a new source review permit that is otherwise authorized by commission rule, certifying the emission reduction and the new maximum emission limit on one or more forms specified by the executive director, including a Certification of Emission Limits (Form APD-CERT) submitted through e-permitting and an Emissions Banking and Trading Certification of Emission Reductions Form (Form EBT-CERT), or other forms [~~form~~] considered equivalent by the executive director [~~or an agreed order~~].

§101.304. Mobile Emission Reduction Credit Generation and Certification.

(a) Methods of generation.

(1) Mobile emission reduction credits (MERC) may be generated by any mobile source emission reduction strategy that

creates actual mobile source emission reductions under these rules and subject to the approval of the executive director [~~commission~~].

(2) MERCs may not be generated from the following strategies:

(A) that portion of reductions funded through a state or federal program, unless specifically allowed under that program;

(B) through the transfer of emissions from one mobile source to another mobile source within the same nonattainment area and under common ownership or control; [~~or~~]

(C) reduction strategies resulting in secondary emissions increases that exceed limits established under state or federal rules or regulations; or[~~.~~]

(D) the shutdown or replacement of a mobile source unless that source is rendered permanently inoperable or permanently removed from North America.

(b) MERC baseline emissions.

(1) Mobile source baseline emissions shall be calculated with either measured emissions of an appropriately sized sample of the participating mobile sources using a United States Environmental Protection Agency (EPA)-approved test procedure, or by estimating emissions of the participating mobile sources using the most recent edition of the EPA on-road or non-road mobile emissions factor models or other model as applicable.

(2) The historical adjusted emissions and state implementation plan emissions may only include actual emissions that occurred when the mobile source was operating inside a specific nonattainment area. [~~Mobile source baseline emissions for each year of the proposed mobile source reduction strategy must be the same as, or lower than, those used or proposed to be used in the state implementation plan (SIP) in which the reduction strategy is proposed.~~]

(3) The activity and emissions rate data used to calculate the mobile source's historical adjusted emissions must be determined from two consecutive calendar years from the five consecutive years immediately before the emissions reduction is achieved unless detailed operational records are available for more than five years. If these detailed operational records are available and do not demonstrate decreasing use due to vehicle age or inoperability, the historical adjusted emissions for a mobile source may be determined from two consecutive calendar years up to six to ten consecutive years immediately before the emissions reduction is achieved.

(4) For a mobile source in existence less than 24 months or not having two complete calendar years of activity data, a shorter period of not less than 12 months may be approved by the executive director.

(5) [~~(3)~~] Baseline emissions for quantifying MERCs should include, but not be limited to, the following information and data as appropriate:

(A) the emission standard to which the mobile source is subject or the emission performance standard to which the mobile source is certified;

(B) the estimated or measured in-use emissions levels per unit of use from all significant mobile source emissions sources;

(C) the number of mobile sources in the participating group;

(D) the type or types of mobile sources by model year;

(E) the actual or projected activity level, hours of operation, or miles traveled, by type and model year; and

(F) the projected remaining useful life of the participating group of mobile sources.

(c) MERC calculation. The quantity of MERCs must be calculated from the [~~annual~~] difference between the mobile source baseline emissions and the strategic [~~projected~~] emissions [~~level after the MERC strategy has been put in place~~]. The strategic [~~projected~~] emissions must be based on the best estimate of the actual in-use emissions of the modified or substitute on-road or non-road vehicles or transportation system that will occur when the mobile source is operating inside a specific nonattainment area. Any estimate of a strategic [~~projected annual mobile source~~] emissions level based on an assumption of reduced consumer service or transportation service would not be allowed without the support of a convincing analytical justification of the assumption.

(1) For mobile sources generating credits from a shutdown, the amount of MERCs generated will be reduced by 15% or 0.1 ton per year, whichever is greater.

(2) The amount of MERCs generated will be adjusted to account for the quality of the data used to quantify the emissions. The reduction will be 15% or 0.1 ton per year, whichever is greater, for records supporting alternative methods approved according to §101.302(e) of this title (relating to General Provisions).

(3) If the mobile source is subject to an adjustment based on both the reduction strategy being a shutdown and the quality of the data used to quantify the emissions, the total combined reduction to the amount of MERCs generated will be 20% or 0.1 ton per year, whichever is greater.

(d) Emission offsets. Mobile source reduction strategies that reduce emissions in one criteria pollutant or precursor for which an area is designated nonattainment, yet result in an emissions increase of another criteria pollutant or precursor for which that same area is nonattainment and from the same mobile source, must be required to offset the resulting increase at a 1:1 ratio with ERCs or MERCs.

(e) MERC certification.

(1) The generator of the reduction from a mobile source with potential MERCs shall submit an application form specified by the executive director and signed by an authorized account representative [~~Mobile sources with potential MERCs shall submit to the executive director an MEC-1 Form, Application for Mobile Emission Credits, within 180 days of implementation of the strategy. Upon approval of the application, the executive director shall issue a MERC certificate(s) to the person, company, business, organization, or public entity generating the mobile emission reduction. A MERC certificate will indicate the total amount of certified emission credits, the quantity available on an annual basis, and the date upon which the last annualized emission reduction expires~~].

(A) Applications will be reviewed to determine the credibility of the reductions. Reductions determined to be creditable will be certified by the executive director and a MERC will be issued to the owner of the mobile source except as specified in §101.302(n) of this title.

(B) The application for MERCs must be submitted no more than two years after the date of the emissions reduction, except as provided by subparagraph (C) of this paragraph.

(C) For a mobile source, the application for MERCs may be submitted as follows.

(i) For emission reductions that occurred after June 1, 2013 and prior to January 1, 2015, the application for MERCs must be submitted by December 31, 2017.

(ii) For emissions reductions that occurred between January 1, 2015 and January 1, 2017, the application for MERCs may be submitted up to three years after the date of the emissions reduction.

(iii) The application deadline exceptions specified in clauses (i) and (ii) of this subparagraph no longer apply after December 31, 2019.

(iv) Emission credits certified under the application deadline exceptions specified in clauses (i) and (ii) of this subparagraph or certified for mobile source emission reductions occurring before and included on an application submitted, but not acted on, before January 1, 2017 shall be available for use for 72 months from the date of the emission reduction in lieu of the provisions outlined in §101.309(b)(2) of this title (relating to Emission Credit Banking and Trading).

(2) MERCs will be determined and certified in accordance with §101.302(e) [~~§101.302(d)~~] of this title (relating to General Provisions) using:

(A) EPA methodologies, when available;

(B) actual monitoring results, when available;

(C) calculations using the most current EPA mobile emissions factor model or other model as applicable; or

(D) calculations using creditable emission reduction measurement or estimation methodologies that satisfactorily address the analytical uncertainties of mobile source emissions reduction strategies.

(3) The expected remaining useful life of the mobile source shall be determined based on the assumptions used in the models in the applicable state implementation plan (SIP) revision or on a case-by-case basis approved by the executive director when a type of mobile source is not reflected in these models. Except as provided in paragraph (4) of this subsection, the amount of MERCs certified for a given emissions reduction will be determined by the emissions reduction for the expected remaining useful life of the mobile source(s), annualized over 25 years.

(4) The requirement to consider the expected remaining useful life of the mobile source and to annualize the emissions reduction over 25 years, as described in paragraph (3) of this subsection, does not apply if a capture and control system is used to reduce mobile source emissions. Instead, the MERC calculation will include the following.

(A) The strategic emissions used in the MERC calculation must include the mobile source emissions that are not captured by the capture and control system. In addition, the strategic emissions must also include any emissions that are not controlled by the system after capture and any emissions caused by or as a result of operating the system.

(B) The initial owner of the MERCs is the owner or operator of the capture and control system.

(5) [~~(3)~~] An application for MERCs must include, but is not limited to, a form specified by the executive director that is [~~completed MEC-1 Form~~] signed by an authorized account representative, [~~of the applicant~~] along with the following information for each pollutant reduced by each applicable mobile source:

(A) the date of the reduction;

(B) a complete description of the generation strategy;

(C) the amount of emission credits generated;

(D) documentation supporting the mobile source baseline activity, mobile source baseline emission rate, historical adjusted emissions, SIP emissions, mobile source baseline emissions, and the mobile source strategy emissions;

(E) a complete description of the protocol used to calculate the emission reduction generated;

(F) the actual calculations performed by the generator to determine the amount of emission credits generated; and

(G) a demonstration that the reductions are surplus to all local, state, and federal rules and to emission modeled in the SIP.

(6) [~~(4)~~] MERCs will be made enforceable with an Emissions Banking and Trading Certification Form (Form EBT-CERT), or equivalent form approved by the executive director, that may contain special conditions including, but not limited to: [~~by obtaining an agreed order that sets a new maximum allowable mobile source emission limit.~~]

(A) written certification and photographs for mobile sources that are made permanently inoperable for replacement or shutdown;

(B) where applicable, a certified or duplicate Texas Nonrepairable Vehicle Title for mobile sources that are made permanently inoperable for replacement or shutdown;

(C) a bill of sale and bill of lading for mobile sources that are permanently removed from North America for replacement or shutdown and any additional information required by the executive director; and

(D) a new maximum allowable mobile source emission limit.

§101.306. Emission Credit Use.

(a) Uses for emission credits. Unless precluded by a commission order or a condition or conditions within an authorization under the same commission account number, emission credits may be used as the following:

(1) offsets for a new source, as defined in §101.1 of this title (relating to Definitions), or major modification to an existing source;

(2) mitigation offsets for action by federal agencies under 40 Code of Federal Regulations Part 93, Subpart B, Determining Conformity of General Federal Actions to State or Federal Implementation Plans;

(3) an alternative means of compliance with volatile organic compound and nitrogen oxides reduction requirements to the extent allowed in Chapters 115 and 117 of this title (relating to Control of Air Pollution from Volatile Organic Compounds; and Control of Air Pollution from Nitrogen Compounds);

(4) reductions certified as emission credits may be used in netting by the original applicant, if not used, sold, reserved for use, or otherwise relied upon, as provided by Chapter 116, Subchapter B of this title (relating to New Source Review Permits); or

(5) compliance with other requirements as allowed in any applicable local, state, and federal requirement.

(b) Credit use calculation.

(1) The number of emission credits needed by the user for offsets shall be determined as provided by Chapter 116, Subchapter B of this title.

(2) For emission credits used in compliance with Chapter 115 or 117 of this title, the number of emission credits needed should be determined according to the following equation plus an additional 10% to be retired as an environmental contribution.
Figure: 30 TAC §101.306(b)(2) (No change.)

(3) For emission credits used to comply with §§117.123, 117.320, 117.323, 117.423, 117.1020, or 117.1220 of this title (relating to Source Cap; and System Cap), the number of emission credits needed for increasing the 30-day rolling average emission cap or maximum daily cap should be determined according to the following equation plus an additional 10% to be retired as an environmental contribution.
Figure: 30 TAC §101.306(b)(3) (No change.)

(4) Emission credits used for compliance with any other applicable program should be determined in accordance with the requirements of that program and must contain at least 10% extra to be retired as an environmental contribution, unless otherwise specified by that program.

(c) Notice of intent to use emission credits.

(1) [~~Application to use ERCs.~~] The executive director will not accept an application to use emission credits [~~ERCs~~] before the emission credit [~~ERC~~] is available in the compliance account for the site where it will be used. If the emission credit [~~ERC~~] will be used for offsets, the executive director will not accept the emission credit [~~ERC~~] application before the applicable permit application is administratively complete.

(A) The user shall submit a completed application at least 90 days before the start of operation for an emission credit [~~ERC~~] used as offsets in a permit in accordance with Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification).

(B) The user shall submit a completed application at least 90 days before the planned use of an emission credit [~~ERC~~] for compliance with the requirements of Chapter 115 or 117 of this title or other programs.

(C) If the executive director approves the emission credit [~~ERC~~] use, the date the application is submitted will be considered the date the emission credit [~~ERC~~] is used.

~~[(2) Application to use mobile emission reduction credits (MERCs).]~~

~~[(A) For MERCs which are to be used as offsets in a New Source Review permit in accordance with Chapter 116 of this title, the MERCs must be identified prior to permit issuance. Prior to construction, the offsets must be provided through submittal of a completed application form specified by the executive director.]~~

~~[(B) For emission credits that are to be used for compliance with the requirements of Chapter 115 or 117 of this title or other programs, the user must submit a completed application at least 90 days prior to the planned use of the MERC. MERCs may be used only after the executive director grants approval of the notice of intent to use. The user must also keep a copy of the notice and all backup in accordance with §101.302(g) of this title (relating to General Provisions).]~~

(2) [~~(3)~~] If the executive director denies the facility or mobile source's use of emission credits, any affected person may file a motion for reconsideration within 60 days of the denial. Notwithstanding the applicability provisions of §50.31(c)(7) of this title (relating to Purpose and Applicability), the requirements of §50.39 of this title (relating to Motion for Reconsideration) shall apply. Only an affected person may file a motion for reconsideration.

(d) Inter-pollutant use of emission credits [~~ERCs~~]. With prior approval from the executive director and the United States Environmental Protection Agency, a nitrogen oxides or volatile organic compound emissions credit [~~ERC~~] may be used to meet the offset requirements for the other ozone precursor if photochemical modeling demonstrates that the overall air quality and the regulatory design value in the nonattainment area of use will not be adversely affected by the substitution.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-2613

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DIVISION 4. DISCRETE EMISSION CREDIT PROGRAM

30 TAC §§101.370, 101.372 - 101.374, 101.376

Statutory Authority

The amended sections are proposed under Texas Water Code (TWC), §5.102, concerning General Powers, TWC, §5.103, concerning Rules, and TWC, §5.105, concerning General Policy, that authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The rulemaking is proposed under THSC, §382.002, concerning Policy and Purpose, that establishes the commission's purpose to safeguard the state air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; THSC, §382.014, concerning Emission Inventory, that authorizes the commission to require a person whose activities cause air contaminant emissions to submit information to enable the commission to develop an emissions inventory; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, that authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; and THSC, §382.021, concerning Sampling Methods and Procedures, that authorizes the commission to prescribe the sampling methods and procedures to determine compliance with its rules. The amended sections are also proposed under THSC, §382.023, concerning Orders, and §382.036, concerning Cooperation and Assistance. The rulemaking is also proposed under Federal Clean Air Act (FCAA), 42 United States Code, §§7401, et seq., which requires states to submit SIP revisions that specify the manner in which the national ambient air quality standard will be achieved and maintained within each air quality control region of the state.

The proposed amendments implement THSC, §§382.002, 382.011, 382.012, 382.014, 382.016, 82.017. 382.021, 382.023, and 382.036.

§101.370. Definitions.

Unless specifically defined in the Texas Clean Air Act or in §3.2 or §101.1 of this title (relating to Definitions), the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition, the following words and terms, when used in this division, have the following meanings, unless the context clearly indicates otherwise.

(1) Activity--The amount of activity at a facility or mobile source measured in terms of production, use, raw materials input, vehicle miles traveled, or other similar units that have a direct correlation with the economic output and emission rate of the facility or mobile source.

(2) Actual emissions--The total emissions during a selected time period, using the facility's or mobile source's actual daily operating hours, production rates, or types of materials processed, stored, or combusted during that selected time period.

(3) Area source--Any facility included in the agency emissions inventory under the area source category.

(4) Baseline emissions--The facility's emissions, in tons per year, [~~occurring~~] before implementation of an emission reduction [~~strategy~~] and calculated as the lowest of the facility's historical adjusted emissions or state implementation plan (SIP) emissions, except that the SIP emissions value is only considered for a facility in a nonattainment area.

(5) Certified--Any emission reduction that is determined to be creditable upon review and approval by the executive director.

(6) Curtailment--A reduction in activity level at any facility or mobile source.

(7) Discrete emission credit--A discrete emission reduction credit or mobile discrete emission reduction credit.

(8) Discrete emission reduction credit--A certified emission reduction that is created by reducing emissions from a facility during a generation period, quantified after the generation period, and expressed in tenths of a ton.

(9) Emission rate--The facility's rate of emissions per unit of activity.

(10) Emission reduction--A [~~An actual~~] reduction in actual emissions from a facility or mobile source.

(11) Emission reduction strategy--The method implemented to reduce the facility's or mobile source's emissions beyond that required by state or federal law, regulation, or agreed order.

(12) Facility--As defined in §116.10 of this title (relating to General Definitions).

(13) Generation period--The discrete period of time, not exceeding 12 months, over which a discrete emission [~~reduction~~] credit is created.

(14) Generator--The owner or operator of a facility or mobile source that creates an emission reduction.

(15) Historical adjusted emissions--The [~~facility's~~] emissions occurring before implementation of an emission reduction strategy and adjusted for any local, state, or federal requirement, calculated using the following equation.

Figure: 30 TAC §101.370(15)

[~~Figure: 30 TAC §101.370(15)~~]

(16) Mobile discrete emission reduction credit--A certified emission reduction from a mobile source or group of mobile sources that is created during a generation period, quantified after the period in which emissions reductions are made, and expressed in tenths of a ton [~~tons~~].

(17) Mobile source--A source included in the agency's emissions inventory under the mobile source category [~~On-road (highway) vehicles (e.g., automobiles, trucks, and motorcycles) and non-road vehicles (e.g., trains, airplanes, agricultural equipment, industrial equipment, construction vehicles, off-road motorcycles, and marine vessels)~~].

(18) Mobile source baseline activity--The level of activity of a mobile source during the applicable mobile source baseline emissions period.

(19) Mobile source baseline emissions--The mobile source's actual emissions, in tons per year, occurring prior to a mobile emission reduction strategy calculated as the lowest of the historical adjusted emissions or state implementation plan emissions [~~product of mobile source baseline activity and mobile source baseline emission rate not to exceed all limitations required by applicable local, state, and federal rules and regulations~~].

(20) Mobile source baseline emissions rate--The mobile source's rate of emissions per unit of mobile source baseline activity during the mobile source baseline emissions period.

(21) Ozone season--The portion of the year when ozone monitoring is federally required to occur in a specific geographic area, as defined in 40 Code of Federal Regulations Part 58, Appendix D, §2.5.

(22) Point source--A facility included in the agency's emissions inventory under the point source category.

(23) Primarily operated--When the activity is at least 85% within a specific nonattainment area.

(24) Projection-base year--The year of the emissions inventory used to project or forecast future-year emissions for modeling point sources in a state implementation plan revision.

(25) [~~(22)~~] Protocol--A replicable and workable method of estimating emission rates or activity levels used to calculate the amount of emission reduction generated or credits required for facilities or mobile sources.

(26) [~~(23)~~] Quantifiable--An emission reduction that can be measured or estimated with confidence using replicable methodology.

(27) [~~(24)~~] Real reduction--A reduction in which actual emissions are reduced. Emissions reductions that result from any of the following are not considered a real reduction:

(A) lowering the allowable emission limit in a permit without a physical change or change in method of operation;

(B) shifting a vent gas stream or other pollution or waste stream to another site;

(C) a mobile source that is not capable of being operated as intended; or

(D) a change in an emissions factor or emissions calculation equation.

(28) [~~(25)~~] Shutdown--The cessation of an activity producing emissions at a facility or mobile source.

(29) [~~(26)~~] Site--As defined in §122.10 of this title (relating to General Definitions).

(30) [~~(27)~~] State implementation plan--A plan that provides for attainment and maintenance of a primary or secondary national ambient air quality standard as adopted in 40 Code of Federal Regulations Part 52, Subpart SS.

(31) State implementation plan (SIP) emissions--SIP emissions are determined as follows.

(A) For point sources, SIP emissions are facility-specific values based on the emissions data in the state's annual emissions inventory (EI) for the year used to develop the projection-base year inventory for the modeling included in an attainment demonstration (AD) SIP revision, used for the attainment inventory for a maintenance plan SIP revision, or used in an EI SIP revision, as applicable under subparagraph (B)(i) - (iv) of this paragraph. For area and mobile sources, SIP emissions are calculated values based on actual operations during the latest triennial National Emissions Inventory year used to develop the modeling included in an AD SIP revision, used for the attainment inventory for a maintenance plan SIP revision, or used in an EI SIP revision, as applicable under subparagraph (B)(i) - (iv) of this paragraph.

(B) The applicable SIP revision must be for the nonattainment area where the facility is located, or for mobile sources where the mobile source is primarily operated, and must be for the criteria pollutant, or include the precursor pollutant, for which the applicant is requesting credits. The applicable SIP revision is:

(i) an AD SIP revision or a maintenance plan SIP revision, whichever was most recently submitted to the United States Environmental Protection Agency (EPA) for the current National Ambient Air Quality Standard (NAAQS);

(ii) if the SIP revisions identified in clause (i) of this subparagraph have not been submitted to the EPA, an AD SIP revision or a maintenance plan SIP revision, whichever was most recently submitted to the EPA for an earlier NAAQS issued in the same averaging time and the same form as the current NAAQS;

(iii) if the SIP revisions identified in clauses (i) and (ii) of this subparagraph have not been submitted to the EPA, the most recent EI SIP revision submitted to the EPA; or

(iv) if the SIP revisions identified in clauses (i) - (iii) of this subparagraph have not been submitted to the EPA, the EI SIP revision that will be submitted to the EPA.

(C) The total amount of SIP emissions available for credit generation will be set for area, non-road mobile, and on-road mobile source categories.

(i) Total creditable area source emissions are 75% of the total area source emissions excluding residential area sources in the applicable SIP revision.

(ii) Total creditable non-road mobile source emissions are 75% of the total non-road mobile source emissions in the applicable SIP revision.

(iii) Total creditable on-road mobile source emissions are 85% of the total on-road mobile source emissions in the applicable SIP revision.

(D) The SIP emissions for a facility or mobile source may not exceed any applicable local, state, or federal requirement.

(E) The year used to determine SIP emissions is as specified in subparagraph (A) of this paragraph, unless a different year is specifically identified otherwise by the commission in the most recent SIP revision adopted after December 31, 2017.

[~~(28) State implementation plan (SIP) emissions--The emissions data in the state's emissions inventory (EI) required under 40 Code of Federal Regulations Part 51, Subpart A for the year used to represent the facility's emissions in a SIP revision. The applicable SIP revision must be for the nonattainment area where the facility is located and must be for the criteria pollutant, or include the precursor pollutant, for which the applicant is requesting credits. The SIP emissions may not exceed any applicable local, state, or federal requirement. A facility's SIP emissions are determined from the EI year that:~~]

[~~(A) was used to develop the projection-base year inventory for the modeling included in an attainment demonstration (AD) SIP revision or the attainment inventory for a maintenance plan SIP revision, whichever was most recently submitted to the United States Environmental Protection Agency (EPA) for the current National Ambient Air Quality Standard (NAAQS);~~]

[~~(B) if the SIP revisions identified in subparagraph (A) of this paragraph have not been submitted to the EPA, was used to develop the projection-base year inventory for the modeling included in an AD SIP revision or the attainment inventory for a maintenance plan SIP revision, whichever was most recently submitted to the EPA for an earlier NAAQS issued in the same averaging time and the same form as the current NAAQS;~~]

[~~(C) if the SIP revisions identified in subparagraphs (A) and (B) of this paragraph have not been submitted to the EPA, corresponds to the EI for the most recent EI SIP revision submitted to the EPA; or~~]

[~~(D) if the SIP revisions identified in subparagraphs (A) - (C) of this paragraph have not been submitted to the EPA, corresponds to the EI that will be used for the EI SIP revision that will be submitted to the EPA.~~]

(32) [~~(29)~~] Strategy activity--The facility's or mobile source's level of activity during the discrete emission reduction credit generation period.

(33) [~~(30)~~] Strategy emission rate--The facility's or mobile source's emission rate during the discrete emission reduction credit generation period.

(34) [~~(31)~~] Surplus--An emission reduction that is not otherwise required of a facility or mobile source by any applicable local, state, or federal requirement and has not been otherwise relied upon in the state implementation plan.

(35) [~~(32)~~] Use period--The period of time over which the user applies discrete emission credits to an applicable emission reduction requirement.

(36) [~~(33)~~] User--The owner or operator of a facility or mobile source that acquires and uses discrete emission reduction credits to meet a regulatory requirement, demonstrate compliance, or offset an emission increase.

(37) [~~(34)~~] Use strategy--The compliance requirement for which discrete emission credits are being used.

§101.372. General Provisions.

(a) Applicable pollutants.

(1) A discrete emission [~~reduction~~] credit [~~(DERC)~~] may be generated from a reduction of a criteria pollutant, excluding lead, or a precursor of a criteria pollutant.

(2) A discrete emission credit [~~DERC~~] generated from the reduction of one pollutant or precursor may not be used to meet the requirements for another pollutant or precursor, except as provided in §101.376 of this title (relating to Discrete Emission Reduction Credit Use).

[~~(2) Reductions of volatile organic compounds (VOC), nitrogen oxides (NO_x), carbon monoxide (CO), sulfur dioxide (SO_2) and particulate matter with an aerodynamic diameter of less than or equal to a nominal ten microns (PM_{10}) may qualify as mobile discrete emission reduction credits (MDERCs) as appropriate. Reductions of other criteria pollutants are not creditable. Reductions of one pollutant may not be used to meet the reduction requirements for another pollutant, unless urban airshed modeling demonstrates that one may be substituted for another subject to approval by the executive director and the United States Environmental Protection Agency (EPA).~~]

(b) Eligible generator categories. Eligible categories include the following:

(1) facilities, (including point and area sources);

(2) mobile sources; or

(3) any facility, including area sources, or mobile source associated with actions by federal agencies under 40 Code of Federal Regulations Part 93, Subpart B, Determining Conformity of General Federal Actions to State or Federal Implementation Plans.

(c) Ineligible generator categories. The following categories are not eligible to generate discrete emission credits:

(1) residential area sources;

(2) facilities or mobile sources that do not have records for approved or approvable methods to quantify emissions;

(3) on-road mobile sources that are not part of an industrial, commercial, nonprofit, institutional, or municipal/government fleet; and

(4) mobile sources within a nonattainment area that do not primarily operate within that nonattainment area with the exception of marine and locomotive sources that use capture and control emissions reduction systems.

(d) [~~(c)~~] Discrete emission credit requirements.

(1) A DERC is a certified emission reduction that:

(A) must be real, quantifiable, and surplus at the time the DERC is generated;

(B) must occur after the year used to determine the state implementation plan (SIP) emissions for a facility in a nonattainment area; and

(C) must occur at a facility with SIP emissions [~~reported before implementation of the emission reduction strategy~~] for a facility in a nonattainment area. Individual facilities in a nonattainment area that were not operated during the year of the SIP emissions may not be used to generate DERCs.

(2) To be creditable as an MDERC, an emission reduction must meet the following:

(A) the reduction must be real, quantifiable, and surplus at the time it is created;

(B) the reduction must have occurred after the SIP emissions year for a mobile source in a nonattainment area; and [~~most recent year of emissions inventory used in the SIP for all applicable pollutants;~~]

(C) for a mobile source in a nonattainment area, the mobile source [~~source's emissions~~] must have operated during the SIP emissions year. [~~been represented in the emissions inventory used for the SIP; and~~]

[~~(D) the mobile sources must have been included in the attainment demonstration baseline emissions inventory. If a mobile reduction implemented is not in the baseline for emissions, this reduction does not constitute a discrete emission reduction.~~]

(3) Emission reductions from a facility or mobile source [~~which are~~] certified as discrete emission credits under this division cannot be recertified in whole or in part as emission credits under another division within this subchapter.

(e) [~~(d)~~] Protocol.

(1) All generators or users of discrete emission credits must use a protocol which has been submitted by the executive director to the United States Environmental Protection Agency (EPA) [~~EPA~~] for approval, if existing for the applicable facility or mobile source, to measure and calculate baseline emissions. If the generator or user wishes to deviate from a protocol submitted by the executive director, EPA approval is required before the protocol can be used. Protocols shall be used as follows.

(A) The owner or operator of a facility subject to the emission specifications under §§117.110, 117.310, 117.410, 117.1010, 117.1210, 117.1310, 117.2010, 117.2110, or 117.3310 of this title (relating to Emission Specifications for Attainment Demonstration; Emission Specifications for Eight-Hour Attainment Demonstration; and Emission Specifications) shall use the testing and monitoring methodologies required under Chapter 117 of this title (relating to Control of Air Pollution for Nitrogen Compounds) to show compliance with the emission specification for that pollutant.

(B) The owner or operator of a facility subject to the control requirements or emission specifications under Chapter 115 of this title (relating to Control of Air Pollution from Volatile Organic Compounds) shall use the testing and monitoring methodologies required under Chapter 115 of this title to show compliance with the applicable requirements.

(C) For area sources, except as specified in subparagraphs (A) and (B) of this paragraph, the owner or operator of a facility subject to the requirements under Chapter 106 of this title (relating to Permits by Rule) or a permit issued under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) shall use the testing and monitoring methodologies required under Chapter 106 or a permit issued under Chapter 116 of this title to demonstrate compliance with the applicable requirements.

(D) [~~(C)~~] The executive director may approve the use of a methodology approved by the EPA to quantify emissions from the same type of facility.

(E) [~~(D)~~] Except as specified in subparagraph (D) [~~(C)~~] of this paragraph, if the executive director has not submitted a protocol for the applicable facility or mobile source to the EPA for approval, the following applies:

(i) the amount of discrete emission credits from a facility or mobile source, in tons, will be determined and certified based on quantification methodologies at least as stringent as the methods used to demonstrate compliance with any applicable requirements for the facility or mobile source;

(ii) the generator shall collect relevant data sufficient to characterize the facility's or mobile source's emissions of the affected pollutant and the facility's or mobile source's activity level

for all representative phases of operation in order to characterize the facility's or mobile source's baseline emissions;

(iii) the owner or operator of a facility with a continuous emissions monitoring system or predictive emissions monitoring system in place shall use this data in quantifying emissions;

(iv) the chosen quantification protocol must be made available for public comment for a period of 30 days and must be viewable on the commission's website;

(v) the chosen quantification protocol and any comments received during the public comment period must, upon approval by the executive director, be submitted to the EPA for a 45-day adequacy review; and

(vi) quantification protocols may not be accepted for use with this division if the executive director receives a letter objecting to the use of the protocol from the EPA during the 45-day adequacy review or the EPA proposes disapproval of the protocol in the *Federal Register*.

(2) If the monitoring and testing data specified in paragraph (1) of this subsection is missing or unavailable, the generator or user shall determine the facility's emissions for the period of time the data is missing or unavailable using the most conservative method for replacing the data and these listed methods in the following order:

(A) continuous monitoring data;

(B) periodic monitoring data;

(C) testing data;

(D) manufacturer's data;

(E) EPA Compilation of Air Pollution Emission Factors (AP-42), September 2000; or

(F) material balance.

(3) When quantifying actual emissions in accordance with paragraph (2) of this subsection, the generator or user shall submit the justification for not using the methods in paragraph (1) of this subsection and submit the justification for the method used.

(f) Credit application. Beginning January 1, 2018, a credit application must be submitted through the State of Texas Environmental Reporting System (STEERS) unless the applicant receives prior approval from the executive director for an alternative means of application submission.

(g) [~~(e)~~] Credit certification.

(1) The amount of discrete emission credits must be rounded down to the nearest tenth of a ton when generated and must be rounded up to the nearest tenth of a ton when used. An individual area source facility, aggregated fugitive emissions, or aggregated mobile sources that cannot generate at least 0.1 ton of credit after all adjustments are applied may not generate discrete emission credits. Fugitive emissions or mobile source emissions aggregated to meet the requirement that emission reductions be certified for at least 0.1 ton must be represented on the same application and will have an application deadline determined by the earliest emission reduction date among the aggregated sources.

(2) The executive director shall review an application for certification to determine the credibility of the reductions and may certify reductions. Each DERC certified will be assigned a certificate number. Reductions determined to be creditable will be certified by the executive director.

(3) The applicant will be notified in writing if the executive director denies the discrete emission credit notification. The applicant may submit a revised application in accordance with the requirements of this division.

(4) If a facility's or mobile source's emissions exceed any applicable local, state, or federal requirement, reductions of emissions exceeding the requirement may not be certified as discrete emission credits.

(h) [~~(f)~~] Geographic scope. Except as provided in paragraph (7) of this subsection and §101.375 of this title (relating to Emission Reductions Achieved Outside the United States), only emission reductions generated in the State of Texas may be creditable and used in the state with the following limitations.

(1) volatile organic compounds (VOC) [~~VOC~~] and nitrogen oxides (NO_x) [~~NO_x~~] discrete emission credits generated in an ozone attainment area may be used in any county or portion of a county designated as attainment or unclassified, except as specified in paragraphs (4) and (5) of this subsection and may not be used in an ozone nonattainment area.

(2) VOC and NO_x discrete emission credits generated in an ozone nonattainment area may be used either in the same ozone nonattainment area in which they were generated, or in any county or portion of a county designated as attainment or unclassified.

(3) VOC and NO_x discrete emission credits generated in an ozone nonattainment area may not be used in any other ozone nonattainment area, except as provided in this subsection.

(4) VOC discrete emission credits are prohibited from use within the covered attainment counties, as defined in §115.10 of this title (relating to Definitions), if generated outside of the covered attainment counties. VOC discrete emission credits generated in a nonattainment area may be used in the covered attainment counties, except those generated in El Paso.

(5) NO_x discrete emission credits are prohibited from use within the covered attainment counties, as defined in §115.10 of this title, if generated outside of the covered attainment counties. NO_x discrete emission credits generated in a nonattainment area, except those generated in El Paso, may be used in the covered attainment counties.

(6) carbon monoxide (CO), sulfur dioxide (SO_2), [~~CO, SO_2, and PM_{10}~~] discrete emission credits must be used in the same metropolitan statistical area (as defined in Office of Management and Budget Bulletin Number 93-17 entitled "Revised Statistical Definitions for Metropolitan Areas" dated June 30, 1993) in which the reduction was generated.

(7) VOC and NO_x discrete emission credits generated in other counties, states, or emission reductions in other nations may be used in any attainment or nonattainment county provided a demonstration has been made and approved by the executive director and the EPA, to show that the emission reductions achieved in the other county, state, or nation improve the air quality in the county where the credit is being used.

(i) [~~(g)~~] Ozone season. In areas having an ozone season of less than 12 months (as defined in 40 Code of Federal Regulations Part 58, Appendix D) VOC and NO_x discrete emission credits generated outside the ozone season may not be used during the ozone season.

(j) [~~(h)~~] Recordkeeping. The generator must maintain a copy of all forms and backup information submitted to the executive director for a minimum of five years, following the completion of the generation period. The user shall maintain a copy of all forms and backup information submitted to the executive director for a minimum of five

years, following the completion of the use period. Other relevant reference material or raw data must also be maintained on-site by the participating facilities or mobile sources. The user must also maintain a copy of the generator's notice and backup information for a minimum of five years after the use is completed. The records must include, but not necessarily be limited to:

(1) the name, emission point number, and facility identification number of each facility or any other identifying number for mobile sources using discrete emission credits;

(2) the amount of discrete emission credits being used by each facility or mobile source; and

(3) the certificate number of each discrete emission credit used by each facility or mobile source.

(k) [~~(i)~~] Public information. All information submitted with notices, reports, and trades regarding the nature, quantity of emissions, and sales price associated with the use, or generation of discrete emission credits is public information and may not be submitted as confidential. Any claim of confidentiality for this type of information, or failure to submit all information may result in the rejection of the discrete emission reduction application. All nonconfidential notices and information regarding the generation, use, and availability of discrete emission credits may be obtained from the registry.

(l) [~~(j)~~] Authorization to emit. A discrete emission credit created under this division is a limited authorization to emit the specified pollutants in accordance with the provisions of this section, the Federal Clean Air Act, and the Texas Clean Air Act, as well as regulations promulgated thereunder. A discrete emission credit does not constitute a property right. Nothing in this division should be construed to limit the authority of the commission or the EPA to terminate or limit such authorization.

(m) [~~(k)~~] Program participation. The executive director has the authority to prohibit a person from participating in discrete emission credit trading either as a generator or user, if the executive director determines that the person has violated the requirements of the program or abused the privileges provided by the program.

(n) [~~(l)~~] Compliance burden and enforcement.

(1) The user is responsible for assuring that a sufficient quantity of discrete emission credits are acquired to cover the applicable facility or mobile source's emissions for the entire use period.

(2) The user is in violation of this section if the user does not possess enough discrete emission credits to cover the compliance need for the use period. If the user possesses an insufficient quantity of discrete emission credits to cover its compliance need, the user will be out of compliance for the entire use period. Each day the user is out of compliance may be considered a violation.

(3) A user may not transfer its compliance burden and legal responsibilities to a third-party participant. A third-party participant may only act in an advisory capacity to the user.

(o) [~~(m)~~] Credit ownership. The owner of the initial discrete emission credit certificate shall be the owner or operator of the mobile source creating the emission reduction. The executive director may approve a deviation from this subsection considering factors such as, but not limited to:

(1) whether an entity other than the owner or operator of the mobile source incurred the cost of the emission reduction strategy; or

(2) whether the owner or operator of the mobile source lacks the potential to generate one tenth of a ton of credit.

§101.373. Discrete Emission Reduction Credit Generation and Certification.

(a) Emission reduction strategy.

(1) A discrete emission reduction credit (DERC) may be generated using one of the following strategies or any other method that is approved by the executive director:

(A) the installation and operation of pollution control equipment that reduces emissions below the baseline emissions for the facility; or

(B) a change in the manufacturing process, other than a shutdown or curtailment, that reduces emissions below the baseline emissions for the facility.

(2) A DERC may not be generated using the following strategies:

(A) a shutdown or curtailment of an activity at a facility, either permanent or temporary;

(B) a modification or discontinuation of any activity that is otherwise in violation of a local, state, or federal requirement;

(C) an emission reduction required to comply with any provision under 42 United States Code (USC), Subchapter I regarding tropospheric ozone, or 42 USC, Subchapter IV-A regarding acid deposition control;

(D) an emission reduction of hazardous air pollutants, as defined in 42 USC, §7412, from application of a standard promulgated under 42 USC, §7412;

(E) an emission reduction from the shifting of activity from one facility to another facility at the same site;

(F) an emission reduction credited or used under any other emissions trading program;

(G) an emission reduction occurring at a facility that received an alternative emission limitation to meet a state reasonably available control technology requirement, except to the extent that the emissions are reduced below the level that would have been required had the alternative emission limitation not been issued;

(H) an emission reduction from a facility authorized in a flexible permit, unless the reduction is permanent and enforceable or the generator can demonstrate that the emission reduction was not used to satisfy the conditions for the facilities under the flexible permit;

(I) that portion of an emission reduction funded through a state or federal program, unless specifically allowed under that program;

(J) an emission reduction from a facility subject to Division 2, 3, or 6 of this subchapter (relating to Emissions Banking and Trading Allowances; Mass Emissions Cap and Trade Program; and Highly Reactive Volatile Organic Compound Emissions Cap and Trade Program); or

(K) an emission reduction from a facility without state implementation plan (SIP) emissions if the facility is located in a nonattainment area.

(b) DERC baseline emissions.

(1) For a facility located in an area designated as nonattainment for a criteria pollutant, and the pollutant being reduced is either the same criteria pollutant or a precursor of that criteria pollutant, the baseline emissions may not exceed the facility's SIP emissions. If the pollutant being reduced is not the same criteria pollutant for which the area is designated nonattainment or a precursor of that criteria pollu-

tant, then baseline emissions are limited as specified in paragraph (3) of this subsection.

(2) The activity and emission rate used to calculate the facility's historical adjusted emissions must be determined from the same two consecutive calendar years[, ~~selected from the ten consecutive years immediately before the emission reduction is achieved~~].

(A) For point sources, the historical adjusted emissions must be from any two consecutive calendar years from the ten consecutive years immediately before the emissions reduction occurs.

(B) For area sources, the historical adjusted emissions must be from any two consecutive calendar years from the five consecutive years immediately before the emissions reduction occurs unless detailed operational records are available for more than five years. The historical adjusted emissions for an area source may be determined from two consecutive calendar years up to six to ten consecutive years immediately before the emissions reduction is achieved when detailed operational records are available those years.

(3) For a facility located in an area that is not designated nonattainment for the criteria pollutant being reduced, or the pollutant being reduced is not a precursor of that criteria pollutant, the historical adjusted emissions must be determined from two consecutive calendar years that include or follow the 1990 emission inventory.

(4) For emission reduction strategies that exceed 12 months, the baseline emissions are established after the first year of generation and are fixed for the life of each unique emission reduction strategy. A new baseline must be established if the commission adopts a SIP revision for the area where the facility is located.

(5) For a facility in existence less than 24 months or not having two complete calendar years of activity data, a shorter period of not less than 12 months may be considered by the executive director.

(c) DERC calculation.

(1) DERCs are calculated according to the following equation.

Figure: 30 TAC §101.373(c)(1) (No change.)

(2) For area sources, the amount of DERCs calculated will be adjusted based on the quality of the data used to quantify emissions. The adjustment will be:

(A) no reduction for the same type of records that are required to be maintained by regulation or authorization for a facility operating as a point source or as a component of a point source; or

(B) a reduction of 15% or 0.1 ton, whichever is greater, for records supporting approved alternative methods according to §101.372(e) of this title (relating to General Provisions).

(3) [~~(2)~~] For a facility located in an area designated nonattainment for a criteria pollutant, and the pollutant being reduced is either the same criteria pollutant or a precursor of that criteria pollutant, the sum of the reduction generated under paragraph (1) of this subsection and the total strategy emissions must not be greater than the facility's historical adjusted emissions or SIP emissions, whichever is less.

(4) [~~(3)~~] For a facility located in an area that is not designated nonattainment for the criteria pollutant being reduced, or the pollutant being reduced is not a precursor of that criteria pollutant, the sum of the reduction generated under paragraph (1) of this subsection and the total strategy emissions must not be greater than the facility's historical adjusted emissions.

(d) DERC certification.

(1) An [~~The~~] application form specified [~~designated~~] by the executive director and signed by an authorized account representative must be submitted to the executive director no later than 90 days after the end of the generation period and no later than 90 days after completing each 12 months of generation.

(2) A DERC must be quantified in accordance with §101.372(e) [~~§101.372(d)~~] of this title (relating to General Provisions). The executive director shall have the authority to inspect and request information to assure that the emission reductions have actually been achieved.

(3) An application for DERCs must include, but is not limited to, a completed application form signed by an authorized representative of the applicant along with the following information for each pollutant reduced at each applicable facility:

(A) the generation period;

(B) a complete description of the generation activity;

(C) the amount of DERCs generated;

(D) for volatile organic compound reductions, a list of the specific compounds reduced;

(E) documentation supporting the activity, emission rate, historical adjusted emissions, SIP emissions, strategy emission rate, and strategy activity;

(F) for point sources emissions inventory data for [~~each of~~] the years used to determine the SIP emissions and historical adjusted emissions;

(G) the most stringent emission rate for the facility, considering all applicable local, state, and federal requirements;

(H) a complete description of the protocol used to calculate the DERC generated; and

(I) the actual calculations performed by the generator to determine the amount of DERCs generated.

§101.374. Mobile Discrete Emission Reduction Credit Generation and Certification.

(a) Method of generation.

(1) Mobile discrete emission reduction credits (MDERC) may be generated by any mobile source emission reduction strategy that creates actual mobile source emission reductions under this division (relating to Discrete Emission Credit Banking and Trading), and is subject to the approval of the executive director. The number of years that an emissions reduction strategy can be used to generate MDERCs is limited by the expected remaining useful life of the mobile source except if a capture and control system is used to reduce marine or locomotive mobile source emissions. [~~commission.~~]

(2) MDERCs may not be generated from the following strategies:

(A) that portion of reductions funded through a state or federal program, unless specifically allowed under that program;

(B) through the transfer of emissions from one mobile source to another mobile source within the same nonattainment area and under common ownership or control; or

(C) reduction strategies resulting in secondary emissions increases that exceed limits established under state or federal rules or regulations.

(b) MDERC baseline emissions.

(1) Mobile source baseline emissions must be calculated with either measured emissions of an appropriately sized sample for the participating mobile sources using a United States Environmental Protection Agency (EPA)-approved test procedure, or estimated emissions of the participating mobile sources using the most recent edition of the EPA on-road or non-road mobile emissions factor model or other model as applicable.

(2) The historical adjusted emissions and state implementation plan emissions must only include actual emissions that occurred when the mobile source was operating inside a specific nonattainment area.

(3) The activity data used to calculate mobile source's historical adjusted emissions must be from any two consecutive calendar years from the five consecutive years immediately before the emissions reduction occurs unless detailed operational records are available for more than five years. If these detailed operational records are available and do not demonstrate decreasing use due to vehicle age or inoperability, the historical adjusted emissions for a mobile source may be determined from two consecutive calendar years up to six to ten consecutive years immediately before the emissions reduction is achieved.

(4) For a mobile source in existence less than 24 months or not having two complete calendar years of activity data, a shorter period of not less than 12 months may be approved by the executive director.

[~~(2) Mobile source baseline emissions for each year of the proposed mobile source reduction strategy must be the same as, or lower than, those used or proposed to be used in the state implementation plan (SIP) in which the reduction strategy is proposed.~~]

(5) [~~(3)~~] Baseline emissions for quantifying MDERCs should include, but not be limited to, the following information and data as appropriate:

(A) the emission standard to which the mobile source is subject or the emission performance standard to which the mobile source is certified;

(B) the estimated or measured in-use emissions levels per unit of use from all significant mobile source emissions sources;

(C) the number of mobile sources in the participating group;

(D) the type or types of mobile sources by model year; and

(E) the actual activity level, hours of operation, or miles traveled by type and model year.

(c) MDERC calculation. The quantity of MDERCs must be calculated from the annual difference between the mobile source baseline emissions and the strategy emissions. The MDERC must be based on actual in-use emissions of the modified or substitute mobile source.

(1) For mobile sources generating credits from a shutdown, the amount of MDERCs generated will be reduced by 15% or 0.1 ton, whichever is greater.

(2) The amount of MDERCs generated will be adjusted to account for the quality of the data used to quantify the emissions. The reduction will be 15% or 0.1 ton, whichever is greater, for records supporting approved alternative methods according to §101.372(e) of this title (relating to General Provisions).

(3) If the mobile source is subject to an adjustment based on both the reduction strategy being a shutdown and the quality of the data used to quantify the emissions, the total combined reduction will be 20% or 0.1 tons, whichever is greater.

(4) If a capture and control system is used to reduce mobile source emissions, the strategy emissions used in the MDERC calculation must include the mobile source emissions that are not captured by the system, any emissions that are not controlled by the system, and any emissions caused by or as a result of operating and moving the system. The initial owner of the MDERCs is the owner or operator of the capture and control system.

(d) Emission offsets. Mobile source reduction strategies that reduce emissions in one criteria pollutant or precursor for which an area is designated as nonattainment or near nonattainment, yet result in an emissions increase from the same mobile source in another criteria pollutant or precursor for which that same area is nonattainment or near nonattainment, must be offset at a 1:1 ratio with DERCs or MERCs.

(e) MDERC certification.

(1) A designated application form signed by an authorized account representative must [~~An MDEC-1 Form, Notice of Generation and Generator Certification of Mobile Discrete Emission Credits, shall~~] be submitted to the executive director no later than 90 days after the end of the generation period [~~discrete emission reduction strategy activity has been completed~~], or no later than 90 days after the completion of each [~~the first~~] 12 months of generation. [~~Submission of the MDEC-1 Form shall continue every 12 months thereafter for each subsequent year of generation.~~]

(2) MDERCs will be determined and certified in accordance with §101.372(e) [~~§101.372(d)~~] of this title [~~(relating to General Provisions)~~] using:

(A) EPA methodologies, when available;

(B) actual monitoring results, when available;

(C) calculations using the most current EPA mobile emissions factor model or other model as applicable; or

(D) calculations using creditable emission reduction measurement or estimation methodologies that satisfactorily address the analytical uncertainties of mobile source emissions reduction strategies. The generator shall collect relevant data sufficient to characterize the process emissions of the affected pollutant and the process activity level for all representative phases of source operation during the period under which the MDERCs are created or used.

(3) An application for MDERCs must include, but is not limited to, a completed application form [~~a completed MDEC-1 Form~~] signed by an authorized account representative, [~~of the applicant~~] along with the following information for each pollutant reduced for each mobile source:

(A) the date of the reduction;

(B) a complete description of the generation activity;

(C) the amount of discrete mobile source emission credits generated;

(D) documentation supporting the mobile source baseline activity, mobile source baseline emission rate, mobile source baseline emissions, and the mobile source strategy emissions;

(E) a complete description of the protocol used to calculate the discrete mobile source emission reduction generated;

(F) the actual calculations performed by the generator to determine the amount of discrete mobile source emission credits generated; and

(G) a demonstration that the reductions are surplus to all local, state, and federal rules and to emissions modeled in the SIP.

§101.376. Discrete Emission Credit Use.

(a) Requirements to use discrete emission credits. Discrete emission credits may be used if the following requirements are met.

(1) The user shall have ownership of a sufficient amount of discrete emission credits before the use period for which the specific discrete emission credits are to be used.

(2) The user shall hold sufficient discrete emission credits to cover the user's compliance obligation at all times.

(3) The user shall acquire additional discrete emission credits during the use period if it is determined the user does not possess enough discrete emission credits to cover the entire use period. The user shall acquire additional credits as allowed under this section prior to the shortfall, or be in violation of this section.

(4) The user may acquire and use only discrete emission credits listed in the registry.

(5) The user shall obtain executive director approval to use nitrogen oxides (NO_x) discrete emission reduction credits (DERCs) in Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties as provided by subsection (f) of this section.

(6) A discrete emission credit [~~DERC~~] may not be used unless it is available in the account for the site where it will be used.

(b) Use of discrete emission credits. With the exception of uses prohibited in subsection (c) of this section or precluded by a commission order or a condition within an authorization under the same commission account number, discrete emission credits may be used to meet or demonstrate compliance with any facility or mobile regulatory requirement including the following:

(1) to exceed any allowable emission level, if the following conditions are met:

(A) in ozone nonattainment areas, permitted facilities may use discrete emission credits to exceed permit allowables by no more than 10 tons for nitrogen oxides or 5 tons for volatile organic compounds in a 12-month period as approved by the executive director. This use is limited to one exceedance, up to 12 months within any 24-month period, per use strategy. The user shall demonstrate that there will be no adverse impacts from the use of discrete emission credits at the levels requested; or

(B) at permitted facilities in counties or portions of counties designated as attainment or, attainment/unclassifiable, or unclassifiable, discrete emission credits may be used to exceed permit allowables by values not to exceed the prevention of significant deterioration significance levels as provided in 40 Code of Federal Regulations (CFR) §52.21(b)(23), as approved by the executive director before use. This use is limited to one exceedance, up to 12 months within any 24-month period, per use strategy. The user shall demonstrate that there will be no adverse impacts from the use of discrete emission credits at the levels requested;

(2) as new source review (NSR) permit offsets, if the following requirements are met:

(A) the user shall obtain the executive director's approval prior to the use of specific discrete emission credits to cover, at a minimum, one year of operation of the new or modified facility in the NSR permit;

(B) the amount of discrete emission credits needed for NSR offsets equals the quantity of tons needed to achieve the maximum allowable emission level set in the user's NSR permit. The user shall also purchase and retire enough discrete emission credits to meet the offset ratio requirement in the user's ozone nonattainment area. The user shall purchase and retire either the environmental contribution of 10% or the offset ratio, whichever is higher; and

~~[(C) for the use of mobile discrete emission reduction credits, the NSR permit must meet the following requirements:]~~

~~*[(i)* the permit must contain an enforceable requirement that the facility obtain at least one additional year of offsets before continuing operation in each subsequent year;]~~

~~*[(ii)* prior to issuance of the permit, the user shall identify the discrete emission credits; and]~~

~~*[(iii)* prior to start of operation, the user shall submit a completed application form specified by the executive director;]~~

(C) [~~(D)~~] [~~for the use of DERCs,~~] the user shall submit a completed application form specified by the executive director at least 90 days before the start of operation and at least 90 days before continuing operation for any period in which discrete emission credits [~~DERC~~s] not included in a prior application will be used as offsets;

(3) to comply with the Mass Emissions Cap and Trade Program requirements as provided by §101.356(h) of this title (relating to Allowance Banking and Trading); or

(4) to comply with Chapter 115 or 117 of this title (relating to Control of Air Pollution from Volatile Organic Compounds; and Control of Air Pollution from Nitrogen Compounds), as allowed.

(c) Discrete emission credit use prohibitions. A discrete emission credit may not be used under this division:

(1) before it has been acquired by the user;

(2) for netting to avoid the applicability of federal and state NSR requirements;

(3) to meet (as codified in 42 United States Code (USC), Federal Clean Air Act (FCAA)) requirements for:

(A) new source performance standards under FCAA, §111 (42 USC, §7411);

(B) lowest achievable emission rate standards under FCAA, §173(a)(2) (42 USC, §7503(a)(2));

(C) best available control technology standards under FCAA, §165(a)(4) (42 USC, §7475(a)(4)) or Texas Health and Safety Code, §382.0518(b)(1);

(D) hazardous air pollutants standards under FCAA, §112 (42 USC, §7412), including the requirements for maximum achievable control technology;

(E) standards for solid waste combustion under FCAA, §129 (42 USC, §7429);

(F) requirements for a vehicle inspection and maintenance program under FCAA, §182(b)(4) or (c)(3) (42 USC, §7511a(b)(4) or (c)(3));

(G) ozone control standards set under FCAA, §183(e) and (f) (42 USC, §7511b(e) and (f));

(H) clean-fueled vehicle requirements under FCAA, §246 (42 USC, §7586);

(I) motor vehicle emissions standards under FCAA, §202 (42 USC, §7521);

(J) standards for non-road vehicles under FCAA, §213 (42 USC, §7547);

(K) requirements for reformulated gasoline under FCAA, §211(k) (42 USC, §7545); or

(L) requirements for Reid vapor pressure standards under FCAA, §211(h) and (i) (42 USC, §7545(h) and (i));

(4) to allow an emissions increase of an air contaminant above a level authorized in a permit or other authorization that exceeds the limitations of §106.261 or §106.262 of this title (relating to Facilities (Emission Limitations); and Facilities (Emission and Distance Limitations)) except as approved by the executive director and the United States Environmental Protection Agency (EPA). This paragraph does not apply to limit the use of discrete emission credits [~~DERC or mobile DERC~~] in lieu of allowances under §101.356 of this title;

(5) to authorize a facility whose emissions are enforceably limited to below applicable major source threshold levels, as defined in §122.10 of this title (relating to General Definitions), to operate with actual emissions above those levels without triggering applicable requirements that would otherwise be triggered by such major source status;

(6) to exceed an allowable emission level where the exceedance would cause or contribute to a condition of air pollution as determined by the executive director; or

(7) in Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties, if the NO_x DERC usage requested exceeds the limit specified in subsection (f) of this section.

(d) Notice of intent to use.

(1) A completed application form specified by the executive director, signed by an authorized representative of the applicant, must be submitted to the executive director in accordance with the following requirements.

(A) Discrete emission credits may be used only after the applicant has submitted the notice and received executive director approval.

(B) The application must be submitted:

(i) except as provided in subsection (f)(4) of this section, for NO_x DERC use in Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties, by August 1 before the beginning of the calendar year in which the DERCs are intended for use;

(ii) for [~~DERC~~] use for the Mass Emissions Cap and Trade Program in accordance with §101.356 of this title, by October 1 of the control period in which the DERC are intended for use; or

(iii) for [~~DERC~~] use for NSR offsets, as required by subsection (b)(2)(C) [~~(b)(2)(D)~~] of this section; or

(iv) for all other [~~discrete emission credit~~] use, at least 45 days before the first day of the use period if the discrete emission credits were generated from a facility, 90 days if the discrete emission credits were generated from a mobile source, and every 12 months thereafter for each subsequent year if the use period exceeds 12 months.

(C) A copy of the application must also be sent to the federal land manager 30 days prior to use if the user is located within 100 kilometers of a Class I area, as listed in 40 CFR Part 81 (2001).

(D) The application must include, but is not limited to, the following information for each use:

(i) the applicable state and federal requirements that the discrete emission credits will be used to comply with and the intended use period;

(ii) the amount of discrete emission credits needed;

(iii) the baseline emission rate, activity level, and total emissions for the applicable facility or mobile source;

(iv) the actual emission rate, activity level, and total emissions for the applicable facility or mobile source;

(v) the most stringent emission rate and the most stringent emission level for the applicable facility or mobile source, considering all applicable local, state, and federal requirements;

(vi) a complete description of the protocol, as submitted by the executive director to the United States Environmental Protection Agency for approval, used to calculate the amount of discrete emission credits needed;

(vii) the actual calculations performed by the user to determine the amount of discrete emission credits needed;

(viii) the date that the discrete emission credits were acquired [~~or will be acquired~~];

(ix) the discrete emission credit generator and the original certificate number of the discrete emission credits acquired [~~or to be acquired~~];

(x) the price of the discrete emission credits acquired [~~or the expected price of the discrete emission credits to be acquired~~], except for transfers between sites under common ownership or control;

(xi) a statement that due diligence was taken to verify that the discrete emission credits were not previously used, the discrete emission credits were not generated as a result of actions prohibited under this regulation, and the discrete emission credits will not be used in a manner prohibited under this regulation; and

(xii) a certification of use, that must contain certification under penalty of law by a responsible official of the user of truth, accuracy, and completeness. This certification must state that based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

(2) Discrete emission credit use calculation.

(A) To calculate the amount of discrete emission credits necessary to comply with §§117.123, 117.320, 117.323, 117.423, 117.1020, 117.1220, or 117.3020 of this title (relating to Source Cap; and System Cap), a user may use the equations listed in those sections, or the following equations.

(i) For the rolling average cap:

Figure: 30 TAC §101.376(d)(2)(A)(i)
[~~Figure: 30 TAC §101.376(d)(2)(A)(i)~~]
Figure: 30 TAC §101.376(d)(2)(A)(ii)
[~~Figure: 30 TAC §101.376(d)(2)(A)(ii)~~]

(B) The amount of discrete emission credits needed to demonstrate compliance or meet a regulatory requirement is calculated as follows.

Figure: 30 TAC §101.376(d)(2)(B) (No change.)

(C) The amount of discrete emission credits needed to exceed an allowable emissions level is calculated as follows.

Figure: 30 TAC §101.376(d)(2)(C)
[~~Figure: 30 TAC §101.376(d)(2)(C)~~]

(D) The user shall retire 10% more discrete emission credits than are needed, as calculated in this paragraph, to ensure that

the facility or mobile source environmental contribution retirement obligation will be met.

(E) If the amount of discrete emission credits needed to meet a regulatory requirement or to demonstrate compliance is greater than 10 tons, an additional 5.0% of the discrete emission credits needed, as calculated in this paragraph, must be acquired to ensure that sufficient discrete emission credits are available to the user with an adequate compliance margin.

(3) A user may submit a late application in the case of an emergency, or other exigent circumstances, but the notice must be submitted before the discrete emission credits can be used. The user shall include a complete description of the situation in the notice of intent to use. All other notices submitted less than 45 days prior to use, or 90 days prior to use for a mobile source, will be considered late and in violation.

(4) The user is responsible for determining the credits it will purchase and notifying the executive director of the selected generating facility or mobile source in the application. If the generator's credits are rejected or the application is incomplete, the use of discrete emission credits by the user may be delayed by the executive director. The user cannot use any discrete emission credits that have not been certified by the executive director. The executive director may reject the use of discrete emission credits by a facility or mobile source if the credit and use cannot be demonstrated to meet the requirements of this section.

(5) If the facility is in an area with an ozone season less than 12 months, the user shall calculate the amount of discrete emission credits needed for the ozone season separately from the non-ozone season.

(e) Notice of use.

(1) The user shall calculate:

(A) the amount of discrete emission credits used, including the amount of discrete emission credits retired to cover the environmental contribution, as described in subsection (d)(2)(D) of this section, associated with actual use; and

(B) the amount of discrete emission credits not used, including the amount of excess discrete emission credits that were purchased to cover the environmental contribution, as described in subsection (d)(2)(D) of this section, but not associated with the actual use, and available for future use.

(2) Discrete emission credit use is calculated by the following equations.

(A) The amount of discrete emission credits used to demonstrate compliance or meet a regulatory requirement is calculated as follows.
Figure: 30 TAC §101.376(e)(2)(A) (No change.)

(B) The amount of discrete emission credits used to comply with permit allowables is calculated as follows.
Figure: 30 TAC §101.376(e)(2)(B) (No change.)

(3) A form specified by the executive director for using credits must be submitted to the executive director [~~commission~~] in accordance with the following requirements.

(A) The notice must be submitted within 90 days after the end of the use period. Each use period must not exceed 12 months.

(B) The notice is to be used as the mechanism to update or amend the notice of intent to use and must include any information different from that reported in the notice of intent to use, including, but not limited to, the following items:

(i) purchase price of the discrete emission credits obtained prior to the current use period, except for transfers between sites under common ownership or control;

(ii) the actual amount of discrete emission credits possessed during the use period;

(iii) the actual emissions during the use period for volatile organic compounds and nitrogen oxides;

(iv) the actual amount of discrete emission credits used;

(v) the actual environmental contribution; and

(vi) the amount of discrete emission credits available for future use.

(4) Discrete emission credits that are not used during the use period are surplus and remain available for transfer or use by the holder. In addition, any portion of the calculated environmental contribution not attributed to actual use is also available.

(5) The user is in violation of this section if the user submits the report of use later than the allowed 90 days following the conclusion of the use period.

(f) DERC use in Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties.

(1) For the 2015 calendar year, the use of NO_x DERCs in Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties may not exceed 42.8 tons per day.

(2) Beginning in the 2016 calendar year, the use of NO_x DERCs in Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties may not exceed 17.0 tons per day.

(3) If the total number of DERCs submitted for the upcoming calendar year in all applications received by the August 1 deadline in subsection (d)(1)(B)(i) of this section is greater than the applicable limit in paragraph (1) or (2) of this subsection, the executive director shall apportion the number of DERCs for use.

(A) In determining the amount of DERC use to approve for each application, the executive director may take into consideration:

(i) the total number of DERCs existing in the nonattainment area bank;

(ii) the total number of DERCs submitted for use in the upcoming control period;

(iii) the proportion of DERCs requested for use to the total amount requested;

(iv) the amount of DERCs required by the applicant for compliance;

(v) the technological and economic aspects of other compliance options available to the applicant; and

(vi) the location of the facilities for which owners or operators are requesting use of DERCs.

(B) The executive director shall consider the appropriate amount of DERCs allocated for each application submitted on a case-by-case basis.

(4) If the total number of DERCs submitted for use during the upcoming calendar year in all applications received by the August 1

deadline in subsection (d)(1)(B)(i) of this section is less than the limit, the executive director may:

(A) approve all requests for DERC usage provided that all other requirements of this section are met; and

(B) consider any late application submitted as provided under subsection (d)(3) of this section that is not an Electric Reliability Council of Texas, Inc. (ERCOT)-declared emergency situation as defined in paragraph (5) of this subsection, but will not otherwise approve a late submittal that would exceed the limit established in this subsection.

(5) If the applications are submitted in response to an ERCOT-declared emergency situation, the request will not be subject to the limit established in this subsection and may be approved provided all other requirements are met. For the purposes of this paragraph, an ERCOT-declared emergency situation is defined as the period of time that an ERCOT-issued emergency notice or energy emergency alert (EEA) (as defined in ERCOT Nodal Protocols, Section 2: Definitions and Acronyms (June 1, 2012) and issued as specified in ERCOT Nodal Protocols, Section 6: Adjustment Period and Real-Time Operations (June 1, 2012)) is applicable to the serving electric power generating system. The emergency situation is considered to end upon expiration of the emergency notice or EEA issued by ERCOT.

(g) Inter-pollutant use of discrete emission credits [~~DERCs~~]. With prior approval from the executive director and the EPA, a NO_x or VOC discrete emission credit [~~DERC~~] may be used to meet the NNSR offset requirements for the other ozone precursor if photochemical modeling demonstrates that overall air quality and the regulatory design value in the nonattainment area of use will not be adversely affected by the substitution.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-2613

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 3. RESPONSIBILITIES OF STATE FACILITIES

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to §3.101, concerning Definitions; §3.301, concerning Prohibition of Abuse, Neglect, and Exploitation; and §3.305, Completion of an Investigation, in Chapter 3, Administrative Responsibilities of State Facilities.

BACKGROUND AND PURPOSE

The proposed amendments clarify responsibilities of a state supported living center and the director of a state supported living center after the Department of Family and Protective Services (DFPS) completes an investigation of alleged abuse, neglect, or exploitation. The proposed amendments add new definitions and amend existing definitions of terms used in Chapter 3, Subchapter C, relating to Abuse, Neglect and Exploitation. The terms and definitions are consistent with terminology used by DFPS and the Centers for Medicare & Medicaid (CMS), the federal agency that oversees certification of facilities participating in the Intermediate Care for Individuals with an Intellectual Disability and Related Conditions (ICF/IID) Program. The proposed amendments set forth the process that the director of a state supported living center must follow to contest the findings of DFPS regarding an allegation of abuse, neglect, or exploitation at the state supported living center. The amendments also set forth who may obtain a copy of a DFPS investigative report, consistent with DFPS rules. The proposed amendments also make editorial changes for clarity and consistency.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §3.101 adds definitions of "abuse," "exploitation," and "neglect" that reference the applicable terms and definitions used in rules of DFPS in Texas Administrative Code, Title 40, Chapter 711, and the CMS State Operations Manual, Appendix J, Guidance to Surveyors: Intermediate Care Facilities for Individuals with Intellectual Disabilities. DFPS investigates alleged abuse, neglect, and exploitation in facilities in accordance with state law and Chapter 711. Facilities are certified to participate in the federal Intermediate Care Facility for Individuals with an Intellectual Disability Program and, therefore, are surveyed in accordance with the CMS State Operations Manual. The definitions of "DADS" and "DFPS" are being proposed for amendment to include a successor agency. This proposed amendment reflects the transfer of some of the agencies' functions to the Health and Human Services Commission on September 1, 2017. The term "DADS Commissioner" and a definition are proposed to be added to clarify that it will be a position at HHSC to which a duty under this chapter is transferred when DADS is abolished. The proposed amendments to the definitions of "inconclusive" and "unconfirmed" make them consistent with definitions in the DFPS Adult Protective Services Investigations Policy Handbook. The proposed amendment to the definition of "preponderance of evidence" makes it consistent with the definition in DFPS rule at 40 TAC §711.3. The proposed amendment deletes the definition of "primary contact," because the amendment to §3.305 deletes all uses of the term in Chapter 3 and, therefore, a definition is no longer necessary. The proposed amendment to the definition of "protection and advocacy organization" corrects the citation to the federal regulation under which a protection and advocacy system is designated. In addition, the term "agent" is replaced with "system" for consistency with the terminology used in the federal regulation. Currently, the protection and advocacy organization in Texas is Disability Rights Texas. The proposed amendment to the definition of "victim" includes both a person who has been abused, neglected or exploited, and a person who is alleged to have been abused, neglected or exploited.

The proposed amendment to §3.301 deletes subsection (a), which referenced 40 TAC Chapter 711 for the definitions of "abuse," "neglect," and "exploitation." The subsection is unnecessary, because definitions of those terms have been added to §3.101.

The proposed amendment to §3.305 updates certain processes that apply when DFPS completes an investigation of alleged abuse, neglect, or exploitation. Subsection (b) describes the process for the DADS Commissioner to contest a secondary appeal decision of DFPS by requesting that the DFPS Commissioner reconsider the decision. DFPS rules, at 40 TAC §711.913, require DADS rules to describe this process. The proposed amendment states that DADS may not contest the decision of the DFPS Commissioner. Consistent with DFPS rules in 40 TAC Chapter 711, Subchapter J, subsections (c), (g), and (k) do not allow a DFPS investigative report to be provided to a victim's "primary contact." Subsections (c), (g), (h), and (k) describe how the protection and advocacy organization, as an individual's designated representative, may receive a copy of a DFPS investigative report. Additional proposed amendments to §3.305 edit the section for clarity and consistency.

FISCAL NOTE

David Cook, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendments are in effect, enforcing or administering the amendments does not have foreseeable implications relating to costs or revenues of state or local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendments will not have an adverse economic effect on small businesses or micro-businesses.

PUBLIC BENEFIT AND COSTS

Scott Schalchlin, Assistant Commissioner, has determined that, for each year of the first five years the amendments are in effect, the public will benefit from the rules because they set forth processes to be followed after an investigation of abuse, neglect, or exploitation is complete, including the information to be provided to a victim and the protection and advocacy organization. The rule amendments will help ensure the confidentiality of DFPS investigative reports by clarifying who may obtain those reports, consistent with DFPS rules.

Mr. Schalchlin anticipates that there will not be an economic cost to persons who are required to comply with the amendments. The amendments will not affect a local economy.

TAKINGS IMPACT ASSESSMENT

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Julia Marsh-Klepac at (512) 438-2106 in the DADS State Supported Living Centers Division. Written comments on the proposal may be submitted to Rules Coordination Office, H-600, P.O. Box 149030, Austin, Texas 78714-9030; or e-mailed to HHSRulesCoordinationOffice@hhsc.state.tx.us. To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register.* The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; or (2) e-mailed by midnight on the last day of the comment period. Please indicate "Comments on Proposed Rule 16R14" in the subject line of the email or in your mailed comments.

SUBCHAPTER A. DEFINITIONS

40 TAC §3.101

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS.

The amendment affects Texas Government Code, §531.0055.

§3.101. Definitions.

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

(1) Abuse--An act or failure to act that, with regard to an individual, meets the definition of "physical abuse," "sexual abuse," or "verbal/emotional abuse" in Chapter 711, Subchapter A of this title (relating to Introduction), or the definition of "abuse," "physical abuse," "sexual abuse," "verbal abuse," "psychological abuse," or "threat" in the Centers for Medicare & Medicaid Services (CMS) State Operations Manual, Appendix J, Guidance to Surveyors: Intermediate Care Facilities for Individuals with Intellectual Disabilities, available at www.cms.gov.

(2) [~~(1)~~] Administrative death review--An administrative, quality-assurance activity related to the death of an individual to identify non-clinical problems requiring correction and opportunities to improve the quality of care at a facility.

(3) [~~(2)~~] Allegation--A report by a person suspecting or having knowledge that an individual has been or is in a state of abuse, neglect, or exploitation as defined in this chapter.

(4) [~~(3)~~] Alleged offender--An individual who was committed or transferred to a facility:

(A) under Texas Code of Criminal Procedure, Chapters 46B or 46C, as a result of being charged with or convicted of a criminal offense; or

(B) under Texas Family Code, Chapter 55, as a result of being alleged by petition or having been found to have engaged in delinquent conduct constituting a criminal offense.

(5) [~~(4)~~] Applicant--A person who has applied to be an employee, volunteer, or unpaid professional intern.

(6) [~~(5)~~] Attending physician--The physician who has primary responsibility for the treatment and care of an individual.

(7) [~~(6)~~] Bedroom--The room at a facility in which an individual usually sleeps.

(8) [~~(7)~~] Behavioral crisis--An imminent safety situation that places an individual or others at serious risk of violence or injury if no intervention occurs.

(9) [~~(8)~~] CANRS--The client abuse and neglect reporting system maintained by DADS Consumer Rights and Services.

(10) [~~(9)~~] Capacity--An individual's ability to:

(A) understand the nature and consequences of a proposed treatment, including the benefits, risks, and alternatives to the proposed treatment; and

(B) make a decision whether to undergo the proposed treatment.

(11) [~~(10)~~] Chemical restraint--Any drug prescribed or administered to sedate an individual or to temporarily restrict an individual's freedom of movement for the purpose of managing the individual's behavior.

(12) [~~(11)~~] Child--An individual less than 18 years of age who is not and has not been married and who has not had the disabilities of minority removed pursuant to Texas Family Code, Chapter 31.

(13) [~~(12)~~] Clinical death review--A clinical, quality-assurance, peer review activity related to the death of an individual and conducted in accordance with statutes that authorize peer review in Texas to identify clinical problems requiring correction and opportunities to improve the quality of care at a facility.

(14) [~~(13)~~] Clinical practice--The demonstration of professional competence in nursing, dental, pharmacy, or medical practice as described in the relevant chapter of the Texas Occupations Code.

(15) [~~(14)~~] Confirmed--Term used to describe an allegation that DFPS determines is supported by a preponderance of the evidence.

(16) [~~(15)~~] Contractor--A person who contracts with a facility to provide services to an individual, including an independent school district that provides educational services at the facility.

(17) [~~(16)~~] Conviction--The adjudication of guilt for a criminal offense.

(18) [~~(17)~~] Covert electronic monitoring--Electronic monitoring that is not open and obvious, and that is conducted when the director of the facility in which the monitoring is being conducted has not been informed about the device by the individual, by a person who placed the device in the bedroom, or by a person who uses the device.

(19) [~~(18)~~] Crisis intervention--The use of interventions, including physical, mechanical, or chemical restraint, in a behavioral crisis, after less restrictive measures have been determined to be ineffective or not feasible.

(20) [~~(19)~~] Crisis intervention plan--A component of the individual support plan (ISP) action plan that provides instructions for staff on how to effectively and safely use restraint procedures, as long as they are needed to prevent imminent physical injury in a behavioral crisis when less restrictive prevention or de-escalation procedures have failed and the individual's behavior continues to present an imminent risk of physical injury. The plan is developed with input from the PCP and direct support professionals familiar with the individual and the individual and LAR and includes a description of how the individual behaves during a behavioral crisis, along with information about the types of restraints that have been most effective with the individual, staff actions to be avoided because they have been ineffective in the past in preventing or reducing the need for restraints, the restraint's maximum duration, a description of the behavioral criteria for determining when the imminent risk of physical injury abates, and reporting requirements. A crisis intervention plan is not considered a therapeutic intervention. It is implemented only to ensure that restraint procedures are carried out effectively and safely and may be adjusted depending upon the individual's progress in the ISP action plan.

(21) [~~(20)~~] DADS--Department of Aging and Disability Services or its successor agency.

(22) DADS Commissioner--The commissioner of DADS or a position at the Health and Human Services Commission that assumes a duty of the commissioner of DADS described in this chapter.

(23) [~~(21)~~] Deferred adjudication--Has the meaning given to "community supervision" in Texas Code of Criminal Procedure, Article 42.12, §2.

(24) [~~(22)~~] Designated representative--A person designated by an individual or an individual's LAR to be a spokesperson or advocate for the individual.

(25) [~~(23)~~] DFPS--Department of Family and Protective Services or its successor agency.

(26) [~~(24)~~] Director--The director of a facility or the director's designee.

(27) [~~(25)~~] Direct support professional--An unlicensed employee who directly provides services to an individual.

(28) [~~(26)~~] Electronic monitoring--The placement of an electronic monitoring device in an individual's bedroom and making a tape or a recording with the device.

(29) [~~(27)~~] Electronic monitoring device (EMD)--A device that:

(A) includes:

(i) a video surveillance camera; and

(ii) an audio device designed to acquire communications or other sounds; and

(B) does not include an electronic, mechanical, or other device that is specifically used for the nonconsensual interception of wire or electronic communications.

(30) [~~(28)~~] Employee--A person employed by DADS whose assigned duty station is at a facility.

(31) Exploitation--An act or failure to act that, with regard to an individual, meets the definition of "exploitation" in Chapter 711, Subchapter A of this title (relating to Introduction), or the definition of "mistreatment" in the CMS State Operations Manual, Appendix J, Guidance to Surveyors: Intermediate Care Facilities for Individuals with Intellectual Disabilities, available at www.cms.gov.

(32) [~~(29)~~] Facility--A state supported living center or the intermediate care facility for individuals with an intellectual disability component of the Rio Grande State Center.

(33) [~~(30)~~] Family member--An individual's parent, spouse, children, or siblings.

(34) [~~(31)~~] Forensic facility--A facility designated under Texas Health and Safety Code (THSC), §555.002(a) for the care of high-risk alleged offenders.

(35) [~~(32)~~] Guardian--An individual appointed and qualified as a guardian of the person under Texas Estates Code, Title 3.

(36) [~~(33)~~] High-risk alleged offender--An alleged offender who has been determined to be at risk of inflicting substantial physical harm to another person in accordance with THSC §555.003.

(37) [~~(34)~~] Inconclusive--Term used to describe an allegation when there is not a preponderance of credible evidence to indicate that abuse, neglect, or exploitation did or did not occur due to lack of witnesses or other available evidence [~~leading to no conclusion or definite result by DFPS due to lack of witnesses or other relevant evidence~~].

(38) [~~(35)~~] Independent mortality review organization--An independent organization designated in accordance with Texas Government Code, Chapter 531, Subchapter U, to review the death of an individual.

(39) [~~(36)~~] Individual--A person with an intellectual disability or a condition related to an intellectual disability who is receiving services from a facility.

(40) [~~(37)~~] Individual support plan (ISP)--An integrated, coherent, person-directed plan that reflects an individual's preferences, strengths, needs, and personal vision, as well as the protections, supports, and services the individual will receive to accomplish identified goals and objectives.

(41) [~~(38)~~] Interdisciplinary team (IDT)--A team consisting of an individual, the individual's legally authorized representative (LAR) and qualified developmental disability professional, other professionals dictated by the individual's strengths, preferences, and needs, and staff who regularly and directly provide services and supports to the individual. The team is responsible for assessing the individual's treatment, training, and habilitation needs and making recommendations for services based on the personal goals and preferences of the individual using a person-directed planning process, including recommendations on whether the individual is best served in a facility or community setting.

(42) [~~(39)~~] Legally adequate consent--Consent from a person who:

(A) is not a minor and has not been adjudicated incompetent to manage the person's personal affairs by an appropriate court of law;

(B) has been informed of and understands:

(i) the nature, purpose, consequences, risks, and benefits of the medication, treatment, or procedure for which the consent is given;

(ii) alternatives to the medication, treatment, or procedure for which the consent is given;

(iii) that withdrawing or refusing to give consent will not prejudice the future provision of care and services; and

(iv) the method of administration, if the person is giving consent for an unusual or hazardous treatment procedure, experimental research, organ transplantation, or nontherapeutic surgery; and

(C) consents voluntarily, free from coercion or undue influence.

(43) [~~(40)~~] Legally authorized representative (LAR)--A person authorized by law to act on behalf of an individual, including a parent, guardian, or managing conservator of a minor individual, or a guardian of an adult individual.

(44) [~~(41)~~] Life-sustaining medical treatment--Treatment that, based on reasonable medical judgment, sustains the life of an individual and without which the individual will die. The term includes both life-sustaining medications and artificial life support such as mechanical breathing machines, kidney dialysis treatment, and artificial nutrition and hydration. The term does not include the administration of pain management medication or the performance of a medical procedure considered necessary to provide comfort care or any other medical care provided to alleviate an individual's pain.

(45) [~~(42)~~] Mechanical restraint--Any device attached or adjacent to an individual's body that he or she cannot easily remove that restricts freedom of movement or normal access to his or her body. The term does not include a protective device.

(46) [~~(43)~~] Medical emergency--Any illness or injury that requires immediate assessment and treatment by medical staff for conditions considered to be life threatening, including, but not limited to, respiratory or cardiac arrest, choking, extreme difficulty in breathing, status epilepticus, allergic reaction to an insect sting, snake bite, extreme pain in the chest or abdomen, poisoning, hemorrhage, loss of consciousness, sudden loss of function of a body part, injuries resulting in broken bones, possible neck or back injuries, or severe burns.

(47) [~~(44)~~] Medical intervention--Treatment by a licensed medical doctor, osteopath, podiatrist, dentist, physician assistant, or advanced practice registered nurse in accordance with general acceptable clinical practice.

(48) [~~(45)~~] Medical restraint--A health-related protection prescribed by a primary care provider (PCP) or dentist that is necessary for the conduct of a specific medical or dental procedure, or is only necessary for protection during the time that a medical or dental condition exists, for the purpose of preventing an individual from inhibiting or undoing medical or dental treatment. Medical restraint includes pre-treatment sedation.

(49) [~~(46)~~] Medical restraint plan--A component of the ISP action plan that provides instructions for staff on how to effectively and safely carry out medical restraint procedures. The plan is developed with input from the PCP or dentist and meaningful input from the individual and LAR and includes a description of the individual's behaviors that do not allow for a safe and effective implementation of needed medical or dental procedures, information about the types of restraints that have been most effective with the individual, a description of the criteria for releasing the restraint, and reporting requirements. A medical restraint plan is not considered a therapeutic intervention and may be adjusted depending upon the individual's progress in the ISP action plan.

(50) [~~(47)~~] Medication-related emergency--A situation in which it is immediately necessary to administer medication to an individual to prevent:

(A) imminent probable death or substantial bodily harm to the individual because the individual:

(i) overtly or continually is threatening or attempting to commit suicide or serious bodily harm; or

(ii) is behaving in a manner that indicates that the individual is unable to satisfy the individual's need for nourishment, essential medical care, or self-protection; or

(B) imminent physical or emotional harm to another because of threats, attempts, or other acts the individual overtly or continually makes or commits.

(51) [~~(48)~~] Mental health services provider--Has the meaning assigned in Texas Civil Practice and Remedies Code, Chapter 81.

(52) Neglect--An act or failure to act that, with regard to an individual, meets the definition of "neglect" in Chapter 711, Subchapter A of this title (relating to Introduction), or the definition of "neglect" in the CMS State Operations Manual, Appendix J, Guidance to Surveyors: Intermediate Care Facilities for Individuals with Intellectual Disabilities, available at www.cms.gov.

(53) [~~(49)~~] Peer review--A review of clinical or professional practice of a doctor, pharmacist, licensed vocational nurse, or registered nurse conducted by his or her professional peers.

(54) [~~(50)~~] Perpetrator--A person who has committed [~~an act of~~] abuse, neglect, or exploitation.

(55) [~~(51)~~] Person--Includes a corporation, organization, governmental subdivision or agency, or any other legal entity.

(56) [~~(52)~~] Physical restraint--Any manual method that restricts freedom of movement or normal access to one's body, including hand or arm holding to escort an individual over his or her resistance to being escorted. Physical restraint does not include brief and limited

use of physical guidance, positioning, or prompting techniques used to redirect an individual or assist, support, or protect the individual during a functional therapeutic or physical exercise activity; response blocking and brief redirection used to interrupt an individual's limbs or body without the use of force so that the occurrence of challenging behavior is prevented; holding an individual, without the use of force, to calm or comfort, or hand holding to escort an individual from one area to another without resistance from the individual; and response interruption used to interrupt an individual's behavior, using facility-approved techniques.

(57) [~~(53)~~] Physician on duty--The physician designated by the facility's medical director to provide medical care or respond to emergencies outside regular working hours.

(58) [~~(54)~~] Positive behavior support plan (PBSP)--A comprehensive, individualized plan that contains intervention strategies designed to modify the environment, teach or increase adaptive skills, and reduce or prevent the occurrence of target behaviors through interventions that build on an individual's strengths and preferences, without using aversive or punishment contingencies.

(59) [~~(55)~~] Preponderance of the evidence--Evidence that is of greater weight or more convincing than the evidence that is offered in opposition to it; that is, evidence that, as a whole, shows that the fact sought to be proved is more probable than not [~~The greater weight of evidence, or evidence that is more credible and convincing to the mind~~].

(60) [~~(56)~~] Primary care provider (PCP)--A physician, advanced practice nurse, or physician assistant who provides primary care to a defined population of patients. The PCP is involved in health promotion, disease prevention, health maintenance, and diagnosis and treatment of acute and chronic illnesses.

~~[(57) Primary contact--The person designated as the primary contact of an alleged victim of abuse, neglect, or exploitation, if the alleged victim is an adult with an intellectual disability who is unable to authorize the disclosure of protected health information and does not have a guardian.]~~

(61) [~~(58)~~] Prone restraint--Any physical or mechanical restraint that places the individual in a face-down position. Prone restraint does not include when an individual is placed in a face-down position as a necessary part of a medical intervention, or when an individual moves into a prone position during an incident of physical restraint, if staff immediately begin an adjustment to restore the individual to a standing, sitting, or side-lying position or, if that is not possible, immediately release the person. Prone restraint is prohibited.

(62) [~~(59)~~] Protection and advocacy organization--The protection and advocacy system [~~agent~~] for Texas designated in accordance with the Code of Federal Regulations, Title 45, §1326.20 [~~§1386.20~~].

(63) [~~(60)~~] Protective mechanical restraint for self-injurious behavior--A type of mechanical restraint applied before an individual engages in self-injurious behavior, for the purpose of preventing or mitigating the danger of the self-injurious behavior because there is evidence that the targeted behavior can result in serious self-injury when it occurs and intensive, one-to-one supervision and treatment have not yet reduced the danger of self-injury. Examples include, but are not limited to, protective head gear for head banging, arm splints for eye gouging, or mittens for hand-biting. The term does not include medical restraints or protective devices.

(64) [~~(61)~~] Protective mechanical restraint plan for self-injurious behavior--A component of the ISP action plan that provides instructions for staff on how to effectively and safely apply the protective mechanical restraint that is used to prevent or mitigate the effects of serious self-injurious behavior. The plan is developed with input from direct support professionals familiar with the individual and meaningful input from the individual and LAR, and includes a description of the individual's self-injurious behaviors, the type of restraint to be used, the restraint's maximum duration, and the circumstances to apply and remove the restraint. The plan must identify any low-risk situations when the restraint may be safely removed, what staff should do during those situations to continue to protect the individual from harm, and adjustments in staff instructions as progress is made for gradually eliminating the use of the restraints, including details on any specialized staff training and reporting. The plan is not considered a therapeutic intervention and is adjusted depending upon the individual's progress in the ISP action plan and an evaluation by the PCP that the individual's behavior is no longer at the dangerous level that is producing serious self-injury.

(65) [~~(62)~~] Psychotropic medication--A medication that is prescribed for the treatment of symptoms of psychosis or other severe mental or emotional disorder and that is used to exercise an effect on the central nervous system to influence and modify behavior, cognition, or affective state when treating the symptoms of mental illness. Psychotropic medication, sometimes referred to as "psychoactive medication," includes the following categories of medication:

(A) antipsychotics or neuroleptics;

(B) antidepressants;

(C) agents for control of mania or depression;

(D) antianxiety agents;

(E) sedatives, hypnotics, or other sleep-promoting drugs; and

(F) psychomotor stimulants.

(66) [~~(63)~~] Registered nurse--A nurse licensed by the Texas Board of Nursing to practice professional nursing in Texas.

(67) [~~(64)~~] Registries--

(A) The Nurse Aide Registry maintained by DADS in accordance with §94.12 of this title (relating to Findings and Inquiries); and

(B) The Employee Misconduct Registry maintained by DADS in accordance with Chapter 93 of this title (relating to Employee Misconduct Registry (EMR)).

(68) [~~(65)~~] Reporter--A person who reports an allegation of abuse, neglect, or exploitation.

(69) [~~(66)~~] Restraint monitor--A designated facility employee who has received competency-based training and demonstrated proficiency in the application and assessment of restraints, who has experience working directly with individuals with developmental disabilities, and who is trained to conduct a face-to-face assessment of the individual who was restrained and the staff involved in the restraint to review the application and results of the restraint.

(70) [~~(67)~~] Retaliation--An action intended to inflict emotional or physical harm or inconvenience on a person including harassment, disciplinary action, discrimination, reprimand, threat, and criticism.

(71) [~~(68)~~] SSLC--A state supported living center.

(72) [~~(69)~~] State office mortality review--A quality assurance activity to review data related to the death of an individual to identify trends, best practices, training needs, policy changes, or facility or systemic issues that need to be addressed to improve services at facilities.

(73) [~~(70)~~] Supine restraint--Any physical or mechanical restraint that places the individual on his or her back. Supine restraint does not include when an individual is placed in a supine position as a necessary part of a medical restraint, or when an individual moves into a supine position during an incident of physical restraint, if staff immediately begin an adjustment to restore the individual to a standing, sitting, or side-lying position or, if that is not possible, immediately release the person. Supine restraint does not include persons who have freedom of movement in a hospital bed or dental chair that is at a reclined position. Supine restraint is prohibited.

(74) [~~(71)~~] THSC--Texas Health and Safety Code.

(75) [~~(72)~~] Treating physician--A physician who has provided medical or psychiatric treatment or evaluation and has an ongoing treatment relationship with an individual.

(76) [~~(73)~~] Unconfirmed--Term used to describe an allegation in which a [~~that DFPS determines is not supported by the~~] preponderance of evidence exists to prove that it did not occur.

(77) [~~(74)~~] Unfounded--Term used to describe an allegation that DFPS determines is spurious or patently without factual basis.

(78) [~~(75)~~] Unusual incident--An event or situation that seriously threatens the health, safety, or life of an individual.

(79) Victim--An individual who has been or is alleged to have been abused, neglected, or exploited.

(80) [~~(76)~~] Volunteer--A person who is not part of a visiting group, who has active, direct contact with an individual, and who does not receive compensation from DADS other than reimbursement for actual expenses.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 8, 2017.

TRD-201700924
Lawrence Hornsby
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: April 23, 2017
For further information, please call: (512) 438-2106

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SUBCHAPTER C. ABUSE, NEGLECT, AND EXPLOITATION

40 TAC §3.301, §3.305

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS.

The amendment affects Texas Government Code, §531.0055.

§3.301. Prohibition of Abuse, Neglect, and Exploitation.

~~[(a) Abuse, neglect, and exploitation have the meanings and classifications assigned in Chapter 711 of this title (relating to Investigations in DADS Mental Retardation and DSHS Mental Health Facilities and Related Programs).]~~

(a) [~~(b)~~] Abuse, neglect, and exploitation of an individual are prohibited.

(b) [~~(c)~~] If an aggressive action by an individual, including non-consensual sexual activity between individuals, occurs as a result of possible neglect, the facility must report the action as neglect.

§3.305. Completion of an Investigation.

(a) A director may not change a confirmed finding of abuse, neglect, or exploitation made by DFPS. A [~~However, a~~] director may change an unconfirmed, inconclusive, or unfounded finding of abuse, neglect, or exploitation made by DFPS to a confirmed finding. If the director changes a finding to confirmed, the confirmed finding may not be appealed to DFPS.

(b) A facility has the appeal opportunities described [~~and review rights specified~~] in Chapter 711, Subchapter J [~~K~~], of this title (relating to Appealing the Investigative Finding [~~Requesting a Review of Finding If You Are the Administrator or Contractor CEO~~]). If a director disagrees with the secondary appeal decision made by DFPS in accordance with §711.911(b) of this title (relating to How and When is the Appeal Conducted?), the director must notify the DADS Commissioner of the disagreement. If the DADS Commissioner also disagrees with the secondary appeal decision, the DADS Commissioner may request that the DFPS Commissioner reconsider the decision. The DADS Commissioner must submit a reconsideration request to the DFPS Commissioner within 60 days after the date of the secondary appeal decision. DADS may not contest the decision of the DFPS Commissioner. [~~The final finding is a finding that is uncontested by the facility.~~]

(c) A director must ensure that a [~~an alleged~~] victim, a victim's LAR, and the protection and advocacy organization, if the protection and advocacy organization is the [~~or an alleged~~] victim's designated representative, are [~~LAR, or primary contact is~~] promptly notified of:

(1) a final finding made by DFPS;

(2) the process for [~~method of~~] appealing the final finding as described in Chapter 711, Subchapter J [~~M~~], of this title [~~(relating to Requesting an Appeal If You Are the Reporter, Alleged Victim, Legal Guardian, or With Advocacy, Incorporated), if the final finding was not made by the director~~]; and

(3) the right to receive a copy of the DFPS investigative report, if requested from the director [~~upon request~~].

(d) A director must ensure that [~~inform~~] a perpetrator or alleged perpetrator is notified of a final finding made by DFPS.

(e) If DFPS makes a final finding that an employee has [~~is confirmed to have~~] abused, neglected, or exploited an individual, the director of the facility at which the employee [~~person~~] is employed must take disciplinary action against the employee in accordance with DADS operational procedures.

(1) The director must notify the employee in writing of the disciplinary action being taken, the opportunity to access a copy of the DFPS report, and of any opportunity [~~right~~] that the employee may have [~~under DADS operational procedures~~] to file a complaint or request a grievance hearing.

(2) If the employee makes a written request to the director for a copy of the investigative report and acknowledges in writing that the contents of the report must be kept confidential, the director must provide the employee with a copy of or access to the DFPS investigative report.

(f) A facility must establish and implement a mechanism to:

(1) evaluate a problematic pattern [~~patterns~~] or trend [~~trends~~] identified by a DFPS investigator or the facility; and

(2) take action to address the pattern [~~patterns~~] or trend [~~trends~~].

(g) A director must ensure that a [~~an alleged~~] victim, a victim's LAR, and the protection and advocacy organization, if the protection and advocacy organization is the [~~or an alleged~~] victim's designated representative, are [~~LAR, or primary contact is~~] promptly notified of:

(1) the disciplinary action taken against the perpetrator;

(2) an employee's right to request a grievance hearing to dispute disciplinary action; [~~and~~]

(3) the opportunity to be informed if an employee files a grievance; and[~~.~~]

(4) the opportunity to request a copy of the DFPS investigative report.

(h) If the [~~state's~~] protection and advocacy organization informs a director in writing that it represents a [~~the~~] victim [~~of confirmed abuse or neglect~~], the director must notify the protection and advocacy organization if a perpetrator requests a grievance hearing.

(i) If DFPS confirms abuse, neglect, or exploitation and the perpetrator is a licensed professional employed at a facility, the director of the facility at which [~~where~~] the perpetrator is employed must ensure that the appropriate licensing board is notified of the confirmation [~~and documentation of the notification is maintained~~].

(j) If an alleged perpetrator is a licensed professional [~~physician, registered nurse, licensed vocational nurse, or pharmacist,~~] and the DFPS investigator determines that the allegation involves clinical practice rather than abuse, neglect, or exploitation, the facility at which [~~where~~] the alleged perpetrator is employed must conduct an investigation to determine if the allegation meets the licensing board's criteria for peer review. If it meets peer review criteria, the facility must conduct the peer review and ensure that the appropriate licensing board is notified of the results [~~in accordance with DADS operational procedures~~].

(k) Upon request, a director must provide a copy of a DFPS [~~an~~] investigative report to a [~~an alleged~~] victim, a victim's LAR, and the protection and advocacy organization, if the protection and advocacy organization is the [~~or an alleged~~] victim's designated representative. The identity [~~, LAR, or primary contact with the identities~~] of an individual, other than the victim, [~~persons served~~] and any other information [~~determined~~] confidential by law, must be concealed. If the designated representative is the protection and advocacy organization, the director must provide an unredacted copy of the DFPS investigative report.

(l) A facility must report a [~~confirmed~~] finding of abuse, neglect, or exploitation against an employee of the facility to CANRS.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 8, 2017.

TRD-201700926
Lawrence Hornsby
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: April 23, 2017
For further information, please call: (512) 438-2106

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CHAPTER 19. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to §§19.101, 19.1301, 19.1302, 19.1304, 19.1306, 19.2701, 19.2703, 19.2704, 19.2706, and 19.2709; new §19.1300 and §§19.2750 - 19.2756; and the repeal of §19.1303, in Chapter 19, Nursing Facility Requirements for Licensure and Medicaid Certification. HHSC proposes that existing Subchapter BB in Chapter 19 be divided into three divisions, with existing §§19.2701 - 19.2703 in new Division 1, General Provisions; existing §§19.2704 - 19.2709 in new Division 2, Nursing Facility Responsibilities; and proposed new §§19.2750 - 19.2756 in new Division 3, Nursing Facility Specialized Services for Designated Residents.

BACKGROUND AND PURPOSE

The purpose of the proposed rules is to clarify the difference between rehabilitative services, which may be provided to any resident in a nursing facility, and nursing facility specialized services, which may be provided only to a nursing facility resident who is a Medicaid recipient with an intellectual or developmental disability over 21 years of age, also referred to as a "designated resident." The proposal removes all references to specialized services in Chapter 19, Subchapter N, which governs rehabilitative services, and adds requirements for nursing facility specialized services in Subchapter BB, which governs nursing facility responsibilities related to preadmission screening and resident reviews.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §19.101 adds definitions of "qualified mental health professional - community services," and "rehabilitative services." These are terms used in Subchapter N that require definitions. The proposed amendment adds "or the Health and Human Services Commission, as its successor agency" to the definition of "DADS" and "Department" to reflect the transfer of functions from DADS to HHSC. The proposed amendment also reorganizes the definitions of "medical necessity (MN)," "registered nurse (RN)," and "residential assessment instrument (RAI)" to reflect the correct alphabetical order according to the acronym.

The proposed new §19.1300 states that Subchapter N contains the requirements related to rehabilitative services provided to a resident in a nursing facility and that Subchapter BB contains the requirements related to nursing facility specialized services provided to a designated resident. This change is being made to clarify the scope of Subchapters N and BB.

The proposed amendment to §19.1301 makes editorial changes for clarity and consistency with terminology used in Chapter 19.

The proposed amendment to §19.1302 sets forth the requirements a person must meet to provide rehabilitative services to a resident.

The proposed repeal of §19.1303 removes the rule regarding specialized services in Medicaid-certified facilities from Subchapter N. Requirements for nursing facilities related to specialized services are in proposed new §§19.2750 - 19.2756 in Subchapter BB.

The proposed amendment to §19.1304 states that rehabilitative services covered by Medicaid include physical therapy, occupational therapy, and speech therapy, and requires a nursing facility to provide these services with the expectation that the resident's functioning will improve measurably in 30 days.

The proposed amendment to §19.1306 sets forth the requirements of a nursing facility related to the submission and payment of claims for rehabilitative services provided by the nursing facility and the requirements to request a fair hearing regarding any decision related to the provision of rehabilitative services.

The proposed amendment to §19.2701 explains that Subchapter BB includes the requirements a nursing facility must meet when providing nursing facility specialized services to a designated resident.

The proposed amendment to §19.2703 adds definitions of "CMWC" (customized manual wheelchair), "DME" (durable medical equipment), "HHSC," and "therapy services." The proposed amendment adds "or HHSC, as its successor agency" to the definition of "DADS" to reflect the transfer of functions from DADS to HHSC. In addition, the definition of "DADS" is amended to state that, for purposes of PASRR, HHSC is the state authority for intellectual and developmental disabilities. The amendment also makes editorial changes to the section for clarity and consistency.

The proposed amendment to §19.2704 adds the word "designated" to 19.2704(i)(8) to clarify that the facility must document annually in the Long-Term Care Online Portal (LTC Online Portal) all nursing facility specialized services, local intellectual and developmental disabilities authority specialized services, and local mental health authority (LMHA) specialized services for a designated resident.

The proposed amendment to §19.2706 makes editorial changes to the section for clarity and consistency.

The proposed amendment to §19.2709 requires a nursing facility to notify the LMHA representative of an incident or complaint involving a designated resident receiving LMHA specialized services.

The proposed new §19.2750 requires a nursing facility to request authorization from HHSC to provide a nursing facility specialized service if the service is agreed to by a designated resident's IDT or SPT. The proposed new section also requires a nursing facility to request and receive authorization from HHSC before providing a nursing facility specialized service.

The proposed new §19.2751 contains the requirements a nursing facility must ensure are met before providing specialized therapy services to a designated resident. The new section also permits a designated resident to request a fair hearing if HHSC denies authorization for a specialized therapy service.

The proposed new §19.2752 sets forth the qualifications for a person who provides nursing facility specialized therapy services to designated residents.

The proposed new §19.2753 sets forth the requirements a nursing facility must meet related to the submission and payment of claims for nursing facility specialized therapy services provided by the nursing facility.

The proposed new §19.2754 sets forth the requirements a nursing facility must meet to request prior authorization and purchase durable medical equipment or a customized manual wheelchair for a designated resident.

The proposed new §19.2755 sets forth the requirements a nursing facility must meet related to the submission and payment of claims for durable medical equipment and a customized manual power wheelchair.

The proposed new §19.2756 sets forth the administrative requirements a nursing facility must meet related to the use, maintenance, and disposition of durable medical equipment or a customized manual wheelchair for a designated resident.

FISCAL NOTE

David Cook, Deputy Chief Financial Officer, has determined that, for the first five years the proposed amendments, new sections, and repeal are in effect, enforcing or administering the amendments, new sections, and repeal does not have foreseeable implications relating to costs or revenues of state or local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendments, new sections, and repeal will not have an adverse economic effect on small businesses or micro-businesses because these rules do not impose any new costs on nursing facilities.

PUBLIC BENEFIT AND COSTS

Mary T. Henderson, DADS Associate Commissioner for Regulatory Services, has determined that, for each year of the first five years the amendments, new sections, and repeal are in effect, the public benefit expected as a result of enforcing the amendments, new sections, and repeal is that nursing facilities will be better informed about the processes to request appropriate services for residents.

Ms. Henderson anticipates that there will not be an economic cost to persons who are required to comply with the amendments, new sections, and repeal. The amendments, new sections, and repeal will not affect a local economy.

TAKINGS IMPACT ASSESSMENT

DADS has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Sharon Wallace at (210) 619-8292 in DADS Regulatory Services. Written comments on the proposal may be submitted to:

DADS Regulatory Service

Policy, Rules and Curriculum Unit

Department of Aging and Disability Services E-370

P.O. Box 149030

Austin, Texas 78714-9030

Written comments may also be sent to street address 701 West 51st St., Mail Code E-370, Austin, Texas 78751; faxed to (512) 438-4171; or emailed to sharon.wallace@dads.state.tx.us. To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register.* The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m.

on DADS last working day of the comment period; or (3) faxed or emailed by midnight on the last day of the comment period. When faxing or emailing comments, please indicate "Comments on Proposed Rule 16R02" in the subject line.

SUBCHAPTER B. DEFINITIONS

40 TAC §19.101

STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amended sections affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021.

§19.101. Definitions.

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

(1) - (27) (No change.)

(28) DADS--The Department of Aging and Disability Services or the Health and Human Services Commission, as its successor agency.

(29) - (30) (No change.)

(31) Department--The Department of Aging and Disability Services or the Health and Human Services Commission, as its successor agency.

(32) - (41) (No change.)

(42) Facility--Unless otherwise indicated, a facility is an institution that provides organized and structured nursing care and service and is subject to licensure under Texas Health and Safety Code, Chapter 242.

(A) For Medicaid, a facility is a nursing facility which meets the requirements of §1919(a) - (d) of the Social Security Act. A facility may not include any institution that is for the care and treatment of mental diseases except for services furnished to individuals age 65 and over and who are eligible as defined in Chapter 17 of this title (relating to Preadmission Screening and Resident Review (PASRR)).

(B) For Medicare and Medicaid purposes (including eligibility, coverage, certification, and payment), the "facility" is always the entity which participates in the program, whether that entity is comprised of all of, or a distinct part of, a larger institution.

(C) "Facility" is also referred to as a nursing home or nursing facility. Depending on context, these terms are used to represent the management, administrator, or other persons or groups involved in the provision of care of the resident; or to represent the physical building, which may consist of one or more floors or one or more units, or which may be a distinct part of a licensed hospital.

(43) - (76) (No change.)

~~[(77) Medical necessity (MN)--The determination that a recipient requires the services of licensed nurses in an institutional setting to carry out the physician's planned regimen for total care. A recipient's need for custodial care in a 24-hour institutional setting does not constitute a medical need. A group of health care professionals employed or contracted by the state Medicaid claims administrator contracted with HHSC makes individual determinations of medical necessity regarding nursing facility care. These health care professionals consist of physicians and registered nurses.]~~

(77) [~~(78)~~] Medical power of attorney--The legal document that designates an agent to make treatment decisions if the individual designator becomes incapable.

(78) [~~(79)~~] Medical-social care plan--See Interdisciplinary Care Plan.

(79) [~~(80)~~] Medically related condition--An organic, debilitating disease or health disorder that requires services provided in a nursing facility, under the supervision of licensed nurses.

(80) [~~(81)~~] Medication aide--A person who holds a current permit issued under the Medication Aide Training Program as described in Chapter 95 of this title (relating to Medication Aides--Program Requirements) and acts under the authority of a person who holds a current license under state law which authorizes the licensee to administer medication.

(81) [~~(82)~~] Misappropriation of funds--The taking, secretion, misapplication, deprivation, transfer, or attempted transfer to any person not entitled to receive any property, real or personal, or anything of value belonging to or under the legal control of a resident without the effective consent of the resident or other appropriate legal authority, or the taking of any action contrary to any duty imposed by federal or state law prescribing conduct relating to the custody or disposition of property of a resident.

(82) MN--Medical necessity. A determination, made by physicians and registered nurses who are employed by or contract with the state Medicaid claims administrator, that a recipient requires the services of a licensed nurse in an institutional setting to carry out a physician's planned regimen for total care. A recipient's need for custodial care in a 24-hour institutional setting does not constitute medical necessity.

(83) - (113) (No change.)

(114) Qualified mental health professional - community services--Has the meaning given in 25 TAC §412.303 (relating to Definitions).

(115) [~~(114)~~] Qualified surveyor--An employee of DADS who has completed state and federal training on the survey process and passed a federal standardized exam.

(116) [~~(115)~~] Quality assessment and assurance committee--A group of health care professionals in a facility who develop and implement appropriate action to identify and rectify substandard care and deficient facility practice.

(117) [~~(116)~~] Quality-of-care monitor--A registered nurse, pharmacist, or dietitian employed by DADS who is trained and experienced in long-term care facility regulation, standards of practice in long-term care, and evaluation of resident care, and functions independently of DADS Regulatory Services Division.

(118) RAI--Resident assessment instrument. An assessment tool used to conduct comprehensive, accurate, standardized, and reproducible assessments of each resident's functional capacity as specified by the Secretary of the U.S. Department of Health and Human Services. At a minimum, this instrument must consist of the MDS core

elements specified by CMS, utilization guidelines, and Care Area Assessment process.

(119) [~~(117)~~] Recipient--Any individual residing in a Medicaid certified facility or a Medicaid certified distinct part of a facility whose daily vendor rate is paid by Medicaid.

~~[(118) Registered nurse (RN)--An individual currently licensed by the Texas Board of Nursing as a Registered Nurse in the State of Texas.]~~

(120) Rehabilitative services--Rehabilitative therapies and devices provided to help a person regain, maintain, or prevent deterioration of a skill or function that has been acquired but then lost or impaired due to illness, injury, or disabling condition. The term includes physical and occupational therapy, speech-language pathology, and psychiatric rehabilitation services.

(121) [~~(119)~~] Reimbursement methodology--The method by which HHSC determines nursing facility per diem rates.

(122) [~~(120)~~] Remodeling--The construction, removal, or relocation of walls and partitions, the construction of foundations, floors, or ceiling-roof assemblies, the expanding or altering of safety systems (including, but not limited to, sprinkler, fire alarm, and emergency systems) or the conversion of space in a facility to a different use.

(123) [~~(121)~~] Renovation--The restoration to a former better state by cleaning, repairing, or rebuilding, including, but not limited to, routine maintenance, repairs, equipment replacement, painting.

(124) [~~(122)~~] Representative payee--A person designated by the Social Security Administration to receive and disburse benefits, act in the best interest of the beneficiary, and ensure that benefits will be used according to the beneficiary's needs.

(125) [~~(123)~~] Resident--Any individual residing in a nursing facility.

~~[(124) Resident assessment instrument (RAI)--An assessment tool used to conduct comprehensive, accurate, standardized, and reproducible assessments of each resident's functional capacity as specified by the Secretary of the U.S. Department of Health and Human Services. At a minimum, this instrument must consist of the Minimum Data Set (MDS) core elements as specified by the Centers for Medicare & Medicaid Services (CMS); utilization guidelines; and Care Area Assessment (CAA) process.]~~

(126) [~~(125)~~] Resident group--A group or council of residents who meet regularly to:

(A) discuss and offer suggestions about the facility policies and procedures affecting residents' care, treatment, and quality of life;

(B) plan resident activities;

(C) participate in educational activities; or

(D) for any other purpose.

(127) [~~(126)~~] Responsible party--An individual authorized by the resident to act for him as an official delegate or agent. Responsible party is usually a family member or relative, but may be a legal guardian or other individual. Authorization may be in writing or may be given orally.

(128) [~~(127)~~] Restraint hold--

(A) A manual method, except for physical guidance or prompting of brief duration, used to restrict:

(i) free movement or normal functioning of all or a portion of a resident's body; or

(ii) normal access by a resident to a portion of the resident's body.

(B) Physical guidance or prompting of brief duration becomes a restraint if the resident resists the guidance or prompting.

(129) [~~(128)~~] Restraints (chemical)--Psychoactive drugs administered for the purposes of discipline, or convenience, and not required to treat the resident's medical symptoms.

(130) [~~(129)~~] Restraints (physical)--Any manual method, or physical or mechanical device, material or equipment attached, or adjacent to the resident's body, that the individual cannot remove easily which restricts freedom of movement or normal access to one's body. The term includes a restraint hold.

(131) RN--Registered nurse. An individual currently licensed by the Texas Board of Nursing as a registered nurse.

(132) [~~(130)~~] RN assessment coordinator--A registered nurse who signs and certifies a comprehensive assessment of a resident's needs, using the RAI, including the MDS, as specified by DADS.

(133) [~~(131)~~] RUG--Resource Utilization Group. A categorization method, consisting of 34 categories based on the MDS, that is used to determine a recipient's service and care requirements and to determine the daily rate DADS pays a nursing facility for services provided to the recipient.

(134) [~~(132)~~] Secretary--Secretary of the U.S. Department of Health and Human Services.

(135) [~~(133)~~] Services required on a regular basis--Services which are provided at fixed or recurring intervals and are needed so frequently that it would be impractical to provide the services in a home or family setting. Services required on a regular basis include continuous or periodic nursing observation, assessment, and intervention in all areas of resident care.

(136) [~~(134)~~] SNF--A skilled nursing facility or distinct part of a facility that participates in the Medicare program. SNF requirements apply when a certified facility is billing Medicare for a resident's per diem rate.

(137) [~~(135)~~] Social Security Administration--Federal agency for administration of social security benefits. Local social security administration offices take applications for Medicare, assist beneficiaries file claims, and provide information about the Medicare program.

(138) [~~(136)~~] Social worker--A qualified social worker is an individual who is licensed, or provisionally licensed, by the Texas State Board of Social Work Examiners as prescribed by the Texas Occupations Code, Chapter 505, and who has at least:

(A) a bachelor's degree in social work; or

(B) similar professional qualifications, which include a minimum educational requirement of a bachelor's degree and one year experience met by employment providing social services in a health care setting.

(139) [~~(137)~~] Standards--The minimum conditions, requirements, and criteria established in this chapter with which an institution must comply to be licensed under this chapter.

(140) [~~(138)~~] State Medicaid claims administrator--The entity under contract with HHSC to process Medicaid claims in Texas.

(141) [~~(139)~~] State plan--A formal plan for the medical assistance program, submitted to CMS, in which the State of Texas agrees to administer the program in accordance with the provisions of the State Plan, the requirements of Titles XVIII and XIX, and all applicable federal regulations and other official issuances of the U.S. Department of Health and Human Services.

(142) [~~(140)~~] State survey agency--DADS is the agency, which through contractual agreement with CMS is responsible for Title XIX (Medicaid) survey and certification of nursing facilities.

(143) [~~(141)~~] Supervising physician--A physician who assumes responsibility and legal liability for services rendered by a physician assistant (PA) and has been approved by the Texas Medical Board to supervise services rendered by specific PAs. A supervising physician may also be a physician who provides general supervision of an advanced practice registered nurse providing services in a nursing facility.

(144) [~~(142)~~] Supervision--General supervision, unless otherwise identified.

(145) [~~(143)~~] Supervision (direct)--Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within his sphere of competence. If the person being supervised does not meet assistant-level qualifications specified in this chapter and in federal regulations, the supervisor must be on the premises and directly supervising.

(146) [~~(144)~~] Supervision (general)--Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within his sphere of competence. The person being supervised must have access to the qualified person providing the supervision.

(147) [~~(145)~~] Supervision (intermittent)--Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within his sphere of competence, with initial direction and periodic inspection of the actual act of accomplishing the function or activity. The person being supervised must have access to the qualified person providing the supervision.

(148) [~~(146)~~] *Texas Register*--A publication of the Texas Register Publications Section of the Office of the Secretary of State that contains emergency, proposed, withdrawn, and adopted rules issued by Texas state agencies. The Texas Register was established by the Administrative Procedure and Texas Register Act of 1975.

(149) [~~(147)~~] Therapeutic diet--A diet ordered by a physician as part of treatment for a disease or clinical condition, in order to eliminate, decrease, or increase certain substances in the diet or to provide food which has been altered to make it easier for the resident to eat.

(150) [~~(148)~~] Therapy week--A seven-day period beginning the first day rehabilitation therapy or restorative nursing care is given. All subsequent therapy weeks for a particular individual will begin on that day of the week.

(151) [~~(149)~~] Threatened violation--A situation that, unless immediate steps are taken to correct, may cause injury or harm to a resident's health and safety.

(152) [~~(150)~~] Title II--Federal Old-Age, Survivors, and Disability Insurance Benefits of the Social Security Act.

(153) [~~(151)~~] Title XVI--Supplemental Security Income (SSI) of the Social Security Act.

(154) [~~(152)~~] Title XVIII--Medicare provisions of the Social Security Act.

(155) [~~(153)~~] Title XIX--Medicaid provisions of the Social Security Act.

(156) [~~(154)~~] Total health status--Includes functional status, medical care, nursing care, nutritional status, rehabilitation and restorative potential, activities potential, cognitive status, oral health status, psychosocial status, and sensory and physical impairments.

(157) [~~(155)~~] UAR--HHSC's Utilization and Assessment Review Section.

(158) [~~(156)~~] Uniform data set--See RAI (Resident Assessment Instrument) [~~Resident Assessment Instrument (RAI)~~].

(159) [~~(157)~~] Universal precautions--The use of barrier and other precautions to prevent the spread of blood-borne diseases.

(160) [~~(158)~~] Unreasonable confinement--Involuntary seclusion.

(161) [~~(159)~~] Vaccine preventable diseases--The diseases included in the most current recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention.

(162) [~~(160)~~] Vendor payment--Payment made by DADS on a daily-rate basis for services delivered to recipients in Medicaid-certified nursing facilities. Vendor payment is based on the nursing facility's approved-to-pay claim processed by the state Medicaid claims administrator. The Nursing Facility Billing Statement, subject to adjustments and corrections, is prepared from information submitted by the nursing facility, which is currently on file in the computer system as of the billing date. Vendor payment is made at periodic intervals, but not less than once per month for services rendered during the previous billing cycle.

(163) [~~(161)~~] Working day--Any 24-hour period, Monday through Friday, excluding state and federal holidays.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 13, 2017.

TRD-201701040
Lawrence Hornsby
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: April 23, 2017
For further information, please call: (210) 619-8292

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SUBCHAPTER N. REHABILITATIVE SERVICES

40 TAC §§19.1300 - 19.1302, 19.1304, 19.1306

STATUTORY AUTHORITY

The amendments and new section are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt

necessary rules for the proper and efficient operation of the Medicaid program.

The amendments and new section affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code §32.021.

§19.1300. Purpose.

(a) This subchapter contains the requirements a facility must comply with to provide rehabilitative services to a resident.

(b) Subchapter BB (relating to Nursing Facility Responsibilities Related to Preadmission Screening and Resident Review (PASRR)) contains the requirements a facility must comply with to provide nursing facility specialized services to a designated resident, as defined in §19.2703 of this chapter (relating to Definitions).

§19.1301. Provision of Rehabilitative Services.

(a) [~~Provision of services.~~] If rehabilitative services[~~, such as, but not limited to, physical therapy, speech/language pathology, occupational therapy, mental health rehabilitative services for mental illness and mental retardation~~] are required in a [~~the~~] resident's comprehensive care plan [~~of care~~], the facility must:

(1) provide the required services; or

(2) obtain the required services from an outside resource, in accordance with §19.1906 of this chapter [~~title~~] (relating to Use of Outside Resources)[~~, from a provider of specialized rehabilitative services~~].

(b) A [~~Rehabilitative services. The~~] facility must ensure that rehabilitative services:

(1) are provided to a resident under a comprehensive care [~~written~~] plan [~~of treatment~~] based on a [~~the~~] physician's diagnosis and orders; [~~,~~] and [~~that services~~]

(2) are documented in the resident's clinical record.

§19.1302. Qualifications.

A facility must ensure that rehabilitative [~~Rehabilitative~~] services are provided [~~must be provided under the written order of a physician~~] by: [~~qualified personnel.~~]

[~~(1) A qualified therapist is:~~]

(1) [~~(A)~~] an individual [~~a speech-language pathologist~~] who:

(A) [~~(i)~~] is a [~~Texas licensed~~] speech-language pathologist licensed by the Texas Department of Licensing and Regulation; or

(B) [~~(ii)~~] meets the educational requirements [~~for license~~] and has accumulated, or is in the process of accumulating, the supervised professional experience [~~(the internship)~~] required to be licensed as a speech-language pathologist [~~for license~~];

(2) [~~(B)~~] an individual [~~audiologist~~] who:

(A) [~~(i)~~] is an [~~a Texas-licensed~~] audiologist licensed by the Texas Department of Licensing and Regulation; or

(B) [~~(ii)~~] meets the educational requirements [~~for license~~] and has accumulated, or is in the process of accumulating, the supervised professional experience [~~(the internship)~~] required to be licensed as an audiologist [~~for license~~];

(3) [~~(C)~~] an occupational therapist [~~(a qualified consultant) who is currently~~] licensed by the Texas Board of Occupational Therapy Examiners;

(4) [~~(D)~~] an occupational therapy assistant [~~who is currently~~] licensed by the Texas [~~State~~] Board of Occupational Therapy Examiners;

(5) [~~(E)~~] a physical therapist [~~who is currently~~] licensed [~~as a physical therapist~~] by the Texas [~~State~~] Board of Physical Therapy Examiners; [~~or~~]

(6) [~~(F)~~] a physical therapist assistant [~~who is~~] licensed [~~as a physical therapist assistant~~] by the Texas [~~State~~] Board of Physical Therapy Examiners; or

(7) a qualified mental health professional - community services.

[~~(2) A physical therapy aide is a person who assists in the practice of physical therapy and whose activities require on-the-job training and on-site supervision by a physical therapist or physical therapist assistant. A physical therapy aide is not a certified corrective therapist or an adaptive or corrective physical education specialist.~~]

§19.1304. Rehabilitative Services in Medicaid-certified Facilities.

(a) Rehabilitative services covered by Medicaid [~~Services~~] are physical therapy services, occupational therapy services, and speech therapy services [~~for Medicaid nursing facility residents who are not eligible for Medicare or other insurance. The cost of therapy services for residents with Medicare or other insurance coverage or both must be billed to Medicare or other insurance or both~~].

(b) A facility must ensure that rehabilitative services covered by Medicaid are provided to a resident to evaluate or treat a function that has been impaired by illness or injury. [~~Coverage for physical therapy, occupational therapy, or speech therapy services includes evaluation and treatment of functions that have been impaired by illness.~~] Rehabilitative services must be provided with the expectation that the resident's functioning will improve measurably in 30 days.

§19.1306. Fee-for-Service Payment for [~~Specialized and~~] Rehabilitative Services.

(a) HHSC pays [~~DADS reimburses~~] a [~~nursing~~] facility for [~~specialized and~~] rehabilitative services provided to a Medicaid eligible resident based on fees determined [~~by the Health and Human Services Commission~~] in accordance with 1 TAC §355.313 (relating to Reimbursement Methodology for Rehabilitative and Specialized [~~and Rehabilitative~~] Services).

(b) A facility [~~The services~~] must ensure that rehabilitative services provided to a resident eligible for Medicaid are:

(1) [~~be~~] ordered by the resident's attending physician; and

(2) except as provided in subsection (c)(1) of this section, [~~be~~] pre-certified by DADS.

(c) A session is one physical, occupational, or speech therapy service provided to [~~performed for~~] one resident. HHSC pays for an [~~An~~] evaluation [~~is reimbursed~~] at the same rate as a session.

(1) HHSC pays for one [~~One~~] evaluation that is not [~~reimbursed without being~~] pre-certified by DADS.

(2) To have an additional evaluation pre-certified by DADS, a facility must submit documentation [~~An additional evaluation must be supported~~] by the attending physician [~~physician's documentation~~] that indicates the resident has a new illness or injury, or a substantive change in a pre-existing condition.

(d) A facility must submit a complete and accurate claim for services that is [~~must be~~] received by DADS within 12 months after the last day services are provided in accordance with a single pre-certification by DADS.

[(e) A claim rejected during the 12-month period through no fault of the provider may be reimbursed upon approval by DADS.]

(e) [(f)] A resident whose request for pre-certification of Medicaid rehabilitative [or specialized] services is denied may request [is entitled to] a fair hearing in accordance with 1 TAC Chapter 357, Subchapter A (relating to Uniform Fair Hearing Rules) [rules of HHSC regarding Medicaid fair hearings. A request for a fair hearing must be made to: Texas Department of Aging and Disability Services, Attn: Rehabilitative Services, P.O. Box 149030 (MC W-400), Austin, Texas 78714-9030. The request must be received by DADS within 90 days after the date the notice of action is mailed to the resident].

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 13, 2017.

TRD-201701041
Lawrence Hornsby
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: April 23, 2017
For further information, please call: (210) 619-8292

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40 TAC §19.1303

STATUTORY AUTHORITY

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The repeal affects Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021.

§19.1303. Specialized Services in Medicaid-certified Facilities.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 13, 2017.

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General Counsel
Department of Aging and Disability Services
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For further information, please call: (210) 619-8292

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SUBCHAPTER BB. NURSING FACILITY RESPONSIBILITIES RELATED TO PREADMISSION SCREENING AND RESIDENT REVIEW (PASRR)

DIVISION 1. GENERAL PROVISIONS

40 TAC §19.2701, §19.2703

STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendments affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021.

§19.2701. Purpose.
The purpose of this subchapter is to:

(1) describe the requirements of a nursing facility related to preadmission screening and resident review (PASRR), which is a federal requirement in Code of Federal Regulations, Title 42, Part 483, Subpart C to ensure that:

(A) an individual seeking admission to a [Medicaid-certified] nursing facility or [and] a resident of a nursing facility receives a PASRR Level I screening (PL1) to identify whether the individual or resident is suspected of having mental illness (MI), an intellectual disability (ID), or a developmental disability (DD); and

(B) an individual or resident suspected of having MI, ID, or DD receives a PASRR Level II evaluation (PE) to confirm MI, ID, or DD and, if confirmed, to evaluate whether the individual or resident needs nursing facility care and specialized services; [and]

(2) describe the requirements of a nursing facility related to a designated resident who receives service planning and transition planning; and[.]

(3) describe the requirements of a nursing facility related to nursing facility specialized services.

§19.2703. Definitions.
The following words and terms, when used in this subchapter, have the following meanings unless the context clearly indicates otherwise:

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

(5) CMWC--Customized manual wheelchair. A wheelchair that consists of a manual mobility base and customized seating system and is adapted and fabricated to meet the individualized needs of a designated resident.

(6) [(5)] DADS--Department of Aging and Disability Services or HHSC, as its successor agency. For purposes of the PASRR process, HHSC [DADS] is the state authority for intellectual and developmental disabilities.

(7) [(6)] DD--Developmental disability. A disability that meets the criteria described in the definition of "persons with related conditions" in Code of Federal Regulations (CFR) Title 42, §435.1010.

(8) [(7)] Delirium--A serious disturbance in an individual's mental abilities that results in a decreased awareness of the individual's environment and confused thinking.

(9) [(8)] Designated resident--A Medicaid recipient with ID or DD who is 21 years of age or older and who is a resident.

(10) DME--Durable medical equipment. The following items, including any accessories and adaptations needed to operate or access the item:

(A) a gait trainer;

(B) a standing board;

(C) a special needs car seat or travel restraint;

(D) a specialized or treated pressure-reducing support surface mattress;

(E) a positioning wedge;

(F) a prosthetic device; and

(G) an orthotic device.

(11) [~~(9)~~] DSHS--Department of State Health Services. For purposes of the PASRR process, DSHS is the state mental health authority.

(12) [~~(10)~~] Emergency protective services--Services that are furnished by the Department of Family and Protective Services to an elderly or disabled individual who has been determined to be in a state of abuse, neglect, or exploitation.

(13) [~~(11)~~] Exempted hospital discharge--A category of nursing facility admission that occurs when a physician has certified that an individual who is being discharged from a hospital is likely to require less than 30 days of nursing facility services for the condition for which the individual was hospitalized.

(14) [~~(12)~~] Expedited admission--A category of nursing facility admission that occurs when an individual meets the criteria for one of the following categories: convalescent care, terminal illness, severe physical illness, delirium, emergency protective services, respite, or coma.

(15) HHSC--Health and Human Services Commission or its designee.

(16) [~~(13)~~] ID--Intellectual disability. Mental retardation, as described in CFR Title 42, §483.102(b)(3)(i).

(17) [~~(14)~~] IDT--Interdisciplinary team. A team consisting of:

(A) a resident with MI, ID, or DD;

(B) the resident's LAR, if any;

(C) a registered nurse from the nursing facility with responsibility for the resident;

(D) a representative of a LIDDA or LMHA, or if the resident has MI and DD or MI and ID, a representative of the LIDDA and LMHA; and

(E) other persons, as follows:

(i) a concerned person whose inclusion is requested by the resident or LAR;

(ii) a person specified by the resident or LAR, nursing facility, or LIDDA or LMHA, as applicable, who is professionally qualified or certified or licensed with special training and experience in the diagnosis, management, needs and treatment of people with MI, ID, or DD; and

(iii) a representative of the appropriate school district if the resident is school age and inclusion of the district representative is requested by the resident or LAR.

(18) [~~(15)~~] Individual--A person seeking admission to a nursing facility.

(19) [~~(16)~~] ISP--Individual service plan. A service plan developed by the service planning team for a designated resident in accordance with §17.502(2) of this title (relating to Service Planning Team (SPT) Responsibilities for a Designated [~~Designed~~] Resident).

(20) [~~(17)~~] LAR--Legally authorized representative. A person authorized by law to act on behalf of an individual or resident with regard to a matter described by this subchapter, and who may be the parent of a minor child, the legal guardian, or the surrogate decision maker.

(21) [~~(18)~~] LIDDA--Local intellectual and developmental disabilities authority. An entity designated by the executive commissioner of HHSC [~~the Texas Health and Human Services Commission~~], in accordance with Texas Health and Safety Code §533A.035 [~~§533.035~~].

(22) [~~(19)~~] LIDDA specialized services--Support services, other than nursing facility services, that are identified through the PE or resident review and may be provided to a resident who has ID or DD. LIDDA specialized services are:

(A) service coordination, which includes alternate placement assistance;

(B) employment assistance;

(C) supported employment;

(D) day habilitation;

(E) independent living skills training; and

(F) behavioral support.

(23) [~~(20)~~] LMHA--Local mental health authority. An entity designated by the executive commissioner of HHSC [~~the Texas Health and Human Services Commission~~], in accordance with Texas Health and Safety Code §533.035. For the purposes of this subchapter, LMHA includes an entity designated by DSHS [~~the Department of State Health Services~~] as the entity to perform PASRR functions.

(24) [~~(21)~~] LMHA specialized services--Support services, other than nursing facility services, that are identified through the PE or resident review and may be provided to a resident who has MI. LMHA specialized services are defined in Title 25, Texas Administrative Code (TAC), Chapter 412, Subchapter I (relating to MH Case Management), including alternate placement, and 25 TAC Chapter 416, Subchapter A (relating to Mental Health Rehabilitative Services).

(25) [~~(22)~~] LTC Online Portal--Long Term Care Online Portal. A web-based application used by Medicaid providers to submit forms, screenings, evaluations, and the long term services and supports Medicaid identification section of the MDS assessment.

(26) [~~(23)~~] MDS assessment--Minimum data set assessment. A standardized collection of demographic and clinical information that describes a resident's overall condition, which a [~~licensed~~] nursing facility in Texas is required to submit for a resident of [~~admitted into~~] the facility.

(27) [~~(24)~~] MI--Mental illness. Serious mental illness, as defined in 42 CFR §483.102(b)(1).

(28) [~~(25)~~] Nursing facility--A Medicaid-certified facility that is licensed in accordance with Texas Health and Safety Code, Chapter 242.

(29) [~~(26)~~] Nursing facility PASRR support activities--Actions a nursing facility takes in coordination with a LIDDA or LMHA

to facilitate the successful provision of LIDDA specialized services or LMHA specialized services, including:

(A) arranging transportation for a designated [~~nursing facility~~] resident to participate in a LIDDA specialized service or a LMHA specialized service outside the nursing facility;

(B) sending a resident to a scheduled LIDDA specialized service or a LMHA specialized service with food and medications required by the resident; and

(C) including in the comprehensive care plan an agreement to avoid, when possible, scheduling nursing facility services at times that conflict with LIDDA specialized services or LMHA specialized services.

(30) [~~(27)~~] Nursing facility specialized services--Support services, other than nursing facility services, that are identified through the PE and may be provided to a designated resident [~~who has ID or DD~~]. Nursing facility specialized services are:

(A) [~~physical therapy, occupational therapy, and speech~~] therapy services;

(B) CMWC [~~customized manual wheelchair~~]; and

(C) DME [~~durable medical equipment, which consists of:~~]

~~*(i)* a gait trainer;~~]

~~*(ii)* a standing board;~~]

~~*(iii)* a special needs car seat or travel restraint;~~]

~~*(iv)* a specialized or treated pressure-reducing support surface mattress;~~]

~~*(v)* a positioning wedge;~~]

~~*(vi)* a prosthetic device; and~~]

~~*(vii)* an orthotic device~~].

(31) [~~(28)~~] PASRR--Preadmission screening and resident review.

(32) [~~(29)~~] PASRR determination--A decision made by DADS, DSHS, or their designee regarding an individual's need for nursing facility specialized services, LIDDA specialized services, and LMHA specialized services, based on information in the PE; and, in accordance with Subchapter Y of this chapter (relating to Medical Necessity Determinations), whether the individual requires the level of care provided in a nursing facility. A report documenting the determination is sent to the individual and LAR.

(33) [~~(30)~~] PE--PASRR Level II evaluation. A face-to-face evaluation of an individual suspected of having MI, ID, or DD performed by a LIDDA or an LMHA to determine if the individual has MI, ID, or DD, and if so to:

(A) assess the individual's need for care in a nursing facility;

(B) assess the individual's need for nursing facility specialized services, LIDDA specialized services and LMHA specialized services; and

(C) identify alternate placement options.

(34) [~~(31)~~] PL1--PASRR Level I screening. The process of screening an individual to identify whether the individual is suspected of having MI, ID, or DD.

(35) [~~(32)~~] Pre-admission--A category of nursing facility admission from a community setting that is not an expedited admission or an exempted hospital discharge.

(36) [~~(33)~~] Referring entity--The entity that refers an individual to a nursing facility, such as a hospital, attending physician, LAR or other personal representative selected by the individual, a family member of the individual, or a representative from an emergency placement source, such as law enforcement.

(37) [~~(34)~~] Resident--An individual who resides in a [~~Medicaid-certified~~] nursing facility and receives services provided by professional nursing personnel of the facility.

(38) [~~(35)~~] Resident review--A face-to-face evaluation of a resident performed by a LIDDA or LMHA:

(A) for a resident with MI, ID, or DD who experienced a significant change in status, to:

(i) assess the resident's need for continued care in a nursing facility;

(ii) assess the resident's need for nursing facility specialized services, LIDDA specialized services and LMHA specialized services; and

(iii) identify alternate placement options; and

(B) for a resident suspected of having MI, ID, or DD, to determine whether the resident has MI, ID, or DD and, if so:

(i) assess the resident's need for continued care in a nursing facility;

(ii) assess the resident's need for nursing facility specialized services, LIDDA specialized services, and LMHA specialized services; and

(iii) identify alternate placement options.

(39) [~~(36)~~] Respite--Services provided on a short-term basis to an individual because of the absence of or the need for relief by the individual's unpaid caregiver for a period not to exceed 14 days.

(40) [~~(37)~~] Service coordination--As defined in §2.553 of this title (relating to Definitions), assistance in accessing medical, social, educational, and other appropriate services and supports that will help an individual achieve a quality of life and community participation acceptable to the person and LAR on the individual's behalf.

(41) [~~(38)~~] Service coordinator--An employee of a LIDDA who provides service coordination.

(42) [~~(39)~~] Severe physical illness--An illness resulting in ventilator dependence or diagnosis such as chronic obstructive pulmonary disease, Parkinson's disease, Huntington's disease, amyotrophic lateral sclerosis, or congestive heart failure, that results in a level of impairment so severe that the individual could not be expected to benefit from nursing facility specialized services, LIDDA specialized services or [~~and~~] LMHA specialized services.

(43) [~~(40)~~] SPT--Service planning team. A team that develops, reviews, and revises the ISP for a designated resident.

(A) The SPT always includes:

(i) the designated resident;

(ii) the designated resident's LAR, if any;

(iii) the service coordinator;

(iv) nursing facility staff familiar with the designated resident's needs;

(v) persons providing nursing facility specialized services and LIDDA specialized services for the designated resident;

(vi) a representative from a community provider, if one has been selected; and

(vii) a representative from the LMHA, if the designated resident has MI.

(B) Other participants on the SPT may include:

(i) a concerned person whose inclusion is requested by the designated resident or the LAR; and

(ii) at the discretion of the LIDDA, a person who is directly involved in the delivery of services to people with ID or DD.

(44) [~~(41)~~] Surrogate decision maker--An actively involved family member of a resident who has been identified by an IDT in accordance with Texas Health and Safety Code §313.004 and who is available and willing to consent on behalf of the resident.

(45) [~~(42)~~] Terminal illness--A medical prognosis that an individual's life expectancy is six months or less if the illness runs its normal course, which is documented by a physician's certification in the individual's medical record maintained by a nursing facility.

(46) Therapy services--Assessment and treatment to help a designated resident learn, keep, or improve skills and functioning of daily living affected by a disabling condition. Therapy services are referred to as habilitative therapy services. Therapy services are limited to:

(A) physical therapy;

(B) occupational therapy; and

(C) speech therapy.

(47) [~~(43)~~] Transition plan--A plan developed by the SPT that describes the activities, timetable, responsibilities, services, and supports involved in assisting a designated resident to transition from the nursing facility to the community.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Lawrence Hornsby
General Counsel
Department of Aging and Disability Services
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For further information, please call: (210) 619-8292

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DIVISION 2. NURSING FACILITY RESPONSIBILITIES

40 TAC §§19.2704, 19.2706, 19.2709

STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The amendments affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021.

§19.2704. Nursing Facility Responsibilities Related to PASRR.

(a) - (h) (No change.)

(i) After an individual or resident who is determined to have MI, ID, or DD from a PE or resident review has been admitted to a nursing facility, the facility must:

(1) - (7) (No change.)

(8) for a designated resident [~~who is a Medicaid recipient~~], annually document in the LTC Online Portal all nursing facility specialized services, LIDDA specialized services, and LMHA specialized services [~~currently~~] being provided to the designated [~~a~~] resident.

§19.2706. Nursing Facility Responsibilities Related to a Designated Resident.

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

(c) A nursing facility must ensure its staff and contractors who are members of a designated resident's SPT:

(1) attend and participate in the [~~a~~] designated resident's SPT meetings as scheduled and convened by the service coordinator;

(2) contribute to the development of the [~~a~~] designated resident's ISP; and

(3) assist the SPT by:

(A) monitoring all nursing facility specialized services, LIDDA specialized services and LMHA specialized services, if applicable, provided to the designated resident to ensure the designated resident's needs are being met;

(B) making timely referrals, service changes, and amendments to the ISP as needed;

(C) ensuring that the designated resident's ISP, including nursing facility specialized services, nursing facility PASRR support activities, and LIDDA specialized services, is coordinated with the nursing facility's comprehensive care plan;

(D) if the designated resident has expressed interest in community living: [~~developing a transition plan for a resident who has expressed interest in community living and, if no transition plan is recommended due to identified barriers, participating to identify the action the SPT will take to address concerns and remove the barriers; and~~]

(i) developing a transition plan for the designated resident to live in the community; or

(ii) identifying the action the SPT will take to address concerns and remove barriers to the designated resident living in the community; and

(E) reviewing and discussing the information included in the ISP and transition plan with key nursing facility staff who work with the resident.

(d) A nursing facility must allow a service coordinator access to:

(1) a designated resident on a monthly basis, or more frequently if needed; and

(2) the designated resident's clinical facility records.

§19.2709. Incident and Complaint Reporting.

In addition to reporting incidents and complaints, including abuse and neglect, to DADS as required by §19.602 of this chapter (relating to Incidents of Abuse and Neglect Reportable to the Texas Department of Aging and Disability Services (DADS) and Law Enforcement Agencies by Facilities) and §19.2006 of this chapter (relating to Reporting Incidents and Complaints), a nursing facility must report the information by making a telephone report immediately after learning of the incident or complaint:

(1) to the service coordinator, if it involves a designated resident; and

(2) to the LMHA representative, if it involves a designated resident with MI receiving LMHA specialized services.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Lawrence Hornsby
General Counsel
Department of Aging and Disability Services
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DIVISION 3. NURSING FACILITY SPECIALIZED SERVICES FOR DESIGNATED RESIDENTS

40 TAC §§19.2750 - 19.2756

STATUTORY AUTHORITY

The new sections are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

The new sections affect Texas Government Code, §531.0055 and §531.021, and Texas Human Resources Code, §32.021.

§19.2750. Nursing Facility Specialized Services for Designated Residents.

(a) A nursing facility must request authorization from HHSC to provide a nursing facility specialized service to a designated resident if the service is agreed to by the designated resident's IDT in accordance with §19.2704 of this subchapter (relating to Nursing Facility Responsibilities Related to PASRR) or the designated resident's SPT in accordance with §17.502(2) of this title (relating to Service Planning Team (SPT) Responsibilities for a Designated Resident).

(b) Before providing a nursing facility specialized service, a nursing facility must request and receive authorization from HHSC through the LTC Online Portal to provide the service.

§19.2751. Requesting Authorization to Provide Therapy Services.

(a) Before requesting authorization to provide a therapy service to a designated resident, a nursing facility must ensure that:

(1) the therapy service is required by the designated resident's comprehensive care plan;

(2) the designated resident has a diagnosis relevant to the need for the therapy service;

(3) the therapy service is ordered by the designated resident's attending physician; and

(4) a therapy provider who meets the qualifications in §19.2752 of this division (relating to Qualifications of a Provider of Therapy Services) completes an assessment within 30 days before the nursing facility request for authorization to provide the therapy service.

(b) After a nursing facility submits a request for authorization to provide a therapy service to a designated resident:

(1) the nursing facility receives a written approval or denial of its request through the LTC Online Portal; and

(2) HHSC notifies the designated resident or the designated resident's LAR that the request has been approved or denied.

(c) If HHSC denies a request for authorization to provide therapy services to a designated resident, the designated resident may request a fair hearing in accordance with 1 TAC Chapter 357, Subchapter A (relating to Uniform Fair Hearing Rules), to appeal the denial.

§19.2752. Qualifications of a Provider of Therapy Services.

A nursing facility must ensure that therapy services are provided to a designated resident by:

(1) a person who:

(A) is a speech-language pathologist licensed by the Texas Department of Licensing and Regulation; or

(B) meets the educational requirements and has accumulated, or is in the process of accumulating, the supervised professional experience required to be licensed as a speech-language pathologist;

(2) an occupational therapist licensed by the Texas Board of Occupational Therapy Examiners;

(3) an occupational therapy assistant licensed by the Texas Board of Occupational Therapy Examiners;

(4) a physical therapist licensed by the Texas Board of Physical Therapy Examiners; or

(5) a physical therapist assistant licensed by the Texas Board of Physical Therapy Examiners.

§19.2753. Payment for Therapy Services.

(a) HHSC pays a nursing facility for therapy services provided to a designated resident based on fees determined in accordance with 1 TAC §355.313 (relating to Reimbursement Methodology for Rehabilitative and Specialized Services).

(b) A therapy session is one hour of therapy provided to one resident.

(c) An assessment is reimbursed at the same rate as a therapy session.

(d) An occupational therapist or physical therapist may assess a designated resident at any time to evaluate the needs of the designated resident for a therapy service, but HHSC does not pay for an assessment

of a designated resident conducted within 180 days after the previous assessment of the designated resident.

(e) A nursing facility must submit a complete and accurate claim for a therapy service within 12 months after the last day of an authorization from HHSC to provide the service.

§19.2754. Requesting Authorization to Provide Durable Medical Equipment and Customized Manual Wheelchairs.

(a) To request authorization to provide DME or a CMWC to a designated resident, a nursing facility must ensure that a physical therapist or occupational therapist licensed in Texas assesses the designated resident for the DME or CMWC. If, based on the assessment, the physical or occupational therapist recommends DME or a CMWC, the nursing facility must request authorization to provide the DME or CMWC through the LTC Online Portal. The assessment required by this subsection must be completed within 30 days before the nursing facility requests authorization through the LTC Online Portal.

(b) The request for authorization to provide DME or a CMWC made through the LTC Online Portal must include:

(1) the assessment of the designated resident described in subsection (a) of this section;

(2) a statement signed by the designated resident's attending physician that the DME or CMWC is medically necessary; and

(3) detailed specifications of the DME or CMWC from a DME supplier.

(c) The documentation of the physical or occupational therapy assessment required by subsection (a) of this section must include:

(1) a diagnosis of the designated resident relevant to the need for DME or a CMWC;

(2) the specific DME or CMWC, including any adaptations recommended for the designated resident; and

(3) a description of how the DME or CMWC will meet the specific needs of the designated resident.

(d) After a nursing facility submits a request for authorization to provide DME or a CMWC to a designated resident:

(1) the nursing facility receives a written approval or denial of its request through the LTC Online Portal; and

(2) HHSC notifies the designated resident or the designated resident's LAR that the request has been approved or denied.

(e) If HHSC approves a request to provide DME or a CMWC to a designated resident, the nursing facility must order the DME or CMWC from a DME supplier within 5 business days after receiving notification of the approval through the LTC Online Portal.

(f) If HHSC denies a request to provide DME or a CMWC to a designated resident, the designated resident may request a fair hearing in accordance with 1 TAC Chapter 357, Subchapter A (relating to Uniform Fair Hearing Rules), to appeal the denial.

§19.2755. Payment for Durable Medical Equipment and Customized Manual Wheelchairs.

(a) A nursing facility must fully explore and use other sources to pay for DME or a CMWC before requesting payment from HHSC. If another funding source is available, HHSC pays no more than the remaining balance after other sources have paid.

(b) HHSC pays a nursing facility for an assessment for DME or a CMWC for a designated resident based on fees determined in accordance with 1 TAC §355.313 (relating to Reimbursement Methodology for Rehabilitative and Specialized Services).

(1) HHSC pays for a DME or CMWC assessment at the same rate as a therapy session.

(2) An occupational therapist or physical therapist may assess a designated resident at any time to evaluate the needs of the designated resident for DME or a CMWC, but HHSC does not pay for an assessment of a designated resident conducted within 180 days after the previous assessment of the designated resident.

(c) A complete and accurate claim for DME or a CMWC must be received by HHSC within 12 months after the day the DME or CMWC is purchased.

(d) A nursing facility must not submit a claim for payment for DME or a CMWC to HHSC before:

(1) an occupational therapist or physical therapist licensed in Texas verifies that the DME or CMWC meets the original specifications and the needs of the designated resident; and

(2) the nursing facility documents the verification in the LTC Online Portal.

(e) If HHSC denies a request for payment for DME or a CMWC because a nursing facility did not obtain authorization before purchasing the DME or CMWC or did not submit necessary documentation to HHSC, the facility may not charge the designated resident or family for the DME or CMWC.

§19.2756. Administrative Requirements for Durable Medical Equipment and Customized Manual Wheelchairs.

(a) A nursing facility must ensure that only the designated resident to whom DME or a CMWC belongs uses the DME or CMWC. A nursing facility must identify the DME or CMWC as the personal property of the designated resident.

(b) If the designated resident who was provided DME or a CMWC is discharged from a nursing facility, the designated resident retains the DME or CMWC.

(c) If a designated resident who was provided DME or a CMWC dies, the DME or CMWC becomes property of the designated resident's estate. As part of the estate, the DME or CMWC is subject to the Medicaid Estate Recovery Program requirements in 1 TAC Chapter 373 (relating to Medicaid Estate Recovery Program).

(d) If DME or a CMWC is donated or sold to a nursing facility by a designated resident or the personal representative of a designated resident's estate, the transaction must be documented in accordance with §19.416 of this chapter (relating to Personal Property).

(e) A modification, adjustment, or repair to DME or a CMWC required within the first six months after delivery of the DME or CMWC is the responsibility of the DME supplier. More than six months after delivery of DME or a CMWC, a nursing facility must maintain and repair all medically necessary equipment for a designated resident, including DME or a CMWC obtained under this division, as required by §19.2601(b)(8)(C) of this chapter (relating to Vendor Payment (Items and Services Included)).

(f) A nursing facility must submit a request to replace DME or a CMWC of a designated resident in the same manner as a request for the authorization to provide DME or a CMWC to a designated resident. HHSC does not approve a request to replace a CMWC made within five years after a CMWC was purchased for the designated resident, unless the request includes:

(1) an order from the designated resident's attending physician; and

(2) an assessment by an occupational therapist or physical therapist licensed in Texas, with documentation explaining why the designated resident's current CMWC no longer meets the designated resident's needs.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Lawrence Hornsby
General Counsel
Department of Aging and Disability Services
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TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 209. FINANCE

SUBCHAPTER A. COLLECTION OF DEBTS

43 TAC §209.2

The Texas Department of Motor Vehicles (department) proposes amendments to Chapter 209, Finance, Subchapter A, Collection of Debts, §209.2, Charges for Dishonored Checks.

EXPLANATION OF PROPOSED AMENDMENTS

Proposed amendments to §209.2 add language to provide a mechanism for the collection of any charges assessed for a dishonored electronic payment by a banking institution to the operator of Texas.gov that are passed on to the Texas Department of Motor Vehicles.

FISCAL NOTE

Linda M. Flores, Chief Financial Officer, has determined that for each of the first five years the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the proposed amendments.

Jeremiah Kuntz, Director of Vehicles Titles and Registration, has determined that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed amendments.

PUBLIC BENEFIT AND COST

Mr. Kuntz has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing or administering the amendment will be enabling the department to offer Automated Clearing House payment options in the department's title and registration systems without bearing the burden of charges for dishonored electronic payment. Passing the cost ensures the responsible party (the customer with the dishonored payment) pays the extra cost that they incurred. There are no anticipated economic costs for persons required to comply with the amendments as proposed. There will be no adverse economic effect on small businesses or micro-businesses.

TAKINGS IMPACT ASSESSMENT

The department has determined that this proposal affects no private real property interests and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action, and so does not constitute a taking or require a takings impact assessment under Government Code, §2007.043.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments may be submitted to David D. Duncan, General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731 or by email to *rules@txdmv.gov.* The deadline for receipt of comments is 5:00 p.m. on April 24, 2017.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department.

CROSS REFERENCE TO STATUTE

Business and Commerce Code, §3.506.

§209.2. Charges for Dishonored Checks.

(a) Purpose. Business and Commerce Code, §3.506, authorizes the holder of a dishonored check, seeking collection of the face value of the check, to charge the drawer or endorser of the check a reasonable processing fee, not to exceed $30. This section prescribes policies and procedures for the processing of dishonored checks made payable to the department and the collection of fees because of the dishonor of a check made payable to the department.

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

(1) Department--The Texas Department of Motor Vehicles.

(2) Dishonored check--A check, draft, order, electronic payment, or other payment device that is drawn or made upon a bank or other financial institution, and that is not honored upon presentment because the account upon which the instrument has been drawn or made does not exist or is closed, or does not have sufficient funds or credit for payment of the instrument in full.

(c) Processing of dishonored checks. Upon receipt of notice from a bank or other financial institution of refusal to honor a check made payable to the department, the department will process the returned check using the following procedures.

(1) The department will send a written notice by certified mail, return receipt requested, to the drawer or endorser at the drawer or endorser's address as shown on:

(A) the dishonored check;

(B) the records of the bank or other financial institution; or

(C) the records of the department.

(2) The written notice will notify the drawer or endorser of the dishonored check and will request payment of the face amount of the check, any payment processor charges, and a $30 processing fee no later than 10 days after the date of receipt of the notice. The written notice will also contain the statement required by Penal Code, §32.41(c)(3).

(3) The face amount of the check, any payment processor charges, and the processing fee must be paid to the department:

(A) with a cashier's check or money order, made payable to the Texas Department of Motor Vehicles; or

(B) with a valid credit card, approved by the department, and issued by a financial institution chartered by a state or the United States, or a nationally recognized credit organization.

(4) Payments made by credit card must include the fee required by §209.23 of this chapter (relating to Methods of Payment).

(5) If payment is not received within 10 days after the date of receipt of the notice, the obligation will be considered delinquent and will be processed in accordance with §209.1 of this title (relating to Collection of Debts).

(d) Supplemental collection procedures. In addition to the procedures described in §209.1, the department may notify appropriate credit bureaus or agencies if the drawer or endorser fails to pay the face amount of a dishonored check, any payment processor charges, and the processing fee, or may refer the matter for criminal prosecution.

(e) Any payment to the department from the drawer or endorser of a dishonored check will be applied first to the processing fee.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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David D. Duncan
General Counsel
Texas Department of Motor Vehicles
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For further information, please call: (512) 465-5665

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CHAPTER 215. MOTOR VEHICLE DISTRIBUTION

SUBCHAPTER E. GENERAL DISTINGUISHING NUMBERS

43 TAC §215.140

The Texas Department of Motor Vehicles (department) proposes amendments to Chapter 215, Motor Vehicle Distribution, Subchapter E, General Distinguishing Numbers, §215.140, Established and Permanent Place of Business.

EXPLANATION OF PROPOSED AMENDMENTS

Amendments are proposed to §215.140 to clarify that the premises requirements apply to each dealer when multiple dealers are licensed at the same location.

FISCAL NOTE

Linda M. Flores, Chief Financial Officer, has determined that for each of the first five years the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the proposed amendments.

William P. Harbeson, Director of the Enforcement Division, has determined that there will be no impact on local economies or overall employment as a result of enforcing or administering the proposed amendments.

PUBLIC BENEFIT AND COST

Mr. Harbeson has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be clarifying for applicants for motor vehicle dealer licenses the requirements for conducting business as a dealer, and impeding dealers intent on violating the off-site sales law from using a single office at which multiple dealers will be licensed. There are no anticipated economic costs for persons required to comply with the amendments as proposed. There will be no adverse economic effect on small businesses or micro-businesses.

TAKINGS IMPACT ASSESSMENT

The department has determined that this proposal affects no private real property interests and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action, and so does not constitute a taking or require a takings impact assessment under Government Code, §2007.043.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments may be submitted to David D. Duncan, General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731 or by email to *rules@txdmv.gov.* The deadline for receipt of comments is 5:00 p.m. on April 24, 2017.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles (board) with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department under the Transportation Code; and more specifically, Transportation Code, §503.002, which authorizes the board to adopt rules to administer Chapter 503, Dealer's and Manufacturer's Vehicle License Plates.

CROSS REFERENCE TO STATUTE

Transportation Code, §§503.029, 503.030, and 503.032.

§215.140. Established and Permanent Place of Business.

A dealer must meet the following requirements at each licensed location and maintain the requirements during the term of the license. If multiple dealers are licensed at a location, each dealer must maintain the following requirements during the entire term of the license.

(1) Business hours for retail dealers.

(A) A retail dealer's office shall be open at least four days per week for at least four consecutive hours per day.

(B) The retail dealer's business hours for each day of the week must be posted at the main entrance of the retail dealer's office that is accessible to the public. The owner or a bona fide employee of the retail dealer shall be at the retail dealer's licensed location during the posted business hours for the purposes of buying, selling, exchanging, or leasing vehicles. If the owner or a bona fide employee is not available to conduct business during the retail dealer's posted business hours due to special circumstances or emergencies, a separate sign must be posted indicating the date and time the retail dealer will resume operations. Regardless of the retail dealer's business hours, the retail dealer's telephone must be answered from 8:00 a.m. to 5:00 p.m. weekdays by a bona fide employee, answering service, or answering machine.

(2) Business hours for wholesale motor vehicle dealers. A dealer that holds only a wholesale motor vehicle dealer's license must post its business hours at the main entrance of the wholesale motor vehicle dealer's office. A wholesale motor vehicle dealer shall be at the wholesale motor vehicle dealer's licensed location at least two weekdays per week for at least two consecutive hours per day. Regardless of the wholesale motor vehicle dealer's business hours, the wholesale motor vehicle dealer's telephone must be answered from 8:00 a.m. to 5:00 p.m. weekdays by a bona fide employee, answering service, or answering machine.

(3) Business sign requirements for retail dealers. A retail dealer must display a conspicuous, permanent sign with letters at least six inches in height showing the retail dealer's business name or assumed name substantially similar to the name reflected on the retail dealer's license under which the retail dealer conducts business. The sign must be permanently mounted at the address listed on the application for the retail dealer's license. A retail dealer may use a temporary sign or banner if that retail dealer can show proof that a sign that meets the requirements of this paragraph has been ordered.

(4) Business sign requirements for wholesale motor vehicle dealers. A wholesale motor vehicle dealer must display a conspicuous, permanent sign with letters at least six inches in height showing the wholesale motor vehicle dealer's business name or assumed name substantially similar to the name reflected on the wholesale motor vehicle dealer's license under which the wholesale motor vehicle dealer conducts business. The sign must be permanently mounted on the business property and shall be on the main door to the wholesale motor vehicle dealer's office or on the outside of the building that houses the wholesale motor vehicle dealer's office. If the wholesale motor vehicle dealer's office is located in an office building with one or more other businesses and an outside sign is not permitted by the landlord, a business sign permanently mounted on or beside the main door to the wholesale motor vehicle dealer's office with letters at least two inches in height is acceptable. A wholesale motor vehicle dealer may use a temporary sign or banner if the wholesale motor vehicle dealer can show proof that a sign that meets the requirements of this paragraph has been ordered.

(5) Office structure for a retail dealer and a wholesale motor vehicle dealer.

(A) A dealer's office must be located in a building with connecting exterior walls on all sides.

(B) A dealer's office must comply with all applicable local zoning ordinances and deed restrictions.

(C) A dealer's office may not be located within a residence, apartment, hotel, motel, or rooming house.

(D) The physical address of the dealer's office must be recognized by the U.S. Postal Service or capable of receiving U.S. mail. The department will not mail a license or a metal dealer's license plate to an out of state address.

(E) A portable-type office structure may qualify as an office only if the structure meets the requirements of this section and is not a readily moveable trailer or other vehicle.

(6) Required office equipment for a retail dealer and a wholesale motor vehicle dealer. At a minimum, a dealer's office must be equipped with:

(A) a desk;

(B) two chairs;

(C) internet access; and

(D) a working telephone number listed in the business name or assumed name under which the dealer conducts business.

(7) Number of retail dealers in one office. Not more than four retail dealers may be located in the same business structure. Each retail dealer located in the same business structure must meet the requirements of this section.

(8) Number of wholesale motor vehicle dealers in one office. Not more than eight wholesale motor vehicle dealers may be located in the same business structure. Each wholesale dealer located in the same business structure must meet the requirements of this section.

(9) Office sharing prohibition for retail dealers and wholesale motor vehicle dealers. Unless otherwise authorized by the Transportation Code, a retail dealer and a wholesale motor vehicle dealer licensed after September 1, 1999, may not be located in the same business structure.

(10) Dealer housed with other business.

(A) If a person conducts business as a dealer in conjunction with another business owned by the same person and under the same name as the other business, the same telephone number may be used for both businesses. If the name of the dealer differs from the name of the other business, a separate telephone listing and a separate sign for each business is required.

(B) A person may conduct business as a dealer in conjunction with another business not owned by that person only if the dealer owns the property on which business is conducted or has a separate lease agreement from the owner of that property that meets the requirements of this section. The same telephone number may not be used by both businesses. The dealer must have separate business signs, telephone listings, and office equipment required under this section.

(11) Display area requirements.

(A) A wholesale motor vehicle dealer is not required to have display space at the wholesale motor vehicle dealer's business premises.

(B) A retail dealer must have an area designated as display space for the retail dealer's inventory. A retail dealer's designated display area must comply with the following requirements.

(i) The display area must be located at the retail dealer's business address or contiguous with the retail dealer's address. A noncontiguous storage lot is permissible only if there is no public access and no sales activity occurs at the storage lot. A sign stating the retail dealer's name, telephone number, and the fact the property is a storage lot is permissible.

(ii) The display area must be of sufficient size to display at least five vehicles of the type for which the GDN is issued. Those spaces must be reserved exclusively for the retail dealer's inventory and may not be shared or intermingled with another business or a public parking area, a driveway to the office, or another dealer's display area.

(iii) The display area may not be on a public easement, right-of-way, or driveway unless the governing body having jurisdiction of the easement, right-of-way, or driveway expressly consents in writing to use as a display area. If the easement, right-of-way, or driveway is a part of the state highway system, use as a display area may only be authorized by a lease agreement.

(iv) If the retail dealer shares a display or parking area with another business, including another dealer, the dealer's vehicle inventory must be separated from the other business's display or

parking area by a material object or barrier that cannot be readily removed.

(v) The display area must be adequately illuminated if the retail dealer is open at night so that a vehicle for sale can be properly inspected by a potential buyer.

(vi) The display area may be located inside a building.

(12) Dealers holding a license issued under Occupations Code, Chapter 2302. If a dealer also holds a license issued under Occupations Code, Chapter 2302, each salvage motor vehicle that is offered for sale on the premises of the dealer's display area must be clearly and conspicuously marked with a sign informing a potential buyer that the vehicle is a salvage motor vehicle. This requirement does not apply to a licensed salvage pool operator.

(13) Lease requirements. If the premises from which a dealer conducts business, including any display area, is not owned by the dealer, the dealer must maintain a lease that is continuous during the period of time for which the dealer's license will be issued. The lease agreement must be on a properly executed form containing at a minimum:

(A) the name of the landlord as the lessor of the premises and the name of the dealer as the tenant or lessee of the premises;

(B) the period of time for which the lease is valid;

(C) the street address or legal description of the property, provided that if only a legal description of the property is included, the applicant must attach a statement that the property description in the lease agreement is the street address identified on the application; and

(D) the signature of the landlord as the lessor and the signature of the dealer as the tenant or lessee.

(14) Dealer must display license. A dealer must display the dealer's license issued by the department at all times in a manner that makes the license easily readable by the public and in a conspicuous place at each place of business for which the dealer's license is issued. If the dealer's license applies to more than one location, a copy of the original license may be displayed in each supplemental location.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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David D. Duncan
General Counsel
Texas Department of Motor Vehicles
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43 TAC §215.155

The Texas Department of Motor Vehicles (department) proposes an amendment to Chapter 215, Motor Vehicle Distribution, Subchapter E, General Distinguishing Numbers, §215.155, Buyer's Temporary Tags.

EXPLANATION OF PROPOSED AMENDMENT

Transportation Code, §503.063(g) requires a dealer to charge the buyer a fee of not more than $5 as prescribed by the department for each buyer's temporary tag issued. The statute directs this fee to be sent to the comptroller for deposit to the credit of the Texas Department of Motor Vehicles fund.

The proposed amendment adds subsection (f) to §215.155, Buyer's Temporary Tags. Proposed subsection (f) establishes the $5 fee and clarifies that if the vehicle is sold to an out-of-state buyer and the dealer is making payment through the department's electronic title system, the entire fee shall be remitted to the department for deposit to the credit of the Texas Department of Motor Vehicles fund. All other buyer's temporary tag fees shall be remitted to the county for deposit to the credit of the Texas Department of Motor Vehicles fund. The proposed amendment also clarifies that the buyer's temporary tag fee shall not be charged if the vehicle is exempt from payment of certain registration fees (exempt registration, all-terrain vehicle or recreational off-highway vehicle or off-highway motorcycle).

FISCAL NOTE

Linda M. Flores, Chief Financial Officer, has determined that for each of the first five years the amendment as proposed is in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the proposed amendment.

Jeremiah Kuntz, Director of Vehicle Titles and Registration, has determined that there will be no impact on local economies or overall employment as a result of enforcing or administering the proposed amendment.

PUBLIC BENEFIT AND COST

Mr. Kuntz has also determined that for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of enforcing or administering the amendment will be clarity in amount, applicability, and disposition of the buyer's temporary tag fee. There are no anticipated economic costs for persons required to comply with the amendment as proposed. There will be no adverse economic effect on small businesses or micro-businesses.

TAKINGS IMPACT ASSESSMENT

The department has determined that this proposal affects no private real property interests and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action, and so does not constitute a taking or require a takings impact assessment under Government Code, §2007.043.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendment may be submitted to David D. Duncan, General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731 or by email to *rules@txdmv.gov.* The deadline for receipt of comments is 5:00 p.m. on April 24, 2017.

STATUTORY AUTHORITY

The amendment is proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; and more specifically, Transportation Code, §503.002, which authorizes the board to adopt rules to administer Chapter 503, Dealer's and Manufacturer's Vehicle License Plates and Transportation Code, §503.063, which

authorizes the department to establish the buyer's temporary tag fee by rule.

CROSS REFERENCE TO STATUTE

Transportation Code, §503.0631 and §503.068.

§215.155. Buyer's Temporary Tags.

(a) A buyer's temporary tag may be displayed only on a vehicle that can be legally operated on the public streets and highways and for which a sale has been consummated.

(b) A buyer's temporary tag may be displayed only a vehicle that has a valid inspection in accordance with Transportation Code, Chapter 548.

(c) For a wholesale transaction, the purchasing dealer places on the motor vehicle its own:

(1) dealer's temporary tag; or

(2) metal dealer's license plate.

(d) A buyer's temporary tag is valid until the earlier of:

(1) the date on which the vehicle is registered; or

(2) the 60th day after the date of purchase.

(e) The dealer must ensure that the following information is placed on a buyer's temporary tag that the dealer issues:

(1) the vehicle-specific number obtained from the temporary tag database;

(2) the year and make of the vehicle;

(3) the VIN of the vehicle;

(4) the month, day, and year of the expiration of the buyer's temporary tag; and

(5) the name of the dealer.

(f) A dealer shall charge a buyer a fee of $5 for the buyer's temporary tag or Internet-down buyer's temporary tag issued, unless the vehicle is exempt from payment of registration fees under Transportation Code, §502.453 or §502.456 or an all-terrain vehicle or recreational off-highway vehicle under Transportation Code, §502.140 or Transportation Code, Chapter 663. The fee shall be remitted to the county in conjunction with the title transfer for deposit to the credit of the Texas Department of Motor Vehicles fund, unless the vehicle is sold to an out-of-state resident, in which case:

(1) the dealer shall remit the entire fee to the department for deposit to the credit of the Texas Department of Motor Vehicles fund if payment is made through the department's electronic title system; or

(2) the dealer shall remit the fee to the county for deposit to the credit of the Texas Department of Motor Vehicles fund.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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David D. Duncan
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CHAPTER 217. VEHICLE TITLES AND REGISTRATION

SUBCHAPTER B. MOTOR VEHICLE REGISTRATION

43 TAC §217.56

The Texas Department of Motor Vehicles (department) proposes amendments to Chapter 217, Vehicle Titles and Registration, Subchapter B, Motor Vehicle Registration, §217.56, Registration Reciprocity Agreements.

EXPLANATION OF PROPOSED AMENDMENTS

Amendments to §217.56 are proposed to adopt by reference the current versions of the International Registration Plan (IRP) and the IRP Audit Procedures Manual. Amendments are also proposed to correct language that is inconsistent with the IRP and to list the sources of the department's authority to cancel or revoke registration under §217.56.

FISCAL NOTE

Linda M. Flores, Chief Financial Officer, has determined that for each of the first five years the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the proposed amendments.

Jimmy Archer, Director of the Motor Carrier Division, has determined that there will be no impact on local economies or overall employment as a result of enforcing or administering the proposed amendments.

PUBLIC BENEFIT AND COST

Mr. Archer has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be a rule that is consistent with the IRP and Transportation Code, Chapter 502. There are no anticipated economic costs for persons required to comply with the amendments as proposed. There will be no adverse economic effect on small businesses or micro-businesses.

TAKINGS IMPACT ASSESSMENT

The department has determined that this proposal affects no private real property interests and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action, and so does not constitute a taking or require a takings impact assessment under Government Code, §2007.043.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments may be submitted to David D. Duncan, General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731 or by email to *rules@txdmv.gov.* The deadline for receipt of comments is 5:00 p.m. on April 24, 2017.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; and more specifically, Transportation

Code, §502.091(b), which authorizes the department to adopt rules to carry out the IRP.

CROSS REFERENCE TO STATUTE

Transportation Code, §502.091.

§217.56. Registration Reciprocity Agreements.

(a) Purpose. To promote and encourage the fullest possible use of the highway system and contribute to the economic development and growth of the State of Texas and its residents, the department is authorized by Transportation Code, §502.091 to enter into agreements with duly authorized officials of other jurisdictions, including any state of the United States, the District of Columbia, a foreign country, a state or province of a foreign country, or a territory or possession of either the United States or of a foreign country, and to provide for the registration of vehicles by Texas residents and nonresidents on an allocation or distance apportionment basis, and to grant exemptions from the payment of registration fees by nonresidents if the grants are reciprocal to Texas residents.

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

(1) Cab card--The apportioned vehicle registration receipt that contains, but is not limited to, the vehicle description and the registered weight at which the vehicle may operate in each jurisdiction.

(2) Department--The Texas Department of Motor Vehicles.

(3) Director--The director of the Motor Carrier Division, Texas Department of Motor Vehicles.

(4) Executive director--The chief executive officer of the department.

(5) Regional Service Center--A department office which provides specific services to the public, including replacement titles, bonded title rejection letters, and apportioned registration under the International Registration Plan (IRP).

(6) Temporary cab card--A temporary registration permit authorized by the department that allows the operation of a vehicle for 30 days subject to all rights and privileges afforded to a vehicle displaying apportioned registration.

(c) Multilateral agreements.

(1) Authority. The executive director may on behalf of the department enter into a multilateral agreement with the duly authorized officials of two or more other jurisdictions to carry out the purpose of this section.

(2) International Registration Plan.

(A) Applicability. The IRP is a registration reciprocity agreement among states of the United States and other jurisdictions providing for payment of registration fees on the basis of fleet distance operated in various jurisdictions. Its purpose is to promote and encourage the fullest possible use of the highway system by authorizing apportioned registration for commercial motor vehicles and payment of appropriate vehicle registration fees and thus contributing to the economic development and growth of the member jurisdictions.

(B) Adoption. The department adopts by reference the January 1, 2017, [~~2015,~~] edition of the IRP. [~~Effective January 1, 2016, the department adopts by reference the amendments to the IRP with an effective date of January 1, 2016. Effective July 1, 2016, the department adopts by reference the amendment to the IRP with an effective date of July 1, 2016.~~] The department also [~~further~~] adopts by reference the January 1, 2016, [~~July 1, 2013,~~] edition of the IRP Audit Procedures Manual. In the event of a conflict between this section and the IRP or the IRP Audit Procedures Manual, the IRP and the IRP Audit Procedures Manual control. Copies of the documents are available for review in the Motor Carrier Division, Texas Department of Motor Vehicles. Copies are also available on request. The following words and terms, when used in the IRP or in paragraph (2) of this subsection, shall have the following meanings, unless the context clearly indicates otherwise.

(i) Apportionable vehicle--Any vehicle - except recreational vehicles, vehicles displaying restricted plates, city pickup and delivery vehicles, and government-owned vehicles - used or intended for use in two or more member jurisdictions that allocate or proportionally register vehicles and used either for the transportation of persons for hire or designed, used, or maintained primarily for the transportation of property and:

(I) is a power unit having two axles and a gross vehicle weight or registered gross vehicle weight in excess of 26,000 pounds (11,793.401 kilograms);

(II) is a power unit having three or more axles, regardless of weight;

(III) is used in combination, when the weight of such combination exceeds 26,000 pounds (11,793.401 kilograms) gross vehicle weight; or

(IV) at the option of the registrant, a power unit, or the power unit in a combination of vehicles having a gross vehicle weight of 26,000 pounds (11,793.401 kilograms) or less.

(ii) Commercial vehicle--A vehicle or combination of vehicles designed and used for the transportation of persons or property in furtherance of any commercial enterprise, for hire or not for hire.

(iii) Erroneous issuance--Apportioned registration issued based on erroneous information provided to the department.

(iv) Established place of business--A physical structure owned or leased within the state of Texas by the applicant or fleet registrant and maintained in accordance with the provisions of the IRP.

(v) Fleet distance--All distance operated by an apportionable vehicle or vehicles used to calculate registration fees for the various jurisdictions.

(C) Application.

(i) An applicant must submit an application to the department on a form prescribed by the director, along with additional documentation as required by the director.

(ii) Upon approval of the application, the department will compute the appropriate registration fees and notify the registrant.

(D) Fees. Upon receipt of the applicable fees in the form as provided by §209.23 of this title (relating to Methods of Payment), the department will issue one or two license plates and a cab card for each vehicle registered.

(E) Display.

(i) The department will issue one license plate for a tractor, truck tractor, trailer, and semitrailer. The license plate issued to a tractor or a truck tractor shall be installed on the front of the tractor or truck tractor, and the license plate issued for a trailer or semitrailer shall be installed on the rear of the trailer or semitrailer.

(ii) The department will issue two license plates for all other vehicles that are eligible to receive license plates under the

IRP. Once the department issues two license plates for a vehicle listed in this clause, one plate shall be installed on the front of the vehicle, and one plate shall be installed on the rear of the vehicle.

(iii) The cab card shall be carried at all times in the vehicle in accordance with the IRP.

(F) Audit. An audit of the registrant's vehicle operational records may be conducted by the department according to the IRP provisions and the IRP Audit Procedures Manual. Upon request, the registrant shall provide the operational records of each vehicle for audit in unit number order, in sequence by date, and including, but not limited to, a summary of distance traveled by each individual vehicle on a monthly, quarterly, and annual basis with distance totaled separately for each jurisdiction in which the vehicle traveled.

(G) Assessment. The department may assess additional registration fees of up to 100% of the apportionable fees paid by the registrant for the registration of its fleet in the registration year to which the records pertain, as authorized by the IRP, if an audit conducted under subparagraph (F) of this paragraph reveals that:

(i) the operational records indicate that the vehicle did not generate interstate distance in two or more member jurisdictions for the distance reporting period supporting the application being audited, plus the six-month period immediately following that distance reporting period;

(ii) the registrant failed to provide complete operational records; or

(iii) the distance must be adjusted, and the adjustment results in a shortage of registration fees due Texas or any other IRP jurisdiction.

(H) Refunds. If an audit conducted under subparagraph (F) of this paragraph reveals an overpayment of fees to Texas or any other IRP jurisdiction, the department will refund the overpayment of registration fees in accordance with Transportation Code, §502.195 and the IRP. Any registration fees refunded to a carrier for another jurisdiction will be deducted from registration fees collected and transmitted to that jurisdiction.

(I) Cancellation or revocation. The director or the director's designee may cancel or revoke a registrant's apportioned registration and all privileges provided by the IRP as authorized by the following:

(i) the IRP; or

(ii) Transportation Code, Chapter 502. [~~if the registrant:~~]

~~*[(i)* submits payment in the form of a check that is dishonored;]~~

~~*[(ii)* files or provides erroneous information to the department; or]~~

~~*[(iii)* fails to:]~~

~~*[(I)* remit appropriate fees due each jurisdiction in which the registrant is authorized to operate;]~~

~~*[(II)* meet the requirements of the IRP concerning established place of business;]~~

~~*[(III)* provide operational records in accordance with subparagraph (F) of this paragraph;]~~

~~*[(IV)* provide an acceptable source document as specified in the IRP; or]~~

~~*[(V)* pay an assessment pursuant to subparagraph (G) of this paragraph.]~~

(J) Enforcement of cancelled or revoked registration.

(i) Notice. If a registrant is assessed additional registration fees, as provided in subparagraph (G) of this paragraph, and the additional fees are not paid by the due date provided in the notice or it is determined that a registrant's apportioned license plates and privileges should be canceled or revoked, as provided in subparagraph (I) of this paragraph, the director or the director's designee will mail a notice by certified mail to the last known address of the registrant. The notice will state the facts underlying the assessment, [~~or~~] cancellation, or revocation; the effective date of the assessment, [~~or~~] cancellation, or revocation; and the right of the registrant to request a conference as provided in clause (ii) of this subparagraph.

(ii) Conference. A registrant may request a conference upon receipt of a notice issued as provided by clause (i) of this subparagraph. The request must be made in writing to the director or the director's designee within 30 days of the date of the notice. If timely requested, the conference will be scheduled and conducted by the director or the director's designee at division headquarters in Austin and will serve to abate the assessment, [~~or~~] cancellation, or revocation unless and until that assessment, [~~or~~] cancellation, or revocation is affirmed or disaffirmed by the director or the director's designee. In the event matters are resolved in the registrant's favor, the director or the director's designee will mail the registrant a notice of withdrawal, notifying the registrant that the assessment, [~~or~~] cancellation, or revocation is withdrawn, and stating the basis for that action. In the event matters are not resolved in the registrant's favor, the director or the director's designee will issue a ruling reaffirming the department's assessment of additional registration fees or cancellation or revocation of apportioned license plates and privileges. The registrant has the right to appeal in accordance with clause (iii) of this subparagraph.

(iii) Appeal. If a conference held in accordance with clause (ii) of this subparagraph fails to resolve matters in the registrant's favor, the registrant may request an administrative hearing. The request must be in writing and must be received by the director no later than the 20th day following the date of the ruling issued under clause (ii) of this subparagraph. If requested within the designated period, the hearing will be initiated by the department and will be conducted in accordance with Chapter 206, Subchapter D of this title (relating to Procedures in Contested Cases). Assessment, [~~or~~] cancellation, or revocation is abated unless and until affirmed or disaffirmed by order of the Board of the Texas Department of Motor Vehicles.

(K) Reinstatement.

(i) The director or the director's designee will reinstate apportioned registration to a previously canceled or revoked registrant if all applicable fees and assessments due on the previously canceled or revoked apportioned account have been paid and the applicant provides proof of an acceptable recordkeeping system for a period of no less than 60 days.

(ii) The application for the following registration year will be processed in accordance with the provisions of the IRP.

(L) Denial of apportioned registration for safety reasons. The department will comply with the requirements of the Performance and Registration Information Systems Management program (PRISM) administered by the Federal Motor Carrier Safety Administration (FMCSA).

(i) Denial or suspension of apportioned registration. Upon notification from the FMCSA that a carrier has been placed out of service for safety violations, the department will:

(I) deny initial issuance of apportioned registration;

(II) deny authorization for a temporary cab card, as provided for in subparagraph (M) of this paragraph;

(III) deny renewal of apportioned registration; or

(IV) suspend current apportioned registration.

(ii) Issuance after denial of registration or reinstatement of suspended registration. The director or the director's designee will reinstate or accept an initial or renewal application for apportioned registration from a registrant who was suspended or denied registration under clause (i) of this subparagraph upon presentation of a Certificate of Compliance from FMCSA, in addition to all other required documentation and payment of fees.

(M) Temporary cab card.

(i) Application. The department may authorize issuance of a temporary cab card to a motor carrier with an established Texas apportioned account for a vehicle upon proper submission of all required documentation, a completed application, and all fees for either:

(I) Texas title as prescribed by Transportation Code, Chapter 501 and Subchapter A of this chapter (relating to Motor Vehicle Titles); or

(II) registration receipt to evidence title for registration purposes only (Registration Purposes Only) as provided for in Transportation Code, §501.029 and §217.24 of this title (relating to Vehicle Last Registered in Another Jurisdiction).

(ii) Title application. A registrant who is applying for a Texas title as provided for in clause (i)(I) of this subparagraph and is requesting authorization for a temporary cab card, must submit to a Regional Service Center by email, fax, overnight mail, or in person a photocopy of the title application receipt issued by the county tax assessor-collector's office.

(iii) Registration Purposes Only. A registrant who is applying for Registration Purposes Only under clause (i)(II) of this subparagraph and is requesting authorization for a temporary cab card, must submit an application and all additional original documents or copies of original documents required by the director to a Regional Service Center by email, fax, or overnight mail or in person.

(iv) Department approval. On department approval of the submitted documents, the department will send notice to the registrant to finalize the transaction and make payment of applicable registration fees.

(v) Finalization and payment of fees. To finalize the transaction and print the temporary cab card, the registrant may compute the registration fees through the department's apportioned registration software application, TxIRP system, and:

(I) make payment of the applicable registration fees to the department as provided by §209.23 of this title (related to Methods of Payment); and

(II) afterwards, mail or deliver payment of the title application fee in the form of a check, certified cashier's check, or money order payable to the county tax assessor-collector in the registrant's county of residency and originals of all copied documents previously submitted.

(vi) Deadline. The original documents and payment must be received by the Regional Service Center within 72-hours after the time that the office notified the registrant of the approval to print a temporary cab card as provided in clause (iv) of this subparagraph.

(vii) Failure to meet deadline. If the registrant fails to submit the original documents and required payment within the time prescribed by clause (vi) of this subparagraph, the registrant's privilege to use this expedited process to obtain a temporary cab card will be denied by the department for a period of six months from the date of approval to print the temporary cab card.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 10, 2017.

TRD-201701010
David D. Duncan
General Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: April 23, 2017
For further information, please call: (512) 465-5665

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 746. MINIMUM STANDARDS FOR CHILD-CARE CENTERS

SUBCHAPTER D. PERSONNEL

DIVISION 1. CHILD-CARE CENTER

40 TAC §746.1029

The Health and Human Services Commission, on behalf of the Department of Family and Protective Services (DFPS), withdraws proposed amendment to §746.1029, which appeared in the September 9, 2016, issue of the *Texas Register* (41 TexReg 6970). The term "management" for required college courses is the more commonly used term and was correctly used in the current rule versus the use of "business management" in the proposed rule.

Filed with the Office of the Secretary of State on March 8, 2017.

TRD-201700889
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: March 8, 2017
For further information, please call: (512) 438-3854

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SUBCHAPTER U. INDOOR AND OUTDOOR ACTIVE PLAY SPACE AND EQUIPMENT

DIVISION 1. MINIMUM SAFETY REQUIREMENTS

40 TAC §746.4607

The Health and Human Services Commission on behalf of the Department of Family and Protective Services withdraws the proposed repeal of §746.4607 which appeared in the September 9, 2016, issue of the *Texas Register* (41 TexReg 6970). The repeal and new §746.4607 are being withdrawn because the new rule included a change that inadvertently allowed the maximum height of the designated play surface to be higher than was intended, so DFPS is reverting to the current rule.

Filed with the Office of the Secretary of State on March 8, 2017.

TRD-201700891
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: March 8, 2017
For further information, please call: (512) 438-3854

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40 TAC §746.4607

The Health and Human Services Commission, on behalf of the Department of Family and Protective Services, withdraws the proposed new §746.4607 which appeared in the September 9, 2016, issue of the *Texas Register* (41 TexReg 6970). The repeal and new §746.4607 are being withdrawn because the new rule included a change that inadvertently allowed the maximum height of the designated play surface to be higher than was intended, so DFPS is reverting to the current rule.

Filed with the Office of the Secretary of State on March 8, 2017.

TRD-201700893
Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
Effective date: March 8, 2017
For further information, please call: (512) 438-3854

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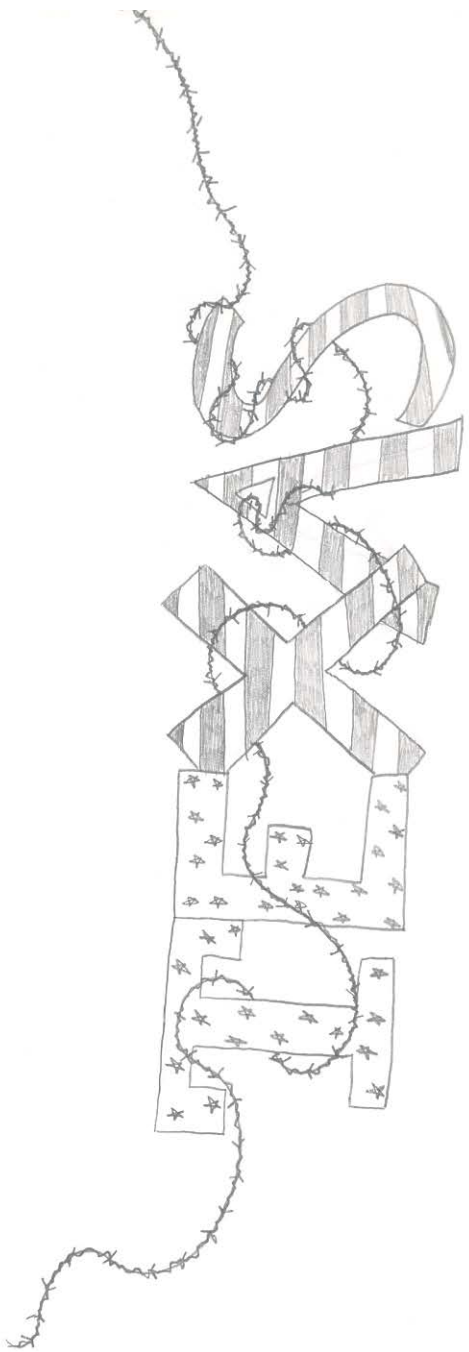

ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 13. CULTURAL RESOURCES

PART 8. TEXAS FILM COMMISSION

CHAPTER 121. TEXAS MOVING IMAGE INDUSTRY INCENTIVE PROGRAM

The Texas Film Commission (Commission) within the Office of the Governor, Economic Development and Tourism Office adopts amendments to 13 TAC §§121.1, 121.2, 121.7, 121.8, 121.10 - 121.12, and the repeal of 121.15 relating to the Texas Moving Image Industry Incentive Program (TMIIIP) under Subchapter B, Chapter 485 of the Texas Government Code. The rules are adopted without changes to the proposed text as published in the December 16, 2016, issue of the *Texas Register* (41 TexReg 9815).

Reasoned Justification for Adoption and Repeal

The CPA audit opinion requirement in §121.15 is repealed. Since current Commission practice is that grantee expenditures for qualifying projects are subject to verification by the Commission and an additional compliance review by the Office of the Governor, the requirement for grantees to obtain a CPA audit opinion is administratively unnecessary. Repeal of the CPA audit opinion requirement necessitates the adopted amendments to rules: §121.1(a) (Background and Purpose); §121.2 (Definitions); §121.7 (Underutilized and Economically Distressed Areas); §121.11 (Confirmation and Verification of Texas Expenditures); §121.12 (Disbursement of Funds).

The Commission also adopts confirming amendments to clarify the current Commission practice that grantee expenditures for qualifying projects are subject to verification by the Commission and an additional compliance review by the Office of the Governor. The adopted amendments include modifications to §121.1 (Background and Purpose); §121.11 (Confirmation and Verification of Texas Expenditures) and §121.12 (Disbursement of Funds).

Finally, the Commission adopts amendments to accept TMIIIP applications up to 120 calendar days prior to the commencement of production of eligible projects. The adopted amendments include modifications to §121.8 (Grant Application) and §121.10 (Disqualification of an Application).

Public Comments

No comments were received regarding the proposed adoptions.

13 TAC §§121.1, 121.2, 121.7, 121.8, 121.10 - 121.12

Statutory Authority

The rules are adopted under §485.022 and §485.024 of the Texas Government Code, which require the Commission to develop procedures for the administration of grant awards under the TMIIIP program.

Cross Reference to Statute

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 7, 2017.

TRD-201700866
Diane Morris
Deputy General Counsel
Texas Film Commission
Effective date: March 27, 2017
Proposal publication date: December 16, 2016
For further information, please call: (512) 463-1955

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13 TAC §121.15.

Statutory Authority

The repeal is adopted under §485.022 and §485.024 of the Texas Government Code, which require the Commission to develop procedures for the administration of grant awards under the TMIIIP program, including rules prescribing the methods used for determining grant amounts based on an analysis of in-state spending.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 7, 2017.

TRD-201700867
Diane Morris
Deputy General Counsel
Texas Film Commission
Effective date: March 27, 2017
Proposal publication date: December 16, 2016
For further information, please call: (512) 463-1955

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER H. ELECTRICAL PLANNING

DIVISION 2. ENERGY EFFICIENCY AND CUSTOMER-OWNED RESOURCES

16 TAC §25.181

The Public Utility Commission of Texas (commission) adopts an amendment to §25.181, relating to energy efficiency goal, without changes to the proposed text as published in the November 11, 2016, issue of the *Texas Register* (41 TexReg 8885). The amendment requires that electric utilities' residential and commercial energy efficiency cost recovery factor (EECRF) cost caps be increased or decreased by a rate equal to the most recently available calendar year's percentage change in the South urban consumer price index (CPI), as determined by the Federal Bureau of Labor Statistics. The amendment replaces the provision in the rule that required that the EECRF cost caps only increase in response to an increase in the South urban CPI. In addition, the amendment updates the benchmarks used for calculating the EECRF cost caps for future program years and deletes obsolete language. This amendment is adopted under Project Number 46388.

The commission received comments on the proposed amendment from AEP Texas Central Company (AEP TCC); AEP Texas North Company (AEP TNC); CenterPoint Energy Houston Electric, LLC; El Paso Electric Company (EPE); Entergy Texas, Inc. (ETI); Oncor Electric Delivery Company, LLC (Oncor); Sharyland Utilities, L.P. (Sharyland); Southwestern Electric Power Company (SWEPCO); Southwestern Public Service Company (SPS); and Texas-New Mexico Power Company (TNMP) (collectively Joint Utilities); and the Environmental Defense Fund, Inc. (EDF).

Section 25.181, Energy Efficiency Goal

Subsection (f)(7) Cost recovery

The Joint Utilities supported the proposed amendment that requires electric utilities' residential and commercial EECRF cost caps be increased or decreased by a rate equal to the most recently available calendar year's percentage change in the South urban CPI, as determined by the Federal Bureau of Labor Statistics.

EDF stated that it joined the Joint Utilities in support of the portion of the proposed amendment to subsection (f) that would allow the residential and commercial EECRF cost caps to increase in response to an increase in the percentage change to the South urban CPI. However, EDF recommended that the portion of the amendment to subsection (f) that would allow the EECRF cost caps to be decreased due to a negative percentage change in the South urban CPI be rejected. EDF noted that pursuant to PURA §39.905(a)(3)(A)(ii) and (B)(ii), the amount of energy efficiency to be acquired for the utility's residential and commercial customers shall not be less than the amount acquired in the most recent preceding year. EDF pointed out that the utilities' energy efficiency goals will not decrease in years when the percentage change in the South urban CPI as determined by the Federal Bureau of Labor Statistics is negative. Furthermore, EDF reasoned that there is no certainty that costs to achieve the goals will decline in tandem with percentage changes to the South urban CPI.

Commission Response

The commission declines to make changes to the proposed amendment in response to EDF's comments. The existing rule increases the cost cap when the rule's measure of inflation shows an increase in costs. It is therefore just and reasonable to amend the rule to require a decrease in the cost cap when the rule's measure of inflation shows a decrease in costs.

Subsection (y) Effective date (deleted)

No comments.

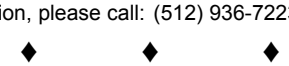
This amendment is adopted under the Public Utility Regulatory Act (PURA), Texas Utilities Code Annotated §14.002 (West 2016), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §36.204, which authorizes the commission to establish rates for an electric utility that allow timely recovery of the reasonable costs for conservation and load management, including additional incentives for conservation and load management; and PURA §39.905, which requires the commission to provide oversight of energy efficiency programs of electric utilities subject to that section and adopt rules and procedures to ensure that electric utilities subject to that section can achieve their energy efficiency goals, including rules providing for EECRFs and an incentive for electric utilities that meet the energy efficiency goals.

Cross Reference to Statutes: PURA §§14.002, 36.204, and 39.905.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 10, 2017.

TRD-201701005
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: March 30, 2017
Proposal publication date: November 11, 2016
For further information, please call: (512) 936-7223



PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 84. DRIVER EDUCATION AND SAFETY

(Editor's Note: Due to editing errors in the proposed rulemaking notice, incorrect language appeared in 16 TAC §§84.41, 84.46, 84.51, 84.61, 84.71, and 84.505 as published in the October 28, 2016, issue of the Texas Register (41 TexReg 8388). For the purpose of clarity, those sections are being republished in this issue as originally submitted by the Texas Department of Licensing and Regulation.)

The Texas Commission of Licensing and Regulation (Commission) adopts the repeal of current rules at 16 Texas Administrative Code (TAC), Chapter 84, Subchapter A, §§84.100 - 84.119;

Subchapter B, §§84.200 - 84.217; Subchapter C, 84.300 - 84.310; Subchapter D, §84.400; Subchapter E, §84.500; Subchapter F, §84.600 and §84.601; Subchapter G, §84.700 and §84.701; and proposed new rules Subchapter A, §84.1; Subchapter B, §§84.30 - 84.34; Subchapter C, §§84.40, 84.44, 84.45, and 84.47; Subchapter D, §84.52; Subchapter E, §84.60 and §84.63; Subchapter F, §84.70 and §84.72; Subchapter G, §§84.80, 84.81, 84.83 and 84.84; Subchapter H, §84.90; Subchapter I, §§84.100 - 84.102; Subchapter K, §84.300 - 84.302; Subchapter L, §84.400 and §84.401; Subchapter M, §84.504 and §84.506; and Subchapter N, §84.600 and §84.601, regarding the Driver Education and Safety program, without changes to the proposed text as published in the October 28, 2016, issue of the *Texas Register* (41 TexReg 8388). The rules will not be republished.

The Commission also adopts new rules at 16 TAC, Chapter 84, Subchapter A, §84.2; Subchapter C, §84.42 and §84.43; Subchapter D, §84.50; Subchapter E, §84.62 and §84.64; Subchapter G, §84.82; Subchapter J, §84.200; and Subchapter M, §§84.500 - 84.503, with changes to the proposed text as published in the October 28, 2016, issue of the *Texas Register* (41 TexReg 8388). The rules will be republished. As previously noted, §§84.41, 84.46, 84.51, 84.61, 84.71, and 84.505 will be republished for the purposes of clarification.

The Texas Legislature enacted House Bill 1786 (H.B. 1786), 84th Legislature, Regular Session (2015), that transferred the Driver Education and Safety program from the Texas Department of Public Safety and the Texas Education Agency to the Department. The Department transferred the rules from Title 19 and Title 37, on September 1, 2015, and the Department has been operating the program under the transferred rules since that date. The transferred rules were placed in 16 TAC, Chapter 84, and organized as Subchapters A-G. The rules had the same content as in their former Administrative Code locations. These adopted rules have reorganized 16 TAC Chapter 84 into additional Subchapters to facilitate ease of use, and now there are Subchapters A-N. These adopted rules are the first of two phases in the rulemaking for 16 TAC Chapter 84. Subchapters A-L that pertain to licensing and regulatory functions were reorganized and consolidated in this first phase of the rulemaking, and the second phase, pertaining to Subchapters M and N containing courses of instruction and alternative delivery methods, will be reorganized and clarified in a second phase, after additional Advisory Committee workgroup and Advisory Committee discussions.

The adopted repeal and new rules are required to implement H.B. 1786 enabling the Department to regulate the Driver Education and Safety program, including licensing, compliance, course curriculum and enforcement, if necessary. The adopted rules are streamlined and reorganized. The adopted rules remove unnecessary duplications, consolidate licensing requirements, remove rules no longer required by statute, reduce certain impediments to business operations, clarify licensing requirements and correct agency references.

The adopted repeal of current Subchapter A, §§84.100 - 84.119 will allow the Department to consolidate, reorganize and clarify the requirements for driver education schools.

The adopted repeal of current Subchapter B, §§84.200 - 84.217 will allow the Department to consolidate, reorganize and clarify the requirements for driving safety schools and course providers.

The adopted repeal of current Subchapter C, §§84.300 - 84.310 will allow the Department to consolidate, reorganize and clarify the requirements of drug and alcohol awareness programs, including schools and course providers.

The adopted repeal of current Subchapter D, §84.400 will allow the Department to conduct contested case proceedings and hearings for the program at the State Office of Administrative Hearings (SOAH), and not before the commissioner of education.

The adopted repeal of current Subchapter E, §84.500 will allow the Department to reorganize parent taught driver education requirements.

The adopted repeal of current Subchapter F, §84.600 and §84.601 allows the Department to reorganize and clarify the process for parent taught driver education course approval.

The adopted repeal of current Subchapter G, §84.700 and §84.701 allows the Department to reorganize and clarify course requirements and procedures for student certification and transfers for driver education taught in public schools, education centers or colleges and universities.

The adopted new Subchapter A provides the General Provisions for the proposed new rules.

The adopted new §84.1 provides statutory authority for the Department to regulate the driver education and safety program.

The adopted new §84.2 creates the definitions to be used in the driver education and safety program.

The adopted new Subchapter B describes the Driver Training and Traffic Safety Advisory Committee.

The adopted new §84.30 details the membership of the advisory committee.

The adopted new §84.31 explains the duties of the advisory committee.

The adopted new §84.32 sets forth the term limits of the advisory committee, and filling vacancies on the committee.

The adopted new §84.33 provides for a presiding officer of the advisory committee.

The adopted new §84.34 sets forth when meetings of the advisory committee shall take place.

The adopted new Subchapter C relates to licensing and requirements of driver education schools and instructors.

The adopted new §84.40 details the driver education school licensure requirements.

The adopted new §84.41 details the driver education school responsibilities.

The adopted new §84.42 explains the motor vehicle requirements when used by a driver education school for in-car instruction.

The adopted new §84.43 explains the requirements for a driver education school to issue driver education certificates.

The adopted new §84.44 details the driver education instructor license requirements.

The adopted new §84.45 explains how to document student progress in driver education schools.

The adopted new §84.46 explains the attendance and makeup requirements for students attending a driver education school.

The adopted new §84.47 provides the statements required to be included in a student enrollment contract pertaining to student conduct, dismissal and reentry.

The adopted new Subchapter D relates to parent taught driver education.

The adopted new §84.50 details parent taught driver education requirements.

The adopted new §84.51 details how to submit a parent taught driver education course for the Department's approval.

The adopted new §84.52 explains the process for the Department to cancel a parent taught driver education course that was previously approved.

The adopted new Subchapter E relates to licensing and requirements of driving safety schools, course providers and instructors.

The adopted new §84.60 details the driving safety school licensure requirements.

The adopted new §84.61 details the driving safety school and course provider responsibilities.

The adopted new §84.62 details course provider license requirements.

The adopted new §84.63 explains the requirements for the handling, storage and issuance of the certificates of course completion for a driving safety or specialized driving safety course.

The adopted new §84.64 details requirements for the licensing of driving safety instructors.

The adopted new Subchapter F relates to drug and alcohol awareness programs and their instructors.

The adopted new §84.70 details the drug and alcohol awareness program school licensure requirements.

The adopted new §84.71 explains school and course provider responsibilities for drug and alcohol awareness programs.

The adopted new §84.72 details the instructor license requirements for drug and alcohol awareness programs.

The adopted new Subchapter G relates to general business practices and operations and administrative requirements for driver education schools, driving safety schools, course providers and drug and alcohol awareness schools.

The adopted new §84.80 explains name and advertising guidelines.

The adopted new §84.81 details recordkeeping requirements.

The adopted new §84.82 details student enrollment contracts.

The adopted new §84.83 explains the process for student complaints and a grievance procedure.

The adopted new §84.84 explains what documents must contain notification to the consumer or service recipients of the name and other contact information of the department for the purpose of directing complaints to the department in the Driver Education and Safety program.

The adopted new Subchapter H relates to facilities and equipment for driver education schools, driving safety schools and drug and alcohol driving awareness schools.

The adopted new §84.90 details the facilities and equipment requirements.

The adopted new Subchapter I relates to how and when the Department conducts inspections at the driver education schools.

The adopted new §84.100 provides general guidelines for inspections.

The adopted new §84.101 explains initial inspections of driver education schools before becoming operational.

The adopted new §84.102 explains periodic inspections.

The adopted new Subchapter J relates to driver education and driving safety school, and course provider cancellation and refund policies.

The adopted new §84.200 details the cancellation and refund policies.

The adopted new Subchapter K relates to licensing fees.

The adopted new §84.300 provides for fees relating to driver education.

The adopted new §84.301 provides for fees relating to driving safety.

The adopted new §84.302 provides for fees relating to the drug and alcohol awareness program.

The adopted new Subchapter L relates to complaints and enforcement provisions.

The adopted new §84.400 provides for administrative penalties and sanctions.

The adopted new §84.401 explains the Department's enforcement authority, and cites which laws authorize the Department to impose sanctions and administrative penalties.

The adopted new Subchapter M relates to curriculum and alternative methods of instruction (AMI) for driver education, including continuing education.

The adopted new §84.500 details the requirements for courses of instruction for driver education schools, including course content.

The adopted new §84.501 details the approval process and course content for driver education school online courses.

The adopted new §84.502 details the requirements for driving safety courses of instruction, including course content.

The adopted new §84.503 details the content for specialized driving safety courses of instruction, and continuing education.

The adopted new §84.504 details the approval process and course content for driving safety courses taught through an Alternative Delivery Method (ADM).

The adopted new §84.505 details the program content for drug and alcohol driving awareness programs of instruction.

The adopted new §84.506 details the approval process and course content for drug and alcohol.

The adopted new Subchapter N relates to the program of organized instruction (POI) for public schools, education service centers, and colleges or universities.

The adopted new §84.600 details the requirements of the program of organized instruction (POI).

The adopted new §84.601 explains the procedures for student transfers, and the Department's delivery of the student certifications.

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the October 28, 2016, issue of the *Texas Register* (41 TexReg 8388). The deadline for public comments was November 28, 2016. During the 30-day public comment period the Department received comments from twelve interested parties on the proposed rules. One late comment was also received. Many of the comments concerned the sections in the rules relating to curriculum and course content which is a part of the phase two rulemaking. During phase one the Department focused on clarifying license requirements and regulatory functions. Phase two of the rulemaking will focus on overhauling the curriculum; courses of instruction; and alternative delivery methods. Though the Department declined to make some of these changes regarding phase two rulemaking, the workgroup is currently addressing them. The public comments received are summarized below.

Comment--One commenter requested the Director of the school be present when audits are conducted.

Department Response--The Department does not recommend changing §84.100 at this time because the Department believes that since inspections are unannounced, then that would be difficult on the school.

Comment--One commenter believes §84.46(c) restricts schools from teaching more than two hours of classroom instruction daily and should be removed.

Department Response--The Department does not recommend changing this section at this time because the department believes that two hours of classroom time is appropriate. This could be addressed in phase two.

Comment--Two commenters expressed concern regarding the requirements for Teacher of Record and expressed that a person with the designation of Teaching Assistant-Full should be able to sign off as the Teacher of Record.

Department Response--The Department does not recommend changing §84.44(b)(4) and (5) at this time because the issues needed more discussion, but it is being considered in phase two.

Comment--One commenter submitted two separate comments regarding the definition and use of 'clock hour' in §84.2(7). The commenter recommended that a 'clock hour' be consistent across all schools/programs in this chapter, and alleged that there was no statutory basis for having a disparity in clock hours between a Driver Education School Clock Hour (50 minutes of instruction time in a 60-minute period, and 55 minutes of instruction time for Driver Safety and Drug And Alcohol Awareness Programs.) He recommended 50 minutes for each.

Department Response--The disparity in clock hours does not conflict with Chapter 1001, Education Code and the disparity has been in the rules for many years. The Department does not recommend changing it at this time; however, the disparity is being discussed in phase two.

Comment--One commenter disagrees with the proposed new language describing the "rate per classroom lesson" and the "rate per in-car lesson" in §84.82(2)(N) and (O) regarding the student enrollment contracts and would like it to remain "rate per classroom lesson that corresponds to actual instructional costs" and "rate per in-car lesson that corresponds to actual instructional costs".

Department Response--The phase one workgroup specifically removed the language relating to 'actual instructional costs' because they felt it was a burden to business to restrict how a school could calculate their rates. The Department does not recommend changing this language.

Comment--The National Safety Council (NSC) submitted comments regarding five issues. The first issue recommended that the department write rules for the Driving Safety Course for Driver Younger than 25 Years of Age, as set out in Section 1001.111, Texas Education Code. (Note: this commenter also made a late comment on this same topic after the comment period was closed.)

Department Response--The Department does not recommend changing the rules at this time, but these are being considered in phase two.

Comment--The second issue the NSC raised was to clarify the role of an Instructor Development Course (IDC) - Driving Safety Instructor Trainer (DSIT) in §84.64(c)(5)(A) and (6)(A).

Department Response--The Department does not recommend changing the rule at this time, but this is being considered in phase two.

Comment--The third issue the NSC recommended was bringing back the previous amount of clock hours for an instructor development course for driving safety instructors in §84.502 (a)(2)(A).

Department Response--The Department does not recommend changing at this time, but this will be considered in phase two.

Comment--The fourth issue the NSC recommended was bringing back the former amount of classes to be taken for a DSIT in §84.502(a)(5)(A) and §84.503.

Department Response--The Department does not recommend changing at this time, but this will be considered in phase two.

Comment--The final issue the NSC requested was for the department to change §84.64(d)(1) to state that a driving instructor may submit their renewals directly and not through the course provider.

Department Response--The Department is still following the current rule requirement so that the course provider is required to submit the renewal; however, this is in the process of changing to what the commenter recommended, and is being considered in phase two.

Comment--Driver Ed in a Box submitted comments, recommending twelve changes: amend the definition of 'Advertising' in §84.2 because it's too broad; delete the requirement in §84.41(b)(4) that each driver education certificate contain the department's complaint contact information and telephone; remove the requirement in §84.83(c) that the front of each uniform certificate of course completion shall contain department complaint contact information and current department telephone number and email; amend §84.500(b)(1)(A)(ii) so that driver education in-vehicle training is limited to two hours per day instead of one hour; amend §84.500 (b)(1)(R) so that there is no provision for simulation hours; amend §84.500(b)(2)(A) to replace the word 'required' with 'recommended' times to cover course content; amend §84.500 (b)(2)(II) and §84.501(c)(2) to remove the third- party data method for personal validation as an option; amend §84.500 (b)(2)(vii) so that the requirement to retest the student after failing a driver education test three times is not a rule, but by choice of the school; amend §84.500(b)(2)(xii), §84.504(l) and §84.506(l) so that access to the instructor includes 'support staff' and questions the term

'flow of instructional information'; and amend §84.600 to remove simulation hours.

Department Response--The Department does not recommend making changes at this time; however, each of these comments is being addressed in phase two.

Comment--SafeWay Driving submitted comments recommending that the department make twelve changes. These first six recommend changes are: amend §84.2(15) defining 'instructor trainer' to clarify the duties of a driving safety instructor trainer; amend §84.42 to replace 'Department of Transportation' with 'Department of Motor Vehicles'; amend §84.43 to add 'licensed driver education school' to clarify who can request DE-964's; amend §84.50 to clarify who a DE-964 may be given to; amend §84.64(c)(3)(A) and (B) and (c)(4); §84.502(a)(1)(E)(iii); §84.503(a)(1)(E)(iii) and (a)(2)(A), (E) and (F) to correct the required hours of training needed by a driving safety instructor in order to get a license; and amend §84.500(b)(1)(C) to replace 'commissioner' with 'executive director'.

Department Response--Each of these changes have been made to the proposed rules and agreed upon by the Driver Education and Traffic Safety Advisory Committee.

Comment--SafeWay Driving's remaining comments recommend that the department: amend §84.72(b) to add 'other than learner license or provisional license', and replace 'five' with 'three' years; amend §84.81(a)(3)(B)(ix) so that it is clear that Teacher of Record must sign all completed classroom records if the classroom instruction was provided by a Supervising Teaching Assistant-Full or Teaching Assistant-Full; and amend §84.101(a) so that a 'relocated' driver education school would not need to be inspected and approved by the department before it could operate.

Department Response--The Department does not recommend making changes at this time, as the comments are being considered in phase two.

Comment--Texas Driving School submitted comments requesting twenty-seven changes. Several of which mirror the comments of SafeWay Driving relating to the total number of hours required for obtaining a driving safety instructor license. Those include the following sections: §84.502(a)(2)(A); §84.502(a)(2)(E); §84.503(a)(2)(A) and (E).

Department Response--The Department made the recommended changes.

Comment--Additionally, Texas Driving School's comments included the following suggestions: amend §84.200 (f) to remove the requirement for a school to submit a report to the department of an audit conducted by a certified or public accountant, in case the school does not routinely pay refunds; amend §84.500(b)(1)(O) to replace the phrase 'instruction permit' with 'learner license'; amend §84.500(d)(5) and §84.503(a)(3)(B) to remove the requirement for driver education school owners and course providers to notify the department of the scheduled times, dates and locations of all CE courses at least ten days prior to teaching the course; amend §84.502(a)(1)(B) and 84.503(a)(1)(B) to remove the requirement that a specially certified translator be required when a course provider submits a course in a language other than English; and amend §84.503(a)(1)(G) and (H) to remove the requirement for students to evaluate a specialized driving safety course of instruction and the requirement for a course provider to collect student data for the department.

Department Response--The Department made the recommended changes.

Comment--Texas Driving School's final suggestions included the following: amend §84.100(b) and (d) so that the Department must notify the driver education school owner in advance of a periodic inspection; amend §84.500(b)(1)(A) to increase the driver education endorsed by the parent from one to two hours per day; amend §84.500(b)(1)(K) and §84.500(b)(2)(A)(iv)(IV) to add the words 'per class' to the enrollment limit of 36 students for a driver education school; amend §84.500(b)(1)(N) to remove the requirement for driver education schools to notify the parents in a contract that they allow one-on-one instruction; amend §84.500(b)(1)(P) to remove the time limitations for schools to provide in-car instruction and also to remove the term 'school director'; amend §84.500(b)(1)(T) to remove it entirely, regarding the requirement for a DE instructor to complete a DPS form DL-42; amend §84.500(c)(3) to replace the phrase 'supervising teaching assistant-full'; amend §84.502(a)(1)(D)(i)-(xiii) to adjust (increase) the minimum times in driving safety courses to meet objectives; amend §84.502(a)(2)(D) and §84.503(A)(2)(D) to include 'or classroom' to the locations where approved driving safety instructor and specialized driving safety instructor development courses may be taught; and amend §84.503(a)(2)(F) to remove it entirely.

Department Response--The Department does not recommend making the recommended changes at this time; however, these comments are being considered in phase two. The Department maintains that unannounced inspections are a core function of responsible regulatory work, and does not recommend removing that requirement.

The Driver Training and Traffic Safety Advisory Committee (Advisory Committee) met on September 22, 2016, and recommended the rules be published in the *Texas Register* for public comment.

The Advisory Committee met again on February 8, 2017, to review the rule publication and the public comments received. The Department and the Advisory Committee recommended changes to the proposed rules based on the public comments received and the Advisory Committee discussion. The Advisory Committee voted and unanimously recommended that the Commission adopt the proposed rules as published in the *Texas Register* with changes. At its meeting on March 1, 2017, the Commission adopted the proposed rules with changes as recommended by the Advisory Committee and the Department.

SUBCHAPTER A. COMMISSIONER'S RULES ON MINIMUM STANDARDS FOR OPERATION OF LICENSED TEXAS DRIVER EDUCATION SCHOOLS

16 TAC §§84.100 - 84.119

The repeal is adopted under Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. COMMISSIONER'S RULES ON MINIMUM STANDARDS FOR OPERATION OF LICENSED TEXAS DRIVING SAFETY SCHOOLS AND COURSE PROVIDERS

16 TAC §§84.200 - 84.217

The repeal is adopted under Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the adoption.

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SUBCHAPTER C. COMMISSIONER'S RULES ON MINIMUM STANDARDS FOR OPERATION OF TEXAS DRUG AND ALCOHOL DRIVING AWARENESS PROGRAMS

16 TAC §§84.300 - 84.310

The repeal is adopted under Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

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SUBCHAPTER D. COMMISSIONER'S RULES ON HEARINGS HELD UNDER THE TEXAS EDUCATION CODE, CHAPTER 1001

16 TAC §84.400

The repeal is adopted under Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the adoption.

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SUBCHAPTER E. PARENT TAUGHT DRIVER EDUCATION

16 TAC §84.500

The repeal is adopted under Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the adoption.

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SUBCHAPTER F. DEPARTMENT APPROVED DRIVER EDUCATION COURSE

16 TAC §84.600, §84.601

The repeal is adopted under Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the adoption.

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SUBCHAPTER G. COMMISSIONER'S RULES CONCERNING DRIVER EDUCATION STANDARDS OF OPERATION FOR PUBLIC SCHOOLS, EDUCATION SERVICE CENTERS, AND COLLEGES OR UNIVERSITIES

16 TAC §84.700, §84.701

The repeal is adopted under Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the adoption.

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SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §84.1, §84.2

The new rules are adopted under Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the adoption.

§84.2. Definitions.

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

(1) ADE-1317--The driver education certificate of completion used for certifying completion of a driver education course exclusively for adults. This term encompasses all parts of a certificate of completion with the same control number issued for an approved driver education course. It is a government record.

(2) Advertising--Any affirmative act, whether written or oral, designed to call public attention to a school and/or course in order to evoke a desire to patronize that school or course. This includes Meta tags and search engines.

(3) Alternative method of instruction--A method of instruction for the minor and adult driver education course that does not require students to be present in a classroom.

(4) Branch school--A licensed driver education school that has the same ownership and name as a licensed primary driver education school.

(5) Certificate of program completion--serially numbered certificates that are printed, administered, and supplied by the course provider that have been approved by the department as part of the drug and alcohol awareness program.

(6) Change of ownership of a school or course provider--A change in the control of the school. The control of a school is considered to have changed:

(A) in the case of ownership by an individual, when more than 50% of the school or course provider has been sold or transferred;

(B) in the case of ownership by a partnership or a corporation, when more than 50% of the school or course provider, or of the owning partnership or corporation has been sold or transferred; or

(C) when the board of directors, officers, shareholders, or similar governing body has been changed to such an extent as to significantly alter the management and control of the school or course provider.

(7) Clock hour:

(A) Driver Education School Clock hour--55 minutes of instruction time in a 60-minute period for a driver education course. This includes classroom and in-car instruction time.

(B) Driving Safety School and Drug and Alcohol Awareness Program Clock Hour--50 minutes of instruction in a 60-minute period for a driving safety course.

(8) Code--Refers to Texas Education Code, Chapter 1001.

(9) Contract site--An accredited public or private secondary school approved as a location for a driver education course of a licensed school. A driver training school may conduct a driver training course at a public or private school for students of the public or private school as provided by an agreement with the public or private school. The course is subject to any law applicable to a course conducted at the main business location of the driver training school.

(10) Criminal history record information--In accordance with the Texas Government Code, §411.082(2), information collected about a person by the Texas Department of Public Safety, a law enforcement or a criminal justice agency, or a private entity governed by the Fair Credit Reporting Act (15 United States Code, §1681 et seq.) that consists of identifiable descriptions and notations of arrests, detentions, indictments, and other formal criminal charges and their dispositions.

(11) DE-964--The driver education certificate of completion used for certifying completion of an approved minor and adult driver education course. This term encompasses all parts of a certificate of completion with the same control number issued for an approved driver education course. It is a government record.

(12) Educational objectives--The goal to promote respect for and encourage observance of traffic laws and traffic safety responsibilities of driver education and citizens; reduce traffic violations; reduce traffic-related injuries, deaths, and economic losses; and motivate development of traffic-related competencies through education, including, but not limited to, Texas traffic laws, risk management, driver attitudes, courtesy skills, and evasive driving techniques.

(13) Good reputation--A person is considered to be of good reputation if the department determines that the person is eligible for licensure, based on the department's review of the application, any supporting documentation and analysis pursuant to any of the laws and rules that relate to the license requirements, including but not limited to this chapter; 16 Texas Administrative Code Chapter 60; Texas Education Code Chapter 1001; and Texas Occupations Code Chapters 51 and Chapter 53.

(14) Inactive course--a driving safety or specialized driving safety course for which no uniform certificates of completion or course completion certificate numbers have been purchased for 36 months or longer.

(15) Instructor trainer--A driving safety instructor trainer (DSIT) or specialized driving safety instructor trainer (SDSIT) who has been trained to prepare instructors to give instruction in a specified curriculum. A DSIT or SDSIT supervises the student instructor trainee during their practical teaching sessions, overseeing their presentation of the course. The DSIT or SDSIT may provide feedback and guidance to the trainee concerning their practical teaching, but would not provide the training of techniques of instruction and in-depth familiarization with course material to the trainee during the Instructor Development Course.

(16) National criminal history record information--Criminal history record information obtained from the Federal Bureau of Investigation under Texas Government Code, §411.087, based on fingerprint identification information.

(17) New Course--A driving safety or specialized driving safety course is considered new when it has not been approved by the department to be offered previously, or has been approved by the department and become inactive; or the content, lessons, or delivery of the course has been changed to a degree that a new application is requested and a complete review of the application and course presentation is necessary to determine compliance.

(18) Personal validation question--A question designed to establish the identity of the student by requiring an answer related to the student's personal information such as a driver's license number, address, date of birth, or other similar information that is unique to the student.

(19) Post program exam--an exam designed to measure the student's comprehension and knowledge of course material presented after the instruction is completed.

(20) Pre-program exam--an exam given during the program introduction using questions drawn from material to be covered in the course to determine the level of drug and alcohol knowledge possessed by the student prior to receiving instruction.

(21) Primary school--A licensed driver education main school that may have branch schools.

(22) Public or private school--an accredited public or nonpublic secondary school.

(23) Specialized driving safety course--a six-hour driving safety course that includes at least four hours of training intended to improve the student's knowledge, compliance with, and attitude toward the use of child passenger safety seats systems and the wearing of seat belt and other occupant restraint system.

(24) Teacher of record--A licensed supervising driver education teacher or licensed driver education teacher employed at the school who is directly responsible for the classroom instructional phase provided by a teaching assistant full or supervising teaching assistant full.

(25) Uniform certificate of course completion--A document with a serial number purchased from the department that is printed, administered and supplied by course providers or primary consignees for issuance to students who successfully complete an approved driving safety or specialized driving safety course and that meets the requirements of Texas Transportation Code, chapter 543, and Texas Code of Criminal Procedure, Article 45.051 or 45.0511. This term encompasses all parts of an original or duplicate uniform certificate of course completion.

(26) Validation question--A question designed to establish the student's participation in a course or program and comprehension of the materials by requiring the student to answer a question regarding a fact or concept taught in the course or program.

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SUBCHAPTER B. DRIVER TRAINING AND TRAFFIC SAFETY ADVISORY COMMITTEE

16 TAC §§84.30 - 84.34

The new rules are adopted under Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the adoption.

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SUBCHAPTER C. DRIVER EDUCATION SCHOOLS AND INSTRUCTORS

16 TAC §§84.40 - 84.47

The new rules are adopted under Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the adoption.

§84.41. Driver Education School Responsibility.

(a) Each driver education school must:

(1) Maintain a current mailing address, telephone number, and e-mail address (if applicable) with the department.

(2) ensure that each individual permitted to give classroom instruction or in-car instruction at the school or classroom location has a valid current driver education instructor's license with the proper endorsement issued by the department.

(3) provide instruction or allow instruction to be provided only in courses that are currently on the school's list of approved courses;

(4) complete, issue, or validate a DE-964 or ADE-1317 only to a person who has successfully completed the entire portion of the course for which the DE-964 or ADE-1317 is being issued;

(5) authorize, approve, or conduct instruction in a motor vehicle that meets the requirements stated in §84.42 (relating to Motor Vehicles); and

(6) ensure that no instructor provides more than 10 hours of behind-the-wheel instruction per day.

(b) Except as provided in subsection (a), an instructor-trainee may engage in practice teaching lessons necessary for the purpose of licensing in an approved location under the direction and in the presence of a licensed instructor.

(c) Each driver education school owner-operator or employee that purchases driver education certificate numbers from the department must:

(1) develop and maintain a means to ensure the security and integrity of student information, especially financial and personal information, in transit and at rest;

(2) develop and maintain a means to ensure the privacy of student data, including personal and financial data, and make the corporate privacy policy available to all course students;

(3) develop and maintain a department-approved method for printing and issuing original and duplicate driver education certificates that, to the greatest extent possible, prevents the unauthorized production or misuse of the certificates; and

(4) ensure that the front of each driver education certificate contains the department's complaint contact information and current department telephone number in a font that is visibly recognizable.

§84.42. Motor Vehicles.

All in-car instruction of students in driver education schools shall be conducted in motor vehicles owned or leased by the owner of the driver education school in the name of the driver education school. If the student is disabled, the school may use a motor vehicle that is owned by the student or student's parent that is equipped with special vehicle controls. All school motor vehicles and vehicles for students with physical disabilities that are used to demonstrate or practice driving lessons shall:

(1) be properly registered and inspected by the Texas Department of Motor Vehicles;

(2) be equipped with dual control brake pedals so that there is a foot brake located within easy reach of the instructor that is capable of bringing the vehicle to a stop and otherwise be equipped in accordance with Texas motor vehicle laws;

(3) be equipped with an extra inside rearview mirror on the instructor's side and an outside rearview mirror on both sides. The visor mirror shall not substitute for the instructor's inside rearview mirror; and

(4) be insured by a company authorized to do business in Texas with a continuous liability business insurance policy in the amount specified in Transportation Code Chapter 601, and include coverage for uninsured or underinsured motorists.

§84.43. Driver Education Certificates.

(a) The DE-964 and ADE-1317 shall be issued only to primary driver education schools. The primary driver education school

shall maintain a record reconciling all DE-964s and ADE-1317s that are distributed by the primary driver education school to branch driver education schools and contract sites.

(b) School owners shall be responsible for the DE-964 and ADE-1317 in accordance with this subsection.

(1) A licensed driver education school, exempt driver education school or parent taught driver education course provider may request the serially numbered DE-964s and ADE-1317s by submitting an order form prescribed by the department stating the number of DE-964s and ADE-1317s to be purchased and include payment of all appropriate fees. A mailed or faxed order form shall have the signature of the driver education school owner or authorized representative. Signature is not required for orders placed through the online system.

(2) A driver education school or parent taught driver education course provider shall not transfer unassigned DE-964s and ADE-1317s to a school/provider other than the school/provider for which the certificates were ordered from the department without written approval from the department.

(3) The driver education school owner or authorized representative shall maintain effective protective measures to ensure that unissued DE-964s and ADE-1317s are secure. The driver education school owner or authorized representative shall report all unaccounted DE-964s and ADE-1317s to the department within fifteen (15) working days of the discovery of the incident. In addition, the driver education school shall be responsible for conducting an investigation to determine the circumstances surrounding the unaccounted DE-964s and ADE-1317s. A report of the findings of the investigation, including preventative measures for recurrence, shall be submitted to the department within thirty (30) days of the discovery.

(4) The driver education school owner or their designee shall return unissued DE-964 and ADE-1317 certificates to the department within thirty (30) days from the date the school discontinues the driver education program, unless otherwise notified.

(c) If a driver education school or parent taught driver education course provider issues a duplicate DE-964 or ADE-1317, the duplicate shall indicate the control number of the original DE-964 or ADE-1317.

(d) A driver education school that purchases driver education certificate numbers shall provide for the following:

(1) The DE-964 and ADE-1317 driver education certificate numbers shall only be issued to primary driver education schools. The primary driver education school shall maintain a record reconciling all DE-964 and ADE-1317 driver education certificate numbers that are distributed to branch driver education schools and contract sites.

(2) The school shall implement and maintain a policy which effectively ensures protective measures are in use at all times for securing original and duplicate driver education certificates numbers. The records and unissued or unnumbered original and duplicate driver education certificates shall be readily available for review by representatives of the department.

(3) The school shall maintain electronic files with data pertaining to all driver education certificate numbers purchased from the department. The school shall make available to the department upon request an ascending numerical accounting record of the numbered driver education certificates issued. The school shall ensure security of the data.

(4) The school shall ensure that effective measures are taken to preclude lost data and that a system is in place to recreate electronic data for all driver education certificate numbers, whether used or not used, and all certificates that have been issued.

(5) Schools shall issue driver education certificates using a block of identifying serial numbers purchased from the department only to students who have successfully completed all elements of the school's approved driver education course taught by department licensed instructors in department approved locations as indicated on the student contract.

(6) Schools shall report all unaccounted original and duplicate driver education numbers or unissued or duplicate certificates to the department within five (5) working days of the discovery of the incident. In addition, the school shall be responsible for conducting an investigation to determine the circumstances surrounding the unaccounted items. A report of the findings of the investigation, including preventative measures for recurrence, shall be submitted for approval to the department within thirty (30) days of the discovery.

(7) Each unaccounted or missing original or duplicate course driver education completion certificate number or blank or unissued original or duplicate driver education certificate may be considered a separate violation. This may include lost, stolen, or otherwise unaccounted original or duplicate driver education certificate numbers or blanks or unissued original or duplicate driver education certificates.

(8) Schools shall not transfer driver education certificate numbers to another school.

(9) Schools shall sequentially number original driver education certificates from the block of numbers purchased from the department.

(10) When a duplicate driver education certificate is issued by a school, the duplicate certificate shall bear a serial number from the block of numbers purchased from the department by the school. The duplicate driver education certificate shall clearly indicate the number of both the duplicate and the original serial number of the certificate being replaced.

(11) The driver education school owner or their designee shall return unissued DE-964 and ADE-1317 certificate numbers to the department within thirty (30) days from the date the school discontinues the driver education program, unless otherwise notified.

§84.46. Attendance and Makeup.

(a) Written or electronic records of student attendance shall be prepared daily to document the attendance and absence of the students. A student must make up any time missed. Electronic signatures shall comply with Texas Business and Commerce Code, Chapter 322.

(b) Schools are allowed five minutes of break per instructional hour.

(c) Driver education training provided by the school is limited to five hours per day. Classroom instruction shall not exceed two hours per day, excluding makeup work. In-car instruction provided by the school shall not exceed three hours per day as follows:

(1) three hours or less of in-car training; however, behind-the-wheel instruction is limited to one hour per day, except as provided in subsection (d); or

(2) three hours or less of simulation instruction; or

(3) three hours or less of multicar range instruction; or

(4) any combination of the methods delineated in this subsection that does not exceed three hours per day.

(d) A 2-hour increment of behind-the-wheel instruction may be offered once during the behind-the-wheel instruction for each student and shall include 10 minutes of instructional break after 55 minutes of instruction as identified in §84.500 (relating to Courses of Instruction for Driver Education Schools).

(e) A student must complete the hours of instruction for the required classroom and in-car phases of the minor and adult driver education course, including any makeup lessons, within the timeline specified in the original student enrollment contract.

(f) Schools shall submit a makeup policy to the department for approval. All absences are subject to the attendance policy regardless of whether the student attends makeup lessons. Students may be allowed to complete up to ten hours of classroom makeup work assignments outside of regularly scheduled classroom instruction. Schools shall not initiate nor encourage absences. Makeup policies shall adhere to the following requirements:

(1) For a policy that allows a student to attend a missed lesson on the same date or at a later date at a regularly scheduled class, the class shall be engaged in the same lesson the student missed previously.

(2) For a policy that allows a student to perform an individual makeup lesson, a sample of each makeup lesson, clearly labeled as "makeup for the driver education course," shall be available for review by the department at the school. Each lesson shall be clearly identified as a makeup lesson and identified as to the units of instruction to be covered. Evidence of makeup completed outside of regularly scheduled classroom instruction shall be placed in the student file.

(g) A school may allow a student to attend an alternative class on the same calendar day if the sequence of instruction will be maintained by the identical lesson being offered. The student instruction record shall reflect the time of day the alternative class was attended. A student selecting alternative scheduling shall not be considered absent.

(h) Except as provided in subsection (f), the enrollment of students who do not complete all required instructional hours within the timelines specified in the original student enrollment contract will be terminated.

(i) Variances to the timelines for completion of the driver education instruction stated in the original student enrollment contract may be made at the discretion of the school owner and must be agreed to in writing by the parent or guardian.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER D. PARENT TAUGHT DRIVER EDUCATION

16 TAC §§84.50 - 84.52

The new rules are adopted under Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the adoption.

§84.50. Parent Taught Driver Education Program Requirements.

(a) Prior to teaching a department-approved parent taught driver education course, a parent or other individual authorized under §1001.112 of the Code, must submit a completed Request for Parent Taught Driver Education Program Guide form with a non-refundable fee to the department.

(b) After receiving the Parent Taught Driver Education Program Guide, the instructor must obtain one of the department approved parent taught driver education courses to fulfill program requirements.

(c) The parent taught driver education course provider will provide the appropriate portion of a control-numbered DE-964 only to a person who has completed the objectives found in Module One: Traffic Laws or who has successfully completed the entire portion of the course for which the DE-964 is being issued.

(d) The program includes both classroom and in-car instruction. Classroom instruction is limited to two hours per day and in-car instruction is limited to two hours per day.

(e) The parent or other individual authorized under §1001.112 of the Code, may teach both or utilize a licensed or public driver education school for either phase.

(f) The fourteen (14) hours of in-car instruction must be taught under one program; either parent taught or a licensed or public driver education school. All previous driver education hours must be repeated if the method of instruction changes prior to completion of either phase.

(g) The remaining hours of classroom following Module One: Traffic Laws, must be taught under one program, either parent taught or a licensed or public driver education school.

(h) The additional thirty (30) hours of behind-the-wheel practice must be completed in the presence of an adult who meets the requirements of Texas Transportation Code, §521.222(d)(2).

(i) A student may apply to the Department of Public Safety for a learner license after completion of the objectives found in Module One: Traffic Laws.

(j) Behind-the-wheel driver education instruction may be conducted in any vehicle that is legally operated with a Class C driver license on a Texas highway.

(k) Behind-the-wheel driver education instruction may begin after the student receives a learner license. The required curriculum that must be followed includes: minimum of 44 hours that includes: 7 hours behind the wheel instruction in the presence of a parent or other individual authorized under §1001.112 of the Code; 7 hours of in-car observation in the presence of a parent or other individual authorized under §1001.112 of the Code; and 30 hours of behind the wheel instruction, including at least 10 hours at night, in the presence of an adult who meets the requirements of Texas Transportation Code, §521.222(d)(2).

§84.51. Parent Taught Submission of Course for Department Approval.

(a) If the curriculum and all materials meet or exceed the minimum standards set forth in §1001.212 of the Code, the department will

approve the course. No more than 640 minutes of the required hours of classroom instruction delivered via multimedia may be counted.

(b) Notification of approval or denial will be sent to the requesting entity. Deficiencies will be noted in cases of denial. Any substantive change in course curriculum or materials will require submission for approval according to subsection (a).

(c) A written request is required within thirty (30) days if there is any change relating to an approved course, including contact information, company name, and course titles. Updated information will be included as soon as practical.

(d) The department will retain submitted materials according to the department's retention schedule.

(e) The department has authority to require course re-approval due to changes in parent taught driver education curriculum requirements, state law, or administrative rules. The department will notify the parent taught driver education course provider when re-approval is required. The course provider will have ninety (90) days from the date of notification to submit the requested information. Failure to adequately respond within the required time will result in cancellation of the course approval. The department will review the course material and make a determination as to adoption in a timely manner.

(f) A parent taught driver education course submitted for department review may be denied upon finding:

(1) that the course does not meet the standards required under §1001.212 of the Code; or

(2) the materials used were not approved by the department.

(g) A notice of denial will be sent to requesting entity. The requesting entity will have ninety (90) days to correct the noted deficiencies. If the requesting entity fails to meet approval criteria, the course will be denied. If a course is denied by the department, the requesting entity must wait thirty (30) days before submitting a new parent taught driver education course for approval by the department.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER E. DRIVING SAFETY SCHOOLS, COURSE PROVIDERS AND INSTRUCTORS

16 TAC §84.60 - 84.64

The new rules are adopted under Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the adoption.

§84.61. Driving Safety School and Course Provider Responsibilities.

(a) Course providers must be located, or maintain a registered agent, in the State of Texas. All instruction in a driving safety or specialized driving safety course shall be performed in locations approved by the department and by department licensed instructors. However, a student instructor trainee may teach the 12 hours necessary for licensing in a department approved location under the direction and in the presence of a licensed driving safety or specialized driving safety instructor trainer who has been trained in the curriculum being instructed.

(b) Each course provider or employee shall:

(1) ensure that instruction of the course is provided in schools currently approved to offer the course, and in the manner in which the course was approved;

(2) maintain a current mailing address with the department;

(3) ensure that the course is provided by persons who have a valid current instructor license with the proper endorsement issued by the department, except as provided in subsection (a);

(4) ensure that schools and instructors are provided with the most recent approved course materials and relevant data and information pertaining to the course within sixty (60) days of approval. Instructor training may be required and shall be addressed in the approval notice;

(5) ensure that applications for licenses or approvals are forwarded to the department within ten (10) days of receipt at the course provider facilities;

(6) ensure that instructor performance is monitored. A written plan describing how instructor performance will be monitored and evaluated shall be provided to the schools. The plan shall identify the criteria upon which the instructors will be evaluated, the procedure for evaluation, the frequency of evaluation (a minimum of once a year), and the corrective action to be taken when instructors do not meet the criteria established by the course provider. The instructor evaluation forms must be kept on file either at the course provider or school location for a period of one year;

(7) develop and maintain a means to ensure the security and integrity of student information, especially financial and personal information, in transit and at rest;

(8) develop and maintain a means to ensure the privacy of student data, including personal and financial data, and make the corporate privacy policy available to all course students;

(9) develop and maintain a department-approved method for printing and issuing original and duplicate uniform certificates of course completion that, to the greatest extent possible, prevents the unauthorized production or misuse of the certificates;

(10) report original and duplicate certificate data, by secure electronic transmission, to the department within thirty (30) days of issue using guidelines established and provided by the department. The issue date indicated on the certificate shall be the date the course provider mails the certificate to the student; and

(11) ensure that the front of each uniform certificate of course completion contains the department complaint contact information and current department telephone number in a font that is visibly recognizable.

(c) Each driving safety school owner-operator or employee shall:

(1) ensure that each individual permitted to give instruction at the school or any classroom location has a valid current instructor's license with the proper endorsement issued by the department, except as provided in subsection (a);

(2) prohibit an instructor from giving instruction or prohibit a student from receiving instruction if that instructor or student exhibits any effects of being intoxicated or otherwise impaired;

(3) provide instruction or allow instruction to be provided only in courses that are currently on the school's list of approved courses;

(4) evaluate instructor performance in accordance with the course provider plan;

(5) develop and maintain a means to ensure the security and integrity of student information, especially financial and personal information, in transit and at rest;

(6) pay a fee to the course provider that is equal to the fee paid by the course provider to the department for course completion certificate numbers for original certificates provided for the students of that school within seven (7) calendar days of the date each student successfully completes the driving safety course.

§84.62. Course Provider License Requirements.

(a) Application for course provider. An application for a license for a course provider shall be made on forms prescribed by the department. An application from a course provider that is a primary consignee shall include evidence of permission from the course owner to operate as the primary consignee.

(b) Bond requirements for course provider. In the case of an original or a change of owner application, an original bond shall be provided in the amount of $25,000. In the case of a renewal application, an original bond or a continuation agreement for the approved bond currently on file shall be submitted. The bond or the continuation agreement shall be executed on the form prescribed by the department.

(c) Course provider license. The course provider license shall indicate the name of the driving safety course for which approval is granted exactly as stated in the application for the course approval.

(d) Verification of ownership for course provider. In the case of an original or change of owner application for a course provider, the owner of the course provider shall provide verification of ownership.

(e) Adequate educational and experience qualifications. The course provider shall provide as part of the application sufficient documentation to support adequate educational and experience qualifications. Verifiable education and/or experience in administration or supervision shall be required. Adequate educational and experience qualifications have been satisfied if the course provider meets one of the following.

(f) A new course provider shall submit evidence of a combined total of three years of driver and traffic safety education or experience and administrative/management experience; however, a minimum of six months in each shall be required.

(g) Purchase of course provider.

(1) A person or persons purchasing a licensed course provider shall obtain an original license. The application for a new course provider that is a primary consignee shall include evidence of permission from the course owner to operate as the primary consignee.

(2) The contract or any instrument transferring the ownership of the course provider shall include the following statements:

(A) The purchaser shall assume all refund liabilities incurred by the seller or any former owner before the transfer of ownership; and

(B) The purchaser shall assume the liabilities, duties, and obligations under the enrollment contracts between the students and the seller, or any former owner.

(h) New location. The department shall be notified in writing of any change of address of a course provider at least fifteen (15) working days before the move. The appropriate fee and all documents must also be submitted.

(i) Renewal of course provider license. A complete application for the renewal of a license for a course provider shall be submitted before the expiration of the license and shall include the following:

(1) completed application for renewal;

(2) annual renewal fee, if applicable;

(3) a new continuing education course; and

(4) executed bond or executed continuation agreement for the bond currently on file with the department.

(j) Course provider closure. A course provider owner shall notify the department of the closure date of the course provider at least fifteen (15) business days before the closure. A course provider shall make all records and all used and unused uniform certificates of course completion and course completion certificate numbers available for review by the department within thirty (30) days of the date the course provider ceases operation.

(k) Facility location. Course providers and all course provider facilities that process, deliver, or store curriculum materials, student records, or uniform certificates of course completion and certificate numbers to be used for Texas courses must be located within the United States.

§84.64. Driving Safety Instructor License Requirements.

(a) Application for licensing as a driving safety or specialized driving safety instructor shall be made on forms prescribed by the department. A person is qualified to apply for a driving safety or specialized driving safety instructor license who holds a valid Class A, B, C, or CDL driver's license, other than learner license or provisional license, for the preceding three years in the areas for which the individual is to teach, which has not been revoked or suspended in the preceding three years.

(b) A person applying for an original driving safety or specialized driving safety instructor's license must submit to the department the following:

(1) a complete application prescribed by the department;

(2) the required fees;

(3) documentation showing that all applicable educational requirements have been met; and

(4) a clear and legible photocopy of the current, valid driver's license issued to the applicant.

(c) A person applying for a driving safety or specialized driving safety instructor license may qualify for the following endorsements:

(1) Driving safety instructor. The application shall include evidence of completion of 16 hours of training covering techniques of

instruction and in-depth familiarization with material contained in the driving safety curriculum in which the individual is being trained and 12 hours of practical teaching in the same driving safety course and a statement signed by the course provider recommending the applicant for licensing. Alternatively, a currently licensed instructor may submit a copy of a current driving safety instructor license, a specialized driving safety instructor license, or a current driver education instructor license and evidence of 6 hours of training and 6 hours of demonstrative presentation teaching or practical teaching in the curriculum to be licensed. The 6 hours of training shall cover techniques of instruction and in-depth familiarization with material contained in the driving safety curriculum. The 6 hours of demonstrative presentation or practical teaching shall be in the driving safety curriculum and under the direct supervision of a licensed driving safety instructor trainer endorsed in the same driving safety curriculum.

(2) Specialized driving safety instructor. The application shall include evidence of completion of 16 hours of training and 12 hours of practical teaching. The 16 hours of training shall cover techniques of instruction and in-depth familiarization with material contained in the specialized driving safety curriculum. The 12 hours of practical teaching shall be in the same specialized driving safety curriculum and shall be accompanied by a statement signed by the course provider recommending the applicant for licensing. Alternatively, the applicant may submit a copy of a current driving safety instructor license or current or past certification as a National Highway Traffic Safety Association Child Passenger Safety technician or instructor and 6 hours of training and 6 hours of demonstrative presentation or practical teaching. The 6 hours of training shall cover techniques of instruction and in-depth familiarization with material contained in the specialized driving safety curriculum. The 6 hours of demonstrative presentation or practical teaching shall be in the same specialized driving safety curriculum and under the direct supervision of a licensed specialized driving safety instructor trainer endorsed in the same specialized driving safety curriculum.

(3) Driving safety instructor trainer. The application shall include a statement signed by the driving safety course provider (if different than the applicant) recommending the instructor as an instructor trainer and evidence of one of the following:

(A) a Texas teaching certificate with driver education endorsement and 12 hours of experience, exclusive of the 28-hour instructor development course, in the same driving safety course for which the individual is to teach;

(B) a teaching assistant certificate and 12 hours of experience, exclusive of the 28-hour instructor development course, in the same driving safety course for which the individual is to teach;

(C) completion of all the requirements of a driving safety instructor and 60 hours of verifiable experience as a licensed driving safety instructor, of which the most recent 12 hours shall be in the same driving safety course for which the individual is to teach; or 6 clock hours in a teaching methodology course; or

(D) proof of authorship of an approved driving safety course. The applicant who will provide the initial instructor training for a newly approved course shall demonstrate to the department the ability to teach the course and instructor training course prior to being licensed.

(4) Specialized driving safety instructor trainer. The application shall include a statement signed by the driving safety course provider (if different than the applicant) recommending the instructor as an instructor trainer, a copy of current or past certification as a National Highway Traffic Safety Association Child Passenger Safety technician or instructor, and evidence of one of the following:

(A) a Texas teaching certificate with driver education endorsement and 12 hours of experience, exclusive of the 28-hour instructor development course, in the same specialized driving safety course for which the individual is to teach;

(B) a teaching assistant certificate and 12 hours of experience, exclusive of the 28-hour instructor development course, in the same specialized driving safety course for which the individual is to teach;

(C) completion of all the requirements for a specialized driving safety instructor license and 60 hours of verifiable experience as a licensed driving safety instructor, of which the most recent 12 hours shall be in the same specialized driving safety course for which the individual is to teach; or 6 clock hours in a teaching methodology course; or

(D) proof of authorship of an approved specialized driving safety course. The applicant who will provide the initial instructor training for a newly approved course shall demonstrate to the department the ability to teach the course and the instructor training course prior to being licensed.

(5) Instructor development course driving safety instructor trainer. The application shall include evidence of:

(A) completion of all the requirements for a driving safety instructor trainer plus an additional 30 hours of verifiable experience as a licensed driving safety instructor or driving safety instructor trainer in the same driving safety course for which the individual is to teach, or proof of authorship of an approved driving safety course. The applicant who will provide the initial instructor training for a newly approved course shall demonstrate to the department the ability to teach the course and the instructor training course prior to being licensed or 6 clock hours in a teaching methodology course; and

(B) a statement signed by the driving safety course provider, if different than the applicant, recommending the individual as an instructor development course instructor trainer in driving safety.

(6) Instructor development course specialized driving safety instructor trainer. The application shall include a copy of a current or past certification as a National Highway Traffic Safety Association Child Passenger Safety technician or instructor and evidence of:

(A) completion of all the requirements for a specialized driving safety instructor trainer plus an additional 30 hours of verifiable experience as a licensed specialized driving safety instructor or specialized driving safety instructor trainer in the same specialized driving safety course for which the individual is to teach, or proof of authorship of an approved specialized driving safety course. The applicant who will provide the initial instructor training for a newly approved course shall demonstrate to the department the ability to teach the course and the instructor training course or 6 clock hours in a teaching methodology course prior to being licensed; and

(B) a statement signed by the driving safety course provider, if different than the applicant, recommending the individual as an instructor development course instructor trainer in specialized driving safety.

(d) A renewal application for a driving safety or specialized driving safety instructor license must be prepared using the following procedures.

(1) Application for renewal of an instructor license shall be made on a form prescribed by the department and submitted by the course provider.

(2) The annual instructor licensing fee and evidence of continuing education shall accompany the application.

(e) Continuing education requirements include the following:

(1) Evidence of completion of continuing education shall be provided for each instructor during the individual license renewal period on forms approved by the department. A verification form indicating completion shall be provided to the department by the course provider on behalf of the instructors. The form shall be signed by the instructor receiving the training and the course provider or designee.

(2) Carryover credit of continuing education hours shall not be permitted.

(3) A licensee may not receive credit for attending the same course more than once during the same licensing period.

(4) A licensed individual who teaches an approved continuing education course may receive credit for attending continuing education.

(5) A driving safety or specialized driving safety continuing education course shall not be used for the continuing education requirement for a driver education instructor license.

(f) An instructor who has allowed a previous license to expire shall file an original application on a form provided by the department that is submitted by the course provider. The application shall include the processing and annual instructor licensing fees and evidence of continuing education completed within the last year. Evidence of educational experience may not be required to be resubmitted if the documentation is on file at the department.

(g) All driving safety and specialized driving safety instructor license endorsement changes shall require the following:

(1) written documentation showing all applicable educational requirements have been met to justify endorsement changes;

(2) the required fees; and

(3) completion of renewal requirements for current endorsements.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER F. DRUG AND ALCOHOL AWARENESS PROGRAMS AND INSTRUCTORS

16 TAC §§84.70 - 84.72

The new rules are adopted under Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the adoption.

§84.71. School and Course Provider Responsibilities.

(a) For purposes of this subsection, the term 'Course provider' means an enterprise that:

(1) maintains a place of business or solicits business in Texas;

(2) is operated by an individual, association, partnership, or corporation; and

(3) has received an approval for a drug and alcohol awareness program from the executive director or has been designated by a person who has received that approval to conduct business and represent the person in Texas.

(b) Course providers must be located, or maintain a registered agent, in the State of Texas. All instruction in a drug and alcohol driving awareness program shall be performed in locations approved by the department and by department-licensed instructors.

(c) Each course provider or employee shall:

(1) ensure that instruction of the program is provided in schools currently approved to offer the program, and in the manner in which the program was approved;

(2) ensure that the program is provided by persons who have a valid current instructor license with the proper endorsement issued by the department, except as provided in subsection (a);

(3) ensure that schools and instructors are provided with the most recent approved program materials and relevant data and information pertaining to the program within sixty (60) days of approval. Instructor training may be required and shall be addressed in the approval notice;

(4) develop and maintain a means to ensure the security and integrity of student information, especially financial and personal information, in transit and at rest;

(5) develop and maintain a means to ensure the privacy of student data, including personal and financial data, and make the corporate privacy policy available to all course students; and

(6) ensure that each certificate of program completion contains the department complaint contact information.

(d) Each drug and alcohol driving awareness school owner-operator or employee shall:

(1) ensure that each individual permitted to give instruction at the school or any classroom location has a valid current instructor license with the proper endorsement issued by the department, except as provided in subsection (a);

(2) prohibit an instructor from giving instruction or prohibit a student from receiving instruction if that instructor or student is using or exhibits any evidence or effect of an alcoholic beverage, controlled substance, drug, abusable glue, aerosol paint, or other volatile chemical as those terms are defined in the Alcoholic Beverage Code and the Health and Safety Code;

(3) provide instruction or allow instruction to be provided only in courses that are currently on the school's list of approved courses;

(4) complete, issue, or validate a certificate of program completion only for a person who has successfully completed the entire course;

(5) evaluate instructor performance in accordance with the course provider plan;

(6) develop and maintain a means to ensure the security and integrity of student information, especially financial and personal information, in transit and at rest; and

(7) develop and maintain a means to ensure the privacy of student data, including personal and financial data, and make the corporate privacy policy available to all course students.

(e) For the purposes of this subchapter, each person employed by or associated with any drug and alcohol driving awareness school shall be deemed an agent of the school, and the school may share the responsibility for all acts performed by the person which are within the scope of the employment and which occur during the course of the employment.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER G. GENERAL BUSINESS PRACTICES

16 TAC §§84.80 - 84.84

The new rules are adopted under Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the adoption.

§84.82. Student Enrollment Contracts.

(a) Driver Education Schools Enrollment Contracts.

(1) A legal written or electronic student enrollment contract shall be executed prior to the school's receipt of any money. Electronic signatures shall comply with Texas Business and Commerce Code, Chapter 322.

(2) All driver education student enrollment contracts shall contain at least the following:

(A) the student's legal name;

(B) the student's address, including city, state, and zip code;

(C) the student's telephone number;

(D) the student's date of birth;

(E) the full legal name and license number of the primary school or the branch school;

(F) the specific course to be taught;

(G) the agreed total contract charges that itemize all tuition, fees, and other charges;

(H) the terms of payment;

(I) the number of classroom lessons;

(J) the length of each lesson and course;

(K) the school's cancellation, termination, and refund policy;

(L) a statement indicating the specific location, date, and time that classroom instruction is scheduled to begin; the date classroom instruction is scheduled to end; and the amount of time a student has to complete all classroom instruction, makeup assignments, and in-car instruction;

(M) the number of in-car lessons;

(N) the rate per classroom lesson;

(O) the rate per in-car lesson;

(P) the rates for use of a school car for a road test (if an extra charge is made);

(Q) a statement that the school maintains a business insurance policy for vehicles with coverage as required by Texas Transportation Code, Chapter 601, and uninsured or underinsured coverage;

(R) the signature of a school representative; and

(S) the student's signature or, if the driver education student is younger than 18, the signature of the parent or guardian. The signature of the parent or guardian is not required for an individual younger than 18 who is, or has been, married or whose disabilities of minority have been removed generally by law. Instead, such an individual shall:

(i) present a marriage certificate or a divorce decree (but not an annulment decree) or other satisfactory evidence of marriage or of having been married; or

(ii) present a court order showing removal of disabilities of minority; or

(iii) present a notarized parental authorization.

(3) In addition, all driver education student enrollment contracts shall contain statements substantially as follows:

(A) I have been furnished a copy of the school tuition schedule; cancellation and refund policy; and school regulations pertaining to absence, grading policy, progress, and rules of operation and conduct.

(B) The school is prohibited from issuing a DE-964 or ADE-1317 if the student has not met all of the requirements for course completion, and the student should not accept a DE-964 or ADE-1317 under such circumstances.

(C) This agreement constitutes the entire contract between the school and the student, and assurances or promises not contained herein shall not bind the school or the student.

(D) I further realize that any grievances not resolved by the school may be forwarded to Driver Education and Safety Austin,

Texas 78701. The current telephone number of the department shall also be provided.

(4) A copy of the enrollment contract shall be delivered to:

(A) the student, if 18 years of age or older; or

(B) the parent or guardian that signed the contract.

(5) A copy of each enrollment contract shall be a part of the student files maintained by all driver education schools.

(6) Schools shall submit proposed or amended enrollment contracts to the department.

(7) Student enrollment contracts used at branch schools must be those approved for use at the primary school.

(8) Driver education courses exclusively for adults may use a group contract that includes more than one student's name.

(b) Driving Safety Schools Enrollment Contracts.

(1) No person shall be instructed, either theoretically or practically, or both, to operate or drive motor vehicles until after a written legal contract has been executed. A contract shall be executed prior to the school's receipt of any money.

(2) All driving safety and specialized driving safety contracts shall contain at least the following:

(A) the student's legal name and driver's license number;

(B) the student's address, including city, state, and zip code;

(C) the student's telephone number;

(D) the student's date of birth;

(E) the full legal name and license number of the driving safety school or approval number of the classroom location, as applicable;

(F) the specific name of the approved driving safety course to be taught;

(G) a statement indicating the agreed total contract charges that itemizes all tuition, fees, and other charges;

(H) the terms of payment;

(I) the number of classroom lessons;

(J) the number of behind-the-wheel lessons, if applicable;

(K) the length of each lesson or course;

(L) the course provider's cancellation and refund policy;

(M) a statement indicating the specific location, date, and time that instruction is scheduled to begin and the date classroom instruction is scheduled to end;

(N) the signature and license number of the instructor;

(O) the signature of the student or the approved equivalent for a driving safety course delivered by an alternative delivery method; and

(P) a statement that notifies the student of the course provider's security and privacy policy regarding student data, including personal and financial data.

(3) In addition, all driving safety school contracts shall contain statements substantially as follows.

(A) I have been furnished a copy of the school tuition schedule; cancellation and refund policy; and school regulations pertaining to absence, grading policy, progress, and rules of operation and conduct.

(B) The school and course provider are prohibited from issuing a uniform certificate of course completion if the student has not met all of the requirements for course completion, and the student should not accept a uniform certificate of course completion under such circumstances.

(C) This agreement constitutes the entire contract between the school and the student, and verbal assurances or promises not contained herein shall not bind the school or the student.

(D) I further realize that any grievances not resolved by the school may be forwarded to the course provider (identify name and address) and to Driver Education and Safety, Austin, Texas 78701. The current telephone number of the department shall also be provided.

(4) Driving safety or specialized driving safety may use a group contract that includes more than one student's name.

(5) A copy of each contract shall be a part of the student files maintained by the driving safety school and/or course provider.

(6) Course providers shall submit proposed or amended contracts to the division, and those documents shall be approved prior to use by schools.

(7) Contracts for group instruction must meet all legal requirements.

(8) Contracts executed in an electronic format shall be considered to contain original signatures for purposes of this section.

(c) Drug and Alcohol Awareness Schools Enrollment Contracts.

(1) No person shall be instructed in a drug and alcohol driving awareness program until after being enrolled.

(2) All drug and alcohol driving awareness enrollment forms shall provide students with the following information:

(A) Grievances not resolved by the school may be forwarded to Driver Education and Safety, Austin, Texas 78701. The current telephone number of the department shall also be provided.

(B) The school is prohibited from issuing a certificate of program completion if the student has not met all of the requirements for program completion, and the student should not accept a certificate of program completion under such circumstances.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER H. FACILITIES AND EQUIPMENT FOR DRIVER EDUCATION SCHOOL, DRIVING SAFETY SCHOOLS AND DRUG AND ALCOHOL AWARENESS SCHOOLS

16 TAC §84.90

The new rule is adopted under Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

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SUBCHAPTER I. INSPECTIONS

16 TAC §§84.100 - 84.102

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SUBCHAPTER J. DRIVER EDUCATION AND DRIVING SAFETY SCHOOL CANCELLATION AND REFUND

16 TAC §84.200

The new rule is adopted under Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

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§84.200. Cancellation and Refund Policy.

(a) Driver Education School, Driving Safety School and Course Provider cancellation and refund policies shall be in accordance with the Code and this chapter.

(b) Driving Safety Schools shall use the cancellation policy approved for the course provider.

(c) If a student withdraws or is terminated from the course, a refund must be issued that corresponds to the actual instructional hours not provided.

(d) Refunds for all driver education schools, driving safety schools and course providers shall be completed within thirty (30) days after the effective date of termination except as allowed under §84.46. Proof of completion of refund shall be the refund document or copies of both sides of the canceled check and shall be on file within seventy-five (75) days of the effective date of termination. All refund checks shall identify the student to whom the refund is assigned. In cases where multiple refunds are made using one check, the check shall identify each individual student and the amount to be credited to that student's account.

(e) In reference to §1001.404 of the Code, the interest rate on unpaid refunds is set at 20%.

(f) In reference to §1001.404 of the Code, a driver education school, driving safety school or course provider is considered to have made a good faith effort to consummate a refund if the student file contains evidence of the following attempts:

(1) certified mail to the student's last known address;

(2) certified mail to the student's permanent address; and

(3) certified mail to the address of the student's parent, if different from the permanent address.

(g) Any funds received from, or on behalf of, a student shall be recorded in a format that is readily accessible to representatives of the department.

(h) Branch schools shall use the policies approved for use at the primary school.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER K. FEES

16 TAC §§84.300 - 84.302

The new rules are adopted under Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

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SUBCHAPTER L. COMPLAINTS AND ENFORCEMENT PROVISIONS

16 TAC §84.400, §84.401

The new rules are adopted under Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

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SUBCHAPTER M. CURRICULUM AND ALTERNATIVE METHODS OF INSTRUCTION

16 TAC §§84.500 - 84.506

The new rules are adopted under Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

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§84.500. Courses of Instruction for Driver Education Schools.

(a) The educational objectives of driver training courses shall include, but not be limited to, promoting respect for and encouraging observance of traffic laws and traffic safety responsibilities of driver education and citizens; reducing traffic violations; reducing traffic-related injuries, deaths, and economic losses; and motivating development of traffic-related competencies through education, including, but not limited to, Texas traffic laws, risk management, driver attitudes, courtesy skills, and evasive driving techniques.

(b) This subsection contains requirements for driver education courses. All course content and instructional material shall include current statistical data, references to law, driving procedures, and traffic safety methodology. For each course, curriculum documents and materials may be requested as part of the application for approval.

(1) Minor and adult driver education course.

(A) The driver education classroom phase for students age 14 and over shall consist of:

(i) a minimum of 32 hours of classroom instruction. The in-car phase must consist of seven hours of behind-the-wheel instruction and seven hours of in-car observation in the presence of a person who holds a driver education instructor license; and

(ii) 30 hours of behind-the-wheel instruction, including at least 10 hours of nighttime instruction, in the presence of an adult who meets the requirements of Texas Transportation Code, §521.222(d)(2). The 30 hours of instruction must be endorsed by a parent or legal guardian if the student is a minor. Simulation hours shall not be substituted for these 30 hours of instruction. Driver education training endorsed by the parent is limited to one hour per day.

(B) Schools are allowed five minutes of break per instructional hour for all phases. No more than ten minutes of break time may be accumulated for each two hours of instruction.

(C) Driver education course curriculum content, minimum instruction requirements, and administrative guidelines for classroom instruction, in-car training (behind-the-wheel and observation), simulation, and multicar range shall include the educational objectives established by the department in the Program of Organized Instruction

in Driver Education and Traffic Safety (POI) and meet the requirements of this subchapter. In addition, the educational objectives that must be provided to every student enrolled in a minor and adult driver education course shall include information relating to litter prevention, anatomical gifts, leaving children in vehicles unattended, distractions, motorcycle awareness, alcohol awareness and the effect of alcohol on the effective operation of a motor vehicle, and recreational water safety.

(D) Driver education schools that desire to instruct students age 14 and over in a traditional classroom program shall provide the same beginning and ending dates for each student in the same class of 36 or less. No student shall be allowed to enroll and start the classroom phase after the seventh hour of classroom instruction has begun.

(E) Students shall proceed in the sequence identified by and approved for that school.

(F) Students shall receive classroom instruction from an instructor who is approved and licensed by the department. An instructor shall be in the classroom and available to students during the entire 32 hours of instruction, including self-study assignments. Instructors shall not have other teaching assignments or administrative duties during the 32 hours of classroom instruction.

(G) Videos, tape recordings, guest speakers, and other instructional media that present concepts required in the POI may be used as part of the required 32 hours of traditional classroom instruction. Instructors shall refrain from using any type of media for an extended period of time and should only use videos for no more than 640 minutes. PowerPoint slides or equivalent software solutions are considered to be approved teaching aids and does not fall into the restricted media aids.

(H) Self-study assignments occurring during regularly scheduled class periods shall not exceed 25% of the course and shall be presented to the entire class simultaneously.

(I) Each classroom student shall be provided a driver education textbook designated by the commissioner or access to instructional materials that are in compliance with the POI approved for the school. Instructional materials, including textbooks, must be in a condition that is legible and free of obscenities.

(J) A copy of the current edition of the "Texas Driver Handbook" or instructional materials that are equivalent shall be furnished to each student enrolled in the classroom phase of the driver education course.

(K) Each student, including makeup students, shall be provided their own seat and table or desk while receiving classroom instruction. A school shall not enroll more than thirty-six (36) students, excluding makeup students, and the number of students may not exceed the number of seats and tables or desks available at the school.

(L) When a student changes schools, the school must follow the current transfer policy developed by the department and Texas Department of Public Safety (DPS).

(M) All classroom phases of driver education, including makeup work, shall be completed within the timelines stated in the original student contract. This shall not circumvent the attendance and progress requirements.

(N) All in-car lessons shall consist of actual driving instruction. No school shall permit a ratio of more than four students per instructor or exceed the seating and occupant restraint capacity of the vehicle used for instruction. Schools that allow one-on-one instruction shall notify the parents in the contract.

(O) A student must have a valid driver's license or learner license in his or her possession during any behind-the-wheel instruction.

(P) All in-car instruction provided by the school shall begin no earlier than 5:00 a.m. and end no later than 11:00 p.m. The division may approve exceptions; however, the request shall be made in writing by the school owner or school director and include acknowledgment by all parents in the form of signatures.

(Q) A school may use multimedia systems, simulators, and multicar driving ranges for in-car instruction in a driver education program. Each simulator, including the filmed instructional programs, and each plan for a multicar driving range must meet state specification developed by DPS and the department. A licensed driver education instructor must be present during use of multimedia systems, simulators, and multicar driving ranges.

(R) Four periods of at least 55 minutes per hour of instruction in a simulator may be substituted for 1 hour of behind-the-wheel instruction and 1 hour of in-car observation. Two periods of at least 55 minutes per hour of multicar driving range instruction may be substituted for 1 hour of behind-the-wheel instruction and 1 hour of in-car observation relating to elementary or city driving lessons. However, a minimum of four hours must be devoted to actual behind-the-wheel instruction.

(S) In a minor and adult driver education program, a student may apply to the DPS for a learner license after completing the objectives found in Module One: Traffic Laws

(T) A student issued a DE-964 under the block and concurrent programs must subsequently complete the required classroom instruction. If a student does not subsequently complete the required class instruction, the instructor must complete DPS Form DL-42 and send it to the DPS division responsible for license and driver records. Form DL-42 should be prepared as soon as it is evident the student will not complete the required hours of instruction. The DPS may then revoke the student's instruction permit.

(U) Each school owner that teaches driver education courses shall collect adequate student data to enable the department to evaluate the overall effectiveness of the driver education course in reducing the number of violations and accidents of persons who successfully complete the course. The department may determine a level of effectiveness that serves the purposes of the Code.

(2) Driver education course exclusively for adults. Courses offered in a traditional classroom setting or online to persons who are age 18 to under 25 years of age for the education and examination requirements for the issuance of a driver's license under Texas Transportation Code, §521.222(c) and §521.1601, must be offered in accordance with the following guidelines.

(A) Traditional approval process. The department may approve a driver education course exclusively for adults to be offered traditionally if the course meets the following requirements.

(i) Application. The driver education school shall submit a completed application along with the appropriate fee.

(ii) Instructor license required. Students shall receive classroom instruction from a licensed supervising teacher, driver education teacher, supervising teaching assistant-full or teaching assistant-full.

(iii) Minimum course content. The driver education course exclusively for adults shall consist of six clock hours of classroom instruction that meets the following topics.

(I) Course introduction--ten minutes. Objective: The student recognizes the value of legal and responsible reduced-risk driving practices and accepts driving as a privilege with responsibilities, obligations, and potential consequences.

(II) Your license to drive--minimum of 20 minutes. Objective: The student reduces risk and accepts driving as a privilege by legally and responsibly possessing a driver's license, registering and having a current inspection on a motor vehicle, and obeying the Safety Responsibility Act.

(III) Right-of-way--minimum of 50 minutes. Objective: The student reduces risk by legally and responsibly accepting or yielding the right-of-way.

(IV) Traffic control devices--minimum of 40 minutes. Objective: The student reduces risk by legally and responsibly applying knowledge and understanding of traffic control devices.

(V) Controlling traffic flow--minimum of 40 minutes. Objective: The student reduces risk by legally and responsibly applying knowledge and understanding of laws and procedures for controlling traffic flow.

(VI) Alcohol and other drugs--minimum of 50 minutes. Objective: The student legally and responsibly performs reduced-risk driving practices by adopting zero-tolerance driving and lifestyle practices related to the use of alcohol and other drugs and applying knowledge and understanding of alcohol and other drug laws, regulations, penalties, and consequences.

(VII) Cooperating with other roadway users--minimum of 20 minutes. Objective: The student reduces risk by legally and responsibly cooperating with law enforcement and other roadway users, including vulnerable roadway users in emergency and potential emergency situations.

(VIII) Managing risk--minimum of 50 minutes. Objective: The student reduces and manages risk by legally and responsibly understanding the issues commonly associated with motor vehicle collisions, including poor decision making, risk taking, impaired driving, distractions, speed, failure to use a safety belt, driving at night, and using a wireless communications device while operating a vehicle.

(IX) Classroom progress assessment--25 minutes (this shall be the last unit of instruction). The remaining 25 minutes of instruction shall be allocated to the topics included in the minimum course content under subclauses (II)-(VIII) of this clause.

(iv) Course management. An approved adult driver education course shall be presented in compliance with the following guidelines.

(I) The instructor shall be physically present in appropriate proximity to the student for the type of instruction being given. The teacher of record shall sign all completed classroom instruction records provided by a supervising teaching assistant-full or teaching assistant-full.

(II) A copy of the current edition of the "Texas Driver Handbook" or study material that is equivalent shall be furnished to each student enrolled in the course.

(III) Self-study assignments, videos, tape recordings, guest speakers, and other instructional media that present topics required in the course shall not exceed 120 minutes of instruction. PowerPoint slides or equivalent software solutions are considered to be approved teaching aids and does not fall into the restricted media aids.

(IV) Each student, including makeup students, shall be provided their own seat and table or desk while receiving classroom instruction. A school shall not enroll more than 36 students, excluding makeup students, and the number of students may not exceed the number of seats and tables or desks available at the school.

(V) All classroom instruction, including makeup work, shall be completed within the timelines stated in the original student contract.

(VI) A minimum of 330 minutes of instruction is required.

(VII) The total length of the course shall consist of a minimum of 360 minutes.

(VIII) Thirty minutes of time, exclusive of the 330 minutes of instruction, shall be dedicated to break periods or to the topics included in the minimum course content.

(IX) Students shall not receive a driver education certificate of completion unless that student receives a grade of at least 70% on the highway signs examination and at least 70% on the traffic laws examination as required under Texas Transportation Code, §521.161.

(X) The driver education school shall make a material effort to establish the identity of the student.

(B) Online approval process. The department may approve a driver education course exclusively for adults to be offered online if the course meets the following requirements.

(i) Application. The driver education school shall submit a completed application along with the appropriate fee.

(ii) Request for approval. The request for approval must include a syllabus cross-reference, contract, and instructional records.

(iii) School license required. A person or entity offering an online driver education course exclusively for adults must hold a driver education school license.

(I) The driver education school shall be responsible for the operation of the online course.

(II) Students shall receive classroom instruction from a licensed supervising teacher, driver education teacher, or teaching assistant-full.

(iv) Course content. The online course must meet the requirements of the course identified in §1001.1015 of the Code.

(I) Course topics. The course requirements described in subparagraph (A)(iii) shall be met.

(II) Length of course. The course must be 6 hours in length, which is equal to 360 minutes. A minimum of 330 minutes of instruction must be provided. Thirty minutes of time, exclusive of the 330 minutes of instruction, shall be dedicated to break periods or to the topics included in the minimum course content. All break periods shall be provided after instruction has begun and before the comprehensive examination and summation.

(III) Required material. A copy of the current edition of the "Texas Driver Handbook" or study material that is equivalent shall be furnished to each student enrolled in the course.

(IV) Editing. The material presented in the online course shall be edited for grammar, punctuation, and spelling and be of such quality that it does not detract from the subject matter.

(V) Irrelevant material. Advertisement of goods and services shall not appear during the actual instructional times of the course. Distracting material that is not related to the topic being presented shall not appear during the actual instructional times of the course.

(VI) Minimum content. The online course shall present sufficient content so that it would take a student 360 minutes to complete the course. In order to demonstrate that the online course contains sufficient minutes of instruction, the online course shall use the following methods.

(-a-) Word count. For written material that is read by the student, the course shall contain the total number of words in the written sections of the course. This word count shall be divided by 180, the average number of words that a typical student reads per minute. The result is the time associated with the written material for the sections.

(-b-) Multimedia presentations. For multimedia presentation, the online course shall calculate the total amount of time it takes for all multimedia presentations to play, not to exceed 120 minutes.

(-c-) Charts and graphs. The online course may assign one minute for each chart or graph.

(-d-) Time allotment for questions. The online course may allocate up to 60 seconds for questions presented over the Internet and 60 seconds for questions presented by telephone.

(-e-) Total time calculation. If the sum of the time associated with the written course material, the total amount of time for all multimedia presentations, and the time associated with all charts and graphs equals or exceeds 330 minutes, the online course has demonstrated the required amount of minimum content.

(-f-) Alternate time calculation method. In lieu of the time calculation method, the online course may submit alternate methodology to demonstrate that the online course meets the 330-minute requirement.

(v) Personal validation. The online course shall maintain a method to validate the identity of the person taking the course. The personal validation system shall incorporate one of the following requirements.

(I) School-initiated method. Upon approval by the department, the online course may use a method that includes testing and security measures that validate the identity of the person taking the course. The method must meet the following criteria.

(-a-) Time to respond. The student must correctly answer a personal validation question within 60 seconds.

(-b-) Placement of questions. At least two personal validation questions shall appear randomly during each instructional hour, not including the final examination.

(-c-) Exclusion from the course. The online course shall exclude the student from the course after the student has incorrectly answered more than 30% of the personal validation questions.

(-d-) Correction of answer. The online course may correct an answer to a personal validation question for a student who inadvertently missed a personal validation question. In such a case, the student record shall include a record of both answers and an explanation of the reasons why the answer was corrected.

(II) Third party data method. The online course shall ask a minimum of twelve (12) personal validation questions randomly throughout the course from a bank of at least twenty (20) questions drawn from a third party data source. The method must meet the following criteria.

(-a-) Time to respond. The student must correctly answer a personal validation question within sixty (60) seconds.

(-b-) Placement of questions. At least two personal validation questions shall appear randomly during each instructional hour, not including the final examination.

(-c-) Exclusion from the course. The online course shall exclude the student from the course after the student has incorrectly answered more than 30% of the personal validation questions.

(-d-) Correction of answer. The online course may correct an answer to a personal validation question for a student who inadvertently missed a personal validation question. In such a case, the student record shall include a record of both answers and an explanation of the reasons why the answer was corrected.

(vi) Content validation. The online course shall incorporate a course content validation process that verifies student participation and comprehension of course material, including the following.

(I) Timers. The online course shall include built-in timers to ensure that 330 minutes of instruction have been attended and completed by the student.

(II) Testing the student's participation in multimedia presentations. The online course shall ask at least 1 course validation question following each multimedia clip of more than sixty (60) seconds.

(-a-) Test bank. For each multimedia presentation that exceeds sixty (60) seconds, the online course shall have a test bank of at least four (4) questions.

(-b-) Question difficulty. The question shall be short answer, multiple choice, essay, or a combination of these forms. The question shall be difficult enough that the answer may not be easily determined without having viewed the actual multimedia clip.

(-c-) Failure criteria. If the student fails to answer the question correctly, the online course must require the student to view the multimedia clip again. The online course shall then present a different question from its test bank for that multimedia clip. The online course may not repeat a question until it has asked all the questions from its test bank.

(-d-) Answer identification. The online course shall not identify the correct answer to the multimedia question.

(III) Course participation questions. The online course shall test the student's course participation by asking at least two questions from each of the seven topics listed in subparagraph (A)(v)(II)-(VIII).

(-a-) Test bank. The test bank for course participation questions shall include at least ten questions from each of the seven topics identified in subparagraph (A)(v)(II)-(VIII).

(-b-) Placement of questions. The course participation questions shall be asked at the end of the major unit or section in which the topic is covered.

(-c-) Question difficulty. Course participation questions shall be of such difficulty that the answer may not be easily determined without having participated in the actual instruction.

(IV) Comprehension of course content. The online course shall test the student's mastery of the course content by administering at least 30 questions covering the highway signs and traffic laws required under Texas Transportation Code, §521.161.

(-a-) Test banks (two). Separate test banks for course content mastery questions are required for the highway signs and traffic laws examination as required under Texas Transportation Code, §521.161, with examination questions drawn equally from each.

(-b-) Placement of questions. The mastery of course content questions shall be asked at the end of the course (comprehensive final examination).

(-c-) Question difficulty. Course content mastery questions shall be of such difficulty that the answer may not be easily determined without having participated in the actual instruction.

(vii) Retest the student. If the student misses more than 30% of the questions asked on an examination, the online course shall retest the student using different questions from its test bank. The student is not required to repeat the course, but may be allowed to review the course prior to retaking the examination. If the student fails the comprehensive final examination three times, the student shall fail the course.

(viii) Student records. The online course shall provide for the creation and maintenance of the records documenting student enrollment, the verification of the student's identity, and the testing of the student's mastery of the course material. The school shall also ensure that the student record is readily, securely, and reliably available for inspection by a department representative. The student records shall contain the following information:

(I) the student's first, middle, and last name;

(II) the student's date of birth and gender;

(III) a record of all questions asked and the student's responses;

(IV) the name or identity number of the staff member entering comments, retesting, or revalidating the student;

(V) both answers and a reasonable explanation for the change if any answer to a question is changed by the school for a student who inadvertently missed a question; and

(VI) a record of the time the student spent in each unit and the total instructional time the student spent in the course.

(ix) Waiver of certain education and examination requirements. A licensed driver education instructor must determine that the student has successfully completed and passed a driver education course exclusively for adults prior to waiving the examination requirements of the highway sign and traffic law parts of the examination required under Texas Transportation Code, §521.161, and signing the ADE-1317 driver education completion certificate.

(x) Age requirement. A person must be at least 18 years of age to enroll in a driver education course exclusively for adults.

(xi) Issuance of certificate. Not later than the 15th working day after the course completion date, the school shall issue an ADE-1317 driver education certificate only to a person who successfully completes an approved online driver education course exclusively for adults.

(xii) Access to instructor. The school must establish hours that the student may access the instructor. With the exception of circumstances beyond the control of the school, the student shall have access to the instructor during the specified hours.

(xiii) Additional requirements for online courses.

(I) Re-entry into the course. An online course may allow the student re-entry into the course by username and password authentication or other means that are as secure as username and password authentication.

(II) Navigation. The student shall be provided orientation training to ensure easy and logical navigation through the course. The student shall be allowed to freely browse previously completed material.

(III) Audio-visual standards. The video and audio shall be clear and, when applicable, the video and audio shall be synchronized.

(IV) Domain names. Each school offering an online course must offer that online course from a single domain. The online course may accept students that are redirected to the online course domain, as long as the school license number appears on the source that redirects the student to the online course domain. The student must be redirected to a webpage that clearly identifies the licensed school offering the online course before the student begins the registration process, supplies any information, or pays for the course.

(3) Compliance with Texas Transportation Code, §521.1601. Persons age 18 to under 25 years of age must successfully complete either a minor and adult driver education course or the driver education course exclusively for adults. Partial completion of either course does not satisfy the requirements of rule or law.

(4) Issuance of certificate. A licensed school or instructor may not issue an ADE-1317 adult driver education certificate to a person who is not at least 18 years of age.

(c) This subsection contains requirements for driver education instructor development courses. For each course, the following curriculum documents and materials are required to be submitted as part of the application for approval. If the course meets the minimum requirements set forth in this subchapter, the division may grant an approval. Schools desiring to provide driver education instructor development courses shall provide an application for approval that shall be in compliance with this section.

(1) Schools desiring to obtain approval for a driver education instructor development course shall request an application for approval from the department. All instructor development curricula submitted for approval shall meet or exceed the requirements set forth for approved programs offered at colleges, universities, school districts, or educational service centers and shall be specific to the area of specialization. Guidelines and criteria for the course shall be provided with the application packet, and the school shall meet or exceed the criteria outlined.

(A) Six-semester-hour instructor development course. The driver education instructor development program instructional objectives must be equivalent to 6 semester hours or 90 clock hours of driver and traffic safety education instructor training and shall include:

(i) Driver Education I--minimum of 45 clock hours. Instructional objectives: the trainee shall acquire the knowledge, skills, and understanding to instruct students in the reduced-risk driving practices in the Highway Transportation System (HTS) in accordance with the standards for minor and adult driver education and traffic safety. Instruction shall address the following topics:

(I) overview of Driver Education I;

(II) minor and adult driver education curriculum overview and course goals;

(III) school and instructor liability and responsibility;

(IV) student evaluation and assessment;

(V) instructor conduct, including professionalism and public relations;

(VI) rules, codes, and standards for driver education programs; and

(VII) classroom progress examination for Driver Education I.

(ii) Driver Education II--minimum of 45 clock hours. Instructional objectives: the trainee shall acquire the knowledge, skills, and understanding to instruct students in the reduced-risk driving practices in the HTS in accordance with the standards for minor and adult driver education and traffic safety for in-car instruction. Instruction shall address the following topics:

(I) overview of Driver Education II;

(II) minor and adult driver education in-car curriculum overview;

(III) commentary driving techniques;

(IV) factors that influence learning and habit formation;

(V) in-car lesson planning, including scheduling and designing;

(VI) vocabulary and communication;

(VII) risk management;

(VIII) general guidelines for conducting behind-the-wheel and in-car observation;

(IX) in-car debriefing techniques;

(X) proper record keeping and maintenance;

(XI) classroom progress examination for Driver Education II; and

(XII) in-car laboratory, including:

(-a-) initial assessment of trainee's driving skills by instructor trainer;

(-b-) observation of in-car teaching techniques as given by a licensed instructor;

(-c-) practice of instructor risk-management and emergency procedures, including taking control of the vehicle under the supervision and observation of a licensed instructor;

(-d-) in-car trainee student teaching under the supervision and observation of a licensed instructor; and

(-e-) trainee in-car student teaching final progress assessment under the supervision and observation of a licensed instructor.

(B) Nine-semester-hour instructor development course. The driver education instructor development program instructional objectives must be equivalent to 9 semester hours or 135 clock hours of driver and traffic safety education instructor training and shall include:

(i) all requirements set forth in subparagraph (A); and

(ii) Driver Education III--minimum of 45 clock hours. Instructional objectives: the trainee shall acquire the knowledge, skills, and understanding to instruct students in the reduced-risk driving practices in the HTS in accordance with the standards for minor and adult driver education and traffic safety for classroom instruction. Instruction shall address the following topics:

(I) overview of Driver Education III;

(II) classroom delivery, including the Code, rules, standards, and school administrative procedures;

(III) student learning styles;

(IV) classroom management and student discipline;

(V) classroom lesson planning and designing;

(VI) scheduling driver education programs;

(VII) proper record keeping and maintenance;

(VIII) simulation theory and multicar range instruction;

(IX) instructor professional growth;

(X) classroom progress examination for Driver Education III; and

(XI) classroom laboratory, including:

(-a-) observation of classroom teaching techniques as given by a licensed instructor; and

(-b-) classroom practice student teaching under the supervision and observation of a licensed instructor.

(C) Supervising instructor development course. The supervising driver education instructor development program instructional objectives must be equivalent to 6 semester hours or 90 clock hours of driver and traffic safety education instructor training and shall include:

(i) training in administering driver education programs and supervising and administering traffic safety education;

(ii) Supervising Instructor I--minimum of 45 clock hours. Instructional objectives: the instructor shall acquire the knowledge, skills, and understanding to instruct trainees in the reduced-risk driving practices in the HTS in accordance with the standards for minor and adult driver education and traffic safety. Instruction shall address the following topics:

(I) overview of Supervising Instructor I;

(II) minor and adult driver education curriculum overview and course goals;

(III) rules, codes, and standards for driver education programs;

(IV) learning styles;

(V) factors that influence learning and habit formation;

(VI) vocabulary and communication;

(VII) lesson plan development;

(VIII) classroom management and student discipline; and

(IX) classroom progress examination for Supervising Instructor I; and

(iii) Supervising Instructor II--minimum of 45 clock hours. Instructional objectives: the instructor shall acquire the knowledge, skills, and understanding to instruct trainees in the reduced-risk driving practices in the HTS in accordance with the standards for minor and adult driver education and traffic safety. Instruction shall address the following topics:

(I) overview of Supervising Instructor II;

(II) student evaluation and assessment;

(III) commentary driving techniques;

(IV) in-car debriefing techniques;

(V) scheduling driver education programs;

(VI) proper record keeping and maintenance;

(VII) school and instructor liability and responsibility;

(VIII) instructor conduct, including professionalism and public relations;

(IX) risk management;

(X) simulation theory and multicar range;

(XI) professional growth;

(XII) classroom progress examination for Supervising Instructor II; and

(XIII) classroom laboratory, including:

(-a-) observation of nine-semester-hour driver education instructor development course classroom teaching techniques as given by a licensed instructor; and

(-b-) classroom practice student teaching of a nine-semester-hour driver education instructor development course under the supervision and observation of a licensed instructor.

(2) Prior to enrolling a student in a driver education instructor development course, the school owner or representative must obtain proof that the student has a high school diploma or equivalent. A copy of the evidence must be placed on file with the school. Further, the school shall obtain and evaluate a current official driving record from the student prior to enrollment. The individual must not have accumulated 6 or more penalty points on a driving record during the preceding 36-month period. The school must use the standards for assessing penalty points for convictions of traffic law violations and accident involvements established under Texas Transportation Code, Chapter 708, Subchapter B.

(3) Instruction records shall be maintained by the school for each instructor trainee and shall be available for inspection by authorized division representatives at any time during the training period and/or for license investigation purposes. The instruction record shall include the trainee's name, address, driver's license number, and other pertinent data; name and instructor license number of the person conducting the training; and dates of instruction, lesson time, and subject taught during each instruction period. Each record shall also include grades or other means of indicating the trainee's aptitude and development. Upon satisfactory completion of the training course, the supervising teacher conducting the training will certify one copy of the instruction record for attachment to the trainee's application for licensing, and one copy will be maintained in a permanent file at the school.

(4) All student instruction records submitted for the approved instructor development courses shall be original documents.

(5) A properly licensed supervising driver education teacher or supervising teaching assistant-full shall teach the 6-semester-hour, 9-semester-hour, and supervising instructor development courses. The supervising teacher may allow a driver education teacher, teaching assistant-full, or teaching assistant to provide training under the direction of the supervising teacher in areas appropriate for their level of certification and/or licensure. The supervising teacher is responsible for certifying all instruction conducted by the driver education teacher, teaching assistant-full, or teaching assistant, including independent study and research assignments, which shall not exceed 25% of the total training program time.

(d) This subsection contains requirements for driver education continuing education courses.

(1) Driver education school owners may receive an approval for a four-hour continuing education course and provide the approved course to instructors to ensure that instructors meet the requirements for continuing education.

(2) The request for course approval shall contain the following:

(A) a description of the plan by which the course will be presented;

(B) the subject of each unit;

(C) the educational objectives of each unit;

(D) time to be dedicated to each unit;

(E) instructional resources for each unit, including names or titles of presenters and facilitators; and

(F) a plan by which the school owner will monitor and ensure attendance and completion of the course by the instructions within the guidelines set forth in the course.

(3) A continuing education course may be approved if the department determines that:

(A) the course constitutes an organized program of learning that enhances the instructional skills, methods, or knowledge of a licensed driver education instructor;

(B) the course pertains to subject matters that relate directly to the practice of driver education instruction, instruction techniques, or driver education-related subjects; and

(C) the entire course shall be taught by individuals with recognized experience or expertise in the area of driver education or related subjects. The division may request evidence of the individuals' experience or expertise.

(4) Driver education school owners may not offer the same continuing education course to instructors each year. In order to continue to offer a course, a new or revised continuing education course shall be submitted to the department for approval.

(e) A branch school may offer only a course that is approved for the primary school.

(f) Schools applying for approval of additional courses after the original approval has been granted shall submit the documents designated by the division with the appropriate fee. Courses shall be approved before soliciting students, advertising, or conducting classes. An approval for an additional course shall not be granted if the school's compliance is in question at the time of application.

(g) If an approved course is discontinued, the division shall be notified within five days of discontinuance and furnished with the names and addresses of any students who could not complete the course because it was discontinued. If the school does not make arrangements satisfactory to the students and the division for the completion of the courses, the full amount of all tuition and fees paid by the students are due and refundable. If arrangements are not made satisfactory to the students and the division, the refunds must be made no later than thirty (30) days after the course was discontinued. Any course discontinued shall be removed from the school's approval.

(h) If, upon review and consideration of an original, renewal, or amended application for course approval, the department determines that the applicant does not meet the legal requirements, the department shall notify the applicant, setting forth the reasons for denial in writing.

(i) The department may revoke approval of a school's courses under certain circumstances, including, but not limited to, the following.

(1) Information contained in the application for the course approval is found to be untrue.

(2) The school has failed to maintain the instructors, facilities, equipment, or courses of study on the basis of which approval was issued.

(3) The school offers a course which has not been approved or for which there are no instructors or equipment.

(4) The school has been found to be in violation of TEC, Chapter 1001, and/or this chapter.

§84.501. Driver Education Course Alternative Method of Instruction.

(a) Approval process. The department may approve an alternative method whereby a driver education school is approved to teach all or part of the classroom portion of an approved driver education course by an alternative method of instruction (AMI) that does not require students to be present in a classroom that meets the following requirements.

(1) Standards for approval. The department may approve a driver education school to teach all or part of the classroom portion of an approved driver education course by an AMI that does not require students to be present in a classroom only if:

(A) the AMI includes testing and security measures that the department determines are at least as secure as the measures available in the usual classroom setting;

(B) the course satisfies any other requirement applicable to a course in which the classroom portion is taught to students in the usual classroom setting;

(C) a student and instructor are in different locations for a majority of the student's instructional period;

(D) the AMI instructional activities are integral to the academic program; and

(E) extensive communication between a student and instructor and among students is emphasized.

(2) Application. The school shall submit a completed AMI application along with the appropriate fee. The application for AMI approval shall be treated the same as an application for the approval of a driver education traditional course, and the AMI must deliver the school's approved curriculum as aligned with the Program of Organized Instruction for Driver Education and Traffic Safety.

(3) School license required. A person or entity offering a classroom driver education course to Texas students by an AMI must hold a driver education school license. The driver education school is responsible for the operation of the AMI.

(b) Course content. The AMI must deliver the same topics, sequence, and course content as the school's approved traditional driver education course.

(1) Course topics. The time requirements for the course content described in §84.500 (a) and (b)(1)(C) (relating to Courses of Instruction) shall be met.

(2) Editing. The material presented in the AMI shall be edited for grammar, punctuation, and spelling and be of such quality that it does not detract from the subject matter.

(3) Irrelevant material. Advertisement of goods and services shall not appear during the actual instructional times of the course. Distracting material that is not related to the topic being presented shall not appear during the actual instructional times of the course.

(4) Student breaks. The AMI is allowed 5 minutes of break per instructional hour for all phases, for a total of 160 minutes of break time. No more than ten minutes of break time may be accumulated for each two hours of instruction.

(5) Minimum content. The AMI shall present sufficient instructional content so that it would take a student a minimum of 32 hours (1,920 minutes) to complete the course. A course that demonstrates that it contains 1,760 minutes of instructional content shall mandate that students take 160 minutes of break time or provide additional educational content for a total of 1,920 minutes (32 hours). In order to demonstrate that the AMI contains sufficient content, the AMI shall use the following methods.

(A) Word count. For written material that is read by the student, the total number of words in the written sections of the course shall be divided by 180. The result is the time associated with the written material for the sections.

(B) Multimedia presentations. There shall be a minimum of 120 minutes of multimedia presentation. The school owner shall calculate the total amount of time it takes for all multimedia presentations to play, not to exceed 640 minutes.

(C) Charts and graphs. The AMI may assign one minute for each chart or graph.

(D) Examinations. The school owner may allocate up to 60 seconds for questions presented over the Internet and 30 seconds for questions presented by telephone.

(E) Total time calculation. If the sum of the time associated with the written course material, the total amount of time for all multimedia presentations, and the time associated with all charts, graphs, and breaks equals or exceeds the minimum 1,920 minutes, the AMI has demonstrated the required amount of content.

(F) Alternate time calculation method. In lieu of the time calculation method, the AMI may submit alternate methodology to demonstrate that the AMI meets the minimum 32-hour requirement.

(6) Academic integrity. The academic integrity of the AMI for a classroom driver education course shall include:

(A) goals and objectives that are measurable and clearly state what the participants should know or be able to do at the end of the course;

(B) a clear, complete driver education classroom course overview and syllabus;

(C) content and assignments that are of sufficient rigor, depth, and breadth to teach the standards being addressed;

(D) literacy and communication skills that are incorporated and taught as an integral part of the AMI;

(E) sufficient learning resources and materials to increase student success available to students before the AMI begins;

(F) instruction requirements that are consistent with course goals, representative of the scope of the course, and clearly stated;

(G) communication processes that are provided to students, parents, and mentors on how to communicate with the school

and instructor, including information on the process for these communications and for timely and frequent feedback about student progress;

(H) information addressing issues associated with the use of copyrighted materials; and

(I) if online, clearly stated academic integrity and netiquette (Internet etiquette) expectations regarding lesson activities, discussions, e-mail communications, and plagiarism.

(7) Instructional design. Instructional design of AMI for classroom driver education shall:

(A) include a clear understanding of student needs and incorporate varied ways to learn and multiple levels of mastery of the curriculum;

(B) ensure each lesson includes a lesson overview, objectives, resources, content and activities, assignments, and assessments to provide multiple learning opportunities for students to master the content;

(C) include concepts and skills that students will retain over time;

(D) include activities that engage students in active learning;

(E) include the instructor engaging students in learning activities that address a variety of learning styles and preferences to master course content;

(F) include instruction that provides opportunities for students to engage in higher-order thinking, critical-reasoning activities, and thinking in increasingly complex ways;

(G) include a statement that notifies the student of the school owner's security and privacy policy regarding student data, including personal and financial data; and

(H) include assessment and assignment answers and explanations.

(c) Personal validation. The AMI shall maintain a method to validate the identity of the person taking the course. The personal validation system shall incorporate one of the following requirements.

(1) School initiated method. Upon approval by the department, the AMI may use a method that includes testing and security measures that are at least as secure as the methods available in the traditional classroom setting.

(2) Third party data method. The online course shall ask a minimum of sixty (60) personal validation questions randomly throughout the course from a bank of at least 200 questions drawn from a third party data source.

(A) Time to respond. The student must correctly answer the personal validation question within sixty (60) seconds for questions presented over the Internet and 30 seconds for questions presented by telephone.

(B) Placement of questions. At least one personal validation question shall appear in each major unit or section, not including the final examination.

(C) Exclusion from the course. The AMI shall exclude the student from the course after the student has incorrectly answered more than 30% of the personal validation questions.

(D) Correction of answer. The school may correct an answer to a personal validation question for a student who inadvertently missed a personal validation question. In such a case, the student record shall include a record of both answers and an explanation of the reasons why the answer was corrected.

(d) Content validation. The AMI shall incorporate a course content validation process that verifies student participation and comprehension of course material, including the following.

(1) Timers. The AMI shall include built-in timers to ensure that 1,920 minutes of instruction have been attended and completed by the student.

(2) Testing the student's participation in multimedia presentations. The AMI shall ask at least 1 course validation question following each multimedia clip of more than sixty (60) seconds.

(A) Test bank. For each multimedia presentation that exceeds sixty (60) seconds, the AMI shall have a test bank of at least 4 questions.

(B) Question difficulty. The question shall be short answer, multiple choice, essay, or a combination of these forms. The question shall be difficult enough that the answer may not be easily determined without having viewed the actual multimedia clip.

(C) Failure criteria. If the student fails to answer the question correctly, the AMI shall either require the student to view the multimedia clip again or the AMI shall fail the student from the course. If the AMI requires the student to view the multimedia clip again, the AMI shall present a different question from its test bank for that multimedia clip. The AMI may not repeat a question until it has asked all the questions from its test bank.

(D) Answer identification. The AMI shall not identify the correct answer to the multimedia question.

(3) Mastery of course content. The AMI shall test the student's mastery of the course content by asking questions from each of the modules listed in the program of organized instruction for driver education and traffic safety.

(A) Test bank. The test bank for course content mastery questions shall include at least:

(i) 20 questions from each of modules 1, 8, and 12 listed in the program of organized instruction for driver education and traffic safety; and

(ii) 10 questions from each of the remaining modules.

(B) Placement of questions. The mastery of course content questions shall be asked at the end of each module.

(C) Question difficulty. Course content mastery questions shall be of such difficulty that the answer may not be easily determined without having participated in the actual instruction.

(4) Repeat and retest options. The AMI may use the following options for students who fail an examination to show mastery of course content.

(A) Repeat the failed module. If the student misses more than 30% of the questions asked on a module examination, the AMI shall require that the student take the module again. The correct answer to missed questions may not be disclosed to the student (except as part of course content). At the end of the module, the AMI shall again test the student's mastery of the material. The AMI shall present different questions from its test bank until all the applicable questions have been asked. The student may repeat this procedure an unlimited number of times.

(B) Retest the final examination. If the student misses more than 30% of the questions asked on the final examination, the AMI shall retest the student in the same manner as the failed examination, using different questions from its test bank. If the student fails the same unit examination or the comprehensive final examination three times, the student shall fail the course.

(e) Student records. The AMI shall provide for the creation and maintenance of the records documenting student enrollment, the verification of the student's identity, and the testing of the student's mastery of the course material. The school shall ensure that the student record is readily, securely, and reliably available for inspection by a department-authorized representative. The student records shall contain all information required in §84.81 (relating to Recordkeeping Requirements) and the following information.

(1) A record of all questions asked and the student's responses.

(2) The name or identity number of the staff member entering comments or revalidating the student.

(3) The name or identity number of the staff member retesting the student.

(4) If any answer to a question is changed by the school for a student who inadvertently missed a question, the school shall provide both answers and a reasonable explanation for the change.

(5) A record of the time the student spent in each unit of the AMI and the total instructional time the student spent in the course.

(f) Additional requirements for Internet courses. Courses delivered via the Internet or technology shall also comply with the following requirements.

(1) An AMI may allow the student re-entry into the course by username and password authentication or other means that are equally secure.

(2) The student shall be provided orientation training to ensure easy and logical navigation through the course. The student shall be allowed to freely browse previously completed material.

(3) The video and audio shall be clear and, when applicable, the video and audio shall be synchronized.

(4) If the AMI presents transcripts of a video presentation, the transcript shall be delivered concurrently with the video stream so that the transcript cannot be displayed if the video does not display on the student's computer.

(5) Each school offering an AMI must offer that AMI from a single domain. The AMI may accept students that are redirected to the AMI's domain, as long as the school license number appears on the source that redirects the student to the AMI domain. The student must be redirected to a webpage that clearly identifies the licensed school offering the AMI before the student begins the registration process, supplies any information, or pays for the course.

(6) Hardware, web browser, and software requirements must be specified.

(7) Prerequisite skills in the use of technology must be identified.

(8) Appropriate content-specific tools and software must be used.

(9) Universal design principles that ensure access for all students must be used.

(10) Online textbooks and other instructional materials used in an AMI must meet state standards.

(11) The school must offer the course instructor, school director, and school owner assistance with technical support and course management.

(g) Additional requirements for video courses.

(1) Delivery of the material. For AMIs delivered by the use of videotape, digital video disc (DVD), film, or similar media, the equipment and course materials may only be made available through a process that is approved by the department.

(2) Video requirement. The video course shall include between 60 and 640 minutes of video that is relevant to the required topics such as video produced by other entities for training purposes, including public safety announcements and B roll footage. The remainder of the 1,760 minutes of required instruction shall be video material that is relevant to required course instruction content.

(A) A video AMI shall ask, at a minimum, at least 1 course validation question for each multimedia clip of more than sixty (60) seconds.

(B) A video AMI shall devise and submit for approval a method for ensuring that a student correctly answers questions concerning the multimedia clips of more than sixty (60) seconds.

(h) Standards for AMIs using new technology. For AMIs delivered using technologies that have not been previously reviewed and approved by the department, the department may apply similar standards as appropriate and may also require additional standards. These standards shall be designed to ensure that the course can be taught by the alternative method and that the alternative method includes testing and security measures that are at least as secure as the methods available in the usual classroom setting.

(i) Modifications to the AMI. Except as provided by paragraph (1), a change to a previously approved AMI shall not be made without the prior approval of the department. The licensed school for the approved course on which the AMI is based shall ensure that any modification to the AMI is implemented by all schools endorsed to offer the AMI.

(1) A school may submit to the department a request for immediate implementation of a proposed change that is insignificant or that protects the interest of the consumer such that immediate implementation is warranted. The request shall include:

(A) a complete description of the proposed change;

(B) the reason for the change;

(C) the reason the requestor believes the proposed change is insignificant or protects the interest of the consumer such that immediate implementation is warranted; and

(D) an explanation of how the change will maintain the course or AMI in compliance with state law and the rules specified in this chapter.

(2) The department may request additional information regarding a proposed change from the school making a request under paragraph (1).

(3) The department will respond to any request made under paragraph (1), within five (5) working days of receipt.

(A) If the department determines that the proposed change is insignificant or protects the interest of the consumer such that immediate implementation is warranted, the requestor may imme-

diately implement the change. The licensed school for the approved course on which the AMI is based shall ensure that the change is implemented.

(B) If the department determines that the proposed change is neither insignificant nor protects the interest of the consumer such that immediate implementation is warranted, the department shall notify the requestor of that determination and the change may not be made unless the department approves the change following a complete review.

(4) A determination by the department to allow immediate implementation under paragraph (1), does not constitute final approval by the department of the change. The department reserves the right to conduct further review after the change is implemented and to grant or deny final approval based on whether the change complies with state law and rules specified in this chapter.

(5) If, following further review, a change in an AMI that has been immediately implemented pursuant to paragraph (1), is determined not to be in compliance with state law and rules specified in this chapter, the department.

(A) shall notify the course provider affected by the change of:

(i) the specific provisions of state law or rules with which the AMI change is not in compliance; and

(ii) a reasonable date by which the AMI must be brought into compliance;

(B) shall not, for the period between the implementation of the change and the date specified under subparagraph (A)(ii):

(i) seek any penalty relating to the non-compliance;

(ii) take any action to revoke or deny renewal of a license of a school or course provider based on the change; or

(iii) withdraw approval of a course or AMI based on the change; and

(C) is not required to specify the method or manner by which the school alters the AMI to come into compliance with state law and the rules in this chapter.

(6) If the department allows immediate implementation pursuant to paragraph (1), and later determines that the description of the change or the request was misleading, materially inaccurate, not substantially complete, or not made in good faith, paragraph (5)(B) does not apply.

(7) A school who immediately implements a change pursuant to paragraph (1) and fails to bring the AMI into compliance prior to the date allowed under paragraph (5)(A)(ii) may be determined to be in violation of state law or the rules in this chapter after that date.

(8) A school that immediately implements a change under paragraph (1) assumes the risk of final approval being denied and of being required to come into compliance with state law and the rules in this chapter prior to the date allowed under paragraph (5)(A)(ii), including bearing the cost of reversing the change or otherwise modifying the AMI to come into compliance with state law and the rules in this chapter.

(j) Termination of the school's operation. Upon termination, schools shall deliver any missing student data to the department within five days of termination.

(k) Renewal of AMI approval. The AMI approval must be renewed and updated to ensure timeliness every two years. The renewal document due date shall be March 1, 2012, and every two years thereafter.

(1) For approval, the school shall:

(A) update all the statistical data, references to law, and traffic safety methodology with the latest available data; and

(B) submit a statement of assurance that the AMI has been updated to reflect the latest applicable laws and statistics.

(2) Failure to make necessary changes or to submit a statement of assurance documenting those changes shall be cause for revocation of the AMI approval.

(3) The department may alter the due date of the renewal documents by giving the approved AMI six months notice. The department may alter the due date in order to ensure that the AMI is updated six months after the effective date of new state laws passed by the Texas Legislature.

(l) Access to instructor. The school must establish hours that the student may access the instructor. With the exception of circumstances beyond the control of the school, the student shall have access to the instructor during the specified hours.

(m) Enrollment guidelines. The AMI for driver education classroom that desires to instruct students age 14 to under 25 years of age shall provide the same beginning and ending dates for each student in the same class of 36 or less. No student shall be allowed to enroll and start the classroom phase after the sixth hour of classroom instruction has been completed.

(n) Required training. The instructor must meet the professional teaching standard established by a state licensing agency or have academic credentials in the field in which he or she is teaching and must have been trained to teach the AMI classroom driver education course. Each instructor of an AMI classroom driver education course offered by a driver education school must:

(1) have a ST, DET, STA-F, or TA-F driver education license; and

(2) successfully complete the appropriate professional development course before teaching an AMI classroom driver education course.

§84.502. Driving Safety Courses of Instruction.

(a) This section contains requirements for driving safety, continuing education, and instructor development courses. For each course, the following curriculum documents and materials are required to be submitted as part of the application for approval. Except as provided by §84.504, relating to Driving Safety Course Alternative Delivery Method), all course content shall be delivered under the direct observation of a licensed instructor. Courses of instruction shall not be approved that contain language that a reasonable and prudent individual would consider inappropriate. Any changes and updates to a course shall be submitted by the course provider and approved prior to being offered. Approval will be revoked for any course that meets the definition of inactive as defined in §84.2(16) of this chapter.

(1) Driving safety courses.

(A) Educational objectives. The educational objectives of driving safety courses shall include, but not be limited to promoting respect for and encouraging observance of traffic laws and traffic safety responsibilities of drivers and citizens; reducing traffic violations; reducing traffic-related injuries, deaths, and economic losses; and motivating continuing development of traffic-related competencies.

(B) Driving safety course content guides. A course content guide is a description of the content of the course and the techniques of instruction that will be used to present the course. For courses offered in languages other than English, the course owner shall provide a copy of the student verification of course completion document and/or enrollment contract, student instructional materials, final examination, and evaluation in the proposed language. To be approved, each course owner shall submit as part of the application a course content guide that includes the following:

(i) a statement of the course's traffic safety goal and philosophy;

(ii) a statement of policies and administrative provisions related to instructor conduct, standards, and performance;

(iii) a statement of policies and administrative provisions related to student progress, attendance, makeup, and conduct. The policies and administrative provisions shall be used by each school that offers the course and include the following requirements:

(I) progress standards that meet the requirements of subparagraph (F);

(II) appropriate standards to ascertain the attendance of students. All schools approved to use the course must use the same standards for documenting attendance to include the hours scheduled each day and each hour not attended;

(III) if the student does not complete the entire course, including all makeup lessons, within the timeline specified by the court, no credit for instruction shall be granted;

(IV) any period of absence for any portion of instruction will require that the student complete that portion of instruction. All makeup lessons must be equivalent in length and content to the instruction missed and taught by a licensed instructor; and

(V) conditions for dismissal and conditions for re-entry of those students dismissed for violating the conduct policy;

(iv) a statement of policy addressing entrance requirements and special conditions of students such as the inability to read, language barriers, and other disabilities;

(v) a list of relevant instructional resources such as textbooks, audio and visual media and other instructional materials, and equipment that will be used in the course and the furniture deemed necessary to accommodate the students in the course such as tables, chairs, and other furnishings. The course shall include a minimum of 60 minutes of audio/video materials relevant to the required topics; however, the audio/video materials shall not be used in excess of 150 minutes of the 300 minutes of instruction. The resources may be included in a single list or may appear at the end of each instructional unit;

(vi) written or printed materials to be provided for use by each student as a guide to the course. The division may make exceptions to this requirement on an individual basis;

(vii) instructional activities to be used to present the material (lecture, films, other media, small-group discussions, workbook activities, written and oral discussion questions, etc.). When small-group discussions are planned, the course content guide shall identify the questions that will be assigned to the groups;

(viii) instructional resources for each unit;

(ix) techniques for evaluating the comprehension level of the students relative to the instructional unit. If oral or written questions are to be used to measure student comprehension levels, they shall be included in the course guide. The evaluative technique may be used throughout the unit or at the end; and

(x) a completed form cross-referencing the instructional units to the topics identified in subparagraph (D). A form to cross-reference the instructional units to the required topics and topics unique to the course will be provided by the division.

(C) Course and time management. Approved driving safety courses shall be presented in compliance with the following guidelines and shall include statistical information drawn from data maintained by the Texas Department of Transportation or National Highway Traffic Safety Administration.

(i) A minimum of 300 minutes of instruction is required.

(ii) The total length of the course shall consist of a minimum of 360 minutes.

(iii) Sixty (60) minutes of time, exclusive of the 300 minutes of instruction, shall be dedicated to break periods or to the topics included in the minimum course content. All break periods shall be provided after instruction has begun and before the comprehensive examination and summation.

(iv) Administrative procedures such as enrollment shall not be included in the 300 minutes of the course.

(v) Courses conducted in a single day in a traditional classroom setting shall allow a minimum of 30 minutes for lunch.

(vi) Courses taught over a period longer than one day shall provide breaks on a schedule equitable to those prescribed for one-day courses. However, all breaks shall be provided after the course introduction and prior to the last unit of the instructional day or the comprehensive examination and summation, whichever is appropriate.

(vii) The order of topics shall be approved by the department as part of the course approval, and for each student, the course shall be taught in the order identified in the approved application.

(viii) Students shall not receive a uniform certificate of course completion unless that student receives a grade of at least 70% on the final examination.

(ix) In a traditional classroom setting, there must be sufficient seating for the number of students, arranged so that all students are able to view, hear, and comprehend all instructional aids and the class shall have no more than 50 students.

(x) The driving safety instructor or school shall make a material effort to establish the identity of the student.

(D) Minimum course content. Driving Safety course content, including video and multimedia, shall include current statistical data, references to law, driving procedures, and traffic safety methodology. A driving safety course shall include, as a minimum, materials adequate to assure the student masters the following.

(i) Course introduction--minimum of ten minutes (instructional objective--to orient students to the class). Instruction shall address the following topics:

(I) purpose and benefits of the course;

(II) course and facilities orientation;

(III) requirements for receiving course credit;

(IV) student course evaluation procedures; and

(V) Department-provided information on course content.

(ii) The traffic safety problem--minimum of 15 minutes (instructional objectives--to develop an understanding of the nature of the traffic safety problem and to instill in each student a sense of responsibility for its solution). Instruction shall address the following topics:

(I) identification of the overall traffic problem in the United States, Texas, and the locale where the course is being taught;

(II) death, injuries, and economic losses resulting from motor vehicle crashes in Texas; and

(III) the top five contributing factors of motor vehicle crashes in Texas as identified by the Texas Department of Transportation.

(iii) Factors influencing driver performance--minimum of 20 minutes (instructional objective--to identify the characteristics and behaviors of drivers and how they affect driving performance). Instruction shall address the following topics:

(I) attitudes, habits, feelings, and emotions (aggressive driving, etc.);

(II) alcohol and other drugs;

(III) physical condition (drowsy driving, etc.);

(IV) knowledge of driving laws and procedures; and

(V) understanding the driving task.

(iv) Traffic laws and procedures--minimum of 30 minutes (instructional objectives--to identify the requirements of, and the rationale for, applicable driving laws and procedures and to influence drivers to comply with the laws on a voluntary basis). Instruction shall address the following topics:

(I) passing;

(II) right-of-way;

(III) turns;

(IV) stops;

(V) speed limits;

(VI) railroad crossings safety, including statistics, causes, and evasive actions;

(VII) categories of traffic signs, signals, and highway markings;

(VIII) pedestrians;

(IX) improved shoulders;

(X) intersections;

(XI) occupant restraints;

(XII) anatomical gifts;

(XIII) litter prevention;

(XIV) law enforcement and emergency vehicles (this category will be temporary until the need is substantiated by documentation from the Department of Public Safety on the number of deaths or injuries involved because of improper procedures used by a citizen when stopped by a law enforcement officer); and

(XV) other laws as applicable (i.e., financial responsibility/compulsory insurance).

(v) Special skills for difficult driving environments--minimum of 20 minutes (instructional objectives--to identify how special conditions affect driver and vehicle performance and identify techniques for management of these conditions). Instruction shall address the following topics:

(I) inclement weather;

(II) traffic congestion;

(III) city, urban, rural, and expressway environments;

(IV) reduced visibility conditions--hills, fog, curves, light conditions (darkness, glare, etc.), etc.; and

(V) roadway conditions.

(vi) Physical forces that influence driver control--minimum of 15 minutes (instructional objective--to identify the physical forces that affect driver control and vehicle performance). Instruction shall address the following topics:

(I) speed control (acceleration, deceleration, etc.);

(II) traction (friction, hydroplaning, stopping distances, centrifugal force, etc.); and

(III) force of impact (momentum, kinetic energy, inertia, etc.).

(vii) Perceptual skills needed for driving--minimum of 20 minutes (instructional objective--to identify the factors of perception and how the factors affect driver performance). Instruction shall address the following topics:

(I) visual interpretations;

(II) hearing;

(III) touch;

(IV) smell;

(V) reaction abilities (simple and complex); and

(VI) judging speed and distance.

(viii) Defensive driving strategies--minimum of 40 minutes (instructional objective--to identify the concepts of defensive driving and demonstrate how they can be employed by drivers to reduce the likelihood of crashes, deaths, injuries, and economic losses). Instruction shall address the following topics:

(I) trip planning;

(II) evaluating the traffic environment;

(III) anticipating the actions of others;

(IV) decision making;

(V) implementing necessary maneuvers;

(VI) compensating for the mistakes of other drivers;

(VII) avoiding common driving errors;

(VIII) interaction with other road users (motorcycles, bicycles, trucks, pedestrians, etc.);

(IX) motorcycle awareness, including the dangers of failing to yield the right-of-way to a motorcyclist and the need to share the road with motorcyclist; and

(X) distractions relating to the effect of using a wireless communication device, including texting or engaging in other actions that may distract a driver from the safe or effective operation of a motor vehicle.

(ix) Driving emergencies--minimum of 40 minutes (instructional objective--to identify common driving emergencies and their countermeasures). Instruction shall address the following topics:

(I) collision traps (front, rear, and sides);

(II) off-road recovery, paths of least resistance; and

(III) mechanical malfunctions (tires, brakes, steering, power, lights, etc.).

(x) Occupant restraints and protective equipment--minimum of 15 minutes (instructional objective--to identify the rationale for having and using occupant restraints and protective equipment). Instruction shall address the following topics:

(I) legal aspects;

(II) vehicle control;

(III) crash protection;

(IV) operational principles (active and passive);

(V) helmets and other protective equipment; and

(VI) dangers involved in locking or leaving children in vehicles unattended.

(xi) Alcohol and traffic safety--minimum of 40 minutes (instructional objective--to identify the effects of alcohol on roadway users). Instruction shall not address methods to drink and drive but shall address the following topics related to the effects of alcohol on roadway users:

(I) physiological effects;

(II) psychological effects;

(III) legal aspects; and

(IV) synergistic effects.

(xii) Comprehensive examination--minimum of five minutes (this shall be the last unit of instruction).

(xiii) The remaining 30 minutes of instruction shall be allocated to the topics included in the minimum course content or to additional driving safety topics that satisfy the educational objectives of the course.

(E) Instructor training guides. An instructor training guide contains a description of the plan, training techniques, and curriculum to be used to train instructors to present the concepts of the approved driving safety course described in the applicant's driving safety course content guide. Each course provider shall submit as part of the application an instructor training guide that is bound or hole-punched and placed in a binder and that has a cover and a table of contents. The guide shall include the following:

(i) a statement of the philosophy and instructional goals of the training course;

(ii) a description of the plan to be followed in training instructors. The plan shall include, as a minimum, provisions for the following:

(I) instruction of the trainee in the course curriculum;

(II) training the trainee in the techniques of instruction that will be used in the course;

(III) training the trainee about administrative procedures and course provider policies;

(IV) demonstration of desirable techniques of instruction by the instructor trainer;

(V) a minimum of 15 minutes of instruction of the course curriculum by the trainee under the observation of the instructor trainer as part of the basic training course;

(VI) time to be dedicated to each training lesson; and

(VII) a minimum of 600 minutes of instruction of the course in a regular approved course under the observation of a licensed instructor trainer. The instructor trainee shall provide instruction for two full courses. It is not mandatory that the two courses be taught as two complete courses; however, every instructional unit shall be taught twice; and

(iii) instructional units sufficient to address the provisions identified in clause (ii)(I)-(VI). The total time of the units shall contain a minimum of 16 instructional hours. Each instructional unit shall include the following:

(I) the subject of the unit;

(II) the instructional objectives of the unit;

(III) time to be dedicated to the unit;

(IV) an outline of major concepts to be presented;

(V) instructional activities to be used to present the material (i.e., lecture, films, other media, small-group discussions, workbook activities, written and oral discussion questions). When small-group discussions are planned, the course guide shall identify the questions that will be assigned to the groups;

(VI) instructional resources for each unit; and

(VII) techniques for evaluating the comprehension level of the students relative to the instructional unit. If oral or written questions are to be used to measure student comprehension levels, they shall be included in the instructor training guide. The evaluative technique may be used throughout the unit or at the end.

(F) Examinations. Each course provider shall submit for approval, as part of the application, tests designed to measure the comprehension level of students at the completion of the driving safety course and the instructor training course. The comprehensive examination for each driving safety course must include at least 2 questions from the required units set forth in subparagraph (D)(ii)-(xi), for a total of at least 20 questions. The final examination questions shall be of such difficulty that the answer may not easily be determined without completing the actual instruction. Instructors shall not assist students in answering the final examination questions, but may facilitate alternative testing. Instructors may not be certified or students given credit for the driving safety course unless they score 70% or more on the final test. The course content guide shall identify alternative testing techniques to be used for students with reading, hearing, or learning disabilities and policies for retesting students who score less than

70% on the final examination. The applicant may choose not to provide alternative testing techniques; however, students shall be advised whether the course provides alternative testing prior to enrollment in the course. Test questions may be short answer, multiple choice, essay, or a combination of these forms.

(G) Requirements for authorship. The course materials shall be written by individuals or organizations with recognized experience in writing instructional materials.

(H) Renewal of course approval. The course approval must be renewed every two years. The renewal document due date shall be March 1 of every even numbered calendar year.

(i) For approval, the course owner shall update all the course content methodology, procedures, statistical data, and references to law with the latest available data.

(ii) The course owner shall submit a Statement of Assurance stating that the course has been updated to reflect the latest applicable laws and statistics.

(iii) Failure to make necessary changes or to submit a Statement of Assurance documenting those changes shall be cause for revocation of the course approval.

(iv) The commissioner may alter the due date of the renewal documents by giving the approved course six months' notice. The commissioner may alter the due date in order to ensure that the course is updated six months after the effective date of new state laws passed by the Texas Legislature.

(2) Instructor development courses.

(A) If the alternative instructor training in §84.64 (relating to Driving Safety Instructor License Requirements) is not applicable, driving safety instructors shall successfully complete 28 clock hours (50 minutes of instruction in a 60-minute period) in the approved instructor development course for the driving safety course to be taught, under the supervision of a driving safety instructor trainer. Supervision is considered to have occurred when the instructor trainer is present and personally provides the 28 clock hours of training for driving safety instructors, excluding those clock hours approved by department staff that may be presented by a guest speaker or using films and other media that pertain directly to the concepts being taught.

(B) Instruction records shall be maintained by the course provider and instructor trainer for each instructor trainee and shall be available for inspection by authorized division representatives at any time during the training period and/or for license investigation purposes. The instruction record shall include the trainee's name, address, driver's license number, and other pertinent data; the name and instructor license number of the person conducting the training; and the dates of instruction, lesson time, and subject taught during each instruction period. Each record shall also include grades or other means of indicating the trainee's aptitude and development. Upon satisfactory completion of the training course, the instructor trainer conducting the training will certify one copy of the instruction record for attachment to the trainee's application for licensing, and one copy will be maintained in a permanent file at the course provider location.

(C) All student instruction records submitted for the department-approved instructor development course shall be signed by the course provider. Original documents shall be submitted.

(D) Driving safety instructor development courses may be offered at approved classroom facilities of a licensed school which is approved to offer the driving safety course being taught. A properly licensed instructor trainer shall present the course.

(E) Applicants shall complete 28 hours of training in the driving safety curriculum that shall be taught. Of the 28 hours, 16 shall cover techniques of instruction and in-depth familiarization with materials contained in the driving safety curriculum. The additional 12 hours shall consist of practical teaching with students and shall occur after the first 16 hours have been completed.

(F) The driving safety course provider shall submit dates of instructor development course offerings for the 16-hour training that covers techniques of instruction and in-depth familiarization with the material contained in the driving safety curriculum, locations, class schedules, and scheduled instructor trainers' names and license numbers before the courses are offered. The 12-hour practical-teaching portion of the instructor development course shall be provided at properly licensed schools or classrooms approved to offer the course being provided.

(3) Continuing education courses.

(A) Each course provider will be responsible for receiving an approval for a minimum of a two-hour continuing education course. Each instructor currently endorsed to teach the course must attend the approved continuing education course conducted by the course provider.

(B) The request for course approval shall contain the following:

(i) a description of the plan by which the course will be presented;

(ii) the subject of each unit;

(iii) the instructional objectives of each unit;

(iv) time to be dedicated to each unit;

(v) instructional resources for each unit, including names or titles of presenters and facilitators;

(vi) any information that the department mandates to promote the quality of the education being provided; and

(vii) a plan by which the course provider will monitor and ensure attendance and completion of the course by the instructions within the guidelines set forth in the course.

(C) A continuing education course may be approved if the department determines that:

(i) the course is designed to enhance the instructional skills, methods, or knowledge of the driving safety instructor;

(ii) the course pertains to subject matters that relate directly to driving safety instruction, instruction techniques, or driving safety-related subjects;

(iii) the course has been designed, planned, and organized by the course provider. The course provider shall use licensed driving safety instructors to provide instruction or other individuals with recognized experience or expertise in the area of driving safety instruction or driving safety-related subject matters. Evidence of the individuals' experience or expertise may be requested by the division;

(iv) the course contains updates or approved revisions to the driving safety course curriculum, policies or procedures, and/or any changes to the course, that are affected by changes in traffic laws or statistical data; and

(v) any technology used to present a continuing education course meets reasonable standards for determining attendance, security, and testing.

(b) Course providers shall submit documentation on behalf of schools applying for approval of additional courses after the original approval has been granted. The documents shall be designated by the division and include the appropriate fee. Courses shall be approved before soliciting students, advertising, or conducting classes. An approval for an additional course shall not be granted if the school's compliance is in question at the time of application.

(c) If an approved course is discontinued, the division shall be notified within five days of discontinuance and furnished with the names and addresses of any students who could not complete the course because it was discontinued. If the school does not make arrangements satisfactory to the students and the division for the completion of the courses, the full amount of all tuition and fees paid by the students are due and refundable. If arrangements are not made satisfactory to the students and the division, the refunds must be made no later than 30 days after the course was discontinued. Any course discontinued shall be removed from the list of approved courses.

(d) If, upon review and consideration of an original, renewal, or amended application for course approval, the department determines that the applicant does not meet the legal requirements, the commissioner shall notify the applicant, setting forth the reasons for denial in writing.

(e) The department may revoke approval of any course given to a course owner, provider, or school under any of the following circumstances.

(1) Any information contained in the application for the course approval is found to be untrue.

(2) The school has failed to maintain the faculty, facilities, equipment, or courses of study on the basis of which approval was issued.

(3) The school and/or course provider has been found to be in violation of the Code, and/or this chapter.

(4) The course has been found to be ineffective in meeting the educational objectives set forth in subsection (a)(1)(A).

§84.503. Specialized Driving Safety Courses of Instruction.

(a) This section contains requirements for specialized driving safety courses, instructor development courses, and continuing education. For each course, the following curriculum documents and materials are required to be submitted as part of the application for approval. Except as provided by §84.504 of this title (relating to Driving Safety Course Alternative Delivery Method), all course content shall be delivered under the direct observation of a specialized driving safety licensed instructor. Courses of instruction shall not be approved that contain language that a reasonable and prudent individual would consider inappropriate. Any changes and updates to a course shall be submitted and approved prior to being offered. Approval will be revoked for any course that meets the definition of inactive as defined in §84.2(14).

(1) Specialized driving safety courses.

(A) Educational objectives. The educational objectives of specialized driving safety courses shall include, but not be limited to improving the student's knowledge, compliance with, and attitude toward the use of child passenger safety seat systems and the wearing of seat belt and other occupant restraint systems.

(B) Specialized driving safety course content guides. A course content guide is a description of the content of the course and the techniques of instruction that will be used to present the course. For courses offered in languages other than English, the course owner shall provide a copy of the student verification of course completion document and/or contract, student instructional materials, final examination, and evaluation in the proposed language. To be approved, each course owner shall submit as part of the application a course content guide that includes the following:

(i) a statement of the course's goal and philosophy relative to occupant protection;

(ii) a statement of policies and administrative provisions related to instructor conduct, standards, and performance;

(iii) a statement of policies and administrative provisions related to student progress, attendance, makeup, and conduct. The policies and administrative provisions shall be used by each school that offers the course and include the following requirements:

(I) progress standards that meet the requirements of subparagraph (F);

(II) appropriate standards to ascertain the attendance of students. All schools approved to use the course must use the same standards for documenting attendance to include the hours scheduled each day and each hour not attended;

(III) appropriate criteria to determine course completion. If the student does not complete the entire course, including all makeup lessons, within the timeline specified by the court, no credit for instruction shall be granted;

(IV) provisions for the completion of makeup work. Any period of absence for any portion of instruction will require that the student complete that portion of instruction. All makeup lessons must be equivalent in length and content to the instruction missed and taught by a licensed instructor; and

(V) conditions for dismissal and conditions for re-entry of those students dismissed for violating the conduct policy;

(iv) a statement of policy addressing entrance requirements and special conditions of students such as the inability to read, language barriers, and other disabilities;

(v) a list of relevant instructional resources such as textbooks, audio and visual media and other instructional materials, and equipment that will be used in the course and the furniture deemed necessary to accommodate the students in the course such as tables, chairs, and other furnishings. The course shall include a minimum of 60 minutes of audio/video materials relevant to the required topics; however, the audio/video materials shall not be used in excess of 150 minutes of the 300 minutes of instruction. The resources may be included in a single list or may appear at the end of each instructional unit;

(vi) written or printed materials provided for use by each student as a guide to the course. The division may make exceptions to this requirement on an individual basis;

(vii) instructional activities to be used to present the material (lecture, films, other media, small-group discussions, workbook activities, written and oral discussion questions, etc.). When small-group discussions are planned, the course content guide shall identify the questions that will be assigned to the groups;

(viii) instructional resources for each unit;

(ix) techniques for evaluating the comprehension level of the students relative to the instructional unit. If oral or written questions are to be used to measure student comprehension levels, they shall be included in the course guide. The evaluative technique may be used throughout the unit or at the end; and

(x) a completed form cross-referencing the instructional units to the topics identified in subparagraph (D). A form to

cross-reference the instructional units to the required topics and topics unique to the course will be provided by the division.

(C) Course and time management. Approved specialized driving safety courses shall be presented in compliance with the following guidelines and shall include statistical information drawn from data maintained by the Texas Department of Transportation or National Highway Traffic Safety Administration.

(i) A minimum of 300 minutes of instruction is required of which at least 200 minutes shall address the use of child passenger safety seat systems and the wearing of seat belt and other occupant restraint systems.

(ii) The total length of the course shall consist of a minimum of 360 minutes.

(iii) Sixty minutes of time, exclusive of the 300 minutes of instruction, shall be dedicated to break periods or to the topics included in the minimum course content. All break periods shall be provided after instruction has begun and before the comprehensive examination and summation.

(iv) Administrative procedures such as enrollment shall not be included in the 300 minutes of the course.

(v) Courses conducted in a single day in a traditional classroom setting shall allow a minimum of 30 minutes for lunch.

(vi) Courses taught over a period longer than one day shall provide breaks on a schedule equitable to those prescribed for one-day courses. However, all breaks shall be provided after the course introduction and prior to the last unit of the instructional day or the comprehensive examination and summation, whichever is appropriate.

(vii) The order of topics shall be approved by the department as part of the course approval, and for each student, the course shall be taught in the order identified in the approved application.

(viii) Students shall not receive a uniform certificate of course completion unless that student receives a grade of at least 70% on the final examination.

(ix) Specialized driving safety classrooms must have sufficient seating for the number of students, arranged so that all students are able to view, hear, and comprehend all instructional aids and the class shall have no more than 50 students.

(x) The specialized driving safety instructor or school shall make a material effort to establish the identity of the student.

(D) Minimum course content. A specialized driving safety course shall include, as a minimum, four hours of instruction that encourages the use of child passenger safety seat systems and the wearing of seat belts, etc., and materials adequate to assure the student masters the following.

(i) Course introduction--minimum of ten minutes (instructional objective--to orient students to the class). Instruction shall address the following topics:

(I) purpose and benefits of the course;

(II) course and facilities orientation;

(III) requirements for receiving course credit; and

(IV) student course evaluation procedures.

(ii) The occupant protection problem--minimum of 15 minutes (instructional objectives--to develop an understanding of Texas occupant protection laws and the national and state goals regarding occupant protection). Instruction shall address the following topics:

(I) identification of Texas Occupant Protection Laws;

(II) deaths, injuries, and economic losses related to improper use of occupant restraint systems; and

(III) national and state goals regarding occupant protection.

(iii) Factors influencing driver performance--(instructional objective--to identify the characteristics and behaviors of drivers and how they affect driving performance). Instruction shall address the following topics:

(I) attitudes, habits, feelings, and emotions;

(II) alcohol and other drugs;

(III) physical condition;

(IV) knowledge of driving laws and procedures; and

(V) understanding the driving task.

(iv) Physical forces that influence driver control--(instructional objective--to identify the physical forces that affect driver control and vehicle performance). Instruction shall address the following topics:

(I) speed control (acceleration, deceleration, etc.);

(II) traction (friction, hydroplaning, stopping distances, centrifugal force, etc.); and

(III) force of impact (momentum, kinetic energy, inertia, etc.).

(v) Perceptual skills needed for driving--(instructional objective--to identify the factors of perception and how the factors affect driver performance). Instruction shall address the following topics:

(I) visual interpretations;

(II) hearing;

(III) touch;

(IV) smell;

(V) reaction abilities (simple and complex); and

(VI) judging speed and distance.

(vi) Occupant protection equipment--minimum of 25 minutes (instructional objective--to identify the improvements and technological advances in automotive design and construction). Instruction shall address the following topics:

(I) anti-lock brakes;

(II) traction control devices;

(III) suspension control devices;

(IV) electronic stability/active handling systems;

(V) crumple zones;

(VI) door latch improvements;

(VII) tempered or safety glass;

(VIII) headlights; and

(IX) visibility enhancements.

(vii) Occupant restraint systems--minimum of 40 minutes (instructional objective--to identify the rationale for having and using occupant restraints and protective equipment). Instruction shall address the following topics:

(I) safety belts, airbags, and other protective equipment;

(II) proper usage and necessary precautions;

(III) vehicle control and driver stability;

(IV) crash dynamics and protection; and

(V) operational principles (active versus passive).

(viii) Child passenger safety--minimum of 120 minutes (instructional objective--to understand the child passenger safety law in Texas; the importance of child safety seats; and the risks to children that are unrestrained or not properly restrained). Instruction shall address the following topics:

(I) misconceptions or mistaken ideas regarding child passenger safety;

(II) purpose of child safety seats;

(III) how to secure the child properly and factors to consider;

(IV) child safety seat types and parts;

(V) precautions regarding child safety seats;

(VI) correct installation of a child safety restraint system;

(VII) tips regarding child safety restraint systems; and

(VIII) dangers involved in locking or leaving children in vehicles unattended.

(ix) Comprehensive examination--minimum of five minutes (this shall be the last unit of instruction).

(x) The remaining 30 minutes of instruction shall be allocated to the topics included in the minimum course content or to additional occupant protection topics that satisfy the educational objectives of the course.

(E) Instructor training guides. An instructor training guide contains a description of the plan, training techniques, and curriculum to be used to train instructors to present the concepts of the approved specialized driving safety course described in the applicant's specialized driving safety course content guide. Each course provider shall submit as part of the application an instructor training guide that is bound or hole-punched and placed in a binder and that has a cover and a table of contents. The guide shall include the following:

(i) a statement of the philosophy and instructional goals of the training course;

(ii) a description of the plan to be followed in training instructors. The plan shall include, as a minimum, provisions for the following:

(I) instruction of the trainee in the course curriculum;

(II) training the trainee in the techniques of instruction that will be used in the course;

(III) training the trainee about administrative procedures and course provider policies;

(IV) demonstration of desirable techniques of instruction by the instructor trainer;

(V) a minimum of 15 minutes of instruction of the course curriculum by the trainee under the observation of the instructor trainer as part of the basic training course;

(VI) time to be dedicated to each training lesson; and

(VII) a minimum of 600 minutes of instruction of the course in a regular approved course under the observation of a licensed specialized driving safety instructor trainer. The instructor trainee shall provide instruction for two full courses. It is not mandatory that the two courses be taught as two complete courses; however, every instructional unit shall be taught twice; and

(iii) instructional units sufficient to address the provisions identified in clause (ii)(I)-(VI). The total time of the units shall contain a minimum of 16 instructional hours. Each instructional unit shall include the following:

(I) the subject of the unit;

(II) the instructional objectives of the unit;

(III) time to be dedicated to the unit;

(IV) an outline of major concepts to be presented;

(V) instructional activities to be used to present the material (i.e., lecture, films, other media, small-group discussions, workbook activities, written and oral discussion questions). When small-group discussions are planned, the course guide shall identify the questions that will be assigned to the groups;

(VI) instructional resources for each unit; and

(VII) techniques for evaluating the comprehension level of the students relative to the instructional unit. If oral or written questions are to be used to measure student comprehension levels, they shall be included in the instructor training guide. The evaluative technique may be used throughout the unit or at the end.

(F) Examinations. Each course provider shall submit for approval, as part of the application, tests designed to measure the comprehension level of students at the completion of the specialized driving safety course and the instructor training course. The comprehensive examination for each specialized driving safety course must include at least two questions from each unit, excluding the course introduction and comprehensive examination units. The final examination questions shall be of such difficulty that the answer may not easily be determined without completing the actual instruction. Instructors shall not assist students in answering the final examination questions unless alternative testing is required. Instructors may not be certified or students given credit for the specialized driving safety course unless they score 70% or more on the final test. The course content guide shall identify alternative testing techniques to be used for students with reading, hearing, or learning disabilities and policies for retesting students who score less than 70% on the final examination. The applicant may choose not to provide alternative testing techniques; however, students shall be advised whether the course provides alternative testing prior to enrollment in the course. Test questions may be short answer, multiple choice, essay, or a combination of these forms.

(G) Requirements for authorship. The course shall be authored by an individual who possesses a current or past National Highway Traffic Safety Association Child Passenger Safety technician or instructor certificate.

(2) Specialized driving safety instructor development courses.

(A) If the alternative instructor training in §84.64 of this chapter (relating to Driving Safety Instructor License Requirements) is not applicable, specialized driving safety instructors shall successfully complete 28 clock hours (50 minutes of instruction in a 60-minute period) in the approved instructor development course for the specialized driving safety course to be taught, under the supervision of a specialized driving safety instructor trainer. Supervision is considered to have occurred when the instructor trainer is present and personally provides the 28 clock hours of training for the instructors, excluding those clock hours approved by department staff that may be presented by a guest speaker or using films and other media that pertain directly to the concepts being taught.

(B) Instruction records shall be maintained by the course provider and instructor trainer for each instructor trainee and shall be available for inspection by authorized division representatives at any time during the training period and/or for license investigation purposes. The instruction record shall include the trainee's name, address, driver's license number, and other pertinent data; the name and instructor license number of the person conducting the training; and the dates of instruction, lesson time, and subject taught during each instruction period. Each record shall also include grades or other means of indicating the trainee's aptitude and development. Upon satisfactory completion of the training course the instructor trainer conducting the training will certify one copy of the instruction record for attachment to the trainee's application for licensing and one copy will be maintained in a permanent file at the course provider location.

(C) All student instruction records submitted for the department approved specialized driving safety instructor development course shall be signed by the course provider. Original documents shall be submitted.

(D) Specialized driving safety instructor development courses may be offered at approved classroom facilities of a licensed school which is approved to offer the specialized course being taught. A properly licensed instructor trainer shall present the course.

(E) Applicants shall complete 28 hours of training in the specialized driving safety curriculum that shall be taught. Of the 28 hours, 16 hours shall cover techniques of instruction and in-depth familiarization with materials contained in the specialized driving safety curriculum. The additional 12 hours shall consist of practical teaching with students and shall occur after the first 24 hours have been completed.

(F) The course provider shall submit dates of instructor development course offerings for the 16-hour training that covers techniques of instruction and in-depth familiarization with the material contained in the specialized driving safety curriculum, locations, class schedules, and scheduled instructor trainers' names and license numbers before the courses are offered. The 12-hour practical-teaching portion of the instructor development course shall be provided at properly licensed schools or classrooms approved to offer the course being provided.

(3) Continuing education courses.

(A) Each course provider will be responsible for receiving an approval for a minimum of a two-hour continuing education course. Each instructor currently endorsed to teach the course must attend the approved continuing education course conducted by the course provider.

(B) The request for course approval shall contain the following:

(i) a description of the plan by which the course will be presented;

(ii) the subject of each unit;

(iii) the instructional objectives of each unit;

(iv) time to be dedicated to each unit;

(v) instructional resources for each unit, including names or titles of presenters and facilitators;

(vi) any information that the department mandates to ensure quality of the education being provided; and

(vii) a plan by which the course provider will monitor and ensure attendance and completion of the course by the instructions within the guidelines set forth in the course.

(C) A continuing education course may be approved if the department determines that:

(i) the course constitutes an organized program of learning that enhances the instructional skills, methods, or knowledge of the specialized driving safety instructor;

(ii) the course pertains to subject matters that relate directly to driving safety or specialized safety instruction, instruction techniques, or driving safety-related subjects;

(iii) the entire course has been designed, planned, and organized by the course provider. The course provider shall use licensed driving safety or specialized driving safety instructors to provide instruction or other individuals with recognized experience or expertise in the area of driving safety or specialized driving safety instruction or driving safety-related subject matters. Evidence of the individuals' experience or expertise may be requested by the division;

(iv) the course contains updates or approved revisions to the specialized driving safety course curriculum, policies or procedures, and/or any changes to the course, that are affected by changes in traffic laws or statistical data; and

(v) the division determines that any technology used to present a continuing education course meets reasonable standards for determining attendance, security, and testing.

(b) Course providers shall submit documentation on behalf of schools applying for approval of additional courses after the original approval has been granted. The documents shall be designated by the division and include the appropriate fee. Courses shall be approved before soliciting students, advertising, or conducting classes. An approval for an additional course shall not be granted if the school's compliance is in question at the time of application.

(c) If an approved course is discontinued, the division shall be notified within five days of discontinuance and furnished with the names and addresses of any students who could not complete the course because it was discontinued. If the school does not make arrangements satisfactory to the students and the division for the completion of the courses, the full amount of all tuition and fees paid by the students are due and refundable. If arrangements are not made satisfactory to the students and the division, the refunds must be made no later than thirty (30) days after the course was discontinued. Any course discontinued shall be removed from the list of approved courses.

(d) If, upon review and consideration of an original, renewal, or amended application for course approval, the department determines that the applicant does not meet the legal requirements, the commissioner shall notify the applicant, setting forth the reasons for denial in writing.

(e) The department may revoke approval of any course given to a course owner, provider, or school under any of the following circumstances.

(1) Any information contained in the application for the course approval is found to be untrue.

(2) The school has failed to maintain the faculty, facilities, equipment, or courses of study on the basis of which approval was issued.

(3) The school and/or course provider has been found to be in violation of the Code, and/or this chapter.

(4) The course has been found to be ineffective in meeting the educational objectives set forth in subsection (a)(1)(A).

§84.505. Drug and Alcohol Driving Awareness Programs of Instruction.

(a) This section contains requirements for drug and alcohol driving awareness programs and instructor development programs. For each program, the following curriculum documents and materials are required to be submitted as part of the application for approval. All program content shall be delivered under the direct observation of a licensed instructor. Programs of instruction shall not be approved which contain language that a reasonable person would consider inappropriate. Any changes and updates to a program shall be submitted and approved prior to being offered.

(1) Drug and alcohol driving awareness programs.

(A) Educational objectives. The educational objectives of drug and alcohol driving awareness programs shall include, but not be limited to: educating participants on the risks associated with alcohol or other drug use/abuse and problems associated with such use; providing information on the physiological and psychological effects of alcohol and drugs, legal aspects of alcohol and drug use; the effects of alcohol and drugs on the driving task; signs of abuse; and assisting participants in developing a plan to reduce the probability that they will be involved in alcohol/drugs and driving situations.

(B) Drug and alcohol driving awareness program content guides. A program content guide is a description of the content of the program and the techniques of instruction that will be used to present the program. For programs offered in languages other than English, the course provider shall provide, along with the documentation specified in clauses (i)-(ix), a copy of the student verification of course completion document and/or enrollment contract, student instructional materials, and post-program exam in the proposed language accompanied by a statement from a translator with current credentials from the American Translators Association or the National Association of Judicial Interpreters and Translators that the materials are the same in both English and the other language. In lieu of the credentials specified in this subparagraph, a translator's credentials shall be presented to the department for approval with the final determination based solely on the department's interpretation. To be approved, each course provider shall submit as part of the application a program content guide that includes the following:

(i) a statement of the program's drug and alcohol driving awareness program goal and philosophy. The program must not in any way promote Responsible Use, Harm Reduction, or Risk Reduction philosophies when being presented to minors;

(ii) a statement of policies and administrative provisions related to instructor conduct, standards, and performance;

(iii) a statement of policies and administrative provisions related to student progress, attendance, makeup, and conduct. The following policies and administrative provisions shall be used by each school that offers the program and include the following requirements:

(I) progress standards that meet the requirements of subsection (a)(1)(F);

(II) appropriate standards to ascertain the attendance of students. All schools approved to use the program must use the same standards for documenting attendance to include the hours scheduled each day and each hour not attended;

(III) any period of absence for any portion of instruction will require that the student complete that portion of instruction. All make-up lessons must be equivalent in length and content to the instruction missed and taught by a licensed instructor; and

(IV) conditions for dismissal and conditions for reentry of those students dismissed for violating the conduct policy;

(iv) a statement of policy addressing entrance requirements and special conditions of students, such as the inability to read, language barriers, and other disabilities;

(v) a list of relevant instructional resources, such as textbooks, audio and visual media and other instructional materials, and equipment that will be used in the program; and the furniture deemed necessary to accommodate the students in the program, such as tables, chairs, and other furnishings. The program shall include a minimum of 60 minutes of videos, including audio; however, the videos and other relevant instructional resources cannot be used in excess of 150 minutes of the 300 minutes of instruction. The resources may be included in a single list or may appear at the end of each instructional unit;

(vi) a clear identification of the order in which the units of instruction will be presented, and for each student, the program shall be taught in the order identified in the approved application;

(vii) written or printed materials that shall be provided for use by each student as a guide to the program. The division director may make exceptions to this requirement on an individual basis;

(viii) units of instruction sufficient to present the topics identified in subsection (a)(1)(B) and any additional topics unique to the program. Each instructional unit shall include the following:

(I) the subject of the unit;

(II) the instructional objectives of the unit;

(III) time to be dedicated to the unit;

(IV) an outline of major concepts to be presented;

(V) instructional activities to be used to present the material (lecture, films, other media, small-group discussions, workbook activities, written and oral discussion questions, etc.). When small-group discussions are planned, the program guide shall identify the questions that will be assigned to the groups;

(VI) instructional resources for each unit; and

(VII) techniques for evaluating the comprehension level of the students relative to the instructional unit. If oral or

written questions are to be used to measure student comprehension levels, they shall be included in the program content guide. The evaluative technique may be used throughout the unit or at the end; and

(ix) a document that identifies the instructional units and topics and the order in which they are provided.

(C) Program and time management. Approved drug and alcohol driving awareness programs shall be presented in compliance with the following guidelines.

(i) A minimum of 300 minutes of instruction is required.

(ii) The total length of the program shall consist of a minimum of 360 minutes.

(iii) Sixty minutes of time, exclusive of the 300 minutes of instruction, shall be dedicated to break periods or to the topics included in the minimum program content. All break periods shall be provided after instruction has begun and before the post-program exam.

(iv) Programs conducted in a single day shall allow a minimum of 30 minutes for lunch.

(v) Programs taught over a period longer than one day shall provide breaks on a schedule equitable to those prescribed for one-day programs. However, all breaks shall be provided prior to the last unit of the instructional day or the post-program exam, whichever is appropriate.

(vi) The order of topics shall be approved by the department as part of the program approval, and for each student, the program shall be taught in the order identified in the approved application.

(vii) Students shall not receive a certificate of program completion unless that student received a grade of at least 70% on the post-program exam.

(viii) The program must not in any way promote Responsible Use, Harm Reduction, or Risk Reduction philosophies when provided to minors.

(ix) No more than 50 students per class are permitted in drug and alcohol driving awareness programs, unless the class size is limited by a restriction under another law or rule. In a traditional classroom setting, there must be sufficient seating for the number of students arranged so that all students are able to view, hear, and comprehend all instruction aids.

(x) The drug and alcohol driving awareness school shall make a material effort to establish the identity of the student.

(D) Minimum program content. A drug and alcohol driving awareness program shall include, as a minimum, materials adequate to address the following topics and instructional objectives and the program as a whole.

(i) Program administration. The objective is to enable the instructor to handle any basic in-class administrative details that are necessary prior to beginning instruction. This unit shall be limited to 15 minutes.

(ii) Program introduction, pre-program exam, and background. The objective is to present an overview of the program and to demonstrate the nature of the problem as it relates to the use of alcohol or other drugs.

(iii) Texas laws. The objective is to provide basic information about laws related to alcohol/drug use in Texas.

(iv) Physiological and psychological effects of alcohol/drugs. The objective is to provide basic information about the physiological and psychological effects of alcohol and other drugs on humans.

(v) Effects of alcohol/drugs on the driving task. The objective is to explain the relationship of alcohol and other drugs to driving task abilities.

(vi) Signs of a problem. The objective is to help participants recognize and understand the warning signs of a potential alcohol/drug problem.

(vii) Decision making. The objective is to help participants make quality decisions about alcohol/drug use that will prevent future problems.

(viii) Post-program exam.

(E) Instructor training guides. An instructor training guide contains a description of the plan, training techniques, and curriculum to be used to train instructors to present the concepts of the approved drug and alcohol driving awareness program described in the applicant's drug and alcohol driving awareness program guide. Each course provider shall submit as part of the application an instructor training guide. The guide shall include a table of contents and the following:

(i) a statement of the philosophy and instructional goals of the training program. The program must not in any way promote Responsible Use, Harm Reduction, or Risk Reduction philosophies when being presented to minors;

(ii) a description of the plan to be followed in training instructors. The plan shall include, as a minimum, provisions for the following:

(I) instruction of the trainee in the program curriculum;

(II) training the trainee in the techniques of instruction that will be used in the program;

(III) training the trainee about administrative procedures and course provider policies;

(IV) demonstration of desirable techniques of instruction by the instructor trainer;

(V) a minimum of 15 minutes of instruction of the program curriculum by the trainee under the observation of the instructor trainer as part of the basic training program; and

(VI) time to be dedicated to each training lesson; and

(iii) instructional units sufficient to address the provisions identified in clause (ii)(I)-(V). The total time of the units shall contain a minimum of 16 instructional hours. Each instructional unit shall include the following:

(I) the subject of the unit;

(II) the instructional objectives of the unit;

(III) time to be dedicated to the unit;

(IV) an outline of major concepts to be presented;

(V) instructional activities to be used to present the material (i.e., lecture, films, other media, small-group discussions, workbook activities, written and oral discussion questions). When small-group discussions are planned, the program guide shall identify the questions that will be assigned to the groups;

(VI) instructional resources for each unit; and

(VII) techniques for evaluating the comprehension level of the students relative to the instructional unit. If oral or written questions are to be used to measure student comprehension levels, they shall be included in the instructor training guide. The evaluative technique may be used throughout the unit or at the end.

(F) Exams. Each course provider shall submit for approval, as part of the application, pre- and post-program exams designed to measure the knowledge of students at the completion of the drug and alcohol driving awareness program. The post-program exam for each drug and alcohol driving awareness program must contain at least 20 questions. A minimum of 2 questions shall be drawn from the required units set forth in subparagraph (D)(iii)-(vii) of this paragraph. The post-program final exam questions shall be of such difficulty that the answer may not easily be determined without completing the actual instruction. Instructors shall not assist students in answering the post-program exam questions, but may facilitate alternative testing. Instructors may not certify or give students credit for the drug and alcohol driving awareness program unless they score 70% or more on the post-program exam. The program content guide shall identify alternative testing techniques to be used for students with reading, hearing, or learning disabilities and policies for retesting students who score less than 70% on the post-program exam. The course provider may choose not to provide alternative testing techniques; however, students shall be advised whether the course provides alternative testing prior to enrollment in the course. Exam questions may be short answer, multiple choice, essay, or a combination of these forms.

(2) Instructor development programs.

(A) Drug and alcohol driving awareness program instructors shall successfully complete 24 clock hours (50 minutes of instruction in a 60-minute period) in the approved instructor development program for the drug and alcohol driving awareness program to be taught, under the supervision of a licensed drug and alcohol driving awareness instructor who is designated by the course provider. Supervision is considered to have occurred when the licensed instructor is present and personally provides the 24 clock hours of training for drug and alcohol driving awareness instructors, excluding clock hours approved by the department that may be presented by a guest speaker or using films and other media that pertain directly to the concepts being taught.

(B) Instruction records shall be maintained by the course provider and licensed instructor for each instructor trainee and shall be available for inspection by authorized division representatives at any time during the training period and/or for license investigation purposes. The instruction record shall include the trainee's name, address, driver's license number, and other pertinent data; the name and instructor license number of the person conducting the training; and the dates of instruction, lesson time, and subject taught during each instruction period. Each record shall also include unit, pre- and post-program exam grades or other means of indicating the trainee's aptitude and development. Upon satisfactory completion of the training program, the instructor trainer conducting the training will certify a copy of the instruction record for attachment to the trainee's application for licensing.

(C) The course provider shall sign all student instruction records submitted for the department-approved instructor development program. Original documents shall be submitted.

(D) Instructor development programs may be offered at approved classroom facilities of a licensed school which is approved to offer the drug and alcohol driving awareness program being taught. A properly licensed instructor shall present the program.

(b) Schools applying for approval of additional drug and alcohol driving awareness programs after the original approval has been granted shall submit the documents designated by the division director with the appropriate fee. Programs shall be approved before soliciting students, advertising, or conducting classes. An approval for an additional program shall not be granted if the school's compliance is in question at the time of application.

(c) If an approved program is discontinued, the division director shall be notified within five working days of discontinuance. Any program discontinued shall be removed from the list of approved programs.

(d) If, upon review and consideration of an original, renewal, or amended application for drug and alcohol driving awareness program approval, the department determines that the applicant does not meet the legal requirements, the commissioner shall notify the applicant, setting forth the reasons for denial in writing.

(e) The department may revoke approval of any drug and alcohol driving awareness program given to a course provider or school under any of the following circumstances.

(1) A statement contained in the application for the program approval is found to be untrue.

(2) The school has failed to maintain the faculty, facilities, equipment, or programs of study on the basis of which approval was issued.

(3) The school and/or course provider has been found to be in violation of the Code, and/or this subchapter.

(4) The program has been found to be ineffective in carrying out the purpose of the Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 10, 2017.

TRD-201701002
Brian E. Francis
Executive Director
Texas Department of Licensing and Regulation
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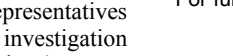
Proposal publication date: October 28, 2016
For further information, please call: (512) 463-8179



SUBCHAPTER N. PROGRAM INSTRUCTION FOR PUBLIC SCHOOLS, EDUCATION SERVICE CENTERS, AND COLLEGES OR UNIVERSITIES COURSE REQUIREMENTS

16 TAC §84.600, §84.601

The new rules are adopted under Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Brian E. Francis
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TITLE 22. EXAMINING BOARDS

PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 463. APPLICATIONS AND EXAMINATIONS

22 TAC §463.11

The Texas State Board of Examiners of Psychologists adopts amendment §463.11, concerning Licensed Psychologist without changes to the proposed text published in the January 13, 2017, issue of the *Texas Register* (42 TexReg 42) and will not be republished.

The amendment is being adopted to ensure the protection and safety of the public. The amendment as adopted is necessary to continue recognizing the supervised experience acquired by psychological associates and specialists in school psychology for purposes of full licensure. Absent this amendment, an LPA or LSSP undergoing his or her informal year of supervised experience would be unable to count that experience toward the licensure requirements of subsection (d) of this rule if he or she were not also a provisional trainee or PLP. Because an applicant who holds an LPA or LSSP license is already subject to the full range of Board rules, and because any individual utilizing one of these licenses during their informal year of supervised experience must be supervised by a licensed psychologist, requiring an already licensed individual to obtain provisional trainee status or provisional licensure before acquiring any post-doctoral supervised experience is unnecessary.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 9, 2017.

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Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
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Proposal publication date: January 13, 2017
For further information, please call: (512) 305-7706

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CHAPTER 469. COMPLAINTS AND ENFORCEMENT

22 TAC §469.13

The Texas State Board of Examiners of Psychologists adopts a repeal to §469.13, concerning Non-Compliance with Professional Development Requirements without changes to the proposed text published in the December 16, 2016, issue of the *Texas Register* (41 TexReg 9873) and will not be republished.

The repeal is being adopted to ensure the protection and safety of the public. The repeal as adopted is reflects a shift in policy away from treating the failure to report compliance with the Board's professional development requirements as a rule violation that should result in discipline. The Board's intent behind this proposed change, together with the proposed change to Board rule §471.1, is to treat compliance with the professional development requirements as a prerequisite for renewing a license. This adopted change is also intended to ease the burden on enforcement staff by eliminating the need to open a CE complaint every time a licensee fails to indicate compliance with Board rule §461.11 when renewing his or her license.

No comments were received regarding the adoption of the repeal.

The repeal is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-201700951
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: March 29, 2017
For further information, please call: (512) 305-7706

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CHAPTER 471. RENEWALS

22 TAC §471.1

The Texas State Board of Examiners of Psychologists adopts a repeal to §471.1, concerning Notification of Renewal without changes to the proposed text published in the December 16, 2016, issue of the *Texas Register* (41 TexReg 9874) and will not be republished.

The repeal is being adopted to ensure the protection and safety of the public. The repeal as adopted, together with the newly proposed version of the rule, reflects a shift in policy toward recognizing compliance with Board rule §461.11 as a condition of renewal, rather than noncompliance serving as a basis for disciplinary action. The Board's intent behind this proposed change is to treat compliance with the professional development requirements as a prerequisite for renewing a license, and thereby reduce the need to open complaints against those licensees who fail to report their professional development hours when renewing their license.

No comments were received regarding the adoption of the repeal.

The repeal is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
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Proposal publication date: December 16, 2016
For further information, please call: (512) 305-7706

22 TAC §471.1

The Texas State Board of Examiners of Psychologists adopts new rule §471.1, concerning Renewal of a License without changes to the proposed text published in the December 16, 2016, issue of the *Texas Register* (41 TexReg 9874) and will not be republished.

The new rule is being adopted to ensure the protection and safety of the public. The new rule as adopted which reflects a shift in policy toward recognizing compliance with Board rule §461.11 as a condition of renewal, rather than noncompliance serving as a basis for disciplinary action. The Board's intent behind this proposed change is to treat compliance with the professional development requirements as a prerequisite for renewing a license, and thereby reduce the need to open complaints against those licensees who fail to report their professional development hours when renewing their license.

No comments were received regarding the adoption of the new rule.

The new rule is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
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For further information, please call: (512) 305-7706

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PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 511. ELIGIBILITY

SUBCHAPTER F. EXPERIENCE REQUIREMENTS

22 TAC §511.123

The Texas State Board of Public Accountancy adopts an amendment to §511.123, concerning Reporting Work Experience, without changes to the proposed text as published in the February 3, 2017, issue of the *Texas Register* (42 TexReg 381) and will not be republished.

The amendment to §511.123 is a clarification of full-time and part-time work experience needed for the issuance of the CPA certificate.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 9, 2017.

TRD-201700955
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: March 29, 2017
Proposal publication date: February 3, 2017
For further information, please call: (512) 305-7842

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SUBCHAPTER H. CERTIFICATION

22 TAC §511.163

The Texas State Board of Public Accountancy adopts an amendment to §511.163, concerning Board-Approved Ethics Requirement and Examination on the Rules of Professional Conduct, without changes to the proposed text as published in the February 3, 2017, issue of the *Texas Register* (42 TexReg 382). The amended rule will not be republished.

The amendment to §511.163 clarifies when an ethics course needs to be completed for the issuance of the CPA certificate.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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General Counsel
Texas State Board of Public Accountancy
Effective date: March 29, 2017
Proposal publication date: February 3, 2017
For further information, please call: (512) 305-7842

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CHAPTER 523. CONTINUING PROFESSIONAL EDUCATION

SUBCHAPTER A. CONTINUING PROFESSIONAL EDUCATION PURPOSE AND DEFINITIONS

22 TAC §523.102

The Texas State Board of Public Accountancy adopts an amendment to §523.102, concerning CPE Purpose and Definitions, without changes to the proposed text as published in the February 3, 2017, issue of the *Texas Register* (42 TexReg 383). The amended rule will not be republished.

The amendment to §523.102 incorporates most of the recent changes to the Statement on Standards for Continuing Professional Education Programs (Standards) published jointly by the American Institute of Certified Public Accountants (AICPA) and the National Association of State Boards of Accountancy (NASBA).

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: March 29, 2017
Proposal publication date: February 3, 2017
For further information, please call: (512) 305-7842

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SUBCHAPTER B. CONTINUING PROFESSIONAL EDUCATION RULES FOR INDIVIDUALS

22 TAC §523.110

The Texas State Board of Public Accountancy adopts an amendment to §523.110, concerning Establishment of Required CPE Program Standards, without changes to the proposed text as published in the February 3, 2017, issue of the *Texas Register* (42 TexReg 385). The amended rule will not be republished.

The amendment to §523.110 deletes the phrase "credit hours" and replaces it with "credits" and revises the title of §523.118 to more accurately reflect the regulation.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 9, 2017.

TRD-201700958
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: March 29, 2017
Proposal publication date: February 3, 2017
For further information, please call: (512) 305-7842

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22 TAC §523.111

The Texas State Board of Public Accountancy adopts an amendment to §523.111, concerning Required CPE Reporting, without changes to the proposed text as published in the February 3, 2017, issue of the *Texas Register* (42 TexReg 386). The amended rule will not be republished.

The amendment to §523.111 deletes the phrase "credit hours" and replaces it with "credits" and adds "or electronic record" in order to have a clearer understanding of acceptable evidence of CPE completion.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the

agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 9, 2017.

TRD-201700959
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: March 29, 2017
Proposal publication date: February 3, 2017
For further information, please call: (512) 305-7842

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22 TAC §523.112

The Texas State Board of Public Accountancy adopts an amendment to §523.112, concerning Required CPE Participation, without changes to the proposed text as published in the February 3, 2017, issue of the *Texas Register* (42 TexReg 387) and will not be republished.

The amendment to §523.112 deletes the word "hours" and replaces it with "CPE credits" or "credits" and makes other minor grammatical revisions.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-201700960
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: March 29, 2017
Proposal publication date: February 3, 2017
For further information, please call: (512) 305-7842

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22 TAC §523.113

The Texas State Board of Public Accountancy adopts an amendment to §523.113, concerning Exemptions from CPE, without changes to the proposed text as published in the February 3, 2017, issue of the *Texas Register* (42 TexReg 388). The amended rule will not be republished.

The amendment to §523.113 incorporates most of the recent changes to the Statement on Standards for Continuing Professional Education Programs (Standards) published jointly by the American Institute of Certified Public Accountants (AICPA) and the National Association of State Boards of Accountancy (NASBA).

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 9, 2017.

TRD-201700961
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: March 29, 2017
Proposal publication date: February 3, 2017
For further information, please call: (512) 305-7842

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22 TAC §523.114

The Texas State Board of Public Accountancy adopts an amendment to §523.114, concerning Disciplinary Actions Relating to CPE, without changes to the proposed text as published in the February 3, 2017, issue of the *Texas Register* (42 TexReg 389) and will not be republished.

The amendment to §523.114 deletes the phrase "credit hours" and replaces it with "credits."

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 9, 2017.

TRD-201700962
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: March 29, 2017
Proposal publication date: February 3, 2017
For further information, please call: (512) 305-7842

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22 TAC §523.115

The Texas State Board of Public Accountancy adopts an amendment to §523.115, concerning Credits for Instructors and Discussion Leaders, without changes to the proposed text as published

in the February 3, 2017, issue of the *Texas Register* (42 TexReg 390) and will not be republished.

The amendment to §523.115 clarifies that multiple instructors shall receive proportional CPE credit when serving at a program and deletes the phrase "credit hours" and replaces it with "CPE credits."

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 9, 2017.

TRD-201700963
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: March 29, 2017
Proposal publication date: February 3, 2017
For further information, please call: (512) 305-7842

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22 TAC §523.116

The Texas State Board of Public Accountancy adopts an amendment to §523.116, concerning Authors of Published Articles and Books, without changes to the proposed text as published in the February 3, 2017, issue of the *Texas Register* (42 TexReg 390) and will not be republished.

The amendment to §523.116 clarifies that reviewers of published articles and books may receive CPE credits, deletes the phrase "credit hours" and replaces it with "CPE credits" or "credits," and deletes subsection (c) so it can be relocated to a more appropriate rule.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 9, 2017.

TRD-201700964
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: March 29, 2017
Proposal publication date: February 3, 2017
For further information, please call: (512) 305-7842

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22 TAC §523.118

The Texas State Board of Public Accountancy adopts an amendment to §523.118, concerning Limitations of Courses, without changes to the proposed text as published in the February 3, 2017, issue of the *Texas Register* (42 TexReg 391) and will not be republished.

The amendment to §523.118 adds subsections (b) and (c) to clarify how many CPE credits can be awarded upon the completion of certain programs, revises the rule title and deletes the phrase "credit hours" and replaces it with "credits."

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 9, 2017.

TRD-201700965
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: March 29, 2017
Proposal publication date: February 3, 2017
For further information, please call: (512) 305-7842

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22 TAC §523.119

The Texas State Board of Public Accountancy adopts an amendment to §523.119, concerning Alternative Sources of CPE, without changes to the proposed text as published in the February 3, 2017, issue of the *Texas Register* (42 TexReg 392) and will not be republished.

The amendment to §523.119 deletes the phrase "credit hours" and replaces it with "CPE credits" or "credits" and clarifies reporting of those credits.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 9, 2017.

TRD-201700966
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: March 29, 2017
Proposal publication date: February 3, 2017
For further information, please call: (512) 305-7842

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22 TAC §523.121

The Texas State Board of Public Accountancy adopts an amendment to §523.121, concerning CPE for Non-CPA Owners, without changes to the proposed text as published in the February 3, 2017, issue of the *Texas Register* (42 TexReg 393) and will not be republished.

The amendment to §523.121 deletes the word "hours" and replaces it with "CPE credits" or "credits."

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 9, 2017.

TRD-201700967
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: March 29, 2017
Proposal publication date: February 3, 2017
For further information, please call: (512) 305-7842

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SUBCHAPTER C. ETHICS RULES: INDIVIDUALS AND SPONSORS

22 TAC §523.130

The Texas State Board of Public Accountancy adopts an amendment to §523.130, concerning Ethics Course Requirements, without changes to the proposed text as published in the February 3, 2017, issue of the *Texas Register* (42 TexReg 394) and will not be republished.

The amendment to §523.130 deletes the word "hour" and replaces it with "CPE credit" and deletes the phrase "if due" in subsection (c).

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 9, 2017.

TRD-201700968
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: March 29, 2017
Proposal publication date: February 3, 2017
For further information, please call: (512) 305-7842

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22 TAC §523.131

The Texas State Board of Public Accountancy adopts an amendment to §523.131, concerning Board Approval of Ethics Course Content, without changes to the proposed text as published in the February 3, 2017, issue of the *Texas Register* (42 TexReg 394) and will not be republished.

The amendment to §523.131 deletes the word "hour" and replaces it with "CPE credit" and makes a grammatical change in subsection (b)(3).

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 9, 2017.

TRD-201700969
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: March 29, 2017
Proposal publication date: February 3, 2017
For further information, please call: (512) 305-7842

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22 TAC §523.132

The Texas State Board of Public Accountancy adopts an amendment to §523.132, concerning Board Contracted Ethics Instructors, without changes to the proposed text as published in the February 3, 2017, issue of the *Texas Register* (42 TexReg 396) and will not be republished.

The amendment to §523.132 eliminates the requirement for ethics training for instructors and a minor clerical change in subsection (b)(1).

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 9, 2017.

TRD-201700970
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: March 29, 2017
Proposal publication date: February 3, 2017
For further information, please call: (512) 305-7842

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SUBCHAPTER D. STANDARDS FOR CONTINUING PROFESSIONAL EDUCATION PROGRAMS AND RULES FOR SPONSORS

22 TAC §523.140

The Texas State Board of Public Accountancy adopts an amendment to §523.140, concerning Program Standards, with changes to the proposed text as published in the February 3, 2017, issue of the *Texas Register* (42 TexReg 397) and will be republished. The changes, a spelling correction, can be found in subsection (g)(2).

The amendment to §523.140 incorporates recent changes made to the Statement on Standards for Continuing Professional Education Programs (Standards) published jointly by the American Institute of Certified Public Accountants (AICPA) and the National Association of State Boards of Accountancy (NASBA).

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

§523.140. Program Standards.

(a) Potential participants should be informed in advance of course content, learning objectives, prerequisites, and recommended credits so they can determine whether they are qualified to participate in and benefit from the program. The stated learning objectives should clearly communicate the specific areas of knowledge that will be covered. If there are no prerequisites for the course, a statement to this effect must be made.

(b) The program developer must organize the program around the stated learning objectives and must retain a copy of the final program, including electronic media, in accordance with §523.143(b) of this chapter (relating to Sponsor's Record). The final program must contain sufficient documentation to support the number of CPE credits granted. The course materials must be periodically reviewed to assure that they are accurate and consistent with currently accepted standards relating to the program's subject matter. The program developer should provide the instructor with separate materials that emphasize sections of the course that need reinforcement, if appropriate.

(c) Instructors must be qualified both with respect to program content and teaching methods used. Sponsors shall evaluate the performance of instructors at the conclusion of each program to determine their suitability for continuing to serve as instructors.

(d) All programs must provide for some means to evaluate both the competence of the instructor and the course material. Refer to §523.141 of this chapter (relating to Evaluation).

(e) Self-study programs must conform to the requirements outlined in §523.102(c)(2) of this chapter (relating to CPE Purpose and Definitions).

(1) Program must include at least five review questions, or two review questions if the program is marketed for one-half CPE credits, at the end of each learning objective (section/chapter) to allow the participant the opportunity to understand the material. Evaluative feedback must be provided for each incorrect response. At least five review questions per CPE credit must be included.

(2) To provide evidence of satisfactory completion of the course, CPE sponsors must require participants to successfully complete a final exam with a passing grade of at least 70%. The final exam must have at least five questions for each CPE credit granted and no more than 25% of the questions be "true/false" in nature.

(3) Program or course expiration date. Course documentation must include an expiration date (the time by which the participant must complete the final exam). The expiration date should be no longer than one year from the date of purchase.

(f) Nano programs must use instructional methods that clearly define a minimum of one learning objective, guide the participant through a program of learning, and provide evidence of a participant's satisfactory completion of the program. Satisfactory completion of the program must be confirmed at the conclusion of the program by passing a final exam.

(1) To provide evidence of satisfactory completion of the course, CPE sponsors must require participants to successfully complete a final exam with a passing grade of 100 percent before issuing CPE credit for the course. The final exam may contain questions of varying format (for example, multiple choice, rank order, and matching). Only two questions must be included on the final exam. "True or false" questions are not permissible on the final exam. If the participant fails the final exam CPE credit will not be granted. The participant may re-take the program and the number of re-takes permitted is at the sponsor's discretion.

(2) Program or course expiration date. Course documentation must include an expiration date. The expiration date is no longer than one year from the date of purchase.

(3) Based on materials developed for instructional use, Nano programs must be based on materials specifically developed for instructional use and not on third-party materials. Nano learning programs requiring only the reading of general professional literature, IRS publications, or reference manuals followed by an assessment will not be acceptable.

(g) Blended programs must use instructional methods that clearly define learning objectives and guide the participant through a program of learning. Pre-program, post-program, and homework assignments should enhance the learning program experience and must relate to the defined learning objectives of the program.

(1) Blended programs include different learning or instructional methods (for example, lectures, discussion, guided practice, reading, games, case studies, and simulation); different delivery methods (group live, group Internet based, nano learning, or self study); and/or different levels of guidance (for example, individual, instructor or subject matter expert led, or group and social learning). To guide participants through the learning process, CPE program sponsors must provide clear instructions and information to participants that summarize the different components of the program and what must be completed or achieved during each component in order to qualify for CPE credits. The CPE program sponsor must document the process and components of the course progression and completion of components by the participants.

(2) To provide evidence of satisfactory completion of sections of the course that are not "live" (such as nano or self-study) CPE sponsors must require participants to successfully complete an exam with a passing grade appropriate to the delivery method (i.e. 70% for self-study, 100% for nano).

(h) Sponsors are responsible for ensuring the participants register their attendance during the program. Sponsors are responsible for assigning the appropriate number of CPE credits for participants, including reduced CPE credits for those participants who arrive late or leave early. Refer to §523.142 of this chapter (relating to Program Time Credit Measurement for Sponsors).

(i) Sponsors must comply with all CPE rules including §523.143 of this chapter.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 9, 2017.

TRD-201700971
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: March 29, 2017
Proposal publication date: February 3, 2017
For further information, please call: (512) 305-7842

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22 TAC §523.141

The Texas State Board of Public Accountancy adopts an amendment to §523.141, concerning Evaluation, without changes to the proposed text as published in the February 3, 2017, issue of the *Texas Register* (42 TexReg 399). The amended rule will not be republished.

The amendment to §523.141 incorporates changes recently made to the Statement on Standards for Continuing Professional Education Programs (Standards) published jointly by the American Institute of Certified Public Accountants (AICPA) and the National Association of State Boards of Accountancy (NASBA).

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 9, 2017.

TRD-201700972
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: March 29, 2017
Proposal publication date: February 3, 2017
For further information, please call: (512) 305-7842

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22 TAC §523.142

The Texas State Board of Public Accountancy adopts an amendment to §523.142, concerning Program Time Credit Measurement for Sponsors, without changes to the proposed text as published in the February 3, 2017, issue of the *Texas Register* (42 TexReg 399). The amended rule will not be republished.

The amendment to §523.142 incorporates recent changes to the Statement on Standards for Continuing Professional Education Programs (Standards) published jointly by the American Institute of Certified Public Accountants (AICPA) and the National Association of State Boards of Accountancy (NASBA).

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 9, 2017.

TRD-201700973
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: March 29, 2017
Proposal publication date: February 3, 2017
For further information, please call: (512) 305-7842

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22 TAC §523.143

The Texas State Board of Public Accountancy adopts an amendment to §523.143, concerning Sponsor's Record, without changes to the proposed text as published in the February 3, 2017, issue of the *Texas Register* (42 TexReg 401). The amended rule will not be republished.

The amendment to §523.143 incorporates recent changes to the Statement on Standards for Continuing Professional Education Programs (Standards) published jointly by the American Institute of Certified Public Accountants (AICPA) and the National Association of State Boards of Accountancy (NASBA).

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 9, 2017.

TRD-201700974
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: March 29, 2017
Proposal publication date: February 3, 2017
For further information, please call: (512) 305-7842

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22 TAC §523.144

The Texas State Board of Public Accountancy adopts an amendment to §523.144, concerning Board Registered CPE Sponsors, without changes to the proposed text as published in the February 3, 2017, issue of the *Texas Register* (42 TexReg 402). The amended rule will not be republished.

The amendment to §523.144 makes a minor grammatical change in subsection (b).

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 9, 2017.

TRD-201700975
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: March 29, 2017
Proposal publication date: February 3, 2017
For further information, please call: (512) 305-7842

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22 TAC §523.145

The Texas State Board of Public Accountancy adopts an amendment to §523.145, concerning Obligations of the Sponsor, without changes to the proposed text as published in the February 3, 2017, issue of the *Texas Register* (42 TexReg 403) and will not be republished.

The amendment to §523.145 deletes the phrase "credit hours" and replaces it with "CPE credits."

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act (Act), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 9, 2017.

TRD-201700976
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: March 29, 2017
Proposal publication date: February 3, 2017
For further information, please call: (512) 305-7842

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PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

CHAPTER 571. LICENSING

SUBCHAPTER A. GENERAL

22 TAC §571.1

The Texas Board of Veterinary Medical Examiners (Board) adopts amendments to §571.1, concerning Definitions. The amendments are adopted without changes to the proposed text as published in the December 16, 2016, issue of the *Texas Register* (41 TexReg 9875) and will not be republished.

Reasoned Justification

The amendments are adopted to clarify that the first regular license issued to a person is valid for at least one full year, which is the Board's current practice. Effective January 1, 2016, the Board transitioned from a calendar year renewal cycle to a renewal cycle based upon each licensee's birth month. However, the definition for "renewal year" did not clearly identify the length of the first renewal year for newly issued licenses. Under the adopted amendments, new licenses will be valid for at least one year, regardless of the length of time between licensure and the licensee's birth month. The purpose of amendment is to clarify the Board's current practice and to ensure that new licensees have at least a full year period before they are required to renew their license and pay the associated renewal fees.

Summary of Comments and Agency Response

One commenter was concerned to see proposed rulemaking by a Board without complete membership, but did not specifi-

cally address the merits of this proposed change. Another commenter proposed using the term "renewal cycle" instead of "renewal year," reasoning that the first renewal term will sometimes be longer than a year. However, the agency disagrees with this proposed change as most renewal terms will be approximately a year in length, and because the term "renewal year" is used consistently in the Board's Rules.

Statutory Authority

The amendment is adopted under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; and §801.301(b) which states that the board by rule may adopt a system under which licenses expire on various dates during the year.

No other statutes, articles, or codes are affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 6, 2017.

TRD-201700857
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Effective date: March 26, 2017
Proposal publication date: December 16, 2016
For further information, please call: (512) 305-7563

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CHAPTER 573. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER G. OTHER PROVISIONS

22 TAC §573.64

The Texas Board of Veterinary Medical Examiners (Board) adopts amendments to §573.64, concerning Continuing Education Requirements. The amendments are adopted without changes to the proposed text as published in the December 16, 2016, issue of the *Texas Register* (41 TexReg 9879) and will not be republished.

Reasoned Justification

Effective January 1, 2016, the Board transitioned from a calendar year renewal cycle to a renewal cycle based upon each licensee's birth month. The amendments are adopted to reflect this transition by replacing the term "calendar year" with "renewal year." The amendment also amends the deadline for licensees to request a hardship extension. Under the previous system, licensees were required to request a hardship extension by no later than December 15th. Under the amendment, licensees will be able to request a hardship extension up to the 15th day of the month three months prior to the last day of the licensee's birth month. This amendment allows licensees the same approximate amount of time to request a hardship exemption as they were allowed under the previous renewal system.

Summary of Comments and Agency Response

One commenter was concerned to see proposed rulemaking by a Board without complete membership, but did not specifically address the merits of this proposed change.

Statutory Authority

The amendments are adopted under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; and §801.301(b) which states that the board by rule may adopt a system under which licenses expire on various dates during the year.

No other statutes, articles or codes are affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 6, 2017.

TRD-201700858
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Effective date: March 26, 2017
Proposal publication date: December 16, 2016
For further information, please call: (512) 305-7563

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PART 34. TEXAS STATE BOARD OF SOCIAL WORKER EXAMINERS

CHAPTER 781. SOCIAL WORKER LICENSURE

The Texas State Board of Social Worker Examiners (board) adopts new rule §781.222 and adopts an amendment to §781.419, concerning the licensure and regulation of social workers, without changes to the proposed text as published in the October 28, 2016, issue of the *Texas Register* (41 TexReg 8454), and therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

The new rule in §781.222 implements House Bill (HB) 1449, 84th Legislature, Regular Session, 2015, as it relates to child custody and adoption evaluations in certain suits affecting the parent-child relationship, by stipulating minimum qualifications for licensees who hold doctoral degrees to serve as a child custody evaluator and prohibiting a holder of a baccalaureate social worker license (LBSW) from conducting a child custody or adoption evaluation under amended Family Code, Chapter 107, unless the individual is otherwise qualified by law to conduct the evaluation.

The amendments to §781.419 implement Senate Bill (SB) 807 and SB 1307, of the 84th Legislature, Regular Session, 2015, which amended the Texas Occupations Code, Chapter 55, relating to occupational license application and examination fees and to licensing and renewal of certain military service members, military veterans, and military spouses.

SECTION-BY-SECTION SUMMARY

This summary considers only those sections which were substantially changed in language, meaning, or intent.

New §781.222 implements HB 1449 of the 84th Legislature, Regular Session, 2015, as it relates to licensed social workers and child custody and adoption evaluations. HB 1449 amended the Family Code, Chapter 107, relating to child custody and

adoption evaluations conducted and provided in certain suits affecting the parent-child relationship. New §781.222 prohibits licensed baccalaureate social workers from conducting those evaluations unless the individual is otherwise qualified by law to conduct the evaluation.

The amendment to §781.419 adds new language to define military service member, military spouse, and military veteran as well as application and eligibility procedures that apply to those individuals.

COMMENTS

The board received no public comments regarding the proposed rules during the comment period.

SUBCHAPTER B. CODE OF CONDUCT AND PROFESSIONAL STANDARDS OF PRACTICE

22 TAC §781.222

STATUTORY AUTHORITY

The new rule is authorized by Texas Occupations Code, §505.201, which authorizes the board to adopt rules necessary for the performance of its duties.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 8, 2017.

TRD-201700880
Timothy Martel Brown, LCSW
Chair
Texas State Board of Social Worker Examiners
Effective date: March 28, 2017
Proposal publication date: October 28, 2016
For further information, please call: (512) 776-6972

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SUBCHAPTER D. LICENSES AND LICENSING PROCESS

22 TAC §781.419

The amendment is authorized by Texas Occupations Code, §505.201, which authorizes the board to adopt rules necessary for the performance of its duties; and Chapter 55, which authorizes the board to adopt rules necessary for the licensing of military service members and military veterans.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 8, 2017.

TRD-201700881
Timothy Martel Brown, LCSW
Chair
Texas State Board of Social Worker Examiners
Effective date: March 28, 2017
Proposal publication date: October 28, 2016
For further information, please call: (512) 776-6972

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 91. CANCER

SUBCHAPTER A. CANCER REGISTRY

25 TAC §§91.2, 91.4, 91.6, 91.7, 91.9, 91.11, 91.12

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts amendments to §§91.2, 91.4, 91.6, 91.7, 91.9, 91.11 and 91.12, concerning the operation of the Texas Cancer Registry. The amendments to §91.2 and §91.4 are adopted with changes to the proposed text as published in the November 18, 2016, issue of the *Texas Register* (41 TexReg 9081). The amendments to §§91.6, 91.7, 91.9, 91.11, and 91.12 are adopted without changes, and therefore the sections will not be republished.

BACKGROUND AND PURPOSE

The amendments are necessary to comply with Health and Safety Code, Chapter 82, Cancer Registry, which requires the department to maintain the Texas Cancer Registry, including who, what, where, when, and how to report cancer data to the cancer registry, as well as compliance, confidentiality, quality assurance, and requests for data.

The amendments implement House Bill (HB) 2641, 84th Legislature, Regular Session, 2015, which amended Health and Safety Code, §82.008, to authorize the submission of data through a health information exchange, and provide updated language of adopted rules to enhance the understanding of the program rules for the Texas Cancer Registry. The amendments will provide the additional option for health care providers to report data through a health information exchange.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 91.1 - 91.12 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are required to comply with statutory requirements and to effectively operate the program.

SECTION-BY-SECTION SUMMARY

The amendments to §91.2 include deleting the definition of "branch" and replacing references to the "branch" with "Texas Cancer Registry" or "Department of State Health Services;" this change was preemptive as the Health and Human Services Transformation may affect future organizational structure. Additionally, the definition of "personal cancer data" was deleted and replaced with a new definition of "confidential cancer data" to better clarify distinctions in the types of data. In addition, a new definition for "reporting entity" was added to provide context for amendments related to health information exchange as a result of the passage of HB 2641, as well as subsequent reordering and renumbering of section.

Additional revisions were made to §91.2(3) and §91.4(b)(2), replacing the references to "cancer reporters" with "reporting entities" to provide for consistent language throughout the rule text.

The amendments to §91.4 include replacing references to "branch" with "Texas Cancer Registry."

The amendments to §91.6 include adding language to subsection (a) to allow for the submission of data to the Texas Cancer Registry through a health information exchange.

The amendments to §91.7 include replacing the reference to "branch" with "Texas Cancer Registry."

The amendments to §91.9 include inserting "cancer" in subsection (c) to clarify the requests for confidential or statistical cancer data.

The amendments to §91.11 include replacing references to "branch" with "Texas Cancer Registry," removing the phrase "and printed," and adding an email address contact in subsection (a) as another method of requesting information or cancer data. In subsection (b)(3), the word "sent" was replaced with "submitted" to be consistent with rule text.

The amendments to §91.12 include adding an email address contact, replacing a reference to "Institutional Review Board" with the "Texas Cancer Registry" in the mailing address in subsection (a)(1). The references to "branch" are being replaced with "Texas Cancer Registry." The name of §91.12 is revised to "Requests and Release of Confidential Cancer Data" and throughout the rule, "confidential cancer data" is replacing the references to "personal cancer data."

COMMENTS

The department, on behalf of the commission, has reviewed and prepared a response to the comment received regarding the proposed rules during the comment period, which the commission has reviewed and accepts. The department received a comment from Lynda Woolbert, MS, RN, CPNP-PC, FAANP, the CEO of the Coalition for Nurses in Advanced Practice (CNAP). The commenter was not against the rules in their entirety; however, the commenter suggested a recommendation for change as follows.

COMMENT: The Coalition for Nurses in Advanced Practice (CNAP) submitted a comment suggesting the inclusion of advanced practice registered nurses (APRNs) in §91.4(b)(1)(H) to allow clinical laboratories to more accurately report the name and address of the referring provider, as APRNs perform procedures and submit specimens to clinical pathology laboratories.

RESPONSE: The commission disagrees because the rule language is sufficient and consistent with the Texas Cancer Incidence Reporting Act, Health and Safety Code, Chapter 82. The rule in question, §91.4(b)(1)(H), lists what reportable information could be included in clinical laboratory information, and is not a comprehensive list. Section 91.4(b)(1)(H) refers to what information may be included in the report and does not specify the reporting entity or person. Additionally, the current statute is aimed at the accountability of health care facilities, clinical laboratories, and health care practitioners (Health and Safety Code, §82.008), as defined in the statute (Health and Safety Code, §82.002). The rule as currently written would not prohibit an APRN from including his or her information where appropriate for clinical laboratory reporting. No change to the rule was made as a result of this comment.

Section 91.2 and §91.4 are adopted with changes to the proposed text as published in the November 18, 2016, issue of the *Texas Register.* The department is revising §91.2(3) and §91.4(b)(2) by replacing the references to "cancer reporter" with "reporting entity" to provide consistent language throughout the rules.

LEGAL CERTIFICATION

The Department of State Health Services, General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The amendments will be adopted under Health and Safety Code, §82.008, which provides the department with the authority to accept submissions of data through a health information exchange; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039.

§91.2. Definitions.

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

(1) Act--The Texas Cancer Incidence Reporting Act, Texas Health and Safety Code, Chapter 82.

(2) Cancer--Includes a large group of diseases characterized by uncontrolled growth and spread of abnormal cells; any condition of tumors having the properties of anaplasia, invasion, and metastasis; a cellular tumor the natural course of which is fatal, including intracranial and central nervous system malignant, borderline, and benign tumors as required by the national program of cancer registries; and malignant neoplasm, other than non-melanoma skin cancers such as basal and squamous cell carcinomas.

(3) Cancer Reporting Handbook--The Texas Cancer Registry's manual for reporting entities that documents reporting procedures and format.

(4) Clinical laboratory--An accredited facility in which tests are performed identifying findings of anatomical changes; specimens are interpreted and pathological diagnoses are made.

(5) Confidential cancer data--Information that includes items that may identify an individual, and is subject to Health and Safety Code, §82.009.

(6) Department--Department of State Health Services.

(7) Health care facility--A general or special hospital as defined by the Health and Safety Code, Chapter 241; an ambulatory surgical center licensed under the Health and Safety Code, Chapter 243; an institution licensed under the Health and Safety Code, Chapter 242; or any other facility, including an outpatient clinic, that provides diagnostic or treatment services to patients with cancer.

(8) Health care practitioner--A physician as defined by Occupations Code, §151.002 or a person who practices dentistry as described by the Occupations Code, §251.003.

(9) Quality assurance--Operational procedures by which the accuracy, completeness, and timeliness of the information reported to the department can be determined and verified.

(10) Report--Information provided to the department that notifies the appropriate authority of the occupancy of a specific cancer

in a person, including all information required to be provided to the department.

(11) Reporting Entity--A reporting entity may include a health care facility, clinical laboratory, health care practitioner, or a health information exchange as defined by Health and Safety Code, §182.151.

(12) Research--A systematic investigation, including research development, testing, and evaluation, designed to develop or contribute to generalizable knowledge.

(13) Statistical cancer data--Aggregate presentation of individual records on cancer cases excluding patient identifying information.

(14) Texas Cancer Registry--The cancer incidence reporting system administered by the Department of State Health Services.

§91.4. What to Report.

(a) Reportable conditions.

(1) The cases of cancer to be reported to the Texas Cancer Registry are as follows:

(A) all neoplasms with a behavior code of two or three in the most current edition of the International Classification on Diseases for Oncology (ICD-O) of the World Health Organization with the exception of those designated by the Texas Cancer Registry as non-reportable in the Cancer Reporting Handbook; and

(B) all benign and borderline intracranial and central nervous system neoplasms as required by the national program of cancer registries.

(2) Codes and taxa of the most current edition of the International Classification of Diseases, Clinical Modification of the World Health Organization which correspond to the Texas Cancer Registry's reportable list are specified in the Cancer Reporting Handbook.

(b) Reportable information.

(1) Except as provided in paragraph (2) of this subsection and health care practitioners in §91.5(c) of this title (relating to When to Report), those data required to be reported for each cancer case shall include:

(A) name, address, zip code, and county of residence;

(B) social security number, date of birth, gender, race and ethnicity, marital status, birthplace, and primary payer at time of diagnosis, to the extent such information is available from the medical record;

(C) information on industrial and occupational history, smoking status, height and weight to the extent such information is available from the medical record;

(D) diagnostic information including the cancer site and laterality, cell type, tumor behavior, markers, grade and size, stage of disease, date of diagnosis, diagnostic confirmation method, sequence number, and other primary tumors;

(E) first course of cancer-related treatment, including dates and types of procedures;

(F) text information to support cancer diagnosis, stage and treatment codes;

(G) health care facility or practitioner related information including reporting institution number, casefinding source, type of reporting source, medical record number, registry number, tumor record number, class of case, date of first contact, date of last contact, vital status, facility referred from, facility referred to, managing physician, follow-up physician, date abstracted, abstractor, and electronic record version; and

(H) clinical laboratory related information including laboratory name and address, pathology case number, pathology report date, pathologist, and referring physician name and address.

(2) The department or its authorized representative may exempt a reporting entity from providing specific reportable data items delineated in paragraph (1) of this subsection to the extent that those data to be exempted are not collected by the reporting entity.

(3) Except as provided in §91.6(b) of this title (relating to How to Report), each report shall:

(A) be electronically readable and contain all data items required in paragraph (1) of this subsection;

(B) be fully coded and in a format prescribed by the Texas Cancer Registry;

(C) meet all quality assurance standards utilized by the Texas Cancer Registry;

(D) in the case of individuals who have more than one form of cancer, be submitted separately for each primary cancer diagnosed;

(E) be submitted to the Texas Cancer Registry electronically; and

(F) be transmitted by secure means at all times to protect the confidentiality of the data.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 13, 2017.

TRD-201701044
Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: April 2, 2017
Proposal publication date: November 18, 2016
For further information, please call: (512) 776-6972

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CHAPTER 97. COMMUNICABLE DISEASES
SUBCHAPTER A. CONTROL OF COMMUNICABLE DISEASES

25 TAC §§97.3, 97.4, 97.13

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts amendments to §§97.3, 97.4 and 97.13, concerning the control of communicable diseases. Amendments to §97.3 and §97.4 are adopted with changes to the proposed text as published in the November 18, 2016, issue of the *Texas Register* (41 TexReg 9085). Section 97.13 is adopted without changes, and therefore, the section will not be republished.

BACKGROUND AND PURPOSE

The purpose of the amendments is to clarify the conditions and diseases that must be reported; clarify the minimal reportable

information requirements for the conditions and diseases; and adjust the list of reportable diseases to include diseases and conditions of concern to public health. The amendments comply with guidance from the Centers for Disease Control and Prevention (CDC) regarding surveillance for reportable conditions, and allow the department to conduct more relevant and efficient disease surveillance. The amendments comply with Health and Safety Code, Chapter 81, which requires the department to identify each communicable disease or health condition which is reportable under the chapter.

House Bill (HB) 2641, 84th Legislature, Regular Session, 2015, amended Health and Safety Code, §81.044, authorizing the submission of data through a health information exchange (HIE). The amendments will provide the additional option for health care providers to report data through a health information exchange.

SECTION-BY-SECTION SUMMARY

The amendments to §97.3(a)(2)(A), §97.4(a)(1), and §97.13(c), delete "causing severe acute respiratory disease" in "novel coronavirus causing severe acute respiratory disease" to make sure that all novel coronavirus infections get reported and fully investigated, not just the severe cases. In addition, §97.3(a)(2)(A) adds language to clarify what hepatitis B is reportable.

The amendments to §97.3(a)(3)(B), (C), and (D), update the names of the revised Tuberculosis forms and specify the minimal information that should be reported.

Language is added in §97.3(a)(3)(K) to encourage the reporting of "test type" by healthcare providers. In addition, the words "or practitioners" are added to be more inclusive of reporting entities.

The amendments to §97.3(a)(4), add "diphtheria (*Corynebacteria diphtheria* from any site)," "salmonellosis, including typhoid fever (*Salmonella* species)," and "all *Streptococcus pneumoniae,* invasive, in children under five years old *(Streptococcus pneumoniae* from normally sterile sites)," to the list of "Diseases requiring submission of cultures."

The amendments to §97.4(a)(1) and §97.4(a)(2) update the language to clarify when and how to report a condition or isolate. In addition, §97.4(a)(2) updates the reporting period for "mumps" from weekly to one day reporting.

The amendments to §97.4(a)(5) add language to cover possible electronic reporting including reporting by HIEs in response to amendments to HB 2641. Amendments allow electronic submission with restrictions for security, process requirements, and exceptions for conditions that must be reported immediately by phone and within one day.

COMMENTS

The department, on behalf of the commission, reviewed and prepared responses to the comments received regarding the proposed rules during the comment period, which the commission has reviewed and accepts. The department received written comments from the Coalition for Nurses in Advanced Practice (CNAP); Texas Medical Association Committee on Infectious Diseases; San Antonio Metropolitan Health District; Austin Public Health; and Harris County Public Health. The commenters were not against the rules in their entirety; however, the commenters suggested recommendations for change as discussed in the summary of comments.

COMMENT: A staff member from CNAP recommended the addition of the terms "or practitioner" to §97.3(a)(3)(K) to be more inclusive of reporting entities who submit specimens to clinical laboratories.

RESPONSE: The commission agrees and §97.3(a)(3)(K) was amended to add "or practitioner" to be included in the reporting entities.

The department received comments in opposition to making influenza-associated adult deaths reportable as follows.

COMMENT: A commenter from the Texas Medical Association Committee on Infectious Diseases stated that they do not currently support the proposal to extend statewide reporting of "influenza mortality" to include deaths in adults.

Some of the concerns with the proposal included:

-the number of adult deaths from influenza is greater than the number of pediatric deaths from influenza;

-mortality from influenza and laboratory confirmation of influenza in adults is more complicated than it is in young children;

-many local public health officials may not have the resources to carry out this reporting requirement; and

-variability in local capacity for detecting and reporting influenza-associated adult deaths would affect the accuracy of data gathered across Texas.

Additionally, the commenter suggested that there are some existing surveillance tools that could be strengthened such as reporting influenza outbreaks in long-term care facilities.

COMMENT: A commenter from the San Antonio Metropolitan Health District stated that they are strongly recommending against mandatory reporting of "adult influenza-associated deaths."

Some of the concerns with the proposal included:

-the workload for San Antonio Metropolitan Health District and hospital staff would increase and the mandate would be unfunded;

-questions on how will the rule change improve early detection or control of influenza;

-the CDC already possesses well-established statistical methods for estimating influenza-associate adult mortality; and

-the rule changes were not initiated by the CDC or the Council of State and Territorial Epidemiologists.

COMMENT: A commenter from Austin Public Health stated that adding "influenza-associated death" to the reportable disease list will create an unnecessary burden for local health departments. The commenter also stated that this change would have fiscal implications.

COMMENT: A commenter from Harris County Public Health stated that quantifying "influenza-related deaths" is overall a good thing, but the concerns included:

-additional adult flu-associated death investigations and data collection required to be able to report such statistics may increase the workload of local health departments, hospital infection prevention teams and physicians;

-that their current flu surveillance system does a sufficient job describing flu activity and the number of pediatric deaths is a good proxy for flu severity in any given year; and

-that there are other less burdensome means of achieving quantifiable flu-related death information.

In order to implement the suggested changes, the commenter stated that they would need additional resources and staff to implement this mandate. As an alternative, the commenter suggested that the department provides resources to encourage collaboration among local health departments, local vital statistics units and hospitals to establish a system of electronic data retrieval for influenza associated mortalities, hospital/Intensive Care Units admissions, and other relevant variables.

RESPONSE: The commission agrees with the commenters and has decided to keep "influenza-associated pediatric mortality" as a notifiable disease condition in the State of Texas and not to move forward with the proposed change of "influenza-associated mortality" as a notifiable disease condition.

In §97.3(a)(2)(A), "influenza-associated mortality" was amended to "influenza-associated pediatric mortality" as a notifiable condition in the state.

In §97.4(a)(2), "influenza-associated pediatric mortality" was added back in the list of conditions that are reportable within one working day.

LEGAL CERTIFICATION

The Department of State Health Services, General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The amendments are authorized by Health and Safety Code, §81.004, which authorizes rules necessary for the effective administration of the Communicable Disease Prevention and Control Act; §81.042, which requires a rule on the exclusion of children from schools; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

§97.3. What Condition to Report and What Isolates to Report or Submit.

(a) Humans.

(1) Identification of notifiable conditions.

(A) A summary list of notifiable conditions and reporting time frames is published on the Department of State Health Services web site at http://www.dshs.state.tx.us/idcu/investigation/conditions/. Copies are filed in the Emerging and Acute Infectious Disease Branch, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756.

(B) Repetitive test results from the same patient do not need to be reported except those for mycobacterial infections.

(2) Notifiable conditions or isolates.

(A) Confirmed and suspected human cases of the following diseases/infections are reportable: acquired immune deficiency syndrome (AIDS); amebiasis; amebic meningitis and encephalitis; anaplasmosis; ancylostomiasis; anthrax; arboviral infections including, but not limited to, those caused by California serogroup virus, chikungunya virus, dengue virus, Eastern equine encephalitis (EEE) virus, St. Louis encephalitis (SLE) virus, Western equine encephalitis (WEE) virus, yellow fever virus, West Nile (WN) virus, and Zika virus; ascariasis; babesiosis; botulism, adult and infant; brucellosis; campylobacteriosis; carbapenem resistant *Enterobacteriaceae* (CRE); Chagas disease; chancroid; chickenpox (varicella); *Chlamydia trachomatis* infection; cryptosporidiosis; cyclosporiasis; diphtheria; echinococcosis; ehrlichiosis; fascioliasis; gonorrhea; *Haemophilus influenzae,* invasive; Hansen's disease (leprosy); hantavirus infection; hemolytic uremic syndrome (HUS); hepatitis A, acute hepatitis B infection, hepatitis B acquired perinatally (child), any hepatitis B infection identified prenatally or at delivery (mother), acute hepatitis C infection, and acute hepatitis E infection; human immunodeficiency virus (HIV) infection; influenza-associated pediatric mortality; legionellosis; leishmaniasis; listeriosis; Lyme disease; malaria; measles (rubeola); meningococcal infection, invasive; multidrug-resistant *Acinetobacter* (MDR-A); mumps; novel coronavirus; novel influenza; paragonimiasis; pertussis; plague; poliomyelitis, acute paralytic; poliovirus infection, non-paralytic; prion diseases, such as Creutzfeldt-Jakob disease (CJD); Q fever; rabies; rubella (including congenital); salmonellosis, including typhoid fever; Shiga toxin-producing *Escherichia coli* infection; shigellosis; smallpox; spotted fever group rickettsioses (such as Rocky Mountain spotted fever); streptococcal disease: invasive group A, invasive group B, or invasive *Streptococcus pneumoniae;* syphilis; *Taenia solium* and undifferentiated *Taenia* infections, including cysticercosis; tetanus; trichinosis; trichuriasis; tuberculosis *(Mycobacterium tuberculosis* complex); tuberculosis infection; tularemia; typhus; vancomycin-intermediate *Staphylococcus aureus* (VISA); vancomycin-resistant *Staphylococcus aureus* (VRSA); *Vibrio* infection, including cholera (specify species); viral hemorrhagic fever; and yersiniosis.

(B) In addition to individual case reports, any outbreak, exotic disease, or unusual group expression of disease that may be of public health concern should be reported by the most expeditious means.

(3) Minimal reportable information requirements. The minimal information that shall be reported for each disease is as follows:

(A) AIDS, chancroid, *Chlamydia trachomatis* infection, gonorrhea, HIV infection, and syphilis shall be reported in accordance with Subchapter F of this chapter (relating to Sexually Transmitted Diseases Including Acquired Immune Deficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV));

(B) for tuberculosis disease - complete name, date of birth, physical address and county of residence, country of origin, information on which diagnosis was based or suspected. In addition, if known, radiographic or diagnostic imaging results and date(s); all information necessary to complete the most recent versions of department reporting forms: Report of Case and Patient Services, Report of Follow-up and Treatment for Contacts to TB Cases and Suspects; and Report of Verified Case of Tuberculosis; laboratory results used to guide prescribing, monitoring or modifying antibiotic treatment regimens for tuberculosis to include, but not limited to, liver function studies, renal function studies, and serum drug levels; pathology reports related to diagnostic evaluations of tuberculosis; reports of imaging or radiographic studies; records of hospital or outpatient care to include, but not limited to, histories and physical examinations, discharge summaries and progress notes; records of medication administration to include, but not limited to, directly observed therapy (DOT) records, and drug toxicity and monitoring records; a listing of other patient medications to evaluate the potential for drug-drug interactions; and copies of court documents related to court ordered management of tuberculosis.

(C) for contacts to a known case of tuberculosis - complete name; date of birth; physical address; county of residence; evaluation and disposition; and all information necessary to complete the most recent versions of department reporting forms: Report of Follow-up and Treatment for Contacts to TB Cases and Suspects; and Report of Case and Patient Services;

(D) for other persons identified with TB infection - complete name; date of birth; physical address and county of residence; country of origin; diagnostic information; treatment information; medical and population risks; and all information necessary to complete the most recent versions of department reporting form: Report of Case and Patient Services.

(E) for hepatitis B (chronic and acute) identified prenatally or at delivery - mother's name, address, telephone number, age, date of birth, sex, race and ethnicity, preferred language, hepatitis B laboratory test results; estimated delivery date or date and time of birth; name and phone number of delivery hospital or planned delivery hospital; name of infant; name, phone number, and address of medical provider for infant; date, time, formulation, dose, manufacturer, and lot number of hepatitis B vaccine and hepatitis B immune globulin administered to infant;

(F) for hepatitis A, B, C, and E - name, address, telephone number, age, date of birth, sex, race and ethnicity, disease, diagnostic indicators (diagnostic lab results, including all positive and negative hepatitis panel results, liver function tests, and symptoms), date of onset, pregnancy status, and physician name, address, and telephone number;

(G) for hepatitis B, perinatal infection - name of infant; date of birth; sex; race; ethnicity; name, phone number and address of medical provider for infant; date, time, formulation, dose, manufacturer, and lot number of hepatitis B vaccine and hepatitis B immune globulin administered to infant, hepatitis B laboratory test results;

(H) for chickenpox - name, date of birth, sex, race and ethnicity, address, date of onset, and varicella vaccination history;

(I) for Hansen's disease - name; date of birth; sex; race and ethnicity; disease type; place of birth; address; telephone number; date entered Texas; date entered U.S.; education/employment; insurance status; location and inclusive dates of residence outside U.S.; date of onset and history prior to diagnosis; date of initial biopsy and result; disease type i.e., tuberculoid, borderline and lepromatous; date initial drugs prescribed and name of drugs; name, date of birth and relationship of household contacts; and name, address, and telephone number of physician;

(J) for novel influenza investigations occurring during an influenza pandemic--minimal reportable information on individual cases, a subset of cases or aggregate data will be specified by the department;

(K) for all other notifiable conditions listed in paragraph (2)(A) of this subsection - name, address, telephone number, age, date of birth, sex, race and ethnicity, disease, diagnostic indicators (diagnostic lab results, specimen source, test type, and clinical indicators), date of onset, and physician or practitioner name, address, and telephone number; and

(L) other information may be required as part of an investigation in accordance with Texas Health and Safety Code, §81.061.

(4) Diseases requiring submission of cultures. For all anthrax *(Bacillus anthracis);* botulism, adult and infant *(Clostridium botulinum);* brucellosis *(Brucella* species); diphtheria (*Corynebacteria diphtheria* from any site); all *Haemophilus influenzae,* invasive, in children under five years old *(Haemophilus influenzae* from normally sterile sites); listeriosis *(Listeria monocytogenes);* meningococcal infection, invasive *(Neisseria meningitidis* from normally sterile sites or purpuric lesions); plague *(Yersinia pestis);* salmonellosis, including typhoid fever (*Salmonella* species); Shiga toxin-producing *Escherichia coli* infection (*E.coli* O157:H7, isolates or specimens from cases where Shiga toxin activity is demonstrated); *Staphylococcus aureus* with a vancomycin MIC greater than 2 µg/mL; all *Streptococcus pneumoniae,* invasive, in children under five years old *(Streptococcus pneumoniae* from normally sterile sites); tuberculosis *(Mycobacterium tuberculosis* complex); tularemia *(Francisella tularensis);* and vibriosis *(Vibrio* species) - pure cultures (or specimens as indicated in this paragraph) shall be submitted accompanied by a current department Specimen Submission Form.

(5) Laboratory reports. Reports from laboratories shall include patient name, identification number, address, telephone number, age, date of birth, sex, race and ethnicity; specimen submitter name, address, and phone number; specimen type; date specimen collected; disease test and test result; normal test range; date of test report; and physician name and telephone number.

(b) Animals.

(1) Clinically diagnosed or laboratory-confirmed animal cases of the following diseases are reportable: anthrax, arboviral encephalitis, tuberculosis *(Mycobacterium tuberculosis* complex) in animals other than those housed in research facilities, and plague. Also, all non-negative rabies tests performed on animals from Texas at laboratories located outside of Texas shall be reported; all non-negative rabies tests performed in Texas will be reported by the laboratory conducting the testing. In addition to individual case reports, any outbreak, exotic disease, or unusual group expression of disease which may be of public health concern should be reported by the most expeditious means.

(2) The minimal information that shall be reported for each disease includes species and number of animals affected, disease or condition, name and phone number of the veterinarian or other person in attendance, and the animal(s) owner's name, address, and phone number. Other information may be required as part of an investigation in accordance with Texas Health and Safety Code, §81.061.

§97.4. When and How to Report a Condition or Isolate

(a) Humans.

(1) The following notifiable conditions are public health emergencies and suspect cases shall be reported immediately by phone to the local health authority or the appropriate Department of State Health Services regional epidemiology office: anthrax; botulism; diphtheria; measles (rubeola); meningococcal infection, invasive; novel coronavirus; novel influenza; poliomyelitis, acute paralytic; plague; rabies; smallpox; tularemia; vancomycin-intermediate *Staphylococcus aureus* (VISA); vancomycin-resistant *Staphylococcus aureus* (VRSA); viral hemorrhagic fever; yellow fever; and any outbreak, exotic disease, or unusual group expression of disease that may be of public health concern.

(2) The following notifiable conditions shall be reported by fax or phone within one working day of identification as a suspected case: brucellosis; carbapenem resistant *Enterobacteriaceae* (CRE); hepatitis A, acute; hepatitis B, perinatal infection; influenza-associated pediatric mortality; multidrug-resistant *Acinetobacter* (MDR-A) species; mumps; pertussis; poliovirus infection, non-paralytic; Q fever; rubella (including congenital); tuberculosis *(Mycobacterium tuberculosis* complex); and *Vibrio* infection (including cholera).

(3) AIDS, chancroid, *Chlamydia trachomatis* infection, gonorrhea, HIV infection, and syphilis shall be reported in accordance with Subchapter F of this chapter (relating to Sexually Transmitted Diseases Including Acquired Immune Deficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV)).

(4) Tuberculosis antibiotic susceptibility results should be reported by laboratories no later than one week after they first become available.

(5) For all other notifiable conditions not listed in paragraphs (1) - (4) of this subsection, reports of disease shall be made no later than one week after a case or suspected case is identified.

(A) Transmittal may be by telephone, fax, mail, courier, or electronic transmission.

(i) If by mail or courier, the reports shall be on a form provided by the department and placed in a sealed envelope addressed to the attention of the appropriate receiving source and marked "Confidential."

(ii) Any electronic transmission of the reports must provide at least the same degree of protection against unauthorized disclosure as those of mail or courier transmittal, be by express written agreement with the receiving agency, utilize a format prescribed by the receiving agency, and be validated as accurate.

(B) A health information exchange (HIE) organization as defined by Health and Safety Code, §182.151, may transmit reports on behalf of providers required to report in §97.2(a) - (d) of this title (relating to Who Shall Report) in accordance with Health and Safety Code, Chapter 182, Subchapter D. Health Information Exchanges, and all other state and federal law as follows:

(i) The receiving agency has published message standards.

(ii) A method of secure transmission has been established between the HIE and the receiving agency and transmissions have been tested with the receiving agency and established as meeting the data exchange standards and conveying information accurately.

(iii) Reporting by the HIE has been requested and authorized by the appropriate health care provider, practitioner, physician, facility, clinical laboratory, or other person who is required to report health-related information.

(iv) HIE reports may be made in addition to but shall not replace reports listed in paragraphs (1) - (2) of this subsection.

(6) All diseases requiring submission of cultures in §97.3(a)(4) of this title (relating to What Condition to Report and What Isolates to Report or Submit) shall be submitted as they become available.

(b) Animals. Reportable conditions affecting animals shall be reported within one working day following the diagnosis.

§97.13. Death of a Person with Certain Communicable Diseases.

(a) If a physician has knowledge that a person had, at the time of death, a communicable disease listed in subsection (c) of this section, then the hospital administrator, clinic administrator, nurse, or the physician shall affix or cause to be affixed a tag on the body, preferably the great toe.

(b) The tag shall be on card stock paper and shall be no smaller than five centimeters by ten centimeters. The tag shall include the words "COMMUNICABLE DISEASE--BLOOD/BODY SUBSTANCE PRECAUTIONS REQUIRED" in letters no smaller than six millimeters in height. The name of the deceased person shall be written on the tag. The tag shall remain affixed to the body until the preparation of the body for burial has been completed.

(c) Diseases that shall require tagging are acquired immune deficiency syndrome (AIDS); anthrax; brucellosis; cholera; Hantavirus pulmonary syndrome; hepatitis, viral; human immunodeficiency virus (HIV) infection; novel coronavirus; novel influenza; plague; prion diseases, such as Creutzfeldt-Jakob disease (CJD); Q fever; rabies; Rocky Mountain spotted fever; smallpox; syphilis; tuberculosis *(Mycobacterium tuberculosis* complex); tularemia; and viral hemorrhagic fever.

(d) All persons should routinely practice standard infection control procedures when performing postmortem care on a deceased person who is known or suspected of having a communicable disease listed in subsection (c) of this section.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Lisa Hernandez
General Counsel
Department of State Health Services
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Proposal publication date: November 18, 2016
For further information, please call: (512) 776-6972

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CHAPTER 100. IMMUNIZATION REGISTRY

25 TAC §100.1, §100.11

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), adopts an amendment to §100.1 and new §100.11, concerning the requirement to allow health information exchanges (HIEs) access to the immunization registry. Section 100.1 and §100.11 are adopted without changes to the proposed text as published in the November 18, 2016, issue of the *Texas Register* (41 TexReg 9088) and therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

The amendment and new section are necessary to comply with House Bill (HB) 2641, 84th Legislature, Regular Session, 2015, which amended Health and Safety Code, Chapter 161, Subchapter B, Immunizations, and directed the department to allow the immunization registry to exchange data elements with an HIE as defined in Health and Safety Code, §182.151.

SECTION-BY-SECTION SUMMARY

The adopted amendment to §100.1 adds the definition of an HIE as defined in Health and Safety Code, §182.151.

The adopted new §100.11 will allow the immunization registry to exchange data elements with an HIE as defined in Health and Safety Code, §182.151. The adopted new rule will clarify procedures and requirements for the exchange of data between the immunization registry and HIEs. The new rule will stipulate that data access and transmittal will be subject to provisions of the department's data usage agreement and will state that access and transmittal of immunization registry data by an HIE must be made for immunization registry purposes only.

COMMENTS

The department, on behalf of the commission, did not receive any comments regarding the proposed rules during the comment period.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The amendment and new rule are adopted under Health and Safety Code, Chapter 161, which provides the department with the authority to allow Health Information Exchanges access to the immunization registry; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Lisa Hernandez
General Counsel
Department of State Health Services
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CHAPTER 103. INJURY PREVENTION AND CONTROL

25 TAC §§103.1 - 103.8

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts amendments to §§103.1 - 103.8, concerning injury prevention and control without changes to the proposed text as published in the November 11, 2016, issue of the *Texas Register* (41 TexReg 8903) and therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to Government Code, Chapter 2001 (Administrative Procedure Act). Sections 103.1 - 103.8 have been reviewed in their entirety and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed.

The department administers the state program for Injury Epidemiology and Surveillance. The Emergency Medical Services (EMS) & Trauma Registries system is operated by the Injury Epidemiology and Surveillance Branch (the Program) that collects data on reportable injuries and EMS runs submitted by the reporting health care providers (physicians, medical examiners, justices of the peace, hospitals, and acute and post-acute care rehabilitation facilities) and EMS providers.

The rules implement Health and Safety Code, Chapter 92 for the prevention and control of injuries in Texas by establishing and maintaining a trauma reporting and analysis system, investigating injuries, and providing injury related information for prevention. Senate Bill (SB) 219, 84th Texas Legislature, Regular Session, 2015, amended Health and Safety Code, Chapter 92 and replaced the "Texas Board of Health" that was abolished with the "Executive Commissioner" and the "department."

The Program develops reporting requirements, maintains registries operations, conducts data analysis, prepares reports, and provides information for injury prevention and control in Texas. The amendments to the rules clarify the rules for reporting entities. The rule revisions are expected to increase reporting, improve data quality (timeliness, accuracy, and completeness), improve compliance with reporting requirements, and ensure secure access to data by authorized system users.

SECTION-BY-SECTION SUMMARY

Changes made throughout the sections include various grammatical, punctuations, and formatting changes. Also, any reference to the "Texas EMS/Trauma Registry" has been changed to the "Texas EMS & Trauma Registries" or "Registries" in §§103.1 - 103.8. In addition to these changes, more specific changes included in the sections are described as follows.

Section 103.1(a) is being revised to replace the "Texas Board of Health" which was abolished with the "Executive Commissioner." In subsection (b), the references to "Commissioner" were replaced with "Executive Commissioner."

Section 103.2 defines the key words and terms used in the rule. The definitions of "business associate" and "paper reporting" were deleted because they are no longer relevant terms. The definitions for "data dictionaries" and "no reportable data" were added because these terms were not previously defined and are included in the rules. The definitions of "run," "spinal cord injury," "submersion injury," "traumatic brain injury," and "traumatic injury" were removed and included in the new definition of "reportable event."

Section 103.4 specifies reporting entities and lists reportable injuries and events. The list of reportable injuries and events was clarified for hospitals. The phrase "if reporting for a physician" was added to the reporting entities for a hospital and for an acute or post-acute rehabilitation facility.

Section 103.5 specifies reporting requirements for EMS providers. The section was revised to clarify the requirements for reporting "no reportable data" (NRD) and the use of third-party services to submit data to the department on behalf of the reporting entity.

Section 103.6 specifies the reporting requirements for physicians, medical examiners, and justices of the peace. This section was revised to clarify reporting requirements, such as the submittal of data electronically within ninety calendar days of the date of examination. The section also specifies that hospitals may fulfill reporting requirements on behalf of a physician as stated in §103.7. Language was also added concerning the use of third-party services to submit data to the department on behalf of the reporting entity.

Section 103.7 specifies the reporting requirements for hospitals if reporting on behalf of physicians. The section was revised to clarify the requirements for reporting, including electronic reporting within ninety calendar days, submission of NRD on a monthly basis as appropriate, and use of third-party services to submit data.

Section 103.8 specifies the reporting requirements for acute or post-acute rehabilitation facilities if reporting on behalf of physicians. The section was revised to clarify the requirements for reporting including electronic reporting within ninety calendar days, submission of NRD on a monthly basis as appropriate, and use of third-party services to submit data.

COMMENTS

The department, on behalf of the commission, did not receive any comments regarding the proposed rules during the comment period.

LEGAL CERTIFICATION

The Department of State Health Services, General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The amendments are authorized by Health and Safety Code, §92.003, which requires the department to establish guidelines by rule for conducting injury surveillance by developing the reporting requirements of reportable injuries and events in Texas; Health and Safety Code, §773.112, which authorizes the department to adopt rules establishing requirements for data collection, including trauma incidence reporting; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the sections implements Government Code, §2001.039.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Lisa Hernandez
General Counsel
Department of State Health Services
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CHAPTER 412. LOCAL MENTAL HEALTH AUTHORITY RESPONSIBILITIES

SUBCHAPTER I. MENTAL HEALTH CASE MANAGEMENT

25 TAC §412.403

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), adopts an amendment to §412.403, concerning mental health case management services. An amendment to §412.403 is adopted without changes to the proposed text as published in the November 18, 2016 issue of the *Texas Register* (41 TexReg 9089), and therefore, the section will not be republished.

BACKGROUND AND PURPOSE

The subchapter describes requirements for providing mental health case management services funded by or through the department. The purpose of amending this section is to update the following provisions to expand the definition of "provider" to include a Local Behavioral Health Authority (LBHA) and subcontractors of an LBHA. This will allow LBHAs to subcontract for general revenue-funded case management services, and allow for continuity of care between Managed Care Organizations (MCOs) and LBHA provider networks. Fee for Service Medicaid recipients will continue to receive case management services at community mental health centers in accordance with the Medicaid State Plan.

SECTION-BY-SECTION SUMMARY

The amendment to §412.403 revises and adds definitions that are used in the subchapter.

Section 412.403(25) is being added to include a definition for an LBHA that states "An entity designated as the local behavioral health authority in accordance with Texas Health and Safety Code, §533.0356."

Section 412.403(30) is being amended to provide clarification to expand the definition of provider to include an LBHA and the LBHA's subcontractors.

COMMENTS

The department, on behalf of the commission, did not receive any comments regarding the proposed rules during the comment period.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rule, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The amendment is authorized by Health and Safety Code, §534.058, which requires the department to develop standards of care for the services provided by local mental health authorities and their subcontractors; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 7, 2017.

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Lisa Hernandez
General Counsel
Department of State Health Services
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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION

The commissioner of insurance adopts new 28 TAC §5.4023 and §§5.4029 - 5.4041, concerning claim settlement guidelines to be used by the Texas Windstorm Insurance Association (TWIA).

Additionally, to allow room to adopt the new sections in 28 TAC Chapter 5, Subchapter E, Division 1, the commissioner adopts the repeal of 28 TAC Chapter 5, Subchapter E, Division 2, which includes only §5.4016, concerning reinsurance. The text of repealed §5.4016 is incorporated into new §5.4023, with changes to update Insurance Code references and to conform to current Texas Department of Insurance (TDI) rule drafting style.

The new sections are adopted with and without changes to the proposed text published in the September 9, 2016, issue of the *Texas Register* (41 TexReg 6920). Sections 5.4030 - 5.4033, 5.4035, 5.4036, and 5.4038 - 5.4041 are adopted without changes to the proposed text. Sections §§5.4023, 5.4029, 5.4034, and 5.4037 have nonsubstantive grammatical changes and nonsubstantive changes made to clarify the sections.

TDI held a public hearing on the proposal on October 28, 2016. TWIA was the only commenter.

REASONED JUSTIFICATION FOR REPEAL OF §5.4016 AND ADOPTION OF §5.4023. Section 5.4023, relating to reinsurance, adopts text similar to what was contained in §5.4016, which is repealed in this order. The text of §5.4016 is incorporated into §5.4023 to include it in TWIA's plan of operation, and §5.4016 is repealed to expand the section numbers in 28 TAC Chapter 5, Subchapter E, Division 1.

The text in §5.4023 differs from repealed §5.4016 in that §5.4016(d)(2) and (g)(2) required notice and hearing before the commissioner issued an order approving or disapproving an excess reinsurer or the amount of payment for the excess reinsurance, while new §5.4023(d)(2) and (g)(2) do not require notice and a hearing before the commissioner issues the order. The new section differs from repealed §5.4016 in this way because the notice and hearing requirement was removed from Insurance Code §2210.008 by HB 4409, 81st Legislature, Regular Session (2009).

New §5.4023 also differs from repealed §5.4016 in the following ways:

(1) include Insurance Code citations that reflect the recodification of the Insurance Code;

(2) not include unnecessary definitions; and

(3) draft text consistent with current TDI rule drafting style.

In addition, the text of §5.4023 as adopted has been changed from the version as proposed for consistency with TDI rule drafting style: the catchline "Payment to the association" has been added to Subsection (g), and the capital "A" in the word "Association" has been changed to lowercase in the first sentence in Subsection (g)(1).

REASONED JUSTIFICATION FOR ADOPTION OF §§5.4029 - 5.4041. The new sections are necessary to implement Insurance Code §2210.578, enacted by HB 3, 82nd Legislature, 1st Called Session (2011). The sections prescribe guidelines TWIA must use to settle certain claims. The guidelines are based on the recommendations of a panel of experts, appointed under Insurance Code §2210.578 and charged with recommending methods or models for determining the extent to which a loss may be or was incurred as a result of wind, waves, tidal surges, or rising waters not caused by waves or surges.

TWIA is the residual insurer of last resort for windstorm and hail insurance coverage in the seacoast territory for those unable to obtain wind and hail insurance in the private market. TWIA is similar to other insurers in that it sells policies, collects premiums, and pays claims. TWIA's largest risk is exposure to catastrophic losses from hurricanes. Under Insurance Code §2210.005, the commissioner designates the catastrophe area eligible for TWIA coverage. The catastrophe area currently includes the 14 first-tier coastal counties and parts of Harris County.

In August 2013, the commissioner appointed a panel of experts with the professional expertise and knowledge required by Insurance Code §2210.578(b) to advise TWIA on the extent to which a loss to insurable property was incurred as a result of wind, waves, tidal surges, or rising waters not caused by waves or surges. Because TWIA policies cover loss caused by wind and exclude loss caused by rising water in its various forms, the distinction is important for determining TWIA's liability for a claim.

Insurance Code §2210.578 requires the panel to recommend to the commissioner methods or models for determining the extent to which a loss may be or was incurred as a result of wind, waves, tidal surges, or rising waters not caused by waves or surges for geographic areas or regions designated by the commissioner. After considering the panel's recommendations, the commissioner must publish guidelines that TWIA must use to settle claims.

The panel developed a methodology, submitted it for peer review, and adjusted it based on the peer review. The panel also held nine public meetings in Austin and Corpus Christi to provide updates on the panel's progress. The panel submitted the final report containing its recommended methodology on April 18, 2016. The report is on TDI's website at tdi.texas.gov/reports/pc/documents/epfinalrpt.pdf.

The panel's recommended methodology estimates the percentage of damage each component of a structure sustained due to wind before the structure was likely destroyed by waves or surges. These estimates are probabilistic; they represent the average damage expected for a given structure and do not necessarily reflect what actually happened to the structure. The methodology also requires that TWIA check the damage estimates against observations. The new sections adopt the panel's methodology.

Applicability and Definitions

Section 5.4029 requires TWIA to use the guidelines set out in §§5.4030 - 5.4041 to prepare for and settle residential slab claims occurring in National Flood Insurance Program Zones V, VE, and V1 - V30 as the result of a defined organized weather system. The section requires use of the guidelines only in these flood zones because they are the most likely areas where slab claims will occur.

Sections 5.4029 - 5.4041 apply only when TWIA expects at least 500 residential slab claims. The panel's methodology uses the probability that a component of a structure will fail as a proxy for the expected amount of damage to the component. The methodology assumes a large number of slab claims. The 500 slab claim threshold also balances anticipated costs and benefits of implementation for a particular storm.

TWIA must use the methodology based on an anticipated number of residential slab claims, regardless of the actual number TWIA ultimately receives. TWIA will not know the final, actual number of residential slab claims until after a storm. While the vast majority of residential slab claims would likely be made shortly after the storm, policyholders have until the first anniversary of the date of loss to file claims. Requiring the wind damage evaluation based on the anticipated number of residential slab claims provides clear guidance immediately after a storm as to what claim-settling procedures TWIA must use.

Section 5.4029 specifies when TWIA must make initial and final determinations of the number of expected claims resulting from an organized weather system. The deadlines are based on the time when TWIA, under its plan of operation, stops writing new policies in anticipation of an approaching storm and the latest reasonable time to set up mobile wind measurement platforms. The definition of an organized weather system is based on the definition of "named storm" in the National Flood Insurance Act.

Section 5.4030 contains definitions to be used with the guidelines.

Section 5.4031 requires TWIA to use both a probabilistic and an observational approach for residential slab claims when estimating the extent to which damage to a residence was caused by wind, waves, tidal surges, or rising waters not caused by waves or surges.

Sections 5.4031 - 5.4040 require TWIA to implement the panel's recommended methodology, which includes five components or modules, as follows:

(1) §5.4032, the property database;

(2) §§5.4033 - 5.4037, the hazard module;

(3) §5.4038, the damage estimation module;

(4) §5.4039, the economic loss module; and

(5) §5.4040, the report generation module.

Property Database

The property database described in §5.4032 consists of information on certain characteristics of each TWIA-insured structure to which the methodology might be applied. For example, this information includes age of the structure, type of roof covering, and height of the structure's lowest horizontal structural member. The property database also includes high-resolution aerial and ground photographs of each structure, providing further information on characteristics of the structure.

Information from the database, along with data on a particular storm from the hazard module, is used in the damage estimation module to calculate the probable extent of wind damage to a given structure. High-resolution aerial photographs also provide information on the terrain surrounding a structure, which is key to assessing its wind exposure. The damage estimation module assumes the worst exposure category in all wind directions for a structure.

As an enhancement, TWIA may input wind exposure for eight direction sectors into the damage estimation module. TWIA must populate the property database in advance of a storm and keep it up to date.

Hazard Module

The hazard module set out in §§5.4033 - 5.4037 provides data on wind, waves, and storm surges to which a given structure was exposed for the duration of a storm. To calculate the probable extent of wind damage to a given structure, the damage estimation module uses:

(1) wind speed and direction time histories;

(2) wave and surge time histories; and

(3) information from the property database.

Because taking measurements at every structure would be cost prohibitive or technically infeasible, the hazard module requires taking sufficiently detailed measurements during a storm to enable the use of models to project site-specific data.

In developing the hazard module, the expert panel investigated existing systems for modeling wind fields during a storm. For the purpose of the recommended methodology, a wind field model or models must provide site-specific wind speed and direction time histories and provide a wind field that can be used in a wave and surge model to generate site-specific wave and surge time histories. The wave and surge model requires input from the wind field model so that the histories from each model will be spatially and temporally correlated. The recommended methodology also requires that wind field models have a minimum amount of error at each specific site, where error is defined as the difference between model estimates and the observed wind speeds and directions measured during a storm.

The expert panel investigated three classes of wind field models by comparing each model's output wind speeds, predicted with data from Hurricane Ike, with observed wind speeds from Hurricane Ike. The expert panel recommended that an observational model or models be used in the hazard module to generate wind speed and direction time histories and wave and surge time histories. The rules require that TWIA use one or more observational models for this purpose. The rules also require TWIA to gather the data to be used in the model or models as the expert panel recommended.

The expert panel recommended inputting the wind field model into the wave and surge model. In addition, the wave and surge model requires measurements of waves and water levels during a storm and measurements of high-water marks taken after the storm. The wave and surge model uses these inputs to generate wave and surge time histories at a given structure. The expert panel recommended that TWIA contract with firms or government agencies to gather data during and after a storm and to develop a wave and surge model. The rules require that the wave and surge model contain the technical features the ex-

pert panel recommended and require TWIA to obtain the recommended data.

Damage Estimation Module

The damage estimation module, the use of which is described in §5.4038, uses wind speed and direction time histories and wave and surge time histories, along with information on the characteristics of a given structure. The inputs are used to estimate the percentage of each component in the structure damaged by wind before the point in time at which waves or surges likely destroyed the structure. The expert panel recommended that TWIA use these percentages, after validating them with post-storm observations, to compute the total loss due to wind that occurred during a storm. The rules require that TWIA use the damage estimation module, defined in Section 6 and Appendix A of the expert panel's report and incorporated into the rules by reference.

The damage estimation module requires two independent determinations of probability: the probability that waves or surges destroyed the structure and the probability that wind destroyed it. For both hazards, the probability will vary throughout the time history.

The expert panel recommended that TWIA determine the probability that waves or surges destroyed a structure using an engineering methodology introduced in a paper in the *Journal of Waterway, Port, Coastal, and Ocean Engineering*, a peer-reviewed journal published by the American Society of Civil Engineers. The rules cite Tomiczek, T., Kennedy, A., and Rogers, S. (2014), *Collapse Limit State Fragilities of Wood-Framed Residences From Storm Surge and Waves During Hurricane Ike*, J. Waterway, Port, Coastal, and Ocean Eng. ASCE, 140(1), 43-55, *available at* dx.doi: 10.1061/(ASCE)WW.1943-5460.0000212. The paper is available through TWIA at compliance@twia.org.

The probability that wind destroyed a structure will be determined from the maximum of the probabilities of failure for three key components of the structure. The expert panel investigated different techniques for estimating component failure probabilities, including the First-Order, Second-Moment, Mean Value (FOSM-MV) reliability analysis; the Rackwitz-Fiessler procedure; and Monte Carlo simulation. The panel chose to use the FOSM-MV reliability analysis to demonstrate the calculation of failure probabilities in its report, but any of the three techniques can be used effectively in the damage estimation module. Appendix C of the expert panel's report discusses the strengths and weaknesses of the different techniques.

In the damage estimation module, the independent probabilities of destruction by waves and surges and destruction by wind are used in an equation with the percentage of a given component that was damaged by wind before the structure was likely destroyed by waves or surges. The equation creates a probability-weighted average of the expected wind damage to the component before waves and surges likely destroyed the structure, and the damage that would have occurred if wind destroyed the structure. The equation is calculated for every component. Pages 6-3 and 6-4 of the expert panel's report show examples of how the equation would function with different damage levels and collapse probabilities.

The damage estimation module uses the probability that a component of a structure will fail as a proxy for the expected amount of damage to the component. This is because damage is estimated probabilistically as the average damage expected for a structure with given characteristics. The average damage expected can be used when there are a large number of properties being considered. From Page 6-8 of the expert panel's report:

"As an example, consider roof panel damage in one corner zone of a roof. Only one piece of plywood may occupy this location due to the relative sizes of plywood sheets and of roof corner zones for typical residences. For a single property, only two outcomes are possible: damage or no damage. If the Damage Estimation Module estimates that the probability of damage to the roof decking in this location is 10 percent, then it is reasonable to conclude that a single property would not experience damage to roof decking in this roof area. However, if 100 properties are under consideration, and the Damage Estimation Module estimates that the probability of damage to the roof decking in this location is 9 percent, then it is reasonable to conclude that 9 of 100 properties experience damage to roof decking in this area, and the average damage rate for these 100 properties is 9 percent. That is, 9 of 100 properties would experience total damage, and the other 91 would experience no damage.

"This example demonstrates a fundamental characteristic of the Damage Estimation Module: the most likely result and the average result are not the same. The Damage Estimation Module produces the average result, and because of this characteristic, the assumption that probability of failure can be considered as a proxy for damage rate is acceptable. The total damage ratio for a component over the entire building is the sum of the areas, weighted by their individual failure probabilities.

"For illustration, consider the following simple hypothetical scenario. One portion of a building roof covers 10 percent of the roof area, and the probability of failure for this area of roof is 50 percent. If the probabilities of failure in all the other portions of the roof are zero, then the total damage ratio for the roof is five percent."

In addition to the probabilistic approach, the damage estimation module contains an observational approach (not to be confused with the observational models developed as part of the hazard module). The rules require TWIA to use this observational approach, the purpose of which is to check the results from the probabilistic approach.

Economic Loss Module

The economic loss module set out in §5.4039 contains the expert panel's recommendation that adjusters use the component damage estimates from the damage estimation module to determine the scope of work and associated costs for each component. The panel's expertise covers damage to structures, not to contents. Therefore, the panel also recommended that adjusters or other professionals estimate losses to contents.

Report Generation Module

The report generation module set out in §5.4040 requires:

(1) pre-storm and post-storm site-specific information;

(2) wind and wave and surge hazard information and building vulnerability; and

(3) damage information (the results of the damage estimation module).

TWIA must combine this information in a report sent to the policyholder. The policyholder can then supplement any building, damage, or hazard magnitude information used as inputs to the model.

Insurance Code §2210.573(b) allows TWIA to ask a claimant for additional information not later than the 30th day after the claim is filed. Section 5.4040(a) uses the same time frame to require TWIA to ask the policyholder for information that may be used to verify or correct model inputs, thus tying the two actions to the same deadline.

Insurance Code §2210.573(d) requires TWIA to accept or deny a claim not later than the 60th day after the claim is filed. Section 5.4040(b) requires TWIA at the same time to provide the policyholder with a complete residential slab claim report and a summary of the results, again tying a new requirement to an existing deadline.

The expert panel's report recommends that TWIA give the residential slab claim report to the policyholder after running the model. The rule departs from this timing so that the communications between the policyholder and TWIA can be combined with the claim-processing correspondence in Insurance Code §2210.573. Incorporating the new requirements into the claim-settling process is less burdensome for TWIA and policyholders than creating a new set of deadlines.

Validation of Recommended Methodology

The expert panel validated its recommended methodology by using the damage estimation module to predict damage for past hurricanes using data from those hurricanes, and then comparing the predictions with residential claims resulting from the hurricanes. The panel compared predictions for Hurricanes Charley (2004), Ivan (2004), Katrina (2005), Rita (2005), and Ike (2008) with residential windstorm claims drawn from insurer bulk claims data, individual claim reports, open literature, and existing catastrophe loss models.

Qualitative analysis confirmed the damage estimation module is reasonable in terms of overall approach, with its predictions comparing favorably with qualitative observations from post-storm damage photographs. Quantitative analysis showed that the module's predictions generally compared favorably with data interpreted from claim files, with the module providing reasonable estimates of the magnitudes and trends of damage when compared to observations of actual damage. Detailed discussion of the validation, including data and limitations, is in the expert panel's report.

The damage estimation module was also reviewed (independently of the expert panel) by employees of Exponent, Inc., which is an ISO 9001-certified firm, to verify the reliability of the calculations underlying the module's predictions, which were based on the FOSM-MV reliability analysis.

Peer Review of Recommended Methodology

TDI contracted with five reviewers from industry and academia to each conduct an independent peer review of the expert panel's report. Each reviewer looked for compliance with accepted standards of professional and technical practices, and each provided a final report of his findings to TDI. The expert panel reviewed each peer review report and, where necessary, modified its final report on the basis of the peer review suggestions or comments.

The most significant modification the panel made in response to peer review comments was to change the equation used to calculate the percentage of damage each component sustained. The panel made the change to take into account situations in which the probability of both destruction due to wave and surge and destruction due to wind was low. Also, in response to peer reviewer comments, the expert panel added a sensitivity analysis of failure probability calculation techniques, comparing roof cover damage results obtained using the FOSM-MV technique with results obtained using Monte Carlo simulation for different wind speeds and structure characteristics. The panel concluded that the limitations of the FOSM-MV, which a reviewer had also mentioned, have "little practical significance for the methodology as currently proposed." The sensitivity analysis is in Appendix C of the expert panel's report.

The panel's final report, containing its recommended methodology, is on TDI's website at tdi.texas.gov/reports/pc/documents/epfinalrpt.pdf. The peer reviews are also on TDI's website at tdi.texas.gov/commercial/pctwia.html#expert.

Changes to §§5.4029, 5.4034, and 5.4037

Adopted §5.4029 differs from the proposed version in that it contains a subsection (f), added to allow TWIA time for implementation, which states that §§5.4029 - 5.4041 are applicable beginning June 1, 2018. This effective date is consistent with the expert panel's recommendation as to the time necessary to implement the recommended methodology.

Adopted §5.4034(d) requires that when TWIA deploys mobile wind measurement platforms along the coast in front of a landfalling storm, TWIA must ensure that a high-resolution wind field with small errors can be developed for use in wind damage prediction. An error is the difference between the wind speed predicted by the wind field model and the wind speed measured during the storm. The proposed rule stated that "small errors" means "no more than 2 percent of the maximum sustained wind measured in a 30-minute period." The adopted rule is changed at the suggestion of the expert panel to clarify that "small errors" refers to errors of plus or minus 2 percent.

As proposed, §5.4037(d) required TWIA to "ensure that errors are minimized." As adopted, §5.4037(d) instead requires TWIA to "take steps to minimize" errors between storm surge wave model estimates and observed storm surge and wave heights. The reason for the change is to make §5.4037(d) consistent with a similar requirement in §5.4035(b).

SUMMARY OF COMMENTS AND AGENCY RESPONSES.

Commenter: TDI received comments from TWIA supporting the rule proposal with changes. TWIA included with its comments an independent cost assessment report by Accenture Consulting.

Comment on §5.4034(c). TWIA asked TDI to delete §5.4034(c), which would allow TWIA to deploy fewer mobile wind measurement platforms. The subsection requires that, during an applicable storm, TWIA deploy at least 40 to 60 mobile wind measurement platforms in two layers--along the coastline and approximately 20 miles inland.

TWIA estimated the cost of complying with §5.4034(c)--including purchasing the mobile wind measurement platforms, readying them for deployment, and placing them for an applicable storm--would be a combined cost per unit of $45,000, or a minimum of $1.8 million for the minimum of 40 units required by the rule.

TWIA suggested the rules should allow for the possibility that a high-resolution wind field could still be created with fewer than 40 mobile wind measurement platforms if the platforms are combined with fixed monitoring stations. TWIA pointed out that §5.4034(d) requires TWIA to deploy a sufficient number of platforms based on the specific characteristics of an applicable storm.

Agency Response to Comment on §5.4034(c). TDI disagrees with the comment and declines to delete the subsection. Accurate wind measurement before and during a storm provides critical data for the hazard and damage estimation modules. Proper deployment of the mobile wind measurement platforms requires the spacing and operational elements specified in §5.4034(c), and is key to obtaining the necessary wind measurement data.

According to the expert panel, a high-resolution wind field is essential to the panel's recommended methodology. The expert panel confirmed that at least 40 mobile wind measurement platforms must be deployed to achieve a sufficient high-resolution wind field. Also, as the panel stated, "[~~Fixed~~] platforms are good auxiliary sources of data . . . However, they may be subject to a loss of power (and thus their data) during a hurricane . . . Mobile platforms are preferable over fixed platforms since they can be positioned at strategic locations in the storm path when the storm is close to landfall. Fixed platforms may or may not be in the best position relative to the storm path to supply wind speed information for wind field modeling. Report, Page 4-7."

Comment on the Cost of Implementing the Rule Proposal. Based on Accenture's report, TWIA stated that implementation costs would be significantly higher than the expert panel's estimates. TWIA recommended that the panel be directed to consider alternative requirements with the goal of developing a methodology substantially less costly to implement and maintain.

Agency Response to Comment on the Cost of Implementing the Rule Proposal. TDI disagrees with the comment and declines to ask the expert panel to develop alternative requirements for implementing its methodology. The panel's report distinguishes between essential elements and those that are beneficial but not essential. Report, pages 11-1 and 11-2. TDI also consulted the expert panel about TWIA's concerns. The panel confirmed that the requirements in the new rules are essential to implement the recommended methodology.

As its report reflects, the panel considered alternative approaches for a number of elements in developing the recommended methodology. The panel determined that all the elements of its recommended methodology are essential. The methodology requires a step-by step progression through each of the modules. The methodology was peer-reviewed before the panel finalized its report. The rules incorporate the entire recommended methodology. Therefore, TDI declines to deviate from the recommended methodology.

TDI is not persuaded by Accenture's cost assessment. The expert panel reviewed Accenture's report and raised several concerns.

The panel believes Accenture based its report on vendor estimates that did not properly consider the methodology and assumed an unreasonably short time for implementing the methodology. Accenture sent each vendor the proposed rules, the expert panel report, and followed up with a telephone call or email. Vendors were not given a request for proposal or a request for qualifications from which to develop their estimates. Vendors made estimates based on a six-month period to implement the methodology, but the panel concluded that a substantially longer period is needed to implement the rules. The panel also concluded that the vendors either did not have or did not use the panel's report supplement, "Spreadsheet Demonstrating Damage Estimation Module."

Accenture used the highest price provided by each vendor to develop its cost estimates. Accenture also included expenditures that are not required by the panel's methodology, such as a "Slab Potential CAT Model."

Accenture included other unnecessary expenditures that appear to be for redeveloping existing methodology components, such as the damage estimation, economic loss, and report generation modules. The Accenture report also assumes costs for functions, such as formulating economic loss estimates and claims adjusting, that TWIA would perform regardless of whether TDI adopts the recommended methodology.

Accenture made substantive and arithmetic mistakes that lessen the report's credibility. For example, the Accenture report misstates how wind collapse probability is determined using the methodology. The report contains miscalculations of vendor estimates and mistakenly matches vendors with estimates provided by other vendors.

TWIA's comments consider only the cost of implementing the rule proposal. Potential benefits should be considered alongside costs.

One goal of the rules is to reduce litigation costs and contested claims. TWIA received approximately 2,700 slab claims following Hurricane Ike. Almost all of the claims were the subject of litigation, resulting in settlement and litigation costs of approximately $200 million.

By comparison, the expert panel estimated costs of approximately $925,000 - $1.34 million for implementing the recommended methodology, with approximately $35,000 - $65,000 in annual costs and $150,000 - $250,000 in costs per storm.

DIVISION 1. PLAN OF OPERATION

28 TAC §§5.4023, 5.4029 - 5.4041

STATUTORY AUTHORITY. The commissioner adopts new §5.4023 and §§5.4029 - 5.4041 under Insurance Code §§36.001, 2210.008, 2210.152, 2210.505, 2210.578, and 2210.580.

Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

Section 2210.008(b) authorizes the commissioner to adopt reasonable and necessary rules to implement Chapter 2210.

Section 2210.152(c) provides that TWIA's plan of operation must require it to use the claim settlement guidelines published by the commissioner under §2210.578(f) in evaluating the extent to which a loss to insured property is incurred as a result of wind, waves, tidal surges, or rising waters not caused by waves or surges.

Section 2210.505(c) authorizes the commissioner to adopt rules as necessary to implement §2210.505, relating to reinsured excess limits.

Section 2210.578(f) provides that after consideration of the recommendations made by the expert panel, the commissioner must publish guidelines that TWIA will use to settle claims.

Section 2210.580 authorizes the commissioner to adopt rules regarding the provisions of Subchapter L 1.

CROSS-REFERENCE TO STATUTE. The new sections implement Insurance Code §§2210.152, 2210.505, and 2210.578.

§5.4023. Per Risk Reinsured Excess Coverage.

(a) Purpose. Under Insurance Code §2210.505, the Texas Windstorm Insurance Association may issue a policy of windstorm and hail insurance that includes coverage for an amount in excess of the maximum limit of liability approved by the commissioner.

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

(1) Available reinsurance capacity--Amount of reinsurance purchased by the association pursuant to the excess per risk reinsurance contract to provide reinsured excess coverage to association policyholders as provided in Insurance Code §2210.505.

(2) Excess per risk reinsurance contract--An agreement entered into by the association with an approved reinsurer to provide coverage to association policyholders for an amount in excess of the liability limits approved by the commissioner.

(3) Reinsured excess coverage--Coverage provided under a windstorm and hail insurance policy issued by the association through a reinsurance agreement with an approved reinsurer for amounts of insurance that are in excess of the maximum limits of liability available to the individual risk from the association.

(4) Reinsured excess coverage program--The program operated by the association to provide reinsured excess coverage, the excess per risk reinsurance contract or contracts entered into between the association and the commissioner-approved reinsurer or reinsurers, this section, and any orders issued, including the collection of premium, issuance of coverage under the windstorm and hail insurance policy, and the processing and payment of claims for the reinsured excess coverage.

(c) Administration.

(1) The association must administer the reinsured excess coverage program on behalf of each policyholder of a windstorm and hail insurance policy to which reinsurance is provided by an approved reinsurer.

(2) The association must distribute the available reinsurance capacity for the reinsured excess coverage in a fair and reasonable manner to risks qualifying under the association's reinsured excess coverage program.

(3) The association must annually review the reinsured excess coverage program, including the rates, reinsurers, excess per risk reinsurance contracts, use of available reinsurance capacity, the association's costs to administer the reinsured excess coverage program, and the rules in this section, and must provide an annual summary of the review to the commissioner.

(d) Approval of reinsurer. Before the association may provide reinsurance coverage on an individual risk that is in excess of the maximum limits of liability approved by the commissioner, the association must first obtain from a reinsurer approved by the commissioner reinsurance for the full amount of policy exposure above the limits approved by the commissioner for any given type of risk. The approval of the reinsurer must be in accordance with this subsection.

(1) The association must submit a petition to the commissioner requesting approval of the reinsurer before any excess per risk reinsurance contract or renewal of such contract becomes effective. The petition must include the name of the proposed reinsurer or reinsurers; the reinsurance proposal; the draft excess per risk reinsurance contract; information on the financial health of the proposed reinsurer or reinsurers and any other information related to the reasons for the association's selection of reinsurer or reinsurers; estimated costs for the reinsurance; the proposed cost to the association to administer the reinsured excess coverage program; estimated total premium for the reinsurance; the method of making the reinsurance capacity available to policyholders; and any other information the association or the commissioner deems necessary to enable the commissioner to determine whether to approve or disapprove the proposed reinsurer or reinsurers.

(2) The commissioner must issue an order approving or disapproving the proposed reinsurer. The order must be issued no later than December 31 of each year preceding the calendar year in which the reinsured excess coverage program is operated except for the first year the program is operated when the order must be issued following the adoption of this section.

(3) An excess per risk reinsurance contract may not become effective until the commissioner has issued an order approving the reinsurer. The excess per risk reinsurance contract does not require approval by the commissioner.

(4) The association must submit written notice of any amendments to any existing excess per risk reinsurance contract to the commissioner at least 30 days prior to the effective date of the proposed amendments. The notice must include an explanation of the reason for the amendments and a copy of the draft amendments. The reinsurer under the amended contract must be deemed approved by the commissioner unless within 30 days following the submission of the written notice the commissioner enters an order disapproving the reinsurer. Amendments to the contract do not require approval by the commissioner.

(e) Coverage. The association may issue a policy of windstorm and hail insurance that includes coverage that is in excess of a liability limit approved by the commissioner. Any such policy must be issued in accordance with this subsection.

(1) Excess liability limits. The amount of reinsurance excess coverage available to an individual risk must be determined in accordance with the reinsured excess coverage program.

(2) Policy provisions.

(A) The total limit of liability must be the limit of liability insured by the association and the amount of reinsured excess coverage provided on the individual risk under the reinsured excess coverage program.

(B) All terms and conditions of the windstorm and hail insurance policy issued by the association must apply to the reinsured excess coverage provided under the windstorm and hail insurance policy.

(C) The amount of reinsured excess coverage must be shown separately on the declarations page of the policy.

(3) Types of risks.

(A) The association may provide reinsured excess coverage for dwelling structures only, commercial structures only, or for both dwelling structures and commercial structures.

(B) Reinsured excess coverage may be provided on either buildings or contents, or on building and contents. If reinsured excess coverage is provided on building and contents, building structures must be insured for 100 percent replacement cost, up to the total maximum limit of liability available for the risk and the available reinsured excess coverage amount provided under the reinsured excess coverage program before reinsured excess coverage may be applied to contents.

(f) Premium.

(1) Premium computation. The total premium charged by the association for the reinsured excess coverage provided on a windstorm and hail insurance policy issued by the association must be the total of:

(A) the amount of the excess per risk reinsurance premium charged to the association by the reinsurer for the reinsured excess coverage provided on any given risk; and

(B) the payment to the association that is approved by the commissioner.

(2) Display of premium. The total premium charged by the association for the reinsured excess coverage provided in a windstorm and hail insurance policy issued by the association must be shown separately on the declarations page of the policy.

(g) Payment to the association. The premium charged by the association for the excess coverage must be equal to the amount of the reinsurance premium charged to the association by the reinsurer plus any payment to the association that is approved by the commissioner.

(1) The payment to the association that may be proposed by the association for approval by the commissioner may include the amount of the direct and indirect costs identified by the association to administer the reinsured excess coverage program and may include costs for claims, underwriting, accounting, technical and administrative support, computer equipment, agent commissions, taxes, and any other administrative costs approved by the commissioner.

(2) The commissioner will issue an order approving or disapproving the proposed payment to the association. The commissioner may take action in the order issued under subsection (d)(2) of this section.

§5.4029. Applicability and Effective Date of 28 TAC §§5.4029 - 5.4041.

(a) This section and §§5.4030 - 5.4041 of this title prescribe guidelines that the Texas Windstorm Insurance Association must use to prepare for and settle residential slab claims in Zones V, VE, and V1-V30, as defined by the National Flood Insurance Program.

(b) This section and §§5.4030 - 5.4041 of this title apply only to residential slab claims resulting from an organized weather system that:

(1) has a defined surface circulation and maximum sustained winds of not less than 39 miles per hour;

(2) the National Hurricane Center of the United States National Weather Service names as a tropical storm or a hurricane; and

(3) that the association expects will result in more than 500 residential slab claims.

(c) The association must make an initial determination as to the expected number of claims when the organized weather system is in the Gulf of Mexico or within the boundaries of longitude 80 degrees west and latitude 20 degrees north.

(d) The association must make a final determination as to the expected number of claims no later than 24 hours before expected landfall.

(e) The association may contract with appropriate private or governmental entities to obtain any of the data or services required in this division.

(f) This section and §§5.4030 - 5.4041 are applicable beginning June 1, 2018.

§5.4034. Hazard Module - Wind Measurements.

(a) Before an applicable storm, the association must take steps to ensure the deployment of mobile measurement platforms and fixed surface-level devices that:

(1) provide real-time wind speed and direction measurements during the applicable storm; and

(2) can be used both for forecasting and producing post-event wind field hindcasts.

(b) Wind measurements must be capable of generating gust wind speed and wind-direction time histories during an applicable storm.

(c) The association must deploy at least 40 to 60 mobile wind measurement platforms in two layers, with the first layer in close proximity to the coastline and the second layer approximately 20 miles inland. The mobile wind measurement platforms must be deployed as follows:

(1) three to five miles apart in the eyewall region of the storm;

(2) up to 10 miles apart in the outer regions of the storm;

(3) with a wind speed and direction sampling frequency of 10 hertz or higher; and

(4) a temperature, barometric pressure, and relative humidity sampling frequency of 1 hertz or higher.

(d) The association must deploy sufficient mobile wind measurement platforms along the coast in front of a land-falling storm to ensure that a high-resolution wind field with small errors--no more than ±2 percent of the maximum sustained wind measured in a 30-minute period--can be developed for use in wind damage prediction.

(e) Wherever reasonable, the mobile wind measurement platforms must be co-located with surge and wave gauges.

§5.4037. Hazard Module - Storm Surge and Wave Model.

(a) Before an applicable storm, the association must take steps so that it will be able to obtain rapid, post-event high-resolution surge and wave modeling to provide surge and wave time histories.

(b) The surge and wave hazard module must directly incorporate both numerical modeling and the high-resolution aerial photographs and LIDAR measurements required under §5.4036(a) and (b) of this title.

(c) The technical features of the storm surge and wave model must include:

(1) a domain of surge and wave modeling that extends from at least Pensacola, Florida to the Mexican coast at latitude 23 degrees north, and at minimum, 500 km offshore of Texas;

(2) for Texas and parts of Louisiana west of longitude 93.5 degrees west, sufficiently high-resolution nearshore and overland to show dunes and other significant features impeding flow, such as a grid with 50 meter or finer resolution (resolution may be coarser offshore and in other locations), with models run on the same grid, if possible, to avoid interpolation errors;

(3) the same wind field used to compute wind damage, which must be a best available reanalysis wind field that incorporates measurements made during the applicable storm;

(4) a drag coefficient that features a high wind cutoff that is defensible from observations or the scientific literature;

(5) wave computations that use a third-generation unsteady spectral wave model that has been tested closely against data from Hurricane Ike and other storms in Texas;

(6) wave computations that include feedback from velocities and water levels generated by the surge model;

(7) wave breaking dissipation that is spectrally based and does not use a simple depth-limited cutoff;

(8) a shallow water model (either depth-averaged or multilevel) that includes convective processes and bottom friction that varies with substrate or vegetation;

(9) tides as an integral part of the model;

(10) the ability to produce initial estimates within 48 hours of landfall;

(11) the ability to readily incorporate new LIDAR topographical data into the grid, and wind data into the surge and wave model as it becomes available post-event, to rapidly produce improved surge and wave model simulations;

(12) the ability to quickly produce estimates of waves and surge as additional data becomes available, and pass these estimates to the association for use in the damage estimation module;

(13) the ability to compare model estimates with measured wave and water level data as it becomes available; and

(14) the ability to produce error estimates for each applicable storm.

(d) The association must take steps to minimize errors between model estimates and the observed storm surge and wave heights measured during an applicable storm.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 8, 2017.

TRD-201700878
Norma Garcia
General Counsel
Texas Department of Insurance
Effective date: March 28, 2017
Proposal publication date: September 9, 2016
For further information, please call: (512) 676-6584

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DIVISION 2. REINSURANCE

28 TAC §5.4016

STATUTORY AUTHORITY. The commissioner adopts the repeal of Division 2, consisting of 28 TAC §5.4016, under Insurance Code §§36.001, 2210.008(b), and 2210.505(c).

Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of the state.

Section 2210.008(b) authorizes the commissioner to adopt reasonable and necessary rules to implement Chapter 2210.

Section 2210.505(c) authorizes the commissioner to adopt rules as necessary to implement §2210.505, relating to reinsured excess limits.

CROSS-REFERENCE TO STATUTE. The repeal implements Insurance Code §2210.152 and §2210.505.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 676-6584

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 290. PUBLIC DRINKING WATER

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendments to §§290.38, 290.42, 290.46, 290.47, 290.102 - 290.104, 290.106 - 290.119, 290.121, 290.122, 290.272, and 290.275.

The amendments to §§290.38, 290.103, 290.104, 290.111, 290.112, and 290.118 are adopted *without changes* to the proposed text as published in the October 7, 2016, issue of the *Texas Register* (41 TexReg 7949) and will not be republished. The amendments to §§290.42, 290.46, 290.47, 290.102, 290.106 - 290.110, 290.113 - 290.117, 290.119, 290.121, 290.122, 290.272, and 290.275 are adopted *with changes* to the proposed text and will be republished.

Background and Summary of the Factual Basis for the Adopted Rules

Under 40 Code of Federal Regulations (CFR) §142.10 and §142.12, TCEQ shall adopt rules at least as stringent as the federal rules to maintain primacy over the Public Water System Supervision Program in Texas. The Revised Total Coliform Rule (RTCR), a federal drinking water rule, was promulgated by the United States Environmental Protection Agency (EPA) on February 13, 2013. The RTCR increases public health protection through the reduction of potential pathways of entry for fecal contamination into the distribution system of public water systems. Greater public health protection is anticipated under the RTCR as it requires public water systems that are vulnerable to microbial contamination to identify and address problems.

The adopted amendments to Chapter 290, provide rule language that is no less stringent than the RTCR. The adopted amendments provide for consistency with other federal drinking water provisions, address the EPA's comments on the federal Ground Water Rule (GWR), and provide clarification on existing state rules. Regarding the GWR, the EPA conducted a primacy review of the TCEQ's adopted GWR rules. On March 10, 2014, the EPA provided its GWR comments outlining additional state rule revisions needed. TCEQ adopts the amendments Chapter 290 to ensure that the state rules are no less stringent than with

the federal GWR in response to the EPA's primacy review comments.

The RTCR's implementation date for public water systems was April 1, 2016. Due to an open section conflict with an ongoing rulemaking, the commission requested an extension from the EPA on this rule's implementation, and the request was approved by EPA on March 4, 2015. States with an approved extension shall submit complete and final program revision packages to the EPA by February 13, 2017.

Section by Section Discussion

In addition to the adopted revisions associated with this rulemaking, the adopted rulemaking also includes various stylistic, non-substantive changes to update rule language to current *Texas Register* style and format requirements. Such changes included appropriate and consistent use of acronyms, section references, rule structure, and certain terminology. Where the adoption of new subsections, paragraphs, subparagraphs, etc. are adopted, subsequent relettering or renumbering are modified accordingly. These changes are non-substantive and generally not specifically discussed in this preamble.

The terms "system" and "water system" were amended to "public water system" where appropriate and will not be specifically discussed in each section.

§290.38, Definitions

The commission adopts the amendment to add §290.38(31) and (32), defining "Grantee" and "Grantor," to clarify the adopted amendment of §290.46(p)(1). Subsequent definitions are renumbered accordingly due to the addition of "Grantee" and "Grantor." Under previous §290.46(p)(1), notice of the change of ownership is required before the change in owner actually occurs, so the terms of "prospective owner" and "current owner" are unambiguous. Under adopted §290.46(p)(1), notice of the change of ownership is required no later than 30 days after the change in ownership occurs, which will occur at an indefinite point in time. For purposes of enforcement and clarity, the terms "grantee" and "grantor" are substituted for "prospective owner" and "current owner" in adopted §290.46(p)(1).

The commission adopts the amendment to add §290.38(82) to clarify that the use of the word "System" has the same meaning as "Public water system," as described in §290.38(71). The commission adopts a similar addition to §290.38(88) to clarify that the use of the word "Water system" has the same meaning as "Public water system," as described in §290.38(71). Subsequent definitions are renumbered accordingly.

§290.42, Water Treatment

The commission adopts the amendment to §290.42(b)(1) and (e)(2) to clarify the association between §290.42(b)(1) and (e)(2) with the requirements of §290.110, concerning the disinfection, treatment, and monitoring requirements for public water systems that utilize a groundwater source.

The commission adopts the amendment to §290.42(c) and (c)(1) to address EPA comments concerning rule applicability and treatment requirements for public water systems using groundwater under the direct influence of surface water sources.

The commission adopts the amendment to §290.42(d)(15)(D) to require surface water treatment plants that utilize chlorine dioxide to provide testing equipment for measuring chlorine dioxide and chlorite levels.

The commission adopts the amendment to §290.42(g)(6) and (6)(A) and (B) to address the utilization of membrane filtration for virus removal that achieves at least 4-log removal of viruses to comply with the groundwater rule requirements under §290.109 and §290.116.

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

The commission adopts the amendment to add §290.46(f)(3)(D)(x) and (xi) and amends (f)(3)(E)(ix) and (x) to require public water systems to maintain and update operating records concerning assessment forms, corrective actions, seasonal operating procedures, Sample Siting Plans, and membrane integrity testing results as required by the RTCR and GWR. The commission adopts the amendment to §290.46(f)(3)(D)(x) to address EPA comments concerning recordkeeping requirements for assessments and corrective actions under §290.109.

The commission adopts the amendment to add §290.46(f)(3)(D)(xii) to address EPA comments concerning recordkeeping requirements for any repeat sample taken that meets the criteria for an extension of the 24-hour period for collecting repeat samples required by §290.109.

The commission adopts the amendment to §290.46(n)(3) to clarify the recordkeeping requirements for public water systems concerning well completion data as required by §290.41(c)(3)(A).

The commission adopts the amendment to §290.46(p)(1) to require the new owner or grantee of a public water system to notify the executive director of the change in ownership within 30 days after the effective date of the change in ownership and include any other information necessary to identify the transaction. In addition, the commission adopts the added definitions of "Grantee" and "Grantor" as discussed in §290.38 of this preamble. Finally, the commission adopts the removal of the reference to 30 TAC Chapter 291 (Utility Regulations).

The commission adopts the amendment to §290.46(q) to clarify the subject matter of the subsection, which is special precautions, protective measures, and boil water notices. The amendment also adds the abbreviation *E. coli* and adds the language "or other approved fecal indicator" to be consistent with the federal GWR requirements as described in 40 CFR §141.402. The amendment adds a description of what special precautions, protective measures, and boil water notices are and when they shall be instituted by public water systems. The commission adopts the amendment to §290.46(q) to address public comments and provide clarification concerning the requirements for special precautions, protective measures, and boil water notices.

The commission adopts the amendment to §290.46(q)(1) to clarify when and how a public water system shall issue and rescind boil water notices. The commission adopts the amendment to add language to specify boil water notice delivery requirements by cross-referencing §290.122 and referencing the format specified in §290.47(c)(1) and (2).

The commission adopts the amendment to §290.46(q)(1) to address public comments and provide clarification concerning the requirements for special precautions, protective measures, and boil water notices. The commission clarified that public water systems are allowed to submit a Certificate of Delivery (COD) to the executive director within ten days of its issuance by email and has also clarified this COD delivery option in the proposed amendment as specified in §290.122(f). The commission clar-

ified that public water systems are required to provide a copy of the initial boil water notice to the executive director within 24 hours or no later than the next business day after issuance by the public water system.

The commission adopts the amendment to §290.46(q)(2) to clarify when a boil water notice shall be issued by a public water system in the event distribution system pressure is lost.

The commission adopts the amendment to add §290.46(q)(3) to specify that a public water system shall issue a boil water notice to customers for a violation of the acute maximum contaminant level (MCL) for *Escherichia coli (E. coli)* or other approved fecal indicator. The boil water notice shall be in accordance with rule requirements as described in §290.122(a)(1)(A) and to be consistent with the RTCR.

The commission adopts the amendment to §290.46(q)(4) to specify when a public system shall issue a boil water notice to customers for exceeding certain combined filter effluent turbidity levels at a water treatment plant in accordance with the rule requirements as described in §290.122(a)(1)(B) and to be consistent with the RTCR. The commission adopts the amendment to add §290.46(q)(4)(A) - (D) to summarize the conditions triggering a boil water notice for turbidity.

The commission adopts the amendment to add §290.46(q)(5) to clarify the circumstances when discretionary action by the executive director may be warranted concerning special precautions, protective measures, and boil water notices. The adopted rule requires the executive director to provide written notification to the public water system when exercising this discretionary action.

The commission adopts the amendment to add §290.46(q)(5)(A) and (A)(i) - (iii) to clarify the circumstances that may warrant the exercise of discretionary action by the executive director. Under adopted §290.46(q)(5)(A)(i), such circumstances include a public water system failing to provide required compliance information to the executive director and the failure results in the inability of the executive director to determine compliance with disinfection and treatment technique requirements for public water systems. Under adopted §290.46(q)(5)(A)(ii), such circumstances include prevention or correction of a potential or actual health hazard as defined in this chapter. Under adopted §290.46(q)(5)(A)(iii), the circumstances include a public water system which has failed to maintain adequate disinfectant residuals. The commission adopts the amendment to §290.46(q)(5)(A) and (A)(i) and (ii) to address EPA and others' public comments and provide clarification concerning the requirements for special precautions, protective measures, and boil water notices.

The commission adopts the amendment to add §290.46(q)(5)(B) to require that the executive director provide written notification to a public water system when requiring the public water system to institute special precautions, protective measures, or issue boil water notices when the executive director exercises his discretion under this subsection. The adopted rule also establishes a timeframe in which the public water system is required to implement the requirements. The commission adopts the amendment to §290.46(q)(5)(B) to address EPA comments and provide clarification concerning requirements for special precautions, protective measures, and boil water notices.

The commission adopts the amendment to add §290.46(q)(5)(C) to establish that a public water system is required to provide any required information to the executive director when requested to document that the public water system has met the requirements for special precautions, protective measures, and boil water notices required under §290.46(q)(5). The commission adopts the amendment to §290.46(q)(5)(C) to address EPA and others' public comments and provide clarification concerning the requirements for special precautions, protective measures, and boil water notices.

The commission adopts the amendment to add §290.46(q)(6), which summarizes what actions are required to rescind a boil water notice. This language clarifies that the executive director may provide written notification to the public water system once the public water system has provided compliance documentation. This language establishes that the boil water notice shall remain in effect until the public water system establishes that it has met the applicable requirements. The applicable requirements are set forth in adopted §290.46(q)(6)(A) - (E), which incorporate requirements located in former §290.46(q) and adds new language. The commission adopts the amendment to §290.46(q)(6) to address EPA and others' public comments and provide clarification concerning the requirements for special precautions, protective measures, and boil water notices.

The commission adopts the amendment to add §290.46(q)(6)(A), with the requirements to rescind a boil water notice for a public water system which experienced distribution system pressure issues.

The commission adopts the amendment to add §290.46(q)(6)(B), with the requirements to rescind a boil water notice for a public water system which experienced disinfectant residual issues.

The commission adopts the amendment to add §290.46(q)(6)(C), with the requirements to rescind a boil water notice for a public water system which experienced turbidity issues.

The commission adopts the amendment to add §290.46(q)(6)(D), with the requirements to rescind a boil water notice for a public water system which failed to provide required compliance information to the executive director. The commission adopts the amendment to §290.46(q)(6)(D) to correspond with the proper rule reference adopted in §290.46(q)(5)(A)(i).

The commission adopts the amendment to add §290.46(q)(6)(E), with the water sampling and microbiological analysis requirements to rescind a boil water notice for a public water system which has met all other required actions to rescind a boil water notice. The commission adopts the amendment to add language requiring public water systems to collect representative water samples for microbiological analysis which meet specific laboratory labeling and analytical requirements and that the water sample laboratory analysis results are negative for coliform organisms before a public water system may rescind a boil water notice. The commission adopts the amendment to §290.46(q)(6)(E) to address EPA and others' public comments and provide clarification concerning the requirements for special precautions, protective measures, and boil water notices.

The commission adopts the amendment to add §290.46(q)(6)(F), which incorporates rule requirements located in current §290.46(q)(1) and adds new language requiring a public water system to issue a notice rescinding a boil water notice within a specific timeframe once the public water system has met the applicable requirements in adopted

§290.46(q)(6)(A) - (E). The commission adopts the amendment to add language requiring a public water system to provide a copy of the rescind notice and associated microbial sample results to the executive director within a specific timeframe, and to issue the rescind notice to customers in accordance with existing rule requirements in §290.122(f).

§290.47, Appendices

The commission adopts the amendment to §290.47(c) and adds §290.41(c)(1) and Figure: 30 TAC §290.47(c)(1) to revise the mandatory boil water notice language that "community" public water systems are required to provide to customers and to add language which establishes that the mandatory boil water notice language is specific to "community" public water systems. The commission adopts the amendment to Figure: 30 TAC §290.47(c)(1) to address EPA and others' public comments concerning required public notice language applicable to boil water notices.

The commission adopts the amendment to add §290.47(c)(2) and Figure: 30 TAC §290.47(c)(2) to establish the mandatory boil water notice language that "noncommunity" public water systems are required to provide to customers, individuals, or employees.

The commission adopts the amendment to Figure: 30 TAC §290.47(c)(2) to address EPA and others' public comments concerning required public notice language applicable to boil water notices.

The commission adopts the amendment to add §290.47(c)(3) and Figure: 30 TAC §290.47(c)(3) to establish the mandatory language to rescind a boil water notice that all public water systems are required to provide to customers, individuals, or employees.

The commission adopts the amendment to Figure: 30 TAC §290.47(c)(3) to address DPA and others' public comments concerning required public notice language applicable to boil water notices.

§290.102, General Applicability

The commission adopts the amendment to §290.102(b)(1) to revise variances and exemptions as described in 40 CFR §141.4 by removing the total coliform MCL reference and adding *E. coli* to the list, which establishes that the executive director may not grant variances or exemptions from the MCL for *E. coli* and that the total coliform MCL is no longer applicable, which is consistent with 40 CFR §141.4 and the RTCR.

The commission adopts the amendment to add §290.102(b)(4) to address EPA comments concerning rule variances and exemptions.

The commission adopts the amendment to add revised §290.102(g) to clarify compliance monitoring reporting requirements for public water systems to be consistent with 40 CFR §141.31 and be consistent with the amended rule requirements as described in §§290.106 - 290.109 and 290.113 - 290.115.

§290.103, Definitions

The commission adopts the amendment to §290.103(3) to clarify the definition of the term "Compliance cycle" to be consistent with 40 CFR §141.23(j), which requires all public water systems to monitor for inorganic chemicals at the time designated by the executive director during each compliance period during each nine-year compliance cycle, and be consistent with the amended rule in §290.106(c)(7)(A), which specifies nitrite monitoring requirements for public water systems.

The commission adopts the amendment to §290.103(4) to clarify the definition of the term "Compliance period" to be consistent with 40 CFR §§141.23, 141.24, and 141.26, which specifies monitoring requirements for public water systems concerning inorganic chemicals, organic chemicals, and radionuclides; and requires public water systems to monitor for inorganic chemicals, organic chemicals, and radionuclides at the time designated by the executive director during each compliance period during each nine-year compliance cycle.

The commission adopts the amendment to §290.103(6) to clarify the definition of the term "Consecutive system" by adding the words "raw water or" prior to the existing "finished water" to be consistent with the applicability requirements as described in 40 CFR §141.400, which applies to all public water systems that use groundwater except that it does not apply to public water systems that combine all of their groundwater with surface water or with groundwater under the direct influence of surface water prior to treatment. In addition to public water systems that provide "Finished water," as defined in adopted §290.103(19), former §290.103(18), to customers from a groundwater source, the amended language will require public water systems that provide "Raw water," as defined in adopted §290.103(33), former §290.103(30), to other public water systems that provide "Finished water" to customers will be subject to the GWR requirements as described in 40 CFR §141.400.

The commission adopts the amendment to add §290.103(9) to define the term "Domestic or other non-distribution system plumbing problem" as described in 40 CFR §141.2 to be consistent with the RTCR.

The commission adopts the amendment to add §290.103(26) to define the term "Level 1 assessment" as described in 40 CFR §141.2 to be consistent with the RTCR.

The commission adopts the amendment to add §290.103(27) to define the term "Level 2 assessment" as described in 40 CFR §141.2 to be consistent with the RTCR.

The commission adopts the amendment to add §290.103(35) to define the term "Sanitary defect" as described in 40 CFR §141.2 to be consistent with the RTCR.

The commission adopts the amendment to add §290.103(36) to define the term "Seasonal public water system" as described in 40 CFR §141.2 to be consistent with the RTCR.

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

The commission adopts the amendment to §290.104(e) to clarify the MCL for microbiological contaminants as described in 40 CFR §141.52, which is based on the presence or absence of *E. coli*, to be consistent with the RTCR.

§290.106, Inorganic Contaminants

The commission adopts the amendment to §290.106(c)(3) to correct a typographical error concerning the initial monitoring frequency for inorganic contaminants (IOC) except asbestos. The commission adopts the amendment to the second use of the word "nitrate" in the existing paragraph from "nitrate" to "nitrite" to correct this typographical error.

The commission adopts the amendment to §290.106(c)(7)(A) to clarify the monitoring requirements for nitrite for public water systems and to be consistent with 40 CFR §141.23(j) which requires all public water systems to monitor for inorganic chemicals at the time designated by the executive director during each compliance period during each nine-year compliance cycle.

The commission adopts the revised amendment to §290.106(e) to clarify the reporting requirements for public water systems regarding ensuring the submission of laboratory analyses and reports to the executive director and to be consistent with 40 CFR §141.31.

§290.107, Organic Contaminants

The commission adopts the revised amendment to §290.107(e) to clarify the reporting requirements for public water systems regarding ensuring the submission of laboratory analyses and reports to the executive director and to be consistent with 40 CFR §141.31.

§290.108, Radionuclides Other than Radon

The commission adopts the revised amendment to §290.108(e) to clarify the reporting requirements for public water systems regarding ensuring the submission of laboratory analyses and reports to the executive director and to be consistent with 40 CFR §141.31.

§290.109, Microbial Contaminants

The commission adopts the amendment to §290.109(b)(1) to clarify the applicability requirements relating to the MCL for microbial contaminants and for public water systems, consistent with the RTCR as described in 40 CFR §141.851.

The commission adopts the amendment to add §290.109(b)(1)(A) - (E) to clarify the applicability requirements relating to the MCL for *E. coli* for public water systems, consistent with the RTCR as described in 40 CFR §141.851.

The commission adopts the amendment to add §290.109(c), which establishes that public water systems shall comply with the requirements to conduct and complete assessments after exceeding any of the treatment technique triggers, as described in §290.109(c)(1) and (2). The commission adopts the amendment to add this language to be consistent with the RTCR. Subsequent subsections are relettered accordingly.

The commission adopts the amendment to add §290.109(c)(1)(A) - (C) to establish the Level 1 treatment technique triggers and assessment requirements for microbial contaminants for public water systems to be consistent with the RTCR as described in 40 CFR §141.859.

The commission adopts the amendment to add §290.109(c)(2)(A) and (B) to establish the Level 2 treatment technique triggers and assessment requirements for microbial contaminants for public water systems to be consistent with the RTCR as described in 40 CFR §141.859. The commission adopts the amendment to add language which establishes the requirements for public water systems concerning the submission of documentation to the executive director to determine if a Level 2 assessment is required when a second Level 1 assessment trigger has occurred within a rolling 12-month period.

The commission adopts the amendment to §290.109(c)(2)(B) to address EPA comments concerning RTCR requirements for Level 1 and Level 2 assessments.

The commission adopts the amendment to add §290.109(c)(3)(A)(i) and (ii) to establish the Level 1 and Level 2 treatment technique assessment requirements for microbial contaminants for public water systems to be consistent with the RTCR as described in 40 CFR §141.859. Additionally, the commission adopts added language to establish the Level 1 and Level 2 assessment assessor qualifications for public water systems to be consistent with the RTCR as described in 40 CFR §141.859. The commission adopts the amendment to §290.109(c)(3)(A)(i) to address EPA comments concerning RTCR requirements for assessor training regarding Level 1 and Level 2 assessments.

The commission adopts the amendment to add §290.109(c)(3)(A)(iii) to address EPA comments concerning RTCR requirements for assessor training regarding Level 1 assessments.

The commission adopts the amendment to add §290.109(c)(3)(B)(i) - (vii) to establish the Level 1 and Level 2 assessment requirements and evaluation criteria for public water systems to be consistent with the RTCR as described in 40 CFR §141.859.

The commission adopts the amendment to add §290.109(c)(3)(B)(viii) to address EPA comments concerning RTCR stringency requirements regarding assessments.

The commission adopts the amendment to add §290.109(c)(3)(C) to address EPA comments concerning RTCR requirements for assessments.

The commission adopts the amendment to add §290.109(c)(3)(C)(i) - (iii) to establish the Level 1 assessment requirements regarding completion deadlines, consultations with the executive director, and corrective actions for public water systems to be consistent with the RTCR as described in 40 CFR §141.859. The commission adopts the amendment to add §290.109(c)(3)(C)(i) to address EPA comments concerning RTCR requirements for assessments. The commission adopts the amendment to add §290.109(c)(3)(C)(iii) to address public comments concerning RTCR requirements for assessments.

The commission adopts the amendment to add §290.109(c)(3)(D)(i) - (iii) to establish the Level 2 assessment requirements, regarding completion deadlines, consultations with the executive director, and corrective actions, for public water systems to be consistent with the RTCR as described in 40 CFR §141.859.

The commission adopts the amendment to §290.109(c)(3)(D) and (D)(i) - (iii) to address EPA comments concerning RTCR stringency requirements regarding assessments.

The commission adopts the amendment to add §290.109(c)(3)(E) and (F) to establish and further clarify the Level 1 and Level 2 assessment requirements, regarding the correction of sanitary defects identified during Level 1 and Level 2 assessments and consultations with the executive director, for public water systems to be consistent with the RTCR as described in 40 CFR §141.859. Subsequent subsections are relettered accordingly.

The commission adopts the amendment to former §290.109(c), adopted as §290.109(d), to establish microbial sampling location and Sample Siting Plan requirements for public water systems to be consistent with the RTCR as described in 40 CFR §141.859.

The commission adopts the amendment to former §290.109(c)(1)(A), adopted as §290.109(d)(1)(A) and (B), to establish microbial sampling location and Sample Siting Plan requirements for public water systems to be consistent with the RTCR as described in 40 CFR §141.859.

The commission adopts the amendment to amend former §290.109(c)(2)(A)(i) and (ii), adopted as §290.109(d)(2)(A)(i) and (ii), to clarify the methods in which public water system population data is established and reported to the executive director to determine microbial sampling frequency for public water systems to be consistent with the RTCR as described in 40 CFR §§141.853 - 141.857, and Texas Health and Safety Code (THSC), §341.033(d).

The commission adopts the amendment to former §290.109(c)(2)(C), adopted as §290.109(d)(2)(C), to correct a typographical error concerning the use of the words "uses only" which are repeated consecutively in the subparagraph. This revision will remove the second occurrence of these words.

The commission adopts the amendment to §290.109(d)(2)(E) to address EPA comments concerning RTCR stringency requirements regarding microbial sample invalidation.

The commission adopts the amendment to remove former §290.109(c)(2)(F), replaced with adopted §290.109(d)(2)(F), to clarify and establish the routine microbial sampling frequency for public water systems to be consistent with the RTCR. This amended language establishes that public water systems that collect fewer than five routine distribution coliform samples per month will not be required to conduct increased routine microbial monitoring during the month following a month in which the public water system has one or more total coliform-positive samples.

The commission adopts the amendment to add §290.109(d)(2)(F) and (G) to clarify and establish the routine microbial sampling frequency for public water systems to be consistent with the RTCR. This language establishes that all public water systems shall collect at least the minimum number of required routine microbial samples even if the public water system has had an *E. coli* MCL violation or has exceeded the coliform treatment technique triggers. This language establishes that public water systems may conduct more microbial compliance monitoring than is required to investigate potential problems. This language establishes that if a public water system chooses to take more than the minimum number of required routine samples, the results of all samples shall be used in calculating whether the coliform treatment technique triggers have been exceeded. This language establishes that the routine sample sites shall be included in the public water system's Sample Siting Plan and requires that the samples be collected in accordance with the Sample Siting Plan.

The commission adopts the amendment to former §290.109(c)(3)(A), adopted as §290.109(d)(3)(A), to clarify the 24-hour repeat microbial sampling limit for public water systems to be consistent with the RTCR as described in 40 CFR §141.858. The language specifies that the executive director may extend the 24-hour limit for public water systems on a case-by-case basis under extenuating circumstances. The amended language specifies that all public water systems shall collect no fewer than three repeat samples for each total coliform-positive sample found. The commission adopts the amendment to §290.109(d)(3)(A) to address EPA comments concerning RTCR stringency requirements regarding repeat microbial monitoring.

The commission adopts the amendment to former §290.109(c)(3)(A)(i) and (ii), adopted as §290.109(d)(3)(A), to clarify and establish the repeat microbial sampling requirements for public water systems which collect only one routine distribution coliform sample per month to be consistent with the RTCR as described in 40 CFR §141.858. The amended language specifies that these public water systems will no longer be required to collect four repeat samples for each coliform-positive sample found and that all public water systems shall collect no fewer than three repeat samples for each total coliform-positive sample found.

The commission adopts the amendment to former §290.109(c)(3)(B), adopted as §290.109(d)(3)(B), to clarify the timeframe in which repeat microbial sampling is required for public water systems to establish that all repeat samples shall be collected on the same day, except for public water systems with a single service connection may collect daily repeat samples over a three-day period until the required number of repeat samples have been collected. This language is consistent with the RTCR as described in 40 CFR §141.858.

The commission adopts the amendment to former §290.109(c)(3)(C), adopted as §290.109(d)(3)(C), to clarify the location in which repeat microbial samples are required to be collected for public water systems to establish that when a positive routine sample is collected at the end of the distribution system or one service connection away from the end of the distribution system, one repeat sample shall be collected at that point, and all other samples shall be collected within five connections upstream of that point. This language is consistent with the RTCR as described in 40 CFR §141.853. The commission adopts the amendment to §290.109(d)(3)(C) to address EPA comments concerning RTCR stringency requirements regarding repeat microbial monitoring.

The commission adopts the amendment to add §290.109(d)(3)(C)(i) - (iii), which establishes that public water systems may propose alternative repeat microbial sampling locations to the executive director that are representative of a pathway for contamination of the distribution system. The adopted language specifies that the executive director may approve alternative microbial sampling locations for public water systems that elect to propose this repeat sample selection criteria option as an alternative to the repeat microbial sampling requirements as described in adopted §290.109(d)(3)(C). The language specifies that if a public water system proposes this option, they shall do so in a written standard operating procedure (SOP) included in its Sample Siting Plan as described in adopted §290.109(d)(6). The adopted language establishes that the executive director may approve public water systems that use a groundwater source and serve 1,000 or fewer people to specify alternative microbial sampling locations in a written SOP. The language specifies that the executive director may approve a written SOP for public water systems that have only one groundwater well and serve 1,000 or fewer people which allows the public water system to collect one of its repeat samples at the location required for triggered source monitoring under the GWR and to use this sample to comply with both the repeat monitoring and triggered source monitoring requirements. This language is consistent with the RTCR as described in 40 CFR §141.853.

The commission adopts the amendment to former §290.109(c)(3)(D), adopted as §290.109(d)(3)(D)(i) - (iii), to clarify the required 24-hour repeat microbial sampling limit for public water systems by adding language which specifies that the executive director may extend the 24-hour microbial sampling limit for public water systems under extenuating circumstances. The commission added language to establish the number of repeat microbial samples public water systems are required to collect based on the presence or absence of coliform bacteria, and exceeding coliform treatment technique triggers to be consistent with the RTCR as described in 40 CFR §141.858. The commission adopts the amendment to §290.109(d)(3)(D) to address EPA comments concerning RTCR stringency requirements regarding executive director requirements for waiving repeat microbial monitoring.

The commission adopts the amendment to add §290.109(d)(3)(F) to address EPA comments concerning RTCR stringency requirements regarding microbial sample invalidation.

The commission adopts the amendment to former §290.109(c)(4), adopted as §290.109(d)(4), to clarify the triggered source monitoring requirements for public water systems to be consistent with the GWR as described in 40 CFR §141.402. The commission added language to establish that the executive director may approve public water systems to collect a triggered source monitoring sample at an alternate location prior to any treatment if the sample is representative of the water quality of that well.

The commission adopts the amendment to former §290.109(c)(4)(A), adopted as §290.109(d)(4)(A), by adding the language "or other approved fecal indicator" to be consistent with the GWR requirements as described in 40 CFR §141.402.

The commission adopts the amendment to former §290.109(c)(4)(A)(i), adopted as §290.109(d)(4)(A)(i), to revise the reference for the definition of "4-log treatment" in §290.103.

The commission adopts the amendment to §290.109(d)(4)(B)(i) to address EPA comments concerning RTCR stringency requirements regarding extensions for repeat microbial monitoring.

The commission adopts removing former §290.109(c)(4)(B)(iii), replaced with adopted §290.109(d)(4)(B)(iii) and add adopted §290.109(d)(4)(B)(iv) and (v), to establish that a public water system that uses a groundwater source, has only one well, and serves 1,000 people or fewer may use one of the three required repeat samples collected from a raw groundwater source to meet both the repeat microbial monitoring requirements as required under the RTCR and the triggered raw source monitoring requirements as required under the GWR. The commission added language to establish that if one of the required repeat samples is used to meet both of the RTCR and GWR requirements and the sample is found to be *E. coli*-positive, the public water system will have achieved an *E. coli* MCL violation which requires corrective action at the groundwater source where the *E. coli*-positive sample was taken. The commission adopts added language which establishes that if the executive director does not require corrective action, then the public water system will be required to conduct additional microbial monitoring at the groundwater source where the *E. coli*-positive sample was detected. The commission also adopts added language which establishes that public water systems will be able to conduct reduced microbial monitoring for groundwater sources under certain conditions. The commission adopts the amendment to add §290.109(d)(4)(B)(iii) and (iii)(I) - (III) to address EPA comments concerning RTCR stringency requirements regarding repeat and triggered raw source monitoring.

The commission adopts the amendment to former §290.109(c)(4)(C)(i) and (ii), adopted as §290.109(d)(4)(C)(i) and (ii), by adding the language "or other approved fecal indicator" to be consistent with the GWR requirements as described in 40 CFR §141.402.

The commission adopts the amendment to add §290.109(d)(4)(C)(iii) to establish public notification and triggered source monitoring requirements for public water systems that wholesale groundwater to other public water systems. The language specifies that if a wholesale groundwater system receives an *E. coli*-positive raw source sample result, the wholesale groundwater system shall notify all consecutive public water systems served by that groundwater source of the *E. coli*-positive result within 24 hours of being notified of the result, and the wholesale groundwater system shall conduct triggered source monitoring in accordance with adopted §290.109(d)(4)(B)(iv). The commission adopts this added language to be consistent with the RTCR and the GWR requirements as described in 40 CFR §141.402.

The commission adopts the amendment to former §290.109(c)(4)(E), adopted as §290.109(d)(4)(E), to clarify public notification requirements for public water systems that use groundwater sources and their consecutive public water systems. The language specifies that if a groundwater system receives a fecal indicator positive raw source sample result, the groundwater system shall notify all consecutive public water systems served by that groundwater source of the fecal indicator positive result within 24 hours of being notified of the result. The commission adopts this added language to be consistent with the GWR requirements as described in 40 CFR §141.402.

The commission adopts the amendment to former §290.109(c)(5), adopted as §290.109(d)(5), to establish that public water systems will be required to ensure that if a routine or repeat microbial sample result is total coliform-positive, the total coliform-positive sample medium will be analyzed to determine if *E. coli* are present; and if *E. coli* are present in the sample, the public water system will be required to notify the executive director of the *E. coli* result by the end of the day. The commission adopts this added language to be consistent with the RTCR as described in 40 CFR §141.858.

The commission adopts the amendment to add §290.109(d)(6) and (6)(A) - (E) to require public water systems to develop a Sample Siting Plan which identifies microbial routine and repeat sampling sites, a sample schedule that is representative of water throughout the distribution system, all groundwater sources, and any associated sampling points necessary to meet the RTCR and GWR requirements. The commission adopts this added language which establishes that the Sample Siting Plan is subject to review and revision by the executive director and shall be included in the public water system's monitoring plan to be consistent with the RTCR. The commission adopts this added language to require public water systems to develop Sample Siting Plans in a format specified by the executive director and that the Sample Siting Plans are subject to review and revision by the executive director to be consistent with the RTCR. The commission adopts this added language, "in a format specified by the executive director," to provide review consistency in determining that Sample Siting Plans identify microbial routine and

repeat sampling sites and a sample schedule that is representative of water throughout the distribution system to be consistent with the RTCR. The commission adopts this added language to require public water systems to collect routine and repeat microbial samples and any other samples necessary to meet the requirements of the RTCR and GWR according to their written Sample Siting Plan and that these sample site locations shall be reflected in their Sample Siting Plan to be consistent with the RTCR. The commission adopts this added language to require public water systems to include any SOP for proposed repeat microbial monitoring as described in §290.109(d)(3) in their Sample Siting Plan to be consistent with the RTCR. The commission adopts this added language to establish that the executive director may review, revise, and approve any proposed SOP as required by the executive director to be consistent with the RTCR. The commission adopts this added language to require public water systems to include a distribution system map, which is required under existing rule requirements as described in §290.46(n)(2), with their Sample Siting Plan. The commission adopts this added language, in addition to the former rule requirements as described in §290.46(n)(2), which requires public water systems to include the location of all routine microbial sample sites, water main sizes, entry point source locations, water storage facilities, and any pressure plane boundaries in their distribution system map. The commission adopts this added language to provide review consistency and assist in determining that Sample Siting Plans identify routine microbial sample site locations that are representative of water throughout the distribution system to be consistent with the RTCR. The commission adopts added language which requires public water systems to update their written Sample Siting Plan as necessary, or as requested by the executive director, to identify the most current microbial routine and repeat sampling sites and a sample collection schedule to be consistent with the RTCR. The commission adopts added language which requires public water systems to maintain a copy of their Sample Siting Plan on file at the public water system for inspection purposes and to submit a copy of their Sample Siting Plan to the executive director upon request to be consistent with existing recordkeeping rule requirements. The commission adopts the amendment to §290.109(d)(6)(A) to address EPA comments concerning RTCR stringency requirements regarding the executive director's evaluation of public water systems during sanitary surveys. The commission adopts the amendment to §290.109(d)(6)(C) to address public comments concerning Sample Siting Plan mapping requirements which specify that a public water system may develop a single map or a series of maps to document required microbial sample site locations.

The commission adopts the amendment to §290.109(e) to address EPA comments concerning RTCR stringency requirements regarding certified laboratories.

The commission adopts the amendment to former §290.109(d)(1)(B), adopted as §290.109(e)(1)(B), to clarify that unless a total coliform-positive sample has been invalidated by the executive director, public water systems are required to collect the minimum number of required samples even if the system has had an *E. coli* MCL violation or has exceeded the coliform treatment technique triggers, and public water systems are required to continue to collect additional sets of repeat samples until either total coliforms are not detected in one complete set of repeat samples or it has been determined that a coliform treatment technique trigger has been exceeded as a result of a repeat sample being total coliform-positive. The commission adopts this added language to be consistent with the RTCR as described in 40 CFR §141.853 and §141.858. The commission adopts the amendment to §290.109(e)(1)(B) to address EPA comments concerning RTCR stringency requirements regarding microbial sample invalidation by the executive director.

The commission adopts the amendment to former §290.109(d)(1)(C), adopted as §290.109(e)(1)(C), to clarify that public water systems shall collect all repeat microbial samples as required and use all valid repeat samples to assist in determining compliance with the *E. coli* MCL and whether a coliform treatment technique trigger has been exceeded. The commission adopts the amendment to §290.109(e)(1)(C) to address EPA comments concerning RTCR stringency requirements regarding microbial sample invalidation by the executive director.

The commission adopts the amendment to §290.109(e)(1)(D) to address EPA comments concerning RTCR stringency requirements regarding microbial sample invalidation by laboratories.

The commission adopts the amendment to former §290.109(d)(2)(A) and (B), adopted as §290.109(e)(2)(A) and (B), by adding the language "or other approved fecal indicator" to be consistent with the GWR requirements as described in 40 CFR §141.402.

The commission adopts the amendment to add §290.109(e)(3) to address EPA comments concerning RTCR stringency requirements regarding culture analysis to determine the presence of *E. coli.*

The commission adopts the revised amendment to former §290.109(e), adopted as §290.109(f), to clarify the reporting requirements for public water systems regarding ensuring the submission of laboratory analyses and reports to the executive director to be consistent with 40 CFR §141.31.

The commission adopts the amendment to remove former §290.109(f)(1) - (3), adopted as §290.109(g)(1) and (2), to clarify the MCL compliance determination criteria for public water systems regarding microbial contaminants to be consistent with the RTCR as described in 40 CFR §141.63.

The commission adopts the amendment to add §290.109(g)(1)(A) - (D) to establish the *E. coli* MCL violation compliance determination criteria for public water systems regarding microbial contaminants to be consistent with the RTCR as described in 40 CFR §141.63.

The commission adopts the amendment to add §290.109(g)(1)(E)(i) - (v), to identify for public water systems the best technology, treatment techniques, or other means available for achieving compliance with the MCL for *E. coli* to be consistent with the RTCR as described in 40 CFR §141.63. The commission also adopts to add §290.109(g)(1)(E)(vi) to establish that the executive director may require additional best technology, treatment techniques, or other means available for achieving compliance with the MCL for *E. coli.* The commission has moved proposed §290.109(g)(1)(E)(i) - (vi) to added §290.109(i)(1) - (6) to address EPA comments to provide consistency in rule organization and format.

The commission adopts the amendment to add §290.109(g)(2) to establish *E. coli* MCL violation scenarios for public water systems regarding repeat samples collected for triggered source monitoring to be consistent with the RTCR as described in 40 CFR §141.853. The commission adopts changes to

§290.109(g)(2) from proposal to address public comments concerning clarification of the reference §290.109(d)(4)(B)(v). This reference has been changed to §290.109(d)(4)(B)(iv).

The commission adopts the amendment to amend former §290.109(f)(5), adopted as §290.109(g)(4) and added (5), to establish microbial monitoring violations for public water systems to be consistent with the RTCR as described in 40 CFR §141.860.

The commission adopts the amendment to amend former §290.109(f)(5), adopted as §290.109(g)(4) to address public comments and provide clarification concerning applicability requirements for public water systems that are not on a monthly microbial monitoring frequency.

The commission adopts the amendment to remove former §290.109(f)(9), replaced with adopted §290.109(g)(9), to establish for public water systems that the results of all routine and repeat distribution coliform samples not invalidated by the executive director shall be included in determining compliance with the *E. coli* MCL and whether a coliform treatment technique trigger has been exceeded to be consistent with the RTCR as described in 40 CFR §141.21(b)(7) and §141.858(a)(5). The commission adopts revised §290.109(g)(9) to address EPA comments concerning sample invalidation requirements for microbial groundwater source samples and special purpose samples.

The commission adopts the amendment to former §290.109(f)(10), adopted as §290.109(g)(10), to establish for public water systems that the results of all routine and repeat distribution coliform samples invalidated by the executive director shall not be included in determining compliance with the *E. coli* MCL and whether a coliform treatment technique trigger has been exceeded to be consistent with the RTCR as described in 40 CFR §141.21(c) and §141.853(c). The commission adopts revised §290.109(g)(10) to address EPA comments concerning sample invalidation requirements for groundwater source samples.

The commission adopts revised §290.109(g)(11) to address EPA comments to establish that special purpose samples shall not be used to determine whether the coliform treatment technique trigger has been exceeded as described in §290.109(c) and that coliform samples taken in accordance to §290.109(d)(3), which are not invalidated under §290.109(e), are not considered special purpose samples.

The commission adopts the amendment to add §290.109(g)(12) to establish the start-up procedures, certification requirements, and reporting violations for seasonal public water systems as defined in §290.103(36) to be consistent with the RTCR as described in 40 CFR §141.854 and §141.861. The commission adopts added language that requires all seasonal public water systems to demonstrate completion of an executive director-approved start-up procedure and certification prior to serving water to the public.

The commission adopts revised §290.109(g)(12) to address EPA comments concerning that a seasonal system must certify, prior to serving water to the public, that it has complied with the executive director-approved start-up procedures.

The commission adopts the amendment to add §290.109(g)(13) to establish the treatment technique violation requirements for seasonal public water systems to be consistent with the RTCR as described in 40 CFR §141.860.

The commission adopts the amendment to add §290.109(g)(14) to establish the treatment technique violation for public water systems when a system exceeds a treatment technique trigger and then fails to conduct the required assessment or corrective actions within the specified timeframe to be consistent with the RTCR as described in 40 CFR §141.860.

The commission adopts the amendment to add §290.109(g)(15) to establish the assessment, corrective actions, and reporting requirements for public water systems to be consistent with the RTCR as described in 40 CFR §141.859.

The commission adopts the amendment to add §290.109(g)(16) to address EPA comments concerning RTCR stringency requirements regarding reporting violations for microbial contaminants.

The commission adopts the amendment to former §290.109(g)(2) and (3), adopted as §290.109(h)(2) and (3), by adding the language "or other approved fecal indicator" to be consistent with the GWR requirements as described in 40 CFR §141.402.

The commission adopts the amendment to §290.109(h)(3) to address EPA comments concerning when a public water system must notify the executive director of an *E. coli* microbial sample result.

The commission adopts the amendment to add §290.109(h)(5) to establish the reporting requirements for public water systems regarding an *E. coli* MCL violation to be consistent with the GWR requirements as described in 40 CFR §141.860. The commission adopts the amendment §290.109(h)(5) to address EPA comments concerning when a public water system must notify the executive director of an *E. coli* MCL violation.

The commission adopts the amendment to add §290.109(h)(7) to establish the reporting requirements for public water systems regarding an *E. coli* MCL violation to be consistent with the GWR requirements as described in 40 CFR §141.860. The commission adopts the amendment to §290.109(h)(7) to address EPA comments concerning when a public water system must notify the executive director of a treatment technique violation.

The commission adopts the amendment to add §290.109(h)(8) to address EPA comments concerning public notice for a public water system that commits a treatment technique violation for failure to complete and certify seasonal system start-up procedures.

The commission adopts the amendment to add §290.109(i)(1) - (6), which was moved from §290.109(g)(1)(E)(i) - (vi), to address EPA comments concerning best available treatment technologies for the MCL for *E. coli.*

§290.110, Disinfectant Residuals

The commission adopts the amendment to §290.110(c)(4)(D) to clarify the residual disinfectant concentration monitoring requirements for public water systems during microbial monitoring activities and in accordance with existing residual disinfectant concentration monitoring requirements to be consistent with the RTCR as described in 40 CFR §§141.74, 141.132, 141.854, and 141.858. The commission adopts the amendment to §290.110(c)(4)(D) to address EPA comments concerning residual disinfectant monitoring frequency requirements for public water systems.

The commission adopts the amendment to §290.110(d)(2) and removes the requirements in subsection (d)(2)(A) - (C), to clarify the monitoring requirements for public water systems using chlo-

rine dioxide and to establish executive approval requirements for certain monitoring equipment for testing chlorine dioxide.

The commission adopts the amendment to §290.110(f)(8) to revise a grammatical reference and establish that public water systems shall consult with the executive director upon increasing residual disinfectant levels in the distribution system in order to maintain compliance with the maximum residual disinfectant levels (MRDL).

The commission adopts the amendment to §290.110(g)(3) and removes the requirements in §290.110(g)(3)(A) and (B) to clarify that a public water system shall provide notice to customers in accordance with §290.122 when the public water system does not demonstrate an adequate residual disinfectant concentration in more than 5.0% of the samples collected each month for two consecutive months.

§290.111, Surface Water Treatment

The commission adopts the amendment to §290.111(d)(4)(D) and removes the requirements in §290.111(d)(4)(D)(i) and (ii) to clarify the required analytical methods used for measuring the chlorine dioxide residual and analytical methods that require written permission of the executive director.

The commission adopts the amendment to §290.111(e)(4) to clarify when public water systems are required to conduct a special investigation concerning the removal/inactivation of pathogens during the surface water treatment process.

The commission adopts the amendment to add §290.111(e)(4)(A)(iv) and (C) to establish criteria for public water systems concerning when they may be required to participate in a special investigation conducted by the executive director.

The commission adopts the amendment to §290.111(e)(5)(A) and removes the requirements in §290.110(e)(5)(A)(i) - (iii) to clarify the required analytical methods used for measuring turbidity.

The commission adopts the amendment to add §290.111(e)(5)(E)(i) - (iii) to establish and clarify the precision and accuracy requirements for turbidity monitoring equipment and associated data recording devices used to measure and record combined filter and individual filter effluent turbidity levels.

The commission adopts the amendment to add §290.111(f)(3)(F)(i) - (iii) to establish and clarify the precision and accuracy requirements for turbidity monitoring equipment and associated data recording devices used to measure and record combined filter and individual filter effluent turbidity levels.

The commission adopts the amendment to add §290.111(f)(4)(A) - (C) to establish criteria for public water systems concerning when they may be required to participate in a special investigation conducted by the executive director.

The commission adopts the amendment to §290.111(i)(3) and adds §290.111(i)(3)(A) - (E) to establish the acute treatment technique violation conditions and public notice and boil water notice requirements when a public water system fails to meet specific treatment, turbidity level, monitoring, and/or reporting requirements.

The commission adopts the amendment to §290.111(i)(4) and adds §290.111(i)(4)(A) - (D) to establish the acute treatment technique violation conditions and public notice requirements when a public water system fails to meet specific treatment, turbidity level, monitoring, and/or reporting requirements.

§290.112, Total Organic Carbon (TOC)

The commission adopts the amendment to §290.112(f)(3)(A) to clarify the formula and method for calculating and determining the actual monthly TOC percent removal in a TOC sample set.

The commission adopts the amendment to §290.112(f)(3)(D) and (E) to clarify the terminology of the annual average TOC removal ratio and the method for calculating and determining the annual average TOC removal ratio.

§290.113, Stage 1 Disinfection Byproducts (TTHM and HAA5)

The commission adopts the revised amendment to §290.113(e) to clarify the reporting requirements for public water systems regarding ensuring the submission of laboratory analyses and reports to the executive director to be consistent with 40 CFR §141.31.

§290.114, Other Disinfection Byproducts (Chlorite and Bromate)

The commission adopts the amendment to §290.114(a)(3)(A) and removes the requirements in §290.111(a)(3)(A)(i) and (ii) to clarify that public water systems are required to use facilities that are approved by the executive director for the analysis of chlorite concentrations in water entering the distribution system.

The commission adopts the revised amendment to §290.114(a)(4)(B) to clarify the reporting requirements for public water systems regarding ensuring the submission of any required chlorite test, measurement, or analysis to the executive director to be consistent with 40 CFR §141.31.

The commission adopts the revised amendment to §290.114(b)(4) to clarify the reporting requirements for public water systems regarding ensuring the submission of laboratory analyses and reports to the executive director to be consistent with 40 CFR §141.31.

§290.115, Stage 2 Disinfection Byproducts (TTHM and HAA5)

The commission adopts the revised amendment to §290.115(e)(1) to clarify the reporting requirements for public water systems regarding ensuring the submission of laboratory analyses and reports to the executive director to be consistent with 40 CFR §141.31.

§290.116, Groundwater Corrective Actions and Treatment Techniques

The commission adopts the amendment to §290.116(a) to clarify the applicability requirements for public water systems to be consistent with the GWR and RTCR as described in 40 CFR §141.859. This amended language specifies the treatment technique and corrective action requirements for public water systems that use groundwater sources to be consistent with the GWR and the treatment technique and corrective action requirements for these public water systems when they have exceeded a treatment technique trigger under the RTCR as described in §141.859. The commission adopts changes to §290.116(a) to address EPA comments concerning applicability with the GWR.

The commission adopts the amendment to §290.116(a)(1) and (2) to establish that public water systems that use groundwater sources shall receive prior written approval from the executive director before the public water system discontinues the use of

4-log treatment for their groundwater sources to be consistent with the GWR.

The commission adopts the amendment to §290.116(b)(5) to clarify the corrective action plan and approval requirements for public water systems that are required to complete the corrective action to be consistent with the GWR.

The commission adopts the amendment to §290.116(c) by removing the words "or in lieu of the" and adding the words "instead of conducting" to clarify the microbial inactivation and removal requirements for public water systems that treat groundwater sources in response to a fecal indicator positive source sample or significant deficiency, instead of conducting raw groundwater source monitoring, shall meet minimum requirements demonstrating at least 4-log treatment of viruses to be consistent with the GWR.

The commission adopts the amendment to §290.116(c)(2) and adds the requirements in §290.116(c)(2)(A) and (B) to include and establish the monitoring and operating requirements for membrane treatment systems and to specify the approval process for monitoring and recording the performance of these alternative treatment technologies to be consistent with the GWR.

The commission adopts the amendment to add §290.116(c)(3)(F) to establish that membrane treatment system integrity monitoring shall be conducted in accordance with executive director specified requirements to be consistent with the GWR.

The commission adopts the amendment to §290.116(c)(4) to clarify the recordkeeping applicability requirements for public water systems to be consistent with the GWR.

The commission adopts the amendment to §290.116(d) by removing the words "in lieu of the" and "to conduct" and adding the words "instead of conducting" to clarify that public water systems that treat groundwater sources in response to a fecal indicator positive source sample or significant deficiency, instead of conducting raw groundwater source monitoring, shall report to the executive director to be consistent with the GWR.

The commission adopts the amendment to add §290.116(d)(6) to establish the reporting requirements for public water systems that are required to conduct integrity monitoring for membrane treatment systems for groundwater sources.

The commission adopts the amendment to §290.116(e)(4) and (5) to clarify the compliance monitoring and reporting requirements for public water systems that use membrane systems to treat groundwater sources.

The commission adopts the amendment to §290.116(f)(1) to clarify and establish the public notification requirements for community public water systems that use groundwater sources when the public water system receives notice from the executive director of a significant deficiency or notification of a fecal indicator positive groundwater source sample to be consistent with the GWR. This amended language requires these public water systems to provide public notice to customers on an annual basis until the significant deficiency is corrected or the fecal contamination in the groundwater source is corrected as determined by the executive director.

§290.117, Regulation of Lead and Copper

The commission adopts the amendment to §290.117(c)(2)(D)(i) - (vi) to add the word "reduced" to clarify the reduced nine-year tap sampling requirements for public water systems regarding lead and copper monitoring to be consistent with the federal Lead and Copper Rule Minor Revisions (LCRMR) as described in 40 CFR §141.86. This amended language removes the word "waiver" and replaces it with "schedule" for consistency with amended rule language. This amended language will provide clarification concerning the executive director's authority to modify reduced nine-year tap sampling schedules. The commission adopts changes to §290.117(c)(2)(D) by revising the reference "EPA's Lead and Copper Rule Minor Revisions." The referenced has been changed to "the EPA's Lead and Copper Rule Minor Revisions as described in 40 CFR §141.86" to address public comments requesting that specific federal citations be added for clarity.

The commission adopts the amendment to §290.117(c)(2)(D-)(vii) by removing the executive director's approval of waivers regarding the lead and copper nine-year tap sampling requirements for public water systems that received such waivers. This amended language is consistent with a new provision under the LCRMR and supersedes pre-existing waivers that were granted for lead and copper tap monitoring. This amended language provides clarification for public water systems with state-approved waivers that the waivers are no longer valid in accordance with the LCRMR provision. The public water systems that were granted waivers will be eligible for reduced nine-year monitoring if the public water system meets the federal criteria outlined in the LCRMR and will be required to re-apply for reduced monitoring every nine years.

The commission adopts the amendment to §290.117(e) to remove and clarify an incorrect table reference and to clarify the applicability of monitoring requirements for Water Quality Parameters (WQPs).

The commission adopts the amendment to §290.117(e)(1) by adding the words "take two samples" to clarify the sampling requirements for public water system's relating to monitoring for WQPs to be consistent with the LCRMR as described in 40 CFR §141.87(a)(2). This amended language requires public water systems to also take two samples at all raw WQP sites in addition to entry points and distribution WQP sites in accordance with the table referenced in Figure: 30 TAC §290.117(e)(1). The requirement to monitor at raw WQP sites was added to be consistent with the March 2016 EPA *Optimal Corrosion Control Treatment Evaluation Technical Recommendations for Primacy Agencies and Public Water Systems* guidance document.

The commission adopts the amendment to §290.117(e)(1) and removes the requirement for raw WQP sampling to address public comments.

The commission adopts the amendment to add §290.117(e)(1)(C) to establish the raw water monitoring requirements for WQP sample sites to be consistent with the March 2016 EPA *Optimal Corrosion Control Treatment Evaluation Technical Recommendations for Primacy Agencies and Public Water Systems* guidance document. The commission adopts the amendment to remove §290.117(e)(1)(C) and removes the requirement for raw WQP sampling to address public comments.

The commission adopts the amendment to §290.117(e)(2) to establish the initial and routine raw water monitoring requirements for WQP sample sites to be consistent with the March 2016 *EPA Optimal Corrosion Control Treatment Evaluation Technical Rec-*

ommendations for Primacy Agencies and Public Water Systems guidance document.

The commission adopts the amendment to Figure: 30 TAC §290.117(e)(2) to include raw water monitoring WQP sample sites in the title and to include total dissolved solids, sodium, sulfate, chloride, hardness, manganese, and iron as additional WQP monitoring constituents to be consistent with the March 2016 EPA *Optimal Corrosion Control Treatment Evaluation Technical Recommendations for Primacy Agencies and Public Water Systems* guidance document. The commission adopts the amendment to Figure: 30 TAC §290.117(e)(2) and removes the requirement for raw WQP sampling to address public comments.

The commission adopts the amendment to §290.117(e)(2)(A) to establish the initial and routine raw water monitoring requirements for WQP sample site locations as referenced in Figure: 30 TAC §290.117(e)(1) to be consistent with the March 2016 EPA *Optimal Corrosion Control Treatment Evaluation Technical Recommendations for Primacy Agencies and Public Water Systems* guidance document. The commission adopts the amendment to §290.117(e)(2)(A) and removes the requirement for raw WQP sampling to address public comments.

The commission adopts the amendment to §290.117(e)(2)(B) to establish the frequency for initial and routine WQP monitoring on a quarterly basis to reflect seasonal variability in water quality conditions to be consistent with the March 2016 EPA *Optimal Corrosion Control Treatment Evaluation Technical Recommendations for Primacy Agencies and Public Water Systems* guidance document.

The commission adopts the amendment to §290.117(e)(3) to establish the entry point and distribution WQP monitoring requirements for public water systems after the installation of corrosion control treatment as referenced in Figure: 30 TAC §290.117(e)(3). This amended language clarifies the Figure: 30 TAC §290.117(e)(3) table reference.

The commission adopts the amendment to Figure: 30 TAC §290.117(e)(3) to amend the title and to include calcium, total dissolved solids, temperature, sodium, sulfate, chloride, hardness, manganese, and iron as additional WQP monitoring constituents and remove the requirement to measure calcium if calcium carbonate stabilization is used as part of corrosion control to be consistent with the March 2016 EPA *Optimal Corrosion Control Treatment Evaluation Technical Recommendations for Primacy Agencies and Public Water Systems* guidance document.

The commission adopts the amendment to §290.117(e)(4) to clarify the Figure: 30 TAC §290.117(e)(4) table reference.

The commission adopts the amendment to §290.117(f)(1)(C) to clarify the reference to corrosion control treatment methods as described in §290.117(f)(1)(B) and to make grammatical revisions.

The commission adopts the amendment to §290.117(i)(4)(B)(i) - (iii) to add the word "reduced" to clarify the reduced nine-year tap sampling requirements for public water system's regarding lead and copper monitoring to be consistent with the LCRMR as described in 40 CFR §141.85. This amended language removes the word "waiver" and replaces it with "schedule" for consistency with amended rule language.

The commission adopts the amendment to §290.117(k)(2)(B)(i) and (ii) and removes §290.117(k)(2)(B)(iii), to establish that community public water systems serving 3,300 or fewer people are allowed to limit certain aspects of their public education programs by distributing required public education materials to facilities and organizations served by the public water system that are most likely to be visited regularly by pregnant women and children. This amended language allows community public water systems serving 3,300 or fewer people the option to distribute notices to every household served by the public water system instead of delivering notices by media release. This amended language requires community public water systems serving 3,300 or fewer people to implement at least one of nine possible options to deliver public education materials to customers.

§290.118, Secondary Constituent Levels

The commission adopts the amendment to §290.118(g)(1) to clarify terminology for public water systems regarding secondary constituent levels to be consistent with existing rule language.

§290.119, Analytical Procedures

The commission adopts the amendment to §290.119(a)(1) to address EPA comments concerning laboratory accreditation requirements for microbial contaminants.

The commission adopts the amendment to §290.119(b)(1) to reference and include the acceptable federal analytical methods as described in 40 CFR §141.852. This language specifies that public water systems are required to conduct total coliform and *E. coli* analyses in accordance with the analytical methods or alternative methods as described in 40 CFR §141.852 to be consistent with the RTCR. The commission adopts the amendment to §290.119(b)(1) to address EPA comments concerning acceptable analytical methods in 40 CFR §141.852(c) for microbiological analyses.

§290.121, Monitoring Plans

The commission adopts the amendment to add §290.121(b)(3) to require public water systems to include a list of all repeat microbial sample sites which are associated to their originating routine microbial sample sites in a Sample Siting Plan to be consistent with the RTCR as described in 40 CFR §141.853. The RTCR requires public water systems to include routine and repeat microbial sample sites in a Sample Siting Plan. The amended language specifies that the Sample Siting Plan shall be included in the public water system's monitoring plan. This requirement is included in the amended rule language regarding Sample Siting Plans as described in §290.109. The commission adopts the amendment to §290.121(b)(3) to address EPA comments concerning Sample Siting Plan requirements for public water systems that list more than the minimum number of required microbial samples on their Sample Siting Plan.

§290.122, Public Notification

The commission adopts the amendment to §290.122(a) to establish the Tier 1 public notice category and to describe that a Tier 1 public notice is associated to acute violations or situations with significant potential to have serious adverse effects on human health as a result of short-term exposure and which require a Tier 1 public notice. The commission adopted this language to be consistent with 40 CFR Part 141, Subpart Q.

The commission adopts the amendment to §290.122(a)(1)(A) to establish that a Tier 1 public notice is required for a violation of the *E. coli* MCL as described in §290.109(g)(1)(A) - (D), and the acute MCL for microbial contaminants is no longer applicable to

be consistent with the RTCR as described in 40 CFR §141.63 and §141.860.

The commission adopts the amendment to add §290.122(a)(1)(B)(v) and (vi) to establish the Tier 1 public notice requirements when a public water system fails to meet specific treatment, turbidity level, monitoring, and/or reporting requirements as described in §290.111(i)(3) and (4).

The commission adopts the amendment to §290.122(a)(1)(F) to revise the citation reference from §290.109(b)(2) to §290.109(h)(2) to clarify public notice requirements when a public water system receives and *E. coli*-positive source water sample to address EPA comments.

The commission adopts the amendment to §290.122(a)(1)(G) to address EPA comments concerning health effects language for public notice.

The commission adopts the amendment to add §290.122(a)(1)(H) to address EPA comments concerning executive director discretion regarding Tier 1 public notices.

The commission adopts the amendment to §290.122(a)(2) to clarify and establish the methods in which public water systems are required to issue a Tier 1 public notice to customers to be consistent with 40 CFR Part 141, Subpart Q. The commission adopts this language to specify that public water systems shall issue the initial Tier 1 public notice to customers for an acute violation or situation in one or more manners that are reasonably calculated to reach persons served by the public water system within the required time period. The commission adopts the amendment to this language to specify that public water systems are no longer required to issue a Tier 1 public notice by using two of the approved methods described in rule and are now allowed to issue a Tier 1 public notice by using one or more of the approved methods described in rule to be consistent with 40 CFR §141.202.

The commission adopts the amendment to §290.122(a)(2)(A) to clarify the Tier 1 public notice and/or boil water notice requirements when a public water system fails to meet specific treatment, turbidity level, monitoring, and/or reporting requirements as referenced in §290.122(a)(1)(B)(vi) and described in §290.111(i)(4).

The commission adopts the amendment to remove §290.122(a)(4) to establish that public water systems are not required to issue a public notice to customers when the public water system has corrected a Tier 1 acute violation or situation to be consistent with 40 CFR Part 141, Subpart Q.

The commission adopts the amendment to §290.122(b) to establish the Tier 2 public notice category and to describe that a Tier 2 public notice is associated to other MCL, MRDL, or treatment technique violations and for variance and exemption violations which are violations and situations with potential to have serious adverse effects on human health and which require a Tier 2 public notice. The commission adopts the amendment to this language to be consistent with 40 CFR Part 141, Subpart Q.

The commission adopts the amendment §290.122(b)(1)(E) to address EPA comments concerning Tier 1 public notice requirements for public water systems.

The commission adopts the amendment to add §290.122(b)(1)(F) to address EPA comments concerning Tier 2 public notice requirements for public water systems.

The commission adopts the amendment to §290.122(b)(2) to provide consistency with revised terminology concerning Tier 2 public notices to be consistent with 40 CFR Part 141, Subpart Q.

The commission adopts the amendment to remove §290.122(b)(4) to establish that public water systems are not required to issue a public notice to customers when the public water system has corrected a Tier 2 violation to be consistent with 40 CFR Part 141, Subpart Q.

The commission adopts the amendment to §290.122(c) and (c)(1) to establish the Tier 3 public notice category and to describe that a Tier 3 public notice is associated with other violations, situations, variances, and exemptions as defined and which require a Tier 3 public notice. The commission adopts this amended language to be consistent with 40 CFR Part 141, Subpart Q.

The commission adopts the amendment to add §290.122(c)(1)(F) - (K) to require a community and nontransient, noncommunity public water system to provide notification to its customers of the availability of unregulated contaminant monitoring results. These systems will also be required to issue a Tier 3 public notice to customers in the event the public water system fails to notify customers of the availability of unregulated contaminant monitoring results to be consistent with 40 CFR §141.204 and §141.207. The commission adopts the added amended language to establish that a public water system is required to issue a Tier 3 public notice for failure to maintain any assessment form and documentation of corrective actions completed as a result of those assessments to be consistent with 40 CFR §141.204 and §141.861. The commission adopts the added language to establish that a public water system is required to issue a Tier 3 public notice for failure to maintain a record of any repeat sample taken that meets the criteria for an extension of the 24-hour period for collecting repeat samples to be consistent with 40 CFR §141.204 and §141.861. The commission adopts the added language that may require public water systems to issue a Tier 1 public notice instead of a Tier 3 public notice for other violations or situations deemed by the executive director to pose an acute risk to human health or with significant potential to have serious adverse effects on human health as a result of short-term exposure to be consistent with 40 CFR §141.202. The commission adopts the added language that may require public water systems to issue a Tier 2 public notice instead of a Tier 3 public notice for other violations or situations, at the discretion of the executive director, which take into account potential health impacts and persistence of the violation and failure to comply with the terms and conditions of any variance or exemption to be consistent with 40 CFR §141.203.

The commission adopts the amendment to §290.122(c)(1)(H) to address EPA comments concerning Consumer Confidence Report (CCR) requirements for corrective actions conducted by public water systems.

The commission adopts the amendment to add §290.122(c)(1)(L) to address EPA comments concerning Tier 3 public notice requirements for public water systems.

The commission adopts the amendment to §290.122(c)(2) to clarify and establish the methods in which public water systems are required to issue the initial and repeat Tier 3 public notices to customers to be consistent with 40 CFR §141.204. The commission adopts the added language to specify that public water systems shall issue the initial Tier 3 public notice to customers

not later than one year after the public water system learns of the violation or situation or begins operating under a variance or exemption. The commission adopts the added language to specify that public water systems shall issue the repeat Tier 3 public notice to customers annually for as long as the violation, variance, exemption, or other situation persists. The commission adopts the added language to specify that if the public notice is posted, the notice shall remain in place for as long as the violation, variance, exemption, or other situation persists, but in no case less than seven days even if the violation or situation is resolved. The commission adopts the amended language to specify that public water systems are no longer required to issue a Tier 3 public notice within three months of the violation or the granting of a variance or exemption and may now issue a Tier 3 public notice on an annual basis unless otherwise specified by rule to be consistent with 40 CFR §141.204.

The commission adopts the amendment to add §290.122(c)(2)(C)(i) - (iii) to establish the criteria that allows community public water systems to use their annual CCR for delivering the initial Tier 3 public notice and all required repeat Tier 3 public notices to be consistent with 40 CFR §141.204.

The commission adopts the amendment to §290.122(c)(3)(A) to establish the criteria that allows community public water systems to use their annual CCR for delivering repeat Tier 3 public notices to be consistent with 40 CFR §141.204.

The commission adopts the amendment to remove §290.122(c)(4) to establish that public water systems are not required to issue a public notice to customers when the public water system has corrected a Tier 3 violation to be consistent with 40 CFR Part 141, Subpart Q.

The commission adopts the amendment to §290.122(d)(3)(A) to address EPA comments concerning health effects information for a variance or exemption.

The commission adopts the amendment to §290.122(d)(8) to address EPA comments concerning public notice distribution requirements to all persons served by the public water system.

The commission adopts the amendment to §290.122(f) to clarify the reporting methods for public water systems regarding the proof of public notification delivery.

The commission adopts the amendment to §290.122(g) to clarify the public notification requirements for public water systems that sell or provide drinking water to other public water systems (i.e., consecutive systems) and to clarify that consecutive systems are responsible for and shall provide public notice to the persons it serves to be consistent with 40 CFR §141.201(c)(1).

§290.272, Content of the Report

The commission adopts the amendment to add §290.272(b)(1)(A) and (B) to establish the content requirements for CCR regarding Level 1 and Level 2 assessments to be consistent with the RTCR, as described in 40 CFR §141.153.

The commission adopts the amendment to §290.272(c)(4)(D) and (D)(i) to establish the content requirements for CCR regarding contaminants subject to an MCL, except turbidity, total coliform, fecal coliform, and *E. coli* to be consistent with the RTCR.

The commission adopts the amendment to §290.272(c)(4)(G) and to remove §290.272(c)(4)(H) to establish the content requirements for CCR regarding *E. coli* reporting to be consistent with the RTCR.

The commission proposed adding §290.272(d)(4) to establish the content requirements for CCR regarding community and nontransient, noncommunity public water systems that exceed the secondary constituent level for fluoride but are below the MCL. The commission adopts changes to §290.272(d)(4) by removing the reference to nontransient, noncommunity public water systems to address public comments concerning clarification of applicability requirements.

The commission adopts the amendment to add §290.272(g)(9) - (11) to establish the content requirements for CCR regarding Level 1 or Level 2 assessments, associated corrective actions, monitoring and reporting, and the *E. coli* MCL to be consistent with the RTCR.

The commission adopts the amendment §290.272(g)(9) and (10) to address EPA comments concerning CCR requirements for Level 1 and Level 2 assessments.

The commission adopts the amendment to add §290.272(h) to establish the content requirements for CCR regarding when a public water system detects *E. coli* and has not violated the *E. coli* MCL to be consistent with the RTCR, as described in 40 CFR §141.153.

§290.275, Appendices A - D

The commission adopts the amendment to Figure: 30 TAC §290.275(1) to correct the MCL units for Total trihalomethanes (TTHMs).

The commission adopts the amendment to Figure: 30 TAC §290.275(1) and (2) to address EPA comments concerning CCR requirements for information contained in the appendices to include *E. coli* and total coliform MCL units, and *Legionella* and *Cryptosporidium* MCLG units.

The commission adopts the amendment to Figure: 30 TAC §290.275(3) to establish the mandatory health effects language required for CCR regarding coliforms and *E. coli* bacteria to be consistent with the RTCR.

Final Regulatory Impact Analysis Determination

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

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

to increase public human health protection through the reduction of potential pathways of entry for fecal contamination into the distribution systems of public drinking water systems, which should reduce the potential risk from all waterborne pathogens including bacteria, viruses, parasitic protozoa, and their associated illnesses. In addition, the rulemaking addresses specific comments from the EPA regarding state implementation of the federal GWR, ensuring that the state rules are no less stringent than the federal GWR. Finally, the rulemaking clarifies state implantation of the federal Lead and Copper Rule, the TOC Rule, and incorporates other federal analytical and reporting requirements for public drinking water systems.

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

Finally, the rulemaking does not meet any of the four applicability requirements for a "major environmental rule" listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of the preceding four applicability requirements because this rulemaking: does not exceed any standard set by federal law for public water systems and is consistent with and no less stringent than federal rules; does not exceed any express requirement of state law under THSC, Chapter 341, Subchapter C; does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government, but rather is to be consistent with applicable federal rules in order to allow the state to maintain its authority to implement the federal Safe Drinking Water Act, pursuant to agreements between the commission and the EPA; and is not based solely under the general powers of the agency, but specifically under THSC, §341.031, which allows the commission to adopt and enforce rules to implement the federal Safe Drinking Water Act, as well under as the other general powers of the commission.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination. No comments received on the regulatory impact analysis determination.

Takings Impact Assessment

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

The commission adopts these rules for the specific purpose of maintaining the state's primary enforcement responsibility by incorporating federal drinking water regulations related to: 1) increasing public health protection through the reduction of potential pathways of entry for fecal contaminants into distribution systems of public drinking water systems in response to the RTCR, published by the EPA in the February 13, 2013, issue of the *Federal Register;* 2) responding to comments from the EPA on state implementation of the federal GWR to ensure that the state rules are no less stringent than the federal. The rules clarify state rules governing lead and copper, TOC, and other state drinking water analytical and reporting requirements governed by federal requirements and/or addressed in federal guidance documents. In addition, the rules clarify requirements for special precautions, protective measures, boil water notices, and special investigation requirements for elevated turbidity levels and for failure to provide compliance data. Finally, the rules correct typographical errors, formatting, internal cross-references, and citation changes.

The commission's analysis indicates that Texas Government Code, Chapter 2007, does not apply to these rules based upon exceptions to applicability in Texas Government Code, §2007.003(b). First, the rulemaking is an action that is reasonably taken to fulfill an obligation mandated by federal law, Texas Government Code, §2007.003(b)(4). In order to maintain primacy over public drinking water, the state must enact rules no less stringent than the federal drinking water regulations as required by 40 CFR §142.10. Second, the rulemaking is an action that is taken in response to a real and substantial threat to public health and safety; that is designed to significantly advance the public health and safety purpose; and that does not impose a greater burden than is necessary to achieve the public health and safety purpose, Texas Government Code, §2007.003(b)(13). Though health and safety purpose is incidental to the rulemaking's goal of maintaining state primacy over drinking water regulation, fecal contamination in the distribution systems of public drinking water systems constitutes a real and substantial threat to public health and safety and requires appropriate governmental regulation. Reducing potential pathways for fecal contamination in drinking water distribution systems should reduce the potential risk from all waterborne pathogens including bacteria, viruses, parasitic protozoa, and their associated illnesses. The rules significantly advance the public health and safety purpose by ensuring appropriate governmental regulation of these items, and do so in a way that does not impose a greater burden than is necessary to achieve the public health and safety purpose.

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

Consistency with the Coastal Management Program

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

The commission invited public comment regarding the consistency with the Coastal Management Program during the public comment period, and no comments were received.

Public Comment

The commission held a public hearing on November 7, 2016. The comment period closed on November 22, 2016. The commission received written comments from Aqua Texas Incorporated (ATI), the City of Austin (COA), the City of Corpus Christi (COCC), the City of Dallas (COD), the City of Houston (COH), San Antonio Water System (SAWS), South Central Membrane Association (SCMA), Steve Walden Consulting (SWC), Texas Rural Water Association (TRWA), and the EPA. Most comments received were neither in support of nor against the rulemaking, but rather suggested changes to the proposed rule language.

Response to Comments

Oral Comments

Comment

The COA commented that the drinking water rules process could be better if the draft rules were shared prior to being proposed for publication, and indicated that the wastewater program shared its draft 30 TAC Chapter 217 rules prior to proposal.

Response

The commission responds that it is agency policy to not release drafts of a proposed rule prior to filing the rule package with the TCEQ Chief Clerk's Office. A draft of the 30 TAC Chapter 217 rules was provided earlier in the process to allow additional stakeholder review due to the length of that rule package and the number of changes proposed.

Fiscal Note Costs to State and Local Government

Comment

ATI, COA, COCC, and COH commented that they have concerns with the commission's contemplated plans for an additional 14 full-time equivalents (FTEs) to implement the proposed RTCR. The commenters stated that not all of the activities listed for the 14 FTEs are required by federal regulations. They commented that the commission's estimated need for an additional 14 FTEs was not substantially supported with quantifiable data; that it was not clearly communicated what workload activities are associated to these FTEs; and that the commission's fee increase for public water systems, effective June 2, 2016, under §290.51, poses an unwarranted burden on the regulated community because such fees have historically failed to adequately fund the commission's services provided to public water systems. The commenters stated that shifting of the financial burden from the commission to the local level in order to fund commission operations significantly inhibits a municipality or public water system from investing in infrastructure and operational improvements that would benefit customers. They commented on the number of Level 1 and Level 2 assessments that the commission anticipates processing on an annual basis and requested an estimate of these assessments based on historical program data.

Response

The commission respectfully disagrees that the fiscal note in the proposal preamble lacked sufficient information, and notes again that the commission anticipates significant resource implications as a result of the administration and enforcement of the RTCR and does not have sufficient staff resources to implement the rules.

In order for the commission to implement the provisions of the RTCR and obtain primary enforcement authority (primacy) from the EPA for the RTCR under the Public Water System Supervision Program for approximately 6,900 public water systems, the commission will be required to conduct and complete additional workload tasks. The following summarizes the additional workload tasks concerning the commission's request for 14 FTEs which will be dispersed among commission central office staff and its 16 statewide regional offices: performing compliance determinations for Sample Siting Plans submitted by all public water systems, which may include review of SOPs for microbial sample collection processes; issuing approximately 300 *E. coli* MCL, treatment technique, and monitoring/reporting violations per month based on historical data under the Total Coliform Rule; conducting the review and evaluation of approximately 260 Level 1 assessments and 60 Level 2 assessments on an annual basis which will require administering and coordinating associated compliance determination activities and enforcement actions with EPA; conducting compliance tracking activities for the assessments which are intended to identify the possible presence of sanitary defects in public water system distribution systems; tracking of sanitary defects identified during the assessments and any associated corrective actions; ensuring compliance with RTCR-related public notice requirements; providing specialized technical assistance and advanced technical training that may include conducting on-site visits to assist public water systems conducting assessments; reviewing, approving, and monitoring the specific requirements concerning start-up procedures for seasonal public water systems which are required to conduct these activities prior to serving water to the public; providing technical assistance and training to seasonal systems who receive treatment technique violations for failure to conduct seasonal start-up procedures; providing technical and regulatory assistance on a daily basis to all public water systems; developing and providing compliance assistance outreach training for public water system management and operations staff; reviewing sample analysis and sampling locations; and reviewing monthly operating reports to ensure compliance with the additional regulatory requirements. This will also require additional time to document findings and complete written reports and address the potential subsequent increase in associated enforcement actions and complaints.

Under the RTCR, specific compliance scenarios will require public water systems to conduct Level 1 and Level 2 assessments which will require commission staff to review and perform qualitative evaluations for each assessment completed by public water systems and conduct subsequent compliance determination reviews and enforcement tracking activities. The Level 1 and Level 2 assessments are an evaluation to identify the possible presence of sanitary defects, defects in distribution system coliform monitoring practices, and (when possible) the likely reason that the public water system triggered the assessment. A Level 2 assessment provides a more detailed examination of the public water system than does a Level 1 assessment through the use of a more comprehensive investigation and review of available information, additional internal and external resources, and other relevant practices. The commission will conduct enhanced investigations of community distribution systems on a discretionary basis in addition to the currently required Comprehensive Compliance Investigations conducted at public water systems once every three years during which the investigators will review the RTCR Sample Siting Plan to ensure that it is representative of the public water system. Implementation of the RTCR will involve the administration and coordination of compliance and en-

forcement activities between the commission's central office and statewide regional offices as well as with the EPA, which will also include quarterly reporting of all applicable compliance data to the EPA. No change was made in response to these comments.

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

(Well Recordkeeping)

Comment

ATI, SAWS, SCMA, SWC, and TRWA commented that they have concerns with proposed §290.46(n)(1) regarding the proposal and adoption of §290.46(n)(1) which was effective on September 13, 2000. They commented that this rule was never intended to be implemented retroactively to facilities constructed prior to the effective date and that during promulgation water suppliers assumed that this new rule did not apply to infrastructure already in place because one cannot "maintain" a record that was never previously required to be maintained. They commented that further maintenance of the records does not improve water quality and the cost of re-creation of the documents imposes a financial burden and hardship on public water systems.

Response

The commission respectfully disagrees with these comments requesting the addition of a "grandfather clause" date of September 13, 2000, to the rule because adequate records are required for protective operation and management of public water systems. Grandfathering systems constructed prior to a particular date could put those systems at risk for ability to operate and properly treat water. Failure to maintain these records could have a detrimental impact on the water quality produced by the public water system. These records provide important information on the construction of the public water system including location of hazards and materials used in construction. A public water system operator needs to know the location of potential sources of contamination when making plant repairs in order to avoid unintended contamination of the water. Lack of knowledge regarding treatment plant or tank materials could also detrimentally impact water quality if the public water system does not have accurate information on type, age of material, and material coatings. Over time, harmful materials could leach from the materials in these facilities. A public water system must also take facility materials into account when proposing treatment changes. Chemicals intended to correct a minor water quality issue could cause a different water quality issue if existing facility materials are not compatible with the proposed treatment chemical. Knowledge of facility construction materials is necessary to make knowledgeable treatment changes. The commission acknowledges that public water systems without accurate and up-to-date detailed as-built plans or record drawings for each treatment plant, pump station, and storage tank will be required to hire a professional engineer licensed in Texas to prepare these documents. No change has been made in response to these comments.

Comment

ATI, SAWS, SCMA, SWC, and TRWA commented that they have concerns with proposed §290.46(n)(3) which adds a reference to §290.41(c)(3)(A) to clarify the documents included in well completion data. They commented that the reference is an increase in requirements and the change in recordkeeping should be limited to those wells installed after the effective date of the rule revision which was September 13, 2000.

Response

The commission respectfully disagrees with the comment stating that the amendment of §290.46(n)(3) increases requirements. The commission responds that well completion data have always included the information referenced in §290.41(c)(3)(A); therefore, the amendment clarifies the rule by formalizing the commission's understanding. The commission further responds that well completion data help to ensure that the well is safe from contamination and determine possible sources of contamination if future problems arise by examining the documentation maintained by a public water system.

The commission also respectfully disagrees with the comment asking that the recordkeeping requirement be limited for facilities constructed after September 13, 2000. The commission responds that assembling and maintaining well completion data aid a public water system if the system needs to know whether its groundwater source is adequately protected from migration of contaminants by utilizing adequate construction materials and pressure cementing the well casing. Public water systems also need to know pump setting and water levels in order to monitor a well for loss of water supply. The commission further responds that well completion data aid the agency when assisting in emergency situations, such as natural or man-made disasters, and in providing adequate documentation for federal reporting of infrastructure needs. No changes have been made in response to these comments.

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

(Special Precautions, Protective Measures and Boil Water Notice Requirements)

Comment

COA, COCC, COD, COH, EPA, SCMA, and TRWA commented that they have concerns with proposed §290.46(q) and requested that the commission further clarify the situations and actions that may be required at the executive director's discretion concerning special precautions, protective measures, and boil water notices. They requested clarification or definition of the terms special precautions, protective measures, and boil water notices.

Response

The commission agrees with this comment and has made changes to §290.46(q) by adding the language "as specified in this subsection" to further clarify the situations which require special precautions, protective measures, and boil water notices.

The commission further responds that special precautions, protective measures, and boil water notices are described in §290.46(q) as corrective or protective actions. These corrective or protective actions should be instituted by a public water system to correct or protect against an identified sanitary defect, significant deficiency, and/or a situation that poses a potential or actual health hazard. The commission responds that a boil water notice is a protective action instituted by a public water system as a precautionary measure in response to specific circumstances, or when a situation within a public water system poses a potential or actual health hazard to customers or individuals served by the public water system. The commission further responds that "Sanitary defect" is defined in amended §290.103 as "A defect that could provide a pathway of entry for microbial contamination into the distribution system or that is indicative of

a failure or imminent failure in a barrier that is already in place;" "Significant deficiency" is defined in §290.103 as "Significant deficiencies cause, or have the potential to cause, the introduction of contamination into water delivered to customers. This could include defects in design, operation, or maintenance of the source, treatment, storage, or distribution systems;" and "Health hazard" is defined in §290.38 as "A cross-connection, potential contamination hazard, or other situation involving any substance that can cause death, illness, spread of disease, or has a high probability of causing such effects if introduced into the potable drinking water supply."

Comment

ATI commented concerning §290.46(q)(1) that the required language and format for boil water notices do not provide flexibility for public water systems or the commission to make modifications for specific issues that may be necessitated by unique circumstances and requested that the language "or approved equivalent" be added to §290.46(q)(1) which references the required boil water notice templates specified in Figure: 30 TAC §290.47(c)(1) and (2).

Response

The commission respectfully disagrees with this comment. The commission responds that the proposed boil water notice language specified in Figure: 30 TAC §290.47(c)(1) and (2) allows public water systems the flexibility to add explanatory language concerning the conditions that require a boil water notice. The commission responds that the proposed boil water notice language provides regulatory consistency for public water systems and ensures that customers or individuals served by public water systems receive uniform notification concerning situations that pose a potential or actual health hazard to the potable drinking water supply. No changes have been made in response to this comment.

Comment

COCC and SAWS commented concerning §290.46(q)(1) that the required deadline for public water systems to provide the executive director with a copy of the initial boil water notice and COD within 24 hours or no later than the next business day after issuance does not allow a public water system adequate time to compile this information under certain circumstances and requested that email notification be allowed for the "Certificate of Delivery" form.

Response

The commission agrees with these comments and revised §290.46(q)(1) to provide consistency with §290.122(f) which allows public water systems to provide the COD to the executive director within ten days of its distribution. The commission responds that the executive director currently allows public water systems to submit the COD by email and has clarified this COD delivery option in the proposed amendment as specified in §290.122(f). The commission further responds that public water systems are required to provide a copy of the initial boil water notice to the executive director within 24 hours or no later than the next business day after issuance by the public water system.

Comment

SAWS commented concerning §290.46(q)(2) that the boil water notice flowchart referenced in Figure: 30 TAC §290.47(e), which is used to determine when a boil water notice is required for low distribution system pressure issues, is difficult to follow and should be revised.

Response

The commission respectfully disagrees with these comments requesting a revision to Figure: 30 TAC §290.47(e). Because adoption of the recommended changes would go beyond the scope of the proposed rule, the commission responds that this issue may be addressed by proposing the amendment of Figure: 30 TAC §290.47(e) or other applicable rules in a future rulemaking for Chapter 290. No change has been made in response to these comments.

Comment

COA commented concerning §290.46(q)(5) and suggested that language be added which specifies that the executive director will allow public water system staff and officials the opportunity to provide initial comment, reaction, and discussion with the executive director when special precautions, protective measures, and boil water notices may be required at the discretion of the executive director.

Response

The commission respectfully disagrees with these comments requesting a revision to §290.46(q)(5). The commission responds that the executive director's current regulatory business processes involve and encourage open communication with public water systems to promote the protection of public health when special precautions, protective measures, and boil water notices may be required at the discretion of the executive director. However, it will still be the responsibility of the public water system to institute special precautions, protective measures, and boil water notices in accordance with the deadlines established in §290.46(q). No change has been made in response to these comments.

Comment

COA, COCC, COD, COH, EPA, SCMA, and TRWA commented that they have concerns with proposed §290.46(q)(5)(A) and (5)(A)(i) and (ii) and requested that the commission further clarify the situations and actions that may be required at the executive director's discretion concerning special precautions, protective measures, and boil water notices. They requested clarification or definition of the terms special precautions, protective measures, and boil water notices. EPA commented and recommended that the commission consider referencing language from 40 CFR §141.2 to specify the executive director's discretionary requirements concerning special precautions, protective measures, and boil water notices for waterborne disease outbreaks or other waterborne emergencies.

Response

The commission agrees with these comments and has made changes to §290.46(q)(5)(A) to clarify the circumstances warranting the executive director's discretion when special precautions, protective measures, and boil water notices may be required. The commission has made changes to §290.46(q)(5)(A)(i) to clarify the circumstances warranting the executive director's discretion when special precautions, protective measures, and boil water notices may be required when a public water system that uses surface water sources or groundwater sources under the direct influence of surface water fails to provide any of the required compliance information to the executive director in a Surface Water Monthly Operating Report

and the failure to provide the required compliance information results in the inability of the executive director to determine compliance as described in §290.111(i) or the failure to provide any of the required compliance information to the executive director results in the existence of a potential or actual health hazard, as described in §290.38. The commission has made changes to §290.46(q)(5)(A)(ii) to clarify the circumstances warranting the executive director's discretion when special precautions, protective measures, and boil water notices may be required for waterborne disease outbreaks or other waterborne emergencies.

Comment

ATI, COA, and COCC commented that they have concerns with proposed §290.46(q)(5)(A)(iii) and have requested that the commission further clarify the situations concerning the executive director's discretion when requiring special precautions, protective measures, and boil water notices for failure to maintain adequate disinfection residuals. They expressed concern that the proposed amendment may provide for issuance of a boil water notice based on a single failure to maintain disinfectant residuals and requested that the commission consider less severe responses based on results of further investigations by a public water system. They proposed that the commission adopt a 5.0% rule, as described in §290.110, to be used as a primary method to determine boil water notice requirements when a public water system fails to maintain the residual disinfectant concentration in the water within the distribution system.

Response

The commission respectfully disagrees with these comments and responds that §290.46(q)(5)(A)(iii) establishes that the executive director will exercise discretion to determine special precautions, protective measures, and boil water notice requirements when a public water system fails to maintain minimum disinfectant residuals during treatment processes, in each finished water storage tank, throughout the distribution system, and/or when disinfection equipment is not operated in a manner to maintain minimum disinfectant residuals as described in §290.46(d) and §290.110. The commission responds that the executive director considers all applicable contributing conditions which have the potential to impact the potability of drinking water when determining special precautions, protective measures, and boil water notice requirements that may be necessary as a result of a public water system failing to maintain required minimum disinfectant residuals. The commission further responds that the application of these requirements may be used at the discretion of the executive director to address site specific and variable conditions and that these determinations are not typically based on a single distribution system event. No change has been made in response to these comments.

Comment

COCC and SAWS commented concerning §290.46(q)(5)(B) that the proposed rule places the liability of protecting public health on the executive director through additional notification and instruction prior to a public water system instituting special precautions, protective measures, and boil water notices. They commented that the proposed amendment which requires a public water system to implement special precautions, protective measures, or issue boil water notices to customers "within 24 hours or within time period specified by the executive director" under specific circumstances at the executive director's discretion, does not provide a public water system adequate time to respond and implement such orders.

Response

The commission respectfully disagrees with these comments requesting a revision to §290.46(q)(5)(B). The commission responds that §290.46(q)(4) currently provides the executive director discretion when requiring public water systems to implement special precautions, protective measures, and boil water notices in response to specific circumstances, or when a situation within a public water system poses a potential or actual health hazard to customers or individuals served by the public water system. The commission responds that the executive director's regulatory implementation process for boil water notices requires that public water systems issue boil water notices to customers within 24 hours, which is consistent with existing and proposed rule requirements. The commission further responds that the proposed amendments are intended to clarify when boil water notices must be issued and how they should be rescinded, as well as clarifying when the commission's executive director may exercise his discretion by requiring a public water system to implement special precautions and protective measures, such as a boil water notice to be protective of public health; however, it will still be the responsibility of the public water system to issue the boil water notice. The rule revisions clarify when and how a public water system must issue and rescind boil water notices but do not restrict a public water system's authority to implement special precautions and protective measures or issue boil water notices. No change has been made in response to these comments.

Comment

SAWS commented concerning §290.46(q)(5)(C) and requested that the language in the proposed amendment be clarified concerning when public water systems are required to provide information to the executive director to document that the public water system has met the requirements for special precautions, protective measures, and boil water notices required at the discretion of the executive director.

Response

The commission agrees with this comment and has made changes to §290.46(q)(5)(C) to provide clarification. The commission responds that specific circumstances will determine when a public water system shall provide any required information to the executive director to document that the public water system has met the requirements for special precautions, protective measures, and boil water notices required at the discretion of the executive director.

Comment

ATI, COA, and COCC commented concerning §290.46(q)(6) and requested that the language, "The executive director may provide written notification to the public water system once the public water system has provided required compliance documentation to the executive director", within the proposed amendment be clarified or removed.

Response

The commission agrees with this comment and has made this change to §290.46(q)(6) by removing this specific language.

Comment

SAWS commented concerning §290.46(q)(6)(A) and requested that the language in the proposed amendment be revised to add the phrase "or affected area(s)" after the language "throughout the distribution system" to reflect certain language contained in the flowchart found in Figure: 30 TAC §290.47(e), which references guidelines, conditions, and procedures a public water system must follow in order to determine if a boil water notice is required in response to water distribution system pressures that fall below 20 pounds per square inch (psi).

Response

The commission respectfully disagrees with this comment and responds that the proposed amendment establishes that prior to rescinding a boil water notice, public water systems must ensure, at a minimum, that water distribution system pressures in excess of 20 psi are consistently being maintained throughout the distribution system following water distribution system repairs and/or other events or defects that may cause water distribution system pressures to fall below 20 psi. The commission further responds that this added barrier of protection is necessary to ensure that water distribution system pressures do not fall below 20 psi in other areas of the distribution system when a boil water notice has been rescinded. The commission further responds that this requirement provides an additional barrier of protection against a potential pathway of entry for microbial contamination into the distribution system or a potential contamination hazard that may cause a distribution system backflow condition to occur which allows contamination to be introduced into the water supply. No change has been made in response to these comments.

Comment

ATI and COCC commented that §290.46(q)(6)(E) is interpreted to mean that public water systems will not be allowed to use microbial samples that have not been collected within 24 hours or the next business day to meet the requirements to rescind a boil water notice and have requested a language revision to this proposed amendment to provide clarification. The commenters requested clarification concerning whether or not microbial samples are required only for boil water notices associated with microbial and disinfectant level related events. The commenters also requested clarification on whether the public water system or commission determines the microbial sample site locations in order to rescind a boil water notice event.

Response

The commission agrees with these comments and has made changes to §290.46(q)(6)(E) by adding language which specifies that public water systems are required to collect water samples for microbiological analysis from representative locations throughout the distribution system or in the affected area(s) of the distribution system after the public water system has met all other applicable requirements for special precautions, protective measures, and boil water notices.

The commission responds that boil water notices are typically required as a result of microbial and disinfectant level related events that could provide a pathway of entry for microbial contamination into the distribution system or that are indicative of a failure or imminent failure in a barrier that is already in place. The commission responds that the proposed amendment requires public water systems to collect microbial samples from representative locations throughout the distribution system or in the affected area(s) of the distribution system in order to rescind all boil water notices that are issued under §290.46(q). The commission responds that public water systems are responsible for ensuring that microbial sample sites are representative of locations throughout the distribution system or affected area(s) of the distribution system. The commission further responds that the proposed amendment requires boil water notices to remain in effect until the public water system has provided required compliance documentation to the executive director which establishes that the public water system has met these requirements which are referenced in §290.46(q).

Comment

ATI commented that the language contained in §290.46(q)(6)(F) is redundant to language contained in the proposed amendment in §290.46(q)(6).

Response

The commission respectfully disagrees with this comment and responds that the language contained in the proposed amendment to §290.46(q)(6)(F) establishes that public water systems are required to notify its customers within a specific timeframe that a boil water notice has been rescinded and that public water systems are required to use specific language and format for the rescind notice once a public water system has met certain requirements. The commission further responds that the proposed amendment establishes that a public water system is required to provide documentation to the executive director within a specific time which demonstrates that the public water system has met the requirements of §290.46(q)(6). No change has been made in response to this comment.

§290.47, Appendices

Comment

ATI commented that the mandatory boil water notice language contained in Figure: 30 TAC §290.47(c)(1) and (3) implies that public water systems are not willing to issue a boil water notice since the language references that the "Texas Commission on Environmental Quality" is requiring the public water system to issue the boil water notice to its customers and requested that this and similar language be revised. ATI commented that the proposed language referencing the terms "human consumption" and "drinking water" as defined in §290.38 is redundant and requested that this language be revised to provide clarification. ATI commented that the public water system identification number required on these notices doesn't add clarity for the general public and requested that the identification number be removed from these notices.

Response

The commission respectfully disagrees with these comments and responds that it appreciates and is aware that the majority of public water systems actively pursue and encourage voluntary compliance measures concerning the commission's regulatory requirements. The commission responds that a boil water notice remains a regulatory requirement of the executive director and that the proposed boil water notice format specified in Figure: 30 TAC §290.47(c)(1) allows public water systems the flexibility to include explanatory language concerning the conditions and/or corrective actions taken by a public water system in response to a boil water notice. The commission responds that both of the terms "human consumption" and "drinking water" as defined in §290.38, reference activities that require a public water system to protect the water supplied to these activities for the protection of public health. The commission responds that the public water system identification number listed on the boil water notice forms provides the executive director with an es-

sential component to properly administer regulatory compliance. The commission further responds that this information assists customers to locate information about their public water system on the commission's Texas Drinking Water Watch website. No changes have been made in response to these comments.

Comment

ATI and COA commented concerning the boil water notice forms listed in Figure: 30 TAC §290.47(c)(1) and (3) and requested that the format in these two notices allow public water systems to provide statements to describe the actions they have taken to address the boil water notice situation. They commented and requested that the executive director's contact information and non-substantive language listed in the notices be revised to provide clarification and consistency.

Response

The commission agrees with these comments and has made changes to Figure: 30 TAC §290.47(c)(1) - (3) to provide clarification and consistency. The commission responds that the boil water notice template forms now allow public water systems to provide statements to describe the actions they have taken to address the boil water notice situation and that the executive director's contact information has been revised to provide clarification and consistency.

§§290.102, 290.106 - 290.109, and 290.113 - 290.115, Sample Analyses Reporting

Comment

COCC, COD, COH, SAWS, and TRWA commented that they have concerns with the proposed amendments to §§290.102(g), 290.106(e), 290.107(e), 290.108(e), former §290.109(e), adopted as §290.109(f), 290.113(e), 290.114(a)(4)(B) and (b)(4), and 290.115(e)(1), which clarify the reporting requirements for public water systems regarding the submission of laboratory analyses and reports to the executive director. They commented that public water systems should not be penalized for failure to provide sample analyses reports to the executive director in a timely manner when the delay is caused by events outside control of the public water system. They commented that the amendments should stipulate that a public water system should not receive a violation for failure to report analyses results to the executive director when the agency sampling contractor and contracted laboratory have not met the sampling, analysis, and reporting deadlines. They requested clarification on whether the proposed amendments require public water systems to directly report these data to the executive director in addition to the laboratory reporting process to the executive director, and recommended that the amendments limit these requirements to only analyses results from sampling and analysis under the control of public water systems. They urged the commission to consider allowing public water systems the option of collecting their own compliance samples by licensed individuals and having them analyzed by an accredited laboratory chosen by the public water system instead of relying on the agency contractor to collect compliance samples. They requested that the amendments should align more consistently with 40 CFR §141.31(c) which states: "The supplier of water is not required to report analytical results to the state in cases where a state laboratory performs the analysis and reports the results to the state office which would normally receive such notification from the supplier."

Response

The commission respectfully disagrees with these comments and responds that the proposed amendments are consistent with 40 CFR §141.31 which requires public water systems to report the results of any test measurement or analysis as required under 40 CFR Part 141 National Primary Drinking Water Regulations. The commission responds that public water systems are ultimately responsible for ensuring that laboratory data are reported timely and accurately to the executive director and that public water systems and laboratories are not required to conduct dual reporting of data to the executive director. The commission responds that under §290.51, it collects fees for services to public water systems which require the commission to provide services that include the collection of samples of drinking water for chemical analyses in accordance with §290.51(a)(2)(B). The commission responds that it utilizes a third-party contractor to collect all chemical compliance samples, which include: minerals, metals, nitrate/nitrite, asbestos, disinfection by-products, radionuclides, and organic contaminants for all public water systems in the state. The commission responds that this requirement is in place to better ensure the protection of human health and safety of public water system consumers, individuals, or employees since the commission's sampling contract requires that all chemical compliance samples are collected by trained, certified sample collectors and requires that the samplers hold a valid water operator license. The commission responds that it also conducts annual audits of the sampling contractor to ensure that samples are collected according to required analysis method, consistently, and from the proper locations. The commission responds that it requires all laboratories which are utilized for compliance analysis be accredited under the National Environmental Laboratory Accreditation Program and inspected by the commission's Laboratory Accreditation Section and/or the EPA. The commission responds that contracted sampling activities offer compliance assistance for public water systems and provide consistency with required sampling methodologies and protocol. The commission responds that the executive director's regulatory business processes involve and encourage open communication with public water systems concerning monitoring and reporting requirements. The commission responds that public water systems will not be penalized when chemical sampling results are not available to the commission to conduct compliance as the result of a commission confirmed contractor and/or laboratory error outside the control of the public water system. The commission further responds that it currently allows public water systems the option to use analytical laboratories chosen by the system for the analysis of microbial contaminants and lead and copper at laboratories accredited by the executive director in accordance with 30 TAC Chapter 25 (Environmental Testing Laboratory Accreditation and Certification). No change was made in response to these comments, but to address continuing concerns re-iterated by some stakeholders who had filed comments, the commission revised the affected subsections in §§290.102, 290.106 - 290.109, and 290.113 - 290.115 to clarify that public water systems must ensure that the executive director is provided with a copy of sample analyses required in Chapter 290, Subchapter F.

§290.103, Definitions

Comment

SAWS commented concerning §290.103(26) which defines a Level 1 assessment as described under 40 CFR §141.2 and requested that the definition include language that is more consis-

tent with 40 CFR §141.2 which specifies that a Level 1 assessment is conducted by the public water system operator or owner.

Response

The commission respectfully disagrees with this comment and responds that the definition in §290.103(26) does not reference who conducts a Level 1 assessment since §290.109(c)(3)(A)(i) and (ii) establish assessor qualifications for both Level 1 and Level 2 assessments which are consistent with 40 CFR §141.2 and 40 CFR Part 141, Subpart Y. The commission further responds that the Level 1 and Level 2 assessor qualifications and training requirements are referenced in §290.109(c)(3)(A)(i) and (ii) which establish that public water systems, licensed operators as required under §290.46(e), or other parties approved by the executive director may conduct and complete a Level 1 or Level 2 assessment. The commission responds that public water systems, licensed operators as required under §290.46(e), and other parties approved by the executive director shall have also completed any training required by the executive director. The commission further responds that the reference to public water systems includes the owner of a public water system which will be required to have also completed any training required by the executive director in order to conduct and complete a Level 1 or Level 2 assessment. No change has been made in response to this comment.

§290.109, Microbial Contaminants

Revised Total Coliform Rule (RTCR)

Comment

COA and COH commented concerning §290.109 and commended the commission on the proposed amendments to Chapter 290. They commented that the amendments not only provide transparent alignment with the EPA RTCR, but also are transparent and able to be clearly understood by public water systems. They commented that the commission's proposed definitions, MCL for *E. coli,* monitoring, reporting, recordkeeping requirements, and updated federal analytical methods are clearly in accordance with the EPA RTCR provisions in 40 CFR Part 141, Subpart Y. They also commented that the proposed amendment to §290.109(d)(3), which allows executive director discretion to extend the 24-hour requirement for repeat sample collection based on a logistical problem beyond the public water systems' control, fosters an environment for the commission and public water systems to work as partners to find solutions.

Response

The commission responds that the COA and COH have provided valuable stakeholder interaction and assistance throughout the RTCR Plus rule project and would like to extend its appreciation for continued input, encouragement, and support.

Comment

EPA commented concerning §290.46(e)(1) - (6) that the existing rule language is not as stringent as the federal regulations under 40 CFR §141.403(a)(5)(i) as described in the GWR and under 40 CFR §141.859(b)(4) as described under the RTCR. They commented that under the GWR and RTCR, the definition of corrective action is broad and that the commission has the discretion to require with corrective actions requirements related to operator certification; therefore, corrective action can include requiring a transient, noncommunity public water system to have a certified operator or for a public water system to have an additional operator or an operator with a higher certification level. They commented that the commission's operator certification regulations in §290.46(e) must not prohibit the commission from requiring corrective actions that involve certified operators. They commented that the commission must have regulatory authority to require public water systems to have certified operators or to have higher than the minimum licensed operator especially when required as part of commission directives for corrective actions for a significant deficiency, or as part of commission directives in the case of an *E. coli* MCL. They suggested that the commission make revisions to §290.46(e)(1) - (6) to ensure commission regulations are as stringent as the federal regulations.

Response

The commission respectfully disagrees with the comments that §290.46(e)(1) - (6) should include language that provides the executive director with discretionary authority to require a public water system to use an additional operator with the same level of license or higher license as described in §290.46(e) to conduct and complete corrective actions as described in 40 CFR §141.403(a)(5)(i) under the GWR regarding treatment technique requirements for groundwater systems, and 40 CFR §141.859(b)(4) as described under the RTCR to conduct and complete a Level 1 or Level 2 assessment and/or correct sanitary defects identified during assessments and as part of any required expedited actions or additional actions in the case of an *E. coli* MCL violation as described under §290.109(c). The commission responds that it has implemented federal provisions under 40 CFR §142.16(h)(2) which requires states to implement program requirements to qualify operators of public water systems subject to 40 CFR Part 141, Subpart L, and to establish qualification requirements for operators of public water systems subject to 40 CFR Part 141, Subpart H. The commission further responds that it has implemented federal provisions under 40 CFR §141.130(c) which requires states to implement program requirements to ensure that community public water systems and nontransient, noncommunity public water systems are operated by qualified personnel who meet the requirements specified by the State and are included in a state register of qualified operators. The commission responds that since its implementation of the GWR, the majority of corrective actions required by the executive director under §290.116 are associated with general disinfection, microbiological sampling, and well maintenance activities. The commission responds that these types of general activities are addressed under the commission's licensing and training requirements as described in 30 TAC Chapter 30 and §290.46(e). The commission further responds that corrective actions which require enhanced treatment such as 4-log treatment of viruses (using inactivation, removal, or a commission-approved combination of 4-log virus inactivation and removal) must provide notification to the executive director and the notification must include engineering, operational, and other information required by the executive director to evaluate the submission. No change has been made in response to this comment.

Comment

ATI commented concerning §290.109(c)(3)(C)(iii) and (D)(iii) and requested to add the language "the likely cause(s)" to more closely match the federal language as described in 40 CFR Part 141, Subpart Y, since it will be impossible to say for certain that a particular defect actually caused the trigger concerning assessments.

Response

The commission agrees with these comments and has added the requested language to §290.109(c)(3)(C)(iii) and (D)(iii). The commission responds that the language "the likely cause(s)" has been added to more closely match the federal language as described in 40 CFR Part 141, Subpart Y.

Comment

COD commented concerning §290.109(d)(2)(F) and (G) and requested clarification as to the interpretation of this amendment. They commented that this amendment allows a public water system to collect more than the minimum required number of routine samples for microbial monitoring per month as long as the sites are listed in the Sample Siting Plan. They asked if this amendment will allow a public water system to have more routine sites listed in the Sample Siting Plan than the minimum requirement, but not have to monitor all of them every month, or at least not with the same frequency?

Response

The commission responds that the RTCR allows public water systems to collect more than the minimum required number of routine microbial samples per month as long they are included in their Sample Siting Plan. The commission responds that the additional routine sample sites are available to public water systems as discretionary microbial monitoring sites and public water systems are required to collect only the minimum number of routine microbial samples per month in accordance with Figure: 30 TAC §290.109(d)(2)(A)(iii) and their Sample Siting Plan. No change has been made in response to these comments.

Comment

COH commented concerning §290.109(d)(3)(C)(i) and requested that the commission provide clarity throughout the proposed amendments to note that Sample Siting Plans should include repeat sites and/or SOP as described in §290.109(d)(3)(C)(i). They requested that the commission allow public water systems to propose a format equivalent to the commission's Sample Siting Plan form to include in the public water system's monitoring plan as required in §290.121.

Response

The commission respectfully disagrees with these comments and responds that repeat microbial monitoring locations for Sample Siting Plans are specifically addressed in §290.109(d)(3)(C)(i) and (6). The commission further responds that to provide consistency, it is also revising the monitoring plan document for public water systems in a format similar to the current Sample Siting Plan compliance document. The Sample Siting Plan document was developed to be consistent with the RTCR requirements and to allow regulatory consistency for public water systems. No change has been made in response to these comments.

Comment

COA commented concerning §290.109(c)(3)(C)(iii) and (D)(iii) and requested that the language: "The assessment may also state that no cause was found and no sanitary defects were identified" be added at the end of the paragraphs in §290.109(c)(3)(C)(iii) and (D)(iii) to provide consistency with the language in §290.109(c)(3)(A) which states: "The assessments may also indicate that no sanitary defects were identified."

Response

The commission agrees with these comments and has added this language in §290.109(c)(3)(C)(iii) and (D)(iii) to provide consistency with the language in §290.109(c)(3)(A) and the RTCR.

Comment

SAWS commented concerning §290.109(d)(3)(C)(iii) and requested that the word "all" be included in the opening sentence of this amendment to reflect "all" sample sites and any SOPs required by this paragraph in the Sample Siting Plan.

Response

The commission respectfully disagrees with this comment and responds that §290.109(d)(3)(C)(iii) includes the language as follows: "All public water systems shall include all sample sites as required by this subparagraph and any required SOPs for any proposed sampling sites as described in clauses (i) and (ii) of this subparagraph in the public water system's Sample Siting Plan in accordance with paragraph (6) of this subsection." No change has been made in response to this comment.

Comment

The COA commented concerning §290.109(d)(3)(D) and suggested adding wording to read as follows: "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 *from the same set of 3 sites (repeat, upstream and downstream) originally sampled and in the same* manner as specified in subparagraphs (A) - (C) of this paragraph" to clarify this policy.

Response

The commission respectfully disagrees with these comments and responds that §290.109(d)(3)(D) establishes that 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 §290.109(d)(3)(A) - (C) which requires public water systems to collect at least one repeat sample from the sampling tap where the original 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. The commission further responds that §290.109(d)(3)(C) allows public water systems to propose repeat monitoring locations to the executive director that the public water system considers to be representative of a pathway for contamination of the distribution system by specifying either alternative fixed locations or criteria for selecting repeat sampling sites on a situational basis in a written SOP in its Sample Siting Plan. No change has been made in response to these comments.

Comment

SAWS commented concerning §290.109(d)(3)(D)(i) - (iii) and asked if a public water system has more routine sites listed in their Sample Siting Plan as backups, does the public water system have to monitor at all of them every month?

Response

The commission responds that the RTCR allows public water systems to collect more than the minimum required number of routine microbial samples per month as long as the sample site locations are included in their Sample Siting Plan. The commission responds that the additional routine sample sites are available to public water systems as discretionary microbial monitoring sites and public water systems are required to collect only

the minimum number of routine microbial samples per month in accordance with Figure: 30 TAC §290.109(d)(2)(A)(iii) and their Sample Siting Plan. No change has been made in response to these comments.

Comment

The COA commented concerning §290.109(d)(6) and requested that the commission provide clarification concerning Sample Siting Plans and required SOPs for repeat microbial monitoring locations proposed by public water systems regarding the collection of samples from either designated upstream and downstream repeat sample sites or collecting samples from alternative sample locations designated in an SOP. They requested a language revision to §290.109(d)(6) to clarify these requirements.

Response

The commission respectfully disagrees with the comment proposing a revision to §290.109(d)(6). To provide clarification, the commission responds that §290.109(d)(3)(C) allows public water systems to propose repeat monitoring locations to the executive director that the public water system considers to be representative of a pathway for contamination of the distribution system by specifying either alternative fixed locations or criteria for selecting repeat sampling sites on a situational basis in a written SOP in its Sample Siting Plan. No change has been made in response to these comments.

Comment

ATI commented concerning §290.109(d)(6)(C) - (E) that the requirements contained in the referenced sections as it relates to the distribution maps content and maintenance is beyond the federal RTCR requirements. The level of detail represents a compilation of data, which due to security concerns about critical infrastructure systems should not be maintained in publicly accessible files and requested that the phrase from §290.109(d)(6)(E) that states "provide a copy of their Sample Siting Plan and/or map to the executive director for review and/or revision purposes" should be removed or otherwise modified to not require submission of the map detail required in §290.109(d)(6)(C). They commented that compelling a public water system to provide copies of data that will become accessible through commission public records is considered an unacceptable risk.

Response

The commission respectfully disagrees with these comments and responds that the amendments specified in §290.109(d)(6)(C) - (E) provide the executive director with distribution system data in order to be consistent with RTCR provisions under 40 CFR §141.853(a) which specify that all public water systems must develop a written Sample Siting Plan that identifies microbial sampling sites and a sample collection schedule that are representative of water throughout the distribution system. The commission responds that 40 CFR §141.853(a) specifies that routine and repeat sample sites and any sampling points necessary to meet the requirements of the GWR must be reflected in the Sample Siting Plan. The commission responds that 40 CFR §141.853(a) also specifies that these plans are subject to State review and revision in order to determine these requirements. The commission refers to the Texas Government Code, §418.181 "Confidentiality of Certain Information Relating to Critical Infrastructure," which states, "Those documents or portions of documents in the possession of a governmental entity are confidential if they identify the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism." The commission further responds that it will coordinate with public water systems to address concerns and take appropriate action regarding the review and submission of data that are considered by public water systems to be sensitive and/or create an unacceptable risk to critical infrastructure. No change has been made in response to these comments.

Comment

ATI commented concerning §290.109(d)(6)(C) and requested that language "or series of maps" be added to the statement: "The Sample Siting Plan shall include a distribution system map 'or series of maps' which identifies distribution system valves and mains as described in §290.46(n)(2) of this title." They commented that although the commission has presented in stakeholder presentations that the map requirement could be met by a single map showing all the data or a series of maps which includes the required data, ATI has already experienced field investigators interpreting this section as requiring all data on one map. They commented that modification to the language is needed to insure clarity of intent.

Response

The commission agrees with these comments and responds that the language "or series of maps" has been added to §290.109(d)(6)(C) to provide clarification.

Comment

COA commented concerning §290.109(e)(1)(B) and requested that the language "cease sampling and" not be deleted from this paragraph and remain in the current rule. They commented that by removing this language the water system is dependent on the commission to respond with 24 hours of the request or the system must continue repeat sampling as required in the rules. They commented that without the "cease resampling" wording and a prompt response by the commission, the public water system cannot be certain of the commission's invalidation request determination. They suggested that language be added that requires the commission to respond to the public water system within 24 hours concerning the invalidation request if this language is removed.

Response

The commission respectfully disagrees with these comments and responds that the amendment in §290.109(e)(1)(B) is consistent with the RTCR as described in 40 CFR §141.853 and §141.858. The commission responds that public water systems must continue to collect repeat microbial samples until certain conditions are met in §290.109(d)(3)(D) and that the allowance to cease repeat microbial monitoring pending a sample invalidation request determination conflicts with the RTCR language and may prevent an accurate and timely evaluation of the Level 1 and Level 2 assessment triggers under the RTCR. The commission further responds that sample invalidation requests will be reviewed and evaluated in an expedited manner. No change has been made in response to these comments.

Comment

ATI commented concerning §290.109(g)(2) and asked that the rule reference to §290.109(d)(4)(B)(v) be verified to clarify this reference which allows for the reduction of additional source water samples. They commented that this reference is intended to be §290.109(d)(4)(B)(iv) instead of clause (v).

Response

The commission agrees with these comments and responds that it has made changes to §290.109(g)(2) to reflect that the reference is §290.109(d)(4)(B)(iv) instead of clause (v).

Comment

ATI commented concerning §290.109(g)(4) and suggested striking the phrase "or additional routine" for clarity since this phrase is not defined.

Response

The commission agrees with these comments and has removed the phrase "or additional routine" from §290.109(g)(4) to provide clarity. The commission further responds that this phrase refers to noncommunity public water systems under the RTCR that are not on a monthly microbial monitoring frequency and are required to conduct additional routine monitoring the month following a month in which a public water system receives one or more total coliform-positive samples.

§290.109, Microbial Contaminants

Comment

ATI, COA, COH, SCMA, and TRWA commented concerning §290.103(26) and (27) and §290.109(c)(3)(A) and (B) which define Level 1 and Level 2 assessments and describe the requirements for assessments as required under the RTCR. They commented that the focus of the assessment forms should be in responding to microbial contamination and should not be diluted with other questions on the form that take away from that important mission or put an operator or reviewer down pathways taking time away from that goal. They commented that the proposed amendments clearly support that mission and goal in defining the assessments and requested that the commission set up a structured process such as a formal advisory group, separate from this rulemaking, with stakeholders to revise the assessment forms that meet the proposed regulatory language and to ensure the forms are useful tools in solving the public health risks associated with the RTCR provisions that trigger them. They urged the commission to consider the training requirements in the amendments be included as part of operator licensing certification and continuing education. They commented that the current draft assessment forms go beyond the original scope and intent of the RTCR which is increasing the burden and associated cost beyond that which is necessary on both the public water systems and commission staff and that the format of the draft assessment forms being prescribed represent rulemaking through policy. They commented that there is no formal mechanism to provide comment nor is there any requirement for the commission staff to respond to any comment or input provided on the assessment forms. They commented that the version of the assessment forms published on the commission website are far and above what was intended by EPA as is represented in EPA guidance and by federal definitions of the Level 1 and 2 assessments. They commented that the proposed amendment is too general and should note that the required content of the assessments shall not be extended beyond the minimum elements of the assessments as defined the federal rules and that any additional content is strictly voluntary. They commented that this is to ensure an effective and efficient assessment of the likely cause of the assessment trigger as intended and described in the federal statute while being protective of public health. They encouraged the commission to structure the assessment forms as provided in the rule language where it states in §290.109(c)(3)(A) "assessments are conducted in order to identify the possible presence of sanitary defects and defects in distribution system coliform monitoring practices." They commented that the current proposed draft assessment forms include elements beyond the scope of the federal rule which is to identify (find and fix) any sanitary defects as defined in 40 CFR §141.2 and §290.103(35). They commented that some of the requested information in the draft assessment forms is unrelated to sanitary defects and that this information does not directly correlate with identifying a pathway for contamination or help to explain why a sample was positive for contamination and that the information being requested in the proposed forms is burdensome and dilutes the focus of the assessor's efforts to identify a sanitary defect. They requested that the commission align the forms with the federal rule requirements and intent as set forth in the assessment forms in the EPA guidance manual. They commented that they would like to see a close and transparent alignment of the commission's RTCR compliance forms with the amendments described in §290.103(26) and (27) and §290.109(c)(3)(A) and (B) and urged the commission to structure the Level 1 and Level 2 assessment forms according to the proposed language in the rule. They requested that the commission allow opportunity for further input and public comment regarding its assessment forms to help ensure that these forms are not unduly burdensome and focus on the issue of quickly identifying and addressing public health concerns.

Response

The commission responds that the Level 1 and Level 2 assessment forms were developed to meet the federal RTCR requirements and designed to be a useful tool to identify and correct any sanitary defects when sampling results show that the public water system may be vulnerable to contamination. The commission responds that the assessment forms were also designed to assist public water systems in complying with the RTCR provisions particularly for small public water systems who may struggle to meet the requirements of the RTCR. The commission responds that comments were requested and received from stakeholders concerning the assessment forms. The commission responds that stakeholders submitted comments during September 2016. In addition, the commission responds that comments concerning the assessment forms were received during the October 25, 2016, Drinking Water Advisory Work Group meeting in Austin. The commission responds that the executive director also received comments from public water systems after providing on-site assistance to complete the assessment forms to be in compliance with the RTCR. The commission responds that the executive director continues to implement stakeholder comments to improve the assessment forms. The commission responds that it appreciates stakeholder suggestions for improvements of the Level 1 and Level 2 assessment forms required under the provisions of the RTCR. The commission responds that it is developing training opportunities for public water systems concerning RTCR requirements and assessments to assist systems and operators in obtaining compliance with RTCR provisions and is evaluating and considering training requirements to be included as part of operator licensing certification and continuing education. No change has been made to the amendments in response to these comments; however, the commission will continue to have open dialogue with stakeholders concerning the Level 1 and Level 2 assessments.

§290.110, Disinfectant Residuals

Comment

COA commented concerning §290.110(f)(8) and asked for clarification of the sentence "Public water systems shall consult with the executive director upon increasing residual disinfectant levels in the distribution system in order to maintain compliance with the MRDLs listed in subsection (b) of this section" and when these conditions apply to public water systems.

Response

The commission responds that this requirement is a coordination and assistance effort between the executive director and public water systems when it is necessary to increase residual disinfectant levels in their distribution system to a level significantly above their normal operating conditions to address specific microbiological contamination problems caused by circumstances such as distribution line breaks, storm runoff events, source water contamination, or cross-connections. The commission responds that this action instituted by public water systems may be considered a special precaution or protective measure as described in §290.46(q). No change has been made in response to these comments.

§290.111, Surface Water Treatment

Comment

COA and COH commented concerning §290.111(i)(3)(D), which cross-references §290.46(q), and requested clarification on when these conditions apply and whether a Tier 1 public notice and/or boil water notice would apply to public water systems when the system fails to complete a portion of a report due to equipment failure or other situations outside of the control of the public water system or the entire report.

Response

The commission responds that §290.111(i)(3)(D) establishes that a public water system that fails to submit a report required by §290.111(h) for two consecutive months commits an acute treatment technique violation and is required to issue a public notice and a boil water notice within 24 hours in accordance with §290.122(a).

The commission further responds that it has made changes to §290.46(q)(5)(A)(i) to clarify the circumstances warranting the executive director's discretion when special precautions, protective measures, and boil water notices may be required when a public water system that uses surface water sources or groundwater sources under the direct influence of surface water fails to provide any of the required compliance information to the executive director in a Surface Water Monthly Operating Report as required by §290.111(h), and the failure to provide the required compliance information results in the inability of the executive director to determine compliance as described in §290.111(i) or the failure to provide any of the required compliance information to the executive director results in the existence of a potential or actual health hazard, as described in §290.38. No change has been made in response to these comments.

§290.116, Groundwater Corrective Actions and Treatment Techniques

Comment

ATI commented that the language in §290.116 (b)(5)(E) should be modified for clarity to read: "Investigate and correct all significant deficiencies if any are determined to exist." They commented that the added language is consistent with the "find it and fix it" approach similar to the RTCR assessments while providing clarity that there may not be a significant deficiency present at the time of the raw water *E. coli* sample result either due to previous repairs or generally acceptable maintenance.

Response

The commission respectfully disagrees with the comment due to the necessity to maintain consistency with the federal language found in 40 CFR §141.403(a)(6). The commission will not require any corrective action under the requirements of §290.116(b)(5)(E) unless an actual significant deficiency has been identified. No change has been made in response to these comments.

Comment

SAWS commented concerning §290.116(f)(1) and asked if public water systems are required to re-issue a public notice annually, thereafter, until fixed in the annual CCR when a public water system has a fecal indicator- positive source sample and/or a significant deficiency?

Response

The commission responds that public water systems that use groundwater are required to inform the public annually in the CCR of any uncorrected significant deficiencies or *E. coli*-positive raw groundwater (triggered or assessment) source samples. When the significant deficiency or *E. coli* situations have been corrected, the public water system must then inform the public in the CCR. If the significant deficiency or *E. coli*-positive raw groundwater source sample remains uncorrected, the system must inform the public annually in the CCR including the approved corrective action plan and schedule. No change has been made in response to these comments.

§290.117, Regulation of Lead and Copper

Comment

COA, COD, and SAWS commented concerning §290.117(e)(1) and requested clarification concerning the meaning of the language "take two samples." They asked if this a reference to the amendment to §290.117(e)(2)(B) which requires public water systems to collect samples on a quarterly basis every six months, or is it requiring that samples be collected in duplicate.

Response

The commission responds that the language specified in §290.117(e)(1), which requires public water systems to "take two samples," means that public water systems are required to collect one set of WQP samples each quarter during a six-month period at all entry points and locations within the distribution system as described in Figure: 30 TAC §290.117(e)(2) to address seasonal variability in water quality conditions to be consistent with 40 CFR §141.87. The commission further responds that the language "take two samples" refers to WQP sample collection over the six-month monitoring period. No change has been made in response to these comments.

Comment

ATI, COH, and EPA commented concerning §290.117(c)(2)(D) and requested clarification concerning the applicability reference to the EPA's LCRMR concerning reduced nine-year tap sampling. They requested that the commission replace this reference with the specific 40 CFR citation. EPA also commented that §290.117 is incorrectly cited and should reference EPA's LCRMR 40 CFR §141.86 instead of 40 CFR §141.85.

Response

The commission agrees with the comments and adopts revisions to §290.117 to reference the EPA's LCRMR as described in 40 CFR §141.86.

Comment

SAWS commented concerning §290.117(c)(2)(D)(i) - (vi) and requested that the commission allow partial waivers for reduced nine-year tap sampling.

Response

The commission respectfully disagrees with this comment concerning the allowance of partial waivers for reduced nine-year tap sampling. Because adoption of the recommended changes would go beyond the scope of the proposed rule, the commission responds that this issue may be addressed by proposing the amendment of §290.117(c)(2)(D)(i) - (vi) or other applicable rules in a future rulemaking for Chapter 290. No change has been made in response to these comments.

Comment

ATI, COA, COD, COH, SAWS, SCMA, and TRWA commented that they have concerns with §290.117(e)(1)(C) as it requires the collection of raw WQPs under the Lead and Copper Rule. They commented that commission rules should not be based on federal guidance as referenced in the March 2016 EPA *Optimal Corrosion Control Treatment Evaluation Technical Recommendations for Primacy Agencies and Public Water Systems* guidance document. They commented that commission rules should not be based on federal guidance and have concerns regarding the cost benefit of public water systems collecting WQPs from raw water sources.

Response

The commission agrees with these comments and has removed the requirement for raw water WQP sampling in §290.117(e)(1)(C) and any associated rule references.

WQPs are used for evaluation of corrosivity and treatment analysis. Proposed treatment for water stability or to reduce the aggressive nature of water is generally based on raw water chemical characteristics. The commission acknowledges that in this case, treatment analysis may be based on WQPs collected at the point of entry since the WQP data for many groundwater systems will not differ significantly between the raw water and point of entry.

Comment

ATI, COA, COD, COH, SAWS, SCMA, and TRWA commented that they have concerns with Figure: 30 TAC §290.117(e)(2) which adds total dissolved solids, sodium, sulfate, chloride, hardness, manganese, and iron to the list of WQPs a public water system must collect when conducting lead and copper monitoring. As proposed, §290.117(e)(2)(A) and (B) and (3) refer to WQP monitoring requirements established in §290.117(e)(2)(A) and (B) and (3). They commented that commission rules should not be based on federal guidance and have concerns regarding the cost benefit of public water systems collecting the additional WQPs.

Response

The commission respectfully disagrees with these comments. The commission has a duty to evaluate potential corrosivity at public water systems to ensure that lead and copper do not leach out of plumbing materials. The commission accomplishes the evaluation of potential corrosivity through the use of indices. The commission acknowledges that the additional WQPs are found in the March 2016 EPA *Optimal Corrosion Control Treatment Evaluation Technical Recommendations for Primacy Agencies and Public Water Systems* guidance document rather than rule. However, the commission's procedure to use certain indices for evaluating potential corrosivity requires the input of the additional WQPs into the indices. The commission currently requires the proposed additional WQPs for evaluation of corrosivity indices for approval of new sources and treatments under §290.117(d)(2)(E). Requiring public water systems to include these WQPs in routine monitoring will enable the public water system and the commission to ensure that corrosivity indices are not signaling a potential problem. No change was made in response to these comments.

§290.121, Monitoring Plans

Comment

ATI commented concerning §290.121(b)(3) and suggested that the statement be removed to avoid misinterpretation between Sample Siting Plan and monitoring plan requirements.

Response

The commission respectfully disagrees with the comment and responds that additional language has been included in §290.121(b)(3) to address EPA comments concerning primacy requirements. No change was made in response to the comment.

§290.122, Public Notification

Comment

SAWS commented concerning §290.122(a) concerning public notice requirements and suggested that the commission adopt the term "Tier 1" and as defined in 40 CFR Part 141, Subpart Q, to clarify wording to be more consistent with 40 CFR Part 141.

Response

The commission responds that §290.122(a) includes the reference to Tier 1 public notice. No change was made in response to the comment.

Comment

COA commented concerning §290.122(a) and asked for clarification concerning boil water notice requirements for special investigations referenced in §290.111(i)(3) and (4).

Response

The commission responds that §290.122(a) references §290.111(i)(3)(A) - (E) which establishes that a public water system is required to issue a public notice and a boil water notice if the public water system experiences one or more conditions as specified in §290.111(i)(3)(A) - (E) for an acute treatment technique violation. The commission responds that §290.122(a) also references §290.111(i)(4)(A) - (D) which establishes that a public water system using conventional filters is required to issue a public notice if the public water system experiences one or more conditions as specified in §290.111(i)(4)(A) - (D) for an acute treatment technique violation. The commission further responds that §290.122(a)(2)(A) establishes that a public water system is not required to issue a boil water notice under the conditions specified in §290.111(i)(4)(A) - (D) unless required at the discretion of the executive director due to a specific

treatment issue which may present a risk to public health. No change was made in response to the comment.

Comment

SAWS commented concerning §290.122(c)(1)(F) - (K) concerning the Unregulated Contaminant Monitoring Rule (UCMR) and requested that the commission incorporate UCMR monitoring results in the commission's Drinking Water Watch data system.

Response

The commission respectfully disagrees with this comment since it is the responsibility of the public water system to provide the UCMR results to its customers. No change was made in response to the comment.

Comment

SAWS commented concerning §290.122(c)(1)(F) - (K) and requested that this section be removed concerning Tier 1 public notice or define "other violations and situations."

Response

The commission respectfully disagrees with the comment. Unique situations may arise that require other situations be placed in a higher public notice tier based on a threat to public health. The commission is given this authority based on 40 CFR Part 141, Subpart Q, Appendix A, End Note #21. No change was made in response to the comment.

Comment

SAWS commented concerning §290.122(c)(2) and asked that "other or situations" be defined.

Response

The commission respectfully disagrees with the comment. Unique situations may arise that require other situations be placed in a higher public notice tier based on a threat to public health. The commission is given this authority based on 40 CFR Part 141, Subpart Q, Appendix A, End Note #21. No change was made in response to the comment.

Comment

COA commented concerning §290.122(c)(1)(F) and requested clarification concerning public notice requirements for public water systems that monitor for unregulated contaminants and are required to notify customers of the availability of unregulated contaminant monitoring results.

Response

The commission respectfully disagrees with the comment because 40 CFR §141.207 requires public water systems to follow the requirements for a Tier 3 public notice prescribed in 40 CFR §141.204(c), (d)(1), and (d)(3). The commission further responds that public water systems that monitor for unregulated contaminants are required to notify customers of the availability of unregulated contaminant monitoring results and are also required to notify customers if the public water system fails to provide the availability notice. No change was made in response to the comment.

§290.272, Content of the Report

Comment

ATI commented concerning §290.272(b)(1)(A) and (B) and suggested that these two terms be moved to §290.272(b)(2) which is for terms that must be defined if they appear in the report.

Response

The commission respectfully disagrees with these comments since §290.272(b)(1) is specific to definitions contained in the CCR. No change was made in response to the comment.

Comment

ATI commented concerning §290.272(d)(4) and suggested that the nontransient, noncommunity reference be removed to clarify applicability requirements.

Response

The commission agrees with this comment and has made changes to §290.272(d)(4) by removing the nontransient, noncommunity reference to clarify applicability requirements.

Comment

ATI commented concerning §290.272(h) and suggested that this language be removed and that it is more appropriate for guidance.

Response

The commission respectfully disagrees with this comment and responds that §290.272(h) has been added to be consistent with the RTCR concerning CCR requirements and provides optional language for public water systems to use in their CCR. The commission further responds that §290.272(h) establishes that if a public water system detects *E. coli* and has not violated the *E. coli* MCL, the public water system may include a statement in their CCR. The statement may specify that although the public water system has detected *E. coli,* they are not in violation of the *E. coli* MCL. No change was made in response to this comment.

EPA comments

Comment

EPA commented concerning §290.109(g)(1)(E)(i) - (vi) and requested that this amendment be moved to add amendment §290.109(i) to provide clarification concerning the applicability for the best technology, treatment techniques, or other means available for achieving compliance with the MCL for *E. coli* pursuant to 40 CFR §141.63(e).

Response

The commission agrees with this comment and adopts the amendment §290.109(i)(1) - (6) which was moved from §290.109(g)(1)(E)(i) - (vi) to address EPA comments concerning best available treatment technologies for the MCL for *E. coli.*

Comment

EPA commented concerning §290.116(a) that the commission cannot exempt these public water systems beyond GWR triggered source water monitoring requirements. EPA commented that 40 CFR §141.403(a)(3) does not allow groundwater only systems to get an exemption from the GWR treatment technique requirements related to significant deficiencies and fecal contamination. EPA commented that 40 CFR Part 141, Subpart H, means groundwater under the direct influence of surface water (GUDI), referenced in commission rules as GUI, or surface water-groundwater blended systems which are required to filter and disinfect and comply with the filtration and disinfection regulations are allowed an exemption under 40 CFR §141.403(a).

Response

The commission agrees with the comment and adopts the recommended language from EPA to ensure the rule is as stringent as the federal regulations in 40 CFR §141.400(c)(3) and §141.402(a)(5). The commission has revised §290.116(a) to include the recommended citation §290.109(d)(3)(C)(ii) which emphasizes that the samples required under this citation are included in the applicability statement that could lead to corrective actions. The commission has revised §290.116(a) to clarify that a significant deficiency identified in a portion of the distribution system served by surface water or groundwater under the influence of surface water would be exempted from the corrective action requirements of this section.

Comment

EPA commented that §290.42(c)(1) is not as stringent as the federal regulations in 40 CFR §141.70(a). EPA commented that the existing language is missing equivalent language from 40 CFR §141.70(a) and specifically omits the federal requirement that systems using groundwater under the direct influence of surface water (GUDI), referenced in commission rules as GUI, must require filtration. EPA suggested that the commission modify §290.42(c)(1) by adding the equivalent language to §290.42(c)(1).

Response

The commission agrees with the comment and adopts the recommended language from EPA to ensure the rule language is as stringent as the federal regulations. The commission adopts §290.42(c)(1) and adds the language "Groundwater under the direct influence of surface water" to the catch phrase of the subsection, and "Groundwater under the direct influence of surface water as defined in §290.38 shall be provided minimum treatment as required by the executive director under this subsection or subsection (d) of this section, as applicable."

Comment

EPA commented that the commission cannot exempt a groundwater only public water system beyond GWR triggered source water monitoring requirements. EPA commented that 40 CFR §141.403(a)(3) does not allow a groundwater only systems to get an exemption from the GWR treatment technique requirements related to significant deficiencies and fecal contamination. EPA commented that 40 CFR Part 141, Subpart H, means GUDI, referenced in commission rules as GUI, or surface water-groundwater blended systems which are required to filter and disinfect and comply with the filtration and disinfection regulations are allowed an exemption under 40 CFR §141.403(a).

Response

The commission agrees with this comment and adopts the recommended language from EPA to ensure the rule is as stringent as the federal regulations in 40 CFR §141.400(c)(3) and §141.402(a)(5). The commission adopts §290.116(a) to include the citation §290.109(d)(3)(C)(ii) and clarifies that a significant deficiency identified in an area served by a surface or groundwater under the influence of surface water portion of this distribution system, would be exempted from the corrective actions requirements of this section.

Comment

EPA commented that §290.117 incorrectly cites the federal LCRMR as described in 40 CFR §141.85. EPA commented that this should reference LCRMR as described in 40 CFR §141.86.

Response

The commission agrees that the citation is incorrectly cited in §290.117 and adopts language that references 40 CFR §141.86.

Comment

EPA commented that §290.46(f)(3)(D) is missing the recordkeeping requirements in 40 CFR §141.861(b)(2) and should be modified by adding §290.46(f)(3)(D)(xii) to include the equivalent language in 40 CFR Part 141.

Response

The commission agrees with the comment and adopts the recommended language by adding §290.46(f)(3)(D)(xii) which specifies that any record of a repeat sample that meets the criteria for an extension to the 24-hour sample collection requirement be maintained for five years.

Comment

EPA commented that §290.46(f)(3)(D)(x) does not clarify that the assessment form must be maintained for recordkeeping purposes regardless of who conducts the assessment per 40 CFR §141.861(b)(1). They request the commission modify §290.46(f)(3)(D)(x) to include equivalent language in 40 CFR §141.861(b)(1).

Response

The commission agrees with the comment and adopts the recommended language in §290.46(f)(3)(D)(x) to ensure it is as stringent as federal regulations in 40 CFR §141.861(b)(1) by requiring documentation of assessments and the accompanying corrective actions, no matter who completes the assessment, be maintained for five years.

Comment

EPA commented that §290.46(q)(5)(A) - (C) is required in order to be consistent with the federal regulations to ensure the commission has specific authority to implement corrective actions and expedited actions as required in 40 CFR §142.16(q)(2). They commented that the commission must have authority specific enough to allow the commission to require correction of conditions that have the potential for causing the introduction of contamination into the water delivered to consumers. They commented that the commission must have authority to require expedited actions to address any areas of concern from the assessment and to require correction of all sanitary defects, including when the sanitary defect(s) does not rise to the level of imminent and substantial endangerment. They commented that this includes commission authority to require expedited actions such as boil water notices. They commented that boil water notices are a Tier 1 public notice that is also re-emphasized in 40 CFR Part 141, Subpart Q, Appendix A, End Note #20 and End Note #21, and the commission must have the authority and equivalent regulatory citations to require a Tier 1 public notice under 40 CFR §141.202(a) for situations that do not meet the definition of a waterborne disease outbreak in 40 CFR §141.2, but that still have the potential to have serious adverse effects on health as a result of short-term exposure. They commented that primacy agencies may place other situations in any tier they believe appropriate based on a threat to public health.

Response

The commission agrees with this comment and adopts revisions to §290.46(q)(5)(A) - (C) to ensure that the executive director has the necessary authority to require correction of conditions that have the potential for causing the introduction of contamina-

tion into the water delivered to consumers as well as to require expedited actions to address any areas of concern from the assessments and to require correction of all sanitary defects.

Comment

EPA commented that language should be added to community and noncommunity public water systems in Figure: 30 TAC §290.47(c)(1) to ensure that the commission's regulations are as stringent as the federal requirements in 40 CFR §141.205(a)(4), (9), and (10) and (c)(2)(i).

Response

The commission agrees with the comment and adopts revisions to Figure: 30 TAC §290.47(c)(1) and (2) to ensure the figures include all of the required federal language in 40 CFR §141.205(a)(4), (9), (10) and (c)(2)(i).

Comment

EPA commented that language should be added to the Figure: 30 TAC §290.47(c)(2) to ensure the commission's regulations are as stringent as the federal requirements in 40 CFR §141.205(a)(4), (9), and (10) and (c)(2)(i).

Response

The commission agrees with the comment and adopts revisions to Figure: 30 TAC §290.47(c)(2) to ensure the figure includes all of the required federal language in 40 CFR §141.205(a)(4), (9), and (10) and (c)(2)(i).

Comment

EPA commented that language should be added to Figure: 30 TAC §290.47(c)(3) to ensure the commission's regulations are as stringent as the federal requirements in 40 CFR §141.205(c)(2)(i).

Response

The commission agrees with the comment and adopts revisions to figure: 30 TAC §290.47(c)(3) to ensure the figure includes all of the required federal language found in 40 CFR §141.205(c)(2)(i).

Comment

EPA suggested language be added to §290.102(b) to clarify the commission regulations that are prohibited from receiving a variance. The EPA commented that §290.102(c) is not as stringent as the federal regulations in 40 CFR §141.4(b) and §142.304(a). EPA stated the rules should include language prohibiting small system variances for rules addressing microbial contaminants such as treatment technique requirements under various other rules including the RTCR (assessments and corrective actions treatment technique requirements) and the GWR source water triggered monitoring and correction of significant deficiencies.

Response

The commission agrees with this comment and adopts revisions to §290.102(b)(4) to include the EPA's language in 40 CFR §141.4(b) and §142.304(a) which prohibits system variances for rules addressing microbial contaminants.

Comment

EPA commented that §290.109(c)(2)(B), (3)(C)(i), and (D)(i) is not as stringent as the federal regulations in 40 CFR §§141.854(a)(3), 141.855(a)(3), 141.856(a)(3), 141.857(a)(3), and 141.859(b)(3)(i) and (4)(i). Specifically, the commission's rule is missing the language that specifies when the treatment technique trigger determination must be made. They commented that the rule is missing the federal requirement that public water systems must describe in the assessment form specific items such as sanitary defects detected, corrective actions completed, and a proposed timetable for any corrective actions not already completed.

Response

The commission agrees with this comment and adopts revisions to §290.109(c)(2)(B), (3)(C)(i) and (iii), and (D)(i) - (iii) to include the EPA's suggested language to clarify the federal requirements in 40 CFR §§141.854(a)(3), 141.855(a)(3), 141.856(a)(3), 141.857(a)(3), and 141.859(b)(3)(i) and (4)(i). The commission's adopted revisions describe when a public water system must make a treatment technique trigger determination and the requirement that public water systems must describe in the assessment form specific items such as sanitary defects detected, corrective actions completed, and a proposed timetable for any corrective actions not already completed including expedited corrective actions when there is a potential for an acute health risk.

Comment

EPA commented that §290.109(c)(3)(A) does not clarify the requirements to ensure that the Level 2 assessor's training is more comprehensive than the Level 1 assessor's training. EPA commented that the language concerning qualifications or training of a Level 1 and Level 2 assessor must clearly delineate the difference between these two types of assessor criteria.

Response

The commission agrees with this comment and adopts revisions to §290.109(c)(3)(A)(i) to clarify the training requirements for assessors and includes the addition of §290.109(c)(3)(A)(iii) which establishes that the executive director may require additional training or certifications for Level 1 assessors when Level 1 assessments have been determined by the executive director to be insufficient or inadequate.

The commission further responds that Level 1 and Level 2 assessors shall also complete any additional training required by the executive director and specifically, the commission is developing an advanced level of training for Level 2 assessors.

Comment

EPA commented that §290.109(c)(3)(B) is not as stringent as the federal regulations in 40 CFR §141.859(b)(1). EPA commented specifically, that it is a public water system requirement to ensure the Level 1 and Level 2 assessments are conducted to identify the possible presence of sanitary defects.

Response

The commission agrees with the comment and adopts revisions to §290.109(c)(3)(B)(viii) to describe the purpose of the assessment is to identify the possible presence of sanitary defects.

Comment

EPA commented that §290.109(c)(3)(C)(i) and (D)(i) is not as stringent as the federal regulations in 40 CFR §§141.854(a)(3), 141.855(a)(3), 141.856(a)(3), 141.857(a)(3), and 141.859(b)(3)(i) and (4)(i). EPA commented that the commission's rule is missing the language that specifies when the treatment technique trigger determination must be made. Also, the EPA commented that commission's rule must ensure that

both the Level 1 and Level 2 assessments and the associated assessment forms are completed and submitted. EPA commented that the rule is missing the federal requirement that public water systems must describe in the assessment form specific items such as sanitary defects detected, corrective actions completed, and a proposed timetable for any corrective actions not already completed.

Response

The commission agrees with this comment and adopts revisions to §290.109(c)(3)(D) to specify when the treatment technique trigger determination must be made and that both the Level 1 and Level 2 assessment and the associated assessment forms are completed and submitted with a description of the sanitary defects detected, corrective actions completed, and a proposed timetable for any corrective actions not already completed.

Comment

EPA commented that §290.109(c)(2)(B), (3)(C)(i), and (D)(i) is not as stringent as the federal regulations in 40 CFR §§141.854(a)(3), 141.855(a)(3), 141.856(a)(3), 141.857(a)(3), and 141.859(b)(3)(i) and (4)(i). EPA commented specifically, that the commission's rule is missing the language that specifies when the treatment technique trigger determination must be made. EPA commented that the rule is missing the federal requirement that must describe in the assessment form specific items such as sanitary defects detected, corrective actions completed, and a proposed timetable for any corrective actions not already completed.

Response

The commission agrees with this comment and adopts revisions to §290.109(c)(3)(C) and (D) to include the EPA's suggested language to clarify the federal requirements in 40 CFR §141.857(a)(3), §§141.854(a)(3), 141.855(a)(3), 141.856(a)(3), 141.857(a)(3), and 141.859(b)(3)(i) and (4)(i). The revisions describe the requirements for completing the assessment forms.

Comment

EPA commented that §290.109(c)(3)(D)(ii) should be modified to be consistent with federal regulations to specify that if the commission requires revisions to an assessment after consultation with the public water system, the system must submit a revised assessment form to the commission on an agreed-upon schedule not to exceed 30 days from the date of consultation.

Response

The commission agrees with the comment and adopts revisions to §290.109(c)(3)(D)(ii) to specify the time frame for a public water system to submit revisions to the assessment forms.

Comment

EPA commented that §290.109(d)(3) is not as stringent as the federal regulations in 40 CFR §141.853(c) and §141.858(A)(5). EPA commented specifically, that the commission does not have regulations concerning invalidated repeat samples not being able to be counted towards the minimum monitoring requirements of the RTCR. EPA commented that the commission does not have regulations concerning compliance samples that are not invalidated, must be used to determine a coliform treatment technique trigger or to determine an *E. coli* MCL violation.

Response

The commission agrees with this comment and adopts §290.109(d)(2)(E) to establish that unless the executive director has invalidated a coliform-positive sample all routine coliform sample results must be used to determine compliance with determining treatment technique triggers and assessment requirements. The commission further responds that it has adopted §290.109(d)(3)(F) to describe that an invalidated repeat sample does not counted towards meeting the minimum monitoring requirements of the RTCR and compliance samples that are not invalidated, must be used to determine compliance with coliform treatment technique trigger and/or *E. coli* MCL violations.

Comment

EPA commented that §290.109(g)(9) and (10) is not as stringent as the federal regulations in 40 CFR §141.858(5) because not all repeat coliform samples are distribution samples. EPA suggested that the commission delete §290.109(g)(9) and (10) and include the suggested changes in §290.109(d)(2)(E) and (3)(F). EPA commented that the commission has allowed some RTCR - GWR dual compliance repeat samples to be collected at the groundwater raw well site and has not applied the required invalidation criteria to these samples.

Response

The commission agrees with this comment and instead of deleting the amendments in §290.109(g)(9) and (10), the commission adopts revisions to §290.109(g)(9) and (10) to specify that the invalidation criteria is applied to groundwater source samples.

Comment

EPA commented that §290.109(d)(3)(A) is missing the equivalent federal language in 40 CFR §141.853(a)(3). EPA commented specifically, that the minimum number of both routine samples and repeat samples must be collected even if there is an *E. coli* MCL violation or an RTCR treatment technique trigger.

Response

The commission agrees with this comment and adopts revisions to §290.109(d)(3)(A) to ensure the adopted language is equivalent to the required federal language in 40 CFR §141.853(a)(3) to specify that the minimum number of both routine samples and repeat samples must be collected even if there is an *E. coli* MCL violation or an RTCR treatment technique trigger.

Comment

EPA commented that §290.109(d)(3)(C) is missing the equivalent federal language in 40 CFR §141.853(a)(5) specifying that if a total coliform-positive sample is at the end of the distribution system, or one service connection away from the end of the distribution system, the system must still take all required repeat samples and the commission may allow an alternative sampling location.

Response

The commission agrees with this comment and adopts revisions to §290.109(d)(3)(C) to ensure the adopted language is equivalent to the required federal language in 40 CFR §141.853(a)(5) which specifies that if a positive routine sample was collected at the end of the distribution system, or one service connection away from the end of the distribution system, {line} one repeat sample must be collected at that point and the other two repeat samples must be collected within five connections upstream of that point.

Comment

EPA commented that §290.109(d)(3)(C)(ii) and (4)(B)(iii) is not as stringent as the federal regulations in 40 CFR §141.402(a)(2)(iv) and §141.853(a)(5)(ii). EPA commented that the commission cannot allow groundwater systems with one well and serving fewer than 1,000 persons to use one of the repeat samples as both an RTCR repeat and GWR triggered raw source monitoring sample unless all of the following requirements are met: 1) the fecal indicator used is *E. coli* 2) the commission has provided written approval for the public water system to use of a single sample for meeting both the GWR triggered raw water monitoring and RTCR repeat monitoring requirements, and 3) the public water system's Sample Siting Plan remains representative of water quality in the distribution system.

Response

The commission agrees with the comment and adopts revisions to §290.109(d)(4)(B)(iii) to ensure the adopted language is equivalent to the federal language in 40 CFR §141.402(a)(2)(iv) and §141.853(a)(5)(ii) to establish the requirements that a groundwater system with one well serving 1,000 people or fewer may use one of the three required repeat samples collected from a raw groundwater source to meet both the repeat and triggered raw source monitoring requirements.

Comment

EPA commented that §290.109(d)(3)(D) is not as stringent as the federal regulations in 40 CFR §141.858(a)(1). EPA commented specifically that the commission is missing the citation that says the commission cannot waive the requirement for a public water system to collect repeat samples.

Response

The commission agrees with the comment and adopts revisions to §290.109(d)(3)(D) to ensure the adopted rule language is as stringent as the federal regulations in 40 CFR §141.858(a)(1) to establish that the commission cannot waive the requirement for a public water system to collect repeat samples.

Comment

EPA commented that §290.109(d)(3) is not as stringent as the federal regulations in 40 CFR §141.853(c). EPA commented specifically that the commission does not have regulations concerning invalidated repeat samples not being able to be counted towards the minimum monitoring requirements of the RTCR.

Response

The commission agrees with the comment and adopts added §290.109(d)(3)(F) to ensure the adopted language is as stringent as the federal regulations in 40 CFR §141.853(c).

Comment

EPA commented that §290.109(d)(4)(B)(i) is not as stringent as the federal regulations in 40 CFR §141.402(a)(1)(i). EPA commented that the federal regulations specify that in the case of an extension, the commission must specify how much time the system has to collect the sample.

Response

The commission agrees with this comment and adopts revisions to §290.109(d)(4)(B)(i) to ensure the adopted language is as stringent as the federal regulations in 40 CFR §141.402(a)(1)(i) which specifies the timeframe of the extension given to public water systems to complete sampling due to special circumstances.

Comment

EPA commented that the commission must add rule language to be consistent with federal regulations in 40 CFR §141.854(c)(2) and §141.855(c)(2) which requires the State to perform a special monitoring evaluation during each sanitary survey for community and noncommunity public water systems serving 1,000 or fewer people using only groundwater, to review the status of the system including the distribution system, and to determine whether the system is on an appropriate monitoring schedule. EPA commented that the special monitoring evaluation is required even when the required RTCR routine monitoring frequency is monthly.

Response

The commission agrees with the comment and adopts revisions to §290.109(d)(6)(A) to be consistent with the federal regulations in 40 CFR §141.854(c)(2) and §141.855(c)(2) requiring the commission to conduct special monitoring evaluations.

Comment

EPA commented that §290.109(e) is not as stringent as the federal regulations in 40 CFR §141.402(a)(2)(iv) and §141.852(b) EPA commented specifically, that the commission is missing the statement that the public water system must use a laboratory certified for each method and associated contaminants used for compliance monitoring analyses under the RTCR. EPA commented that laboratories can be certified but not for a specific method, and therefore, the commission regulations must specify that the lab is certified and that the lab uses the appropriate certified method.

Response

The commission agrees with the comments and adopts revisions to §290.109(e) to be as stringent as the federal regulations in 40 CFR §141.402(a)(2)(iv) to specify that public water systems must use a laboratory certified for each method and associated contaminants used for compliance monitoring analyses under the RTCR.

Comment

EPA commented that §290.109(e)(1)(B) is not as stringent as the federal regulations in 40 CFR §141.402(a)(1)(iii) and §141.853(c)(1)(ii). EPA commented that the federal regulations only allow invalidation of a total coliform-positive sample result as specified in 40 CFR §141.853(c)(1)(i) - (iii) and (2). EPA commented that §290.109(e)(1)(B) is missing federal language that says the State cannot invalidate a total coliform-positive sample on the basis that all the repeat samples are total coliform-negative or if the system has only one service connection as specified in 40 CFR §141.853(c)(1)(ii).

Response

The commission agrees with this comment and adopts revisions to §290.109(e)(1)(B) to be as stringent as the federal regulations in 40 CFR §141.853(c)(1)(ii) which specifies prohibitions on the invalidation of total coliform-positive samples.

Comment

EPA commented that §290.109(e)(1)(C) is not as stringent as the federal regulations in 40 CFR §141.402(a)(1)(iii) and §141.853(c)(1)(i) - (iii) and (2). The federal regulations only

allow invalidation of a total coliform-positive sample result as specified in 40 CFR §141.853(c)(1)(i) - (iii) and (2). EPA commented that §290.109(e)(1)(C) is missing the federal language that says the State cannot invalidate a total coliform-positive sample unless the written documentation is approved and signed by the State per 40 CFR §141.853(c)(1)(iii).

Response

The commission agrees with the comment and adopts revisions to §290.109(e)(1)(C) to be as stringent as the federal regulations in 40 CFR §141.853(c)(1)(iii) requiring written approval for the invalidation of a total coliform-positive sample.

Comment

EPA commented that §290.109(e)(1)(D) is not as stringent as the federal regulations in 40 CFR §141.402(a)(1)(iii) and §141.853(c)(1)(i) - (iii) and (2). EPA commented that the federal regulations only allow invalidation of a total coliform-positive sample result as specified in 40 CFR §141.853(c)(1)(i) - (iii) and (2). EPA commented specifically that the commission's rules allow the invalidation of a total coliform-positive sample result that is not allowed by the federal regulations in 40 CFR Part 141.

Response

The commission agrees with the comment and adopts revisions to §290.109(e)(1)(D) to be as stringent as the federal regulations in 40 CFR §141.402(a)(1)(iii) and §141.853(c)(1)(i) - (iii) and (2) specifying when a public water system must resample based on an invalidation of a sample from the laboratory.

Comment

EPA commented that §290.109(g) is not as stringent as the federal regulations in 40 CFR §141.860(d)(2) because it is missing the citation that deems failure to notify the State about an *E.coli*-positive is a reporting violation.

Response

The commission agrees with the comment and adopts added §290.109(g)(16) to be consistent with the federal regulations in 40 CFR §141.860(d)(2) to specify *E. coli*-positive reporting violations.

Comment

EPA commented that §290.109(g)(11) is not as stringent as the federal regulations in 40 CFR §141.853(b). EPA commented specifically, that the commission regulations are missing the requirement that prohibits special purpose samples from being used to determine whether the coliform treatment technique trigger has been exceeded.

Response

The commission agrees with the comment and adopts revisions to §290.109(g)(11) to specify that special purpose samples shall not be used to determine whether the coliform treatment technique trigger has been exceeded as described in §290.109(c) of this section. Coliform samples taken in accordance to §290.109(d)(3) that are not invalidated under §290.109(e) are not considered special purpose samples.

Comment

EPA commented that §290.109(g)(12) is incomplete and missing part of the federal regulations specified in 40 CFR §141.861(a)(5). EPA requested that §290.109(g)(12) be modified to incorporate the federal language.

Response

The commission agrees with these comments and adopts revisions to §290.109(g)(12) by adopting additional language to be consistent with the federal regulations in 40 CFR §141.861(a)(5) to specify that a seasonal public water system must certify with the executive director that the system has completed executive director-approved start-up procedures prior to serving water to the public.

Comment

EPA commented that §290.109(h) is missing the public notification requirements in 40 CFR §141.205(d) as required by 40 CFR Part 141, Subpart Q, Appendix B, Contaminant 1h. EPA commented that the commission should modify the reference in §290.122(a)(1)(F) by removing §290.109(b)(3).

Response

The commission agrees with the comment and adopts added §290.109(h)(8) to be consistent with the federal regulations in 40 CFR §141.205(d) and has replaced the reference in §290.122(a)(1)(F) with §290.109(h)(2) instead of §290.109(b)(3).

Comment

EPA commented that §290.109(h)(5) is not as stringent as the federal regulations in 40 CFR §141.861(a)(1)(i). EPA commented specifically, that the commission has an after-hours phone line and/or an alternative notification procedure for public water systems to use to notify the commission of *E. coli* MCL violations, and therefore, public water systems must notify the commission by the end of the day and not the end of the next business day when an *E. coli* MCL or *E. coli*-positive sample result occurs.

Response

The commission agrees with the comment and adopts revisions to §290.109(h)(3) and (5) to ensure the consistency with the federal regulations in 40 CFR §141.861(a)(1)(i) to specify that a public water system must notify the executive director of an *E. coli* violation by the end of the day.

Comment

EPA commented that §290.109(h)(7) is inaccurately written. EPA commented specifically, that a treatment technique violation occurs when the treatment technique trigger requirements are not met. EPA suggested that the commission revise the language to be equivalent to the federal language in 40 CFR §141.861(a)(2).

Response

The commission agrees with the comment and adopts revisions to §290.109(h)(7) to be consistent with the federal regulations in 40 CFR §141.861(a)(2) to specify that a treatment technique violation occurs when the treatment technique trigger requirements are not met.

Comment

EPA commented that §290.110(c)(4)(D) is not as stringent as the federal regulations and is missing equivalent federal language in 40 CFR §141.74(b)(6)(i) and (c)(3)(i) and §141.132(c)(1)(i).

Response

The commission agrees with the comment and adopts revisions to §290.110(c)(4)(D) to be consistent with the federal regulations

in 40 CFR §141.74(b)(6)(i) and (c)(3)(i), and §141.132(c)(1)(i) to specify that monitoring for disinfectant residual must take place at the same site and time as the bacteriological monitoring.

Comment

EPA commented that §290.119(a) is not as stringent as the federal regulations in 40 CFR §141.852(b). EPA commented that Chapter 25, Subchapter C, uses laboratory conformance standards referenced in an EPA lab manual that is several editions and several supplemental editions out of date. EPA suggested that the commission modify the language in §290.119(a)(1) to be as stringent as the federal regulations in 40 CFR §141.852(b).

Response

The commission agrees with the comment and adopts revisions to §290.119(a)(1) to be as stringent as the federal regulations in 40 CFR §141.852(b) by updating laboratory conformance standards.

Comment

EPA commented that §290.119(b)(1) is missing the equivalent federal language in 40 CFR §141.852(b) and (c). EPA commented that 40 CFR §141.852(c) has numerous analytical method reference materials that the commission has not adopted. EPA suggested that the commission modify the language in §290.119(b)(1) to be as stringent as the federal regulations in 40 CFR §141.852(c).

Response

The commission agrees with the comment and adopts revisions to §290.119(b)(1) to be as stringent as the federal regulations in 40 CFR §141.852(c) by referencing that samples used to determine compliance must be analyzed by a laboratory accredited by the executive director in accordance with Chapter 25, Subchapters A and B using acceptable analytical methods as specified in §290.119(b).

Comment

EPA commented that §290.121 is missing the equivalent federal language in 40 CFR §141.853(a)(1). EPA commented specifically, that the RTCR Sample Siting Plan must also have any sampling points necessary to meet the requirements of the GWR. EPA commented that the federal regulation requires the GWR sites as part of the RTCR Sample Siting Plan to better assist public water systems and the State with determining the cause of any sanitary defects. EPA commented that the cross-references in §290.121(b)(3) are incomplete and do not ensure federal stringency with Sample Siting Plan requirements in 40 CFR §141.853(a)(1). EPA suggested that the commission revise §290.121(b)(3) to include the commission's existing language that is located in various sections of the commission's rules, and consolidate it in one section with corrected citations for clarity and federal stringency requirements.

Response

The commission agrees with the comment and adopts revisions in §290.121(b)(3) to be as stringent as the federal regulations in 40 CFR §141.853(a)(1) and to specify that the required sample sites must be included in the public water system's Sample Siting Plan.

Comment

EPA commented that the commission's regulations are inadequate because in the event of a waterborne emergency, the commission's regulations do not require the executive director to make the declaration that the situation poses an acute health risk for the public water system to be required to issue a Tier 1 public notice. EPA commented that in the event of a waterborne emergency, the situation only has to have the potential for an acute health risk and does not have to actually pose an acute health risk for a Tier 1 public notice to be required. EPA commented that §290.122(a)(1) is missing equivalent federal language in 40 CFR Part141, Subpart Q, Appendix A, of the Table Line IV. E. and 40 CFR Part 141, Subpart Q, Appendix A, End Note #20. EPA suggested the commission modify language in §290.122(a)(1)(G) to be consistent with the federal regulations.

Response

The commission agrees with the comment and adopts revisions to §290.122(a)(1)(G) to be consistent with federal regulations in 40 CFR Part 141, Subpart Q, Appendix A, by specifying other situations that have the potential to have serious adverse effects on health as a result of short-term exposure.

Comment

EPA commented that the commission must have the authority to require other situations to be placed in a higher public notification tier based on a threat to public health, including situations that do not constitute an acute public health threat. EPA suggested that the commission add §290.122(a)(1)(H) to ensure the executive director has the authority to require a Tier 1 public notice when necessary.

Response

The commission agrees with the comment and adopts revisions to add §290.122(a)(1)(H) to ensure the executive director has the authority to require a Tier 1 public notice when necessary.

Comment

EPA commented that §290.122(b)(1)(E) is not as stringent as the federal regulations in 40 CFR Part 141, Subpart Q, Appendix A, End Note #21. EPA suggested that the commission modify §290.122(b)(1)(E) to ensure it is as stringent as the federal regulations.

Response

The commission agrees with the comment and adopts revisions to §290.122(b)(1)(E) to be as stringent as the federal regulations in 40 CFR Part 141, Subpart Q, Appendix A, to specify that the executive director can require a Tier 1 public notice for other situations or violations that are deemed by the executive director to have significant potential to have serious adverse effects on human health as a result of short-term exposure.

Comment

EPA commented that §290.122(b)(1)(F) should be added to ensure consistency with the federal regulations, 40 CFR Part 141, Subpart Q, Appendix A, Table Lines I. A. 1b and 1c. EPA suggested that the commission modify language in §290.122(b)(1) to include public notice Tier 2 criteria for treatment technique violations under the RTCR. EPA also suggested that the commission modify language in §290.122(b)(1) to ensure that the rule is as stringent as the federal regulations.

Response

The commission agrees with the comment and adopts revisions to add §290.122(b)(1)(F) to ensure it is as stringent as the federal regulations in 40 CFR Part 141, Subpart Q, Appendix A, to

specify the public notice requirements for the failure to conduct Level 1 or Level 2 assessments and associated corrective/expedited action(s) or seasonal start-up procedures.

Comment

EPA commented that §290.122(c)(1) is not as stringent as the federal regulations in 40 CFR §141.204(a)(6). EPA suggested that the commission modify §290.122(c)(1) to make it as stringent as the federal regulations in 40 CFR §141.204(a)(6).

Response

The commission agrees with the comment and adopts added §290.122(c)(1)(L) to ensure that the adopted rule is as stringent as the federal regulations in 40 CFR §141.204(a)(6) by specifying that public notice is required for failure to maintain records for seasonal start-up procedures and seasonal start-up procedures certification form(s).

Comment

EPA commented that the commission modify §290.122(c)(1)(H) to include the corrective actions required even if the corrective actions are not completed because the CCR requirements require standard language that describes how many corrective actions were not completed.

Response

The commission agrees with the comment and adopts revisions to §290.122(c)(1)(H) to specify the requirement for documentation of corrective actions that are required but have not been completed.

Comment

EPA commented that §290.122(d) is not as stringent as the federal regulations in 40 CFR §141.205(d)(1) and Part 141, Subpart Q, Appendix A, End Note #19, because the commission has omitted the language for violations of the condition of a variance or exemption. EPA suggested that the commission modify §290.122(d) to be as stringent as the federal regulations.

Response

The commission agrees with the comment and adopts revisions to §290.122(d)(3)(A) to ensure the adopted rule is as stringent as the federal regulations in 40 CFR §141.205(d)(1) and Part 141, Subpart Q, Appendix A.

Comment

EPA commented that §290.122(d)(8) is not as stringent as the federal regulations in 40 CFR §141.205(d)(3) because it has omitted the language to encourage distribution of the public notice to all persons served.

Response

The commission agrees with the comment and adopts revisions to §290.122(d)(8) to ensure that the adopted rule is as stringent as the federal regulations in 40 CFR §141.205(d)(3) to establish that public water systems shall provide distribution of the public notice to all persons served and to those who might not have received the public notice.

Comment

EPA commented that §290.272(g)(9) is not as stringent as the federal regulations in 40 CFR §141.153(h)(7)(i). EPA suggested that the commission revise §290.272(g)(9) to ensure that the language is equivalent to the federal regulations in 40 CFR §141.153(h)(7)(i).

Response

The commission agrees with the comment and adopts revisions to §290.272(g)(9) to ensure the adopted rule is as stringent as the federal regulations in 40 CFR §141.153(h)(7)(i) to ensure a public water system includes required elements regarding any RTCR assessments performed by the public water system in their CCR.

Comment

EPA commented that §290.272(g)(10) is not as stringent as the federal regulations in 40 CFR §141.153(h)(7)(ii). EPA suggested that the commission revise §290.272(g)(10) to ensure that language is equivalent to the federal regulations in 40 CFR §141.153(h)(7)(ii).

Response

The commission agrees with the comment and adopts revisions to §290.272(g)(10) to ensure that the adopted rule is as stringent as the federal regulations in 40 CFR §141.153(h)(7)(ii) which specifies the required language for any applicable treatment technique triggers, failures to complete assessments, and failure to correct identified sanitary defects required in a public water system's CCR.

Comment

EPA commented that Figure: 30 TAC §290.275(2) (Appendix B) is not as stringent as the federal regulations. EPA suggested that the commission include the contaminants: *E. coli* and total coliform MCL units in CCR.

Response

The commission agrees with the comment and adopts the revisions to Figure: 30 TAC §290.275(2) (Appendix B) by including the *E. coli* and total coliform MCL units and deleting the reference to fecal coliform.

Comment

EPA commented that Figure: 30 TAC §290.275(2) (Appendix B) is not as stringent as the federal regulations in 40 CFR §141.52(a)(3) and (6). EPA suggested that the commission update the graphic to include *Legionella* and *Cryptosporidium* MCLG units in CCR.

Response

The commission agrees with the comments and adopts the revisions Figure: 30 TAC §290.275(2) (Appendix B) to include *Legionella* and *Cryptosporidium* MCL and MCLG units.

SUBCHAPTER D. RULES AND REGULATIONS FOR PUBLIC WATER SYSTEMS

30 TAC §§290.38, 290.42, 290.46, 290.47

Statutory Authority

These amendments are adopted under the Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; TWC, §5.103, which establishes the commission's general authority to adopt rules; TWC, §5.105, which establishes the commission's authority to set policy by rule; Texas Health and Safety Code

(THSC), §341.031, which allows the commission to adopt rules to implement the federal Safe Drinking Water Act, 42 United States Code, §§300f - 300j-26; and THSC, §341.0315, which requires public water systems to comply with commission rules adopted to ensure the supply of safe drinking water.

§290.42. Water Treatment.

(a) Capacity and location.

(1) Based on current acceptable design standards, the total capacity of the public water system's treatment facilities must always be greater than its anticipated maximum daily demand.

(2) The water treatment plant and all pumping units shall be located in well-drained areas not subject to flooding and away from seepage areas or where the groundwater water table is near the surface.

(A) Water treatment plants shall not be located within 500 feet of a sewage treatment plant or lands irrigated with sewage effluent. A minimum distance of 150 feet must be maintained between any septic tank drainfield line and any underground treatment or storage unit. Any sanitary sewers located within 50 feet of any underground treatment or storage unit shall be constructed of ductile iron or polyvinyl chloride (PVC) pipe with a minimum pressure rating of 150 pounds per square inch (psi) and have watertight joints.

(B) Plant site selection shall also take into consideration the need for disposition of all plant wastes in accordance with all applicable regulations and state statutes, including both liquid and solid wastes, or by-product material from operation and/or maintenance.

(3) Each water treatment plant shall be located at a site that is accessible by an all-weather road.

(b) Groundwater.

(1) Disinfection facilities shall be provided for all groundwater supplies for the purpose of microbiological control and distribution protection and shall be in conformity with applicable disinfection requirements in subsection (e) of this section and in a manner consistent with the requirements of §290.110 of this title (relating to Disinfectant Residuals).

(2) Treatment facilities shall be provided for groundwater if the water does not meet the drinking water standards. The facilities provided shall be in conformance with established and proven methods.

(A) Filters provided for turbidity and microbiological quality control shall be preceded by coagulant addition and shall conform to the requirements of subsection (d)(11) of this section. Filtration rates for iron and manganese removal, regardless of the media or type of filter, shall be based on a maximum rate of five gallons per minute per square foot (gpm/sq ft).

(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.

(D) If reverse osmosis or nanofiltration membrane systems are used, the design shall conform to the requirements in paragraph (9) of this subsection.

(3) Any proposed change in the extent of water treatment required will be determined on the basis of geological data, well construction features, nearby sources of contamination, and on qualitative and quantitative microbiological and chemical analyses.

(4) Appropriate laboratory facilities shall be provided for controls as well as to check the effectiveness of disinfection or any other treatment processes employed.

(5) All plant piping shall be constructed to minimize leakage.

(6) All groundwater systems shall provide sampling taps for raw water, treated water, and at a point representing water entering the distribution system at every entry point.

(7) Air release devices shall be installed in such a manner as to preclude the possibility of submergence or possible entrance of contaminants. In this respect, all openings to the atmosphere shall be covered with 16-mesh or finer corrosion-resistant screening material or an equivalent acceptable to the executive director.

(8) The executive director may require 4-log removal or inactivation of viruses based on raw water sampling results required by §290.116 of this title (relating to Groundwater Corrective Actions and Treatment Techniques).

(9) Reverse osmosis or nanofiltration membrane systems used for the treatment of primary and secondary contaminants defined in Subchapter F of this chapter (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems), must meet the design criteria in subparagraphs (A) - (L) of this paragraph.

(A) The design for all reverse osmosis and nanofiltration membrane systems must be in accordance with the findings of the engineering report. Variations from the engineering report must be explained and shall not compromise public health. Minimum engineering report requirements are found in §290.39(e)(1) and (6) of this title (relating to General Provisions).

(B) The reverse osmosis and nanofiltration membrane systems must be designed to ensure adequate cleaning of the membrane system.

(C) The reverse osmosis or nanofiltration membrane systems must be designed to operate at flux rates which assure effective filtration at all times based on at least one of the following:

(i) manufacturer's computer models for new and end-of-life membranes;

(ii) site-specific pilot study;

(iii) comparable design data from an alternative site; or

(iv) the manufacturer's allowable operating parameters, if the membrane unit's capacity is rated less than 300 gallons per minute.

(D) Pretreatment shall be provided such that the feed water quality to the membrane units shall meet the minimum allowable requirements of the membrane manufacturer. Pretreatment processes shall be sized correctly for the flow of the plant, and the components and chemicals used for pretreatment in contact with the water must conform to American National Standards Institute/NSF International (ANSI/NSF) Standard 60 for Drinking Water Treatment Chemicals or ANSI/NSF Standard 61 for Drinking Water System Components. Other pretreatment processes will be reviewed on an individual basis in accordance with the innovative/alternate treatment require-

ments specified in subsection (g) of this section. Acceptable pretreatment techniques include:

(i) bags, cartridge filters, or screens for particulate removal;

(ii) chemical addition that will not adversely affect the reverse osmosis or nanofiltration membrane;

(iii) filters for iron and manganese removal in accordance with paragraph (2)(A) of this subsection;

(iv) aeration or degasification; and

(v) ion exchange softening.

(E) The treatment plant must include post-treatment facilities for corrosivity control, re-mineralization and the removal of dissolved gases, such as carbon dioxide and hydrogen sulfide, if necessary to meet the system's water quality goals. The treatment must be sized correctly for the flow of the plant, and the components and chemicals used for treatment must conform to ANSI/NSF Standard 60 for Drinking Water Treatment Chemicals or ANSI/NSF Standard 61 for Drinking Water System Components.

(F) Pipes and pipe galleries shall meet the minimum requirements specified in subsection (d)(12) and (13) of this section.

(G) Each reverse osmosis or nanofiltration membrane unit shall be equipped to measure conductivity or total dissolved solids in the feed and the permeate water.

(H) Chemical storage and chemical feed facilities shall comply with subsection (f) of this section.

(I) Provide cross-connection protection for common piping used for cleaning and normal production modes.

(J) Provide flow meters on the pipes for feed, permeate, and concentrate water. 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.

(K) The water system must provide pressure measuring and recording devices before and after each membrane stage.

(L) The water system must provide equipment to monitor the temperature of the water. The temperature of the water must be measured using a thermometer or thermocouple with a minimum accuracy of plus or minus 0.5 degrees Celsius.

(c) Groundwater under the direct influence of surface water, 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 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. Groundwater under the direct influence of surface water, as defined in §290.38 of this title (relating to Definitions), shall be provided minimum treatment as required by the executive director under this subsection or subsection (d) of this section, as applicable. Minimum treatment shall consist of coagulation with direct filtration and adequate disinfection. In all cases, the treatment process shall be designed to achieve at least a 2-log removal of *Cryptosporidium* oocysts, a 3-log removal or inactivation of *Giardia* cysts, and a 4-log removal or inactivation of viruses before the water is supplied to any consumer. The executive director may require additional levels of treatment in cases of poor source water quality. Based on raw water monitoring results, the executive director may require additional levels of treatment for *Cryptosporidium* treatment as specified in §290.111 of this title (relating to Surface Water Treatment).

(A) Filters provided for turbidity and microbiological quality control shall conform to the requirements of subsection (d)(11) of this section.

(B) All processes involving exposure of the water to atmospheric contamination shall provide for subsequent disinfection of the water ahead of ground storage tanks. Likewise, all exposure of water to atmospheric contamination shall be accomplished in a manner such that insects, birds, and other foreign materials will be excluded from the water. Aerators and all other such openings shall be screened with 16-mesh or finer corrosion-resistant screen.

(2) Any proposed change in the extent of water treatment required will be determined on the basis of geological data, well construction features, nearby sources of contamination, and qualitative and quantitative microbiological and chemical analyses.

(3) Appropriate laboratory facilities shall be provided for controls as well as for checking the effectiveness of disinfection or any other treatment processes employed.

(4) All plant piping shall be constructed to minimize leakage. No cross-connection or interconnection shall be permitted to exist between a conduit carrying potable water and another conduit carrying raw water or water in a prior stage of treatment.

(5) All systems using springs and other water sources shall provide sampling taps for raw water, treated water, and at a point representing water entering the distribution system at every entry point.

(6) Return of the decanted water or sludge to the treatment process shall be adequately controlled so that there will be a minimum of interference with the treatment process and shall conform to the applicable requirements of subsection (d)(3) of this section. Systems that do not comply with the provisions of subsection (d)(3) of this section commit a treatment technique violation and must notify their customers in accordance with the requirements of §290.122(b) of this title (relating to Public Notification).

(7) Air release devices on treated waterlines shall be installed in such a manner as to preclude the possibility of submergence or possible entrance of contaminants. In this respect, all openings to the atmosphere shall be covered with 16-mesh or finer corrosion-resistant screening material or an equivalent acceptable to the executive director.

(8) Reverse osmosis and nanofiltration membrane systems not provided for microbiological quality control shall conform to the requirements of subsection (b) of this section.

(d) Surface water.

(1) All water secured from surface sources shall be given complete treatment at a plant which provides facilities for pretreatment disinfection, taste and odor control, continuous coagulation, sedimentation, filtration, covered clearwell storage, and terminal disinfection of the water with chlorine or suitable chlorine compounds. In all cases, the treatment process shall be designed to achieve at least a 2-log removal of *Cryptosporidium* oocysts, a 3-log removal or inactivation of *Giardia* cysts, and a 4-log removal or inactivation of viruses before the water is supplied to any consumer. The executive director may require additional levels of treatment in cases of poor source water quality. Based on raw water monitoring results, the executive director may require additional levels of treatment for *Cryptosporidium* treatment as specified in §290.111 of this title.

(2) All plant piping shall be constructed so as to be thoroughly tight against leakage. No cross-connection or interconnection shall be permitted to exist in a filtration plant between a conduit carrying filtered or post-chlorinated water and another conduit carrying raw water or water in any prior stage of treatment.

(A) Vacuum breakers must be provided on each hose bibb within the plant facility.

(B) No conduit or basin containing raw water or any water in a prior stage of treatment shall be located directly above, or be permitted to have a single common partition wall with another conduit or basin containing finished water.

(C) Make-up water supply lines to chemical feeder solution mixing chambers shall be provided with an air gap or other acceptable backflow prevention device.

(D) Filters shall be located so that common walls will not exist between them and aerators, mixing and sedimentation basins or clearwells. This rule is not strictly applicable, however, to partitions open to view and readily accessible for inspection and repair.

(E) Filter-to-waste connections, if included, shall be provided with an air gap connection to waste.

(F) Air release devices on treated waterlines shall be installed in such a manner as to preclude the possibility of submergence or possible entrance of contaminants. In this respect, all openings to the atmosphere shall be covered with 16-mesh or finer corrosion-resistant screening material or an equivalent acceptable to the executive director.

(3) Return of the decanted water or solids to the treatment process shall be adequately controlled so that there will be a minimum of interference with the treatment process. Systems that do not comply with the provisions of this paragraph commit a treatment technique violation and must notify their customers in accordance with the requirements of §290.122(b) of this title.

(A) Unless the executive director has approved an alternate recycling location, spent backwash water and the liquids from sludge settling lagoons, spent backwash water tanks, sludge thickeners, and similar dewatering facilities shall be returned to the raw waterline upstream of the raw water sample tap and coagulant feed point. The blended recycled liquids shall pass through all of the major unit processes at the plant.

(B) Recycle facilities shall be designed to minimize the magnitude and impact of hydraulic surges that occur during the recycling process.

(C) Solids produced by dewatering facilities such as sludge lagoons, sludge thickeners, centrifuges, mechanical presses, and similar devices shall not be returned to the treatment plant without the prior approval of the executive director.

(4) Reservoirs for pretreatment or selective quality control shall be provided where complete treatment facilities fail to operate satisfactorily at times of maximum turbidities or other abnormal raw water quality conditions exist. Recreational activities at such reservoirs shall be prohibited.

(5) Flow-measuring devices shall be provided to measure the raw water supplied to the plant, the recycled decant water, the treated water used to backwash the filters, and the treated water discharged from the plant. Additional metering devices shall be provided as appropriate to monitor the flow rate through specific treatment processes. Metering devices shall be located to facilitate use and to assist in the determination of chemical dosages, the accumulation of water production data, and the operation of plant facilities.

(6) Chemical storage facilities shall comply with applicable requirements in subsection (f)(1) of this section.

(7) Chemical feed facilities shall comply with the applicable requirements in subsection (f)(2) of this section.

(8) Flash mixing equipment shall be provided.

(A) Plants with a design capacity greater than 3.0 million gallons per day (MGD) 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 MGD must provide at least two sets of flocculation equipment which are designed to operate in parallel. Public water systems with other surface water treatment plants, interconnections with other systems, or wells that can meet the system's average daily demand are exempt from the requirement for redundant flocculation equipment.

(B) Flocculation facilities shall be designed to provide adequate time and mixing intensity to produce a settleable floc under varying raw water characteristics and raw water flow rates.

(i) Flocculation facilities for straight-flow and up-flow sedimentation basins shall provide a minimum theoretical detention time of at least 20 minutes when operated at their design capacity. Flocculation facilities constructed prior to October 1, 2000, are exempt from this requirement if the settled water turbidity of each sedimentation basin remains below 10.0 nephelometric turbidity units and the treatment plant meets with turbidity requirements of §290.111 of this title.

(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 MGD 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 gpm/sq ft 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 gpm/sq ft 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 gpm/sq ft 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 MGD.

(B) Filtration facilities shall be designed to operate at filtration rates which assure effective filtration at all times.

(i) The design capacity of gravity rapid sand filters shall not exceed a maximum filtration rate of 2.0 gpm/sq ft. At the beginning of filter runs for declining rate filters, a maximum filtration rate of 3.0 gpm/sq ft is allowed.

(ii) Where high-rate gravity filters are used, the design capacity shall not exceed a maximum filtration rate of 5.0 gpm/sq ft. At the beginning of filter runs for declining rate filters, a maximum filtration rate of 6.5 gpm/sq ft is allowed.

(iii) The design capacity of pressure filters shall not exceed a maximum filtration rate of 2.0 gpm/sq ft with the largest filter off-line.

(iv) Except as provided in clause (vi) of this subparagraph, any surface water treatment plant that provides, or is being designed to provide, less than 7.5 MGD must be able to meet either the maximum daily demand or the minimum required 0.6 gpm per connection, whichever is larger, with all filters on-line.

(v) Any surface water treatment plant that provides, or is being designed to provide, 7.5 MGD or more must be able to meet either the maximum daily demand or the minimum required 0.6 gpm per connection, whichever is larger, with the largest filter off-line.

(vi) Any surface water treatment plant that uses pressure filters must be able to meet either the maximum daily demand or the minimum required 0.6 gpm per connection, whichever is larger, with the largest filter off-line.

(C) The depth and condition of the media and support material shall be sufficient to provide effective filtration.

(i) The filtering material shall conform to American Water Works Association (AWWA) standards and be free from clay, dirt, organic matter, and other impurities.

(ii) The grain size distribution of the filtering material shall be as prescribed by AWWA standards.

(iii) The depth of filter sand, anthracite, granular activated carbon, or other filtering materials shall be 24 inches or greater and provide an L/d ratio, as defined in §290.38 of this title, of at least 1,000.

(I) Rapid sand filters typically contain a minimum of eight inches of fine sand with an effective size of 0.35 to 0.45 millimeter (mm), eight inches of medium sand with an effective size of 0.45 to 0.55 mm, and eight inches of coarse sand with an effective size of 0.55 to 0.65 mm. The uniformity coefficient of each size range should not exceed 1.6.

(II) High-rate dual media filters typically contain a minimum of 12 inches of sand with an effective size of 0.45 to 0.55 mm and 24 inches of anthracite with an effective size of 0.9 to 1.1 mm. The uniformity coefficient of each material should not exceed 1.6.

(III) High-rate multi-media filters typically contain a minimum of three inches of garnet media with an effective size of 0.2 to 0.3 mm, nine inches of sand with an effective size of 0.5 to 0.6 mm, and 24 inches of anthracite with an effective size of 0.9 to 1.1 mm. The uniformity coefficient of each size range should not exceed 1.6.

(IV) High-rate mono-media anthracite or granular activated carbon filters typically contain a minimum of 48 inches of anthracite or granular activated carbon with an effective size of 1.0 to 1.2 mm. The uniformity coefficient of each size range should not exceed 1.6.

(iv) Under the filtering material, at least 12 inches of support gravel shall be placed varying in size from 1/16 inch to 2.5 inches. The gravel may be arranged in three to five layers such that each layer contains material about twice the size of the material above it. Other support material may be approved on an individual basis.

(D) The filter shall be provided with facilities to regulate the filtration rate.

(i) With the exception of declining rate filters, each filter unit shall be equipped with a manually adjustable rate-of-flow controller with rate-of-flow indication or flow control valves with indicators.

(ii) Each declining rate filter shall be equipped with a rate-of-flow limiting device or an adjustable flow control valve with a rate-of-flow indicator.

(iii) The effluent line of each filter installed after January 1, 1996, must be equipped with a slow opening valve or another means of automatically preventing flow surges when the filter begins operation.

(E) The filters shall be provided with facilities to monitor the performance of the filter. Monitoring devices shall be designed

to provide the ability to measure and record turbidity as required by §290.111 of this title.

(i) Each filter shall be equipped with a sampling tap so that the effluent turbidity of the filter can be individually monitored.

(ii) Each filter operated by a public water system that serves fewer than 10,000 people shall be equipped with an on-line turbidimeter and recorder which will allow the operator to measure and record the turbidity at 15-minute intervals. The executive director may allow combined filter effluent monitoring in lieu of individual filter effluent monitoring under the following conditions:

(I) The public water system has only two filters that were installed prior to October 1, 2000, and were never equipped with individual on-line turbidimeters and recorders; and

(II) The plant is equipped with an on-line turbidimeter and recorder which will allow the operator to measure and record the turbidity level of the combined filter effluent at a location prior to clearwell storage at 15-minute intervals.

(iii) Each filter operated by a public water system that serves at least 10,000 people shall be equipped with an on-line turbidimeter and recorder which will allow the operator to measure and record the turbidity at 15-minute intervals.

(iv) Each filter installed after October 1, 2000, shall be equipped with an on-line turbidimeter and recorder which will allow the operator to determine the turbidity at 15-minute intervals.

(v) Each filter unit that is not equipped with an on-line turbidimeter and recorder shall be equipped with a device to indicate loss of head through the filter. In lieu of loss-of-head indicators, declining rate filter units may be equipped with rate-of-flow indicators.

(F) Filters shall be designed to ensure adequate cleaning during the backwash cycle.

(i) Only filtered water shall be used to backwash the filters. This water may be supplied by elevated wash water tanks, by the effluent of other filters, or by pumps which take suction from the clearwell and are provided for backwashing filters only. For installations having a treatment capacity no greater than 150,000 gallons per day, water for backwashing may be secured directly from the distribution system if proper controls and rate-of-flow limiters are provided.

(ii) The rate of filter backwashing shall be regulated by a rate-of-flow controller or flow control valve.

(iii) The rate of flow of backwash water shall not be less than 20 inches vertical rise per minute (12.5 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) (No change.)

(B) A plant that was repainted before October 1, 2000, may use an alternate color code. The alternate color code must provide clear visual distinction between process streams.

(C) The system must maintain clear, current documentation of its color code in a location easily accessed by all personnel.

(14) All surface water treatment plants shall provide sampling taps for raw, settled, individual filter effluent, and clearwell discharge. Additional sampling taps shall be provided as appropriate to monitor specific treatment processes.

(15) An adequately equipped laboratory shall be available locally so that daily microbiological and chemical tests can be conducted.

(A) For plants serving 25,000 persons or more, the local laboratory used to conduct the required daily microbiological analyses must be accredited by the executive director to conduct coliform analyses.

(B) For plants serving populations of less than 25,000, the facilities for making microbiological tests may be omitted if the required microbiological samples can be submitted to a laboratory accredited by the executive director on a timely basis.

(C) All surface water treatment plants shall be provided with equipment for making at least the following determinations:

(i) pH;

(ii) temperature;

(iii) disinfectant residual;

(iv) alkalinity;

(v) turbidity;

(vi) jar tests for determining the optimum coagulant dose; and

(vii) other tests deemed necessary to monitor specific water quality problems or to evaluate specific water treatment processes.

(D) Each surface water treatment plant that uses chlorine dioxide shall provide testing equipment for measuring chlorine dioxide and chlorite levels.

(E) Each surface water treatment plant that uses sludge-blanket clarifiers shall be equipped with facilities to monitor the depth of the sludge blanket.

(F) Each surface water treatment plant that uses solids-recirculation clarifiers shall be equipped with facilities to monitor the solids concentration in the slurry.

(16) Each surface water treatment plant shall be provided with a computer and software for recording performance data, maintaining records, and submitting reports to the executive director. The executive director may allow a water system to locate the computer at a site other than the water treatment plant only if performance data can be reliably transmitted to the remote location on a real-time basis, the plant operator has access to the computer at all times, and performance data is readily accessible to agency staff during routine and special investigations.

(17) Reverse osmosis and nanofiltration membrane systems not provided for microbiological quality control shall conform to the requirements of subsection (b)(9) of this section.

(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.

(2) All groundwater must be disinfected prior to distribution and in a manner consistent with the requirements of §290.110 of this title. 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 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 and 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 free chlorine and chloramines will be considered on a case-by-case basis under the exception guidelines of §290.39(l) of this title. If water containing chloramines and water containing free chlorine are blended, then a case-by-case review under §290.39(l) of this title will be required.

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

(A) When chlorine gas is used, a full-face self-contained breathing apparatus or supplied air respirator that meets Occupational Safety and Health Administration (OSHA) standards for construction and operation, and a small bottle of fresh ammonia solution (or approved equal) for testing for chlorine leakage shall be readily accessible outside the chlorinator room and immediately available to the operator in the event of an emergency.

(B) Housing for gas chlorination equipment and cylinders of chlorine shall be in separate buildings or separate rooms with impervious walls or partitions separating all mechanical and electrical equipment from the chlorine facilities. Housing shall be located above ground level as a measure of safety. Equipment and cylinders may be installed on the outside of the buildings when protected from adverse weather conditions and vandalism.

(C) Adequate ventilation, which includes both high level and floor level screened vents, shall be provided for all enclosures in which gas chlorine is being stored or fed. Enclosures containing more than one operating 150-pound cylinder of chlorine shall also provide forced air ventilation which includes: screened and louvered floor level and high level vents; a fan which is located at and draws air in through the top vent and discharges to the outside atmosphere through the floor level vent; and a fan switch located outside the enclosure. Alternately, systems may install negative pressure ventilation as long as the facilities also have gas containment and treatment as prescribed by the current International Fire Code (IFC).

(5) Hypochlorination solution containers and pumps must be housed in a secure enclosure to protect them from adverse weather conditions and vandalism. The solution container top must be completely covered to prevent the entrance of dust, insects, and other contaminants.

(6) Where anhydrous ammonia feed equipment is utilized, it must be housed in a separate enclosure equipped with both high and low level ventilation to the outside atmosphere. The enclosure must be provided with forced air ventilation which includes: screened and louvered floor level and high level vents; a fan which is located at and draws air in through the floor vent and discharges through the top vent; and a fan switch located outside the enclosure. Alternately, systems may install negative pressure ventilation as long as the facilities also have gas containment and treatment as prescribed by the current IFC.

(7) Chloramine disinfection shall be performed in a manner which assures that the proper chlorine to ammonia (as nitrogen) ratio is achieved in order to maintain a monochloramine residual and limit nitrification.

(A) The order of chlorine and ammonia injection must be accomplished in a manner which allows inactivation of viruses and oxidation of cyanide.

(i) When chlorine is injected upstream of any other disinfectant, the ammonia injection point must be downstream of the chlorine injection point.

(ii) When chlorine and ammonia are added to distribution water that has a chloramine residual, ammonia should be added first.

(iii) When chlorine and ammonia are added to distribution water that has a free chlorine residual, chlorine should be added first.

(B) Mixing shall be provided to disperse chemicals.

(C) Sampling taps must be provided at locations that allow for chlorine and ammonia to be added to the water to form monochloramine as the primary chloramine species. These locations must be listed in the system's monitoring plan as described in §290.121 of this title (relating to Monitoring Plans). Sample taps must be provided as follows:

(i) upstream of the chlorine or ammonia chemical injection point, whichever is furthest upstream;

(ii) between the addition of the chloramine chemicals at chloramination facilities submitted for plan review after December 31, 2015. For these facilities, an installation without this sample tap may be approved if an acceptable technical reason is described in the plan review documents. Technical reasons, such as disinfection byproduct control, must be supported by bench scale sampling results. Other technical reasons, such as membrane integrity, must be supported by documentation; and

(iii) at a point after mixing to be able to measure fully-formed monochloramine levels.

(D) When using chloramines, the feed and storage must be designed as described in subsection (f) of this section, regardless of water source.

(E) When using chloramines, the public water systems shall provide equipment for making at least the following determinations for purposes of complying with the requirements in §290.110 of this title:

(i) free ammonia (as nitrogen);

(ii) monochloramine;

(iii) total chlorine;

(iv) free chlorine; and

(v) nitrite and nitrate (both as nitrogen). The public water systems must either obtain equipment for measuring nitrite and nitrate or identify an accredited laboratory that can perform nitrite and nitrate analysis and can provide results to the public water systems within 48 hours of sample delivery.

(f) Water treatment plant chemical storage and feed facilities.

(1) Chemical storage facilities shall be designed to ensure a reliable supply of chemicals to the feeders, minimize the possibility and impact of accidental spills, and facilitate good housekeeping.

(A) Bulk storage facilities at the plant shall be adequate to store at least a 15-day supply of all chemicals needed to comply with minimum treatment technique and maximum contaminant level (MCL) requirements. The capacity of these bulk storage facilities shall be based on the design capacity of the treatment plant. However, the executive director may require a larger stock of chemicals based on local resupply ability.

(B) Day tanks shall be provided to minimize the possibility of severely overfeeding liquid chemicals from bulk storage facilities. Day tanks will not be required if adequate process control instrumentation and procedures are employed to prevent chemical overfeed incidents.

(C) Every chemical bulk storage facility and day tank shall have a label that identifies the facility's or tank's contents and a device that indicates the amount of chemical remaining in the facility or tank.

(D) Dry chemicals shall be stored off the floor in a dry room that is located above ground and protected against flooding or wetting from floors, walls, and ceilings.

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

(i) The materials used to construct bulk storage and day tanks must be compatible with the chemicals being stored and resistant to corrosion.

(ii) Except as provided in this clause, adequate containment facilities shall be provided for all liquid chemical storage tanks.

(I) Containment facilities for a single container or for multiple interconnected containers must be large enough to hold the maximum amount of chemical that can be stored with a minimum freeboard of six vertical inches or to hold 110% of the total volume of the container(s), whichever is less.

(II) Common containment for multiple containers that are not interconnected must be large enough to hold the volume of the largest container with a minimum freeboard of six vertical inches or to hold 110% of the total volume of the container(s), whichever is less.

(III) The materials used to construct containment structures must be compatible with the chemicals stored in the tanks.

(IV) Incompatible chemicals shall not be stored within the same containment structure.

(V) No containment facilities are required for hypochlorite solution containers that have a capacity of 55 gallons or less.

(VI) On a site-specific basis, the executive director may approve the use of double-walled tanks in lieu of separate containment facilities.

(F) Chemical transfer pumps and control systems must be designed to minimize the possibility of leaks and spills.

(G) Piping, pumps, and valves used for chemical storage and transfer must be compatible with the chemical being fed.

(2) Chemical feed and metering facilities shall be designed so that chemicals shall be applied in a manner which will maximize reliability, facilitate maintenance, and ensure optimal finished water quality.

(A) Each chemical feeder that is needed to comply with a treatment technique or MCL requirement shall have a standby or reserve unit. Common standby feeders are permissible, but generally, more than one standby feeder must be provided due to the incompati-

bility of chemicals or the state in which they are being fed (solid, liquid, or gas).

(B) Chemical feed equipment shall be sized to provide proper dosage under all operating conditions.

(i) Devices designed for determining the chemical feed rate shall be provided for all chemical feeders.

(ii) The capacity of the chemical feeders shall be such that accurate control of the dosage can be achieved at the full range of feed rates expected to occur at the facility.

(iii) Chemical feeders shall be provided with tanks for chemical dissolution when applicable.

(C) Chemical feeders, valves, and piping must be compatible with the chemical being fed.

(D) Chemical feed systems shall be designed to minimize the possibility of leaks and spills and provide protection against backpressure and siphoning.

(E) If enclosed feed lines are used, they shall be designed and installed so as to prevent clogging and be easily maintained.

(F) Dry chemical feeders shall be located in a separate room that is provided with facilities for dust control.

(G) Coagulant feed systems shall be designed so that coagulants are applied to the water prior to or within the mixing basins or chambers so as to permit their complete mixing with the water.

(i) Coagulant feed points shall be located downstream of the raw water sampling tap.

(ii) Coagulants shall be applied continuously during treatment plant operation.

(H) Chlorine feed units, ammonia feed units, and storage facilities shall be separated by solid, sealed walls.

(I) Chemical application points shall be provided to achieve acceptable finished water quality, adequate taste and odor control, corrosion control, and disinfection.

(g) Other treatment processes. Innovative/alternate treatment processes will be considered on an individual basis, in accordance with §290.39(l) of this title. Where innovative/alternate treatment systems are proposed, the licensed professional engineer must provide pilot test data or data collected at similar full-scale operations demonstrating that the system will produce water that meets the requirements of Subchapter F of this chapter. Pilot test data must be representative of the actual operating conditions which can be expected over the course of the year. The executive director may require a pilot study protocol to be submitted for review and approval prior to conducting a pilot study to verify compliance with the requirements of §290.39(l) of this title and Subchapter F of this chapter. The executive director may require proof of a one-year manufacturer's performance warrantee or guarantee assuring that the plant will produce treated water which meets minimum state and federal standards for drinking water quality.

(1) Package-type treatment systems and their components shall be subject to all applicable design criteria in this section.

(2) Bag and cartridge filtration systems or modules installed or replaced after April 1, 2012, and used for microbiological treatment, can receive up to 3.0-log *Giardia* removal credit, up to 2.0-log *Cryptosporidium* removal credit for individual bag or cartridge filters, and up to 2.5-log *Cryptosporidium* removal credit for bag or cartridge filters operated in series only if the cartridges or bags meet the criteria in subparagraphs (A) - (C) of this paragraph.

(A) The filter system must treat the entire plant flow.

(B) To be eligible for this credit, systems must receive approval from the executive director based on the results of challenge testing that is conducted according to the criteria established by 40 Code of Federal Regulations (CFR) §141.719(a) and the executive director.

(i) A factor of safety equal to 1.0-log for individual bag or cartridge filters and 0.5-log for bag or cartridge filters in series must be applied to challenge testing results to determine removal credit.

(ii) Challenge testing must be performed on full-scale bag or cartridge filters, and the associated filter housing or pressure vessel, that are identical in material and construction to the filters and housings the system will use for removal of *Cryptosporidium* and *Giardia.*

(iii) Bag or cartridge filters must be challenge tested in the same configuration that the system will use, either as individual filters or as a series configuration of filters.

(iv) Systems may use results from challenge testing conducted prior to January 5, 2006, if prior testing was consistent with 40 CFR §141.719, submitted by the system's licensed professional engineer, and approved by the executive director.

(v) If a previously tested filter is modified in a manner that could change the removal efficiency of the filter product line, additional challenge testing to demonstrate the removal efficiency of the modified filter must be conducted and results submitted to the executive director for approval.

(C) Pilot studies must be conducted using filters that will meet the requirements of this section.

(3) Membrane filtration systems or modules installed or replaced after April 1, 2012, and used for microbiological treatment, can receive *Cryptosporidium* and *Giardia* removal credit for membrane filtration only if the systems or modules meet the criteria in subparagraphs (A) - (F) of this paragraph.

(A) The membrane module used by the system must undergo challenge testing to evaluate removal efficiency. Challenge testing must be conducted according to the criteria established by 40 CFR §141.719(b)(2) and the executive director.

(i) All membrane module challenge test protocols and results, the protocol for calculating the representative Log Removal Value (LRV) for each membrane module, the removal efficiency, calculated results of Membrane $LRV_{C\text{-}Test}$, and the non-destructive performance test with its Quality Control Release Value (QCRV) must be submitted to the executive director for review and approval prior to beginning a membrane filtration pilot study at a public water system.

(ii) Challenge testing must be conducted on either a full-scale membrane module identical in material and construction to the membrane modules to be used in the system's treatment facility, or a smaller-scale membrane module identical in material and similar in construction to the full-scale module if approved by the executive director.

(iii) Systems may use data from challenge testing conducted prior to January 5, 2006, if prior testing was consistent with 40 CFR §141.719, submitted by the system's licensed professional engineer, and approved by the executive director.

(iv) If a previously tested membrane is modified in a manner that could change the removal efficiency of the membrane product line or the applicability of the non-destructive performance test and associated QCRV, additional challenge testing to demonstrate

the removal efficiency of the modified membrane and determine a new QCRV for the modified membrane must be conducted and results submitted to the executive director for approval.

(B) The membrane system must be designed to conduct and record the results of direct integrity testing in a manner that demonstrates a removal efficiency equal to or greater than the removal credit awarded to the membrane filtration system approved by the executive director and meets the requirements in clauses (i) and (ii) of this subparagraph.

(i) The design must provide for direct integrity testing of each membrane unit.

(ii) The design must provide direct integrity testing that has a resolution of 3 micrometers or less.

(iii) The design must provide direct integrity testing with sensitivity sufficient to verify the log removal credit approved by the executive director. Sensitivity is determined by the criteria in 40 CFR §141.719(b)(3)(iii).

(iv) The executive director may reduce the direct integrity testing requirements for membrane units.

(C) The membrane system must be designed to conduct and record continuous indirect integrity monitoring on each membrane unit. The turbidity of the water produced by each membrane unit must be measured using the Hach FilterTrak Method 10133. The executive director may approve the use of alternative technology to monitor the quality of the water produced by each membrane unit.

(D) The level of removal credit approved by the executive director shall not exceed the lower of:

(i) the removal efficiency demonstrated during challenge testing conducted under the conditions in subparagraph (A) of this paragraph; or

(ii) the maximum removal efficiency that can be verified through direct integrity testing used with the membrane filtration process under the conditions in subparagraph (B) of this paragraph.

(E) Pilot studies must be conducted using membrane modules that will meet the requirements of this section.

(F) Membrane systems must be designed so that membrane units' feed water, filtrate, backwash supply, waste, and chemical cleaning piping shall have cross-connection protection to prevent chemicals from all chemical cleaning processes from contaminating other membrane units in other modes of operation. This may be accomplished by the installation of a double block and bleed valving arrangement, a removable spool system, or other alternative methods approved by the executive director.

(4) Bag, cartridge, or membrane filtration systems or modules installed or replaced before April 1, 2012, and used for microbiological treatment, can receive up to a 2.0-log removal credit for *Cryptosporidium* and up to a 3.0-log removal credit for *Giardia* based on site-specific pilot study results, design, operation, and reporting requirements.

(5) Ultraviolet (UV) light reactors used for microbiological inactivation can receive *Cryptosporidium, Giardia,* and virus inactivation credit if the reactors meet the criteria in subparagraphs (A) - (C) of this paragraph.

(A) UV light reactors can receive inactivation credit only if they are located after filtration.

(B) In lieu of a pilot study, the UV light reactors must undergo validation testing to determine the operating conditions under which a UV reactor delivers the required UV dose. Validation testing must be conducted according to the criteria established by 40 CFR §141.720(d)(2) and the executive director.

(i) The validation study must include the following factors: UV absorbance of the water; lamp fouling and aging; measurement uncertainty of on-line sensors; UV dose distributions arising from the velocity profiles through the reactor; failure of UV lamps and other critical system components; inlet and outlet piping or channel configuration of the UV reactor; lamp and sensor locations; and other parameters determined by the executive director.

(ii) Validation testing must be conducted on a full-scale reactor that is essentially identical to the UV reactor(s) to be used by the system and using waters that are essentially identical in quality to the water to be treated by the UV reactor.

(C) The UV light reactor systems must be designed to monitor and record parameters to verify the UV reactors operation within the validated conditions approved by the executive director. The UV light reactor must be equipped with facilities to monitor and record UV intensity as measured by a UV sensor, flow rate, lamp status, and other parameters designated by the executive director.

(6) Membrane filtration used by groundwater systems to achieve at least 4-log removal of viruses to comply with the groundwater rule requirements under §290.109 of this title (relating to Microbial Contaminants) and §290.116 of this title, the public water system shall meet the following criteria.

(A) The membrane module must have an absolute molecular weight cut-off, or an alternate parameter that describes the exclusion characteristics of the membrane, that can reliably achieve at least 4-log removal of viruses.

(B) The membrane system must be designed to conduct and record the results of integrity testing in a manner that demonstrates a removal efficiency equal to or greater than the removal credit awarded to the membrane system approved by the executive director.

(h) Sanitary facilities for water works installations. Toilet and hand washing facilities provided in accordance with established standards of good public health engineering practices shall be available at all installations requiring frequent visits by operating personnel.

(i) Permits for waste discharges. Any discharge of wastewater and other plant wastes shall be in accordance with all applicable state and federal statutes and regulations. Permits for discharging wastes from water treatment processes shall be obtained from the commission, if necessary.

(j) Treatment chemicals and media. All chemicals and any additional or replacement process media used in treatment of water supplied by public water systems must conform to ANSI/NSF Standard 60 for Drinking Water Treatment Chemicals and ANSI/NSF Standard 61 for Drinking Water System Components. Conformance with these standards must be obtained by certification of the product by an organization accredited by ANSI.

(k) Safety.

(1) Safety equipment for all chemicals used in water treatment shall meet applicable standards established by the OSHA or Texas Hazard Communication Act, Texas Health and Safety Code, Chapter 502.

(2) Systems must comply with United States Environmental Protection Agency (EPA) requirements for Risk Management Plans.

(l) Plant operations manual. A thorough plant operations manual must be compiled and kept up-to-date for operator review and ref-

erence. This manual should be of sufficient detail to provide the operator with routine maintenance and repair procedures, with protocols to be utilized in the event of a natural or man-made catastrophe, as well as provide telephone numbers of water system personnel, system officials, and local/state/federal agencies to be contacted in the event of an emergency. If operating a reverse osmosis or nanofiltration membrane system, the manual must also include the system's configuration, baseline performance data, and any set point for membrane cleaning or replacement.

(m) Security. Each water treatment plant and all appurtenances thereof shall be enclosed by an intruder-resistant fence. The gates shall be locked during periods of darkness and when the plant is unattended. A locked building in the fence line may satisfy this requirement or serve as a gate.

(n) Corrosion control treatment. Systems must install any corrosion control or source water treatment required by §290.117(f) and (g) of this title (relating to Regulation of Lead and Copper), respectively. Such treatment must be designed and installed consistent with the requirements of this subchapter. The requirements of 40 CFR §141.82(i) and §141.83(b)(7) relating to EPA involvement in treatment determination are adopted by reference.

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

(a) General. When a public drinking water supply system is to be established, plans shall be submitted to the executive director for review and approval prior to the construction of the system. All public water systems are to be constructed in conformance with the requirements of this subchapter and maintained and operated in accordance with the following minimum acceptable operating practices. Owners and operators shall allow entry to members of the commission and employees and agents of the commission onto any public or private property at any reasonable time for the purpose of inspecting and investigating conditions relating to public water systems in the state including the required elements of a sanitary survey as defined in §290.38 of this title (relating to Definitions). Members, employees, or agents acting under this authority shall observe the establishment's rules and regulations concerning safety, internal security, and fire protection, and if the property has management in residence, shall notify management or the person then in charge of his presence and shall exhibit proper credentials.

(b) Microbiological. Submission of samples for microbiological analysis shall be as required by Subchapter F of this chapter (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems). Microbiological samples may be required by the executive director for monitoring purposes in addition to the routine samples required by the drinking water standards. These samples shall be submitted to an accredited laboratory. (A list of the accredited laboratories can be obtained by contacting the executive director.) The samples shall be submitted to the executive director in a manner prescribed by the executive director.

(c) Chemical. Samples for chemical analysis shall be submitted as directed by the executive director.

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

(1) Disinfection equipment shall be operated and monitored in a manner that will assure compliance with the requirements of §290.110 of this title (relating to Disinfectant Residuals).

(2) The disinfection equipment shall be operated to maintain the following minimum disinfectant residuals in each finished water storage tank and throughout the distribution system at all times:

(A) a free chlorine residual of 0.2 milligrams per liter (mg/L); or

(B) a chloramine residual of 0.5 mg/L (measured as total chlorine) for those systems that distribute chloraminated water.

(e) Operation by trained and licensed personnel. Except as provided in paragraph (1) of this subsection, the production, treatment, and distribution facilities at the public water system must be operated at all times under the direct supervision of a water works operator who holds an applicable, valid license issued by the executive director. Except as provided in paragraph (1) of this subsection, all public water systems must use a water works operator who holds an applicable, valid license issued by the executive director to meet the requirements of this subsection. The licensed operator of a public water system may be an employee, contractor, or volunteer.

(1) Transient, noncommunity public water systems are exempt from the requirements of this subsection if they use only groundwater or purchase treated water from another public water system.

(2) All public water systems that are subject to the provisions of this subsection shall meet the following requirements.

(A) Public water systems shall not allow new or repaired production, treatment, storage, pressure maintenance, or distribution facilities to be placed into service without the prior guidance and approval of a licensed water works operator.

(B) Public water systems shall ensure that their operators are trained regarding the use of all chemicals used in the water treatment plant. Training programs shall meet applicable standards established by the Occupational Safety and Health Administration or the Texas Hazard Communication Act, Texas Health and Safety Code, Chapter 502.

(C) Public water systems using chlorine dioxide shall place the operation of the chlorine dioxide facilities under the direct supervision of a licensed operator who has a Class "C" or higher license.

(D) Effective September 1, 2016, reverse osmosis or nanofiltration membrane systems must have operators that have successfully completed at least one executive director-approved training course or event specific to the operations and maintenance of reverse osmosis or nanofiltration membrane treatment.

(3) Systems that only purchase treated water shall meet the following requirements in addition to the requirements contained in paragraph (2) of this subsection.

(A) Purchased water systems serving no more than 250 connections must use an operator who holds a Class "D" or higher license.

(B) Purchased water systems serving more than 250 connections, but no more than 1,000 connections, must use an operator who holds a Class "C" or higher license.

(C) Purchased water systems serving more than 1,000 connections must use at least two operators who hold a Class "C" or higher license and who each work at least 16 hours per month at the public water system's treatment or distribution facilities.

(4) Systems that treat groundwater and do not treat surface water or groundwater that is under the direct influence of surface water

shall meet the following requirements in addition to the requirements contained in paragraph (2) of this subsection.

(A) Groundwater systems serving no more than 250 connections must use an operator with a Class "D" or higher license.

(B) Groundwater systems serving more than 250 connections, but no more than 1,000 connections, must use an operator with a Class "C" or higher groundwater license.

(C) Groundwater systems serving more than 1,000 connections must use at least two operators who hold a Class "C" or higher groundwater license and who each work at least 16 hours per month at the public water system's production, treatment, or distribution facilities.

(5) Systems that treat groundwater that is under the direct influence of surface water must meet the following requirements in addition to the requirements contained in paragraph (2) of this subsection.

(A) Systems which serve no more than 1,000 connections and utilize cartridge or membrane filters must use an operator who holds a Class "C" or higher groundwater license and has completed a four-hour training course on monitoring and reporting requirements or who holds a Class "C" or higher surface water license and has completed the Groundwater Production course.

(B) Systems which serve more than 1,000 connections and utilize cartridge or membrane filters must use at least two operators who meet the requirements of subparagraph (A) of this paragraph and who each work at least 24 hours per month at the public water system's production, treatment, or distribution facilities.

(C) Systems which serve no more than 1,000 connections and utilize coagulant addition and direct filtration must use an operator who holds a Class "C" or higher surface water license and has completed the Groundwater Production course or who holds a Class "C" or higher groundwater license and has completed a Surface Water Production course. Effective January 1, 2007, the public water system must use at least one operator who has completed the Surface Water Production I course and the Surface Water Production II course.

(D) Systems which serve more than 1,000 connections and utilize coagulant addition and direct filtration must use at least two operators who meet the requirements of subparagraph (C) of this paragraph and who each work at least 24 hours per month at the public water system's production, treatment, or distribution facilities. Effective January 1, 2007, the public water system must use at least two operators who have completed the Surface Water Production I course and the Surface Water Production II course.

(E) Systems which utilize complete surface water treatment must comply with the requirements of paragraph (6) of this subsection.

(F) Each plant must have at least one Class "C" or higher operator on duty at the plant when it is in operation or the plant must be provided with continuous turbidity and disinfectant residual monitors with automatic plant shutdown and alarms to summon operators so as to ensure that the water produced continues to meet the commission's drinking water standards during periods when the plant is not staffed.

(6) Systems that treat surface water must meet the following requirements in addition to the requirements contained in paragraph (2) of this subsection.

(A) Surface water systems that serve no more than 1,000 connections must use at least one operator who holds a Class "B" or higher surface water license. Part-time operators may be used to meet the requirements of this subparagraph if the operator is completely familiar with the design and operation of the plant and spends at least four consecutive hours at the plant at least once every 14 days and the system also uses an operator who holds a Class "C" or higher surface water license. Effective January 1, 2007, the public water system must use at least one operator who has completed the Surface Water Production I course and the Surface Water Production II course.

(B) Surface water systems that serve more than 1,000 connections must use at least two operators; one of the required operators must hold a Class "B" or higher surface water license and the other required operator must hold a Class "C" or higher surface water license. Each of the required operators must work at least 32 hours per month at the public water system's production, treatment, or distribution facilities. Effective January 1, 2007, the public water system must use at least two operators who have completed the Surface Water Production I course and the Surface Water Production II course.

(C) Each surface water treatment plant must have at least one Class "C" or higher surface water operator on duty at the plant when it is in operation or the plant must be provided with continuous turbidity and disinfectant residual monitors with automatic plant shutdown and alarms to summon operators so as to ensure that the water produced continues to meet the commission's drinking water standards during periods when the plant is not staffed.

(D) Public water systems shall not allow Class "D" operators to adjust or modify the treatment processes at surface water treatment plant unless an operator who holds a Class "C" or higher surface license is present at the plant and has issued specific instructions regarding the proposed adjustment.

(f) Operating records and reports. All public water systems must maintain a record of water works operation and maintenance activities and submit periodic operating reports.

(1) The public water system's operating records must be organized, and copies must be kept on file or stored electronically.

(2) The public water system's operating records must be accessible for review during inspections and be available to the executive director upon request.

(3) All public water systems shall maintain a record of operations.

(A) The following records shall be retained for at least two years:

(i) the amount of chemicals used:

(I) Systems that treat surface water or groundwater under the direct influence of surface water shall maintain a record of the amount of each chemical used each day.

(II) Systems that serve 250 or more connections or serve 750 or more people shall maintain a record of the amount of each chemical used each day.

(III) Systems that serve fewer than 250 connections, serve fewer than 750 people, and use only groundwater or purchased treated water shall maintain a record of the amount of each chemical used each week;

(ii) the volume of water treated and distributed:

(I) Systems that treat surface water or groundwater under the direct influence of surface water shall maintain a record of the amount of water treated and distributed each day.

(II) Systems that serve 250 or more connections or serve 750 or more people shall maintain a record of the amount of water distributed each day.

(III) Systems that serve fewer than 250 connections, serve fewer than 750 people, and use only groundwater or purchase treated water shall maintain a record of the amount of water distributed each week.

(IV) Systems that serve 250 or more connections or serve 750 or more people and also add chemicals or provide pathogen or chemical removal shall maintain a record of the amount of water treated each day.

(V) Systems that serve fewer than 250 connections, serve fewer than 750 people, use only groundwater or purchase treated water, and also add chemicals or provide pathogen or chemical removal shall maintain a record of the amount of water treated each week;

(iii) the date, location, and nature of water quality, pressure, or outage complaints received by the system and the results of any subsequent complaint investigation;

(iv) the dates that dead-end mains were flushed;

(v) the dates that storage tanks and other facilities were cleaned;

(vi) the maintenance records for water system equipment and facilities. For systems using reverse osmosis or nanofiltration, maintain records of each clean-in-place process including the date, duration, and procedure used for each event;

(vii) for systems that do not employ full-time operators to meet the requirements of subsection (e) of this section, a daily record or a monthly summary of the work performed and the number of hours worked by each of the part-time operators used to meet the requirements of subsection (e) of this section; and

(viii) the owner or manager of a public water system that is operated by a volunteer to meet the requirements of subsection (e) of this section, shall maintain a record of each volunteer operator indicating the name of the volunteer, contact information for the volunteer, and the time period for which the volunteer is responsible for operating the public water system. These requirements apply to full-time and part-time licensed volunteer operators. Part-time licensed volunteer operators are excluded from the requirements of clause (vii) of this subparagraph.

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

(i) copies of notices of violation and any resulting corrective actions. The records of the actions taken to correct violations of primary drinking water regulations must be retained for at least three years after the last action taken with respect to the particular violation involved;

(ii) copies of any public notice issued by the water system;

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

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

(v) the records of backflow prevention device programs;

(vi) the raw surface water monitoring results and source water monitoring plans required by §290.111 of this title (relating to Surface Water Treatment) must be retained for three years after bin classification required by §290.111 of this title;

(vii) notification to the executive director that a system will provide 5.5-log *Cryptosporidium* treatment in lieu of raw surface water monitoring;

(viii) except for those specified in subparagraphs (C)(iv) and (E)(i) of this paragraph, the results of all surface water treatment monitoring that are used to demonstrate log inactivation or removal;

(ix) free and total chlorine, monochloramine, ammonia, nitrite, and nitrate monitoring results if chloramines are used in the water system; and

(x) the records of treatment effectiveness monitoring for systems using reverse osmosis or nanofiltration membranes. Treatment effectiveness monitoring includes the parameters for determining when maintenance is required. Examples of parameters to be monitored include conductivity (or total dissolved solids) on each membrane unit, pressure differential across a membrane vessel, flow, flux, and water temperature. At a minimum, systems using reverse osmosis or nanofiltration membranes must monitor the conductivity (or total dissolved solids) of the feed and permeate water once per day.

(C) The following records shall be retained for a period of five years after they are no longer in effect:

(i) the records concerning a variance or exemption granted to the system;

(ii) Concentration Time (CT) studies for surface water treatment plants;

(iii) the Recycling Practices Report form and other records pertaining to site-specific recycle practices for treatment plants that recycle; and

(iv) the turbidity monitoring results and exception reports for individual filters as required by §290.111 of this title.

(D) The following records shall be retained for at least five years:

(i) the results of microbiological analyses;

(ii) the results of inspections (as required in subsection (m)(1) of this section) for all water storage and pressure maintenance facilities;

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

(iv) documentation of compliance with state approved corrective action plan and schedules required to be completed by groundwater systems that must take corrective actions;

(v) documentation of the reason for an invalidated fecal indicator source sample and documentation of a total coliform-positive sample collected at a location with conditions that could cause such positive samples in a distribution system;

(vi) notification to wholesale system(s) of a distribution coliform-positive sample for consecutive systems using groundwater;

(vii) Consumer Confidence Report compliance documentation;

(viii) records of the lowest daily residual disinfectant concentration and records of the date and duration of any failure to maintain the executive director-approved minimum specified disinfectant residual for a period of more than four hours for groundwater systems providing 4-log treatment;

(ix) records of executive director-specified compliance requirements for membrane filtration, records of parameters specified by the executive director for approved alternative treatment and records of the date and duration of any failure to meet the membrane operating, membrane integrity, or alternative treatment operating requirements for more than four hours for groundwater systems. Membrane filtration can only be used if it is approved by the executive director and if it can be properly validated;

(x) assessment forms, regardless of who conducts the assessment, and documentation of corrective actions completed or documentation of corrective actions required but not yet completed as a result of those assessments and any other available summary documentation of the sanitary defects and corrective actions taken in accordance with §290.109 of this title (relating to Microbial Contaminants) for executive director review;

(xi) seasonal public water systems shall maintain executive director-approved start-up procedures and certification documentation in accordance with §290.109 of this title for executive director review; and

(xii) records of any repeat sample taken that meets the criteria for an extension of the 24-hour period for collecting repeat samples under §290.109 of this title.

(E) The following records shall be retained for at least ten years:

(i) copies of Monthly Operating Reports and any supporting documentation including turbidity monitoring results of the combined filter effluent;

(ii) the results of chemical analyses;

(iii) any written reports, summaries, or communications relating to sanitary surveys of the system conducted by the system itself, by a private consultant, or by the executive director shall be kept for a period not less than ten years after completion of the survey involved;

(iv) copies of the Customer Service Inspection reports required by subsection (j) of this section;

(v) copy of any Initial Distribution System Evaluation (IDSE) plan, report, approval letters, and other compliance documentation required by §290.115 of this title (relating to Stage 2 Disinfection Byproducts (TTHM and HAA5));

(vi) state notification of any modifications to an IDSE report;

(vii) copy of any 40/30 certification required by §290.115 of this title;

(viii) documentation of corrective actions taken by groundwater systems in accordance with §290.116 of this title (relating to Groundwater Corrective Actions and Treatment Techniques);

(ix) any Sample Siting Plans required by §290.109(d)(6) of this title and monitoring plans required by §290.121(b) of this title (relating to Monitoring Plans); and

(x) records of the executive director-approved minimum specified disinfectant residual and executive director-approved membrane system integrity monitoring results for groundwater systems providing 4-log treatment, including wholesale, and consecutive systems, regulated under §290.116(c) of this title.

(F) A public water system shall maintain records relating to lead and copper requirements under §290.117 of this title (relating to Regulation of Lead and Copper) for no less than 12 years. Any system subject to the requirements of §290.117 of this title shall retain on its premises original records of all sampling data and analyses, reports, surveys, letters, evaluations, schedules, executive determinations, and any other information required by the executive director under §290.117 of this title. These records include, but are not limited to, the following items: tap water monitoring results including the location of each site and date of collection; certification of the volume and validity of first-draw-tap sample criteria via a copy of the laboratory analysis request form; where residents collected the sample; certification that the water system informed the resident of proper sampling procedures; the analytical results for lead and copper concentrations at each tap sample site; and designation of any substitute site not used in previous monitoring periods.

(G) 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) Public water systems shall submit routine reports and any additional documentation that the executive director may require to determine compliance with the requirements of this chapter.

(A) The reports must be submitted to the Texas Commission on Environmental Quality, Water Supply Division, MC 155, P.O. Box 13087, Austin, Texas 78711-3087 by the tenth day of the month following the end of the reporting period.

(B) The reports must contain all the information required by the drinking water standards and the results of any special monitoring tests which have been required.

(C) The reports must be completed in ink, typed, or computer-printed and must be signed by the licensed water works operator.

(5) All public water systems that are affected utilities must maintain the following records for as long as they are applicable to the system:

(A) An emergency preparedness plan approved by the executive director and a copy of the approval letter.

(B) All required operating and maintenance records for auxiliary power equipment, including periodic testing of the auxiliary power equipment under load and any associated automatic switch over equipment.

(C) Copies of the manufacturer's specifications for all generators that are part of the approved emergency preparedness plan.

(g) Disinfection of new or repaired facilities. Disinfection by or under the direction of water system personnel must be performed when repairs are made to existing facilities and before new facilities are placed into service. Disinfection must be performed in accordance with American Water Works Association (AWWA) requirements and water samples must be submitted to a laboratory approved by the executive director. The sample results must indicate that the facility is free of microbiological contamination before it is placed into service. When it is necessary to return repaired mains to service as rapidly as possible, doses may be increased to 500 mg/L and the contact time reduced to 1/2 hour.

(h) Calcium hypochlorite. A supply of calcium hypochlorite disinfectant shall be kept on hand for use when making repairs, setting meters, and disinfecting new mains prior to placing them in service.

(i) Plumbing ordinance. Public water systems must adopt an adequate plumbing ordinance, regulations, or service agreement with provisions for proper enforcement to insure that neither cross-connections nor other unacceptable plumbing practices are permitted (See §290.47(b) of this title (relating to Appendices)). Should sanitary control of the distribution system not reside with the purveyor, the entity retaining sanitary control shall be responsible for establishing and enforcing adequate regulations in this regard. The use of pipes and pipe fittings that contain more than 0.25% lead or solders and flux that contain more than 0.2% lead is prohibited for installation or repair of any public water supply and for installation or repair of any plumbing in a residential or nonresidential facility providing water for human consumption and connected to a public drinking water supply system. This requirement may be waived for lead joints that are necessary for repairs to cast iron pipe.

(j) Customer service inspections. A customer service inspection certificate shall be completed prior to providing continuous water service to new construction, on any existing service either when the water purveyor has reason to believe that cross-connections or other potential contaminant hazards exist, or after any material improvement, correction, or addition to the private water distribution facilities. Any customer service inspection certificate form which varies from the format found in commission Form 20699 must be approved by the executive director prior to being placed in use.

(1) Individuals with the following credentials shall be recognized as capable of conducting a customer service inspection certification.

(A) Plumbing Inspectors and Water Supply Protection Specialists licensed by the Texas State Board of Plumbing Examiners (TSBPE).

(B) Customer service inspectors who have completed a commission-approved course, passed an examination administered by the executive director, and hold current professional license as a customer service inspector.

(2) As potential contaminant hazards are discovered, they shall be promptly eliminated to prevent possible contamination of the water supplied by the public water system. The existence of a health hazard, as identified in §290.47(f) of this title, shall be considered sufficient grounds for immediate termination of water service. Service can be restored only when the health hazard no longer exists, or until the health hazard has been isolated from the public water system in accordance with §290.44(h) of this title (relating to Water Distribution).

(3) These customer service inspection requirements are not considered acceptable substitutes for and shall not apply to the sanitary control requirements stated in §290.102(a)(5) of this title (relating to General Applicability).

(4) A customer service inspection is an examination of the private water distribution facilities for the purpose of providing or denying water service. This inspection is limited to the identification and prevention of cross-connections, potential contaminant hazards, and illegal lead materials. The customer service inspector has no authority or obligation beyond the scope of the commission's regulations. A customer service inspection is not a plumbing inspection as defined and regulated by the TSBPE. A customer service inspector is not permitted to perform plumbing inspections. State statutes and TSBPE adopted rules require that TSBPE licensed plumbing inspectors perform plumbing inspections of all new plumbing and alterations or additions to existing plumbing within the municipal limits of all cities, towns, and villages which have passed an ordinance adopting one of the plumbing codes recognized by TSBPE. Such entities may stipulate that the customer service inspection be performed by the plumbing inspector as a part of the more comprehensive plumbing inspection. Where such entities permit customer service inspectors to perform customer service inspections, the customer service inspector shall report any violations immediately to the local entity's plumbing inspection department.

(k) Interconnection. No physical connection between the distribution system of a public drinking water supply and that of any other water supply shall be permitted unless the other water supply is of a safe, sanitary quality and the interconnection is approved by the executive director.

(l) Flushing of mains. All dead-end mains must be flushed at monthly intervals. Dead-end lines and other mains shall be flushed as needed if water quality complaints are received from water customers or if disinfectant residuals fall below acceptable levels as specified in §290.110 of this title.

(m) Maintenance and housekeeping. The maintenance and housekeeping practices used by a public water system shall ensure the good working condition and general appearance of the system's facilities and equipment. The grounds and facilities shall be maintained in a manner so as to minimize the possibility of the harboring of rodents, insects, and other disease vectors, and in such a way as to prevent other conditions that might cause the contamination of the water.

(1) Each of the system's ground, elevated, and pressure tanks shall be inspected annually by water system personnel or a contracted inspection service.

(A) Ground and elevated storage tank inspections must determine that the vents are in place and properly screened, the roof hatches closed and locked, flap valves and gasketing provide adequate protection against insects, rodents, and other vermin, the interior and exterior coating systems are continuing to provide adequate protection to all metal surfaces, and the tank remains in a watertight condition.

(B) Pressure tank inspections must determine that the pressure release device and pressure gauge are working properly, the air-water ratio is being maintained at the proper level, the exterior coating systems are continuing to provide adequate protection to all metal surfaces, and the tank remains in watertight condition. Pressure tanks provided with an inspection port must have the interior surface inspected every five years.

(C) All tanks shall be inspected annually to determine that instrumentation and controls are working properly.

(2) When pressure filters are used, a visual inspection of the filter media and internal filter surfaces shall be conducted annually to ensure that the filter media is in good condition and the coating materials continue to provide adequate protection to internal surfaces.

(3) When cartridge filters are used, filter cartridges shall be changed at the frequency required by the manufacturer, or more frequently if needed.

(4) All water treatment units, storage and pressure maintenance facilities, distribution system lines, and related appurtenances shall be maintained in a watertight condition and be free of excessive solids.

(5) Basins used for water clarification shall be maintained free of excessive solids to prevent possible carryover of sludge and the formation of tastes and odors.

(6) Pumps, motors, valves, and other mechanical devices shall be maintained in good working condition.

(7) Reverse osmosis or nanofiltration membrane systems shall be cleaned, or replaced, in accordance with the allowable operating conditions of the manufacturer and shall be based on one or more of the following: increased salt passage, increased or decreased pressure differential, and/or change in normalized permeate flow.

(n) Engineering plans and maps. Plans, specifications, maps, and other pertinent information shall be maintained to facilitate the operation and maintenance of the system's facilities and equipment. The following records shall be maintained on file at the public water system and be available to the executive director upon request.

(1) Accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank shall be maintained at the public water system until the facility is decommissioned. As-built plans of individual projects may be used to fulfill this requirement if the plans are maintained in an organized manner.

(2) An accurate and up-to-date map of the distribution system shall be available so that valves and mains can be easily located during emergencies.

(3) Copies of well completion data as defined in §290.41(c)(3)(A) of this title (relating to Water Sources) shall be kept on file for as long as the well remains in service.

(o) Filter backwashing at surface water treatment plants. Filters must be backwashed when a loss of head differential of six to ten feet is experienced between the influent and effluent loss of head gauges or when the turbidity level at the effluent of the filter reaches 1.0 nephelometric turbidity unit (NTU).

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

(1) When a public water system changes ownership, a written notice of the transaction must be provided to the executive director. The grantee shall notify the executive director of the change in ownership within 30 days after the effective date of the change in ownership by providing the name of the grantor, the effective date of the change in ownership, the physical and mailing address and phone number of the grantee, the public water system's drinking water supply identification number, and any other information necessary to identify the transaction.

(2) On an annual basis, the owner of a public water system shall provide the executive director with a list of all the operators and operating companies that the public water system uses. The notice shall contain the name, contact information, work status, license number, and license class of each operator and the name and registration number of each operating company. Public water systems may report the list of operators and operating companies to the executive director by utilizing the Texas Commission on Environmental Quality (TCEQ) online "Operator Notice" form. If reporting cannot be accomplished utilizing the TCEQ online "Operator Notice" form, then a public water system may report the list of operators and operating companies on the written "Operator Notice" form to the executive director by mail, email or facsimile. (See §290.47(d) of this title).

(q) Special precautions, protective measures, and boil water notices. Special precautions, protective measures, and boil water notices shall be instituted by the public water system as specified in this subsection in the event of low distribution pressures (below 20 pounds per square inch (psi)), water outages, microbiological samples found to contain *Escherichia coli (E. coli)* (or other approved fecal indicator), failure to maintain adequate disinfectant residuals, elevated finished water turbidity levels, or other conditions which indicate that the potability of the drinking water supply has been compromised. Special precautions, protective measures, and boil water notices are corrective or protective actions which shall be instituted by the public water system to comply with the requirements of this subsection.

(1) Boil water notices and rescind notices. A public water system shall issue a boil water notice to customers throughout the distribution system or in the affected area(s) of the distribution system as soon as possible, but in no case later than 24 hours after the public water system has met any of the criteria described in paragraphs (2) - (5) of this subsection. Boil water notices shall be issued to customers by using one or more of the Tier 1 delivery methods as described in §290.122(a)(2) of this title (relating to Public Notification) and using the applicable boil water notice language and format specified in Figure: 30 TAC §290.47(c)(1) and (2) of this title. A copy of this notice shall be provided to the executive director within 24 hours or no later than the next business day after issuance by the public water system and a signed Certificate of Delivery shall be provided to the executive director within ten days after issuance by the public water system in accordance with §290.122(f) of this title. The boil water notice shall be multilingual where appropriate based upon local demographics. Once the boil water notice is no longer in effect, the public water system shall notify customers throughout the distribution system or in the affected area(s) of the distribution system that the boil water notice has been rescinded using the language and format specified in Figure: 30 TAC §290.47(c)(3) of this title. A public water system shall not rescind a boil water notice and/or notify customers that the boil water notice has been rescinded until the public water system has met all of the applicable requirements as described in paragraph (6) of this subsection.

(2) Boil water notices for low distribution pressures. The flowchart found in §290.47(e) of this title shall be used to determine if a boil water notice shall be issued by the public water system to customers in the event of a loss of distribution system pressure.

(3) Boil water notices for *E. coli* (or other approved fecal indicator) maximum contaminant level (MCL) violations. A public water system shall issue a boil water notice to customers for a violation of the MCL for *E. coli* (or other approved fecal indicator) as described in §290.109(b)(1) of this title.

(4) Boil water notices for turbidity requirements. A public water system shall issue a boil water notice to customers if the combined filter effluent turbidity of the finished water, produced by a treatment plant that is treating surface water or groundwater under the direct influence of surface water, is above the turbidity level requirements as described in §290.122(a)(1)(B) of this title, specifically:

(A) a combined filter effluent turbidity level above 5.0 NTU;

(B) a combined filter effluent turbidity level above 1.0 NTU at a treatment plant using membrane filters;

(C) a combined filter effluent turbidity level above 1.0 NTU at a plant using other than membrane filters at the discretion of the executive director after consultation with the public water system; or

(D) failure of a public water system with treatment other than membrane filters to consult with the executive director within 24 hours after a combined filter effluent reading of 1.0 NTU.

(5) Actions which may be required by the executive director. Special precautions, protective measures, and boil water notices may be required at the discretion of the executive director and shall be

instituted by the public water system, upon written notification to the public water system, and shall remain in effect until the public water system meets the requirements of subparagraph (C) of this paragraph and paragraph (6) of this subsection.

(A) Circumstances warranting the exercise of such discretion may include:

(i) the public water system has failed to provide any of the required compliance information to the executive director as described in §290.111(h)(2) of this title and the failure results in the inability of the executive director to determine compliance as described in §290.111(i) of this title or the existence of a potential or actual health hazard, as described in §290.38 of this title;

(ii) a waterborne disease outbreak, as defined in 40 Code of Federal Regulations §141.2, or other waterborne emergencies for situations that do not meet this definition, but that still have the potential to have serious adverse effects on health as a result of short-term exposure. These could include outbreaks not related to treatment deficiencies, as well as situations that have the potential to cause outbreaks, such as failures or significant interruption in water treatment processes, natural disasters that disrupt the water supply or distribution system, chemical spills, or unexpected loading of possible pathogens into the source water; or

(iii) the public water system has failed to maintain adequate disinfectant residuals as described in subsection (d) of this section and as described in §290.110 of this title.

(B) The executive director will provide written notification to the public water system in the event a public water system is required to institute special precautions, protective measures, or issue boil water notices to customers at the discretion of the executive director. Upon written notification from the executive director, the public water system shall implement special precautions, protective measures, or issue boil water notices to customers within 24 hours or within the time period specified by the executive director.

(C) The public water system shall provide any required information to the executive director to document that the public water system has met the requirements for special precautions, protective measures, and boil water notices required at the discretion of the executive director under this paragraph.

(6) Required actions prior to rescinding a boil water notice. A public water system shall notify customers throughout the distribution system or in the affected area(s) of the distribution system that a boil water notice has been rescinded after the public water system has met the requirements of this paragraph. A boil water notice issued under the requirements of this subsection shall remain in effect until the public water system has provided required compliance documentation to the executive director which establishes that the public water system has met the following requirements, as applicable:

(A) water distribution system pressures in excess of 20 psi are consistently being maintained throughout the distribution system in accordance with the flowchart found in §290.47(e) of this title;

(B) affected area(s) of the distribution system have been thoroughly flushed until a minimum of 0.2 mg/L free chlorine residual or 0.5 mg/L chloramine residual (measured as total chlorine) is present and is consistently being maintained in each finished water storage tank and throughout the distribution system as described in subsection (d) of this section;

(C) finished water entering the distribution system, produced by a treatment plant that is treating surface water or groundwater under the direct influence of surface water, has a turbidity level that is consistently being maintained below 1.0 NTU;

(D) actions required by the executive director under paragraph (5) of this subsection have been met and the public water system is operating in accordance with §290.111(h)(2) of this title as described in paragraph (5)(A)(i) of this subsection; and

(E) water samples for microbiological analysis, marked as "special" on the laboratory sample submission form, were collected from representative locations throughout the distribution system or in the affected area(s) of the distribution system after the public water system has met all other applicable requirements of this paragraph and the water samples collected for microbiological analysis are found negative for coliform organisms. The water samples described in this subparagraph shall be analyzed at laboratories in accordance with §290.119 of this title (relating to Analytical Procedures).

(F) A public water system shall notify customers throughout the distribution system or in the affected area(s) of the distribution system that a boil water notice has been rescinded within 24 hours or no later than the next business day, using the language and format specified in Figure: 30 TAC §290.47(c)(3) of this title, once the public water system has met the requirements of this paragraph. The public water system shall provide a copy of the "Boil Water Notice Rescinded" notice and a copy of the associated microbiological laboratory analysis results, as required by subparagraph (E) of this paragraph, to the executive director within ten days after the public water system has issued the rescind notice to customers in accordance with §290.122(f) of this title.

(r) Minimum pressures. All public water systems shall be operated to provide a minimum pressure of 35 psi throughout the distribution system under normal operating conditions. The system shall also be operated to maintain a minimum pressure of 20 psi during emergencies such as fire fighting. As soon as safe and practicable following the occurrence of a natural disaster, a public water system that is an affected utility shall maintain a minimum of 35 psi throughout the distribution system during an extended power outage.

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

(1) Flow-measuring devices and rate-of-flow controllers that are required by §290.42(b) and (d) of this title (relating to Water Treatment) shall be calibrated at least once every 12 months. Well meters required by §290.41(c)(3)(N) of this title shall be calibrated at least once every three years.

(2) Laboratory equipment used for compliance testing shall be properly calibrated.

(A) pH meters shall be properly calibrated.

(i) Benchtop pH meters shall be calibrated according to manufacturer 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 manufacturer specifications.

(iii) On-line pH meters shall be calibrated according to manufacturer specifications at least once every 30 days.

(iv) The calibration of on-line pH meters shall be checked at least once each week with a primary standard or by comparing the results from the on-line unit with the results from a properly

calibrated benchtop unit. If necessary, the on-line unit shall be recalibrated with primary standards.

(B) Turbidimeters shall be properly calibrated.

(i) Benchtop turbidimeters shall be calibrated with primary standards at least once every 90 days. Each time the turbidimeter is calibrated with primary standards, the secondary standards shall be restandardized.

(ii) The calibration of benchtop turbidimeters shall be checked with secondary standards each time a series of samples is tested, and if necessary, recalibrated with primary standards.

(iii) On-line turbidimeters shall be calibrated with primary standards at least once every 90 days.

(iv) The calibration of on-line turbidimeters shall be checked at least once each week with a primary standard, a secondary standard, or the manufacturer's proprietary calibration confirmation device or by comparing the results from the on-line unit with the results from a properly calibrated benchtop unit. If necessary, the on-line unit shall be recalibrated with primary standards.

(C) Chemical disinfectant residual analyzers shall be properly calibrated.

(i) The accuracy of manual disinfectant residual analyzers shall be verified at least once every 90 days using chlorine solutions of known concentrations.

(ii) The accuracy of continuous disinfectant residual analyzers shall be checked at least once every seven days with a chlorine solution of known concentration or by comparing the results from the on-line analyzer with the result of approved benchtop method in accordance with §290.119 of this title.

(iii) If a disinfectant residual analyzer produces a result which is not within 15% of the expected value, the cause of the discrepancy must be determined and corrected and, if necessary, the instrument must be recalibrated.

(D) Analyzers used to determine the effectiveness of chloramination in §290.110(c)(5) of this title shall be properly verified in accordance with the manufacturer's recommendations every 90 days. These analyzers include monochloramine, ammonia, nitrite, and nitrate equipment used by the public water system.

(E) Ultraviolet (UV) light disinfection analyzers shall be properly calibrated.

(i) The accuracy of duty UV sensors shall be verified with a reference UV sensor monthly, according to the UV sensor manufacturer.

(ii) The reference UV sensor shall be calibrated by the UV sensor manufacturer on a yearly basis, or sooner if needed.

(iii) If used, the UV Transmittance (UVT) analyzer shall be calibrated weekly according to the UVT analyzer manufacturer specifications.

(F) Systems must verify the performance of direct integrity testing equipment in a manner and schedule approved by the executive director.

(G) Conductivity (or total dissolved solids) monitors and pressure instruments used for reverse osmosis and nanofiltration membrane systems shall be calibrated at least once every 12 months.

(H) Any temperature monitoring devices used for reverse osmosis and nanofiltration shall be verified and calibrated in accordance with the manufacturer's specifications.

(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 executive director for review and approval. Deteriorated wells must be either plugged with cement or repaired to a non-deteriorated condition.

(v) Electrical wiring. All water system electrical wiring must be securely installed in compliance with a local or national electrical code.

(w) Security. All systems shall maintain internal procedures to notify the executive director by a toll-free reporting phone number immediately of the following events, if the event may negatively impact the production or delivery of safe and adequate drinking water:

(1) an unusual or unexplained unauthorized entry at property of the public water system;

(2) an act of terrorism against the public water system;

(3) an unauthorized attempt to probe for or gain access to proprietary information that supports the key activities of the public water system;

(4) a theft of property that supports the key activities of the public water system; or

(5) a natural disaster, accident, or act that results in damage to the public water system.

(x) Public safety standards. This subsection only applies to a municipality with a population of 1,000,000 or more, with a public utility within its corporate limits; a municipality with a population of more than 36,000 and less than 41,000 located in two counties, one of which is a county with a population of more than 1.8 million; a municipality, including any industrial district within the municipality or its extraterritorial jurisdiction (ETJ), with a population of more than 7,000 and less than 30,000 located in a county with a population of more than 155,000 and less than 180,000; or a municipality, including any industrial district within the municipality or its ETJ, with a population of more than 11,000 and less than 18,000 located in a county with a population of more than 125,000 and less than 230,000.

(1) In this subsection:

(A) "Regulatory authority" means, in accordance with the context in which it is found, either the commission or the governing body of a municipality.

(B) "Public utility" means any person, corporation, cooperative corporation, affected county, or any combination of these persons or entities, other than a municipal corporation, water supply or sewer service corporation, or a political subdivision of the state, except an affected county, or their lessees, trustees, and receivers, owning or operating for compensation in this state equipment or facilities for the transmission, storage, distribution, sale, or provision of potable water to the public or for the resale of potable water to the public for any use or for the collection, transportation, treatment, or disposal of sewage or other operation of a sewage disposal service for the public, other than equipment or facilities owned and operated for either pur-

pose by a municipality or other political subdivision of this state or a water supply or sewer service corporation, but does not include any person or corporation not otherwise a public utility that furnishes the services or commodity only to itself or its employees or tenants as an incident of that employee service or tenancy when that service or commodity is not resold to or used by others.

(C) "Residential area" means:

(i) an area designated as a residential zoning district by a governing ordinance or code or an area in which the principal land use is for private residences;

(ii) a subdivision for which a plat is recorded in the real property records of the county and that contains or is bounded by public streets or parts of public streets that are abutted by residential property occupying at least 75% of the front footage along the block face; or

(iii) a subdivision a majority of the lots of which are subject to deed restrictions limiting the lots to residential use.

(D) "Industrial district" has the meaning assigned by Texas Local Government Code, §42.044, and includes an area that is designated by the governing body of a municipality as a zoned industrial area.

(2) When the regulatory authority is a municipality, it shall by ordinance adopt standards for installing fire hydrants in residential areas in the municipality. These standards must, at a minimum, follow current AWWA standards pertaining to fire hydrants and the requirements of §290.44(e)(6) of this title.

(3) When the regulatory authority is a municipality, it shall by ordinance adopt standards for maintaining sufficient water pressure for service to fire hydrants adequate to protect public safety in residential areas in the municipality. The standards specified in paragraph (4) of this subsection are the minimum acceptable standards.

(4) A public utility shall deliver water to any fire hydrant connected to the public utility's water system located in a residential area so that the flow at the fire hydrant is at least 250 gallons per minute for a minimum period of two hours while maintaining a minimum pressure of 20 psi throughout the distribution system during emergencies such as fire fighting. That flow is in addition to the public utility's maximum daily demand for purposes other than fire fighting.

(5) When the regulatory authority is a municipality, it shall adopt the standards required by this subsection within one year of the effective date of this subsection or within one year of the date this subsection first applies to the municipality, whichever occurs later.

(6) A public utility shall comply with the standards established by a municipality under both paragraphs (2) and (3) of this subsection within one year of the date the standards first apply to the public utility. If a municipality has failed to comply with the deadline required by paragraph (5) of this subsection, then a public utility shall comply with the standards specified in paragraphs (2) and (4) of this subsection within two years of the effective date of this subsection or within one year of the date this subsection first applies to the public utility, whichever occurs later.

(y) Fire hydrant flow standards.

(1) In this subsection:

(A) "Municipal utility" means a retail public utility, as defined by Texas Water Code (TWC), §13.002, that is owned by a municipality.

(B) "Residential area" means an area used principally for private residences that is improved with at least 100 single-family homes and has an average density of one home per half acre.

(C) "Utility" includes a "public utility" and "water supply or sewer service corporation" as defined by TWC, §13.002.

(2) The governing body of a municipality by ordinance may adopt standards set by the executive director requiring a utility to maintain a minimum sufficient water flow and pressure to fire hydrants in a residential area located in the municipality or the municipality's ETJ. The municipality must submit a signed copy of the ordinance to the executive director within 60 days of the adoption of an ordinance by its governing body.

(3) In addition to a utility's maximum daily demand, the utility must provide, for purposes of emergency fire suppression:

(A) a minimum sufficient water flow of at least 250 gallons per minute for at least two hours; and

(B) a minimum sufficient water pressure of at least 20 psi.

(4) If a municipality adopts standards for a minimum sufficient water flow and pressure to fire hydrants, the municipality must require a utility to maintain at least the minimum sufficient water flow and pressure described by paragraph (3) of this subsection in fire hydrants in a residential area located within the municipality or the municipality's ETJ. If the municipality adopts a fire flow standard exceeding the minimum standards set in paragraph (3) of this subsection, the standard adopted by the municipality must be based on:

(A) the density of connections;

(B) service demands; and

(C) other relevant factors.

(5) If the municipality owns a municipal utility, it may not require another utility located in the municipality or the municipality's ETJ to provide water flow and pressure in a fire hydrant greater than that provided by the municipal utility as determined by the executive director.

(6) If the municipality does not own a municipal utility, it may not require a utility located in the municipality or the municipality's ETJ to provide a minimum sufficient water flow and pressure greater than the standard established by paragraph (3) of this subsection.

(7) An ordinance under paragraph (2) of this subsection may not require a utility to build, retrofit, or improve infrastructure in existence at the time the ordinance is adopted.

(8) A municipality with a population of less than 1.9 million that adopts standards under paragraph (2) of this subsection or that seeks to use a utility's water for emergency fire suppression shall enter into a written memorandum of understanding with the utility.

(A) The memorandum of understanding must provide for:

(i) the necessary testing of fire hydrants; and

(ii) other relevant issues pertaining to the use of the water and maintenance of the fire hydrants to ensure compliance with this subsection.

(B) The municipality must submit a signed copy of the memorandum of understanding to the executive director within 60 days of the execution of the memorandum of understanding between its governing body and the utility.

(9) A municipality may notify the executive director of a utility's failure to comply with a standard adopted under paragraph (3) of this subsection.

(10) On receiving the notice described by paragraph (9) of this subsection, the executive director shall require a utility in violation of a standard adopted under this subsection to comply within a reasonable time established by the executive director.

(z) Nitrification Action Plan (NAP). Any water system distributing chloraminated water must create a NAP. The system must create a written NAP that:

(1) contains the system-specific plan for monitoring free ammonia, monochloramine, total chlorine, nitrite, and nitrate levels;

(2) contains system-specific action levels of the above monitored chemicals where action must be taken;

(3) contains specific corrective actions to be taken if the action levels are exceeded; and

(4) is maintained as part of the system's monitoring plan in §290.121 of this title.

§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 Retail Service Agreement.
Figure: 30 TAC §290.47(b) (No change.)

(c) Appendix C. Boil Water Notices.

(1) Appendix C1: Boil Water Notice for Community Public Water Systems.
Figure: 30 TAC §290.47(c)(1)

(2) Appendix C2: Boil Water Notice for Noncommunity Public Water Systems.
Figure: 30 TAC §290.47(c)(2)

(3) Appendix C3: Boil Water Notice Rescinded.
Figure: 30 TAC §290.47(c)(3)

(d) Appendix D. Operator Notice.
Figure: 30 TAC §290.47(d) (No change.)

(e) Appendix E. Special Precautions.
Figure: 30 TAC §290.47(e) (No change.)

(f) Appendix F. Assessment of Hazards and Selection of Assemblies.
Figure: 30 TAC §290.47(f) (No change.)

(g) Appendix G. Emergency Preparedness Plan Template.
Figure: 30 TAC §290.47(g) (No change.)

(h) Appendix H. Sample Language for Notification Upon Changing from Free Chlorine to Chloramines.
Figure: 30 TAC §290.47(h) (No change.)

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER F. DRINKING WATER STANDARDS GOVERNING DRINKING WATER QUALITY AND REPORTING REQUIREMENTS FOR PUBLIC WATER SYSTEMS

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

Statutory Authority

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

§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 according to the Safe Drinking Water Act (SDWA), 42 United States Code (USC), §300g-4 and §300g-5, and according to National Primary Drinking Water Regulations Implementation, Subpart K, 40 Code of Federal Regulations §§142.301 - 142.313. The executive director may not approve variances or exemptions from:

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

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

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

(4) Variances are prohibited for rules addressing microbial contaminants, including rules in §290.109 - 209.111 and §290.116 of this title (relating to Microbial Contaminants; Disinfectant Residuals;

Surface Water Treatment; and Groundwater Corrective Actions and Treatment Techniques).

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

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

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

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

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

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

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

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

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

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

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

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

(f) 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.

(g) The owner or operator of a public water system shall ensure that the executive director is provided with a copy of the results of any test, measurement, or analysis required by this subchapter. The copies shall be submitted within the first ten days following the month in which the result is received by the public water system, or the first ten days following the end of the required monitoring period as provided by this subchapter, whichever occurs first.

§290.106. Inorganic Contaminants.

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

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

(2) Transient, noncommunity 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) MCLs for IOCs. The MCLs for IOCs listed in the following table apply to community and nontransient, noncommunity water systems. The MCLs for nitrate, nitrite, and total nitrate and nitrite also apply to transient, noncommunity water systems.
Figure: 30 TAC §290.106(b) (No change.)

(c) Monitoring requirements for IOCs. Public water systems shall monitor for IOCs at the locations specified by the executive director. All monitoring conducted under 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) Routine 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 entry point to the distribution system.

(A) If a system draws water from more than one source and the sources are combined before distribution, the system must sample at an entry point that is representative of all sources and during periods of normal operating conditions.

(B) Systems shall take all subsequent samples at the same entry point to the distribution system unless the executive director determines that conditions make another entry point 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 entry points 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 Code of Federal Regulations (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 entry point 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.

(D) Initial monitoring for a new water source must be conducted at a site representative of the water quality of the new source of water. For systems with one well and one entry point, initial monitoring may be conducted at the entry point to the distribution system.

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

(A) A system vulnerable to asbestos contamination due solely to source water shall sample at the entry point 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) Initial monitoring frequency for IOCs except asbestos. Prior to using water as a drinking water source, public water systems shall monitor at the frequency determined by the executive director to ensure that the water distributed to customers will comply with the MCLs for antimony, arsenic, barium, beryllium, cadmium, chromium, cyanide, fluoride, nitrate, nitrite, nitrate and nitrite (total), mercury, selenium, and thallium.

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

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

(i) Each groundwater entry point shall be sampled once every three years.

(ii) Each surface water entry point shall be sampled annually.

(iii) Each of the sampling frequencies listed in this paragraph constitutes one round of sampling for groundwater and surface water entry points, respectively.

(B) Reduced monitoring. 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 at that sample site were less than the MCL.

(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 that 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) Increased monitoring. The executive director may increase the monitoring frequency for antimony, arsenic, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, selenium, or thallium.

(i) If the results from a sample site exceed any of the MCLs in subsection (b) of this section, the system shall immediately begin quarterly sampling at that sample site starting in the next quarter after the exceedance 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 sampling site 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.

(5) Asbestos monitoring frequency. Community and nontransient, noncommunity 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 that 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.

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

(A) Routine nitrate monitoring frequency. All public water systems shall routinely monitor for nitrate.

(i) All public water systems shall annually sample at each groundwater entry point to the distribution system.

(ii) A community or nontransient, noncommunity water system shall sample quarterly at each surface water entry point to the distribution system.

(iii) A transient, noncommunity water system shall sample annually at each surface water entry point to the distribution system.

(B) Reduced nitrate monitoring frequency. The executive director may reduce the monitoring frequency for community or nontransient, noncommunity 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.

(C) Increased nitrate monitoring frequency. The executive director may increase the nitrate monitoring frequency for community or nontransient, noncommunity 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.

(7) 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 each nine-year compliance cycle. All public water systems shall monitor at the time designated by the executive director during each compliance period during each nine-year compliance cycle. New entry points will be scheduled for nitrite sample collection during the first year of operation, and then every nine years thereafter unless increased nitrite monitoring is required in accordance with this paragraph.

(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.

(8) Confirmation sampling for all IOCs. 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 may be required to collect one additional sample to confirm the results of the initial test. If an additional sample is required:

(i) Confirmation samples must be collected at the same entry point 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; and

(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.

(9) More frequent monitoring. The executive director may require more frequent monitoring than specified in paragraphs (4) - (7) of this subsection.

(d) Analytical requirements for IOCs. Analytical procedures shall be performed in accordance with §290.119 of this title (relating to Analytical Procedures). Testing for inorganic contaminants shall be performed at a laboratory certified by the executive director.

(e) Reporting requirements for IOCs. The owner or operator of a public water system shall ensure that the executive director is provided with a copy of the results of any test, measurement, or analysis required by this subsection. The copies must be submitted within the first ten days following the month in which the result is received by the public water system, or the first ten days following the end of the required monitoring period as provided by this subsection, whichever occurs first The copies must be mailed to the Texas Commission on Environmental Quality, Water Supply Division, MC 155, P.O. Box 13087, Austin, Texas 78711-3087.

(f) Compliance determination for IOCs. Compliance with this section shall be determined using the following criteria.

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

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

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

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

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

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

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

(4) Any result below the method detection limits of 40 CFR §141.23(a)(4)(i) 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.

(6) Compliance with the IOC MCLs must be based on the results of all samples required by the executive director, regardless of whether that number is greater or less than the minimum required number.

(7) For purposes of determining compliance, arsenic results must be reported to the nearest 0.001 milligram per liter.

(8) A public water system that fails to do a required public notice or certify that the public notice has been performed commits a public notice violation.

(g) Public notice for IOCs. 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 within 24 hours 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 IOCs 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 that fails to conduct the monitoring required by this section must notify its customers of the violation in accordance with the requirements of §290.122(c) of this title.

(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 that is out of compliance.

(h) Best available technology (BAT) for IOCs. BAT for treatment of violations of MCLs in subsection (b) of this section are listed in 40 CFR §141.62.

(i) Small system compliance technologies (SSCTs) for arsenic. SSCTs for arsenic are listed in 40 CFR §141.62(d) and may be utilized with commission approval. When point-of-use or point-of-entry devices are used for compliance, the water system must develop a pro-

gram for the long-term operation, maintenance, and monitoring of the devices to ensure adequate performance.

(j) Bottled water. In accordance with 40 CFR §141.101, bottled water may be used on a temporary basis only and with approval by the commission in order to avoid unreasonable risk to health.

§290.107. Organic Contaminants.

(a) Applicability. All community and nontransient, noncommunity 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 MCLs specified in this section.

(1) The following are MCLs for synthetic organic chemical (SOC) contaminants.
Figure: 30 TAC §290.107(b)(1) (No change.)

(2) The following are MCLs for volatile organic chemical (VOC) contaminants.
Figure: 30 TAC §290.107(b)(2) (No change.)

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

(c) Monitoring requirements for organic contaminants. Public water systems shall monitor for organic contaminants at the locations and frequency in paragraphs (1) and (2) of this subsection. All monitoring conducted under 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.

(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 shall routinely sample at sample sites representative of each entry point to the distribution system.

(ii) Subsequent samples must be taken at the same sample site unless the executive director determines that a change in conditions makes a different sample site more representative of the water available to customers.

(iii) The executive director must approve any change in sampling location.

(B) Initial SOC monitoring frequency. Prior to using a new source of water as drinking water, public water systems shall monitor at the frequency established by the executive director to ensure that the water distributed to customers will comply with the MCLs for SOCs.

(C) Routine 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 at that sample site 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 at that sample site 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.

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

(i) Entry points that exceed the SOC MCLs of subsection (b)(1) of this section as determined by subsection (f) of this section must be monitored 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 that 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 entry point to the distribution system at which a detection occurs.

(II) After a system collects a minimum of two consecutive quarterly samples at a groundwater sample site, the executive director may decrease the quarterly monitoring requirement specified in subclause (I) of this clause, if the sample site is reliably and consistently below the MCL.

(III) After a system collects a minimum of four consecutive quarterly samples at a surface water sample site or a groundwater under the direct influence of surface water sample site, the executive director may decrease the quarterly monitoring requirement specified in subclause (I) of this clause, if the sample site is reliably and consistently below the MCL.

(IV) After the executive director determines that a sample site is reliably and consistently below the MCL, the executive director may allow the sample site to be monitored annually. Systems that monitor annually must monitor during the quarter that previously yielded the highest analytical result.

(V) Sample sites that 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 in subsection (f) of this section. The executive director has discretion to delete results of obvious sampling errors from this calculation.

(E) Waivers for SOC monitoring. The executive director may grant a waiver to reduce the SOC monitoring frequency from the monitoring frequency requirements of subparagraphs (B) and (C) of this paragraph, 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 polychlorinated byphenyls (PCBs) in equipment used in the production, storage, or distribution of water (i.e., PCBs used in pumps, transformers, etc.).

(F) Compositing for SOC monitoring. The executive director may reduce the total number of samples required from a system for analysis by allowing the use of compositing. Composite samples from a maximum of five entry points 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 any of the SOC contaminants listed in subsection (b)(1) of this section are detected in a composite sample, then a follow-up sample must be taken from each entry point to the distribution system included in the composite and analyzed within 14 days of collection.

(ii) If duplicates of the original SOC sample taken from each entry point 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 entry points to the distribution system within a single system.

(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 shall routinely sample at sample sites representative of each entry point to the distribution system.

(ii) Subsequent samples must be taken at the same sample site unless the executive director determines that a change in conditions makes a different sample site more representative of the water available to customers.

(iii) The executive director must approve any change in sampling location.

(B) Initial VOC monitoring frequency. Prior to using water as a drinking water source, public water systems shall monitor at the frequency established by the executive director to ensure that the water distributed to customers will comply with the MCLs for VOCs.

(C) Routine 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, 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, noncommunity groundwater system that does not detect a VOC contaminant listed in subsection (b)(2) of this section may be granted a waiver from the annual or triennial requirements of subsection (c)(2)(C)(ii) and (iii) of this section after completing the initial monitoring. For the purposes of this section, detection is defined as an analytical result of 0.0005 mg/L or greater. 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.

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

(i) Sample sites that exceed the VOC MCLs of subsection (b)(2) of this section, as determined by subsection (f) of this section, must be monitored 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 entry point to the distribution system that resulted in a detection;

(II) the executive director may decrease the quarterly monitoring requirement specified in subsection (c)(2)(D)(iii)(I) of this section provided that the executive director has determined that the system is reliably and consistently below the MCL. 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 that monitor annually must monitor during the quarter that 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 subparagraph (E) of this paragraph; and

(V) groundwater systems that have detected one or more of the following two-carbon organic compounds: trichloroethylene, tetrachloroethylene, 1,2-dichloroethane, 1,1,1-trichloroethane, cis-1,2-dichloroethylene, trans-1,2-dichloroethylene, or 1,1-dichloroethylene shall monitor quarterly for vinyl chloride. A vinyl chloride sample shall be taken at each entry point 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.).

(E) 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 entry point 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 that 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 subparagraph (C)(ii) of this paragraph 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).

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

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

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

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

(iv) Procedures for compositing VOC samples are as stated in 40 Code of Federal Regulations (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 executive director.

(e) Reporting requirements for organic contaminants. The owner or operator of a public water system shall ensure the executive director is provided with a copy of the results of any test, measurement, or analysis required by this subsection. The copies must be submitted within the first ten days following the month in which the result is received by the public water system, or the first ten days following the end of the required monitoring period as provided by this subsection, whichever occurs first. The copies must be mailed to the Water Supply

Division, MC 155, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

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

(1) If one sampling point is in violation of any MCL in subsection (b) of this section, then the system is in violation of the MCL for that contaminant.

(A) For systems monitoring more than once per year, compliance with the MCL is determined by a running annual average at each sampling point.

(B) Systems monitoring annually or less frequently whose sample result exceeds the MCL must begin quarterly sampling; systems will not be considered in violation of the MCL until they have completed one year of quarterly sampling.

(C) If any sample result will cause the running annual average to exceed the MCL at any sampling point, the system is out of compliance with the MCL immediately.

(D) If a system fails to collect the required number of samples, compliance will be based on the total number of samples collected.

(E) If a sample result is less than the detection limit, zero will be used to calculate the annual average.

(2) The executive director has the authority to determine compliance or initiate enforcement action based upon analytical results and other information compiled by sanctioned representatives and agencies.

(3) A public water system that fails to do a required public notice or certify that the public notice has been performed commits a public notice violation.

(g) Public notification requirements for organic contaminants. A public water system that violates the requirements of this section must notify the executive director 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 that is out of compliance.

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

(2) A public water system that fails to conduct the monitoring required by this section must notify its customers of the violation in accordance with the requirements of §290.122(c) of this title.

(h) Best available technology 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 Supply Division, MC 155, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

§290.108. Radionuclides Other than Radon.

(a) Applicability. All community water systems shall comply with the requirements of this section regarding radionuclide contaminants. Public water systems treating groundwater under the direct influence of surface water must comply with the radionuclide requirements for surface water systems. Public water systems shall comply with the initial monitoring requirements.

(b) Maximum contaminant levels (MCL). The concentration of radionuclide contaminants in the water entering the distribution system shall not exceed the following MCLs.

(1) MCLs for naturally occurring radionuclides are as follows:

(A) 5 picoCuries per liter (pCi/L) for combined radium-226 and radium-228, as calculated by the summation of the results for radium-226 and radium-228;

(B) 15 pCi/L for gross alpha particle activity (including radium-226 but excluding radon and uranium); and

(C) 30 micrograms per liter for uranium.

(2) MCLs for beta particle and photon radioactivity from man-made radionuclides in drinking water in community water systems are equivalent to the MCLs under 40 Code of Federal Regulations (CFR) §141.66(d), as amended and adopted in the CFR through December 7, 2000 (65 FR 76708), which is adopted by reference.

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

(1) Monitoring frequency for naturally occurring radionuclides. The monitoring frequency requirements for gross alpha particle activity, combined radium-226 and radium-228, and uranium are as follows.

(A) Initial monitoring frequency. All systems that use a new source of water must begin to conduct initial monitoring of the new source within 90 days after initiating use of the source.

(i) If the initial monitoring results are at or above an MCL, the system must perform quarterly monitoring as described in subparagraph (C) of this paragraph.

(ii) If the initial monitoring results are below all of MCLs given in subsection (b)(1) of this section, the system shall perform routine monitoring as described in subparagraph (B) of this paragraph.

(B) Routine monitoring. The results of samples collected during initial and routine monitoring periods will be used to determine the monitoring frequency for subsequent monitoring periods.

(i) If the results for all contaminants (gross alpha particle activity, combined radium-226 and radium-228, and uranium) are below the detection limits specified in Table A of this clause, the system must collect and analyze at least one sample at that sampling point once every nine years.
Figure: 30 TAC §290.108(c)(1)(B)(i) (No change.)

(ii) If the result for any contaminant is at or above the detection limit but at or below one-half the MCLs given in subsection (b) of this section, the system must collect and analyze at least one sample at that sampling point every six years.

(iii) If the result for any contaminant is above one-half the MCLs given in subsection (b) of this section but below the MCL, the system must collect and analyze at least one sample at that sampling point every three years.

(iv) If the result for any contaminant is at or above any of the MCLs given in subsection (b) of this section, monitoring must be performed at the frequency given in subparagraph (C) of this paragraph.

(C) Increased monitoring. A system must perform increased monitoring if any results at a sampling point are at or above the MCLs, or at the direction of the executive director.

(i) If the results for any contaminant are at or above any of the MCLs given in subsection (b) of this section, consecutive quarterly monitoring must be performed at that sample point.

(ii) If the average of quarterly monitoring results is less than the MCLs in subsection (b) of this section, the sample point may be returned to the routine sampling frequency given in subparagraph (B) of this paragraph.

(iii) To fulfill quarterly monitoring requirements a system may composite up to four consecutive quarterly samples from a single entry point if analysis is done within a year of the first sample.

(iv) The analytical results from a composite sample will be treated as the annual average to determine compliance with the MCLs and future monitoring frequency requirements.

(v) When required by the executive director, more frequent monitoring must be conducted in the vicinity of mining or other operations that 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 that may increase the concentration of radionuclide in the finished water.

(vi) Community public water systems shall conduct monitoring when required by the executive director.

(D) Historical data. A system may use historical data to comply with the initial monitoring requirement, if approved by the executive director.

(i) A system having only one entry point to the distribution system may use the monitoring data from the previous entry point or distribution system compliance monitoring to satisfy initial monitoring requirements.

(ii) A system with multiple entry points that has appropriate historical monitoring data for each entry point to the distribution system may use previous compliance monitoring data to satisfy initial monitoring requirements.

(iii) To satisfy initial monitoring requirements, a community water system with appropriate historical data for a representative point in the distribution system may use the monitoring data from the distribution system, provided that the executive director finds that the historical data satisfactorily demonstrates that each entry point to the distribution system is expected to be in compliance based upon the historical data and reasonable assumptions about the variability of contaminant levels between entry points.

(E) Sample invalidation. The executive director may invalidate the results of obvious sampling or analytic errors.

(F) Confirmation samples. The executive director may require more frequent monitoring or may require confirmation samples at the executive director's discretion.

(G) Sampling scheduling. Systems shall monitor at the time designated by the executive director.

(2) Monitoring and compliance for man-made radionuclides. The monitoring and compliance requirements for man-made radionuclide under 40 CFR §141.26(b), as amended and adopted in the CFR through December 7, 2000 (65 FR 76708), are adopted by reference.

(3) Monitoring locations for radionuclide contaminants. Systems must monitor at sample sites described in the system's monitoring plan.

(A) Initial monitoring for a new water source must be conducted at a site representative of the water quality of the new source of water.

(B) Routine compliance monitoring for the radionuclide covered by this section must be performed at sampling points representing each entry point to the distribution system. If results from an entry point exceed one-half the MCL, the executive director may require the system to sample all water sources providing water to that entry point.

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

(e) Reporting requirements. The owner or operator of a public water system must ensure the executive director is provided with a copy of the results of any test, measurement, or analysis required by this section. The copies must be submitted within the first ten days following the month in which the result is received by the public water system, or the first ten days following the end of the required monitoring period as provided by this subsection, whichever occurs first. The copies must be mailed to the Water Supply Division, MC 155, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

(f) Compliance determination. Compliance with the requirements of this section shall be determined as follows.

(1) If the running average annual MCL for gross alpha particle activity, combined radium-226 and radium-228, or uranium as set forth in subsection (b) of this section is exceeded, based on quarterly monitoring results, the system has committed an MCL violation.

(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 5 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 5 pCi/L, the same or an equivalent sample shall be analyzed for radium-226 and radium-228.

(C) If a sample result is less than the detection limit, zero will be used to calculate the annual average, unless a gross alpha particle activity is being used in lieu of radium-226 and/or uranium. If the gross alpha particle activity result is less than detection, one-half the detection limit will be used to calculate the annual average.

(D) The results of all samples taken and analyzed under the provisions of this section will be used in determining compliance, even if that number is greater or less than the minimum required.

(E) If a system fails to complete required increased monitoring, the executive director may base compliance on all available sample results.

(F) If the results at one sample site are in violation, the public water system is in violation.

(G) When confirmation samples are collected, the average of an initial sample and its confirmation sample must be averaged for the purposes of determining compliance.

(H) To judge compliance with the MCLs, sample results must be rounded to the same number of significant figures as the MCL for the substance in question.

(2) If the average annual MCL for man-made radionuclide set forth in subsection (b) of this section is exceeded, the system has committed an MCL violation.

(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.

(5) A public water system that fails to do a required public notice or certify that the public notice has been performed commits a public notice violation.

(g) Public notification. A public water system that violates the requirements of this section must notify the executive director and the system's customers, as follows.

(1) A public water system that violates the MCL for gross alpha particle activity, combined radium-226 and radium-228, or uranium shall give notice to the executive director 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 radionuclide shall give notice to the executive director and to the public as required by §290.122(b) of this title.

(3) A public water system that 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.

(h) Best available technology for radionuclides other than radon. Best available technology for treatment of violations of MCLs in subsection (b) of this section are listed in 40 CFR §141.66(g).

(i) Small system compliance technologies (SSCTs) for radionuclides. SSCTs for radionuclides are listed in 40 CFR §141.66(h) and may be utilized with commission approval. When point-of-use or point-of-entry devices are used for compliance, the water system must develop a program for the long-term operation, maintenance, and monitoring of the devices to ensure adequate performance.

(j) Bottled water. In accordance with 40 CFR §141.101, bottled water may be used on a temporary basis only and with approval by the commission in order to avoid unreasonable risk to health.

§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 (MCL) for microbial contaminants. Treatment techniques and MCL requirements for microbial contaminants are based on detection of those contaminants or fecal indicator organisms.

(1) A public water system is in compliance with the MCL for *Escherichia coli (E. coli)* unless any of the following conditions occur:

(A) The public water system has an *E. coli*-positive repeat sample following a total-coliform-positive routine sample;

(B) The public water system has a total coliform-positive repeat sample following an *E. coli*-positive routine sample;

(C) The public water system fails to take all required repeat samples following an *E. coli*-positive routine sample; or

(D) The public water system fails to test for *E. coli* when any repeat sample tests positive for total coliform.

(E) The *E. coli* MCL is defined as when a condition described in subparagraphs (A) - (D) of this paragraph occurs.

(2) For public water systems required to collect raw groundwater samples, the standard is no detection of fecal indicators in a raw groundwater sample.

(c) Treatment technique triggers and assessment requirements for microbial contaminants. All public water systems shall comply with the requirements as described in this subsection. Public water systems shall conduct assessments after exceeding any of the treatment technique triggers as described in paragraphs (1) and (2) of this subsection.

(1) Level 1 treatment technique triggers are:

(A) For a public water system which collects 40 or more distribution samples per month, the treatment technique trigger is defined as when more than 5.0% of samples collected in a month are total coliform-positive.

(B) For a public water system which collects fewer than 40 distribution samples per month, the treatment technique trigger is defined as when two or more samples collected in a month are total coliform-positive.

(C) When a public water system fails to collect all required repeat samples after a total coliform-positive result.

(2) Level 2 treatment technique triggers are:

(A) An *E. coli* MCL violation as specified in subsection (b)(1)(A) - (D) of this section occurs.

(B) A second Level 1 treatment technique trigger occurs as defined in paragraph (1) of this subsection, within a rolling 12-month period. If the executive director has determined the reason that the samples that caused the first Level 1 treatment technique trigger were total coliform-positive and has established that the public water system has corrected the problem, a public water system will not be required to conduct and complete a Level 2 assessment. The public water system shall have identified any sanitary defect and provided adequate documentation to the executive director in the initial Level 1 assessment which established the reason that caused the first Level 1 treatment technique trigger and that the public water system corrected the problem. If the executive director has determined that a public water system is not required to conduct a Level 2 assessment based on the occurrence of a second Level 1 treatment technique trigger within a rolling 12-month period, the public water system shall still conduct the required Level 1 assessment and shall complete and submit the executive director-approved Level 1 assessment form.

(3) Treatment technique assessment requirements are:

(A) Level 1 and Level 2 assessments are conducted in order to identify the possible presence of sanitary defects and defects in distribution system coliform monitoring practices. The assessments may also indicate that no sanitary defects were identified. When conducting assessments, systems shall ensure that the assessor evaluates minimum elements that include review and identification of inadequacies in sample sites; sampling protocol; sample processing; atypical events that could affect distributed water quality or indicate that distributed water quality was impaired; changes in distribution system maintenance and operation that could affect distributed water quality (including, but not limited to water storage); source and treatment considerations that bear on distributed water quality; and existing water quality monitoring data. The system shall conduct and complete the

assessment in the format as prescribed by the executive director that tailors specific assessment elements with respect to the size and type of the system and the size, type, and characteristics of the distribution system.

(i) Level 1 and Level 2 assessments shall be conducted and completed by the public water system, licensed operators as required under §290.46(e) of this title (relating to Minimum Acceptable Operating Practices for Public Drinking Water Systems), or other parties approved by the executive director. The public water system, licensed operators, as required under §290.46(e) of this title, and other parties approved by the executive director shall have also completed training as required in clause (iii) of this subparagraph and any additional training required by the executive director in writing, upon notice to the public water system, licensed operators, and other parties approved by the executive director.

(ii) Other parties approved by the executive director include, but are not limited to:

(I) backflow prevention assembly testers and customer service inspectors licensed under Chapter 30 of this title (relating to Occupational Licenses and Registrations);

(II) plumbing inspectors and water supply protection specialists licensed by the Texas State Board of Plumbing Examiners;

(III) licensed professional engineers licensed by the Texas Board of Professional Engineers;

(IV) circuit riders or technical assistance providers under contract with the executive director or other government agency as approved by the executive director; or

(V) utility supervisor or manager supported by various utility staff or other individuals that meet the assessment requirements as described in this paragraph.

(iii) Assessors who have conducted Level 1 assessments which were determined by the executive director to be insufficient or inadequate may be required to complete additional training or obtain certifications as prescribed by the executive director.

(B) The Level 1 and Level 2 assessments shall be conducted and completed consistent with all directives set forth by the executive director and with respect to the size, type, and characteristics of the public water system. When conducting assessments, at a minimum, public water systems shall ensure that the following items are evaluated:

(i) review and identification of inadequacies in sample sites;

(ii) sampling protocol;

(iii) sample processing;

(iv) atypical events that could affect distributed water quality or indicate that distributed water quality was impaired;

(v) changes in distribution system maintenance and operation that could affect distributed water quality (including, but not limited to water storage);

(vi) source and treatment considerations that bear on distributed water quality, where appropriate;

(vii) existing water quality monitoring data; and

(viii) the possible presence of sanitary defects.

(C) A public water system shall conduct a Level 1 assessment and complete the executive director-approved Level 1 assessment form when the public water system exceeds one of the treatment technique triggers in paragraph (1) of this subsection. The public water system must note no sanitary defects were identified or describe sanitary defects detected, corrective actions completed, and a proposed timetable for any corrective actions not already completed in the Level 1 assessment form. At the discretion of the executive director, the public water system shall comply with any additional or expedited corrective actions when there is a potential for an acute health risk.

(i) Both the Level 1 assessment and the executive director-approved Level 1 assessment form shall be completed and the form submitted to the executive director as soon as practical, but no later than 30 days after the public water system learns that it has exceeded a trigger, or 30 days after all routine and repeat monitoring was required to be completed for the calendar month in which the system exceeded the trigger, whichever is earlier.

(ii) If the executive director determines that the Level 1 assessment is not sufficient, the public water system shall consult with the executive director and submit a revised assessment form to the executive director within 30 days from the date of consultation.

(iii) The executive director will determine if the public water system has identified the likely cause(s) of the trigger and, if so, was the cause(s) corrected, or has an acceptable schedule to correct the problem been included. The assessments may also indicate that no sanitary defects were identified.

(D) A public water system shall ensure that a Level 2 assessment and the executive director-approved Level 2 assessment form are conducted and completed consistently with all directives set forth by the executive director if the public water system exceeds one of the treatment technique triggers in paragraph (2) of this subsection. The public water system shall comply with any expedited actions or additional actions required by the executive director in the case of an *E. coli* MCL violation.

(i) After any trigger in paragraph (2) of this subsection, the public water system shall ensure that both the Level 2 assessment and the executive director-approved Level 2 assessment form are completed by the public water system, licensed operators as required under §290.46(e) of this title, or by parties approved by the executive director and the completed form submitted to the executive director as soon as practical but no later than 30 days after the public water system learns that it has exceeded a trigger in paragraph (2) of this subsection, or 30 days after all routine and repeat monitoring was required to be completed for the calendar month in which the system exceeded the trigger, whichever is earlier.

(ii) If the executive director determines that the completed Level 2 assessment is not sufficient or the proposed timetable for any corrective actions not completed is not sufficient, the public water system shall consult with the executive director. If any revisions are required after consultation, the public water system shall submit a revised assessment form to the executive director within 30 days from the date of the consultation.

(iii) After the Level 2 assessment is submitted, the executive director will determine if the public water system has identified the likely cause(s) of the trigger and corrected the cause(s), or has included an acceptable timetable for correcting the cause(s). The assessments may also indicate that no sanitary defects were identified.

(E) Public water systems must correct sanitary defects found through either Level 1 or Level 2 assessments described in this subsection. For corrective actions not completed by the time of sub-

mission of the assessment form, the public water system must complete the corrective actions in compliance with a timetable approved by the executive director in consultation with the public water system. The public water system must notify the executive director when scheduled corrective actions have been completed.

(F) At any time during the assessment or corrective action phase, either the public water system or the executive director may request a consultation with the other party to determine the appropriate actions. The public water system shall consult with the executive director on all relevant information that may impact its ability to comply with a requirement of this subsection.

(d) Monitoring requirements for microbial contaminants. Public water systems shall collect samples for total coliform, fecal coliform, *E. coli* (or other approved fecal indicator) at sampling sites and a sample collection schedule, as designated by the public water system, which are subject to review and revision as directed by the executive director. All compliance samples must be collected at sampling sites and a sample collection schedule that are representative of water throughout the distribution system and shall be reflected in the public water system's Sample Siting Plan and included with the public water system's monitoring plan in accordance with §290.121 of this title (relating to Monitoring Plans). All public water systems shall develop a written Sample Siting Plan as described in paragraph (6) of this subsection.

(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 distribution coliform samples at a customer's premise, dedicated sampling station, or other designated compliance sampling location at active service connections which are representative of water quality throughout the distribution system. Other sampling sites may be used if located adjacent to active service connections.

(B) Public water systems shall collect distribution coliform samples at locations specified in the public water system's Sample Siting Plan which shall be included in the public water system's monitoring plan.

(2) Routine distribution coliform sampling frequency. All public water systems must sample for distribution coliform at the following frequency.

(A) Community and noncommunity public water systems must collect routine distribution coliform 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 based on the data reported by the public water system to the executive director during the most recent sanitary survey of the public water system or any other data as required by the executive director.

(ii) The population of community systems will be based on the data reported by the public water system to the executive director during the most recent sanitary survey of the public water system or any other data as required by the executive director.

(iii) The minimum sampling frequency for public water systems is shown in the following table.
Figure: 30 TAC §290.109(d)(2)(A)(iii)

(B) A public water system which uses surface water or groundwater under the direct influence of surface water must collect routine distribution coliform samples at regular time intervals throughout the month.

(C) A public water system which uses only purchased water or groundwater not under the direct influence of surface water and serves more than 4,900 persons must collect routine distribution coliform 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 routine distribution coliform 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. Unless the executive director has invalidated the sample in accordance with subsection (e) of this section, all routine coliform sample results must be used to determine compliance with subsection (b)(1) of this section and to determine treatment technique trigger and assessment requirements as described in subsection (c)(1) and (2) of this section.

(F) All public water system shall collect at least the minimum number of required routine microbial samples even if the public water system has had an *E. coli* MCL violation under any of the conditions as described in subsection (b)(1)(A) - (D) of this section or has exceeded the coliform treatment technique triggers as described in subsection (c)(1) and (2) of this section.

(G) A public water system may conduct more microbial compliance monitoring than is required by this subsection to investigate potential problems in the public water system treatment facilities and distribution system and use monitoring to assist in identifying problems. A public water system may collect more than the minimum number of required routine samples required by this subsection. A public water system that collects more than the minimum number of required routine samples required by this subsection shall include the results of these samples in calculating whether the coliform treatment technique triggers as described in subsection (c)(1) and (2) of this section have been exceeded. The additional routine sample sites shall be included in the public water system's Sample Siting Plan and collected in accordance with the Sample Siting Plan and shall be representative of water throughout the distribution system.

(3) Repeat distribution coliform sampling requirements. Public water systems shall conduct repeat monitoring if one or more of the routine samples is found to contain coliform organisms.

(A) If a routine distribution coliform sample is coliform-positive, the public water system must collect a set of repeat distribution coliform samples within 24 hours of being notified of the positive result, or as soon as possible if the local laboratory is closed. The executive director may extend the 24-hour limit on a case-by-case basis if the public water system has a logistical problem in collecting the repeat samples within 24 hours that is beyond the public water system's control. All public water systems shall collect no fewer than three repeat samples for each total coliform-positive sample found even if the public water system has had an *E. coli* MCL violation under any of the conditions as described in subsection (b)(1)(A) - (D) of this section or has exceeded the coliform treatment technique triggers as described in subsection (c)(1) and (2) of this section.

(B) The public water system must collect all repeat samples on the same day, except a public water system with a single service connection may collect daily repeat samples over a three-day period until the required number of repeat samples has been collected.

(C) Unless the public water system meets the provisions of clause (i) or (ii) of this subparagraph, the public water system must collect at least one repeat sample from the sampling tap where the original 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 the positive routine sample was collected at the end of the distribution system, or one service connection away from the end of the distribution system, one repeat sample must be collected at that point and the other two repeat samples must be collected within five connections upstream of that point.

(i) As approved by the executive director, public water systems may propose repeat monitoring locations to the executive director that the public water system considers to be representative of a pathway for contamination of the distribution system. A public water system may elect to specify either alternative fixed locations or criteria for selecting repeat sampling sites on a situational basis in a written standard operating procedure (SOP) in its Sample Siting Plan. The public water system shall design its SOP to focus the repeat samples at locations that best verify and determine the extent of potential contamination of the distribution system area based on specific situations. The executive director may modify the SOP or require alternative monitoring locations as needed.

(ii) As approved by the executive director, groundwater public water systems serving 1,000 or fewer people may propose repeat sampling locations to the executive director, in a written SOP in its Sample Siting Plan, that differentiate potential source water and distribution system contamination (e.g., by sampling at entry points to the distribution system). A groundwater public water system with a single well required to conduct triggered source water monitoring may, with written executive director approval, take one of its repeat samples at the monitoring location required for triggered source water monitoring under paragraph (4) and (4)(A) of this subsection if the public water system demonstrates to the executive director that the Sample Siting Plan remains representative of water quality in the distribution system. If approved by the executive director, the public water system may use that sample result to meet the monitoring requirements for both repeat monitoring under this paragraph and triggered source monitoring under paragraph (4) and (4)(A) of this subsection.

(iii) All public water systems shall include all sample sites as required by this subparagraph and any required SOPs for any proposed sampling sites as described in clauses (i) and (ii) of this subparagraph in the public water system's Sample Siting Plan in accordance with paragraph (6) of this subsection.

(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 the public water system being notified of the positive result or as soon as possible if the local laboratory is closed. The executive director may extend the 24-hour limit on a case-by-case basis if the public water system has a logistical problem in collecting the repeat samples within 24 hours that is beyond the public water system's control. In accordance with 40 Code of Federal Regulations (CFR) §141.858(a)(1) the executive director is prohibited from waiving the requirement for a public water system to collect repeat samples as specified in subparagraphs (A) - (D) of this paragraph. The public water system must repeat this process until either one of the following occurs:

(i) total coliforms are not detected in one complete set of repeat samples;

(ii) a coliform treatment technique trigger as described in subsection (c)(1) and (2) of this section has been exceeded; or

(iii) If a treatment technique trigger as described in subsection (c)(1) and (2) of this section is exceeded as a result of a routine sample being total coliform-positive, public water systems are required to conduct only one round of repeat monitoring for each total coliform-positive routine sample.

(E) After a public water 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 public water system may count the subsequent sample(s) as a repeat sample instead of as a routine sample.

(F) A total coliform-positive sample invalidated under this subsection does not count towards meeting the minimum repeat monitoring requirements of this subsection. Unless the executive director has invalidated the sample in accordance with subsection (e) of this section, all repeat coliform sample results must be used to determine compliance with subsection (b)(1) of this section and to determine treatment technique trigger and assessment requirements as described in subsection (c)(1) and (2) of this section.

(4) General requirements for raw groundwater source monitoring. Groundwater systems must comply, unless otherwise noted, with the requirements of this section. Any raw groundwater source sample required under this paragraph must be collected at a location prior to any treatment of the groundwater source and use analytical procedures and methods described in §290.119(b)(10) of this title (relating to Analytical Procedures). The public water system may collect a sample at an executive director-approved location prior to any treatment to meet the requirements of this paragraph and subparagraph (A) of this paragraph if the sample is representative of the water quality of that well.

(A) Triggered source monitoring general requirements. A groundwater system must conduct triggered source water monitoring for *E. coli* (or other approved fecal indicator), if both of the following conditions exist.

(i) The system does not provide at least 4-log treatment of viruses (as defined in §290.103(44) of this title (relating to Definitions)) before the first customer for each groundwater source; and

(ii) The system is notified that a routine distribution coliform sample is positive and the sample is not invalidated under subsection (e)(1) of this section.

(B) Triggered source monitoring sampling requirements. A groundwater system must collect, within 24 hours of notification of the routine distribution total coliform-positive sample, at least one raw groundwater source *E. coli* (or other approved fecal indicator) sample from each groundwater source in use at the time the distribution coliform-positive sample was collected.

(i) The executive director may extend the 24-hour time limit on a case-by-case basis if the system cannot collect the raw groundwater source sample within 24 hours due to circumstances beyond its control. If the executive director extends the 24-hour time limit on a case-by-case basis, the public water system must collect the sample within 48 hours.

(ii) If approved by the executive director and documented in the public water system's monitoring plan, public water systems with more than one groundwater source may be allowed to sample a representative groundwater source or sources. Public water

systems shall modify their current monitoring plan to identify one or more groundwater sources that are representative of each distribution coliform sampling site and is intended to be used for representative source sampling.

(iii) A groundwater system with one well serving 1,000 people or fewer may use one of the three required repeat samples collected from a raw groundwater source to meet both the repeat requirements of paragraph (3) of this subsection and the triggered raw source monitoring requirements in this paragraph when all of the following requirements are met:

(I) the fecal indicator used is *E. coli;*

(II) the executive director has provided written approval for the public water system to meet the monitoring requirements for both repeat monitoring under paragraph (3) of this subsection and triggered source monitoring under this paragraph and subparagraph (A) of this paragraph; and

(III) the public water system's sample siting plan remains representative of water quality in the distribution system. If a required repeat sample is used to meet both requirements and found to be *E. coli*-positive, the public water system will have achieved an *E. coli* MCL as defined in subsection (b)(1)(A) - (D) of this section and corrective action will be required for the groundwater source where the sample was found to be *E. coli*-positive.

(iv) If the executive director does not require corrective action under §290.116 of this title (relating to Groundwater Corrective Actions and Treatment Techniques) for a fecal indicator positive source water sample collected under this subparagraph that is not invalidated under subsection (e) of this section, the public water system shall collect five additional source water samples from the same source within 24 hours of being notified of the fecal indicator positive sample.

(v) If a public water system takes more than one repeat sample at the monitoring location required for triggered source water monitoring, the public water system may reduce the number of additional source water samples required under clause (iv) of this subparagraph by the number of repeat samples taken at that location that were not *E. coli*-positive.

(C) Consecutive and wholesale systems. Consecutive groundwater systems receiving drinking water from a wholesaler must notify the wholesale system(s) within 24 hours of being notified of the positive coliform distribution sample. The wholesale groundwater system(s) must comply with the following:

(i) A wholesale groundwater system that receives notice of a distribution coliform sample positive from a consecutive system it serves must collect a sample from each of its groundwater sources within 24 hours of the notification and analyze each sample for the presence of *E. coli* (or other approved fecal indicator).

(ii) If any raw source sample is *E. coli* (or other approved fecal indicator) positive, the wholesale groundwater system must notify all consecutive systems served by that groundwater source of the fecal indicator positive within 24 hours of being notified. The wholesale system and all consecutive systems served by that groundwater source must notify their water system customers in accordance with subsection (h)(2) of this section and shall meet the requirements of subparagraph (B)(iv) of this paragraph.

(iii) If any raw source sample is *E. coli* positive, the wholesale groundwater system shall notify all consecutive systems served by that groundwater source of the fecal indicator source water positive within 24 hours of being notified and shall meet the requirements of subparagraph (B)(iv) of this paragraph.

(D) Exceptions to the triggered source monitoring requirements. A groundwater system is not required to comply with the triggered source monitoring requirements if any of the following conditions exist.

(i) The executive director determines and documents in writing, that the distribution coliform-positive sample is caused by a distribution system deficiency; or

(ii) The distribution coliform-positive sample is collected at a location that meets the distribution coliform sample invalidation criteria as specified in subsection (e)(1) of this section and the replacement sample is negative for coliforms.

(E) Assessment source monitoring. The executive director may require monthly source assessment raw monitoring without the presence of a positive total coliform distribution sample if well conditions exist that indicate the groundwater may be susceptible to fecal contamination. The executive director may conduct a hydrogeological sensitivity assessment to determine if the source is susceptible to fecal contamination. If requested by the executive director, groundwater systems must provide the executive director with any existing information that will enable the executive director to perform a hydrogeological sensitivity assessment. A groundwater system conducting assessment source monitoring may use a triggered source sample collected under subparagraph (A) of this paragraph to meet the assessment source monitoring requirement. A groundwater system with a groundwater source sample collected under this subparagraph or under subparagraph (A) of this paragraph that is fecal indicator positive and that is not invalidated under subsection (e)(2) of this section, including consecutive systems served by the groundwater source, shall conduct public notification under §290.122(a) of this title (relating to Public Notification). Additionally, an assessment source monitoring sample may be used as a triggered source monitoring sample if collected within 24 hours of notification of the coliform-positive distribution sample. Assessment source monitoring requirements may include:

(i) Source monitoring, collected in a manner described in §290.119(b)(10) of this title, for a period of 12 months that represents each month that the system provides groundwater to the public from the raw groundwater source or such time period as specified by the executive director.

(ii) Collection of samples from each well unless the system has an approved triggered source monitoring plan under subparagraph (B)(ii) of this paragraph.

(5) Culture analysis. If any routine or repeat sample is total coliform-positive, that total coliform-positive medium will be analyzed to determine if *E. coli* are present. If *E. coli* are present, the public water system shall notify the executive director by the end of the day in accordance with subsection (h) of this section.

(6) Sample Siting Plan requirements. All public water systems shall develop and complete a written Sample Siting Plan as described in this paragraph that identifies routine and repeat microbial sampling sites and a sample collection schedule as required by this subsection that are representative of water throughout the distribution system. The Sample Siting Plan shall include all groundwater sources and any associated sampling points necessary to meet the requirements of this subsection. The Sample Siting Plan shall be included as a part of the public water system's monitoring plan as described in §290.121 of this title. Sample Siting Plans shall be completed in a format specified by the executive director and are subject to review and revision by the executive director.

(A) All public water systems shall collect routine and repeat samples according to a written Sample Siting Plan. All routine

and repeat sample site locations, any required SOP, and any sampling point locations necessary to meet the requirements of this subsection shall be reflected in the written Sample Siting Plan. For community and noncommunity public water systems serving 1,000 or fewer people using only groundwater, the executive director shall evaluate during every sanitary survey (on-site inspection) the water system factors (including but not limited to pertinent water quality, compliance history, distribution system, all the components of a sanitary survey and its findings) to ensure the timeframe during the month, locations, and number of microbial compliance monitoring sample sites are adequate for producing and distributing safe drinking water.

(B) All public water systems shall include any required SOP for any proposed repeat sampling sites as described in paragraph (3)(C) of this subsection in the Sample Siting Plan. As required by the executive director, the executive director may review, revise, and approve any repeat sampling proposed by public water systems under paragraph (3)(C) of this subsection.

(C) The Sample Siting Plan shall include a distribution system map or series of maps which identifies distribution system valves and mains as described in §290.46(n)(2) of this title. The distribution system map shall also include the location of all routine microbial sample sites, water main sizes, entry point source locations, water storage facilities, and any pressure plane boundaries.

(D) All public water systems shall update their written Sample Siting Plan and map as necessary, or as requested by the executive director, to identify the most current microbial routine and repeat sampling sites and a sample collection schedule that are representative of water throughout the public water system's distribution system.

(E) All public water systems shall maintain a copy of their updated Sample Siting Plan and map on-site at the public water system for inspection purposes and at the request of the executive director, provide a copy of their Sample Siting Plan and/or map to the executive director for review and/or revision purposes.

(e) Analytical and invalidation requirements for microbial contaminants. Analytical procedures shall be performed in accordance with §290.119 of this title. Testing for microbial contaminants shall be performed at a laboratory certified by the executive director. The public water system must use a certified laboratory certified for each method and associated contaminant(s) for compliance analyses in accordance with §290.119 of this title.

(1) Distribution coliform sample invalidation. The executive director may invalidate a distribution total coliform-positive sample if one of the following conditions is met.

(A) The executive director may invalidate a sample if the laboratory provides written notice 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, determine 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 request that the executive director invalidate the sample. The system must provide copies of the routine positive and all repeat samples. The executive director may not invalidate a total coliform-positive sample solely on the grounds that all repeat samples are total coliform-negative or if the system has only one service connection.

(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 *E. coli* MCL as described in subsection (g) of this section and whether a coliform treatment technique trigger has been exceeded as described in subsection (c) 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 system must obtain the written and signed approval from the executive director before the sample can be invalidated under this condition. 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 provides written notice that the sample was unsuitable for analysis and the laboratory invalidated the sample based on the requirements of 40 CFR §141.853(c)(2). When the sample is invalidated under this condition, the system must collect another sample from the same location as the original sample within 24 hours of being notified, and have it analyzed for the presence of total coliforms. The system must continue to re-sample within 24 hours and have the samples analyzed until it obtains a valid result. The executive director may waive the 24-hour time limit on a case-by-case basis. Alternatively, the executive director may implement criteria for waiving the 24-hour sampling time limit to use in lieu of case-by-case extension.

(E) If a sample is invalidated by the laboratory, the public water 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 coliform. The system must continue to resample within 24 hours and have the samples analyzed until it obtains a valid result.

(2) A groundwater system may obtain invalidation of a fecal indicator positive groundwater source sample if the conditions of subparagraphs (A) and (B) of this paragraph apply. If the executive director invalidates a fecal indicator positive groundwater source sample, the system must collect another source sample as specified in subsection (d)(4) of this section within 24 hours of being notified of the invalidation.

(A) Notice from the laboratory must document that improper sample analysis occurred. If a laboratory invalidates a sample, the system must collect another sample from the same location as the original sample within 24 hours of being notified of the invalidated sample, and have it analyzed for the presence of *E. coli* (or other approved fecal indicator). The public water system must continue to re-sample within 24 hours and have the samples analyzed until it obtains a valid result. If approved by the executive director, the 24-hour time limit may be extended.

(B) The executive director may invalidate the sample if the public water system provides written documentation that there is substantial evidence that a fecal indicator positive groundwater source sample is not related to source water quality. If the executive director invalidates a sample, the public water system must collect another sample from the same location as the original sample within 24 hours of being notified of the invalidated sample, and have it analyzed for the presence of *E. coli* (or other approved fecal indicator).

(3) Culture analysis. If any distribution system coliform sample is total coliform-positive, that total coliform-positive medium will be analyzed to determine if *E. coli* are present. If *E. coli* are present, the public water system shall notify the executive director by the end

of the day in accordance with subsection (h) of this section. If any raw groundwater source sample is used to meet the repeat requirements of subsection (d)(3)(C)(ii) and (4)(B)(iii) then it must be analyzed to determine if *E. coli* are present.

(f) Reporting requirements for microbial contaminants. The owner or operator of a public water system must ensure the executive director is provided with a copy of the results of any test, measurement, or analysis required by this subsection. The copies must be submitted within the first ten days following the month in which the result is received by the public water system, or the first ten days following the end of the required monitoring period as provided by this subsection, whichever occurs first. The copies must be mailed to the Water Supply Division, MC 155, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

(g) 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 public water system commits an *E. coli* MCL violation if any of the following conditions occur:

(A) The public water system has an *E. coli*-positive repeat samples following a total coliform-positive routine sample;

(B) The public water system has a total coliform-positive repeat sample following an *E. coli*-positive routine sample;

(C) The public water system fails to take all required repeat samples following an *E. coli*-positive routine sample; or

(D) The public water system fails to test for *E. coli* when any repeat sample tests positive for total coliform.

(2) If all repeat samples taken for triggered source water monitoring are *E. coli*-negative and a repeat sample taken at a monitoring location other than the one required for triggered source water monitoring is *E. coli*-positive, the public water system has violated the *E. coli* MCL, but is not required to comply with subsection (d)(4)(B)(iv) of this section. If a public water system takes more than one repeat sample at the monitoring location required for triggered source water monitoring under subsection (d)(4) of this section, and more than one repeat sample is *E. coli*-positive, the public water system has violated the *E. coli* MCL and shall also comply with the treatment technique and corrective action requirements as described in §290.116 of this title.

(3) A public groundwater system that is required to collect raw source samples is required to conduct corrective action as described in §290.116 of this title and is required to provide public notification in accordance with §290.122(a) of this title if a source sample is confirmed positive for *E. coli* or other approved fecal indicator.

(4) A public water system that fails to collect every required routine sample in a compliance period and/or to submit the analytical results to the executive director commits a monitoring violation.

(5) A public water system that fails to analyze for *E. coli* following a total coliform-positive routine sample commits a monitoring violation.

(6) A public water system that fails to monitor in accordance with the requirements of subsection (d)(4) of this section commits a monitoring violation and must provide public notification in accordance with §290.122 of this title.

(7) A public water system that fails to report the results of the monitoring tests required by this section commits a reporting violation.

(8) A public water system that fails to do a required public notice or certify that notification has been performed commits a public notice reporting violation.

(9) The results of all routine and repeat distribution coliform samples or groundwater source samples not invalidated by the executive director shall be included in determining compliance with the *E. coli* MCL as described in paragraph (1)(A) - (D) of this subsection and whether a coliform treatment technique trigger has been exceeded as described in subsection (c) of this section.

(10) The results of all routine and repeat distribution coliform samples or groundwater source samples invalidated by the executive director shall not be included in determining compliance with the *E. coli* MCL as described in paragraph (1)(A) - (D) of this subsection and whether a coliform treatment technique trigger has been exceeded as described in subsection (c) of this section.

(11) 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. Special purpose samples shall not be used to determine whether the coliform treatment technique trigger has been exceeded as described in subsection (c) of this section. Coliform samples taken in accordance with subsection (d)(3) of this section and that are not invalidated under subsection (e) of this section are not considered special purpose samples.

(12) All seasonal public water systems shall complete executive director-approved start-up procedures and certification and maintain a copy of the start-up procedures and certification on-site at the public water system for inspection purposes. A seasonal system must certify, prior to serving water to the public, that it has complied with the executive director-approved start-up procedures. At the executive director's request, seasonal public water systems shall submit a copy of the start-up procedures and certification to the executive director for review purposes. Failure by a seasonal public water system to complete executive director-approved start-up procedures prior to serving water to the public is a treatment technique violation. Failure by a seasonal public water system to maintain or submit certification of completion of executive director-approved start-up procedures is a reporting violation.

(13) A public water system commits a treatment technique violation when a seasonal public water system fails to complete an executive director-approved start-up procedure prior to serving water to the public.

(14) A public water system commits a treatment technique violation when a public water system exceeds a treatment technique trigger specified in subsection (c) of this section and then fails to conduct the required assessment or corrective actions within the timeframe specified in subsection (c) of this section.

(15) A public water system required to conduct an assessment under the provisions of subsection (c) of this section shall submit the assessment report to the executive director within 30 days. The public water system shall notify the executive director in accordance with subsection (c) of this section when scheduled corrective actions are complete and for corrective actions not completed by the time of submission of the assessment form. For corrective actions not completed by the time of submission of the assessment form to the executive director, the public water system shall complete corrective actions in compliance with a timetable approved by the executive director in consultation with the public water system. The assessment may also indicate that no sanitary defects were identified.

(16) A public water system that fails to notify the executive director before the end of the day in accordance with subsection (h)(3) of this section commits a reporting violation.

(h) Public notification for microbial contaminants. A public water 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 for microbial contamination.

(1) A public water system that commits an acute MCL violation for microbial contaminants must notify the public water system customers in accordance with the boil water notice requirements of §290.46(q) of this title and the public notice requirements of §290.122(a) of this title.

(2) A public groundwater system that receives an *E. coli* (or other approved fecal indicator) positive source sample that has not been invalidated by the executive director, or a notice of an *E. coli* (or other approved fecal indicator) positive source sample from a wholesale system, including consecutive systems, must notify the public water system customers within 24-hours in accordance with the requirements of §290.122(a) of this title and include notice in the next Consumer Confidence Report for community public water systems or provide as a special notice for noncommunity systems in accordance with §290.272(g)(7) of this title (relating to Content of the Report) for community public water systems and §290.116(f)(2) of this title for noncommunity public water systems. Consecutive systems must issue public notice in accordance with §290.122(g) of this title. The public water system must continue to notify the public annually until the fecal contamination in the source water is determined by the executive director to be corrected as specified under §290.116 of this title.

(3) A public water system that has *E. coli* (or other approved fecal indicator) present must notify the executive director by the end of the day when the public water system is notified of the test result.

(4) A public water system which commits an MCL violation must report the violation to the executive director 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.

(5) A public water system which commits an *E. coli* MCL violation shall report the violation to the executive director immediately after it learns of the violation, but no later than the end of the day, and notify the public in accordance with §290.122(a) of this title.

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

(7) A public water system that has committed a treatment technique trigger and assessment requirement for coliforms in subsection (c)(1) and (2) of this section and commits a treatment technique violation as described in subsection (g)(15) of this section shall report the violation to the executive director no later than the end of the next business day after it learns of the violation, and notify the public in accordance with §290.122(b) of this title.

(8) A public water system that commits a treatment technique violation for failure to complete and certify seasonal system start-up procedures as described in subsection (g)(10) and (11) of this section shall report the violation to the executive director no later than the end of the next business day after it learns of the violation, and notify the public in accordance with §290.122(b) of this title. In the notification in accordance with §290.122(b) of this title, if a seasonal system fails to monitor for total coliforms or *E. coli* prior to serving water to the public, it must include the following language: We are required to monitor your drinking water for specific contaminants on a regular basis. Results of regular monitoring are an indicator of whether or not your drinking water meets health standards. During {COMPLIANCE PERIOD}, we "did not monitor or test" or "did not complete all monitoring or testing" for {CONTAMINANT(S)}, and therefore cannot be sure of the quality of your drinking water during that time.

(i) The executive director, pursuant to 40 CFR §141.63(e), recognizes the following as the best technology, treatment techniques, or other means available for achieving compliance with the MCL for *E. coli* as described in subsection (b)(1)(A) - (D) of this section as follows:

(1) protection of wells from fecal contamination by appropriate placement and construction;

(2) maintenance of a disinfectant residual throughout the distribution system;

(3) proper maintenance of the distribution system including appropriate pipe replacement and repair procedures, main flushing programs, proper operation and maintenance of storage tanks and reservoirs, cross-connection control, and continual maintenance of positive water pressure in all parts of the distribution system;

(4) filtration and disinfection of surface water, as described in this chapter, or disinfection of groundwater, as described in chapter, using strong oxidants such as chlorine, chlorine dioxide, or ozone;

(5) for systems using groundwater, development and implementation of a Wellhead Protection Program, as directed by the executive director, and in accordance with the federal Safe Drinking Water Act, United States Code, §1428; or

(6) the executive director may require additional best technology, treatment techniques, or other means available for achieving compliance with the MCL for *E. coli* as described in subsection (g)(1) of this section.

§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. All public water systems shall provide the minimum levels of disinfectants in accordance with the provisions of this section. Public water systems shall not exceed the maximum residual disinfectant levels (MRDLs) provided in this section.

(1) The disinfection process used by public water systems must ensure that water has been adequately disinfected before it enters the distribution system.

(A) The disinfection process used by public water systems treating surface water sources or groundwater sources that are under the direct influence of surface water must meet the requirements of §290.111(d) of this title (relating to Surface Water Treatment).

(B) The executive director may require the disinfection process used by public water systems treating groundwater sources that are not under the direct influence of surface water to meet the requirements of §290.116 of this title (relating to Groundwater Corrective Actions and Treatment Techniques).

(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 milligram per liter (mg/L) free chlorine or 0.5 mg/L chloramine (measured as total chlorine).

(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 (measured as total chlorine).

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

(c) Monitoring requirements. All 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) Entry point compliance monitoring for surface water and groundwater under the direct influence of surface water. 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 at each entry point. 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 at each entry point 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)(1)(B)(i) (No change.)

(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.

(C) Continuous monitors must record the disinfectant residual of the water every 30 minutes.

(2) Entry point compliance monitoring for groundwater and purchased water. 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.

(A) A public water system that uses free chlorine must measure free chlorine.

(B) A public water system that has a chloramine residual must measure total chlorine.

(3) Chlorine dioxide compliance monitoring. 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.

(4) Distribution system compliance monitoring. All public water systems shall monitor the disinfectant residual at various locations throughout the distribution system.

(A) Public water systems that use groundwater or purchased water sources only and serve fewer than 250 connections and fewer than 750 people daily, must monitor the disinfectant residual at representative locations in the distribution system at least once every seven days.

(B) Public water systems that serve at least 250 connections or at least 750 people daily, and use only groundwater or purchased water sources must monitor the disinfectant residual at representative locations in the distribution system at least once per day.

(C) Public water systems using surface water sources or groundwater under the direct influence of surface water must monitor the disinfectant residual tests at least once per day at representative locations in the distribution system.

(D) All public water systems must monitor the residual disinfectant concentration at the same time and at the same sampling site a bacteriological sample is collected, as specified in §290.109 of this title (relating to Microbial Contaminants) in addition to the residual disinfectant concentration monitoring requirements as described in this subsection and chapter.

(E) All public water systems with a chloramine residual must monitor the total chlorine residual downstream of any chlorine and ammonia injection points, in conjunction with the chloramine effectiveness sampling in paragraph (5)(C) of this subsection, in the distribution system weekly and whenever the chemical dose is changed.

(5) Chloramine effectiveness sampling. Public water systems with a chloramine residual shall monitor to ensure that monochloramine is the prevailing chloramine species and that nitrification is controlled. Sample sites and procedures used for chloramine effectiveness sampling must be documented in the system's nitrification action plan (NAP) required by §290.46(z) of this title (relating to Minimum Acceptable Operating Practices for Public Drinking Water Systems). Sample results determined by monitoring required under this paragraph

will not be used to determine compliance with the maximum contaminant levels, MRDLs, action levels, or treatment techniques of this subchapter.

(A) Source water. Public water systems must monitor source water (including raw and treated purchased water) to establish baseline ammonia, nitrite, and nitrate levels (all as nitrogen) at least once to determine the availability of ammonia for chloramine formation and to provide a reference for downstream nitrite and nitrate levels that may indicate nitrification. If any source has more than 0.5 mg/L free ammonia (as nitrogen) in the initial sample, then raw water ammonia (as nitrogen) shall be monitored monthly for six months to determine the baseline free ammonia level.

(B) Water entering distribution system. All public water systems that have chloramines present shall perform sampling to represent the water entering the distribution system.

(i) Total chlorine, free ammonia (as nitrogen) and monochloramine shall be monitored weekly at all entry points to the distribution system or at a location before the first customer.

(ii) Nitrite and nitrate (as nitrogen) levels at the first customer shall be monitored monthly for at least six months to determine baseline nitrite and nitrate levels in the water prior to consumption. Nitrite and nitrate samples collected at the first customer will not be used for compliance with §290.106 of this title (relating to Inorganic Contaminants).

(iii) Nitrite and nitrate (as nitrogen) shall be monitored quarterly at the first customer after establishing the baseline. Nitrite and nitrate samples collected at entry points for compliance with §290.106 of this title may be used for these quarterly samples.

(C) Treatment sampling. Public water systems that inject chlorine at any location to form chloramines or to convert from chloramines to free chlorine must monitor to ensure that chemical addition is effective and the proper chlorine to ammonia (as nitrogen) ratio is achieved. Samples must be collected and analyzed weekly and whenever the chemical dosage is changed.

(i) Sampling must be performed upstream of the chlorine or ammonia chemical injection point, whichever is furthest upstream.

(ii) Sampling must be performed downstream of all the chlorine and ammonia chemical injection points.

(iii) The residual of the chemical injected upstream must be determined to properly dose the downstream chemical where sample taps are present or required under §290.42(e)(7)(C)(ii) of this title (relating to Water Treatment).

(iv) The total chlorine, ammonia (as nitrogen), and monochloramine residuals must all be monitored if the treatment occurs before the entry point.

(v) The ammonia (as nitrogen) and monochloramine residuals must all be monitored if the treatment occurs in the distribution system. The monitoring must occur at the same time as a compliance sampling required under paragraph (4)(E) of this subsection.

(D) Distribution system. Public water systems that distribute water and have a chloramine residual must ensure the efficacy of disinfection within the distribution system.

(i) Monochloramine and free ammonia (as nitrogen) must be monitored weekly at the same time as a compliance sample required under paragraph (4) of this subsection.

(ii) Nitrite and nitrate (as nitrogen) must be monitored quarterly.

(d) Analytical requirements. All monitoring required by paragraphs (1) and (2) of this subsection must be conducted at a facility approved by the executive director and using methods that conform to the requirements of §290.119 of this title (relating to Analytical Procedures). All monitoring for chloramine effectiveness required by paragraphs (3) - (6) of this subsection must be analyzed to the accuracy provided therein.

(1) The free chlorine or chloramine residual (measured as total chlorine) must be measured to a minimum accuracy of plus or minus 0.1 mg/L. Color comparators may be used for distribution system samples only. When used, a color comparator must have current reagents, an unfaded and clear color comparator, a sample cell that is not discolored or stained, and must be properly stored in a cool, dark location where it is not subjected to conditions that would result in staining. The color comparator must be used in the correct range. If a sample reads at the top of the range, the sample must be diluted with chlorine-free water, then a reading taken and the resulting residual calculated.

(2) The chlorine dioxide residual must be measured to a minimum accuracy of plus or minus 0.05 mg/L using a method that conforms to the requirements of §290.119 of this title. The DPD-glycine method using a colorimeter or spectrophotometer may be utilized only with the written permission of the executive director.

(3) The free ammonia level must be measured to a minimum accuracy of plus or minus 0.1 mg/L.

(4) The monochloramine level must be measured to a minimum accuracy of plus or minus 0.15 mg/L using a procedure that has the ability to distinguish between monochloramine and other forms of chloramine.

(5) The nitrate (as nitrogen) level must be measured to a minimum accuracy of plus or minus 0.1 mg/L.

(6) The nitrite (as nitrogen) level must be measured to a minimum accuracy of plus or minus 0.01 mg/L.

(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 by this section.

(1) Public water systems exceeding the MRDL for chlorine dioxide in subsection (b)(3) of this section must report the exceedance to the executive director within 24 hours of the event.

(2) Public water systems that use surface water sources or groundwater sources under the direct influence of surface water must submit a Surface Water Monthly Operating Report (commission Form 0102C), a Surface Water Monthly Operating Report (commission Form 0102D) for alternative technologies, or a Surface Water Monthly Operational Report for Plants That Do Not Have a Turbidimeter on Each Filter (commission Form 0103) each month.

(3) Public water systems that use chlorine dioxide must submit a Chlorine Dioxide Monthly Operating Report (commission Form 0690) each month.

(4) Public water systems that use purchased water or groundwater sources only must complete a Disinfection Level Quarterly Operating Report (commission Form 20067) each quarter.

(A) Community and nontransient, noncommunity public water systems must submit the Disinfection Level Quarterly Oper-

ating Report each quarter, by the tenth day of the month following the end of the quarter.

(B) Transient, noncommunity public water systems must retain the Disinfection Level Quarterly Operating Reports and must provide a copy if requested by the executive director.

(5) Systems that use chloramines must retain their NAP required under §290.46(z) of this title and must provide a copy upon request by the executive director.

(6) Monthly and quarterly reports required by this section must be submitted to the Water Supply Division, MC 155, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 by the tenth day of the month following the end of the reporting period.

(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)(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)(B)(iii) 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)(3) 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 a 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) (No change.)

(7) A public water system violates the MRDL for chlorine or chloramine (measured as total chlorine) 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) Public water systems shall increase residual disinfectant levels of free chlorine, or chloramines measured as total chlorine, (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. Public water systems shall consult with the executive director upon increasing residual disinfectant levels in the distribution system in order to maintain compliance with the MRDLs listed in subsection (b) of this section.

(9) If a public water system's failure to monitor makes it impossible to determine compliance with the MRDL for chlorine or chloramines (measured as total chlorine), the system commits an MRDL violation for the entire period covered by the annual average.

(10) A public water system that fails to issue a required public notice or certify that it has issued that notice commits a violation.

(g) Public notification requirements. The owner or operator of a public water system that violates the requirements of this section must notify the executive director and the people served by the system.

(1) A public water system that fails to meet the requirements of subsection (b)(3) of this section, shall notify the executive director within 24 hours of the event 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.

(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)(2) of this section shall notify the executive director by the end of the next business day and the customers in accordance with the requirements of §290.122(b) of this title.

(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 in accordance with the requirements of §290.122(b) of this title.

(4) A public water system that fails to meet the requirements of subsection (b)(5) of this section shall notify the executive director by the end of the next business day and the customers in accordance with the requirements of §290.122(b) of this title.

(5) A public water system which fails to conduct the monitoring required by subsection (c)(1) - (4) of this section must notify its customers of the violation in accordance with the requirements of §290.122(c) of this title.

(6) A public water system that uses chloramines shall notify their retail and wholesale customers of the use of chloramines.

(A) This notification must contain the exact wording included in Appendix H of §290.47 of this title (relating to Appendices).

(B) Prior to initially providing the chloraminated water to its existing customers, the water system must provide notification by mail or direct delivery at least 14 days before the change.

(C) Additionally, the notification must be provided to the news media, hospitals, renal disease facilities, dialysis clinics, physicians, local health departments, and entities which maintain live fish directly by letter, e-mail, or hand delivery.

(D) New customers must also be notified before they begin receiving water from the water system.

(E) Where appropriate, the notice must be multilingual.

§290.113. Stage 1 Disinfection Byproducts (TTHM and HAA5).

(a) Applicability for total trihalomethanes (TTHM) and haloacetic acids (group of five) (HAA5). All community and nontransient, noncommunity water systems shall comply with the requirements of this section.

(1) Systems must comply with the Stage 1 requirements in this section until the date shown in the table entitled "Date to Start Stage 2 Compliance."

(2) Until the date shown in the table in Figure: 30 TAC §290.113(a)(2) of this paragraph, systems must continue to monitor according to this section.
Figure: 30 TAC §290.113(a)(2) (No change.)

(b) Maximum contaminant level (MCL) for TTHM and HAA5. The running annual average concentration of TTHM and HAA5 shall not exceed the MCLs.

(1) The MCL for TTHM is 0.080 milligrams/liter (mg/L).

(2) The MCL for HAA5 is 0.060 mg/L.

(c) Monitoring requirements for TTHM and HAA5. Systems must take all TTHM and HAA5 samples during normal operating conditions. Monitoring shall be performed at locations and frequency specified in the system's monitoring plan.

(1) The minimum number of samples required to be taken shall be based on the number of treatment plants used by the system, except that multiple wells drawing raw water from a single aquifer shall be considered as one treatment plant for determining the minimum number of samples.

(2) All samples taken within one sampling period shall be collected within a 24-hour period.

(3) Systems must routinely sample at the frequency and locations given in the following table entitled "Stage 1 Routine Monitoring Frequency and Locations for TTHM and HAA5."
Figure: 30 TAC §290.113(c)(3) (No change.)

(4) The executive director may reduce the monitoring frequency for TTHM and HAA5 as indicated in the following table entitled "Stage 1 Reduced Monitoring Frequency and Locations for TTHM and HAA5."
Figure: 30 TAC §290.113(c)(4) (No change.)

(A) The executive director may not reduce the routine monitoring requirements for TTHM and HAA5 until a system has completed one year of routine monitoring in accordance with the provisions of paragraph (3) of this subsection.

(B) A system that is on reduced monitoring and collects quarterly samples for TTHM and HAA5 may remain on reduced monitoring as long as the running annual average of quarterly averages for TTHM and HAA5 is no greater than 0.060 mg/L and 0.045 mg/L, respectively, and as long as it meets the requirements in subparagraph (D) of this paragraph.

(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, and as long as it meets the requirements in subparagraph (D) of this paragraph.

(D) To remain on reduced TTHM and HAA5 monitoring, systems that treat surface water or groundwater under the direct influence of surface water must also maintain a source water annual average total organic carbon (TOC) level, before any treatment, less than or equal to 4.0 mg/L (based on the most recent four quarters of monitoring) on a continuing basis at each plant.

(5) The executive director may require a system to return to the routine monitoring frequency described in paragraph (3) of this subsection.

(A) A system that does not meet the requirements of paragraph (4)(B), (C) or (D) of this subsection must return to routine monitoring in the quarter immediately following the quarter in which the results exceed 0.060 mg/L or 0.045 mg/L for TTHMs and HAA5, respectively, or when the source water annual average TOC level, before any treatment, exceeds 4.0 mg/L at any plant.

(B) A system that is on reduced monitoring and makes any significant change to its source of water or treatment program shall return to routine monitoring in the quarter immediately following the quarter when the change was made.

(C) If a system is returned to routine monitoring, routine monitoring shall continue for at least one year before a reduction in monitoring frequency may be considered.

(D) The executive director may return a system on reduced monitoring to routine monitoring at any time.

(6) Systems monitoring no more frequently than once each year must increase their monitoring frequency to quarterly if either the TTHM annual average is >0.080 mg/L or the HAA5 annual average is >0.060 mg/L. The system must begin monitoring quarterly immediately following the monitoring period in which the system exceeds 0.080 mg/L or 0.060 mg/L for TTHMs or HAA5, respectively.

(d) Analytical requirements for TTHM and HAA5. Analytical procedures required by this section shall be performed in accordance with §290.119 of this title (relating to Analytical Procedures). Testing for TTHM and HAA5 shall be performed at a laboratory accredited by the executive director.

(e) Reporting requirements for TTHM and HAA5. The owner or operator of a public water system must ensure the executive director is provided with a copy of the results of any test, measurement, or analysis required by this subsection. The copies must be submitted within the first ten days following the month in which the result is received by the public water system, or the first ten days following the end of the required monitoring period as provided by this subsection, whichever occurs first. The copies must be mailed to the Water Supply Division, MC 155, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

(f) Compliance determination for TTHM and HAA5. Compliance with the provisions of this section shall be determined as follows.

(1) A system that fails to monitor in accordance with this section commits a monitoring violation. Failure to monitor will be

treated as a violation for the entire period covered by the annual average.

(2) A public water system that fails to report the results of the monitoring tests required by subsection (e) of this section commits a reporting violation.

(3) Compliance with the MCLs for TTHM and HAA5 shall be based on the running annual average of all samples collected during the preceding 12 months.

(A) A public water system that samples for TTHM and HAA5 each quarter must calculate the running annual average of the quarterly averages.

(B) A public water system that samples for TTHM and HAA5 no more frequently than once each year must calculate the annual average of all samples collected during the year.

(C) All samples collected at the sampling sites designated in the public water system's monitoring plan shall be used to compute the quarterly and annual averages unless the analytical results are invalidated by the executive director for technical reasons.

(4) A public water system violates the MCL for TTHM if the running annual average for TTHM exceeds the MCL specified in subsection (b)(1) of this section.

(5) A public water system violates the MCL for HAA5 if the running annual average for HAA5 exceeds the MCL specified in subsection (b)(2) of this section.

(6) If a public water system is routinely sampling in accordance with the requirements of subsection (c)(3) of this section and an individual sample or quarterly average will cause the system to exceed the MCL for TTHM or HAA5, the system is in violation of the respective MCL at the end of that quarter.

(7) If a public water system's failure to monitor makes it impossible to determine compliance with the MCL for TTHM or HAA5, the system commits an MCL violation for the entire period covered by the annual average.

(g) Public Notification Requirements for TTHM and HAA5. A public water system that violates the treatment technique requirements of this section must notify the executive director and the system's customers.

(1) A public water system that violates an MCL given in subsection (b)(1) or (2) of this section shall report to the executive director and the water system customers in accordance with the requirements of §290.122(b) of this title (relating to Public Notification).

(2) A public water system which fails to conduct the monitoring required by subsection (c) of this section must notify its customers of the violation in accordance with the requirements of §290.122(c) of this title.

(h) Best available technology for TTHM and HAA5. Best available technology for treatment of violations of MCLs in subsection (b) of this section are listed in 40 Code of Federal Regulations §141.64(b)(1)(ii).

§290.114. Other Disinfection Byproducts (Chlorite and Bromate).

(a) Chlorite. All public water systems that use chlorine dioxide must comply with the requirements of this subsection.

(1) Maximum contaminant level (MCL) for chlorite. The chlorite concentration in the water in the distribution system shall not exceed an MCL of 1.0 milligrams per liter (mg/L).

(2) Monitoring requirements for chlorite. Public water systems shall measure the chlorite concentration at locations and intervals specified in the system's monitoring plan. All samples must be collected during normal operating conditions.

(A) Each plant using chlorine dioxide must monitor the chlorite concentration in the water entering the distribution system at least once each day. The monitoring frequency at the entry point to the distribution system may not be reduced.

(B) Each plant using chlorine dioxide must monitor the chlorite concentration in the water within the distribution system at each of the following three locations: at a location near the first customer of a plant using chlorine dioxide; at a location representative of the average residence time in the distribution system; and at a location reflecting maximum residence time in the distribution system. The group of three samples must be collected on the same day and is called a "three-sample set."

(i) Each system must collect at least one three-sample set each month.

(ii) If the chlorite concentration entering the distribution system exceeds 1.0 mg/L, the system must collect a three-sample set within 24 hours.

(iii) The frequency of chlorite monitoring in the distribution system may be reduced to one three-sample set per quarter if none of the entry point or distribution system samples tested during the preceding 12 months contained a chlorite concentration above 1.0 mg/L. A system must revert to the monthly monitoring frequency if the chlorite concentration exceeds 1.0 mg/L in any sample.

(3) Analytical requirements for chlorite. Analytical procedures required by this section shall be performed in accordance with the requirements of §290.119 of this title (relating to Analytical Procedures).

(A) The chlorite concentration of the water entering the distribution system must be analyzed at a facility approved by the executive director. The analysis must have a minimum accuracy of 0.05 mg/L.

(B) The chlorite concentration of the water within the distribution system must be analyzed using ion chromatography at a facility accredited by the executive director.

(4) Reporting requirements for chlorite. Public water systems that are subject to the provisions of this subsection must ensure the executive director is provided with the results of any test, measurement, or analysis required by this section.

(A) Systems using chlorine dioxide must submit a Chlorine Dioxide Monthly Operating Report (commission Form 0690) by the tenth day of the month following the end of the reporting period.

(B) Except where a shorter period is specified in this section, a public water system shall ensure the executive director is provided with a copy of the results of any chlorite test, measurement, or analysis required by paragraph (2)(B) of this subsection within the first ten days following the end of the required monitoring period or ten days following receipt of the results of such test, measurement, or analysis whichever occurs first.

(C) Reports and analytical results must be mailed to the Water Supply Division, MC 155, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

(5) Compliance determination for chlorite. Compliance with the requirements of this subsection shall be based on the following criteria.

(A) A public water system that fails to conduct the monitoring tests required by this subsection commits a monitoring violation.

(B) A public water system that fails to report the results of the monitoring tests required by this subsection commits a reporting violation.

(C) A public water system commits an MCL violation if the arithmetic average of any three-sample set collected in the distribution system exceeds the MCL for chlorite.

(D) A public water system that fails to do a required public notice or certify that the public notice has been performed commits a public notice violation.

(6) Public notification requirements for chlorite. A public water system that violates the requirements of this subsection must notify the executive director and the system's customers.

(A) A public water system that violates the MCL for chlorite shall notify the executive director by the end of the next business day and the customers in accordance with the requirements of §290.122(b) of this title (relating to Public Notification).

(B) A public water system which fails to conduct the monitoring required by this subsection must notify its customers of the violation in accordance with the requirements of §290.122(c) of this title.

(b) Bromate. Community and nontransient, noncommunity public water systems that use ozone must comply with the requirements of this subsection beginning on January 1, 2002.

(1) MCL for bromate. The concentration of bromate at the entry point to the distribution system shall not exceed an MCL of 0.010 mg/L.

(2) Monitoring requirements for bromate. Each plant using ozone must measure the bromate concentration in the water entering the distribution system at least once each month. The monitoring frequency at the entry point to the distribution system may not be reduced. Samples shall be collected when the ozonation system is operating under normal conditions and at locations and intervals specified in the system's monitoring plan.

(3) Analytical requirements for bromate. Analytical procedures required by this section shall be performed in accordance with §290.119 of this title. Testing for bromate shall be performed at a laboratory certified by the executive director.

(4) Reporting requirements for bromate. The owner or operator of a public water system must ensure the executive director is provided with a copy of the results of any test, measurement, or analysis required by this subsection. The copies must be submitted within the first ten days following the month in which the result is received by the public water system, or the first ten days following the end of the required monitoring period as provided by this subsection, whichever occurs first. The copies must be mailed to the Water Supply Division, MC 155, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

(5) Compliance determination for bromate. Compliance with the requirements of this subsection shall be determined using the following criteria.

(A) A system that fails to monitor in accordance with this section commits a monitoring violation. Failure to monitor will be treated as a violation for the entire period covered by the annual average.

(B) A public water system that fails to report the results of the monitoring tests required by this subsection commits a reporting violation.

(C) A public water system violates the MCL for bromate if, at the end of any quarter, the running annual average of monthly averages, computed quarterly, exceeds the maximum contaminant level specified in paragraph (1) of this subsection.

(D) A public water system that fails to do a required public notice or certify that the public notice has been performed commits a public notice violation.

(E) A public water system that fails to complete 12 consecutive months' monitoring, compliance with the MCL for the last four-quarter compliance period must be based on an average of the available data.

(6) Public notification requirements for bromate. A public water system that violates the requirements of this subsection must notify the water system's customers and the executive director.

(A) A public water system that violates the MCL for bromate shall notify the customers in accordance with the requirements of §290.122(b) of this title.

(B) A public water system which fails to conduct the monitoring required by this subsection must notify its customers of the violation in accordance with the requirements of §290.122(c) of this title.

§290.115. Stage 2 Disinfection Byproducts (TTHM and HAA5).

(a) Applicability for total trihalomethanes (TTHM) and haloacetic acids (group of five) (HAA5). All community and nontransient, noncommunity water systems shall comply with the requirements of this section for TTHM and HAA5.

(1) Systems must comply with the initial monitoring requirements starting on the dates given in subsection (c) of this section.

(2) Systems must comply with all of the additional requirements in this section starting on the date shown in the table entitled "Date to Start Stage 2 Compliance."
Figure: 30 TAC §290.115(a)(2) (No change.)

(A) Systems required to conduct quarterly monitoring, must begin monitoring in the first full calendar quarter that includes the compliance date in the table titled "Date to Start Stage 2 Compliance."

(B) Systems required to conduct routine monitoring less frequently than quarterly must begin monitoring in the calendar month approved by the executive director in their Initial Distribution System Evaluation (IDSE) report or revised monitoring plan identifying Stage 2 sample sites.

(3) Systems must complete their monitoring plan for the additional Stage 2 TTHM and HAA5 requirements according to §290.121 of this title (relating to Monitoring Plans) before the date shown in the table entitled "Date to Start Stage 2 Compliance."

(b) Maximum contaminant levels (MCL) and operational evaluation levels (OELs) for TTHM and HAA5. Systems shall comply with MCLs and OELs.

(1) The locational running annual average (LRAA) concentration of TTHM and HAA5 shall not exceed the MCLs. A public water system that exceeds a MCL shall determine compliance as described in subsection (f) of this section.

(A) The MCL for TTHM is 0.080 milligrams/liter (mg/L).

(B) The MCL for HAA5 is 0.060 mg/L.

(2) The OEL at any monitoring location is the sum of the two previous quarters' results plus twice the current quarter's result, divided by 4 to determine an average. A public water system that exceeds an OEL shall perform operation evaluation monitoring and reporting described in subsection (e) of this section.

(A) The OEL for TTHM is 0.080 mg/L.

(B) The OEL for HAA5 is 0.060 mg/L.

(c) Monitoring requirements for TTHM and HAA5. Monitoring shall be performed at locations and frequency specified in the system's monitoring plan as approved by the executive director. The executive director may require changes to a system's sampling locations. The executive director may require sampling at additional sampling locations.

(1) Monitoring locations. Systems must establish Stage 2 compliance monitoring sites throughout the distribution system at locations with the potential for relatively high disinfection byproduct formation. Systems must determine Stage 2 compliance monitoring locations by the dates shown in the table titled "Date to Establish Stage 2 Sites."
Figure: 30 TAC §290.115(c)(1) (No change.)

(A) Systems that perform IDSE sampling in accordance with paragraph (5) of this subsection must use the IDSE and Stage 1 results to set Stage 2 compliance monitoring sites.

(B) Systems that do not perform IDSE sampling must set Stage 2 compliance monitoring sites through consultation with the executive director in accordance with this subparagraph.

(i) Systems required to sample at the same number of sites under Stage 1 and Stage 2, can use the Stage 1 sites for Stage 2 compliance monitoring.

(ii) Systems required to sample at more sites under Stage 2 than Stage 1 must identify Stage 2 sites in addition to the existing Stage 1 sites. Systems must identify additional sites representing areas of the distribution system with potentially high TTHM or HAA5 levels and provide the rationale for identifying these locations as having high levels of TTHM or HAA5. The required number of compliance monitoring locations must be identified.

(iii) Systems required to sample at fewer sites under Stage 2 than Stage 1 must identify which locations will be used for Stage 2. Stage 2 sites will be selected by alternating selection of Stage 1 locations representing the highest TTHM levels and highest HAA5 levels until the required number of compliance monitoring locations have been identified.

(C) The protocol given in 40 Code of Federal Regulations (CFR) §141.605(c) - (e) for selecting Stage 2 sample sites is hereby adopted by reference.

(D) To change monitoring locations, a system must replace existing compliance monitoring locations with the lowest LRAA with new locations that reflect the current distribution system locations with expected high TTHM or HAA5 levels. Changes must be approved by the executive director and included in the monitoring plan.

(2) Monitoring frequency and number of sample sites. Routine sampling frequency and number of sample sites are given in the following table, titled "Routine Stage 2 Monitoring Frequency and Number of Sites." Systems must take all routine compliance TTHM and HAA5 samples during normal operating conditions.
Figure: 30 TAC §290.115(c)(2) (No change.)

(3) Reduced monitoring for TTHM and HAA5. Monitoring may be reduced when the LRAA is less than or equal to 0.040 mg/L for TTHM and less than or equal to 0.030 mg/L for HAA5 at all Stage 2 compliance monitoring locations. The Stage 2 reduced sampling frequency and number of sample sites are given in the following table, titled "Reduced Stage 2 Monitoring Frequency and Number of Sites."
Figure: 30 TAC §290.115(c)(3) (No change.)

(A) Only data collected under the provisions of §290.113 of this title (relating to Stage 1 Disinfection Byproducts (TTHM and HAA5)) and under this section may be used to qualify for reduced monitoring.

(B) In order to remain on reduced monitoring, a system must meet the applicable conditions of this subparagraph.

(i) Systems with annual or less frequent reduced monitoring qualify to remain on reduced monitoring as long as each TTHM sample is less than or equal to 0.060 mg/L and each HAA5 sample is less than or equal to 0.045 mg/L.

(ii) Systems on quarterly reduced monitoring qualify to remain on reduced monitoring as long as the TTHM LRAA is less than or equal to 0.040 mg/L and the HAA5 LRAA is less than or equal to 0.030 mg/L at each monitoring location.

(iii) To qualify for and remain on reduced monitoring, the source water annual average Total Organic Carbon (TOC) level, before any treatment, must be less than or equal to 4.0 mg/L at each treatment plant treating surface water or groundwater under the direct influence of surface water, based on monitoring conducted under §290.112(c)(2)(C) of this title (relating to Total Organic Carbon (TOC)).

(C) Systems will be returned to routine monitoring:

(i) if the LRAA at any monitoring location exceeds either 0.040 mg/L for TTHM or 0.030 mg/L for HAA5 based on quarterly monitoring, or

(ii) if the annual (or triennial) sample at any location exceeds either 0.060 mg/L for TTHM or 0.045 mg/L for HAA5, or

(iii) if the source water annual average TOC level, before any treatment, exceeds 4.0 mg/L at any treatment plant treating surface water or groundwater under the direct influence of surface water.

(D) The executive director may return a system on reduced monitoring to routine monitoring at any time.

(E) A system that is on reduced Stage 1 monitoring in accordance with §290.113(c)(4) of this title that has monitoring locations for Stage 2 different from those under Stage 1 must initiate routine monitoring in accordance with paragraph (2) of this subsection on the schedule given in subsection (a) of this section.

(F) A system that is on reduced monitoring in accordance with §290.113(c)(4) of this title may remain on reduced monitoring after the dates identified in subsection (a)(2) of this section only if the system:

(i) received a very small system (VSS) IDSE waiver under paragraph (5)(A) of this subsection or received a 40/30 IDSE waiver under paragraph (5)(B) of this subsection,

(ii) meets the reduced monitoring criteria in subparagraph (B) of this paragraph, and

(iii) is approved to use the same monitoring locations under Stage 1 and Stage 2.

(G) The executive director may choose to perform calculations and determine whether the system is eligible for reduced monitoring in lieu of having the system report that information.

(4) Increased monitoring for TTHM and HAA5. The executive director may increase monitoring in accordance with this paragraph.

(A) A system required to routinely monitor at a particular location annually or less frequently than annually under paragraph (2) of this subsection must increase monitoring to quarterly dual sample sets (every 90 days) at all locations if any TTHM compliance sample is greater than 0.080 mg/L or if any HAA5 compliance sample is greater than 0.060 mg/L at any location.

(B) The executive director may return a system on increased quarterly monitoring to routine monitoring after at least four consecutive quarters if the LRAA for every monitoring location is less than or equal to 0.060 mg/L for TTHM and less than or equal to 0.045 mg/L for HAA5.

(C) A system that is on increased monitoring under §290.113 of this title must remain on increased monitoring until the system qualifies for a return to routine monitoring under subparagraph (B) of this paragraph. The increased monitoring schedule must be conducted at the Stage 2 monitoring locations approved under paragraph (1) of this subsection, beginning on the date identified in subsection (a)(2) of this section.

(5) IDSE requirements. All community systems of any size and nontransient, noncommunity systems that serve at least 10,000 people must comply with these IDSE requirements.

(A) The executive director may grant a VSS IDSE monitoring waiver to systems that serve fewer than 500 people. Systems that receive a VSS IDSE monitoring waiver are not required to do IDSE monitoring. Systems must be compliant with all of the Stage 1 monitoring requirements of §290.113 of this title to be eligible for a VSS IDSE waiver.

(B) The executive director may grant a 40/30 IDSE monitoring waiver to IDSE monitoring to systems with levels for TTHM less than 0.040 mg/L and levels for HAA5 less than 0.030 mg/L. Systems that receive a 40/30 IDSE monitoring waiver are not required to do IDSE monitoring. Systems must be compliant with all of the Stage 1 monitoring requirements of §290.113 of this title to be eligible for a 40/30 IDSE waiver. The timing of samples that all need to be less than 0.040 mg/L and 0.030 mg/L respectively for TTHM and HAA5 are given in the following table, titled "Timing of Stage 1 Samples Evaluated for 40/30 Initial Distribution System Evaluation (IDSE) Waiver."
Figure: 30 TAC §290.115(c)(5)(B) (No change.)

(i) To qualify for a 40/30 IDSE waiver a system must certify to the executive director that every individual sample taken under §290.113 of this title were less than 0.040 mg/L for TTHM and less than 0.030 mg/L for HAA5, and must have not had any TTHM or HAA5 monitoring violations during the period specified in subsection (a) of this section.

(ii) To qualify for a 40/30 IDSE waiver, a system must submit compliance monitoring results, distribution system schematics, and recommended Stage 2 compliance monitoring locations to the executive director upon request. The executive director may require a system that fails to submit the requested information to perform IDSE sampling.

(iii) The executive director may still require a system that meets the 40/30 IDSE waiver or VSS IDSE waiver requirements to do IDSE sampling under subparagraph (C) of this paragraph.

(C) Systems that must perform IDSE sampling must submit any needed documentation for waivers, produce an IDSE Plan, do IDSE sampling, and report the IDSE results to the executive director on the schedule in the following table titled "Initial Distribution Schedule Evaluation (IDSE) Schedule."
Figure: 30 TAC §290.115(c)(5)(C) (No change.)

(i) The IDSE plan has required elements.

(I) The IDSE plan must include a schematic of the distribution system (including distribution system entry points and their sources, and storage facilities), with notes indicating locations and dates of all projected standard monitoring, and also Stage 1 compliance monitoring under §290.113 of this title.

(II) The IDSE plan must include justification of IDSE monitoring location selection and a summary of data used to justify IDSE monitoring location selection.

(III) The IDSE plan must include the system type and population served by the system.

(ii) Systems must do required IDSE sampling in accordance with this clause.

(I) Systems must monitor at the number and type of sites indicated in the following table titled "Number and Type of Initial Distribution System Evaluation (IDSE) Sample Sites:"
Figure: 30 TAC §290.115(c)(5)(C)(ii)(I) (No change.)

(II) Systems must collect dual sample sets at each monitoring location. One sample in the dual sample set must be analyzed for TTHM. The other sample in the dual sample set must be analyzed for HAA5.

(III) IDSE sample locations must be different than the existing Stage 1 monitoring locations established under §290.113 of this title.

(IV) IDSE sample locations must be distributed throughout the distribution system.

(V) Systems must monitor at the frequency indicated in the following table titled "Frequency of Initial Distribution System Evaluation (IDSE) Monitoring:"
Figure: 30 TAC §290.115(c)(5)(C)(ii)(V) (No change.)

(VI) The IDSE monitoring frequency and locations may not be reduced.

(iii) The IDSE report must comply with the elements in this clause.

(I) The IDSE report must include all TTHM and HAA5 analytical results from Stage 1 compliance monitoring under §290.113 of this title and all IDSE sample results and locational running annual averages presented in a tabular or spreadsheet format acceptable as described in Texas Commission on Environmental Quality regulatory guidance number 384: "How to Develop a Monitoring Plan for a Public Water System."

(II) If changed from the IDSE plan submitted under clause (ii) of this subparagraph, the IDSE report must also include an updated distribution system map, documentation verifying the population served, and an updated list of sources including their water type.

(III) The IDSE report must include an explanation of any deviations from the approved IDSE plan.

(IV) The IDSE report must recommend and justify Stage 2 compliance monitoring locations consistent with paragraph (1) of this subsection. The recommended Stage 2 compliance monitoring locations must be listed in a Stage 2 sample plan as part of the system's monitoring plan.

(V) The IDSE report must include recommendations and justification for when Stage 2 samples should be collected.

(iv) The executive director may approve a system specific study that meets the requirements in 40 CFR §141.602 to comply with IDSE sampling requirements. The commission hereby adopts the requirements of 40 CFR §141.602 by reference.

(D) The executive director may require a system to perform IDSE sampling or a system specific study for any reason. The executive director may require a system to perform IDSE sampling or a system specific study even if the system meets the criteria for an IDSE waiver. The executive director may require new systems and systems with a change in population or system type to perform IDSE sampling or a system specific study.

(d) Analytical requirements for TTHM and HAA5. Analytical procedures required by this section shall be performed in accordance with §290.119 of this title (relating to Analytical Procedures). Testing for TTHM and HAA5 shall be performed at a laboratory accredited by the executive director.

(e) Reporting requirements for TTHM and HAA5. Public water systems must submit reports related to TTHM and HAA5 to the executive director. Reports must be mailed to the Water Supply Division, MC 155, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

(1) The owner or operator of a public water system must ensure the executive director is provided with a copy of the results of any test, measurement, or analysis required by this subsection. The copies must be submitted within the first ten days following the month in which the result is received by the public water system, or the first ten days following the end of the required monitoring period as provided by this subsection, whichever occurs first.

(A) The owner or operator of a public water system is responsible for reporting the following information for each monitoring location to the executive director within ten days of the end of any quarter in which monitoring is required:

(i) number of samples taken during the last quarter;

(ii) date and results of each sample taken during the last quarter;

(iii) arithmetic average of quarterly results for the last four quarters for each monitoring location (LRAA), beginning at the end of the fourth calendar quarter that follows the compliance date and at the end of each subsequent quarter;

(iv) whether the MCL was violated at any monitoring location; and

(v) any OELs that were exceeded during the quarter and, if so, the location and date, and the calculated TTHM and HAA5 levels.

(B) If the LRAA based on fewer than four quarters would cause the MCL to be exceeded regardless of the monitoring results of subsequent quarters, the system must report a potential MCL violation as part of the first report due following the compliance date or anytime thereafter that this determination is made. A system required to conduct monitoring at a frequency that is less than quarterly must make compliance calculations beginning with the first compliance sample taken after the compliance date, unless the system is required to conduct increased monitoring under subsection (c)(4) of this section.

(C) A system that treats surface water or groundwater under the direct influence of surface water that seeks to qualify for or remain on reduced TTHM and HAA5 monitoring must measure and report TOC monthly in accordance with §290.112 of this title and distribution system disinfection levels in accordance with §290.110 of this title (relating to Disinfectant Residuals).

(2) A system that exceeds an OEL described in subsection (b)(2) of this section must conduct an operation evaluation and submit a written operation evaluation report that meets the requirements of this paragraph.

(A) The operation evaluation report must be submitted to the executive director no later than 90 days after being notified of the analytical result that causes the exceedance of the OEL.

(B) The operation evaluation report must document an examination of system treatment and distribution operation practices that may contribute to TTHM and HAA5 formation, including:

(i) storage tank operations;

(ii) excess storage capacity;

(iii) distribution system flushing;

(iv) changes in sources or source water quality;

(v) treatment changes or problems; and

(vi) what steps could be considered to minimize future exceedances.

(C) If the cause of the OEL exceedance is identifiable the scope of the report may be limited with the approval of the executive director. A request to limit the scope of the evaluation does not extend the schedule in subparagraph (A) of this paragraph for submitting the written report. The executive director's approval to limit the scope of the operation evaluation report must be in writing. The system must keep a copy of the executive director's approval with the completed operation evaluation report.

(D) The operation evaluation report must be submitted and approved in writing.

(f) Compliance determination for TTHM and HAA5. Compliance with the provisions of this section shall be determined as follows.

(1) A public water system violates the MCL for TTHM if any locational running annual average for TTHM exceeds an MCL specified in subsection (b)(1)(A) of this section. A public water system violates the MCL for HAA5 if any locational running annual average for HAA5 exceeds the MCL specified in subsection (b)(1)(B) of this section.

(A) Compliance with the MCLs for TTHM and HAA5 shall be based on the LRAA of all samples collected during four consecutive quarters of monitoring. If a single quarterly sample would cause an LRAA exceedance regardless of the results of subsequent quarters, compliance may be based on fewer than four quarters of data. Should a system fail to collect all required samples, compliance will be based on the available data. All samples collected at the sampling sites designated in the public water system's monitoring plan shall be used to compute the quarterly and annual averages unless the analytical results are invalidated by the executive director for technical reasons.

(B) Stage 2 MCL compliance determination with LRAAs will start after Stage 2 samples are collected.

(i) For systems required to conduct routine quarterly monitoring, compliance calculations will be made starting at the end of the fourth calendar quarter that follows the compliance date in subsection (a)(2) of this section and at the end of each subsequent quarter.

(ii) For systems on quarterly monitoring, where the LRAA based on fewer than four quarters would exceed the MCL regardless of the monitoring results of subsequent quarters, compliance will be calculated beginning with the first sample that causes that exceedance.

(iii) For systems that are required to monitor less frequently than quarterly, compliance shall be calculated beginning with the first compliance sample taken after the compliance date.

(iv) For systems monitoring annually or triennially that start monitoring quarterly in the quarter following an LRAA exceedance, compliance shall be calculated based on the results of all available samples.

(C) If a public water system's failure to monitor makes it impossible to determine compliance with the MCL for TTHM or HAA5, the system commits an MCL violation for the entire period covered by the annual average.

(D) The executive director may choose to perform calculations and determine MCL exceedances in lieu of having the system report that information.

(E) IDSE results will not be used for the purpose of determining compliance with MCLs.

(2) A system that fails to monitor in accordance with this section commits a monitoring violation. A system on a quarterly monitoring schedule is in violation of the monitoring requirements for each quarter that it fails to monitor.

(3) A system that fails to perform a required operation evaluation under subsection (e)(2) of this section commits a monitoring violation.

(4) A public water system that fails to report the results of the monitoring tests required by subsection (e) of this section commits a reporting violation.

(5) A system that fails to submit an operation evaluation report as required under subsection (e)(2) of this section commits a reporting violation.

(6) A system that fails to perform a required public notification commits a public notification violation.

(g) Public notification requirements for TTHM and HAA5. A public water system that violates the treatment technique requirements of this section must notify the executive director and the system's customers.

(1) A public water system that commits an MCL violation described in subsection (f)(1) of this section shall report to the executive director and the water system customers in accordance with the requirements of §290.122(b) of this title (relating to Public Notification).

(2) A public water system which fails to conduct the monitoring required by subsection (c) of this section must notify its customers of the violation in accordance with the requirements of §290.122(c) of this title.

(3) Any IDSE compliance documents required under subsection (c)(5) of this section must be made available to the executive director or the public upon request.

(4) Any operation evaluation report required under subsection (e)(2) of this section must be made available to the executive director or the public upon request.

(h) Best available technology for TTHM and HAA5. Best available technology for treatment of violations of MCLs in subsection (b) of this section are listed in 40 CFR §141.64(b)(2)(ii) and (iii).

§290.116. Groundwater Corrective Actions and Treatment Techniques.

(a) Applicability. All public water systems that use groundwater, except public water systems that combine all of their groundwater with surface water or with groundwater under the direct influence of surface water prior to treatment as described in §290.111 of this title (relating to Surface Water Treatment), must comply with one or more of the treatment techniques and corrective actions of this section if a raw groundwater source sample collected under §290.109(d)(3)(C)(ii), (4)(B), (C), or (E) of this title (relating to Microbial Contaminants) was positive for fecal indicators, or if a significant deficiency was identified, or if the system is not required to conduct raw groundwater source monitoring because it provides at least 4-log treatment of viruses at each groundwater source. At the discretion of the executive director, a public water system not excluded under this subsection, shall comply with the requirements of this section after exceeding a treatment technique trigger as described in accordance with §290.109 of this title. A public water system shall comply with provisions of §290.109(d)(3)(C)(ii), (4)(B), (C), or (E) of this title except in cases where the executive director determines that the sample collected under §290.109(d)(1) and (2) of this title meets the executive director's criteria for invalidation as described in §290.109(e)(1) of this title. A public water system with a groundwater under the direct influence of surface water (GUI) or surface water/groundwater blended source(s), which provides disinfection and filtration, shall comply with provisions of this section except in cases where the executive director determines that the significant deficiency is in a portion of the distribution system that is served solely by surface water or groundwater under the direct influence of surface water.

(1) A groundwater system must provide written notification to the executive director that it is not required to meet the raw groundwater source monitoring requirements under §290.109(d)(4) of this title because it provides at least 4-log treatment of viruses for the specified groundwater source and must begin compliance monitoring in accordance with subsection (c) of this section. The notification must include engineering, operational, and other information required by the executive director to evaluate the submission. If the executive director determines and documents in writing that 4-log treatment of viruses is no longer necessary for a specified groundwater source or if the system discontinues 4-log treatment of viruses before the first connection for any groundwater source, the system must document this in writing and conduct raw groundwater source sampling as required under §290.109(d)(4) of this title. If the public water system discontinues 4-log treatment it shall receive prior approval in writing from the executive director that 4-log treatment is no longer necessary for that groundwater source.

(2) A groundwater system that places a groundwater source in service after November 30, 2009, that is not required to meet the raw source monitoring requirements under §290.109(d)(4) of this title because the system provides at least 4-log treatment of viruses for a specified groundwater source must begin compliance monitoring within 30 days of placing the source in service in accordance with subsection (c) of this section. The system must provide written notification to the executive director that it provides at least 4-log treatment of viruses before the first connection for the specified groundwater source. The notification must include engineering, operational, and other information re-

quired by the executive director to evaluate the submission. The system must conduct triggered source monitoring under §290.109(d)(4) of this title until the executive director provides written approval of the system's request to provide the 4-log treatment. If the system discontinues 4-log treatment of viruses before the first connection for a groundwater source, the system must conduct raw groundwater source sampling as required under §290.109(d)(4) of this title. If the public water system discontinues 4-log treatment it shall receive prior approval in writing from the executive director that 4-log treatment is no longer necessary for that groundwater source.

(b) Groundwater corrective action plan. All public water systems using groundwater must submit a corrective action plan and implement corrective action if a raw groundwater source sample was positive for fecal indicators or if a significant deficiency was identified.

(1) If a groundwater source sample was found to be fecal indicator positive or if a significant deficiency was identified, the system must consult with the executive director regarding appropriate corrective action and have an approved corrective action plan in place within 30 days of receiving written notification from a laboratory of the fecal indicator positive source sample collected under §290.109(d)(4) of this title or within 30 days of receiving written notification from the executive director of the identification of a significant deficiency.

(2) Within 120 days of receiving written notification from a laboratory of the fecal indicator positive source sample or receiving written notification from the executive director of a significant deficiency, the system must have completed corrective action or be in compliance with an approved corrective action plan and schedule.

(3) Any changes to the approved corrective action plan or schedule must be approved by the executive director.

(4) The executive director may require interim measures for the protection of public health pending approval of the corrective action plan. The system must comply with these interim measures as well as with any schedules specified by the executive director.

(5) Systems that are required to complete corrective action must implement one or more of the procedures in this paragraph and the details of the implementation must be specified in the approved corrective action plan. If subparagraph (A) or (F) of this paragraph is selected as part of the corrective action plan, then subparagraph (B), (C), (D), or (E) of this paragraph must also be selected.

(A) The system may disinfect the groundwater source where the fecal indicator positive source sample was collected following the American Water Works Association (AWWA) standards for well disinfection and start monthly fecal indicator sampling at that source within 30 days after well disinfection. The executive director may discontinue the monthly source sampling requirement if corrective action is sufficient.

(B) The system may eliminate the groundwater source that was found to be fecal indicator positive and provide an alternate groundwater source if necessary. Eliminated groundwater sources must be disconnected from the distribution system until the contamination is corrected and the executive director approves it for use.

(C) The system may identify and eliminate the source of fecal contamination followed by well disinfection according to AWWA well disinfection standards and begin monthly fecal indicator sampling within 30 days after well disinfection. The executive director may allow the system to discontinue the monthly source sampling requirement after making a determination that corrective action is sufficient.

(D) The system may provide treatment that reliably achieves at least 4-log treatment of viruses using inactivation, removal or an executive director-approved combination of inactivation and removal before the first connection of the groundwater source.

(E) Correct all significant deficiencies.

(F) Assessment source monitoring for a period of 12 months or a time period specified by the executive director from the raw groundwater source in accordance with §290.109(d)(4)(E) of this title.

(c) Microbial inactivation and removal requirements. A public water system that treats groundwater in response to a fecal indicator positive source sample or significant deficiency, instead of conducting raw groundwater source monitoring, shall meet minimum requirements demonstrating at least 4-log treatment of viruses before the water is distributed to the first connection of the specified groundwater source.

(1) Monitoring requirements for chemical disinfectants. Groundwater systems shall monitor the performance of the disinfection facilities to ensure that appropriate disinfectant levels are maintained every day the specified source serves the public. All monitoring conducted pursuant to the requirements of this section must be conducted at sites designated in the system's monitoring plan in accordance with §290.121 of this title (relating to Monitoring Plans).

(A) Groundwater systems serving a population greater than 3,300 must continuously monitor the residual disinfectant concentration in accordance with the analytical methods specified in 40 Code of Federal Regulations (CFR) §141.74(a)(2) at a location approved by the executive director and must record the lowest residual disinfectant concentration every day the groundwater source serves the public.

(i) The groundwater system must maintain the executive director-approved minimum specified disinfectant residual every day the groundwater system serves water from the specified groundwater source to the public. If there is a failure in the continuous monitoring equipment, the groundwater system must conduct grab sampling every four hours until the continuous monitoring equipment is returned to service.

(ii) The system must resume continuous residual disinfectant monitoring within 14 days.

(B) Groundwater systems serving a population of 3,300 or fewer must monitor the disinfectant residual in accordance with the analytical methods specified in 40 CFR §141.74(a)(2) in each disinfection zone at least once each day that water from the specified groundwater source is served to the public during either a time when peak hourly raw water flow rates are occurring or at another time specified by the executive director. The system must record and maintain the disinfectant residual every day the system serves water from the groundwater source to the public. The system must collect a daily grab sample during the hour of peak flow or at another time specified by the executive director. If any daily grab sample measurement falls below the executive director-approved minimum specified disinfectant residual, the groundwater system must collect follow-up samples every four hours until the residual disinfectant concentration is restored to the executive director-approved level. Alternatively, a groundwater system that serves 3,300 or fewer people may monitor the residual disinfectant concentration continuously and meet the requirements of subparagraph (A) of this paragraph.

(C) 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.

(D) Groundwater 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) Monitoring and operating requirements for commission-approved alternative treatment, including ultraviolet light (UV) disinfection facilities, membrane systems, and other methods that can obtain 4-log inactivation or removal of viruses.

(A) Public water systems shall monitor the UV intensity as measured by a UV sensor, lamp status, the flow rate through the unit, and other parameters prescribed by the executive director as specified in §290.42(g)(5) of this title (relating to Water Treatment) to ensure that the units are operating within validated conditions.

(B) Public water systems shall monitor and record membrane system performance in accordance with executive director specified requirements.

(3) 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).

(A) The pH analysis must be conducted using a pH meter with a minimum accuracy of plus or minus 0.1 pH units.

(B) The temperature of the water must be measured using a thermometer or thermocouple with a minimum accuracy of plus or minus 0.5 degrees Celsius.

(C) The free chlorine or chloramine residual (measured as total chlorine) must be measured to a minimum accuracy of plus or minus 0.1 milligrams per liter (mg/L). Color comparators may be used for distribution system samples only. When used, a color comparator must have current reagents, an unfaded and clear color comparator, a sample cell that is not discolored or stained, and must be properly stored in a cool, dark location where it is not subjected to conditions that would result in staining. The color comparator must be used in the correct range. If a sample reads at the top of the range, the sample must be diluted with chlorine-free water, then a reading taken and the resulting residual calculated.

(D) The chlorine dioxide residual must be measured to a minimum accuracy of plus or minus 0.05 mg/L using one of the following methods:

(i) Amperometric titrator with platinum-platinum electrodes; or

(ii) Lissamine Green B.

(E) The ozone residual must be measured to a minimum accuracy of plus or minus 0.05 mg/L using an indigo method that uses a colorimeter or spectrophotometer.

(F) Membrane system integrity monitoring shall be conducted in accordance with executive director specified requirements.

(4) Recordkeeping requirements for microbial inactivation and removal treatment. Groundwater systems, including wholesale, and consecutive systems, regulated under this subsection must comply with §290.46 of this title (relating to Minimum Acceptable Operating Practices for Public Drinking Water Systems).

(d) Reporting requirements. Groundwater systems conducting 4-log treatment instead of conducting raw groundwater source monitoring or required corrective action in response to a fecal indicator positive source sample, or a significant deficiency, must report to the executive director in accordance with this subsection.

(1) A groundwater system required to conduct compliance monitoring for chemical disinfectants must complete a Groundwater Treatment Monthly Operating Report (commission Form 20362) for groundwater disinfection facilities monthly. Groundwater systems must maintain the reports on site and make them available to the executive director upon request.

(2) A groundwater system must provide written notification to the executive director that it is not required to meet the raw groundwater source monitoring requirements under §290.109(d)(4) of this title because it provides at least 4-log treatment of viruses for a specified groundwater source and must begin compliance monitoring in accordance with subsection (c) of this section. The notification must include engineering, operational, and other information required by the executive director to evaluate the submission.

(3) A groundwater system required to complete corrective action under subsection (b) of this section must notify the executive director within 30 days of completing the corrective action.

(4) If a groundwater system is subject to the triggered source monitoring requirements of §290.109(d)(4)(A) of this title and does not conduct source monitoring, the system must provide written documentation that it was providing 4-log treatment of viruses for the specified groundwater source or that it met the criteria set out in §290.109(d)(4)(D) of this title within 30 days of the positive distribution coliform sample.

(5) A groundwater system conducting compliance monitoring under subsection (a) of this section must notify the executive director any time the system fails to meet any executive director-specified requirements (including, but not limited to, minimum residual disinfectant concentration, and alternative treatment operating criteria) if the operation in accordance with the criteria or requirements is not restored within four hours. The system must notify the executive director as soon as possible, but no later than the end of the next business day.

(6) A groundwater system required to conduct integrity monitoring for membrane systems shall complete the executive director specified reports. The reports shall be maintained in accordance with executive director specified requirements.

(e) Compliance determination. In accordance with this subsection, the executive director shall determine compliance for groundwater systems required to conduct corrective action within 120 days, or pursuant to a groundwater corrective action plan.

(1) A groundwater system is in violation of the treatment technique requirement if it does not complete corrective action in accordance with the executive director-approved corrective action plan or any interim measures required by the executive director.

(2) A groundwater system is in violation of the treatment technique requirement if it is not in compliance with the executive director-approved corrective action plan and schedule.

(3) A groundwater system subject to the requirements of subsection (c) of this section that fails to maintain at least 4-log treatment of viruses is in violation of the treatment technique requirement if the failure is not corrected within four hours. The groundwater system must notify the executive director as soon as possible but no later than the next business day if there is a failure in maintaining the 4-log treatment for more than four hours.

(4) A groundwater system that fails to conduct the disinfectant or membrane system integrity monitoring required under subsection (c) of this section commits a monitoring violation.

(5) A groundwater system that fails to report the results of the disinfectant or membrane system integrity monitoring required under subsection (c) of this section commits a reporting violation.

(6) A groundwater system that fails to issue a required public notice or certify that the public notice has been performed commits a public notice violation.

(f) Public notification. A groundwater system that commits a treatment technique, monitoring, or reporting violation or situation as identified in this section must notify its customers of the violation in accordance with the requirements of §290.122 of this title (relating to Public Notification).

(1) Special notice to the public of significant deficiencies or source water fecal contamination for community systems. In addition to the applicable public notice requirements of §290.122(a) of this title, a community groundwater system that receives notice from the executive director of a significant deficiency or notification of a fecal indicator positive groundwater source sample that is not invalidated under §290.109(e)(2) of this title must inform the public served by the water system of the fecal indicator positive source sample or of any significant deficiency that has not been corrected in its Consumer Confidence Report as specified in §290.272(g)(7) and (8) of this title (relating to Content of the Report). The system shall continue to inform the public annually until the significant deficiency is corrected or the fecal contamination in the groundwater source is determined by the executive director to be corrected under subsection (b)(2) of this section.

(2) Special notice to the public of significant deficiencies or source water fecal contamination for noncommunity systems. In addition to the applicable public notice requirements of §290.122(a) of this title, a noncommunity groundwater system that receives notice from the executive director of a significant deficiency or notification of a fecal indicator positive groundwater source sample that is not invalidated under §290.109(e)(2) of this title must inform the public served by the water system of any significant deficiency that has not been corrected within 12 months of being notified by the executive director, or earlier if directed by the executive director. The system must continue to inform the public annually until the significant deficiency is corrected. The information must include:

(A) posting the notice in conspicuous locations throughout the distribution system frequented by persons served by the system, or by mail or direct delivery to each customer and service connection; and

(B) any other method reasonably calculated to notify other persons served by the system, if they would not normally be notified by the methods set out in subparagraph (A) of this paragraph. Such persons may include those who may not see a posted notice because the notice is not in a location they routinely frequent. Other methods may include publication in a local newspaper, newsletter, or e-mail; or, delivery of multiple copies in central locations (e.g., community centers).

(C) If directed by the executive director, a noncommunity groundwater system with significant deficiencies that have been corrected must inform its customers of the significant deficiencies, how deficiencies were corrected, and the dates of correction.

§290.117. Regulation of Lead and Copper.

(a) Applicability. The requirements of this section apply to community and nontransient, noncommunity public water systems. These regulations establish requirements for monitoring, reporting, corrosion control studies and treatment, source water treatment, lead service line replacement, and public education. Public water systems must control the levels of lead and copper in drinking water by controlling the corrosivity of the water. New water systems will be required to meet the requirements of this section when notified by the executive director.

(b) Compliance levels and ranges. Community and nontransient, noncommunity systems must meet designated lead and copper levels and water quality parameter ranges.

(1) Lead and copper action levels. Public water systems must meet action levels for lead and copper in drinking water.

(A) Lead action level. The lead action level is 0.015 milligrams per liter (mg/L). The action level is exceeded if the "90th percentile" lead level exceeds 0.015 mg/L in any monitoring period. The 90th percentile lead level is exceeded when more than 10% of tap water samples have a concentration over the action level.

(B) Copper action level. The copper action level is 1.3 mg/L. The action level is exceeded if the concentration of copper in more than 10% of tap water samples collected during any monitoring period is greater than 1.3 mg/L.

(2) Reduced lead and copper monitoring levels. Systems with levels of lead and copper less than the reduced monitoring levels may be eligible for reduced monitoring under subsections (c) - (e) of this section.

(A) The reduced monitoring level for lead is 0.005 mg/L.

(B) The reduced monitoring level for copper is 0.65 mg/L.

(C) A system with 90th percentile levels of lead and copper less than or equal to the reduced monitoring levels in two consecutive six-month initial or routine tap sampling periods may be eligible for reduced monitoring under subsections (c) - (e) of this section.

(3) Lead and copper Practical Quantitation Levels (PQLs). The PQLs for lead and copper are defined by this paragraph.

(A) The PQL for lead is 0.005 mg/L.

(B) The PQL for copper is 0.050 mg/L.

(4) Optimal water quality parameter (OWQP) ranges. The executive director shall set approved OWQP ranges for systems based on corrosion control studies described in subsection (f)(1) of this section. All systems that exceed an action level for lead or copper based on the 90th percentile are required to have approved OWQP ranges. Systems that serve more than 50,000 people that exceed the PQL for lead based on the 90th percentile are required to have approved OWQP ranges. Systems with approved water quality parameter ranges shall operate within the approved OWQP ranges at all times.

(A) OWQP ranges shall include all elements contained in this subparagraph.

(i) OWQPs shall include a minimum value or a range of values for negative log of hydrogen ion concentration (pH) measured at each entry point to the distribution system.

(ii) OWQPs shall include a minimum pH value, measured in all tap samples. Such value shall be equal to or greater than 7.0, unless the executive director determines that meeting a pH level of 7.0 is not technologically feasible or is not necessary for the system to optimize corrosion control.

(iii) If a corrosion inhibitor is used, OWQPs shall include a minimum concentration or a range of concentrations for the inhibitor, measured at each entry point to the distribution system and in all tap samples, that the executive director determines is necessary to form a passivating film on the interior walls of the pipes of the distribution system.

(iv) If alkalinity is adjusted as part of optimal corrosion control treatment, OWQPs shall include a minimum concentration or a range of concentrations for alkalinity, measured at each entry point and in all distribution samples.

(v) If calcium carbonate stabilization is used as part of corrosion control, OWQPs shall include a minimum concentration or a range of concentrations for calcium, measured in all distribution samples.

(B) Systems that must perform corrosion controls studies under subsection (f) of this section shall submit proposed system-specific OWQP ranges in writing for the executive director's approval.

(C) The executive director shall review and designate OWQPs in writing within six months after receipt of the system's recommended OWQPs.

(5) Deemed to have optimized corrosion control. A system may be considered deemed to have optimized corrosion control if it meets the requirements of this paragraph.

(A) A system that serves 50,000 or fewer people may be deemed to have optimized corrosion control if the system meets the lead and copper action levels in two consecutive initial or routine monitoring periods.

(B) A system that serves more than 50,000 people may be deemed to have optimized corrosion control if the difference between the 90th percentile lead level and the highest entry point lead level is less than the PQL and the system meets the copper action levels in two consecutive initial or routine monitoring periods.

(C) Those systems whose highest source water lead level is below the method detection limit may also be deemed to have optimized corrosion control under this paragraph if the 90th percentile tap water lead level is less than or equal to the PQL for lead for two consecutive six-month monitoring periods.

(D) Any water system may be deemed by the executive director to have optimized corrosion control treatment if the system demonstrates, to the satisfaction of the executive director, that it has conducted activities equivalent to the corrosion control requirements of this section, including all applicable monitoring requirements.

(E) Any system that fails to perform required monitoring or reporting, operates outside any approved OWQP ranges, or exceeds a lead or copper action level shall no longer be deemed to have optimized corrosion control.

(6) Maximum permissible levels (MPLs) for source water lead. The executive director shall designate MPLs for lead and copper at entry points to the distribution system for systems that are required to install source water treatment under subsection (g) of this section. Such MPLs shall reflect the contaminant-removal capability of the source water treatment properly operated and maintained. The executive director shall determine MPLs based on source water samples taken by the water system before and after the system installs the approved source water treatment. The executive director will set MPLs in writing, explaining the basis of that decision, within six months after the system completes follow-up tap sampling for lead and copper after source water treatment installation under subsection (g) of this section.

(c) Lead and copper tap sampling locations and frequency. Community and nontransient, noncommunity public water systems shall sample at sites approved by the executive director and at a frequency set by the executive director. Systems shall conduct initial tap sampling until the system either exceeds the lead or copper action level or becomes eligible for reduced monitoring.

(1) Lead and copper tap sampling locations. Systems shall sample at sites approved by the executive director and documented in the system's monitoring plan required under §290.121 of this title (relating to Monitoring Plans).

(A) Number of tap sample sites. The minimum number of sample sites required for initial, routine, or reduced lead and copper tap sampling are listed in the following table, entitled "Required Number of Lead and Copper Tap Sample Sites:"
Figure: 30 TAC §290.117(c)(1)(A) (No change.)

(B) Suitable sample taps. All sites from which lead and copper tap samples are collected shall be selected from a pool of targeted sampling sites identified through a materials survey of the distribution system. Sample sites shall be selected first at tier 1, then tier 2, then tier 3 locations as defined in subparagraph (D) of this paragraph. Sampling sites may not include faucets that have point-of-use or point-of-entry treatment devices designed to remove inorganic chemicals.

(C) Material survey and sample site selection form. Sample sites shall be representative of the distribution system and specifically represent areas of the system most vulnerable to corrosion of lead and copper into the water. The system must maintain a current copy of their Material Survey Form with the monitoring plan.

(i) Material survey. Systems shall perform a materials survey to select sample appropriate tap sampling sites using the Material Survey Form and Instructions (TCEQ Form Number 20467). The material survey shall be submitted in writing for executive director review and approval. In performing the material survey, the system shall review the sources of information listed in this clause in order to identify sampling sites. In addition, the system shall seek to collect such information where possible in the course of its normal operations (for example, while checking service line materials when reading water meters or performing maintenance activities). Sources of information that must be reviewed include:

(I) all plumbing codes, permits, and records in the files of the building department(s) which indicate the plumbing materials that are installed within publicly and privately owned structures connected to the distribution system;

(II) all inspections and records of the distribution system that indicate the material composition of the service connections that connect a structure to the distribution system;

(III) all existing water quality information, which includes the results of all prior analyses of the system or individual structures connected to the system, indicating locations that may be particularly susceptible to high lead or copper concentrations; and

(IV) a water system shall use the information on lead, copper, and galvanized steel that it is required to collect when performing a corrosion control study that is required under subsection (f) of this section.

(ii) Sample site selection form. After completing sample site selection, the system will submit the Lead and Copper Sample Site Selection form (TCEQ Form Number 20467) to the executive director for approval. Systems shall identify routine and reduced monitoring sites on their Lead and Copper Sample Site Selection form.

(I) Selecting tier 1, 2, and 3 sites. Systems shall identify tier 1, tier 2, and tier 3 sites as described in subparagraph (D) of this paragraph.

(II) Sites for community systems with insufficient tier 1, 2, or 3 sites. A community water system with insufficient

tier 1, tier 2, and tier 3 sampling sites shall complete its sampling pool with representative sites throughout the distribution system.

(III) Sites for nontransient, noncommunity systems with insufficient tier 1, 2, or 3 sites. A nontransient, noncommunity water system with insufficient tier 1 sites shall complete its sampling pool with sampling sites that contain copper pipes with lead solder installed before 1983. If additional sites are needed to complete the sampling pool, the nontransient, noncommunity water system shall use representative sites throughout the distribution system.

(IV) Sites for systems with lead service lines. Any water system whose distribution system contains lead service lines shall draw 50% of the samples it collects during each monitoring period from sites that contain lead pipes, or copper pipes with lead solder, and 50% of the samples from sites served by a lead service line. A water system that cannot identify a sufficient number of sampling sites served by a lead service line shall collect first-draw samples from all of the sites identified as being served by such lines.

(V) Supplemental information with Site Selection Form. Systems shall submit supplemental explanatory information as part of the sample site selection documentation.

(D) Tier 1, 2, and 3 sites. Tier 1, 2, and 3 sites representing potential for leaching lead or copper under corrosive conditions shall be defined as described in this subparagraph.

(i) Definition of community tier 1. The sampling sites selected for a community water system's sampling pool, called "tier l sampling sites," shall consist of single family structures that:

(I) contain copper pipes with lead solder installed after 1982 or contain lead pipes; or

(II) are served by a lead service line. When multiple-family residences comprise at least 20% of the structures served by a water system, the system may include these types of structures in its sampling pool.

(ii) Definition of community tier 2. Any community water system with insufficient tier 1 sampling sites shall complete its sampling pool with "tier 2 sampling sites", consisting of buildings, including multiple-family residences that:

(I) contain copper pipes with lead solder installed after 1982 or contain lead pipes; or

(II) are served by a lead service line.

(iii) Definition of community tier 3. Any community water system with insufficient tier 1 and tier 2 sampling sites shall complete its sampling pool with tier 3 sampling sites consisting of single family structures that contain copper pipes with lead solder installed before 1983.

(iv) Definition of community "other representative sites". A representative site is a site in which the plumbing materials used at that site would commonly be found at other sites served by the water system.

(v) Definition of nontransient, noncommunity tier 1 sites. Tier 1 sampling sites selected for a nontransient, noncommunity water system shall consist of buildings that:

(I) contain copper pipes with lead solder installed after 1982 or contain lead pipes; or

(II) are served by a lead service line.

(vi) Nontransient, noncommunity representative sites. For the purpose of this paragraph, a representative site is a site in which the plumbing materials used at that site would be commonly found at other sites served by the water system.

(E) Sites for systems missing first-draw sites. A water system may request approval of non-first-draw sample sites if it meets the requirements in this paragraph. The executive director will use all written documentation provided by the system in reviewing the request.

(i) Type of system for non-first-draw sites. In order to request use of non-first-draw sites, the system must be either a nontransient, noncommunity system, or a community system where:

(I) the system is a facility, such as a prison or a hospital, where the population served is not capable of or is prevented from making improvements to plumbing or installing point of use treatment devices; and

(II) the system provides water as part of the cost of services provided and does not separately charge for water consumption.

(ii) The request for approval of non-first-draw sites must provide written documentation identifying standing times and locations for enough non-first-draw samples to make up its sampling pool. A system must update their sample sites when system conditions changes, such as changes in population and destruction of previously used sites.

(F) Sites for systems with less than five taps. A public water system that has fewer than five drinking water taps that can be used for human consumption may request a five-tap waiver to collect samples at fewer than five locations. The executive director may allow these public water systems to collect a number of samples less than the number of sites specified in paragraph (1) of this subsection, provided that all taps that can be used for human consumption are sampled. The system must request this reduction of the minimum number of sample sites in writing based on a request from the system or on-site verification. In no case can the system reduce the number of samples required below the minimum of one sample per available tap.

(G) Use of same taps each round. A water system must collect tap samples from the same sampling sites in each sampling round.

(i) If a water system changes a sampling site for any reason allowed in this section, the water system must provide the executive director with a written explanation showing which sampling site will be abandoned and the sampling site that replaces the abandoned sampling site. The water system's report shall include an explanation as to why a sampling site was changed from the previous round of sampling.

(ii) If a water system cannot collect a sample from a previously used site, the water system shall provide a written explanation to the executive director. The water system must select an alternate sampling site from the system's sampling pool which meets similar criteria and is within reasonable proximity to the original sampling site.

(2) Lead and copper tap sampling frequency. Water systems shall collect at least one sample from the number of sites listed in the table in paragraph (1) of this subsection during each monitoring period. Systems shall sample on the schedule determined by the executive director.

(A) Initial and routine tap sampling. New systems, systems that exceed any action level, systems that install corrosion control treatment, systems that exceed a reduced monitoring level, and systems that operate outside an approved OWQP range shall collect tap samples in two consecutive six-month monitoring periods at the initial/routine number of sample sites.

(i) Initial tap sampling. New systems shall collect tap samples in two consecutive six-month monitoring periods at the initial/routine number of sample sites. A new community or nontransient, noncommunity water system begins the first six-month initial monitoring period in the year after it becomes active. Initial tap sampling shall be conducted after the executive director has determined that a system has had sample sites approved based on the materials survey and sample site selection form required by subsection (b)(2) of this section.

(ii) Routine tap sampling. Systems on reduced monitoring may be required to return to routine sampling in two consecutive six-month periods.

(I) Systems that exceed the lead action level during any 4-month monitoring period shall return to routine tap sample monitoring.

(II) Systems required to perform biweekly water quality parameter (WQP) sampling that have WQP levels that are outside the system's approved OWQP range for more than nine days in any six-month period shall return to routine tap sample monitoring.

(III) Systems that are required to return to routine tap sampling because of an action level, reduced monitoring level, or OWQP range exceedance shall start the two consecutive six-month periods in the next calendar year after the exceedance or event that triggers routine monitoring.

(IV) Within 36 months after the executive director designates optimal corrosion control treatment, systems that serve fewer than 50,000 people shall return to routine tap sampling.

(V) Any system that installs corrosion control treatment shall return to routine tap sampling.

(VI) Any system that installs source treatment shall return to routine tap sampling.

(B) Reduced annual tap sampling. Systems that meet the requirements of this paragraph shall collect tap samples every year. Systems on annual reduced monitoring shall collect tap samples at the number of sites in the table entitled "Required Number of Lead and Copper Tap Sample Sites" in paragraph (1) of this subsection. Systems shall collect samples at sites approved by the executive director and documented in the monitoring plan. Reduced annual monitoring shall be performed during June, July, August, or September. This annual sampling shall begin during the calendar year immediately following the end of the second consecutive six-month monitoring period. The executive director shall notify each water system if it is eligible for reduced annual tap sample monitoring.

(i) Systems serving more than 50,000 people that meet the lead action levels, and operate within any approved OWQP ranges, during two consecutive six-month periods may have their sampling frequency reduced to once a year.

(ii) Systems serving 50,000 or fewer people that meet the lead and copper action levels during two consecutive six-month periods may have their sampling frequency reduced to once a year.

(iii) Systems serving 50,000 or fewer people that meet the lead action level, and operate within any approved OWQP ranges, during two consecutive six-month periods may have their sampling frequency reduced to once a year.

(iv) Systems that meet the action levels, but whose 90th percentile levels exceed 0.005 mg/L for lead or 0.65 for copper during two consecutive six-month initial or routine sampling periods must perform two consecutive years of annual monitoring.

(v) Systems monitoring annually, that have been collecting samples during the months of June through September and that receive approval from the executive director to alter their sample collection period under subparagraph (E) of this paragraph must collect their next round of samples during a time period that ends no later than 21 months after the previous round of sampling.

(vi) Systems with approved OWQP ranges that operate outside those ranges are not eligible for reduced annual monitoring.

(C) Reduced three-year tap sampling. Systems which meet the requirements of this paragraph, shall collect tap samples every three years. Systems on reduced three-year monitoring shall collect tap samples at the reduced number of sites in the table entitled "Required Number of Lead and Copper Tap Sample Sites" in paragraph (1) of this subsection. Systems shall collect samples at the sites approved by the executive director and documented in the monitoring plan. Reduced three-year monitoring shall be performed during June, July, August, or September, unless the executive director has designated a different four-month period under subparagraph (E) of this paragraph.

(i) Any system that demonstrates during two consecutive six-month initial or routine monitoring periods that the 90th percentile lead level is less than or equal to 0.005 mg/L and the 90th percentile copper level is less than or equal to 0.65 mg/L shall have the required frequency of sampling reduced to once every three years.

(ii) A system that serves 50,000 or fewer people that meets the lead and copper action levels during three consecutive years of monitoring may reduce the frequency of monitoring for lead and copper from annually to once every three years.

(iii) A system with approved OWQP ranges must operate within those ranges to remain eligible for reduced three-year monitoring.

(iv) Samples collected once every three years shall be collected no later than every third calendar year.

(v) Systems on reduced three-year monitoring that have been collecting samples during the months of June through September, and receive approval from the executive director to alter the sampling collection period as per subparagraph (E) of this paragraph must collect their next round of samples during a time period that ends no later than 45 months after the previous round of sampling.

(D) Reduced nine-year tap sampling. Systems that meet the requirements of the United States Environmental Protection Agency's (EPA's) Lead and Copper Rule Minor Revisions as described in 40 Code of Federal Regulations §141.86, and serve 3,300 or fewer people shall be eligible for reduced nine-year tap sampling. Systems on reduced monitoring shall collect tap samples at the number of sites in the table entitled "Required Number of Lead and Copper Tap Sample Sites" in paragraph (1) of this subsection. Systems shall collect samples at the sites approved by the executive director and documented in the monitoring plan. Reduced nine-year tap sampling shall be performed during June, July, August, or September, unless the executive director has designated a different four-month period under subparagraph (E) of this paragraph. The executive director shall notify a system that it is eligible for reduced monitoring.

(i) Initiation of reduced nine-year tap sampling. The first round of reduced nine-year tap sampling shall be completed no later than nine years after the last time the system monitored for lead and copper at the tap.

(ii) Materials requirement for reduced nine-year tap sampling. In order to be eligible for reduced nine-year tap sampling, a

system must provide the executive director with an updated materials survey certifying that the system meets the requirements of this clause.

(I) The water system must demonstrate on the Materials Survey and Lead/Copper Sample Site Selection form (TCEQ Form Number 20467) that its distribution system, service lines, and all drinking water supply plumbing, including plumbing conveying drinking water within all residences and buildings connected to the system, are free of lead-containing materials and/or copper-containing materials to demonstrate the risk from lead and/or copper exposure is negligible throughout the water system.

(II) To qualify for reduced nine-year tap sampling, the water system must certify in writing and provide supporting documentation that the system is free of all lead-containing materials. The system must contain no plastic pipes that contain lead plasticizers, or plastic service lines that contain lead plasticizers. The system must be free of lead service lines, lead pipes, lead soldered pipe joints, and leaded brass or bronze alloy fittings and fixtures, unless such fittings and fixtures meet the specifications of any standard established pursuant to 42 United States Code, §300g-6(e) (Safe Drinking Water Act, §1417(e)).

(III) To qualify for reduced nine-year tap sampling the water system must provide certification and supporting documentation to the executive director that the system contains no copper pipes or copper service lines.

(IV) The executive director shall not issue any "partial waivers" for lead and copper monitoring.

(iii) Lead and copper levels for reduced nine-year tap sampling eligibility. To qualify for reduced nine-year tap sampling, the public water system must have completed at least one six-month period of initial tap water monitoring. Also, all of the system's 90th percentile lead and copper levels must have been less than or equal to 0.005 mg/L for lead and 0.65 for copper in all sampling performed by the system.

(iv) Conditions for reduced nine-year tap sampling eligibility. As a condition of the reduced nine-year tap sampling schedule, the executive director may require the system to perform specific activities to avoid the risk of lead or copper concentration of concern in tap water. For example, additional monitoring, periodic outreach to customers to remind them to avoid installation of materials that might void the reduced nine-year tap sampling schedule, or other activities may be required.

(v) Reduced nine-year tap sampling revocation. If a water system with a nine-year tap sampling schedule adds a new source of water, changes any water treatment, or no longer meets the requirements of this subparagraph, the water system must notify the executive director in writing within 60 days of the change as required by §290.39(j) of this title (relating to General Provisions). The executive director has the authority to modify the reduced nine-year tap sampling schedule to address changes.

(vi) Notification of change in lead or copper materials. If a system on reduced nine-year tap sampling becomes aware that the system is no longer free of lead-containing or copper-containing materials, the system shall notify the executive director in writing no later than 60 days after becoming aware of such a change. If the system met both the lead and the copper action levels in all previous lead and copper tap sampling results, the system must return to three-year tap sampling schedule contained in subparagraph (C) of this paragraph.

(vii) Tap sampling frequency sequence. Subsequent rounds of sampling, after a return to routine monitoring, must be collected once a year, every three years, or every nine years, as required by this section.

(E) Alternate months for reduced lead and copper tap sampling. The executive director may approve a different period, other than June through September, for systems conducting reduced lead and copper tap sampling. Such a period shall be no longer than four consecutive months and must represent a time of normal operation where the highest levels of lead are most likely to occur. For a nontransient, noncommunity water system that does not operate during the months of June through September, and for which the period of normal operation where the highest levels of lead are most likely to occur is not known, the executive director shall designate a period that represents a time of normal operation for the system. This sampling shall begin during the period designated by the executive director in the calendar year immediately following the end of the second consecutive six-month monitoring period for systems initiating annual monitoring and during the three-year period following the end of the third consecutive calendar year of annual monitoring for systems initiating three-year reduced monitoring.

(F) Tap sampling monitoring period. For systems on annual or less frequent schedules, the end of the monitoring period is September 30 of the calendar year in which the sampling occurs, or if the executive director has established an alternate monitoring period, the last day of that period.

(G) Return to initial/routine tap sampling frequency. The executive director shall determine whether a system continues to meet the requirements to remain on reduced annual, three-year, or nine-year monitoring. A system on reduced monitoring may be required to return to routine monitoring as described in subparagraph (A)(i) of this paragraph. Systems required to return to routine monitoring shall sample at the number of routine sites listed in the table entitled "Required Number of Lead and Copper Tap Sample Sites" under paragraph (1) of this subsection.

(H) Replacement tap samples. The water system must collect replacement samples for any samples invalidated under subsection (h) of this section. Any such replacement samples must be collected as soon as possible, but no later than twenty days after receiving notification of sample invalidation approval from the executive director. If a water system discovers that a sample has been collected at an inappropriate sampling site, the water system may request in writing that the sample be invalidated. The replacement samples shall be taken at the same locations as the invalidated samples or, if that is not possible, at locations other than those with valid results for the monitoring period.

(I) Nontransient, noncommunity systems with less than five taps. A nontransient, noncommunity system that has fewer than five drinking water taps meeting the sample site criteria of this paragraph must collect at least one sample from each tap and then must collect additional samples from those same taps on different days during the monitoring period to meet the required number of samples unless the system has received a five-tap waiver from the executive director under paragraph (1)(F) of this subsection.

(3) Consumer sampling for lead action level exceeders. Water systems that exceed the lead action level must arrange to sample the tap water of any customer who requests it. Analytical costs may be borne by the consumer.

(d) Lead and copper entry point sampling. Systems must perform entry point lead and copper sampling after the system exceeds a lead or copper action level, installs source water treatment, or exceeds any MPLs set by the executive director. Systems must routinely monitor lead and copper in conjunction with monitoring for inorganic

contaminants other than asbestos or nitrate under §290.106 of this title (relating to Inorganic Contaminants).

(1) Lead and copper entry point sampling locations. Systems required to perform entry point sampling under this subsection shall sample at every entry point to the distribution system including purchased water entry points. The system shall take each subsequent sample at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant. The system must seek executive director approval to modify an entry point sample location, and must revise its monitoring plan.

(2) Lead and copper entry point sampling frequency. If a system draws water from more than one source and the sources are combined before distribution, the system must sample at an entry point to the distribution system during periods of normal operating conditions when water is representative of all sources being used.

(A) Entry point lead and copper sampling after an action level exceedance. Any system which exceeds the lead or copper action level shall collect one sample from each entry point no later than 180 days after the end of the monitoring period during which the lead or copper action level was exceeded. For systems on annual or less frequent schedules, the end of the monitoring period is September 30 of the calendar year in which the sampling occurs, or if the executive director has established an alternate monitoring period, the last day of that period.

(B) Entry point lead and copper sampling for systems that meet the action levels. A system is not required to conduct entry point lead and copper sampling if the system meets the lead and copper action levels during the entire entry point sampling period.

(C) Entry point lead and copper monitoring frequency after installing source water treatment. Any system that installs source water lead or copper removal treatment shall collect entry point samples during two consecutive six-month periods within 36 months after source water treatment begins.

(D) Entry point lead and copper sampling frequency after specification of MPLs. A system shall monitor at the frequency specified below.

(i) Starting the year after the executive director specifies MPLs, water systems using any surface water shall collect annual samples once during each calendar year.

(ii) Starting the year after the executive director specifies MPLs, a water system using only groundwater shall collect samples once during the three-year compliance period in effect at that time. Such systems shall collect samples once during each subsequent compliance period. Triennial samples shall be collected every third calendar year.

(iii) A water system using only groundwater may sample entry points every ninth year if the system meets one of the following criteria.

(I) The entry point lead and copper levels are below the lead and copper MPLs during at least three consecutive compliance periods; or

(II) The executive director has determined that source water treatment is not needed and the system demonstrates that, during at least three consecutive annual or three-year compliance periods, the concentration of lead in source water was less than or equal to 0.005 mg/L and the concentration of copper in source water was less than or equal to 0.65 mg/L.

(iv) A water system using surface water (or a combination of surface water and ground water) may reduce the lead and copper entry point monitoring frequency to once during every ninth year if the system meets one of the following criteria:

(I) The entry point lead and copper levels are below the MPLs for lead and copper for at least three consecutive years; or

(II) The executive director has determined that source water treatment is not needed and the concentration of lead at all entry points was less than or equal to 0.005 mg/L and the concentration of copper at all entry points was less than or equal to 0.65 mg/L during at least three consecutive years.

(v) A water system that uses a new source of water is not eligible for reduced entry point monitoring for lead and copper until concentrations in samples collected from the new source during three consecutive monitoring periods are below the lead and copper MPLs.

(vi) Where the results of sampling indicate an exceedance of a lead or copper MPL, one additional sample must be collected within two weeks after the initial sample was taken at the same entry point. Samples will be averaged for compliance determination.

(E) All water systems shall notify the executive director in writing of any proposed change in treatment or the addition or deletion of a source of water. The executive director may require any such system to conduct additional monitoring or to take other action to ensure that the system maintains minimal levels of corrosion in the distribution system.

(e) WQP monitoring requirements. Systems shall monitor WQPs to determine the potential for corrosion. All systems that serve more than 50,000 people shall monitor in accordance with this subsection. Systems that serve 50,000 or fewer people that exceed a lead or copper action level shall monitor in accordance with this subsection, during the monitoring period in which the system exceeds the action level. Sites shall be submitted to the executive director for approval in conjunction with the system's monitoring plan.

(1) WQP monitoring locations. Systems that are required to monitor WQPs shall take two samples at all entry points and distribution WQP sites, as specified in subparagraphs (A) and (B) of this paragraph, where applicable, and at the number of distribution sites shown in Figure: 30 TAC §290.117(e)(1). Systems on initial or routine monitoring, as described in paragraph (2) of this subsection, must sample at the number of sample sites in the column entitled "Initial and Routine Number of WQP Distribution Sites." Systems on reduced monitoring must sample at the number of sites in the column entitled "Reduced Number of WQP Distribution Sites."
Figure: 30 TAC §290.117(e)(1) (No change.)

(A) Entry point WQP sites. Systems that are required to perform entry point WQP monitoring under this subsection must perform monitoring at every entry point to the distribution system. The executive director may allow systems using only groundwater to forego entry point monitoring, and monitor only at representative distribution system locations according to paragraph (6) of this subsection.

(B) Distribution WQP sites. Sites normally used for bacteriological monitoring or other appropriate sites may be used for WQP sampling. Samples need not be collected inside a customer's home. These sites shall represent water quality throughout the entire distribution system.

(2) Initial and routine WQP monitoring. New systems must perform at least one initial WQP monitoring round in the year

following the year that the system is identified as active. Systems that exceed lead or copper action levels shall perform two consecutive six-month periods of routine WQP monitoring. Systems must monitor in accordance with subparagraphs (A) and (B) of this paragraph.
Figure: 30 TAC §290.117(e)(2)

(A) Locations for initial and routine WQP monitoring. Systems must conduct WQP monitoring at the locations specified in paragraph (1)(A) and (B) of this subsection, where applicable, and at the number of distribution sites specified in Figure: 30 TAC §290.117(e)(1).

(B) Frequency of initial and routine WQP monitoring. Systems serving 50,000 or fewer people shall measure the WQPs listed in this paragraph during each six-month monitoring period in which the system exceeds the lead or copper action level. Systems serving more than 50,000 people must perform two consecutive six-month periods of sampling. Public water systems shall collect WQP samples on a quarterly basis as described in Figure: 30 TAC §290.117(e)(2) to reflect seasonal variability in water quality conditions.

(3) WQP monitoring after installation of corrosion control treatment. Any system that installs optimal corrosion control treatment as required by subsection (f) of this section shall measure the list of WQPs at the locations and frequencies as specified in Figure: 30 TAC §290.117(e)(3). Any system serving more than 50,000 people that installs optimal corrosion control treatment shall monitor once during each six-month period. Any system serving 50,000 or fewer people that installs corrosion control treatment shall monitor during each six-month monitoring period specified in which the system exceeds the lead or copper action level.
Figure: 30 TAC §290.117(e)(3)

(A) Frequency of WQP monitoring after installation of corrosion control treatment. After a system installs corrosion control treatment, it must collect least one sample every two weeks (biweekly) at every entry point to the distribution system, except as provided under paragraph (6) of this subsection.

(B) Documentation for WQP sample locations after installation of corrosion control treatment. Prior to the starting date of the monitoring period for any monitoring under this paragraph, the system shall provide the executive director with an updated list of entry points and their sources, a list of distribution sites, and information on seasonal variability of water usage to demonstrate that the sites are representative of water quality and treatment conditions throughout the system. The system shall submit this information to the executive director upon request or when circumstances change and retain a copy of the submittal and approval with the system's monitoring plan.

(C) Additional monitoring when determining optimal corrosion control treatment. The executive director may require the system to conduct additional WQP monitoring in to assist in evaluating the system's sample sites.

(4) WQP monitoring after designation of OWQP ranges. After the executive director approves OWQP ranges, systems shall measure the list of WQPs at the frequency and locations as described in Figure: 30 TAC §290.117(e)(4).
Figure: 30 TAC §290.117(e)(4) (No change.)

(A) After the executive director approves OWQP ranges, systems serving more than 50,000 people shall measure the WQPs listed in this paragraph and determine compliance with the OWQP ranges quarterly starting with the first six-month period after the executive director specifies the OWQPs beginning on either January 1 or July 1, whichever comes first.

(B) Any system serving 50,000 or fewer people shall conduct WQP monitoring during each six-month period specified in this paragraph in which the system exceeds the lead or copper action level. If the system is eligible for reduced lead and copper tap sampling, the system shall collect WQPs during the same monitoring periods that it collects lead and copper tap samples.

(C) The system shall complete follow-up sampling within 36 months after the executive director designates optimal corrosion control treatment.

(D) Systems shall measure WQPs at every entry point to the distribution system, except as allowed under paragraph (6) of this subsection.

(5) Reduced WQP monitoring. The executive director may reduce monitoring for systems that demonstrate a low risk of corrosion of lead and copper into the drinking water. Water systems on reduced schedules shall monitor the list of WQPs at the locations and frequency given in the table entitled "Reduced Water Quality Parameter (WQP) Entry Point and Distribution Monitoring."
Figure: 30 TAC §290.117(e)(5) (No change.)

(A) Reduced quarterly WQP distribution monitoring. A system that operates within approved OWQP ranges in all samples taken during two consecutive six-month initial or routine monitoring periods under paragraph (2) of this subsection may collect tap samples for applicable WQPs from the reduced number of sites quarterly. A water system sampling quarterly shall collect samples evenly throughout the year so as to reflect seasonal variability.

(B) Reduced annual WQP distribution monitoring. Any water system that operates within approved OWQP ranges during three consecutive years of quarterly monitoring may reduce the frequency with which it collects distribution WQP samples to annually. Annual WQP sampling shall begin during the calendar year immediately following the end of the monitoring period in which the third consecutive year of quarterly monitoring occurs. A water system sampling annually shall collect samples evenly throughout the year so as to reflect seasonal variability.

(C) Reduced triennial WQP distribution monitoring. The executive director may reduce the WQP monitoring frequency to once every three years if a system meets the criteria of this subparagraph. Triennial monitoring shall be done no later than every third calendar year.

(i) A system that operates within approved OWQP ranges during three consecutive years of annual monitoring is eligible to reduce the frequency of distribution WQP monitoring to once in every third year. This sampling shall begin no later than the third calendar year following the end of the monitoring period in which the third consecutive year of monitoring occurs.

(ii) A system that demonstrates during two consecutive six-month periods that the entry point 90th percentile lead level is less than or equal to the PQL for lead in subsection (b)(3) of this section, and that operates within approved OWQP ranges during that time may reduce the frequency of distribution monitoring to once every third year. This sampling shall begin no later than the third calendar year following the end of the year in which the second consecutive six-month period occurs.

(D) Return to routine WQP monitoring. The executive director may return a system to monitoring at the routine frequency and routine number of sample sites. Any water system on reduced monitoring that fails to operate within the approved OWQP range for more than nine days in any six-month monitoring period shall resume routine WQP distribution system sampling in accordance with the number

and frequency requirements in paragraph (2) of this subsection. Any system required to return to routine frequency for lead and copper tap sampling under subsection (c)(2)(A)(ii) of this section shall also return to routine WQP monitoring.

(E) Entry point WQP monitoring. Systems on reduced WQP monitoring shall measure WQPs at every entry point to the distribution system, except as provided under paragraph (6) of this subsection.

(6) Distribution system sampling for systems using only groundwater. The executive director may allow a system using only groundwater to perform WQP sampling required by paragraph (3), (4), or (5) of this subsection to sample only at representative distribution system sites, and to forego sampling at entry points. Prior to foregoing entry point monitoring, the system shall provide written information identifying the selected entry points and documentation, including information on seasonal variability, sufficient to demonstrate that the sites are representative of water quality and treatment conditions throughout the system to the executive director for approval.

(f) Corrosion control. Systems may be required to perform corrosion control studies to determine whether treatment is necessary to reduce the corrosivity of the water. Systems may be required to install optimal corrosion control treatment in order to control corrosion in the system. The executive director may modify the designated corrosion control treatment or parameters. A system's request for changes and executive director response pursuant to modification shall be in writing.

(1) Corrosion control studies. Systems may be required to perform corrosion control studies to determine whether treatment is necessary to reduce the corrosivity of the water.

(A) Corrosion control studies applicability. Systems that meet the conditions in this subparagraph are required to perform corrosion control studies.

(i) Corrosion control studies for systems serving more than 50,000 people. Systems serving more than 50,000 people are required to conduct corrosion control studies unless the executive director has determined that the system is currently deemed to have optimized corrosion control, as defined in subsection (b)(5) of this section.

(I) Systems serving more than 50,000 people that exceed either the lead or copper action level during any a reduced tap sampling monitoring round must perform a corrosion control study within six months.

(II) Systems serving more than 50,000 people that have not been deemed at any previous time that exceed lead or copper action levels must conduct a demonstration study as described in subparagraph (C) of this paragraph.

(III) The corrosion control study must be conducted and submitted within 12 months after the end of the monitoring period in which the system exceeded the action level.

(ii) Corrosion control studies for systems serving 50,000 or fewer people. Any system serving 50,000 or fewer people that exceeds the lead or copper action level must perform a corrosion control study to identify optimal corrosion control treatment for the system. The system must conduct the study within 12 months after the end of the monitoring period in which the system exceeded the action level.

(B) Scope of corrosion control study. A system required to perform a corrosion control study shall include evaluation of treatment methods and potential constraints to treatment.

(i) Corrosion control treatment methods. Any public water system performing a corrosion control study shall evaluate the effectiveness of each of the following treatments (or combinations of treatments) to identify the optimal control treatment:

(I) alkalinity and pH adjustment;

(II) calcium hardness adjustment; and

(III) the addition of a phosphate or silicate based corrosion inhibitor at a concentration sufficient to maintain an effective residual concentration in all test tap samples.

(ii) Potential constraints to corrosion control treatment methods. The system shall identify all chemical or physical constraints that limit or prohibit the use of a particular corrosion control treatment. The system shall evaluate the effect of the chemicals used for corrosion control treatment on other water quality treatment processes. The system shall document treatment considerations with at least one of the following:

(I) data and documentation showing that a particular corrosion control treatment has adversely affected other water treatment processes when used by another water system with comparable water quality characteristics, or

(II) data and documentation demonstrating that the water system has previously attempted to evaluate a particular corrosion control treatment and has found that the treatment is ineffective or adversely affects other water quality treatment processes.

(C) Demonstration corrosion control study requirements. The water system shall conduct this evaluation using pipe rig/loop tests, metal coupon tests, or partial systems tests called a demonstration study. The water system shall measure the parameters in this clause in any tests conducted under this subparagraph before and after evaluating the corrosion control treatments listed in subparagraph (B) of this paragraph:

(i) lead;

(ii) copper;

(iii) pH;

(iv) alkalinity;

(v) calcium;

(vi) conductivity;

(vii) orthophosphate (when an inhibitor containing a phosphate compound is used);

(viii) silicate (when an inhibitor containing a silicate compound is used); and

(ix) water temperature.

(D) Desk-top corrosion control study requirements. A desk-top corrosion control study shall recommend treatment and OWQPs based on data for treatments in documented analogous systems called a desk-top study. Analogous system means a system of similar size, water chemistry, and distribution system configuration. The water system shall evaluate each of the corrosion control treatments in subparagraph (B)(i) of this paragraph.

(2) Setting approved OWQP ranges based on corrosion control study data. On the basis of the corrosion control study evaluation, the water system shall recommend to the executive director, in writing, an OWQP range based on normal system operating conditions. Systems must recommend OWQPs consistent with subsection (b)(4) of this section. The executive director will review the study

and designate OWQPs. The executive director shall designate OWQP ranges based on the results of lead, copper, and WQP monitoring by the system, both before and after the system installs optimal corrosion control treatment. The executive director may designate values for additional water quality control parameters determined to reflect optimal corrosion control for the system. The executive director shall notify the system in writing of these determinations and will provide the basis for the decision.

(3) Optimal corrosion control treatment designation. A system exceeding the action level for lead or copper based on the 90th percentile level shall submit recommendations for optimal corrosion control treatment within six months after the end of the monitoring period during which it exceeds one of the action levels. The executive director shall designate the optimal corrosion control treatment method.

(A) On the basis of the corrosion control study in paragraph (1) of this subsection, lead and copper tap sampling, and WQP sampling the water system shall recommend to the executive director, in writing, the treatment option that constitutes optimum corrosion control. The system shall submit all corrosion control data and shall provide sufficient documentation as required by the executive director to establish the validity of the evaluation procedure.

(B) The executive director shall designate optimal corrosion control treatment. The executive director shall either approve the corrosion control treatment option recommended by the system, or designate alternative corrosion control treatment(s) from among those listed in paragraph (1)(B)(i) of this subsection. When designating optimal treatment the executive director shall consider the effects that additional corrosion control treatment will have on water quality parameters and on other water quality treatment processes. If the executive director requests additional information, the water system shall provide the information.

(C) Upon its own initiative or in response to a request by a water system or other interested party, the executive director may modify the determination of the optimal corrosion control treatment. A request for modification by a system or other interested party shall be in writing, explain why the modification is appropriate, and provide supporting documentation. The executive director may modify the determination when the change is necessary to ensure that the system continues to optimize corrosion control treatment. A revised determination shall be made in writing, set forth the new treatment requirements, explain the basis for the decision, and provide an implementation schedule for completing the treatment modifications.

(D) The executive director shall notify the system of the decision on optimal corrosion control treatment in writing and will provide the basis for this determination. The executive director will review the study and designate optimal corrosion control treatment and water quality parameters.

(i) For systems serving more than 50,000 customers, optimal corrosion control treatment and OWQPs shall be designated within six months of submittal.

(ii) For systems serving 3,300 to 50,000 customers, optimal corrosion control treatment and OWQPs shall be designated within 18 months of submittal.

(iii) For systems serving fewer than 3,300, optimal corrosion control treatment and OWQPs shall be designated within 24 months of submittal.

(4) Installation of optimal corrosion control treatment. A system shall perform corrosion control activities identified in their approved corrosion control study. A system shall install optimal corrosion control treatment within 24 months after the executive director designates optimal corrosion control treatment and notifies the water system. All applicable water systems shall operate optimal corrosion control treatment in a manner that minimizes lead and copper concentrations at users' taps while ensuring that the treatment does not cause the system to violate any other drinking water standard.

(5) Operation of corrosion control treatment. All systems optimizing corrosion control shall continue to operate and maintain optimal corrosion control treatment, including operating within approved OWQP ranges and complying with all other requirements of this section.

(A) The executive director shall evaluate the results of all lead and copper tap samples and WQP samples submitted by the water system to determine whether the corrosion control treatment was properly installed and if the system is properly operating the designated optimal corrosion control treatment.

(B) The system shall operate in such a manner as to meet any requirements that the executive director determines appropriate to ensure optimal corrosion control treatment is maintained.

(6) Small system activities cessation. A system serving 50,000 or fewer people that is required to perform corrosion control activities because of an action level exceedance may cease the corrosion control activities if it conducts two consecutive six-month lead and copper monitoring rounds and meets the lead and copper action levels based on the 90th percentile in both rounds.

(g) Treatment of source water lead and copper. Systems may be required to perform treatment to remove lead or copper from source water. Any system exceeding the lead or copper action level shall implement all applicable source water treatment requirements specified by the executive director under this subsection. The executive director will determine whether such treatment is required.

(1) Determination of need for source water treatment. Any system which exceeds the lead or copper action level shall recommend in writing to the executive director the installation and operation of ion exchange, reverse osmosis, lime softening or coagulation/filtration. The executive director shall evaluate all entry point water sample results, along with the corrosion control study, to determine if source water treatment is necessary. If source water treatment is required by the executive director, the system must install the treatment in accordance with the scheduling requirements specified in this subsection.

(A) The system shall submit the results for all source water samples to aid in the executive director's evaluation of whether source water treatment is necessary.

(B) The executive director may approve the treatment recommended by the system or may require installation and operation of another source water treatment from among the following: ion exchange, reverse osmosis, lime softening or coagulation/filtration.

(C) If the executive director requests additional information to aid in its review, the water system shall provide the information by the date specified by the executive director in the request.

(D) A system may recommend that no treatment be installed based upon a demonstration that source water treatment is not necessary to minimize lead and copper levels at users' taps.

(E) The executive director shall notify the system in writing of the determination and will provide the basis for the decision.

(2) Schedule for installation of treatment of source water lead and copper. If source water treatment is required, the system must

install the treatment in accordance with the scheduling requirements specified in this subsection.

(A) A system exceeding the lead or copper action level shall recommend treatment to the executive director no later than 180 days after the end of the monitoring period during which the lead or copper action level was exceeded.

(B) The executive director shall make a determination regarding source water treatment within six months after the system submits the treatment recommendation and supporting data under subparagraph (A) of this paragraph.

(C) The system shall properly install and operate the source water treatment approved by the executive director within 24 months after the executive director's determination under subparagraph (B) of this paragraph.

(D) The system shall complete follow-up tap sampling under subsection (c) of this section and entry point monitoring under subsection (d) of this section within 36 months after the executive director's determination of source water treatment under subparagraph (B) of this paragraph.

(3) Operation of source water lead and copper treatment. If source water treatment is required, the system shall properly operate the treatment in compliance with the specified MPLs for lead and copper and continue entry point monitoring under subsection (d) of this section.

(A) A water system shall operate the source water treatment in a manner that maintains lead and copper levels below the MPLs designated by the executive director at each entry point.

(B) The executive director may review the system's data and determine whether the system has properly installed and operated the source water treatment.

(4) Modification of source water treatment decisions. Upon its own initiative or in response to a request by a water system or other interested party, the executive director may modify the determination of the source water treatment under paragraph (1) of this subsection, or MPLs for lead and copper at entry points under subsection (b)(6) of this section. A request for modification by a system or other interested party shall be in writing, explain why the modification is appropriate, and provide supporting documentation. The executive director may modify the determination when the change is necessary to ensure that the system continues to minimize lead and copper concentrations in water entering the distribution system. A revised determination shall be made in writing, set forth the new treatment requirements, explain the basis for the executive director's decision, and provide an implementation schedule for completing the treatment modifications.

(h) Analytical methods, sample collection, and sample invalidation. All methods used for analysis under this section shall be consistent with 40 CFR Part 141, Subpart I, concerning Lead and Copper.

(1) Lead and copper tap sample collection method. A first draw tap sample means a one liter or one quart sample of tap water collected from a cold water, frequently used interior tap, after the water has been standing in the plumbing for at least six hours without first flushing the tap. The kitchen cold water faucet is the preferred sampling tap at residential sites. It is recommended that the water not be allowed to stand in the plumbing for more than 18 hours prior to a sample collection. A sample collection may be conducted by either water system personnel or the residents. If the resident is allowed to collect samples for lead and copper monitoring, the water system must provide written instructions for sample collection procedures.

(2) Lead and copper tap sample analytical methods. Analysis for lead and copper shall be conducted using methods stated in 40 CFR §141.89, in laboratories accredited by the executive director. Analysis for pH, conductivity, calcium, alkalinity, orthophosphate, silica, and temperature may be conducted in any laboratory approved by the executive director under §290.121 of this title utilizing the EPA methods prescribed in 40 CFR §141.89.

(A) The PQLs and the method detection limits (MDLs) must comply with 40 CFR §141.89. The laboratory accredited for the analysis of lead and copper tap samples must achieve the MDL of 0.001 mg/L for lead if composited entry point water samples are analyzed for lead.

(B) The executive director may allow the use of previously collected monitoring data if the data were collected in accordance with 40 CFR §141.89.

(C) All lead levels measured between the PQL and MDL must either be reported as measured or reported as one-half the PQL. All levels below the lead MDLs must be reported as zero.

(D) All copper levels measured between the PQL and the MDL must be either reported as measured or reported as one-half the PQL. All levels below the copper MDL must be reported as zero.

(E) First-draw-tap samples must be received in the laboratory within 14 days after the collection date.

(3) Lead and copper tap sample invalidation. The executive director may invalidate a lead or copper tap sample if one of the conditions in subparagraphs (A) - (D) of this paragraph is met:

(A) The laboratory establishes that improper sample analysis caused erroneous results.

(B) The executive director determines that the sample was taken from an inappropriate site.

(C) The sample was damaged in transit.

(D) The executive director determines that the sample was subject to tampering, as based on substantial documentation.

(E) The executive director shall not invalidate a sample based solely on the fact that a follow-up sample result is higher or lower than the original sample.

(F) The water system must provide written documentation to the executive director for samples the water system believes should be invalidated. The executive director must document any decision to invalidate a sample in writing.

(4) Water quality parameter analytical methods. Water quality parameter testing must be conducted at a laboratory that uses the methods described in 40 CFR §141.89, and it is the responsibility of the water system to collect, submit, and report these values.

(A) Analyses for lead, copper, pH, conductivity, calcium, alkalinity, orthophosphate, silica, and temperature shall be conducted in accordance with 40 CFR §141.23(k)(1).

(B) Analyses for alkalinity, calcium, conductivity, orthophosphate and phosphate compounds, pH, silica, and temperature must be performed by a lab approved by the executive director under the Texas Commission on Environmental Quality Regulatory Guidance 384 "How to Develop a Monitoring Plan for a Public Water System." Analyses under this section for lead and copper shall only be conducted by laboratories that have been accredited by the executive director under Chapter 25, Subchapter B of this title (relating to Environmental Testing Laboratory Accreditation and Certification).

(C) The executive director may allow the use of previously collected monitoring data for purposes of monitoring, if the data were collected and analyzed in accordance with the requirements of this section and 40 CFR Part 141, Subpart I.

(i) Reporting. Systems shall report any information required by this section and 40 CFR Part 141, Subpart I to the executive director.

(1) Reporting lead and copper tap sample results. Tap sample results shall be reported within ten days following the end of each monitoring period as specified by the executive director. For systems on annual or less frequent schedules, the end of the monitoring period is September 30 of the calendar year in which the sampling occurs, or if the executive director has established an alternate monitoring period, the last day of that period.

(A) A system shall provide documentation for each tap water lead or copper sample for which the water system requests invalidation.

(B) The system shall provide the following information to the executive director:

(i) the results of all tap samples for lead and copper including the location of each site and the criteria under which the site was selected for the system's sampling pool; and

(ii) an identification of sampling sites utilized during the current monitoring period that were not sampled during previous monitoring periods, and an explanation why sampling sites have changed.

(2) Reporting entry point lead and copper sample results. A water system shall report the sampling results for all source water samples collected in accordance with subsection (e) of this section within the first 10 days following the end of each source water monitoring period.

(3) Reporting WQP results. Systems must report all results of WQP analyses including the location/address of each distribution system sampling point. This report must include each WQP specified in subsection (e) of this section, as well as all sample results from entry points to the distribution system. WQP reports should be submitted to the executive director within the first ten days following the end of each applicable monitoring period. For monitoring periods with a duration less than six months, the end of the monitoring period is the last date samples can be collected during that period.

(A) Systems shall report the results of all distribution samples for pH, and where applicable, alkalinity, calcium, conductivity, temperature, and orthophosphate or silica.

(B) Systems shall report the results of all samples collected at the entry point(s) to the distribution system for applicable water quality parameters.

(C) A system using only groundwater that is allowed to limit WQP monitoring to a subset of entry points shall report, by the commencement of such monitoring, written correspondence to the executive director that identifies the sources flowing to each of the system's entry points and report information sufficient to demonstrate that the sites are representative of water quality and treatment conditions throughout the system.

(4) Reporting distribution material and sample site data. New systems shall submit the first material survey by December 31 of the year in which they are assigned a Public Water System Identification Number. The executive director may allow a system to submit the first material survey by December 31 of the year in which the system's status becomes active.

(A) All systems shall submit Materials Survey and Site Selection Forms (TCEQ Form Number 20467) describing the entire system before performing tap sampling.

(B) Any system seeking reduced nine-year tap sampling under subsection (c)(2)(D) of this section shall submit current documentation showing that there are no lead- or copper-containing materials within the distribution system.

(i) Prior to starting reduced nine-year tap sampling, a system shall submit documentation showing that there are no lead- or copper- containing materials within the distribution system and that the system complies with all drinking water standards of this subchapter.

(ii) No later than nine years after the first nine-year tap samples are collected, any system desiring to remain on reduced nine-year tap sampling shall provide updated documentation showing that there are no lead- or copper- containing materials within the distribution system and that the system complies with all drinking water standards of this subchapter.

(iii) No later than 60 days after detecting lead-containing and/or copper-containing material, as appropriate, each system with a reduced nine-year tap sampling schedule shall provide written notification to the executive director, setting forth the circumstances resulting in the lead-containing or copper-containing materials being introduced into the system and what corrective action, if any, the system plans to remove these materials.

(C) Water systems requesting a change to previously approved sample sites shall report supporting information, including an explanation as to why a sampling site was changed from the previous round of sampling, if applicable. If a water system changes a sampling site for any reason allowed in this section, the water system must provide the executive director with a written explanation showing which sampling site will be abandoned and the sampling site that replaces the abandoned sampling site.

(5) Reporting public education. A system that is required to perform public education must provide copies of public education materials and certification that distribution of said materials is being conducted in accordance with this subsection to the executive director within ten days after the delivery of the materials to the public.

(6) Reporting consumer notification. No later than three months following the end of the monitoring period, each system must mail a sample copy of the consumer notification of tap results to the executive director along with a certification that the notification has been distributed in a manner consistent with the requirements of subsection (j) of this section.

(7) Corrosion control reporting. Systems that are required to perform corrosion control studies and install corrosion control treatment shall report all information required under subsection (f) of this section. Corrosion control treatment data shall be reported as required by the executive director. Systems shall report the following information listed in this paragraph.

(A) Systems demonstrating that they have already optimized corrosion control, must provide all information required in subsection (f) of this section.

(B) Systems that are recommending optimal corrosion control treatment must provide all supporting documentation for their recommendation regarding optimal corrosion control treatment under 40 CFR §141.82(a).

(C) Systems that are required to evaluate the effectiveness of corrosion control treatments under subsection (f) of this section, must submit the information required by that section.

(D) Systems required to install optimal corrosion control designated by the executive director under 40 CFR §141.82(d), must submit a letter certifying that the system has completed installing that treatment.

(8) Reporting source treatment. A system that is required to install source water lead or copper removal treatment must certify in writing that the system has completed installing the approved treatment within 24 months after the executive director approved that treatment.

(9) Reporting system conditions and facility changes. Systems must report changes of system conditions and facilities that may impact corrosion to the executive director.

(A) The water system must inform the executive director of the identity of treated and non-treated entry points and their seasonal use, if any, and demonstrate that the WQPs represent water quality and treatment conditions throughout the system.

(B) At a time specified by the executive director, or if no specific time is designated by the executive director, then as early as possible prior to the addition of a new source or any long-term change in water treatment, a water system deemed to have optimized corrosion control or subject to reduced tap sampling shall submit written documentation to the executive director describing the change or addition. The water system may not implement the addition of a new source or long-term change in treatment until notified in writing that the change is approved by the executive director. Examples of long-term treatment changes include the addition of a new treatment process or modification of an existing treatment process. Examples of modifications include switching secondary disinfectants, switching coagulants (for example, alum to ferric chloride), and switching corrosion inhibitor products (for example, orthophosphate to blended phosphate). Long-term changes can include dose changes to existing chemicals if the system is planning long-term changes to its finished water pH or residual inhibitor concentration. Long-term treatment changes would not include chemical dose fluctuations associated with daily raw water quality changes.

(10) Other reporting. Any system which collects sampling data in addition to that required by this section shall report the results to the executive director within the first ten days following the end of the applicable monitoring period during which the samples are collected.

(11) Reporting lead service line replacement. A water system that is replacing lead service lines must certify that lead service lines have been replaced in accordance with directives of the executive director.

(j) Consumer notification. All water systems must provide a consumer notice of lead tap water monitoring results to persons served at the sites (taps) that are tested.

(1) Timing of consumer notification. A water system must provide the consumer notice as soon as practical, but no later than 30 days after the system receives the tap sampling results.

(2) Content of consumer notification. The consumer notice must include the results of lead tap sampling for the tap that was tested, an explanation of the health effects of lead, list steps consumers can take to reduce exposure to lead in drinking water, and contact information for the water utility. The notice must also provide the maximum contaminant level goal and the action level for lead and the definitions for these two terms from 40 CFR §141.153(c).

(3) Delivery of consumer notification. The consumer notice must be provided to persons served at the tap that was tested, either by mail or by another method approved by the executive director. Upon approval by the executive director, a nontransient, noncommunity water system may post the results on a bulletin board in the facility to allow users to review the information. The system must provide the notice to customers at sample taps tested, including consumers who do not receive water bills.

(k) Public education. A public water system that exceeds the lead action level based on tap water samples collected in accordance with subsection (c) of this section shall deliver the public education materials in accordance with the requirements of this subsection.

(1) Content of public education materials. Public water systems must include the elements in this paragraph in their printed materials in the same order as listed. Language in subparagraphs (A), (B), and (F) of this paragraph must be included in the materials, exactly as written, except for the text in brackets for which the public water system must include system-specific information. Any additional information presented by a public water system must be consistent with the information below and be in plain language that can be understood by the general public. Water systems must submit all written public education materials to the executive director prior to delivery. Public education materials must be approved by the executive director prior to delivery.

(A) "IMPORTANT INFORMATION ABOUT LEAD IN YOUR DRINKING WATER. {INSERT NAME OF WATER SYSTEM} found elevated levels of lead in drinking water in some homes/buildings. Lead can cause serious health problems, especially for pregnant women and young children. Please read this information closely to see what you can do to reduce lead in your drinking water."

(B) *"Health effects of lead."* Lead can cause serious health problems if too much enters your body from drinking water or other sources. It can cause damage to the brain and kidneys, and can interfere with the production of red blood cells that carry oxygen to all parts of your body. The greatest risk of lead exposure is to infants, young children, and pregnant women. Scientists have linked the effects of lead on the brain with lowered IQ in children. Adults with kidney problems and high blood pressure can be affected by low levels of lead more than healthy adults. Lead is stored in the bones, and it can be released later in life. During pregnancy, the child receives lead from the mother's bones, which may affect brain development."

(C) Sources of lead.

(i) Explain what lead is.

(ii) Explain possible sources of lead in drinking water and how lead enters drinking water. Include information on home and building plumbing materials and service lines that may contain lead.

(iii) Discuss other important sources of lead exposure in addition to drinking water such as lead-based paint or lead-contaminated soils.

(D) Discuss the steps the consumer can take to reduce their exposure to lead in drinking water.

(i) Encourage running the water to flush out the lead.

(ii) Explain concerns with using hot water from the tap and specifically caution against the use of hot water for preparing baby formula.

(iii) Explain that boiling water does not reduce lead levels.

(iv) Discuss other options consumers can take to reduce exposure to lead in drinking water, such as alternative sources or treatment of water.

(v) Suggest that parents have their child's blood tested for lead.

(E) Explain why there are elevated levels of lead in the system's drinking water (if known) and what the water system is doing to reduce the lead levels in homes and buildings in this area.

(F) "For more information, call us at {INSERT YOUR SYSTEM's PHONE NUMBER} if applicable) or visit our website at {INSERT YOUR WEBSITE HERE}. For more information on reducing lead exposure around your home or building and the health effects of lead, visit EPA's website at *www.epa.gov/lead* or contact your health care provider."

(G) In addition to including the elements specified in subparagraphs (A) - (F) of this paragraph, community water systems must:

(i) tell consumers how to get their water tested, and

(ii) discuss lead in plumbing components and the difference between low lead and lead free.

(H) For public water systems serving a large proportion of non-English speaking consumers, as determined by the executive director, the public education materials must contain information in the appropriate language(s) regarding the importance of the notice or contain a telephone number or address where persons served may contact the water system to obtain a translated copy of the public education materials or to request assistance in the appropriate language.

(2) Delivery of public education materials by community systems. Systems must provide public education materials meeting the criteria of paragraph (1) of this subsection to the public in accordance with this paragraph.

(A) A community system must directly deliver printed public education materials to all bill paying customers.

(i) The community system must deliver public education materials to local public health agencies even if they are not located within the water system's service area, along with an informational notice that encourages distribution to all the organization's potentially affected customers or community water system's users. The system must contact the local public health agencies directly by phone or in person. The local public health agencies may provide a specific list of additional community based organizations serving target populations, which may include organizations outside the service area of the water system. If such lists are provided, systems must deliver public education materials to all organizations on the provided lists.

(ii) The community system must contact customers who are most at risk by delivering public education materials to the organizations listed in this clause that are located within the water system's service area, along with an informational notice that encourages distribution to all the organization's potentially affected customers or community water system's users.

(I) Public and private schools or school boards;

(II) Women, Infants and Children (WIC) and Head Start programs;

(III) Public and private hospitals and medical clinics;

(IV) Pediatricians;

(V) Family planning clinics; and

(VI) Local welfare agencies.

(iii) The community system must make a good faith effort to locate organizations of the types listed in this clause within the service area and deliver public education materials to them, along with an informational notice that encourages distribution to all potentially affected customers or users. The good faith effort to contact at-risk customers may include requesting a specific contact list of these organizations from the local public health agencies, even if the agencies are not located within the water system's service area.

(I) Licensed childcare centers;

(II) Public and private preschools; and

(III) Obstetricians-Gynecologists and Midwives.

(iv) The community system must implement at least three activities from one or more categories listed in this clause. The educational content and selection of these activities must be determined in consultation with the executive director.

(I) Public service announcements;

(II) Paid advertisements;

(III) Public area information displays;

(IV) E-mails to customers;

(V) Public meetings;

(VI) Household deliveries;

(VII) Targeted Individual Customer Contact;

(VIII) Direct material distribution to all multi-family homes and institutions; or

(IX) Other methods approved by the executive director.

(v) At least quarterly, the community system must provide information on or in each water bill as long as the system exceeds the action level for lead. The message on the water bill must include the following statement exactly as written except for the text in brackets for which the water system must include system-specific information: "{INSERT NAME OF WATER SYSTEM} found high levels of lead in drinking water in some homes. Lead can cause serious health problems. For more information please call {INSERT NAME OF WATER SYSTEM}" Upon written request, the executive director may allow a separate mailing of public education materials to customers if the water system cannot place the information on water bills.

(vi) A community system serving more than 100,000 people must post public education materials on the water system's website.

(vii) The community system must submit a press release to newspaper, television and radio stations.

(B) With executive director approval, a community public water system serving 3,300 or fewer people may limit certain aspects of their public education programs by distributing the public education materials required by subparagraph (A)(ii) of this paragraph to facilities and organizations served by the public water system that are most likely to be visited regularly by pregnant women and children. In addition:

(i) The executive director may waive the requirement of subparagraph (A)(vii) of this paragraph, to submit press releases to the media, as long as the public water system distributes notices to every household served by the system.

(ii) The public water system shall implement at least one of the requirements found in subparagraph (A)(iv) of this paragraph.

(C) A community water system may apply to the executive director, in writing, to use only the text specified in paragraph (1)(A) - (F) of this subsection, omitting the text specified in paragraph (1)(G) of this subsection, and to post public education materials as described in paragraph (3) of this subsection, omitting the tasks in subparagraph (A) of this paragraph if:

(i) The system is a facility, such as a prison or a hospital, where the population served is not capable of or is prevented from making improvements to plumbing or installing point of use treatment devices; and

(ii) The system provides water as part of the cost of services provided and does not separately charge for water consumption.

(3) Delivery of public education materials by nontransient, noncommunity systems. Systems must provide public education materials meeting the criteria of paragraph (1) of this subsection to the public in accordance with this paragraph.

(A) The system must post informational posters on lead in drinking water in a public place or common area in each of the buildings served by the system.

(B) The system must distribute informational brochures on lead in drinking water to each person served by the nontransient, noncommunity water system. The executive director may allow the system to utilize electronic transmission in lieu of or combined with printed materials as long as it achieves at least the same coverage.

(4) Frequency and timing of public education. A system that exceeds the lead action level must provide educational materials meeting the content requirements of paragraph (1) of this subsection to the public within 60 days after the end of the monitoring period in which the exceedance occurred. For systems that are required to conduct monitoring annually or less frequently, the end of the monitoring period is September 30 of the calendar year in which the sampling occurs, or, if the executive director has established an alternate monitoring period, the last day of that period.

(A) Frequency and timing of public education activities for community systems. As long as a community water system exceeds the action level, it must repeat the activities of this paragraph at the frequency contained in this paragraph.

(i) A community system shall repeat tasks contained in paragraph (2)(A)(v) of this subsection every billing cycle.

(ii) A community system serving a population greater than 100,000 shall post and retain material on a publicly accessible website.

(iii) The community system shall repeat the press release task in paragraph (2)(A)(vii) of this subsection twice every 12 months on a schedule agreed upon with the executive director.

(B) Frequency and timing of public education activities for nontransient, noncommunity systems. A nontransient, noncommunity water system shall maintain the posting required by repeat the tasks contained in paragraph (3) of this subsection at least once during each calendar year in which the system exceeds the lead action level. Posted materials must remain posted until the system no longer exceeds the lead action level, and the executive director informs the system that the posting may be discontinued.

(C) Extension to public education start date. A nontransient, noncommunity system may request, and the executive director can approve, an extension for starting public education beyond the 60-day requirement on a case-by-case basis. The request and approval must be made in writing prior to the 60-day deadline.

(D) Discontinuing public education. A system may discontinue delivery of public education materials if the system has met the lead action level during the most recent six-month monitoring period conducted pursuant to subsection (c) of this section. Such a system shall recommence public education in accordance with this section if it subsequently exceeds the lead action level during any monitoring period.

(5) Notifying the executive director of public education activities. Any water system that is subject to the public education requirements of this subsection shall, within ten days after the end of each period in which the system is required to perform public education, send written documentation to the executive director containing all the elements in this paragraph.

(A) The system must provide documentation that the system has delivered the public education materials that meet the content requirements in paragraph (1) of this subsection and the delivery requirements in paragraph (2) or (3) of this subsection.

(B) The system must provide a list of all the newspapers, radio stations, television stations, and facilities and organizations to which the system delivered public education materials during the period in which the system was required to perform public education tasks.

(C) The system must resubmit certification of delivery of public education materials every time it distributes materials. Unless required by the executive director, a system that previously has submitted the information required by subparagraphs (A) and (B) of this paragraph need not resubmit the information as long as there have been no changes in the distribution list.

(l) Compliance determination. All applicable water systems shall determine compliance based on monitoring and reporting requirements established in this section or contained in 40 CFR Part 141, Subpart I.

(1) Compliance determination with action levels of subsection (b) of this section for lead and copper shall be based on the 90th percentile as described in this paragraph.

(A) The 90th percentile lead and copper levels shall be computed as provided in this subparagraph:

(i) Determination of 90th percentile levels shall be obtained by ranking the results of lead and copper samples collected during a monitoring period in ascending order (lowest concentration is sample Number 1; highest concentration are samples Numbers 10, 20, 30, 40, 50, and so on), up to the total number of samples collected.

(ii) The number of samples collected during the monitoring period shall be multiplied by 0.9. The concentration of lead and copper in sample with the number yielded by this calculation is the 90th percentile level, for systems serving 100 or more people.

(iii) For water systems serving fewer than 100 people, the 90th percentile level is computed by taking the average of the highest two sample results.

(iv) For a public water system that has been allowed by the executive director to collect fewer than five samples in accordance with subsection (c)(1)(F) of this section, the sample result with the highest concentration is considered the 90th percentile value.

(B) A sample invalidated under this section does not count toward determining lead or copper 90th percentile levels or toward meeting the minimum number of tap sample requirements.

(C) Monitoring approved by the executive director and conducted by systems in addition to the minimum requirements of this section shall be considered by the executive director in making any determination of compliance.

(D) The system is in compliance with the lead or copper action levels if the 90th percentile level of lead or copper, respectively, is equal to or less than the action levels specified in subsection (b)(1) of this section.

(2) Compliance determination for water quality parameters. If a water system fails to meet the OWQP values or ranges approved by the executive director, it is out of compliance with this section. WQP confirmation sample results will be included in compliance determination.

(A) A OWQP-range excursion occurs whenever the daily value for one or more WQPs measured at a sampling location is below a minimum value or outside a range approved by the executive director. The executive director has the discretion to delete results of obvious sampling errors from this calculation. Daily values are calculated as follows.

(i) Water systems that collect more than one WQP measurement in one day must record the daily value as an average of all WQP values collected during the day regardless of whether the measurements are collected through continuous monitoring, grab sampling, or a combination of both.

(ii) On days when only one measurement for the WQP is collected at the sampling location, the daily value shall be the result of that measurement.

(iii) On days when no measurement is collected for the WQP at the sampling location, the daily value last calculated on the most recent day shall serve as the daily value.

(B) Compliance periods for this paragraph are two six-month periods, January 1 to June 30, and July 1 to December 31. A water system is out of compliance with this subsection for a six-month period if the water system has OWQP excursions for any approved range for more than nine days during that period.

(C) The results of any monitoring conducted in addition to the minimum requirements of this section shall be considered by the system and the executive director in making any determinations under this section.

(D) The executive director may delete results of obvious sampling errors from this calculation.

(3) Compliance determination for source water treatment. A system required to install and operate source water treatment for lead or copper under subsection (g) of this section is out of compliance if the level of lead or copper in any sample collected under subsection (d)(2)(D)(v) of this section is greater than the MPL designated by the executive director. The initial and confirmation sample shall be averaged in determining compliance. Any sample value below the method detection limit shall be considered to be zero. Any value above the method detection limit but below the PQL shall either be considered as the measured value or be considered one-half the PQL.

(4) Compliance determination for public education. Failure to deliver public education materials required under subsection (k) of this section to customers is a public notification violation. Failure to certify delivery of public education materials to the executive director is a reporting violation.

(5) Failure to conduct or report any requirements of this section shall constitute a monitoring, reporting or treatment technique violation and shall be a violation of these standards.

(m) Lead service line replacement. The provisions of 40 CFR §141.84 and §141.90(e) relating to lead service line replacement are adopted by reference. Any system exceeding the lead action level after implementation of applicable corrosion control and source water treatment requirements shall complete the lead service line replacement requirements contained in 40 CFR §141.84. Any such water system shall submit reports required under 40 CFR §141.90(e).

(n) Additional sampling. The executive director may require systems to sample at additional times or locations in order to ensure that systems maintain minimal levels of corrosion in the distribution system.

§290.119. Analytical Procedures.

(a) Acceptable laboratories. Samples collected to determine compliance with the requirements of this chapter shall be analyzed at accredited or approved laboratories.

(1) Samples used to determine compliance with the maximum contaminant levels, samples used to determine compliance with action level, and raw groundwater source monitoring requirements of this subchapter, and samples for microbial contaminants must be analyzed by a laboratory accredited by the executive director in accordance with Chapter 25, Subchapter A and B of this title (relating to General Provisions; and Environmental Testing Laboratory Accreditation) using acceptable analytical methods as specified in subsection (b) of this section. These samples include:

(A) compliance samples for synthetic organic chemicals;

(B) compliance samples for volatile organic chemicals;

(C) compliance samples for inorganic contaminants;

(D) compliance samples for radiological contaminants;

(E) compliance samples for microbial contaminants;

(F) compliance samples for total trihalomethanes (TTHM);

(G) compliance samples for haloacetic acid-group of five (HAA5);

(H) compliance samples for chlorite;

(I) compliance samples for bromate; and

(J) compliance samples for lead and copper.

(2) Samples used to determine compliance with the treatment technique requirements and maximum residual disinfectant levels (MRDLs) of this subchapter must be analyzed by a laboratory approved by the executive director. These samples include:

(A) compliance samples for turbidity treatment technique requirements;

(B) compliance samples for the chlorine MRDL;

(C) compliance samples for the chlorine dioxide MRDL;

(D) compliance samples for the combined chlorine (chloramine) MRDL;

(E) compliance samples for the disinfection byproduct precursor treatment technique requirements, including alkalinity, total organic carbon, dissolved organic carbon analyses, and specific ultraviolet absorbance;

(F) samples used to monitor chlorite levels at the point of entry to the distribution system; and

(G) samples used to determine pH.

(3) Non-compliance tests, such as control tests taken to operate the system, may be run in the plant or at a laboratory of the system's choice.

(b) Acceptable analytical methods. Methods of analysis shall be as specified in 40 Code of Federal Regulations (CFR) or by any alternative analytical technique as specified by the executive director and approved by the Administrator under 40 CFR §141.27. Copies are available for review in the Water Supply Division, MC 155, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087. The following National Primary Drinking Water Regulations set forth in Title 40 CFR are adopted by reference:

(1) 40 CFR §141.852(a) and (c) for microbiological analyses;

(2) 40 CFR §141.74(a)(1) for turbidity analyses;

(3) 40 CFR §141.23(k) for inorganic analyses;

(4) 40 CFR §141.24(e) - (g) for organic analyses;

(5) 40 CFR §141.25 for radionuclide analyses;

(6) 40 CFR §141.131(a) and (b) for disinfection byproduct methods and analyses;

(7) 40 CFR §141.131(c) for disinfectant analyses other than ozone, and 40 CFR §141.74(b) for ozone disinfectant;

(8) 40 CFR §141.131(d) for alkalinity analyses, bromide and magnesium, total organic carbon analyses, dissolved organic carbon analyses, specific ultraviolet absorbance analyses, and pH analyses;

(9) 40 CFR §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;

(10) 40 CFR §141.402(c) for groundwater source microbiological analyses; and

(11) if a method is not contained in this section, a drinking water quality method can be approved for analysis if it is listed in 40 CFR Part 141, Subpart C, Appendix A.

(c) The definition of detection contained in 40 CFR §141.151(d) is adopted by reference.

§290.121. Monitoring Plans.

(a) Applicability. All public water systems shall maintain an up-to-date chemical and microbiological monitoring plan. Monitoring plans are subject to the review and approval of the executive director. A copy of the monitoring plan must be maintained at each water treatment plant and at a central location.

(b) Monitoring plan requirements. The monitoring plan shall identify all sampling locations, describe the sampling frequency, and specify the analytical procedures and laboratories that the public water system will use to comply with the monitoring requirements of this subchapter.

(1) The monitoring plan shall include information on the location of all required sampling points in the system. Required sampling locations for regulated chemicals are provided in §290.106 of this title (relating to Inorganic Contaminants), §290.107 of this title (relating to Organic Contaminants), §290.108 of this title (relating to Radionuclides Other than Radon), §290.109 of this title (relating to Microbial Contaminants), §290.110 of this title (relating to Disinfectant Residuals), §290.111 of this title (relating to Surface Water Treatment), §290.112 of this title (relating to Total Organic Carbon (TOC)), §290.113 of this title (relating to Stage 1 Disinfection Byproducts (TTHM and HAA5)), §290.114 of this title (relating to Other Disinfection Byproducts (Chlorite and Bromate)), §290.115 of this title (relating to Stage 2 Disinfection Byproducts (TTHM and HAA5)), §290.116 of this title (Relating to Groundwater Corrective Actions and Treatment Techniques), §290.117 of this title (relating to Regulation of Lead and Copper), and §290.118 of this title (relating to Secondary Constituent Levels).

(A) The location of each sampling site at a treatment plant or pump station must be designated on a plant schematic. The plant schematic must show all water pumps, flow meters, unit processes, chemical feed points, and chemical monitoring points. The plant schematic must also show the origin of any flow stream that is recycled at the treatment plant, any pretreatment that occurs before the recycle stream is returned to the primary treatment process, and the location where the recycle stream is reintroduced to the primary treatment process.

(B) Each entry point to the distribution system shall be identified in the monitoring plan as follows:

(i) a written description of the physical location of each entry point to the distribution system shall be provided; or

(ii) the location of each entry point shall be indicated clearly on a distribution system or treatment plant schematic.

(C) The address of each sampling site in the distribution system shall be included in the monitoring plan or the location of each distribution system sampling site shall be designated on a distribution system schematic. The distribution system schematic shall clearly indicate the following:

(i) the location of all pump stations in the distribution system;

(ii) the location of all ground and elevated storage tanks in the distribution system; and

(iii) the location of all chemical feed points in the distribution system.

(D) The system must revise its monitoring plan if changes to a plant or distribution system require changes to the sampling locations.

(2) The monitoring plan must include a written description of sampling frequency and schedule.

(A) The monitoring plan must include a list of all routine samples required on a daily, weekly, monthly, quarterly, annual, or less frequent basis and identify the sampling location where the samples will be collected.

(B) The system must maintain a current record of the sampling schedule.

(3) The monitoring plan shall include the public water system's Sample Siting Plan as required by §290.109(d)(1) - (6) of this title. The public water system's Sample Siting Plans shall include a list of all microbial distribution compliance monitoring sites as required by §290.109(d) of this title, including all routine and repeat microbial sample sites. As required by §290.109(d)(2)(G) of this title, public water

system that collects more than the minimum number of required routine microbial samples shall include the additional routine sample sites in the public water system's Sample Siting Plan. In addition, a public water system that is required to collect any associated raw groundwater source(s) compliance samples, as required by §290.109(d)(4) of this title, shall include the microbial raw groundwater well compliance sites in the public water system's Sample Siting Plan. The repeat sample sites, as required by §290.109(d)(3) of this title, shall be associated to their originating routine microbial sample sites. The Sample Siting Plan shall include all groundwater sources and any associated sampling points necessary to meet the requirements of §290.109(d) of this title.

(4) The monitoring plan must identify the analytical procedures that will be used to perform each of the required analyses.

(5) The monitoring plan must identify all laboratory facilities that may be used to analyze samples required by this chapter.

(6) The monitoring plan shall include a written description of the methods used to calculate compliance with all maximum contaminant levels, maximum residual disinfectant levels, and treatment techniques that apply to the system.

(7) The monitoring plan shall include any groundwater source water monitoring plan developed under §290.109(d)(4) of this title to specify well sampling for triggered coliform monitoring.

(8) The monitoring plan shall include any initial distribution system evaluation compliance documentation required by §290.115(c)(5) of this title. The monitoring plan must be revised to show Stage 2 sample sites by the date shown in Figure: 30 TAC §290.115(a)(2) titled "Date to Start Stage 2 Compliance."

(9) The monitoring plan shall include any raw surface water monitoring plan required under §290.111 of this title.

(c) Reporting requirements. All public water systems shall maintain a copy of the current monitoring plan at each treatment plant and at a central location. The water system must update the monitoring plan when the water system's sampling requirements or protocols change.

(1) Public water systems that treat surface water or groundwater under the direct influence of surface water must submit a copy of the monitoring plan to the executive director upon development and revision.

(2) Public water systems that treat groundwater that is not under the direct influence of surface water or purchase treated water from a wholesaler must develop a monitoring plan and submit a copy of the monitoring plan to the executive director upon request.

(3) All water systems must provide the executive director with any revisions to the plan upon request.

(d) Compliance determination. Compliance with the requirements of this section shall be determined using the following criteria.

(1) A public water system that fails to submit an administratively complete monitoring plan by the required date documented in a request from the executive director or fails to submit updates to a plan when changes are made to a system's surface water treatment commits a reporting violation.

(2) A public water system that fails to maintain an up-to-date monitoring plan commits a monitoring violation.

(e) Public notification. A community system that commits a violation described in subsection (d) of this section shall notify its customers of the violation in the next Consumer Confidence Report that is issued by the system.

§290.122. Public Notification.

(a) Tier 1 public notification requirements for acute violations or situations with significant potential to have serious adverse effects on human health as a result of short-term exposure which require a Tier 1 public notice as described in this subsection. The owner or operator of a public water system must notify persons served by their system of any maximum contaminant level (MCL), maximum residual disinfectant level (MRDL), treatment technique violation, or other situation that poses an acute threat to public health. Each notice required by this section must meet the requirements of subsection (d) of this section.

(1) Situations that pose an acute threat to public health include:

(A) a violation of the *Escherichia coli (E. coli)* MCL as described in §290.109(g)(1)(A) - (D) of this title (relating to Microbial Contaminants);

(B) an acute turbidity issue at a treatment plant that is treating surface water or groundwater under the direct influence of surface water, specifically:

(i) a combined filter effluent turbidity level above 5.0 nephelometric turbidity units (NTU);

(ii) a combined filter effluent turbidity level above 1.0 NTU at a treatment plant using membrane filters;

(iii) a combined filter effluent turbidity level above 1.0 NTU at a plant using other than membrane filters at the discretion of the executive director after consultation with the system;

(iv) failure of a system with treatment other than membrane filters to consult with the executive director within 24 hours after a combined filter effluent reading of 1.0 NTU;

(v) failure of a system to meet turbidity level, monitoring, and/or reporting requirements as described in §290.111(i)(3) of this title (relating to Surface Water Treatment); or

(vi) failure of a system to meet treatment, turbidity level, monitoring, and/or reporting requirements as described in §290.111(i)(4) of this title;

(C) a violation of the MCL for nitrate or nitrite as defined in §290.106(f)(2) of this title (relating to Inorganic Contaminants);

(D) a violation of the acute MRDL for chlorine dioxide as defined in §290.110(f)(5)(A) or (B) of this title (relating to Disinfectant Residuals);

(E) occurrence of a waterborne disease outbreak;

(F) Detection of *E. coli* or other fecal indicators in source water samples as specified in §290.109(h)(2) of this title, which requires a public notice to be issued within 24 hours of notification of the positive sample;

(G) other situations that have the potential to have serious adverse effects on health as a result of short-term exposure; and

(H) at the discretion of the executive director, other situations may require a Tier 1 public notice based on a threat to public health.

(2) The initial Tier 1 acute public notice and/or boil water notice required by this subsection shall be issued as soon as possible, but in no case later than 24 hours after the violation or situation is identified. The initial public notice for an acute violation or situation shall be issued in one or more of the following manners that are reasonably

calculated to reach persons served by the public water system within the required time period.

(A) The owner or operator of a public water system with an acute microbiological or turbidity violation as described in paragraph (1)(A) or (B) of this subsection shall include a boil water notice issued in accordance with the requirements of §290.46(q) of this title (relating to Minimum Acceptable Operating Practices for Public Drinking Water Systems). Public water systems are not required to issue a boil water notice under the conditions as referenced in paragraph (1)(B)(vi) of this subsection, unless required at the discretion of the executive director in accordance with §290.46(q)(5) of this title.

(B) The owner or operator of a community water system shall furnish a copy of the notice to the radio and television stations serving the area served by the public water system.

(C) The owner or operator of a community water system shall publish the notice in a daily newspaper of general circulation in the area served by the system. If the area is not served by a daily newspaper of general circulation, notice shall instead be issued by direct delivery or by continuous posting in conspicuous places within the area served by the system. Other methods of delivery may include electronic delivery or alert systems (e.g., reverse 911).

(D) The owner or operator of a noncommunity water system shall issue the notice by direct delivery or by continuously posting the notice in conspicuous places within the area served by the water system. Other methods of delivery may include electronic delivery or alert systems (e.g., reverse 911).

(E) If notice is provided by posting, the posting must remain in place for as long as the violation or situation exists or seven days, whichever is longer.

(3) The owner or operator of a water system required to issue an initial notice for an acute MCL or treatment technique violation shall issue additional notices. The additional public notices for acute violations shall be issued in the following manner.

(A) Not later than 45 days after the violation, the owner or operator of a community water system shall notify persons served by the system using mail (by direct mail or with the water bill) or hand delivery. The executive director may waive mail or hand delivery if it is determined that the violation was corrected within the 45-day period. The executive director must make the waiver in writing and within the 45-day period.

(B) The owner or operator of a community water system must issue a notice at least once every three months by mail delivery (by direct mail or with the water bill) or by hand delivery, for as long as the violation exists.

(C) If the owner or operator of a noncommunity water system issued the initial notice by continuous posting, posting must continue for as long as the violation exists and in no case less than seven days. If the owner or operator of a noncommunity water system issued the initial notice by direct delivery, notice by direct delivery must be repeated at least every three months for as long as the violation exists.

(4) Copies of all notifications required under this subsection must be submitted to the executive director within ten days of its distribution.

(b) Tier 2 public notification requirements for other MCL, MRDL, or treatment technique violations and for variance and exemption violations which are violations and situations with potential to have serious adverse effects on human health, as defined in this subsection. The owner or operator of a public water system must notify persons served by their system of any MCL, MRDL, or treatment technique violation other than those described in subsection (a)(1) of this section and of any violation involving a variance or exemption requirement. Each notice required by this section must meet the requirements of subsection (d) of this section.

(1) Violations that require notification under this subsection include:

(A) any violation of an MCL, MRDL, or treatment technique not listed under subsection (a) of this section;

(B) failure to comply with the requirements of any variance or exemption granted under §290.102(d) of this title (relating to General Applicability);

(C) failure for a groundwater system to take corrective action, including uncorrected significant deficiencies, or failure to maintain at least 4-log treatment of viruses (using inactivation, removal, or a combination of 4-log virus inactivation and removal approved by the executive director) before or at the first customer under §290.116 of this title (relating to Groundwater Corrective Actions and Treatment Techniques);

(D) failure to perform any three months of raw surface water monitoring as required by §290.111(b) of this title or request bin classification from the executive director under §290.111(c)(3)(A) of this title;

(E) other violations or situations deemed by the executive director to have significant potential to have serious adverse effects on human health as a result of short-term exposure may require a Tier 1 public notice as described in subsection (a)(2) of this section; or

(F) failure of a public water system to conduct Level 1 assessment(s) or Level 2 assessment(s) or failure to complete corrective/expedited action(s) as required by §290.109 of this title or failure of a system to conduct seasonal start-up procedures as required by §290.109 of this title.

(2) The initial Tier 2 public notice for any violation, situation, or significant deficiency identified in this subsection must be issued as soon as possible, but in no case later than 30 days after the violation is identified. The initial public notice shall be issued in the following manner.

(A) The owner or operator of a community water system shall issue the notice by:

(i) mail or other direct delivery to each customer receiving a bill and to other service connections to which water is delivered by the public water system; and

(ii) any other method reasonably calculated to reach other persons regularly served by the system, if they would not normally be reached by the notice required in clause (i) of this subparagraph. Such persons may include those who do not pay water bills or do not have service connection addresses (e.g., house renters, apartment dwellers, university students, nursing home patients, prison inmates, etc.) Other methods may include: publication in a local newspaper; delivery of multiple copies for distribution by customers that provide drinking water to others (e.g., apartment building owners or large private employers); continuous posting in conspicuous public places within the area served by the system or on the Internet; electronic delivery or alert systems (e.g., reverse 911); or delivery to community organizations.

(B) The owner or operator of a noncommunity water system shall issue the notice by:

(i) posting the notice in conspicuous locations throughout the distribution system frequented by persons served by

the system, or by mail or direct delivery to each customer and service connection (where known); and

(ii) any other method reasonably calculated to reach other persons served by the system if they would not normally be reached by the notice. Such persons may include those served who may not see a posted notice because the posted notice is not in a location they routinely pass by. Other methods may include: publication in a local newspaper or newsletter distributed to customers; use of e-mail to notify employees or students; electronic delivery or alert systems (e.g., reverse 911); or, delivery of multiple copies in central locations (e.g., community centers).

(C) If notice is provided by posting, the posting must remain in place for as long as the violation exists or seven days, whichever is longer.

(3) The owner or operator of a system required to issue an initial violation notice shall issue additional notices. The additional notices shall be issued in the following manner.

(A) The owner or operator of a community water system must issue a notice at least once every three months by mail delivery (by direct mail or with the water bill) or by direct delivery, for as long as the violation exists.

(B) If the owner or operator of a noncommunity water system issued the initial notice by continuously posting the notice, the posting must continue for as long as the violation exists, and in no case less than seven days. If the owner or operator of a noncommunity water system issued the initial notice by direct delivery, notice by direct delivery must be repeated at least every three months for as long as the violation exists.

(c) Tier 3 public notification requirements for other violations, situations, variances, exemptions as defined in this subsection. The owner or operator of a public water system who fails to perform monitoring required by this chapter, fails to comply with a testing procedure established by this chapter, or is subject to a variance or exemption granted under §290.102(b) of this title shall notify persons served by the system. Each notice required by this section must meet the requirements of subsection (d) of this section.

(1) Violations or other situations that require notification as described in this subsection include:

(A) exceedance of the secondary constituent levels (SCL) for fluoride;

(B) failure to perform monitoring or reporting required by this subchapter;

(C) failure to comply with the analytical requirements or testing procedures required by this subchapter;

(D) operating under a variance or exemption granted under §290.102(b) of this title;

(E) failure to maintain records on recycle practices as required by §290.46(f)(3)(C)(iii) of this title;

(F) a community and nontransient, noncommunity public water system shall notify its customers of the availability of unregulated contaminant monitoring results, as required under 40 Code of Federal Regulations (CFR) §141.207;

(G) failure of a community and nontransient, noncommunity water public water system to notify of the availability of unregulated contaminant monitoring results, as required under 40 CFR §141.207;

(H) failure of a public water system to maintain any assessment form, regardless of who conducts the assessment, and documentation of corrective actions completed as a result of those assessments, or documentation of corrective actions required but not yet complete, or other available summary documentation of the sanitary defects and corrective actions taken under §290.109 of this title;

(I) failure of a public water system to maintain a record of any repeat sample taken that meets the criteria for an extension of the 24-hour period for collecting repeat samples under §290.109 of this title;

(J) other violations or situations deemed by the executive director to pose an acute risk to human health or with significant potential to have serious adverse effects on human health as a result of short-term exposure may require a Tier 1 public notice as described in subsection (a)(2) of this section;

(K) other violations or situations at the, discretion of the executive director, may require a Tier 2 public notice as described in subsection (b)(2) of this section; and

(L) failure to maintain records for seasonal start-up procedures and seasonal start-up procedures certification form(s) as required by §290.109 of this title.

(2) The initial Tier 3 public notice issued pursuant to this section shall be issued no later than one year after the public water system learns of the violation or situation or begins operating under a variance or exemption. Following the initial notice, the public water system shall repeat the notice annually for as long as the violation, variance, exemption, or other situation persists. If the public notice is posted, the notice shall remain in place for as long as the violation, variance, exemption, or other situation persists, but in no case less than seven days even if the violation or situation is resolved. The initial public notice shall be issued in the following manner.

(A) The owner or operator of a community water system shall issue the notice by mail or other direct delivery to each customer receiving a bill and to other service connections. The owner or operator of a noncommunity water system shall issue the notice by either posting the notice in conspicuous locations throughout the distribution system frequented by persons served by the system, or by mail or direct delivery to each customer and service connection. Other methods of delivery may include electronic delivery or alert systems (e.g., reverse 911).

(B) The owner or operator of any public water system shall also notify the public using another method reasonably calculated to reach other persons regularly served by the system, if they would not normally be reached by the notice required in subparagraph (A) of this paragraph. Such persons may include people who do not pay water bills or do not have service connection addresses (e.g., house renters, apartment dwellers, university students, nursing home patients, prison inmates, etc.). These other methods may include publication in a local newspaper; delivery of multiple copies for distribution by customers that provide their drinking water to others (e.g., apartment building owners or large private employers); posting in public places or on the Internet; or delivery to community organizations. Other methods of delivery may include electronic delivery or alert systems (e.g., reverse 911).

(C) For community public water systems, the Consumer Confidence Report (CCR) as required under Subchapter H of this chapter (relating to Consumer Confidence Reports) may be used for delivering the initial Tier 3 public notice and all required repeat notices, under the following conditions.

(i) The CCR is provided to persons served no later than 12 months after the public water system learns of the violation or situation as described under paragraph (1) of this subsection.

(ii) The Tier 3 notice contained in the CCR follows the content requirements under §290.272 of this title (relating to Content of the Report).

(iii) The CCR is distributed following the delivery requirements under §290.274 of this title (relating to Report Delivery and Recordkeeping).

(D) If notice is provided by posting, the posting must remain in place for as long as the violation exists or seven days, whichever is longer.

(3) The owner or operator of a system required to issue an initial violation notice shall issue additional notices. The additional notices shall be issued in the following manner.

(A) The owner or operator of a community water system shall issue repeat notices at least once every 12 months by mail delivery (by direct mail or with the water bill) or by hand delivery, for as long as the violation exists or variance or exemption remains in effect. Repeat public notice may be included as part of the CCR as described in paragraph (2) of this subsection.

(B) If the owner or operator of a noncommunity water system issued the initial notice by continuously posting the notice, the posting must continue for as long as the violation exists, and in no case less than seven days. If the owner or operator of a noncommunity water system issued the initial notice by direct delivery, notice by direct delivery must be repeated at least every 12 months for as long as the violation exists.

(d) Each public notice must conform to the following general requirements.

(1) The notice must contain a clear and readily understandable explanation of the violation, significant deficiency, or situation that led to the notification. The notice must not contain very small print, unduly technical language, formatting, or other items that frustrate or defeat the purpose of the notice.

(2) If the notice is required for a specific event or significant deficiency, it must state when the event occurred or the date the significant deficiency was identified by the executive director.

(3) For notices required under subsections (a), (b), or (c)(1)(A) of this section, the notice must describe potential adverse health effects.

(A) For MCL, MRDL, or treatment technique violations or situations (including uncorrected significant deficiencies), the notice must contain the mandatory federal contaminant-specific language contained in 40 CFR Part 141, Subpart Q, Appendix B, in addition to any language required by the executive director. For violations of the condition of a variance or exemption, the notice must contain the health effects information and include the items and schedule milestones of the variance or exemption.

(B) For fluoride SCL violations, the notice must contain the mandatory federal contaminant-specific language contained in 40 CFR §141.208, in addition to any language required by the executive director.

(C) For failure to perform any three months of raw surface water monitoring or request bin classification from the executive director, the notice must contain the mandatory federal contaminant specific language contained in 40 CFR §141.211(d)(1) and (2), respectively, in addition to any language required by the executive director.

(D) The notice must describe the population at risk, especially subpopulations particularly vulnerable if exposed to the given contaminant.

(4) The notice must state what actions the water system is taking to correct the violation or situation, and when the water system expects to return to compliance. For groundwater systems with significant deficiencies, the notice must contain the executive director-approved plan and schedule for correction of the significant deficiency, including interim measures, progress to date, and any interim measures completed.

(5) The notice must state whether alternative drinking water sources should be used, and what other actions consumers should take, including when they should seek medical help, if known.

(6) Each notice must contain the name, business address and telephone number at which consumers may contact the owner, operator, or designee of the public water system for additional information concerning the notice.

(7) Where appropriate, the notice must be multilingual. The multilingual notice must explain the importance of the notice or provide a telephone number or address where consumers may contact the system to obtain a translated copy of the notice or assistance in the appropriate language.

(8) The notice shall include a statement to encourage the notice recipient to distribute the public notice to the other persons served. Public water systems must include in their notice the following language: Please share this information with all the other people who drink this water, especially those who may not have received this notice directly (for example, people in apartments, nursing homes, schools, and businesses). You can do this by posting this notice in a public place or distributing copies by hand or mail.

(9) Systems with variances or exemptions must notify in accordance with 40 CFR §141.205(b).

(10) Systems must notify customers at sampled taps of the results of any required lead or copper analyses and certify completion of the notification to the executive director.

(e) Notice to new billing units. The owner or operator of a community water system must give a copy of the most recent public notice for any outstanding violation of any MCL, or any treatment technique requirement, or any variance or exemption schedule to all new billing units or new hookups prior to or at the time service begins. The owner or operator of a noncommunity water system must continuously post the public notice in conspicuous locations in order to inform new consumers of any continuing violation, variance or exemption, or other situation requiring a public notice for as long as the violation, variance, exemption, or other situation persists.

(f) Proof of public notification. A copy of any public notice required under this section must be submitted to the executive director within ten days of its distribution as proof of public notification. The copies must be mailed to the Water Supply Division, MC 155, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or other method of submission as specified by the executive director. Each proof of public notification must be accompanied with a signed Certificate of Delivery.

(g) Notice to consecutive systems. All public water systems shall provide public notice to persons served by the public water system in accordance with this section. All public water systems that are required to issue public notice to persons in accordance with this section, and that sell or otherwise provide drinking water to other public water systems (i.e., consecutive systems), shall provide public notice

to the owner or operator of the consecutive system. The consecutive system is responsible for and shall provide public notice to the persons it serves in accordance with this section.

(h) Notices given by the executive director. The executive director may give the notice required by this section on behalf of the owner and operator of the public water system following the requirements of this section. The owner or operator of the public water system remains responsible for ensuring that the requirements of this section are met.

(i) If a public water system has a violation in a portion of the distribution system that is physically or hydraulically isolated from other parts of the distribution system, the executive director may allow the system to limit distribution of the public notice to only persons served by that portion of the system which is out of compliance. Permission by the executive director for limiting distribution of the notice must be granted in writing.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Robert Martinez
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Texas Commission on Environmental Quality
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SUBCHAPTER H. CONSUMER CONFIDENCE REPORTS

30 TAC §290.272, §290.275

Statutory Authority

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

§290.272. Content of the Report.

(a) Information on the source of the water delivered must be included in the report.

(1) Each report must identify the source(s) of the water delivered by the community water system by providing information on the type of the water (such as surface water or groundwater) and any commonly used name and location of the body(ies) of water.

(2) If a source water assessment has been completed, the report must notify consumers of the availability of this information and the means to obtain it. In the reports, systems should highlight significant sources of contamination in the source water area if they have readily available information.

(3) If a system has received a source water assessment from the executive director, the report must include a brief summary of the system's susceptibility to potential sources of contamination using language provided by the executive director or written by a water system official and approved by the executive director.

(b) The following explanations must be included in the annual report.

(1) Each report must contain the following definitions.

(A) Level 1 assessment--A Level 1 assessment is a study of the water system to identify potential problems and determine (if possible) why total coliform bacteria were found.

(B) Level 2 assessment--A Level 2 assessment is a very detailed study of the water system to identify potential problems and determine (if possible) why an *Escherichia coli (E. coli)* maximum contaminant level (MCL) violation has occurred and/or why total coliform bacteria were found on multiple occasions.

(C) Maximum contaminant level goal (MCLG)--The level of a contaminant in drinking water below which there is no known or expected risk to health. MCLGs allow for a margin of safety.

(D) Maximum contaminant level (MCL)--The highest level of a contaminant that is allowed in drinking water. MCLs are set as close to maximum contaminant level goals as feasible using the best available treatment technology.

(E) Maximum residual disinfectant level goal (MRDLG)--The level of a drinking water disinfectant below which there is no known or expected risk to health. MRDLGs do not reflect the benefits of the use of disinfectants to control microbial contaminants.

(F) Maximum residual disinfectant level (MRDL)--The highest level of a disinfectant allowed in drinking water. There is convincing evidence that addition of a disinfectant is necessary for control of microbial contaminants.

(2) The following terms and their descriptions must be included when they appear in the report:

(A) MFL--million fibers per liter (a measure of asbestos);

(B) mrem/year--millirems per year (a measure of radiation absorbed by the body);

(C) NTU--nephelometric turbidity units (a measure of turbidity);

(D) pCi/L--picocuries per liter (a measure of radioactivity);

(E) ppb--parts per billion, or micrograms per liter (µg/L);

(F) ppm--parts per million, or milligrams per liter (mg/L);

(G) ppq--parts per quadrillion, or picograms per liter (pg/L); and

(H) ppt--parts per trillion, or nanograms per liter (ng/L).

(3) A report for a community water system operating under a variance or an exemption of the Safe Drinking Water Act must include a description of the variance or the exemption granted under §290.102(b) of this title (relating to General Applicability).

(4) A report that contains data on a contaminant for which the United States Environmental Protection Agency (EPA) has set a

treatment technique (TT) or an action level (AL) must include, depending on the contents of the report, the following definitions.

(A) AL--The concentration of a contaminant which, if exceeded, triggers treatment or other requirements that a water system must follow.

(B) TT--A required process intended to reduce the level of a contaminant in drinking water.

(c) Information on detected contaminants.

(1) This subsection specifies the requirements for information to be included in each report for detected contaminants subject to mandatory monitoring, excluding *Cryptosporidium.* Mandatory monitoring is required for:

(A) regulated contaminants subject to an MCL, MRDL, AL, or TT; and

(B) unregulated contaminants for which monitoring is required by 40 Code of Federal Regulations (CFR) §141.40, and found in §290.275(4) of this title (relating to Appendices A - D).

(2) The data relating to these detected contaminants must be displayed in one table or in several adjacent tables. Any additional monitoring results that a community water system chooses to include in its reports must be displayed separately.

(3) The data must be derived from data collected to comply with EPA and the commission monitoring and analytical requirements during the previous calendar year, except when a system is allowed to monitor for regulated contaminants less often than once per year. In that case, the table(s) must include the date and results of the most recent sampling, and the report must include a brief statement indicating that the data presented in the report is from the most recent testing done in accordance with the regulations. The report does not need to include data that is older than five years.

(4) For detected regulated contaminants listed under §290.275 of this title, the table(s) must contain:

(A) the MCLs for those contaminants expressed as a number equal to or greater than 1.0 (as provided under §290.275 of this title);

(B) the MCLGs for those contaminants expressed in the same units as the MCLs (as provided for under §290.275 of this title);

(C) if there is no MCL for a detected contaminant, the TT or specific AL applicable to that contaminant; and

(D) for contaminants subject to an MCL, except turbidity, total coliform, fecal coliform, and *E. coli* the highest contaminant level used to determine compliance with *National Primary Drinking Water Regulations* (NPDWR) and the range of detected levels.

(i) For contaminants subject to MCLs, except turbidity, total coliform, fecal coliform, and *E. coli*, when sampling takes place once per year or less often, the table(s) must contain the highest detected level at any sampling point and the range of detected levels expressed in the same units as the MCL.

(ii) When sampling takes place more than once per year at each sampling point, the table(s) must contain the highest average of any of the sampling points and the range of all sampling points expressed in the same units as the MCL.

(iii) In accordance with date requirements included in the table under §290.115(a) of this title (relating to Stage 2 Disinfection Byproducts (TTHM and HAA5)), entitled "Date to Start Stage 2 Compliance," for the MCLs for total trihalomethanes (TTHM) and haloacetic acids (HAA5), systems must include the highest locational running annual average for TTHM and HAA5 and the range of individual sample results for all monitoring locations expressed in the same units as the MCL. If more than one location exceeds the TTHM or HAA5 MCL, the system must include the locational running annual averages for all sampling points that exceed the MCL.

(iv) When compliance with any MCL is determined on a system-wide basis by calculating a running annual average of all samples at all sampling points, the table(s) must include the average and range of detections expressed in the same units as the MCL.

(v) When the executive director allows the rounding of results to determine compliance with the MCL, rounding should be done after multiplying the results by the factor listed under §290.275 of this title.

(E) When turbidity is reported under §290.111 of this title (relating to Surface Water Treatment), the table(s) must contain the highest single measurement and the lowest monthly percentage of samples meeting the turbidity limits specified in that section for the filtration technology being used. The report should include an explanation of the reasons for measuring turbidity.

(F) When lead and copper are reported, the table(s) must contain the 90th percentile value of the most recent round of sampling and the number of sampling sites exceeding the AL.

(G) When *E. coli* is reported, the table(s) shall contain the total number of *E. coli*-positive samples.

(H) The table(s) must contain information on the likely source(s) of detected contaminants based on the operator's knowledge. Specific information regarding contaminants may be available in sanitary surveys or source water assessments and should be used when available. If the operator lacks specific information on the likely source, the report must include one or more typical sources most applicable to the system for any particular contaminant listed under §290.275 of this title.

(i) If a community water system distributes water to its customers from multiple hydraulically independent distribution systems that are fed by different raw water sources, the table(s) must contain a separate column for each service area, and the report must identify each separate distribution system. Systems may produce separate reports tailored to include data for each service area.

(ii) The table(s) must clearly identify any data indicating violations of MCLs, MRDLs, or TTs. The report must contain a clear and readily understandable explanation of the violation. The explanation must include the length of the violation, the potential adverse health effects, and the actions taken by the system to address the violation. To describe the potential health effects, the system must use the relevant language contained under §290.275 of this title.

(5) For detected unregulated contaminants found under §290.275 of this title, for which monitoring is required (except *Cryptosporidium*), the table(s) must contain the average and range of concentrations at which the contaminant was detected. The report must include the following explanation: "Unregulated contaminants are those for which EPA has not established drinking water standards. The purpose of unregulated contaminant monitoring is to assist EPA in determining the occurrence of unregulated contaminants in drinking water and whether future regulation is warranted."

(d) Information on *Cryptosporidium,* radon, and other contaminants.

(1) If the system has performed any monitoring for *Cryptosporidium,* the report must include a summary of the results of any detections and an explanation of the significance of the results.

(2) If the system has performed any monitoring for radon, which indicates that radon may be present in the finished water, the report must include the results of the monitoring and an explanation of the significance of the results.

(3) If the system has performed additional monitoring, which indicates the presence of other contaminants in the finished water, the executive director strongly encourages systems to report any results which may indicate a health concern. To determine if the results may indicate a health concern, the executive director recommends that systems find out if the EPA has proposed a standard in the NPDWR or issued a health advisory for any particular contaminant. This information may be obtained by calling the Safe Drinking Water Hotline at (800) 426-4791. The executive director considers detections that are above a proposed MCL or health advisory level to indicate possible health concerns. For such contaminants, the executive director recommends that the report include the results of the monitoring and an explanation of the significance of the results. The explanation should note the existence of a health advisory or a proposed regulation.

(4) Community water systems that exceed the secondary constituent level for fluoride as described in §290.118 of this title (relating to Secondary Constituent Levels) but are below the maximum contaminant level listed in §290.106 of this title (relating to Inorganic Contaminants) shall notify the public using the mandatory language as described in 40 CFR §141.208(c).

(e) Compliance with NPDWR. In addition to the requirements in subsection (c)(4)(H)(ii) of this section, the report must note any violation that occurred during the year covered by the report of a requirement listed in paragraphs (1) - (8) of this subsection.

(1) The report must include a clear and readily understandable explanation of each violation of monitoring and reporting of compliance data and explain any adverse health effects and steps the system has taken to correct the violation.

(2) The report must include a clear and readily understandable explanation of each violation of filtration and disinfection prescribed by Subchapter F of this chapter (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems) and explain any adverse health effects and steps the system has taken to correct the violation. This applies both to systems that have failed to install adequate filtration, disinfection equipment, or processes, and to systems that have had a failure of such equipment or processes, each of which constitutes a violation. In either case, the report must include the following language as part of the explanation of potential adverse health effects: "Inadequately treated water may contain disease-causing organisms. These organisms include bacteria, viruses, and parasites that can cause symptoms such as nausea, cramps, diarrhea, and associated headaches."

(3) The report must include a clear and readily understandable explanation of each violation of the lead and copper control requirements prescribed by §290.117 of this title (relating to Regulation of Lead and Copper). For systems that fail to take one or more actions prescribed by §290.117(g), (h), and (i) of this title, the report must include the applicable health effects language of §290.275(3) of this title for lead, copper, or both and the steps the system has taken to correct the violation.

(4) The report must include a clear and readily understandable explanation of each violation of TTs for Acrylamide and Epichlorohydrin prescribed by §290.107 of this title (relating to Organic Contaminants). If a system violates these requirements, the report must include the relevant health effects language from §290.275 of this title and the steps the system has taken to correct the violation.

(5) The report must include a clear and readily understandable explanation of each violation of recordkeeping of compliance data and explain any adverse health effects and steps the system has taken to correct the violation.

(6) The report must include a clear and readily understandable explanation of each violation of special monitoring requirements for unregulated contaminants and special monitoring for sodium as prescribed by 40 CFR §141.40 and §141.41 and explain any adverse health effects and steps the system has taken to correct the violation.

(7) For systems required to conduct initial distribution sampling evaluation (IDSE) sampling in accordance with §290.115(c)(5) of this title, the system is required to include individual sample results for the IDSE when determining the range of TTHM and HAA5 results to be reported in the annual Consumer Confidence Report for the calendar year that the IDSE samples were taken.

(8) The report must include a clear and readily understandable explanation of each violation of the terms of a variance, exemption, administrative order, or judicial order and explain any adverse health effects and steps the system has taken to correct the violation.

(f) Variances and exemptions. If a system is operating under the terms of a variance or exemption issued under §290.102(b) of this title, the report must contain:

(1) an explanation of the variance or exemption;

(2) the date on which the variance or exemption was issued and on which it expires;

(3) a brief status report on the steps the system is taking, such as installing treatment processes or finding alternative sources of water, to comply with the terms and schedules of the variance or exemption; and

(4) a notice of any opportunity for public input as the review or renewal of the variance or exemption.

(g) Additional information.

(1) The report must contain a brief explanation regarding contaminants that may reasonably be expected to be found in drinking water (including bottled water). This explanation may include the language contained within subparagraphs (A) - (C) of this paragraph, or systems may include their own comparable language. The report must include the language of subparagraphs (D) and (E) of this paragraph.

(A) The sources of drinking water (both tap water and bottled water) include rivers, lakes, streams, ponds, reservoirs, springs, and wells. As water travels over the surface of the land or through the ground, it dissolves naturally occurring minerals and, in some cases, radioactive material, and can pick up substances resulting from the presence of animals or from human activity.

(B) Contaminants that may be present in source water include:

(i) microbial contaminants, such as viruses and bacteria, which may come from sewage treatment plants, septic systems, agricultural livestock operations, and wildlife;

(ii) inorganic contaminants, such as salts and metals, which can be naturally occurring or result from urban storm water runoff, industrial or domestic wastewater discharges, oil and gas production, mining, or farming;

(iii) pesticides and herbicides, which might have a variety of sources such as agriculture, urban storm water runoff, and residential uses;

(iv) organic chemical contaminants, including synthetic and volatile organic chemicals, which are byproducts of industrial processes and petroleum production, and can also come from gas stations, urban storm water runoff, and septic systems; and

(v) radioactive contaminants, which can be naturally occurring or the result of oil and gas production and mining activities.

(C) In order to ensure that tap water is safe to drink, the EPA prescribes regulations that limit the amount of certain contaminants in water provided by public water systems. Food and Drug Administration regulations establish limits for contaminants in bottled water that must provide the same protection for public health.

(D) Contaminants may be found in drinking water that may cause taste, color, or odor problems. These types of problems are not necessarily causes for health concerns. For more information on taste, odor, or color of drinking water, please contact the system's business office.

(E) Drinking water, including bottled water, may reasonably be expected to contain at least small amounts of some contaminants. The presence of contaminants does not necessarily indicate that water poses a health risk. More information about contaminants and potential health effects can be obtained by calling the EPA's Safe Drinking Water Hotline at (800) 426-4791.

(2) The report must include the telephone number of the owner, operator, or designee of the community water system as an additional source of information concerning the report.

(3) Each English language report must include the following statement in a prominent place on the first page: "Este reporte incluye informacion importante sobre el agua para tomar. Para asistencia en español, favor de llamar al telefono (XXX) XXX-XXXX." In addition to this statement in Spanish, for communities with a large proportion of limited English proficiency residents, as determined by the executive director, the report must contain information in the appropriate language(s) regarding the importance of the report or contain a telephone number or address where such residents may contact the system to obtain a translated copy of the report or assistance in the appropriate language.

(4) The report must include information about opportunities for public participation in decisions that may affect the quality of the water (e.g., time and place of regularly scheduled board meetings). Investor-owned utilities are encouraged to conduct public meetings, but must include a phone number for public input.

(5) The systems may include such additional information for public education consistent with, and not detracting from, the purposes of the report.

(6) Systems that use an interconnect or emergency source to augment the drinking water supply during the calendar year of the report must provide the source of the water, the length of time used, an explanation of why it was used, and whom to call for the water quality information.

(7) Beginning December 1, 2009, any groundwater system that receives notice from a laboratory of a fecal indicator positive groundwater source sample that is not invalidated by the executive director under §290.109(e) of this title (relating to Microbial Contaminants) must inform its customers of any fecal indicator positive groundwater source sample in the next report. The system must continue to inform the public annually until the executive director determines that the fecal contamination in the groundwater source is addressed under §290.116(a) of this title (relating to Groundwater Corrective Actions and Treatment Techniques). Each report must include the following elements:

(A) the source of the fecal contamination (if the source is known) and the dates of the fecal indicator positive groundwater source samples;

(B) actions taken to address the fecal contamination in the groundwater source as directed by §290.116 of this title and the date of such action;

(C) for each fecal contamination in the groundwater source that has not been addressed under §290.116 of this title, the plan approved by the executive director and schedule for correction, including interim measures, progress to date, and any interim measures completed; and

(D) for a fecal indicator positive groundwater source sample that is not invalidated by the executive director under §290.109(e) of this title, the potential health effects using the health effects language of §290.275(3) of this title.

(8) Beginning December 1, 2009, any groundwater system that receives notice from the executive director of a significant deficiency must inform its customers of any significant deficiency that is uncorrected at the time of the next report. The system must continue to inform the public annually until the executive director determines that particular significant deficiency is corrected under §290.116 of this title. Each report must include the following elements:

(A) the nature of the particular significant deficiency and the date the significant deficiency was identified by the executive director;

(B) for each significant deficiency, the plan approved by the executive director and schedule for correction, including interim measures, progress to date, and any interim measures completed; and

(C) if corrected before the next report, the nature of the significant deficiency, how the deficiency was corrected, and the date of the corrections.

(9) Any public water system required to comply with the Level 1 or Level 2 assessment requirements under §290.109 and §290.116 of this title that is not due to an *E. coli* MCL violation shall include in the report the information in subparagraph (A) of this paragraph. In addition to the elements in subparagraph (A) of this paragraph, the public water system shall include the elements in subparagraph (B) of this paragraph when it has a Level 1 treatment technique trigger as specified under §290.109(c)(1) of this title and shall include the elements in subparagraph (C) of this paragraph in the report when it has a Level 2 treatment technique trigger as specified under §290.109(c)(2)(B) of this title. Furthermore, any public water system that failed to complete all the required assessments shall also include the statement in subparagraph (D)(i) of this paragraph. Any public water system that failed to correct all identified sanitary defects shall also include the statement in subparagraph (D)(ii) of this paragraph.

(A) Coliforms are bacteria that are naturally present in the environment and are used as an indicator that other, potentially harmful, waterborne pathogens may be present or that a potential pathway exists through which contamination may enter the drinking water distribution system. We found coliforms indicating the need to look for potential problems in water treatment or distribution. When this occurs, we are required to conduct assessment(s) to identify problems and to correct any problems that were found during these assessments.

(B) During the past year we were required to conduct {INSERT NUMBER OF LEVEL 1 ASSESSMENTS} Level 1 assessment(s). {INSERT NUMBER OF LEVEL 1 ASSESSMENTS} Level 1 assessment(s) were completed. In addition, we were required to take {INSERT NUMBER OF CORRECTIVE ACTIONS} corrective actions and we completed {INSERT NUMBER OF CORRECTIVE ACTIONS} of these actions.

(C) During the past year {INSERT NUMBER OF LEVEL 2 ASSESSMENTS} Level 2 assessments were required to be completed for our water system. {INSERT NUMBER OF LEVEL 2 ASSESSMENTS} Level 2 assessments were completed. In addition, we were required to take {INSERT NUMBER OF CORRECTIVE ACTIONS} corrective actions and we completed {INSERT NUMBER OF CORRECTIVE ACTIONS} of these actions.

(D) Any public water system that failed to complete all the required assessments or correct all identified sanitary defects, is in violation of the treatment technique requirement and shall also include one or both of the following statements as appropriate:

(i) During the past year we failed to conduct all of the required assessment(s).

(ii) During the past year we failed to correct all identified defects that were found during the assessment.

(10) Any public water system required to comply with the Level 2 assessment requirements under §290.109 and §290.116 of this title that is due to an *E. coli* MCL violation shall include in the report the information in subparagraph (A) of this paragraph. In addition to the elements in subparagraph (A) of this paragraph, the public water system shall include the elements in subparagraph (B) of this paragraph when it has a Level 2 treatment technique trigger as specified under §290.109(c)(2) of this title and shall include the following elements in subparagraph (C) in the report when it has a Level 2 treatment technique trigger as specified under §290.109(c)(2)(A). Furthermore, any public water system that failed to complete all the required assessments shall also include the statement in subparagraph (C)(i) of this paragraph. Any public water system that failed to correct all identified sanitary defects shall also include the statement in subparagraph (C)(ii) of this paragraph.

(A) *E. coli* are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Human pathogens in these wastes can cause short-term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a greater health risk for infants, young children, the elderly, and people with severely compromised immune systems. We found *E. coli* bacteria, indicating the need to look for potential problems in water treatment or distribution. When this occurs, we are required to conduct assessment(s) to identify problems and to correct any problems that were found during these assessments.

(B) We were required to complete a Level 2 assessment because we found *E. coli* in our water system. In addition, we were required to take {INSERT NUMBER OF CORRECTIVE ACTIONS} corrective actions and we completed {INSERT NUMBER OF CORRECTIVE ACTIONS} of these actions.

(C) Any public water system that has failed to complete the required assessment or correct all identified sanitary defects, is in violation of the treatment technique requirement and shall also include one or both of the following statements, as appropriate:

(i) We failed to conduct the required assessment.

(ii) We failed to correct all sanitary defects that were identified during the assessment that we conducted.

(11) If a public water system detects *E. coli* and has violated the *E. coli* MCL, in addition to completing the table as required in subsection (c)(4) of this section, the system shall include one or more of the following statements to describe any noncompliance, as applicable:

(A) We had an *E. coli*-positive repeat sample following a total coliform-positive routine sample.

(B) We had a total coliform-positive repeat sample following an *E. coli*-positive routine sample.

(C) We failed to take all required repeat samples following an *E. coli*-positive routine sample.

(D) We failed to test for *E. coli* when any repeat sample tests positive for total coliform.

(12) Every report must include the following lead-specific information - a short informational statement about lead in drinking water and its effect on children.

(A) The statement must include the information set forth in this example statement. "If present, elevated levels of lead can cause serious health problems, especially for pregnant women and young children. Lead in drinking water is primarily from materials and components associated with service lines and home plumbing. NAME OF UTILITY is responsible for providing high quality drinking water, but cannot control the variety of materials used in plumbing components. When your water has been sitting for several hours, you can minimize the potential for lead exposure by flushing your tap for 30 seconds to two minutes before using water for drinking or cooking. If you are concerned about lead in your water, you may wish to have your water tested. Information on lead in drinking water, testing methods, and steps you can take to minimize exposure is available from the Safe Drinking Water Hotline or at *http://www.epa.gov/safewater/lead.*"

(B) A public water system may write its own educational statement, but only in consultation with the executive director.

(h) If a public water system detects *E. coli* and has not violated the *E. coli* MCL, in addition to completing the table as required in subsection (c)(4) of this section, the system may include a statement that explains that although they have detected *E. coli,* they are not in violation of the *E. coli* MCL.

(i) Customer notification of water loss by a retail public utility. A retail public utility required to file a water loss audit with the Texas Water Development Board under the provisions of Texas Water Code, §16.0121, shall notify its customers of its water loss reported in the water loss audit by including the water loss information on or with the next report following the filing of the water loss audit, unless the retail public utility elects to notify its customers of its water loss reported in the water loss audit by including the water loss information on or with the next bill sent to its customers following the filing of the water loss audit in accordance with §291.87 of this title (relating to Billing).

§290.275. Appendices A - D.

The following appendices are integral components of the subchapter.

(1) Appendix A--Converting Maximum Contaminant Level Compliance Values for Consumer Confidence Reports (CCR).
Figure: 30 TAC §290.275(1)

(2) Appendix B--Sources of Regulated Contaminants.
Figure: 30 TAC §290.275(2)

(3) Appendix C--Health Effects Language.
Figure: 30 TAC §290.275(3)

(4) Appendix D--Unregulated Contaminants.

Figure: 30 TAC §290.275(4) (No change.)

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 10, 2017.

TRD-201700996
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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Proposal publication date: October 7, 2016
For further information, please call: (512) 239-2141

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 13. CONTROLLED SUBSTANCES SUBCHAPTER G. FORFEITURE AND DESTRUCTION

37 TAC §13.151

The Texas Department of Public Safety (the department) adopts amendments to §13.151, concerning Subchapter Definitions. This section is adopted without changes to the proposed text as published in the February 3, 2017, issue of the *Texas Register* (42 TexReg 411) and will not be republished.

Amendments to §13.151 are necessary to ensure compliance with §13.157(d) concerning the modification of the definition of "excess quantity". Further modification has been necessary due to physical storage limitations and the need for continued and improved controlled substance diversion control.

No comments were received regarding the adoption of these amendments.

The amendments are adopted pursuant to Texas Health and Safety Code, §481.003, which authorizes the director to adopt rules to administer and enforce Chapter 481, §481.153 and §481.154.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-201701029
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
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Proposal publication date: February 3, 2017
For further information, please call: (512) 424-5848

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 19. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

The Texas Health and Human Services Commission (HHSC) adopts, on behalf of the Department of Aging and Disability Services (DADS), an amendment to §19.101, in Subchapter B, Definitions, and new §19.2113, in Subchapter V, Enforcement, in Chapter 19, Nursing Facility Requirements for Licensure and Medicaid Certification, without changes to the proposed text published in the October 28, 2016, issue of the *Texas Register* (41 TexReg 8542).

The new section establishes the criteria by which the HHSC executive commissioner may stay a proposed nursing facility license revocation. The new section sets forth the requirements for a license holder to submit a written request to stay a license revocation, including that the license holder must enter into a stay agreement acceptable to the executive commissioner. The new section also states that a license revocation is rescinded if a license holder successfully completes the requirements of a stay agreement and a revocation is imposed if the license holder does not successfully complete the requirements of the stay agreement.

The amendment adds definitions of "stay agreement," "substandard quality of care violation," and "widespread," which are terms used in new §19.2113. The amendment also adds a definition of "quality measure report," a term used in new §19.2107, which is published elsewhere in this issue of the *Texas Register*.

DADS received no comments regarding adoption of the amendment or the new section.

SUBCHAPTER B. DEFINITIONS

40 TAC §19.101

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Health and Safety Code, Chapter 242, which authorizes DADS to license and regulate nursing facilities.

The amendment implements Texas Government Code, §531.0055, and Texas Health and Safety Code, Chapter 242.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 7, 2017.

TRD-201700863
Lawrence Hornsby
General Counsel
Department of Aging and Disability Services
Effective date: March 27, 2017
Proposal publication date: October 28, 2016
For further information, please call: (512) 438-2470

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SUBCHAPTER V. ENFORCEMENT
DIVISION 2. LICENSING REMEDIES

40 TAC §19.2113

The new section is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Health and Safety Code, Chapter 242, which authorizes DADS to license and regulate nursing facilities.

The new section implements Texas Government Code, §531.0055, and Texas Health and Safety Code, Chapter 242.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Lawrence Hornsby
General Counsel
Department of Aging and Disability Services
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Proposal publication date: October 28, 2016
For further information, please call: (512) 438-2470

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CHAPTER 19. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

The Texas Health and Human Services Commission (HHSC) adopts, on behalf of the Department of Aging and Disability Services (DADS), amendments to §19.910 and §19.911, and new §19.2107, in Chapter 19, Nursing Facility Requirements for Licensure and Medicaid Certification without changes to the proposed text published in the October 28, 2016, issue of the *Texas Register* (41 TexReg 8542).

The amendments allow a quality-of-care monitor to visit a facility that is identified through the HHSC early warning system as a medium risk or that requests a visit and provides that a quality-of-care monitor conducts a follow-up visit within 45 days after an initial visit. The amendments also add that a rapid response team visits a nursing facility that is identified as high risk through the early warning system or that has committed three violations that require license revocation under new §19.2107.

The new section provides that, subject to certain exceptions, the HHSC executive commissioner revokes a nursing facility license if DADS finds that the license holder has committed three or more violations constituting an immediate threat to health and safety related to the abuse or neglect of a resident within a 24-month period at the same facility. The new section provides that a license holder may request a stay in accordance with new Section 19.2113, which is being adopted as part of a different project. The rule provides that if a request is denied or the license holder does not request a stay, the license holder may request a hearing to appeal a revocation. If a license is revoked, the rule allows DADS to request appointment of a trustee, assist with obtaining a new operator, or assist with relocating residents to another nursing facility.

DADS received no comments regarding adoption of the amendments or new section.

SUBCHAPTER J. QUALITY OF CARE

40 TAC §19.910, §19.911

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Health and Safety Code, Chapter 242, which authorizes DADS to license and regulate nursing facilities.

The amendment implements Texas Government Code, §531.0055, and Texas Health and Safety Code, Chapter 242.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Lawrence Hornsby
General Counsel
Department of Aging and Disability Services
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Proposal publication date: October 28, 2016
For further information, please call: (512) 438-2470

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SUBCHAPTER V. ENFORCEMENT
DIVISION 2. LICENSING REMEDIES

40 TAC §19.2107

The new section is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Health and Safety Code, Chapter 242, which authorizes DADS to license and regulate nursing facilities.

The new section implements Texas Government Code, §531.0055, and Texas Health and Safety Code, Chapter 242.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Lawrence Hornsby
General Counsel
Department of Aging and Disability Services
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For further information, please call: (512) 438-2470

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PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 746. MINIMUM STANDARDS FOR CHILD-CARE CENTERS

The Texas Health and Human Service Commission (HHSC) adopts, on behalf of the Department of Family and Protective Services (DFPS), the repeal of §§746.103, 746.105, 746.107, 746.109, 746.507, 746.615, 746.617, 746.619, 746.621, 746.703, 746.903, 746.905, 746.1019, 746.1031, 746.1033, 746.1035, 746.1041, 746.1043, 746.1101, 746.1103, 746.1113, 746.1115, 746.1301, 746.1325, 746.1401, 746.1403, 746.2411, 746.2801, 746.2809, 746.2813, 746.3005, 746.3409, 746.3411, and 746.5009; new §§746.111, 746.113, 746.121, 746.123, 746.615, 746.1031, 746.1301, 746.1401, 746.2411, 746.2426, 746.3420, and 746.3606; and amendments to §§746.201, 746.301, 746.303, 746.405, 746.501, 746.503, 746.505, 746.603, 746.613, 746.623, 746.631, 746.705, 746.801, 746.803, 746.909, 746.1015, 746.1017, 746.1021, 746.1037, 746.1039, 746.1057, 746.1105, 746.1107, 746.1109, 746.1203, 746.1315, 746.1316, 746.1317, 746.1319, 746.1323, 746.2205, 746.2401, 746.2403, 746.2405, 746.2407, 746.2409, 746.2413, 746.2415, 746.2417, 746.2419, 746.2421, 746.2425, 746.2427, 746.2428, 746.2431, 746.2501, 746.2505, 746.2507, 746.2509, 746.2607, 746.2707, 746.2803, 746.2805, 746.2905, 746.2911, 746.3117, 746.3119, 746.3123, 746.3201, 746.3203, 746.3309, 746.3313, 746.3401, 746.3405, 746.3415, 746.3419, 746.3421, 746.3501, 746.3503, 746.3601, 746.3607, 746.3701, 746.3703, 746.3707, 746.3709, 746.3801, 746.3901, 746.4207, 746.4213, 746.4501, 746.4503, 746.4507, 746.4601, 746.4609, 746.4907, 746.4971, 746.5015, 746.5105, 746.5305, 746.5607, and 746.5621, concerning a comprehensive review of Chapter 746, Minimum Standards for Child-Care Centers.

The new §§746.123, 746.1031, 746.2426, 746.3420 and 746.3606; and amendments to §§746.201, 746.301, 746.303, 746.405, 746.501, 746.603, 746.623, 746.631, 746.801, 746.1015, 746.1017, 746.1021, 746.1037, 746.1039, 746.1057, 746.1105, 746.1107, 746.1109, 746.1317, 746.1323, 746.2415, 746.2421, 746.2427, 746.2428, 746.2803, 746.3309, 746.3415, 746.3501, 746.3503, 746.3607, 746.3703, 746.3707, 746.3709, 746.3801, 746.4609, 746.5305, and 746.5621 are adopted with changes to the proposed text published in the September 9, 2016, issue of the *Texas Register* (41 TexReg 6970).

The repeal of §§746.103, 746.105, 746.107, 746.109, 746.507, 746.615, 746.617, 746.619, 746.621, 746.703, 746.903, 746.905, 746.1019, 746.1031, 746.1033, 746.1035, 746.1041, 746.1043, 746.1101, 746.1103, 746.1113, 746.1115, 746.1301, 746.1325, 746.1401, 746.1403, 746.2411, 746.2801, 746.2809, 746.2813, 746.3005, 746.3409, 746.3411, and 746.5009; new §§746.111, 746.113, 746.121, 746.615, 746.1301, 746.1401, and 746.2411; and amendments to §§746.503, 746.505, 746.613, 746.705, 746.803, 746.909, 746.1203, 746.1315, 746.1316, 746.1319, 746.2205, 746.2401, 746.2403, 746.2405, 746.2407, 746.2409, 746.2413, 746.2417, 746.2419, 746.2425, 746.2431, 746.2501, 746.2505, 746.2507, 746.2509, 746.2607, 746.2707, 746.2805, 746.2905, 746.2911, 746.3117, 746.3119, 746.3123, 746.3201, 746.3203, 746.3313, 746.3401, 746.3405, 746.3419, 746.3421, 746.3601, 746.3701, 746.3901, 746.4207, 746.4213, 746.4501, 746.4503, 746.4507, 746.4601, 746.4907, 746.4971, 746.5015, 746.5105, and 746.5607 are adopted without changes to the proposed text and will not be republished.

Also in this issue of the *Texas Register,* DFPS is withdrawing the amendment to §746.1029 because the term "management" for required college courses is the more commonly used term and was correctly used in the current rule versus the use of "business management", which was used in the proposed rule; and the repeal and new §746.4607 because the new rule included a change that inadvertently allowed the maximum height of the designated play surface to be higher than was intended, so DFPS is reverting to the current rule.

BACKGROUND AND JUSTIFICATION

The justification for the repeals, new sections and amendments is to implement Texas Human Resources Code (HRC) §42.042(b) which requires Child Care Licensing (CCL) to conduct a comprehensive review of all rules and minimum standards every six years. The adopted changes are a result of the comprehensive review of all minimum standards in Chapter 746.

During this review of standards, CCL's goal was to review the concerns of child advocacy groups, child-care centers, children, and parents and to formulate standards that balance children's health and safety with affordability and availability of care.

In preparation for the review of minimum standards, CCL conducted a web-based survey open to permit holders, caregivers, advocates, parents, CCL staff, and anyone in the general public interested in commenting on the standards. The survey was available for public input from late August through December 2014. The next step in the review was to hold a series of 31 stakeholder forums throughout the state between September and November 2015 to solicit additional input from the public about proposed changes to the minimum standards.

Between the web-based survey and the stakeholder forums, CCL received more than 1,200 comments relating to Chapters 744 (Minimum Standards for School-Age and Before- or After-School Programs), 745 (Licensing), 746, and 747 (Minimum Standards for Child-Care Homes) from stakeholders for consideration in the review. These comments, along with a line-by-line review of all minimum standards conducted by both regional and State Office Licensing staff, formed the basis of the first round of recommendations that were then presented to a temporary workgroup. The temporary workgroup was comprised of approximately 15 participants, including providers from child-care centers, a provider from a school-age and before- and after-school program, a parent, representatives from Licensing, and a representative from the Texas Workforce Commission. The workgroup had an introductory meeting on March 22, 2016, and subsequently met twice on April 5, 2016 and May 16, 2016 to review and provide comments regarding the recommended changes to Chapters 746, as well as Chapters 744 and 747.

The repeals, amendments and new rules will function to (1) clarify the Minimum Standards for Child-Care Centers; (2) place DFPS in compliance with HRC §42.042(b); and (3) reduce the risk to children.

COMMENTS

The 30-day comment period ended October 9, 2016. During this period, DFPS received comments regarding 18 topics from 76 commenters, including Mainspring Schools, Texas Medical Association, Hill Country Fellowship Christian Academy, First3Years, Kinder Care Education, Texas League of Women Voters, Coalition for Nurses in Advanced Practice, Texans Care for Children, Partnership for a Healthy Texas, Texas Women's University, Atmos Pipeline Texas, Early Matters, Commit!, Momentous Institute, Family Services Association of San Antonio, Bell Nunnally, Dave Perry Miller & Associates, Temple Emanu-El, Bazosport College, Clinical Dermatology & Derma-

tological Surgery, and Texas Association for the Education of Young Children. A summary of the comments and the DFPS responses follow. Also included are changes to rules with no comments with an explanation of why additional clarification of the rule was needed.

There were no comments concerning §746.123, relating to definitions, with the exception of the comment immediately below concerning §746.123(28). However, DFPS is adopting this rule with changes to (1) correct a cite in the definition of "caregiver"; (2) correctly alphabetize a couple of definitions; (3) clarify that "clock hour" includes an hour of self-study training; (4) add a definition for "group activities"; (5) move a definition of "high-school equivalent" from proposed §746.1107 to this definitions rule because the term is used in several rules, and in order to clarify that there must be documentation of a GED or confirmation of home-schooling that adequately addresses basic competencies and clarify the wording of the rule to improve readability and ease of understanding; (6) modify the definition for "self-instructional training" to state that "self-study training" is a type of self-instructional training; (7) add a definition for "self-study training", which is where an individual reads written materials, watches a training video, or listens to a recording to obtain certain knowledge that is required for annual training, and clarifies that self-study training is limited to three hours of annual training per year; (8) renumber the definitions; and (9) make minor clarifications in the wording of the rule to improve readability and ease of understanding, including grammatical corrections and the deletion of a masculine pronoun.

Comment concerning §746.123(28), relating to the definition of a health-care professional: The commenter recommended adding a definition for "advanced practice registered nurse (APRN)", and amending the definition of "health-care professional" related to an APRN to be consistent with newer terminology used in the Texas Nursing Practice Act and throughout the other states.

Response: DFPS disagrees in part and agrees in part with the commenter and adopts this paragraph with changes. At this time a separate definition for APRN will not be added because this is the only time the APRN terminology is used in this chapter. DFPS will monitor the necessity of adding a definition of APRN in the future. DFPS will update the terminology for an APRN in the definition of a "health-care professional" as recommended by the commenter. Within the definition of "health-care professional" DFPS is also making some minor changes to delete a masculine pronoun and correct a grammatical error.

No comments concerning §746.201, relating to a permit holder's responsibilities. However, DFPS is adopting this rule with changes to correct a cite and to make several minor clarifications in the wording of the rule to improve readability and ease of understanding.

No comments concerning §746.301, relating to changes at a center that require notification to Licensing. However, DFPS is adopting this rule with changes to clarify when a change in ownership requires notification to Licensing, including adding a relevant cite.

No comments concerning §746.303, relating to director changes that require notification to Licensing. However, DFPS is adopting this rule with changes to clarify a designee, to clarify the rule to improve readability and ease of understanding, and to make the rule more consistent with its corresponding rule in Chapter 744.

No comments concerning §746.405, relating to what telephone numbers must be posted and where must they be posted. However, DFPS is adopting this rule with changes to clarify that phone numbers must be posted in a prominent place, delete the outdated requirement to post on the phone headset, and to make the rule more consistent with its corresponding rules in Chapters 744 and 747.

No comments concerning §746.501, relating to a center's operational policies. However, DFPS is adopting this rule with changes to the policy regarding a parent visiting and observing a center to clarify in more detail that the observation may include the center's building, premises, and equipment. DFPS is also making one minor clarification to paragraph (22) to improve readability and ease of understanding.

No comments concerning §746.603, relating to the records a center must keep. However, DFPS is adopting this rule with changes to clarify what type of daily tracking system for children is required, including adding a relevant cite. DFPS is also making a change to paragraph (10) to clarify that the written documentation must be maintained in the child's record, and two minor clarifications to paragraphs (6) and (10) to make the terms "vision and hearing screening" and "health-care professional" consistent throughout the chapter.

No comments concerning §746.623, relating to documentation requirements for an immunization record. However, DFPS is adopting this rule with changes to reorganize the documentation requirements. The changes, which are partially in response to a comment related to a corresponding rule in Chapter 748, also delete the address requirement for health-care professionals, add a requirement for clinic contact information when the immunization record is generated from an electronic health record system, simplify and clarify the wording of the rule to improve readability and ease of understanding, and make this rule consistent with corresponding rules in Chapters 744, 748, and 749.

No comments concerning §746.631, relating to signing children in and out of the center. However, DFPS is adopting this rule with changes to move the requirement to keep the daily tracking system for children to §746.801(19), which is the rule that lists the records that must be kept at a center. The timeline for keeping this tracking system will no longer be needed, because it is now covered in §746.803(a).

No comments concerning §746.801, relating to what records must be kept at a center. However, DFPS is adopting this rule with changes to clarify the infant feeding instructions and the daily tracking system by adding relevant cites for each requirement, to move the requirement to keep the daily tracking system for children to this rule (this requirement was previously in §746.631), and to clarify the wording of the rule to improve readability and ease of understanding.

No comments concerning §§746.1015 and 746.1017, relating to director qualifications. However, DFPS is adopting these two rules with changes to replace the term "business management" for required college courses to the more commonly used term "management" and to delete the subsection that states some director qualification options require periodic renewal, because this information is redundant and already included at §§746.1053 and 746.1055. DFPS will add the periodic renewal information to a Helpful Information box located on the DFPS public website version of the minimum standards immediately following each of these rules.

No comments concerning §746.1021, relating to what constitutes experience. However, DFPS is adopting this rule with changes to clarify that experience in a licensed or registered

child-care home also includes experience as a substitute caregiver, and to clarify the wording to improve readability and ease of understanding.

No comments concerning §§746.1031 and 746.1037, relating to documentation requirements for management education qualifications and when clock hours or CEUs may be substituted for management education qualifications. However, DFPS is adopting these two rules with changes to replace the term "business management" with the more commonly used term "management" as it relates to the education qualifications.

No comments concerning §746.1039, relating to additional documentation requirements for a director. However, DFPS is adopting this rule with changes to correct two typographical errors.

No comments concerning §746.1057, relating to what happens when a director's credential expires. However, DFPS is adopting this rule with changes to clarify that a director's certificate will expire if the director does not submit the required documentation confirming that the credential is current.

No comments concerning §746.1105, relating to minimum qualifications for employees. However, DFPS is adopting this rule with a change to clarify that only DSHS or a local health authority may require TB exams, because there is no "regional" DSHS.

Comment concerning §746.1107, relating to the minimum qualifications of a caregiver: The commenter stated that caregivers should be required to have some type of Early Childhood credential.

Response: DFPS disagrees with the commenter but adopts this rule with changes. Credentials are mandated for directors. Credentials are also good for caregivers, and in many instances staffs are encouraged to obtain a credential where possible (for example, Texas Rising Star (a quality rating and improvement system for early childhood programs) and accreditation organizations). However, it is cost prohibitive to mandate credentials for all staff. In addressing a separate issue from the comment, DFPS is moving the definition for "high-school equivalent" to the definitions rule at §746.123, because the term is used in several other rules.

No comments concerning §746.1109, relating to when persons under 18 may be employed. However, DFPS is adopting this rule with changes to clarify the question for ease of understanding, delete a redundant cite, and make the wording of the rule consistent with its corresponding rule in Chapter 747.

Comments concerning §746.1309, relating to the annual training hours for caregivers: (1) Two commenters stated that they disagreed with increasing the number of training hours that caregivers may obtain through self-instruction. One commenter prefers to reduce the number of hours. The commenter states this is the least effective method of learning, and caregivers need time to interact with experts and get feedback. The other commenter stated that self-instructional courses should be properly vetted. (2) Two additional commenters recommended that the optional orientation and annual training regarding child nutrition, age-appropriate foods and snacks, and ways to develop age-appropriate activities and games that promote active play should be changed to mandated training.

Response: This rule was not proposed for public comment; therefore, these comments are outside the scope of the proposed rulemaking. Note: (1) This rule was proposed for public comment earlier in the year in response to the federal reauthorization of the Child Care and Development Block Grant (CCDBG). The rule changes made some significant changes to the required training curriculum and became effective on September 1, 2016. The self-instructional training hours issue was changed and discussed in the previous rule adoption. (2) Training on nutrition and active play are currently available through AgriLife and elsewhere. With the September 1, 2016 CCDBG changes to the training curriculum for centers, additional changes for training at this time will be confusing and burdensome. In addition, more mandated annual training will probably require an increase in the actual number of hours of annual training that each employee will need, which will result in additional costs for the provider.

Comment concerning §746.1315, relating to first-aid and CPR training: The commenter disagreed with allowing first-aid training to be conducted through self-instructional training. The commenter believes that face-to-face instruction is necessary and self-instruction courses should be properly vetted.

Response: DFPS disagrees with the commenter and adopts this rule without change. Most, if not all, professions are allowing web-based training and not mandating in-person training. The commenter pointed out that this change was only made with regard to first-aid and not CPR, because CPR training does require face-to-face instructional training. A 50% to 80% increase was made to the self-instructional training standards for child-care homes in 2012 with no noticeable increase in complaints or quality of training. Ultimately though, it is the center's responsibility to assess the quality of the training curriculum provided to staff, including first-aid training.

Comment concerning §746.1317, relating to training criteria: The commenter recommended deleting the option that allows training to be provided by someone with a "generally recognized credential . . . or documented knowledge relevant to the training." The commenter stated this option allows for loopholes in the training requirements.

Response: DFPS disagrees with the commenter but adopts this rule with changes. This training option cannot be deleted because it is mandated by HRC §42.0421(f). However, DFPS is adopting this rule with changes to delete a masculine pronoun and to remove language that self-instructional training may not be used for CPR, because it is redundant and can already be found in §746.1315. This change will also make this rule consistent with corresponding rules in Chapters 744 and 747.

No comments concerning §746.1323, relating to a caregiver or director obtaining training from another operation. However, DFPS is adopting this rule with changes to reorganize the rule and clarify the wording of the rule to improve readability and ease of understanding without impacting the content of the rule.

Comments concerning §746.2205, relating to an activity plan: Two commenters recommended changes to this rule to clarify that: (1) media viewing is not permitted during meal or snack time; (2) a TV/video or computer should not be used for more than 30 minutes once a week and only for educational purposes; and (3) outdoor activities should be provided two or three times a week, should include structured and unstructured play, should include vigorous activity, and centers should have written policies to promote physical activity. Another commenter also supports encouraging outdoor play to reduce child obesity.

Response: DFPS disagrees with the commenters and adopts this rule without change. (1) §746.2207 already states that media viewing cannot be used as an activity unless it is related to the planned activity. This rule would not allow children just to

watch television or a movie while eating. (2) Section 746.2205 is not appropriate to make the change related to the length of time that a TV/video or computer may be used, because §746.2207 (which is not proposed for change) already addresses the issue at two hours per day. For such a major change (from two hours a day to 30 minutes a week), it would not be prudent to make the change to the rule without first proposing the change to allow centers and parents an opportunity to comment. Even so, DFPS will need to conduct additional research regarding this issue before such a proposed change would be contemplated. There are currently some proponents for more frequent computer usage for educational purposes and in response to teacher directed use. (3) Sections 746.2507, 746.2607, and 746.2707 currently address the commenter's activity issues for children with the exception of a policy requirement, which is not necessary in light of these rules.

No comments concerning §746.2415, relating to equipment that is prohibited for infants. However, DFPS is adopting this rule with changes, which are in response to comments related to corresponding rules in Chapters 748 and 749. The changes clarify that cribs must be bare except for a tight fitting sheet and a crib mattress cover that is designed for the crib, is tight fitting and thin, and is not designed to make the sleep surface softer. These changes also make the rule consistent with corresponding rules in Chapters 744, 747, 748, and 749.

Comment concerning §746.2421, relating to an infant's written feeding instructions: To be consistent with other rule changes in this chapter, the commenter recommended that any "health-care professional", not just a "physician", be allowed to provide written feeding instructions for infants.

Response: DFPS agrees with the commenter and adopts this rule with the appropriate change.

No comments concerning §§746.2426, 746.2427, and 746.2428, relating to infants sleeping in restrictive devices, sleeping on their backs, and swaddling, respectively. However, DFPS is adopting these three rules with changes to allow an exception in all of these instances if there is a completed Sleep Exception Form with a signed statement from a health-care professional stating that the exception is medically necessary.

No comments concerning §746.2803, relating to methods of discipline and guidance that may be used. However, DFPS is adopting this rule with changes to correct a grammatical error and to clarify the wording of the rule to improve readability and ease of understanding.

Comments concerning §§746.3305, 746.3315, and 746.3316, relating to nutrition: Two commenters recommended that the nutrition rules should also address children younger than 12 months of age, should align with the Child and Adult Care Food Program (CACFP), and at a minimum should specify nine requirements that were listed by the commenter. One additional commenter supports revising standards to reflect the nutrition requirements of the state obesity prevention program.

Response: These rules were not proposed for public comment; therefore, these comments are outside the scope of the proposed rulemaking. However, DFPS does plan on working with the Department of State Health Services (DSHS), advocates, parents, and providers to determine whether the current rules regarding nutrition need to be updated.

Comments concerning §746.3309, relating to parents providing meals and snacks: Two commenters recommended a change to this rule for those centers that ask parents to supply a child's lunches and/or snacks. The commenters stated that given the importance of nutrition in a child's first few years and the absence of other channels for effectively communicating with parents, the state should leverage the child care provider's relationship with parents to require the centers to give information to parents regarding the nutritional value of food, sample menus, food allergies, and choking hazards.

Response: DFPS agrees in part and disagrees in part with the commenters and adopts this rule with changes. DFPS agrees that nutrition for young children is important and currently has information in the Technical Assistance Library on the DFPS website regarding age-appropriate nutrition, food allergies, and choking hazards (but not sample menus). DFPS currently encourages providers to communicate with parents about nutrition, food allergies, and choking hazards. However, in some instances parents may already be getting this information through other programs (for example, parents currently receiving benefits through the CACFP or Women, Infants, and Children (WIC)). DFPS does not believe a mandatory rule is necessary at this time. In any event, it would not be prudent to make this change to the rule without first proposing the change to allow centers and parents an opportunity to comment on the change. DFPS will add information to the current Helpful Information box immediately following the rule that is located on the DFPS public website version of the minimum standards to further encourage communication with the parents regarding nutrition, food allergies, and choking hazards. In addressing a separate issue from the comment, DFPS is making the wording of this rule consistent with its corresponding rule in Chapter 747 by adding language to clarify that a parent may provide baked goods for a celebration party at the center, and clarifying the wording of the rule to improve readability and ease of understanding.

Comment concerning §746.3407(13), relating to a healthy environment for children: One commenter really appreciated the addition that requires centers to use, store, and dispose of hazardous materials "as recommended by the manufacturer".

Response: This rule was not proposed for public comment; therefore, this comment is outside the scope of the proposed rulemaking. Note: DFPS appreciates the comment even though the changes were proposed for public comment earlier in the year and became effective on September 1, 2016.

No comments concerning §746.3415, relating to when employees must wash their hands. However, DFPS is adopting this rule with changes to correct a grammatical error.

Comment concerning §746.3420, relating to the use of hand sanitizer: The commenter disagrees with allowing the use of hand sanitizer, except in the case of a field trip where water and soap are not available. Her experience is that hand sanitizer dries out sensitive skin and does not provide the same cleanliness as soap and water. She would like to see medical research that shows it is appropriate for young children.

Response: DFPS disagrees with the commenter but adopts this rule with changes. This new rule, which allows hand sanitizers under certain conditions, is consistent with the recommendations of the American Association of Pediatrics and the national standards of Caring for Our Children, which represent the best evidence, expertise, and experience in the country on quality health and safety practices and policies in early childhood care. However, DFPS is clarifying that hand sanitizers may only be used when all of the conditions in the rule are met, and is reorganizing

the order of the conditions to improve the understanding of the rule. DFPS is also adding a Helpful Information box immediately following the rule that is located on the DFPS public website version of the minimum standards that states hand sanitizers should be used in moderation and should not be substituted for all hand washing.

Comment concerning §746.3501, relating to the steps for diaper changing: The commenter disagrees with allowing powder with or without the parent's permission and believes powder should not be allowed because of the recent findings connecting talcum powder to cancer.

Response: DFPS agrees with the commenter; however, DFPS is making limited changes to the rule. The proposed change inadvertently allowed the use of powder when changing a diaper with or without the parent's permission. It would not be prudent to completely disallow the use of powders without first proposing a rule change to allow centers and parents an opportunity to comment on such a change. DFPS is reverting to the original premise of only allowing powder with the parent's permission, with some clarification changes to improve readability. DFPS is also making some clarification changes to paragraphs (2) and (3) to improve readability and to be consistent with similar changes made in its corresponding rule in Chapter 747.

Comment concerning §746.3503, relating to equipment for diaper changing: For diaper changing surfaces above the floor, the commenter disagrees that a caregiver should have an option to only be facing the child instead of using safety mechanisms or keeping a hand on the child. The new standard does not specify how far away the caregiver can be from the child and puts the safety of children at risk.

Response: DFPS agrees with the commenter and has clarified the wording of the rule to make it clear that if the caregiver is using the option of facing the child when changing a diaper on a surface above the floor, then the caregiver must also be within an arm's length of the child at all times.

No comments concerning §746.3606, relating to when an ill child may return to care. However, DFPS is adopting this rule with changes to clarify the wording of the rule without changing the content to improve readability and ease of understanding, and to make it consistent with its corresponding rules in Chapters 744 and 747.

Comment concerning §746.3607, relating to how a caregiver should respond to an illness or injury that requires the immediate attention of a health-care professional: To be consistent with other changes made to the rules, when there is an illness or injury that requires the immediate attention of a health-care professional, the commenter recommended also contacting the physician "or health-care professional" identified in the child's record, because it may not be a physician.

Response: DFPS agrees with the commenter and adopts this rule with the appropriate change. In addition, DFPS is also deleting the word "critical" and adding language to make the question of the rule consistent with the answer, which applies to caregivers responding to an illness or injury "that requires the immediate attention of a health-care professional".

No comments concerning §746.3703, relating to ensuring the safety of children. However, DFPS is adopting this rule with changes to make it clear that prohibited tobacco products include smoking tobacco, e-cigarettes, and vaporizers. Oil diffusers would be allowable. This change is in response to a comment on a corresponding rule in Chapter 747.

No comments concerning §746.3707, relating to firearms allowed at the center. However, DFPS is adopting this rule with changes to clarify that while firearms and other weapons are prohibited on the premises of a center, the prohibition does not apply to personal vehicles. This clarification is needed because a new definition of "premises" was added to §746.123.

No comments concerning §746.3709, relating to toys that explode or shoot. However, DFPS is adopting this rule with changes to clarify the wording of the rule without changing the content to improve readability and ease of understanding, and to make it consistent with its corresponding rules in Chapters 744 and 747.

No comments concerning §746.3801, relating to medication. However, DFPS is adopting this rule with changes to delete a phrase that was added in the proposed amendment regarding the parent providing non-prescription medication, which was confusing and inadvertently altered the meaning of the rule.

No comments concerning §746.4609, relating to the maximum height allowed for the highest designated play surface if a center was licensed before 2010. However, DFPS is adopting this rule with changes to clarify that the grandfather date is September 1, 2010 (not December 1, 2010), when changes are made to the equipment the height requirements in §746.4607 must be met, and the wording of the question and answer to improve readability and ease of understanding.

No comments concerning §746.5305, relating to the mounting of fire extinguishers. However, DFPS is adopting this rule with changes to correct the grammar, so the answer and the question will be consistent.

No comments concerning §746.5621, relating to the communication requirements for a vehicle when transporting children. However, DFPS is adopting this rule with changes to reorganize the rule and clarify the wording of the rule to improve readability and ease of understanding.

There were also some general comments that were made:

Comment: The commenter wanted better training, but was not specific about the recommendation.

Response: No specific rule on training was proposed for public comment; therefore, this comment is outside the scope of the proposed rulemaking. Note: effective September 1, 2016 DFPS made numerous changes to the training requirements for centers in response to the federal reauthorization of the CCDBG.

Comment concerning vaccine-preventable diseases for employees: The commenter is concerned that the immunization requirements for caregivers are set as part of the facility's operational policies, and not all facilities have strong policies in place. The commenter encourages DFPS to establish tools to help facilities develop more effective policies and make a facility's policies more available to the public to help parents make informed decisions about selecting a center.

Response: The relevant rule for vaccine-preventable diseases is §746.3611, which was not proposed for public comment. Therefore, this comment is outside the scope of the proposed rulemaking. Note: HRC §42.04305 was passed in 2013, the 83rd Legislative Session, and established the type of policies a facility must have in relation to employees and vaccine-preventable diseases. Any changes to required policies would need to be

consistent with the statute. DFPS will look at developing further tools for facilities and look at the possibility of encouraging on-line publication of policies within fiscal restraints.

Comments concerning Early Childhood Intervention (ECI): The commenter made three recommendations relating to ECI: (1) Add a standard that requires caregivers that suspect a child has a developmental delay or disability to make a referral to ECI, which the commenter stated is required by I.D.E.A.; (2) Allow ECI providers to serve children in the classroom versus removing them to an isolated room for services, unless special circumstances exist; and (3) Allow the current ECI criminal background checks to suffice for the CCL background check requirements.

Response: No rules regarding ECI or criminal background checks were proposed for public comment; therefore, the comments are outside of the scope of the proposed rulemaking. However, in response to each comment: (1) DFPS will meet with ECI and Legal staff to determine if additional rules and/or direction for centers are needed related to referrals to ECI; (2) the current language of §746.2201 already states that when appropriate ECI providers should be serving children in the child's current environment, which in most instances would mean the classroom. There are no rules that prevent a child from receiving ECI services in the classroom; (3) if a center does not employ or contract with a professional, the professional is only present in an official capacity, and parental consent is obtained before the professional has unsupervised access with the child, current §745.615(d) already excludes the necessity of a CCL background check for a professional who is licensed or required to have a background check to be compliant with another governmental entity's requirements. It appears that ECI would meet the requirements of this exclusion rule and would not require a CCL background check.

Comments concerning ratios: There were 67 commenters that recommended the ratios for children be lowered, expressed concern about DFPS stopping the statewide collection of data for a statewide study, and/or recommended that the study be resumed. Two commenters recommended that the ratios remain the same.

Response: No rules regarding ratios were proposed for public comment; therefore, the comments are outside the scope of the proposed rulemaking.

SUBCHAPTER A. PURPOSE AND DEFINITIONS

40 TAC §§746.103, 746.105, 746.107, 746.109

The repeals are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The repeals implement HRC §42.042.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER A. PURPOSE, SCOPE, AND DEFINITIONS

DIVISION 2. SCOPE

40 TAC §746.111, §746.113

The new sections are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The new sections implement HRC §42.042.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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DIVISION 3. DEFINITIONS

40 TAC §746.121, §746.123

The new sections are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The new sections implement HRC §42.042.

§746.123. What do certain words and terms mean when used in this chapter?

The words and terms used in this chapter have the meanings assigned to them under §745.21 of this title (relating to What do the following words and terms mean when used in this chapter?), unless another meaning is assigned in this section or another subchapter or unless the context clearly indicates otherwise. In addition, the following words and terms used in this chapter have the following meanings unless the context clearly indicates otherwise:

(1) Activity space--An area or room used for children's activities, including areas separate from a group's classroom.

(2) Administrative and clerical duties--Duties that involve the operation of a child-care center, such as bookkeeping, enrolling children, answering the telephone, and collecting fees.

(3) Admission--The process of enrolling a child in a child-care center. The date of admission is the first day the child is physically present in the center.

(4) Adult--A person 18 years old and older.

(5) Age-appropriate--Activities, equipment, materials, curriculum, and environment that are developmentally consistent with the chronological age of the child being served.

(6) Alternate care program--A program in which no child is in care for more than five consecutive days, and no child is in care for more than 15 days in one calendar month, regardless of the duration of each stay.

(7) Attendance--When referring to a child's attendance, the physical presence of a child at the child-care center's program on any given day or at any given time, as distinct from the child's enrollment in the child-care center.

(8) Bouncer seat--A stationary seat designed to provide gentle rocking or bouncing motion by an infant's movement, or by battery-operated movement. This type of equipment is designed for an infant's use from birth until the child can sit up unassisted.

(9) Caregiver--A person who is counted in the child/caregiver ratio, whose duties include the supervision, guidance, and protection of a child. As used in this chapter, a caregiver must meet the minimum education, work experience, and training qualifications required under Subchapter D of this chapter (relating to Personnel). A caregiver is usually an employee, but may also be a substitute, volunteer, or contractor (also see Division 5 of Subchapter D (relating to Substitutes, Volunteers, and Contractors)).

(10) Certified Child-Care Professional Credential--A credential given by the National Early Childhood Program Accreditation to a person working directly with children. The credential is based on assessed competency in several areas of child care and child development.

(11) Certified lifeguard--A person who has been trained in life saving and water safety by a qualified instructor, from a recognized organization which awards a certificate upon successful completion of the training. The certificate is not required to use the term "lifeguard," but the permit holder must be able to document that the certificate represents the type of training described.

(12) CEUs (continuing education units)--A standard unit of measure for adult education and training activities. One CEU equals ten clock hours of participation in an organized, continuing-education experience, under responsible, qualified direction and instruction. Although a person may obtain a CEU in many of the same settings as clock hours, the CEU provider must meet the criteria established by the International Association for Continuing Education and Training to be able to offer the CEU.

(13) Child --An infant, a toddler, a pre-kindergarten age child, or a school-age child.

(14) Child-care center--A child-care facility that is licensed to care for seven or more children for less than 24 hours per day, at a location other than the permit holder's home. If you were licensed before September 1, 2003, the location of the center could be in the permit holder's home.

(15) Child-care program--The services and activities provided by a child-care center.

(16) Child Development Associate Credential--A credential given by the Council for Professional Recognition to a person working directly with children. The credential is based on assessed competency in several areas of child care and child development.

(17) Clock hour--An actual hour of documented:

(A) Attendance at instructor-led training, such as seminars, workshops, conferences, early childhood classes, and other planned learning opportunities, provided by an individual/s as specified in §746.1317(a) of this title (relating to Must the training for my caregivers and the director meet certain criteria?); or

(B) Self-instructional training that was created by an individual/s, as specified in §746.137(a) and (b), or self-study training.

(18) Corporal punishment--The infliction of physical pain on a child as a means of controlling behavior. This includes spanking, hitting, slapping, or thumping a child.

(19) Days--Calendar days, unless otherwise stated.

(20) Employee--A person a child-care center employs full-time or part-time to work for wages, salary, or other compensation. Employees are all of the child-care center staff, including caregivers, kitchen staff, office staff, maintenance staff, the assistant director, the director, and the owner, if the owner is ever on site at the center or transports a child.

(21) Enrollment--The list of names or number of children who have been admitted to attend a child-care center for any given period of time; the number of children enrolled in a child-care center may vary from the number of children in attendance on any given day.

(22) Entrap--A component or group of components on equipment that forms angles or openings that could trap a child's head by being too small to allow the child's body to pass through, or large enough for the child's body to pass through but too small to allow the child's head to pass through.

(23) Field trips--Activities conducted away from the child-care center.

(24) Food service--The preparation or serving of meals or snacks.

(25) Frequent--More than two times in a 30-day period. Note: For the definition of "regularly or frequently present at an operation" as it applies to background checks, see §745.601 of this title (relating to What words must I know to understand this subchapter?).

(26) Garbage--Waste food or items that when deteriorating cause offensive odors and attract rodents, insects, and other pests.

(27) Group activities--Activities that allow children to interact with other children in large or small groups. Group activities include storytelling, finger plays, show and tell, organized games, and singing.

(28) Health-care professional--A licensed physician, a licensed advanced practice registered nurse (APRN), a licensed vocational nurse (LVN), a licensed registered nurse (RN), or other licensed medical personnel providing health care to the child within the scope of the license. This does not include medical doctors, nurses, or medical personnel not licensed to practice in the United States.

(29) Health check--A visual or physical assessment of a child to identify potential concerns about a child's health, including signs or symptoms of illness and injury, in response to changes in the child's behavior since the last date of attendance.

(30) High school equivalent:

(A) Documentation of a program recognized by the Texas Education Agency (TEA) or other public educational entity in another state, which offers similar training on reading, writing, and math skills taught at the high school level, such as a General Educational Development (GED) certificate; or

(B) Confirmation that the person received home-schooling that adequately addressed basic competencies such as basic reading, writing, and math skills, which would otherwise have been documented by a high school diploma.

(31) Individual activities--Opportunities for the child to work independently or to be away from the group, but supervised.

(32) Infant--A child from birth through 17 months.

(33) Inflatable--An amusement ride or device, consisting of air-filled structures designed for use by children, as specified by the manufacturer, which may include bouncing, climbing, sliding, or interactive play. They are made of flexible fabric, kept inflated by continuous air flow by one or more blowers, and rely upon air pressure to maintain their shape.

(34) Instructor-led training--Training characterized by the communication and interaction that takes place between the student and the instructor. The training must include an opportunity for the student to interact with the instructor to obtain clarifications and information beyond the scope of the training materials. For such an opportunity to exist, the instructor must communicate with the student in a timely fashion, including answering questions, providing feedback on skills practice, providing guidance or information on additional resources, and proactively interacting with students. Examples of this type of training include classroom training, web-based on-line facilitated learning, video-conferencing, or other group learning experiences.

(35) Janitorial duties--Those duties that involve the cleaning and maintenance of the child-care center building, rooms, furniture, etc. Cleaning and maintenance include such duties as cleansing carpets, washing cots, and sweeping, vacuuming, or mopping a restroom or a classroom. Sweeping up after an activity or mopping up a spill in a classroom that is immediately necessary for the children's safety is not considered a janitorial duty.

(36) Local sanitation official--A sanitation official designated by the city or county government.

(37) Natural environment--Settings that are natural or normal for all children of an age group without regard to ability or disability. For example, the primary natural group setting for a toddler with a disability would be a play group or whatever setting exists for toddlers without disabilities.

(38) Permit is no longer valid--For purposes of this chapter, a permit remains valid through the renewal process. A permit only becomes invalid when your center voluntarily closes or must close because of an enforcement action in Subchapter L of Chapter 745 (relating to Enforcement Actions).

(39) Premises--Includes the child-care center, any lots on which the center is located, any outside ground areas, any outside play areas, and the parking lot.

(40) Regular--On a recurring, scheduled basis. Note: For the definition of "regularly or frequently present at an operation" as it applies to background checks, see §745.601 of this title (relating to What words must I know to understand this subchapter?).

(41) Restrictive device--Equipment that places the body of a child in a position that may restrict airflow or cause strangulation; usually, the child is placed in a semi-seated position. Examples of restrictive devices are car seats, swings, bouncy seats, and high chairs.

(42) Safety belt--A lap belt and any shoulder straps included as original equipment on or added to a vehicle.

(43) Sanitize--The use of a product (usually a disinfecting solution) that is registered by the Environmental Protection Agency (EPA) which substantially reduces germs on inanimate objects to levels considered safe by public health requirements. Many bleach and hydrogen peroxide products are EPA-registered. You must follow the product's labeling instructions for sanitizing (paying particular attention to any instructions regarding contact time and toxicity on surfaces likely to be mouthed by children, such as toys and crib rails). For an EPA-registered sanitizing product or disinfecting solution that does not include labelling instructions for sanitizing (a bleach product, for example), you must follow these steps in order:

(A) Washing with water and soap;

(B) Rinsing with clear water;

(C) Soaking in or spraying on a disinfecting solution for at least two minutes. Rinsing with cool water only those items that children are likely to place in their mouths; and

(D) Allowing the surface or item to air-dry.

(44) School-age child--A child who is five years of age and older, and who will attend school at or away from the child-care center in August or September of that year.

(45) Self-instructional training--Training designed to be used by one individual working alone and at the individual's own pace to complete lessons or modules. Lessons or modules commonly include questions with clear right and wrong answers. An example of this type of training is web-based training. Self-study training is also a type of self-instructional training.

(46) Self-study training--Non-standardized training where an individual reads written materials, watches a training video, or listens to a recording to obtain certain knowledge that is required for annual training. Self-study training is limited to three hours of annual training per year.

(47) Special care needs--A child with special care needs is a child who has a chronic physical, developmental, behavioral, or emotional condition and who also requires assistance beyond that required by a child generally to perform tasks that are within the typical chronological range of development, including the movement of large and/or small muscles, learning, talking, communicating, self-help, social skills, emotional well-being, seeing, hearing, and breathing.

(48) State or local fire marshal--A fire official designated by the city, county, or state government.

(49) Toddler--A child from 18 months through 35 months.

(50) Universal precautions--An approach to infection control where all human blood and certain human bodily fluids are treated as if known to be infectious for HIV, HBV, and other blood-borne pathogens.

(51) Water activities--Related to the use of swimming pools, splashing/wading pools, sprinkler play, or other bodies of water.

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SUBCHAPTER B. ADMINISTRATION AND COMMUNICATION
DIVISION 1. PERMIT HOLDER RESPONSIBILITIES

40 TAC §746.201

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The amendment implements HRC §42.042.

§746.201. What are my responsibilities as the permit holder?

You are responsible for the following:

(1) Developing and implementing your child-care center's operational policies, which must comply with or exceed the minimum standards specified in this subchapter;

(2) Developing written personnel policies, including job descriptions, job responsibilities, and requirements;

(3) Making provisions for training that comply with Division 4, Subchapter D of this chapter (relating to Professional Development);

(4) Designating a child-care center director who meets minimum standard qualifications and has daily, on-site responsibility for the operation of the child-care center;

(5) Reporting and ensuring your employees and volunteers report suspected abuse, neglect, or exploitation directly to DFPS without delegating this responsibility, as required by the Texas Family Code, §261.101;

(6) Ensuring all information related to background checks is kept confidential, as required by the Human Resources Code, §40.005(d) and (e);

(7) Ensuring parents have the opportunity to visit the child-care center any time during the child-care center's hours of operation to observe their child, program activities, the building, the grounds, and the equipment without having to secure prior approval;

(8) Maintaining liability insurance, as required by the Human Resources Code §42.049, if we license you to care for 13 or more children;

(9) Complying with the child-care licensing law found in Chapter 42 of the Human Resources Code, the applicable minimum standards, and other applicable rules in the Texas Administrative Code;

(10) Reporting to DFPS any Department of Justice substantiated complaints related to Title III of the Americans with Disabilities Act, which applies to commercial public accommodations; and

(11) Ensuring the total number of children in care at the center or away from the center, such as during a field trip, never exceeds the licensed capacity of the center.

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DIVISION 2. REQUIRED NOTIFICATION

40 TAC §746.301, §746.303

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The amendments implement HRC §42.042.

§746.301. What changes regarding my child-care center must I notify Licensing about before making the change?

You must notify us in writing before:

(1) Changing the address or location of the child care center;

(2) Adding to or reducing indoor or outdoor space;

(3) Reducing the number of toilets or sinks;

(4) Adding a swimming pool or other permanent body of water;

(5) Changing the age range of children to be cared for;

(6) Changing the hours, days, or months of operation;

(7) Offering new services, relating to minimum standards found in this chapter, such as a get-well care program, nighttime care, transportation, or field trips;

(8) Planned closure of five consecutive days or more, during designated hours of operation, when the operation is not caring for children, with the exception of nationally recognized holidays;

(9) Going out of business; or

(10) There is a change in ownership of a center as specified in §745.437 of this title (relating to What is a change in ownership of an operation?).

§746.303. What changes must I notify Licensing of regarding the child-care center's designee, governing body, and director?

You must notify us in writing, no later than five days after a change is made, regarding:

(1) The designee of your center that is not a sole proprietorship. The designee for a sole proprietorship is the owner/sole proprietor;

(2) The board chair for a corporate facility or other executive officer of the governing body;

(3) The address of the center's designee or governing body; and

(4) The center director.

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DIVISION 3. REQUIRED POSTINGS

40 TAC §746.405

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The amendment implements HRC §42.042.

§746.405. What telephone numbers must I post and where must I post them?

You must post in a prominent place the following telephone numbers:

(1) 911 or, if 911 is not available in your area, you must post the telephone numbers for:

(A) Emergency medical services;

(B) Law enforcement; and

(C) Fire department;

(2) Poison control;

(3) The Texas Abuse and Neglect Hotline (1-800-252-5400);

(4) The local Licensing office telephone number; and

(5) The child-care center telephone number, name, and address.

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DIVISION 4. OPERATIONAL POLICIES

40 TAC §§746.501, 746.503, 746.505

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The amendments implement HRC §42.042.

§746.501. What written operational policies must I have?

(a) You must develop written operational policies and procedures that at a minimum address each of the following:

(1) Hours, days, and months of operation;

(2) Procedures for the release of children;

(3) Illness and exclusion criteria;

(4) Procedures for dispensing medication or a statement that medication is not dispensed;

(5) Procedures for handling medical emergencies;

(6) Procedures for parental notifications;

(7) Discipline and guidance that is consistent with Subchapter L of this title (relating to Discipline and Guidance). A copy of Subchapter L may be used for your discipline and guidance policy;

(8) Suspension and expulsion of children;

(9) Safe sleep for infants 12 months old or younger that is consistent with the rules in Subchapter H of this chapter (relating to Basic Requirements for Infants) that relate to sleep requirements and restrictions, including sleep positioning, and crib requirements and restrictions, including mattresses, bedding, blankets, toys, and restrictive devices;

(10) Meals and food service practices;

(11) Immunization requirements for children, including tuberculosis screening and testing if required by your regional Texas Department of State Health Services or local health authority;

(12) Hearing and vision screening requirements;

(13) Enrollment procedures, including how and when parents will be notified of policy changes;

(14) Transportation, if applicable;

(15) Water activities, if applicable;

(16) Field trips, if applicable;

(17) Animals, if applicable;

(18) Procedures for providing and applying, as needed, insect repellent and sunscreen, including what types will be used, if applicable;

(19) The procedures for parents to review and discuss with the child-care center director any questions or concerns about the policies and procedures of the child-care center;

(20) The procedures for parents to participate in the child-care center's operation and activities;

(21) The procedures for parents to review a copy of the child-care center's most recent Licensing inspection report and how the parent may access the minimum standards online;

(22) Instructions on how a parent may contact the local Licensing office, access the Texas Abuse and Neglect Hotline, and access the DFPS website;

(23) Your emergency preparedness plan;

(24) Your provisions to provide a comfortable place with an adult sized seat in your center or within a classroom that enables a mother to breastfeed her child. In addition, your policies must inform parents that they have the right to breastfeed or provide breast milk for their child while in care;

(25) Preventing and responding to abuse and neglect of children, including:

(A) Required annual training for employees;

(B) Methods for increasing employee and parent awareness of issues regarding child abuse and neglect, including warning signs that a child may be a victim of abuse or neglect and factors indicating a child is at risk for abuse or neglect;

(C) Methods for increasing employee and parent awareness of prevention techniques for child abuse and neglect;

(D) Strategies for coordination between the center and appropriate community organizations; and

(E) Actions that the parent of a child who is a victim of abuse or neglect should take to obtain assistance and intervention, including procedures for reporting child abuse or neglect;

(26) Procedures for conducting health checks, if applicable; and

(27) Vaccine-preventable diseases for employees, unless your center is in the home of the permit holder. The policy must address the requirements outlined in §746.3611 of this title (relating to What must a policy for protecting children from vaccine-preventable diseases include?).

(b) You must also inform the parents that:

(1) They may visit the child-care center at any time during your hours of operation to observe their child, the program activities, the building, the premises, and the equipment without having to secure prior approval; and

(2) Under the Texas Penal Code any area within 1000 feet of a child-care center is a gang-free zone, where criminal offenses related to organized criminal activity are subject to a harsher penalty. You may inform the parents by:

(A) Providing this information in the operational policies;

(B) Distributing the information in writing to the parents; or

(C) Informing the parents verbally as part of an individual or group parent orientation.

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40 TAC §746.507

The repeal is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The repeal implements HRC §42.042.

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SUBCHAPTER C. RECORD KEEPING

DIVISION 1. RECORDS OF CHILDREN

40 TAC §§746.603, 746.613, 746.615, 746.623, 746.631

The amendments and new section are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The amendments and new section implement HRC §42.042.

§746.603. What records must I have for children in my care and how long must I keep them?

(a) You must maintain the following records for each child enrolled in your child-care center:

(1) Child-care enrollment agreement specified in §746.503 of this title (relating to Must I provide parents with a copy of my operational policies?);

(2) Admission information specified in §746.605 of this title (relating to What admission information must I obtain for each child?);

(3) Statement of the child's health from a health-care professional;

(4) Immunization records;

(5) Tuberculosis screening and testing information, if required by your regional Texas Department of State Health Services or local health authority;

(6) Vision and hearing screening results, if applicable;

(7) Licensing *Incident/Illness Report* form, if applicable;

(8) A daily tracking system for when a child's care begins and ends as specified in §746.631 of this title (relating to Must I have a system for signing children in and out of my care?);

(9) Medication administration records, if applicable; and

(10) A copy of any health-care professional recommendations or orders for providing specialized medical assistance to the child. In some instances minimum standards allow for a deviation from a minimum standard with written documentation from a health-care professional. You must also maintain this written documentation in the child's record.

(b) These records must at a minimum be kept at the child-care center and must be available during hours of operation and for the following periods of time:

(1) Medication administration records for three months after administering the medication;

(2) Health-care professional recommendations or orders for three months after the health-care professional has indicated that the specialized medical assistance is no longer needed; and

(3) All other records noted in subsection (a) of this section for three months after the child's last day in care.

§746.623. What documentation is acceptable for an immunization record?

Acceptable documentation includes:

(1) An official immunization record generated from a state or local health authority, including a record from another state. Examples include a record from the Texas Immunization Registry, a copy of the current immunization record that is on file at the pre-kindergarten or school that the child attends, or the health passport for a child in the conservatorship of DFPS. The record must include:

(A) The child's name and date of birth;

(B) The type of vaccine and number of doses; and

(C) The month, day, and year the child received each vaccination; or

(2) An official immunization record or photocopy. An example includes a record from a doctor's office or a pharmacy. The record must include:

(A) The child's name and date of birth;

(B) The type of vaccine and number of doses;

(C) The month, day, and year the child received each vaccination;

(D) The signature (including a rubber stamp or electronic signature) of the health-care professional who administered the vaccine, or another health-care professional's documentation of the immunization as long as the name of the health-care professional that administered the vaccine is documented; and

(E) Clinic contact information, if the immunization record is generated from an electronic health record system.

§746.631. Must I have a system for signing children in and out of my care?

(a) Yes. You must have a tracking system for each child coming and going from your child-care center throughout the day. This tracking system must include the name of each child; the date, time of arrival, and time of departure; and the employee or parent's initials or other unique identifier code.

(b) All caregivers must have access to the tracking system to determine which children are in care during their work shift, changes in caregivers, and emergency evacuations.

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40 TAC §§746.615, 746.617, 746.619, 746.621

The repeals are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The repeals implement HRC §42.042.

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DIVISION 2. RECORDS OF ACCIDENTS AND INCIDENTS

40 TAC §746.703

The repeal is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

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40 TAC §746.705

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DIVISION 3. RECORDS THAT MUST BE KEPT ON FILE AT THE CHILD-CARE CENTER

40 TAC §746.801, §746.803

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The amendments implement HRC §42.042.

§746.801. What records must I keep at my child-care center?

You must maintain and make the following records available for our review upon request, during hours of operation. Paragraphs (14), (15), and (16) of this section are optional, but if provided will allow Licensing to avoid duplicating the evaluation of standards that have been evaluated by another state agency within the past year:

(1) Children's records, as specified in Division 1 of this subchapter (relating to Records of Children);

(2) Infant feeding instructions, as required in §746.2421 of this title (relating to What written feeding instructions must I obtain for an infant not ready for table food?), if applicable;

(3) Personnel and training records according to Division 4 of this subchapter (relating to Personnel Records);

(4) Licensing *Child-Care Center Director's Certificate;*

(5) Attendance records or time sheets listing all days and hours worked for each employee;

(6) Verification of liability insurance or notice of unavailability, if applicable;

(7) Medication records, if applicable;

(8) Playground maintenance checklists;

(9) Pet vaccination records, if applicable;

(10) Safety documentation for emergency drills, fire extinguishers, and smoke detectors;

(11) Most recent fire inspection report, including any written approval from the fire marshal to provide care above or below ground level, if applicable;

(12) Most recent sanitation inspection report;

(13) Most recent gas inspection report, if applicable;

(14) Most recent Texas Department of State Health Services' immunization compliance review form, if applicable;

(15) Most recent Texas Department of Agriculture Child and Adult Care Food Program (CACFP) report, if applicable;

(16) Most recent local workforce board Child-Care Services Contractor inspection report, if applicable;

(17) Record of pest extermination, if applicable;

(18) Most recent DFPS form certifying that you have reviewed each of the bulletins and notices issued by the United States Consumer Product Safety Commission regarding unsafe children's products and that there are no unsafe children's products in use or accessible to children in the child-care center;

(19) A daily tracking system for when a child's care begins and ends as specified in §746.631 of this title (relating to Must I have a system for signing children in and out of my care?);

(20) Documentation for cribs as specified in §746.2409(a)(9) of this title (relating to What specific safety requirements must my cribs meet?), if applicable; and

(21) Documentation for vehicles specified in §746.5627 of this title (relating to What documentation must I keep at the child-care center for each vehicle used to transport children in care?), if applicable.

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DIVISION 4. PERSONNEL RECORDS

40 TAC §746.903, §746.905

The repeals are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

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40 TAC §746.909

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SUBCHAPTER D. PERSONNEL
DIVISION 1. CHILD-CARE CENTER DIRECTOR

40 TAC §§746.1015, 746.1017, 746.1021, 746.1031, 746.1037, 746.1039, 746.1057

The amendments and new section are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The amendments and new section implement HRC §42.042.

§746.1015. What qualifications must the director of my child-care center licensed for 13 or more children meet?
Except as otherwise provided in this division, the director of a child-care center licensed for 13 or more children must be at least 21 years of age, have a high school diploma or its equivalent, and meet one of the following combinations of education and experience, as defined in §746.1021 of this title (relating to What constitutes experience in a licensed child-care center, or in a licensed or registered child-care home?):
Figure: 40 TAC §746.1015

§746.1017. What qualifications must the director of my child-care center licensed for 12 or fewer children meet?
Except as otherwise provided in this division, the director of a child-care center licensed for 12 or fewer children must be at least 21 years old, have a high school diploma or its equivalent, and meet one of the following combinations of education and experience, as defined in §746.1021 of this title (relating to What constitutes experience in a licensed child-care center, or in a licensed or registered child-care home?):
Figure: 40 TAC §746.1017

§746.1021. What constitutes experience in a licensed child-care center, or in a licensed or registered child-care home?

(a) Only the following types of experience may be counted as experience in a licensed child-care center:

(1) Experience as a director, assistant director, or as a caregiver working directly with children in a DFPS licensed or certified child-care center (or similar type of day care center that was formerly licensed, certified, or accredited by DFPS); and

(2) Experience as a director, assistant director, or caregiver working directly with children in a licensed or certified child-care center in another state or country.

(b) Only experience working directly with children in a DFPS licensed or registered child-care home (or in a group day-care home that was formerly licensed by DFPS) as an assistant caregiver, substitute caregiver, or primary caregiver may be counted as experience in a licensed or registered child-care home.

(c) You must have obtained all work experience in a full-time capacity or its equivalent in a part-time capacity. Full-time is defined as at least 30 hours per week. The work experience may be paid or unpaid.

§746.1031. What documentation must I provide to show that my director meets the child development and management education qualifications?
If requested by Licensing, you must provide original transcripts and supporting documentation, such as a credit course catalog description or a course syllabus or outline to determine whether the course is recognized as child development or management.

§746.1037. May clock hours or CEUs (continuing education units) be substituted for any of the educational requirements in this division?

(a) Clock hours or CEUs may only be substituted for the required credit hours in child development and management.

(b) 50 clock hours or five CEUs may only be substituted for every three college credit hours required in child development and/or management.

(c) The documentation to verify the clock hours or CEUs must be as specified in §746.1329 of this title (relating to What documentation must I provide to Licensing to verify that training requirements have been met?).

§746.1039. What additional documentation must I submit to Licensing to show my child-care center director is qualified and when must I submit it?

(a) In addition to showing that your director meets the minimum qualifications for an employee (and minimum qualifications for a caregiver, if applicable), you must submit the following for each director at your child-care center:

(1) A completed Licensing *Personal History Statement* form specifying the education and experience of your designated director;

(2) A completed Licensing *Governing Body/Director Designation* form;

(3) An original and current Licensing *Child-Care Center Director's Certificate* form; or an original college transcript or original training certificates which verify the educational requirements; and

(4) Complete dates, names, addresses, and telephone numbers which support the required experience.

(b) You must submit the information to us:

(1) As part of a new application for a permit; or

(2) Within five days of designating a new director.

§746.1057. What happens if my Child-Care Center Director's Certificate expires?

We will give you a deadline for your director to submit the required documentation or for you to designate another qualified director. If your director allows the *Child-Care Center Director's Certificate* to expire without submitting the required documentation confirming that the credential is current, then your center will no longer meet the minimum standards for a child-care center director.

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40 TAC §§746.1019, 746.1031, 746.1033, 746.1035, 746.1041, 746.1043

The repeals are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The repeals implement HRC §42.042.

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DIVISION 2. CHILD-CARE CENTER EMPLOYEES AND CAREGIVERS

40 TAC §§746.1101, 746.1103, 746.1113, 746.1115

The repeals are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

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40 TAC §§746.1105, 746.1107, 746.1109

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The amendments implement HRC §42.042.

§746.1105. What minimum qualifications must each of my child-care center employees meet?

Each child-care center employee must:

(1) Meet the requirements in Subchapter F of Chapter 745 of this title (relating to Background Checks);

(2) Have a current record of a tuberculosis examination, showing the employee is free of contagious TB, if required by the Texas Department of State Health Services or local health authority;

(3) Complete a notarized Licensing *Affidavit for Applicants for Employment* form as specified in Human Resources Code, §42.059; and

(4) Complete orientation to your child-care center as specified in Division 4 of this subchapter (relating to Professional Development).

§746.1107. What additional minimum qualifications must each of my caregivers meet?

Except as otherwise provided in this division, each caregiver must comply with minimum standards for employees and must:

(1) Be at least 18 years of age;

(2) Have a:

(A) High school diploma;

(B) High school equivalent; or

(C) High school certificate of coursework completion as defined in Texas Education Code, §28.025(d); and

(3) Complete eight hours of the required 24 hours of pre-service training, as specified in Division 4 of this subchapter (relating to Professional Development) before being counted in the child/caregiver ratio.

§746.1109. When may I employ a person under the age of 18 or a person who does not have a high school diploma or equivalent as a caregiver?

(a) You may employ a 16 or 17 year old who has a high school diploma or its equivalent and count the person in the child/caregiver ratio, provided that:

(1) You don't leave the person alone with sole responsibility for or in charge of an individual child, a group of children, or the child-care center;

(2) The person works in the same room with and is supervised by a caregiver qualified under §746.1107 of this title (relating to What additional minimum qualifications must each of my caregivers meet?); and

(3) The person has completed a child-care-related career program, which:

(A) The Texas Education Agency (including a charter school), the Texas Private School Accreditation Commission, other similar educational entity in another state, or federal agency approves; or

(B) A home-school approves, and the person completes all 24 hours of pre-service training before being placed in a room with children.

(b) You may employ a 16, 17, or 18 year old who attends high school but has not graduated and count the person in the child/caregiver ratio, provided that:

(1) You don't leave the person alone with sole responsibility for or in charge of an individual child, a group of children, or the child-care center;

(2) The person works in the same room with and is supervised by a caregiver qualified under §746.1107 of this title;

(3) The person is currently enrolled in or has completed a child-care-related career program, which:

(A) The Texas Education Agency (including a charter school), the Texas Private School Accreditation Commission, other similar educational entity in another state, or federal agency approves; or

(B) A home-school approves, and the person completes all 24 hours of pre-service training before being placed in a room with children; and

(4) The person is expected to obtain a high school diploma or equivalent.

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DIVISION 3. GENERAL RESPONSIBILITIES FOR CHILD-CARE CENTER PERSONNEL

40 TAC §746.1203

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

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DIVISION 4. PROFESSIONAL DEVELOPMENT

40 TAC §746.1301, §746.1325

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40 TAC §§746.1301, 746.1315 - 746.1317, 746.1319, 746.1323

The amendments and new section are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The amendments and new section implement HRC §42.042.

§746.1301. What training must I ensure that my employees and caregivers have?

You must make sure that employees and caregivers have the training required in the following chart:
Figure: 40 TAC 746.1301

§746.1317. Must the training for my caregivers and the director meet certain criteria?

(a) Training may include clock hours or CEUs provided by:

(1) A training provider registered with the Texas Early Childhood Professional Development System Training Registry, maintained by the Texas Head Start State Collaboration Office;

(2) An instructor who teaches early childhood development or another relevant course at a secondary school or institution of higher education accredited by a recognized accrediting agency;

(3) An employee of a state agency with relevant expertise;

(4) A physician, psychologist, licensed professional counselor, social worker, or registered nurse;

(5) A person who holds a generally recognized credential or possesses documented knowledge relevant to the training the person will provide;

(6) A director at your child-care center who has demonstrated core knowledge in child development and caregiving if:

(A) Providing training to the director's own staff; and

(B) Your child-care center has not been on probation, suspension, emergency suspension, or revocation in the two years preceding the training or been assessed an administrative penalty in the two years preceding the training; or

(7) A person who has at least two years of experience working in child development, a child development program, early childhood education, a childhood education program, or a Head Start or Early Head Start program and:

(A) Has a current Child Development Associate (CDA) credential; or

(B) Holds at least an associate's degree in child development, early childhood education, or a related field.

(b) Training may include clock hours or CEUs obtained through self-instructional materials, if the materials were developed by a person who meets one of the qualifications in subsection (a) of this section.

(c) All training, including instructor-led and self-instructional training, must include:

(1) Specifically stated learning objectives;

(2) A curriculum, which includes experiential or applied activities;

(3) An evaluation/assessment tool to determine whether the person has obtained the information necessary to meet the stated objectives; and

(4) A certificate of successful completion from the training source.

§746.1323. If I hire a caregiver or a director that received training at another operation, may these hours count towards the annual training requirement at my center?
Training received at another operation can be applied towards the annual training requirement, if:

(1) The caregiver or director provides documentation of training as specified in §746.1329 of this title (relating to What documentation must I provide to Licensing to verify that training requirements have been met?);

(2) The person obtained the training from a child-care center, a school-age or before or after-school program, or a child-care home that we license or register; and

(3) The training was obtained within two months before coming to work for your child-care center.

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DIVISION 5. VOLUNTEERS, SUBSTITUTES, AND CONTRACTORS

40 TAC §746.1401, §746.1403

The repeals are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that

the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

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DIVISION 5. SUBSTITUTES, VOLUNTEERS, AND CONTRACTORS

40 TAC §746.1401

The new section is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

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SUBCHAPTER F. DEVELOPMENTAL ACTIVITIES AND ACTIVITY PLAN

40 TAC §746.2205

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

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SUBCHAPTER H. BASIC CARE REQUIREMENTS FOR INFANTS

40 TAC §§746.2401, 746.2403, 746.2405, 746.2407, 746.2409, 746.2411, 746.2413, 746.2415, 746.2417, 746.2419, 746.2421, 746.2425 - 746.2428, 746.2431

The amendments and new sections are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The amendments and new sections implement HRC §42.042.

§746.2415. What specific types of equipment am I prohibited from using with infants?

(a) You may not use the following equipment for infants, which has been identified as unsafe for infants by the Consumer Product Safety Commission and the American Academy of Pediatrics:

(1) Baby walkers, which are devices that allow an infant to sit inside a walker equipped with rollers or wheels and move across the floor;

(2) Baby doorway jumpers, which are devices that allow an infant to bounce while supported in a seat by an elastic "bungee cord" suspended from a doorway;

(3) Accordion safety gates;

(4) Toys that are not large enough to prevent swallowing or choking; or

(5) Bean bags, waterbeds, and foam pads for use as sleeping equipment.

(b) Except for a tight fitting sheet and as provided in subsection (c), the crib must be bare for an infant younger than 12 months of age.

(c) A crib mattress cover may also be used to protect against wetness, but the cover must:

(1) Be designed specifically for the size and type of crib and crib mattress that it is being used with;

(2) Be tight fitting and thin; and

(3) Not be designed to make the sleep surface softer.

§746.2421. What written feeding instructions must I obtain for an infant not ready for table food?

(a) For an infant who is not yet ready for table food, you must obtain and follow written feeding instructions that are signed and dated by the infant's parent or health-care professional.

(b) You must review and update the feeding instructions with the parent every 30 days until the infant is able to eat table food.

§746.2426. May I allow infants to sleep in a restrictive device?

You may not allow an infant to sleep in a restrictive device. If an infant falls asleep in a restrictive device, the infant must be removed from the device and placed in a crib as soon as possible. Infants may sleep in a restrictive device if you have a completed Sleep Exception Form that includes a signed statement from a health-care professional stating that the child sleeping in a restrictive device is medically necessary.

§746.2427. Are infants required to sleep on their backs?

Infants not yet able to turn over on their own must be placed in a face-up sleeping position in the infant's own crib, unless you have a completed Sleep Exception Form that includes a signed statement from a health-care professional stating that a different sleeping position for the child is medically necessary.

§746.2428. May I swaddle an infant to help the infant sleep?

You may not lay a swaddled infant down to sleep or rest on any surface at any time unless you have a completed Sleep Exception Form that includes a signed statement from a health-care professional stating that swaddling the child for sleeping purposes is medically necessary.

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40 TAC §746.2411

The repeal is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

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SUBCHAPTER I. BASIC CARE REQUIREMENTS FOR TODDLERS

40 TAC §§746.2501, 746.2505, 746.2507, 746.2509

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SUBCHAPTER J. BASIC CARE REQUIREMENTS FOR PRE-KINDERGARTEN AGE CHILDREN

40 TAC §746.2607

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SUBCHAPTER K. BASIC CARE REQUIREMENTS FOR SCHOOL AGE CHILDREN

40 TAC §746.2707

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SUBCHAPTER L. DISCIPLINE AND GUIDANCE

40 TAC §§746.2801, 746.2809, 746.2813

The repeals are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

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40 TAC §746.2803, §746.2805

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§746.2803. What methods of discipline and guidance may a caregiver use?

Discipline must be:

(1) Individualized and consistent for each child;

(2) Appropriate to the child's level of understanding;

(3) Directed toward teaching the child acceptable behavior and self-control; and

(4) A positive method of discipline and guidance that encourages self-esteem, self-control, and self-direction, including the following:

(A) Using praise and encouragement of good behavior instead of focusing only upon unacceptable behavior;

(B) Reminding a child of behavior expectations daily by using clear, positive statements;

(C) Redirecting behavior using positive statements; and

(D) Using brief supervised separation or time out from the group, when appropriate for the child's age and development, which is limited to no more than one minute per year of the child's age.

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SUBCHAPTER M. NAPTIME

40 TAC §746.2905, §746.2911

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SUBCHAPTER N. FIELD TRIPS

40 TAC §746.3005

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SUBCHAPTER O. GET-WELL CARE PROGRAMS

40 TAC §§746.3117, 746.3119, 746.3123

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SUBCHAPTER P. NIGHTTIME CARE

40 TAC §746.3201, §746.3203

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SUBCHAPTER Q. NUTRITION AND FOOD SERVICE

40 TAC §746.3309, §746.3313

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§746.3309. May parents provide meals and/or snacks for their child instead of my child-care center providing them?

(a) Yes; however, your enrollment agreement signed by the parent must include a statement that the parent is choosing to provide the child's meals and/or snacks from home and the parent understands the child-care center is not responsible for its nutritional value or for meeting the child's daily food needs.

(b) If the parent provides a meal but not a snack, you are responsible for providing a snack as specified in §746.3307 of this title (relating to What kind of foods must I serve for snacks?).

(c) You must provide safe and proper storage and service of the individual meals and snacks provided by parents.

(d) Snacks provided by a parent must not be shared with other children, unless:

(1) A parent is providing baked goods for a celebration or party being held at the center; and

(2) You ensure that the shared snacks meet the needs of children who require special diets.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Audrey Carmical
Interim General Counsel
Department of Family and Protective Services
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For further information, please call: (512) 438-4358

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SUBCHAPTER R. HEALTH PRACTICES
DIVISION 1. ENVIRONMENTAL HEALTH

40 TAC §§746.3401, 746.3405, 746.3415, 746.3419 - 746.3421

The amendments and new section are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The amendments and new section implement HRC §42.042.

§746.3415. When must employees wash their hands?

Employees must wash their hands:

(1) Before eating or handling food or medication;

(2) Before feeding a child;

(3) After arriving at the child-care center;

(4) After diapering a child;

(5) After assisting a child with toileting;

(6) After personal toileting;

(7) After handling or cleaning bodily fluids, such as after wiping noses, mouths, or bottoms, and tending sores;

(8) After handling or feeding animals;

(9) After outdoor activities;

(10) After handling raw food products;

(11) After eating, drinking, or smoking;

(12) After using any cleaners or toxic chemicals; and

(13) After removing gloves.

§746.3420. May I use hand sanitizer as a substitute for washing hands?

You may use hand sanitizers as a substitute for washing hands if all of the following conditions are met:

(1) You only use hand sanitizers on children 24 months and older;

(2) You do not use hand sanitizers to wash hands that are visibly dirty or greasy or have chemicals on them, unless you are away from the classroom and soap and water are not available for hand washing;

(3) You follow the labeling instructions for the appropriate amount to be used and for how long the hand sanitizer needs to remain on the skin surface to be effective;

(4) Children have adult supervision when using hand sanitizers; and

(5) You store hand sanitizers out of the reach of children when not in use.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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40 TAC §746.3409, §746.3411

The repeals are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The repeals implement HRC §42.042.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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DIVISION 2. DIAPER CHANGING

40 TAC §746.3501, §746.3503

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The amendments implement HRC §42.042.

§746.3501. What steps must caregivers follow for diaper changing?

Caregivers must:

(1) Promptly change soiled or wet diapers or clothing;

(2) Thoroughly cleanse a child with individual cloths or disposable towels. You must discard any disposable towels after use and launder any cloths before using them again;

(3) Ensure that a child is dry before placing a new diaper on the child. If the child must be dried, you must use a clean, individual cloth or disposable towel to dry the child. You must discard the disposable towel after use and launder any cloth before using it again;

(4) Not apply powders, creams, ointments, or lotions unless you obtain the parent's written permission. If the parent supplies these items, permission is implicit and you do not need to obtain permission for each use;

(5) Label powders, creams, ointments, or lotions with the individual child's name; and

(6) Keep all diaper-changing supplies out of the reach of children.

§746.3503. What equipment must I have for diaper changing?

(a) You must have a diaper-changing table or surface that is smooth, non-absorbent, and easy to clean.

(b) You must not use areas that children come in close contact with during play or eating, such as dining tables, sofas, or floor play areas, for diaper changing.

(c) If the diaper-changing table or surface is above the floor level, then at all times when the child is on the table/surface:

(1) There must be a safety mechanism (such as raised sides) that is used;

(2) The caregiver's hand must remain on the child; or

(3) The caregiver must be facing the child and within an arm's length of the child.

(d) You must have a hand-washing sink in the diaper-changing area. Refer to §746.4403 of this title (relating to Must I have a hand-washing sink in the diaper-changing area?).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 438-4358

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DIVISION 3. ILLNESS AND INJURY

40 TAC §§746.3601, 746.3606, 746.3607

The amendments and new section are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The amendments and new section implement HRC §42.042.

§746.3606. When may a child who was ill return to my child-care center?

A child who was ill may return to your child-care center when:

(1) The child is free of symptoms of illness for 24 hours; or

(2) You have obtained a health-care professional's statement that the child no longer has an excludable disease or condition.

§746.3607. How should caregivers respond to an illness or injury that requires the immediate attention of a health-care professional?

For an illness or injury that requires the immediate attention of a health-care professional, you must:

(1) Contact emergency medical services (or take the child to the nearest emergency room after you have ensured the supervision of other children in the group);

(2) Give the child first-aid treatment or CPR when needed;

(3) Contact the child's parent;

(4) Contact the physician or other health-care professional identified in the child's record; and

(5) Ensure supervision of other children in the group.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER S. SAFETY PRACTICES
DIVISION 1. SAFETY PRECAUTIONS

40 TAC §§746.3701, 746.3703, 746.3707, 746.3709

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The amendments implement HRC §42.042.

§746.3703. How can I ensure the safety of the children from other persons?

(a) People whose behavior and/or health status poses an immediate threat or danger to the health or safety of the children must not be present when children are in care.

(b) People must not consume alcohol or controlled substances without a prescription in the child-care center, during transportation, or on field trips.

(c) People must not be under the influence of or impaired by alcohol or controlled substances in the child-care center, during transportation, or on field trips.

(d) People must not smoke any e-cigarette, vaporizer, or tobacco product or otherwise use any tobacco product at your child-care center, on the premises, on the playground, in transportation vehicles, or during field trips.

§746.3707. Are firearms or other weapons allowed at my child-care center?

(a) Peace officers as listed in §2.12 of the Code of Criminal Procedure and security officers commissioned by the Texas Private Security Board who are trained and certified to carry a firearm on duty may have firearms and ammunition on the premises of your child-care center.

(b) For all other persons, firearms, hunting knives, bows and arrows, and other weapons are prohibited on the premises of the child-care center, unless the child-care center is also your residence. This prohibition does not apply to personal vehicles.

(c) Firearms, hunting knives, bows and arrows, and other weapons kept on the premises of a child-care center located in your home must remain in a locked cabinet inaccessible to children during all hours of operation.

(d) Ammunition must be kept in a separate locked cabinet and inaccessible to children during all hours of operation.

§746.3709. May I have toys or other types of equipment that explode or shoot things?

A child may not use any type of toy or equipment that explodes or that shoots things, such as caps, BB guns, darts, or fireworks at the child-care center or on field trips. These types of toys and equipment are not allowed at your operation unless your operation is located in your home. If your child-care center is located in your home, you must keep any such toy or equipment in a locked cabinet inaccessible to any child during your hours of operation.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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DIVISION 2. MEDICATIONS AND MEDICAL ASSISTANCE

40 TAC §746.3801

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The amendment implements HRC §42.042.

§746.3801. What does "medication" refer to in this division?

In this division, medication means:

(1) A prescription medication; or

(2) A non-prescription medication, excluding topical ointments such as diaper ointment, insect repellent, or sunscreen.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 438-4358

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DIVISION 3. ANIMALS AT THE CHILD-CARE CENTER

40 TAC §746.3901

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The amendment implements HRC §42.042.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER T. PHYSICAL FACILITIES

DIVISION 1. INDOOR SPACE REQUIREMENTS

40 TAC §746.4207, §476.4213

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The amendment implements HRC §42.042.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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DIVISION 4. FURNITURE AND EQUIPMENT

40 TAC §§746.4501, 746.4503, 746.4507

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The amendments implement HRC §42.042.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER U. INDOOR AND OUTDOOR ACTIVE PLAY SPACE AND EQUIPMENT
DIVISION 1. MINIMUM SAFETY REQUIREMENTS

40 TAC §746.4601, §746.4609

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The amendments implement HRC §42.042.

§746.4609. What is the maximum height allowed for the highest designated play surface, if my child-care center was licensed before September 1, 2010?

(a) If you were licensed before September 1, 2010, the maximum height allowed for the highest designated play surface on active play equipment is:

(1) Six feet for equipment designed to be used by children younger than five years old; or

(2) Eight feet for equipment designed to be used by children five years old and older.

(b) If your center re-designs the existing playground or adds new playground equipment, then as the changes are made you must meet equipment height requirements specified in §746.4607 of this title (relating to What is the maximum height of the highest designated play surface allowed?). You must submit a written plan for compliance to us upon request.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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DIVISION 5. SURFACING

40 TAC §746.4907

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The amendment implements HRC §42.042.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 438-4358

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DIVISION 7. INFLATABLES

40 TAC §746.4971

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The amendment implements HRC §42.042.

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SUBCHAPTER V. SWIMMING POOLS AND WADING/SPLASHING POOLS

40 TAC §746.5009

The repeal is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The repeal implements HRC §42.042.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER V. SWIMMING POOLS, WADING/SPLASHING POOLS, AND SPRINKLER PLAY

40 TAC §746.5015

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The amendment implements HRC §42.042.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER W. FIRE SAFETY AND EMERGENCY PRACTICES
DIVISION 1. FIRE INSPECTION

40 TAC §746.5105

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The amendment implements HRC §42.042.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 438-4358

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DIVISION 3. FIRE EXTINGUISHING AND SMOKE DETECTION SYSTEMS

40 TAC §746.5305

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The amendment implements HRC §42.042.

§746.5305. Where must I mount fire extinguishers?

You must mount all fire extinguishers on the wall by a hanger or bracket. The top of all extinguishers must be no higher than five feet above the floor and the bottom at least four inches above the floor or any other surface. If the state or local fire marshal or the manufacturer's instructions has different mounting instructions, you must follow those instructions. All fire extinguishers must be readily available for immediate use by employees and caregivers.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Audrey Carmical
Interim General Counsel
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SUBCHAPTER X. TRANSPORTATION

40 TAC §746.5607, §746.5621

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services.

The amendments implement HRC §42.042.

§746.5621. What communication requirements are there for a vehicle used to transport children?

When transporting children in a vehicle:

(1) The vehicle must have a communications device such as a cellular phone or two-way radio; or

(2) A caregiver at the child-care center must know the routine arrival and departure times of the vehicle and take action if the vehicle does not return to the child-care center at a scheduled time. The driver must travel a known fixed route within an approximate timeframe.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Audrey Carmical
Interim General Counsel
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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Adopted Rule Reviews

Credit Union Department

Title 7, Part 6

The Credit Union Commission (Commission) has completed its review of Chapter 97 (relating to Commission Policies and Administrative Rules) of the Texas Administrative Code, Tile 7, Part 6, consisting of §§97.101 - 97.105, 97,107, 97.113 - 97.116, 97.200, 97.205 - 97.207, 97.300, and 97.401. The Commission proposes to readopt these rules.

The rules were reviewed as a result of the Department's general rule review.

Notice of the review of 7 TAC, Part 6, Chapter 97 was published in the *Texas Register* as required on December 16, 2016 (41 TexReg 9983). The Department received no comments on the notice of intention to review.

As a result of the internal review by the Department, the Commission has determined that certain revisions are appropriate and necessary. The Commission is concurrently proposing amendments to Chapter 97, as published elsewhere in this issue of the *Texas Register.* Subject to the concurrently proposed amendments to Chapter 97, the Commission find that the reasons for initially adopting these rules continue to exist, and readopts Chapter 97 in accordance with the requirements of Texas Government Code, §2001.039. This concludes the review of 7 TAC, Part 6, Chapter 97.

TRD-201701027
Harold E. Feeney
Commissioner
Credit Union Department
Filed: March 10, 2017

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Texas Department of Licensing and Regulation

Title 16, Part 4

The Texas Department of Licensing and Regulation (Department) filed a Notice of Intent to Review and consider for re-adoption, revision, or repeal, Title 16, Texas Administrative Code (TAC), Chapter 57, relating to the For-Profit Legal Service Contract Companies program. The Notice of Intent to Review the administrative rules of 16 TAC Chapter 57 was published in the *Texas Register* on November 18, 2016.

Texas Government Code, §2001.039 requires state agencies to review their rules every four years to determine if the reasons for initially adopting the rules continue to exist. The rules implementing the For-Profit Legal Service Contract Companies program under Texas Occupations Code, Chapter 953, are scheduled for this four-year review.

The Department has reviewed these rules and has determined that the rules are still essential in implementing the statutory provisions of Occupations Code, Chapter 953, Regulation of For-Profit Legal Service Contract Companies. The rules provide details that are not found in the program statute but are necessary for implementation and operation of this program. For example, the rules detail the registration and renewal requirements, the registrant's responsibilities, and the required fees that are specific to this program.

The Department received five public comments from four individuals and a representative of a registered legal service contract company. Two of the commenters recommended that the For-Profit Legal Service Contract Companies program be readopted. The third commenter, the registered legal service contract company, recommended readoption of the For-Profit Legal Service Contract Companies rules. The fourth commenter stated that these types of companies should not be allowed to do business in Texas. The fifth commenter stated that the license requirement is not needed and should be discontinued. The fourth and fifth comments would require statutory changes and cannot be addressed through rulemaking.

At its meeting on March 1, 2017, the Texas Commission of Licensing and Regulation (Commission), the Department's governing body, readopted the rules at 16 TAC Chapter 57 For-Profit Legal Service Contract Companies, in their current form. As a result of this review process, the Department may propose amendments in the future that may further clarify or supplement the existing rules. Any future proposed changes to the rules will be published in the Proposed Rules section of the *Texas Register* and will be open for public comment prior to final adoption by the Commission in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

The rules are re-adopted by the Commission in accordance with Texas Government Code §2001.039. This concludes the review of 16 TAC Chapter 57, For-Profit Legal Service Contract Companies.

TRD-201701075
Brian E. Francis
Executive Director
Texas Department of Licensing and Regulation
Filed: March 15, 2017

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The Texas Department of Licensing and Regulation (Department) filed a Notice of Intent to Review and consider for re-adoption, revision, or repeal, Title 16, Texas Administrative Code (TAC), Chapter 59, relating to the Continuing Education Requirements. The Notice of Intent to

Review the administrative rules of 16 TAC, Chapter 59, was published in the *Texas Register* on December 9, 2016.

Texas Government Code, §2001.039 requires state agencies to review their rules every four years to determine if the reasons for initially adopting the rules continue to exist. The rules implementing Continuing Education Requirements under Texas Occupations Code, Chapter 51.405, are scheduled for this four-year review.

The Department has reviewed these rules and has determined that the rules are still essential in implementing the statutory provisions of Texas Occupations Code, §51.405, Regulation of Continuing Education Requirements. The rules provide details that are not found in the program statute but are necessary for implementation and operation of this program. For example, the rules are promulgated to establish continuing education provider and course requirements for the occupations regulated by the Department.

The Department received 14 public comments. Two commenters stated the requirements should be abolished. Two commenters suggested the requirements are still needed in their current form. Two commenters suggested using a more stream lined electronic process for completing the requirements instead of focusing solely on classroom settings. One commenter stated the requirements for HVAC should be eliminated altogether. One commenter stated the requirements for the RAS program should remain the same. Five commenters suggested the requirements for their programs should be modified based on length of licensure and experience. One commenter requested information on how to subscribe to notifications. These comments will be taken under consideration as part of any possible rule changes in the future.

At its meeting on March 1, 2017, the Texas Commission of Licensing and Regulation (Commission), the Department's governing body, readopted the rules at 16 TAC, Chapter 59 Continuing Education requirements, in their current form. As a result of this review process, the Department may propose amendments in the future that may further clarify or supplement the existing rules. Any future proposed changes to the rules will be published in the Proposed Rules section of the *Texas Register* and will be open for public comment prior to final adoption by the Commission in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

The rules are re-adopted by the Commission in accordance with Texas Government Code §2001.039. This concludes the review of 16 TAC, Chapter 59, Continuing Education Requirements.

TRD-201701073
Brian E. Francis
Executive Director
Texas Department of Licensing and Regulation
Filed: March 15, 2017

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The Texas Department of Licensing and Regulation (Department) filed a Notice of Intent to Review and consider for re-adoption, revision, or repeal, Title 16, Texas Administrative Code (TAC), Chapter 60, relating to the Procedural Rules of the Commission and the Department. The Notice of Intent to Review was published in the December 16, 2016, issue of the *Texas Register* (41 TexReg 9983). The public comment period closed on January 17, 2017.

Texas Government Code, §2001.039 requires state agencies to review their rules every four years to determine if the reasons for initially adopting the rules continue to exist. The rules implementing the Procedural Rules of the Commission and the Department under Texas Occupations Code, Chapter 51, are scheduled for this four-year review.

The Department has reviewed these rules and has determined that the rules are still essential in implementing the statutory provisions of Texas Occupations Code, Chapter 51, Texas Department of Licensing and Regulation. The rules provide details that are not found in the program statute but are necessary for implementation and operation of this program. For example, the rules detail general Commission and Executive Director powers and duties, rulemaking procedures, and contested case procedures that are necessary for the operation of all Department programs.

The Department received eight public comments in response to the Notice of Intent to Review. One commenter explained the necessity of having regulation for sanitation in salons. One commenter wants to stay on top of any rule changes. One commenter expressed concern over not requiring ventilation in nail salons. One commenter recommended getting rid of Brazilian blowouts due to health concerns. One commenter explained they had eye surgery and as a result missed several questions on the exam but wants to maintain their license. One commenter does not think the sanitation hour is necessary for licensed elderly people. One commenter recommended the Department regulate roofers, foundation repair contractors and possibly asphalt repairers. The last commenter requested cosmetology board members have at least 5 years of experience; changing the name from "operator" to "cosmetologists"; and a continuing education overhaul to allow more flexibility in classes taken. These comments will be taken under consideration as part of any possible rule changes in the future.

At its meeting on March 1, 2017, the Texas Commission of Licensing and Regulation (Commission), the Department's governing body, readopted the rules at 16 TAC, Chapter 60 Procedural Rules of the Commission and the Department, in their current form. As a result of this review process, the Department may propose amendments in the future that may further clarify or supplement the existing rules. Any future proposed changes to the rules will be published in the Proposed Rules section of the *Texas Register* and will be open for public comment prior to final adoption by the Commission in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

The rules are re-adopted by the Commission in accordance with Texas Government Code §2001.039. This concludes the review of 16 TAC, Chapter 60, Procedural Rules of the Commission and the Department.

TRD-201701079
Brian E. Francis
Executive Director
Texas Department of Licensing and Regulation
Filed: March 15, 2017

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The Texas Department of Licensing and Regulation (Department) filed a Notice of Intent to Review and consider for re-adoption, revision, or repeal, Title 16, Texas Administrative Code (TAC), Chapter 70, relating to the Industrialized Housing and Buildings program. The Notice of Intent to Review the administrative rules of 16 TAC, Chapter 70, was published in the *Texas Register* on December 30, 2016.

Texas Government Code, §2001.039 requires state agencies to review their rules every four years to determine if the reasons for initially adopting the rules continue to exist. The rules implementing the Industrialized Housing and Buildings Program under Occupations Code, Chapters 51 and 1202, are scheduled for this four-year review.

The Department has reviewed these rules and has determined that the rules are still essential in implementing the statutory provisions of Occupations Code, Chapters 51 and 1202, Industrialized Housing and Buildings. The rules provide details that are not found in the program

statute but are necessary for implementation and operation of this program. For example, the rules detail the licensing requirements, responsibilities of licensees, and the fees that are specific to this program.

The Department received two public comments. Oak Creek Homes, a modular home builder, stated that TDLR assesses punitive fines without the opportunity to cure violations; that the Department application of the International Residential Code as a performance standard is in conflict with standard warranty contract provisions, which effectively allows the Department to develop rules on an Ad Hoc basis; that the Department lacks a process to notify the manufacturer or builder of a consumer complaint inspection; that the time frame for investigations of consumer complaints is excessively lengthy; that the fine structure is arbitrary and set by a prosecutor with no specialized knowledge of the processes; and that quarterly auditing of all modular units is overly burdensome and causes a staggering amount of unnecessary paperwork. The Texas Manufactured Housing Association, a trade association of the manufactured and industrialized housing industries, requests the Department to re-examine existing policies, fees, timing of approval processes for new manufacturers and builder registrations, as well as new home designs with respect to industrialized housing, which can be sited in municipalities on par with site-built home construction, since industrialized housing incurs costs associated with registration, maintaining records, compliance, fees and other costs that a site-builder does not incur from a state regulatory agency; that the Department review the amount of time it takes to certify new home model plans, authorize new builders and manufacturers, conduct home inspections and resolve complaints; that market polices be set so that industrialized housing can compete naturally in the market compared to the single-lot site-built home construction industry, which is unburdened by a state level of regulation; that the Department revise its current complaint, inspection, and reporting process to cease conducting any consumer complaint investigations based on alleged construction code violations for homes the Department is aware of, or becomes aware are the subject of and/or to civil litigation; that the passage of S.B. 672 which created a new definition, "final on-site inspection report" and new provisions in §70.73 and §70.70 were not called for, are unnecessary, operate to subvert the two-year jurisdictional limit on enforcement action in the statute, are not adhered to, and that instead of repealing the rules, a more sensible, less burdensome regulation be considered as a benefit to the industry and housing supply in Texas. The comments will be taken under consideration as part of any possible rule changes in the future.

At its meeting on March 1, 2017, the Texas Commission of Licensing and Regulation (Commission), the Department's governing body, readopted the rules at 16 TAC, Chapter 70 Industrialized Housing and Buildings program, in their current form. As a result of this review process, the Department may propose amendments in the future that may further clarify or supplement the existing rules. Any future proposed changes to the rules will be published in the Proposed Rules section of the *Texas Register* and will be open for public comment prior to final adoption by the Commission in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

The rules are re-adopted by the Commission in accordance with Texas Government Code §2001.039. This concludes the review of 16 TAC, Chapter 70, Industrialized Housing and Buildings program.

TRD-201701074
Brian E. Francis
Executive Director
Texas Department of Licensing and Regulation
Filed: March 15, 2017

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The Texas Department of Licensing and Regulation (Department) filed a Notice of Intent to Review and consider for re-adoption, revision, or repeal, Title 16, Texas Administrative Code (TAC), Chapter 72, relating to the Professional Employer Organization program. The Notice of Intent to Review the administrative rules of 16 TAC, Chapter 72, was published in the *Texas Register* on November 18, 2016.

Texas Government Code, §2001.039 requires state agencies to review their rules every four years to determine if the reasons for initially adopting the rules continue to exist. The rules implementing Professional Employer Organizations under Texas Labor Code, Chapter 91 and Occupations Code, Chapter 51 are scheduled for this four-year review.

The Department has reviewed these rules and has determined that the rules are still essential in implementing the statutory provisions of Texas Labor Code, Chapter 91, Regulation of Professional Employer Organization and Texas Occupations Code, Chapter 51. The rules provide details that are not found in the program statute but are necessary for implementation and operation of this program. For example, the rules detail the licensing requirements, responsibilities of licensees, and the fees that are specific to this program.

The Department received one individual comment and one comment from the National Association of Professional Employer Organizations (NAPEO). The individual commenter sought information regarding how to subscribe to web notices. The NAPEO stated that the program is still needed and recommended that the Department readopt the rules in their entirety.

At its meeting on March 1, 2017, the Texas Commission of Licensing and Regulation (Commission), the Department's governing body, readopted the rules at 16 TAC, Chapter 72 Professional Employer Organization program, in their current form. As a result of this review process, the Department may propose amendments in the future that may further clarify or supplement the existing rules. Any future proposed changes to the rules will be published in the Proposed Rules section of the *Texas Register* and will be open for public comment prior to final adoption by the Commission in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

The rules are re-adopted by the Commission in accordance with Texas Government Code §2001.039. This concludes the review of 16 TAC, Chapter 72, Professional Employer Organization.

TRD-201701076
Brian E. Francis
Executive Director
Texas Department of Licensing and Regulation
Filed: March 15, 2017

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The Texas Department of Licensing and Regulation (Department) filed a Notice of Intent to Review and consider for re-adoption, revision, or repeal, Title 16, Texas Administrative Code (TAC), Chapter 73, relating to Electricians. The Notice of Intent to Review was published in the December 16, 2016, issue of the *Texas Register* (41 TexReg 9984). The public comment period closed on January 17, 2017.

Texas Government Code, §2001.039 requires state agencies to review their rules every four years to determine if the reasons for initially adopting the rules continue to exist. The rules implementing Electricians under Occupations Code, Chapter 1305, are scheduled for this four-year review.

The Department has reviewed these rules and has determined that the rules are still essential in implementing the statutory provisions of Oc-

cupations Code, Chapter 1305, Electricians. The rules provide details that are not found in the program statute but are necessary for implementation and operation of this program. For example, the rules detail the licensing requirements, responsibilities, insurance requirements and the fees that are specific to this program.

The Department received thirty public comments in response to the Notice of Intent to Review. Two commenters had not received their license as of yet. One commenter wanted to know if this process would affect his license. One commenter would like a grandfather option to be considered for a certain license. One commenter informed the Department that the license had expired but would renew once the doctor released them. One commenter said "no." One commenter informed us that they accidentally answered a question incorrectly on the application. One commenter does not think the rules are beneficial to the industry and the exam for the residential appliance installer license does not seem relevant to the job duties. One commenter suggested allowing another professional to sign off on the Master Electrician supervision. One commenter would like to see the supervision requirement removed and replaced with relevant work experience. One commenter wanted clarity on why the "nccer" supersedes the journeyman license. One commenter had a question about renewals. One commenter recommended having licensed electricians have a business in their name. One commenter would like the continuing education hours to be increased. One commenter had complaints about unlicensed businesses using Google ads. One commenter suggested allowing residential wiremen to be supervised the same as an electrical apprentice. One commenter requested getting rid of the external switch before power enters a sign. One commenter recommended deleting obsolete rules and streamlining processes. One commenter would like sub- categories for the appliance installer license considering the difficulty in testing. One commenter appreciates the program but would like to see more enforcement action against unlicensed personnel. Two commenters requested clarity on what this is. One commenter wanted to know why Texas would not issue him a license based on a license in another state. One commenter provided their new address. One commenter does not think the continuing education requirement is beneficial and would like it removed. One commenter recommended all persons seeking a journeyman license have a valid apprentice license. One commenter would like to see reciprocity granted across all electrician license types across all fifty states. One commenter recommended licenses be valid for three years and increase the required number of continuing education hours. One commenter requested the test. The last commenter requested a waiver be made to the supervision by a master electrician for electrical engineers. These comments will be taken under consideration as part of any possible rule changes in the future.

At its meeting on March 1, 2017, the Texas Commission of Licensing and Regulation (Commission), the Department's governing body, readopted the rules at 16 TAC, Chapter 73, Electricians, in their current form. As a result of this review process, the Department may propose amendments in the future that may further clarify or supplement the existing rules. Any future proposed changes to the rules will be published in the Proposed Rules section of the Texas Register and will be open for public comment prior to final adoption by the Commission in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

The rules are re-adopted by the Commission in accordance with Texas Government Code §2001.039. This concludes the review of 16 TAC, Chapter 73, Electricians.

TRD-201701081

Brian E. Francis
Executive Director
Texas Department of Licensing and Regulation
Filed: March 15, 2017

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The Texas Department of Licensing and Regulation (Department) filed a Notice of Intent to Review and consider for re-adoption, revision, or repeal, Title 16, Texas Administrative Code (TAC), Chapter 85, relating to the Vehicle Storage Facilities program. The Notice of Intent to Review the administrative rules of 16 TAC, Chapter 85, was published in the *Texas Register* on December 23, 2016.

Texas Government Code, §2001.039 requires state agencies to review their rules every four years to determine if the reasons for initially adopting the rules continue to exist. The rules implementing Vehicle Storage Facilities Program under Occupations Code, Chapters 51 and 2303, are scheduled for this four-year review.

The Department has reviewed these rules and has determined that the rules are still essential in implementing the statutory provisions of Occupations Code, Chapters 51 and 2303, Regulation related to Motor Vehicles Vehicle Storage Facilities. The rules provide details that are not found in the program statute but are necessary for implementation and operation of this program. For example, the rules detail the licensing requirements, applications, and the fees that are specific to this program.

The Department received eight public comments. One commenter requested a revision of §85.712, should be incorporated to address the term total loss claim where insurance companies shouldn't be able to abandon vehicles at a VSF lot when they have accepted liability of the claim. One commenter recommended VSF's not be allowed to charge extra fees to customers who pay by credit card; that digital records be used reduce paper and keep up with technology, and to use digital invoicing. One commenter suggested changing wording for §85.10(3). This commenter believes that §§85.10(13), 85.10(17), 85.708(c), and 85.708(c)(1) is obsolete and should be replaced with affidavit of right of possession; that §85.708(c)(1)(H) needs to be clarified in terms of owner consent and insurance companies removing vehicles without owner consent but with an affidavit; and §85.713(a) stating this section as being inadequate with regard to law enforcement, such as time limitations to release a hold or move a vehicle to a non-commercial facility, to clarify the start date of storage regarding notification requirements, and to clarify what a vehicle owner be can charged. One commenter stated the process to obtain a title is too lengthy, has too many steps, and is not cost effective, suggesting a simplified process, to remove the law enforcement notification and 2nd letter for law enforcement initiated tows, and to remove the requirement of a second letter, due to cost of sending certified mail. One commenter submitted the same comment twice, asking for a new rule to hold TOW/VSF companies accountable for intentionally refusing to accept or answer calls from insurance companies whose caller id identifies the name of the insurance company. One commenter suggested increasing the licensure from one year to two without increasing cost of license, stating they are already being price gauged. One commenter suggested a change in the fees, specifically, the renewal fee should be less than the cost of the original application and that the license time frame be increased from one year to two years, the impound fee should be increased from the current rate of $20 to at least $30, the daily storage fees should be increased to $25 - $35 per day for vehicles twenty-five feet and under and $45 - $55 per day for vehicles over twenty-five feet, the fee for notification should be increased to offset the increase in postage fees, VSF companies should be allowed to charge fees for re-tarping /re-securing a vehicle after the owner or an adjuster has cleaned out the vehicle, and a rule should be

implemented to state owners cannot dump or abandon a vehicle at a storage facility. The comments related to fees and notice require statutory changes and cannot be addressed through the rule making process. The remainder of the comments will be provided to the advisory board and considered in future rule making.

At its meeting on March 1, 2017, the Texas Commission of Licensing and Regulation (Commission), the Department's governing body, readopted the rules at 16 TAC, Chapter 85 Vehicle Storage Facilities program, in their current form. As a result of this review process, the Department may propose amendments in the future that may further clarify or supplement the existing rules. Any future proposed changes to the rules will be published in the Proposed Rules section of the *Texas Register* and will be open for public comment prior to final adoption by the Commission in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

The rules are re-adopted by the Commission in accordance with Texas Government Code §2001.039. This concludes the review of 16 TAC, Chapter 85, Vehicle Storage Facilities program.

TRD-201701077
Brian E. Francis
Executive Director
Texas Department of Licensing and Regulation
Filed: March 15, 2017

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The Texas Department of Licensing and Regulation (Department) filed a Notice of Intent to Review and consider for re-adoption, revision, or repeal, Title 16, Texas Administrative Code (TAC), Chapter 86, relating to the Vehicle Towing and Booting program. The Notice of Intent to Review the administrative rules of 16 TAC, Chapter 86, was published in the *Texas Register* on December 23, 2016.

Texas Government Code, §2001.039 requires state agencies to review their rules every four years to determine if the reasons for initially adopting the rules continue to exist. The rules implementing Vehicle Towing and Booting Program under Occupations Code, Chapters 51 and 2308, are scheduled for this four-year review.

The Department has reviewed these rules and has determined that the rules are still essential in implementing the statutory provisions of Occupations Code, Chapters 51 and 2308, Regulation related to Motor Vehicles Vehicle Towing and Booting. The rules provide details that are not found in the program statute but are necessary for implementation and operation of this program. For example, the rules detail the licensing requirements, applications, and the fees that are specific to this program.

The Department received one public comment. The one commenter sought information on how to legally operate a tow truck. The commenter did not provide specific recommendations, changes, or requests.

At its meeting on March 1, 2017, the Texas Commission of Licensing and Regulation (Commission), the Department's governing body, readopted the rules at 16 TAC, Chapter 86 Vehicle Towing and Booting program, in their current form. As a result of this review process, the Department may propose amendments in the future that may further clarify or supplement the existing rules. Any future proposed changes to the rules will be published in the Proposed Rules section of the *Texas Register* and will be open for public comment prior to final adoption by the Commission in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

The rules are re-adopted by the Commission in accordance with Texas Government Code §2001.039. This concludes the review of 16 TAC, Chapter 86, Vehicle Towing and Booting program.

TRD-201701078
Brian E. Francis
Executive Director
Texas Department of Licensing and Regulation
Filed: March 15, 2017

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Texas Board of Nursing

Title 22, Part 11

On January 23, 2017, in accordance with Government Code §2001.039, the Texas Board of Nursing (Board) filed a notice of intention to review and consider for re-adoption, re-adoption with amendments, or repeal, the following chapter contained in Title 22, Part 11, of the Texas Administrative Code, pursuant to the 2015 rule review plan adopted by the Board at its July 2015 meeting. Notice of the review was published in the February 3, 2017, issue of the *Texas Register* (42 TexReg 499).

Chapter 214. Vocational Nursing Education, §§214.1 - 214.13

Chapter 215. Professional Nursing Education, §§215.1 - 215.13

Chapter 222. Advanced Practice Registered Nurses with Prescriptive Authority, §§222.1 - 222.10

The Board did not receive comment on the above rules. The Board has completed its review and has determined that the reasons for originally adopting the above rules continue to exist. The rules were also reviewed to determine whether they were obsolete, whether they reflected current legal and policy considerations and current procedures and practices of the Board, and whether they were in compliance with Texas Government Code Chapter 2001 (Texas Administrative Procedure Act). The Board finds that the rules are not obsolete, reflect current legal and policy considerations, current procedures and practices of the Board, and that the rules are in compliance with the Texas Administrative Procedure Act.

The Board readopts the rules in Chapter 226 without changes, pursuant to the Texas Government Code §2001.039 and Texas Occupations Code §301.151, which authorizes the Board to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act. This concludes the rule review of Chapter 226 under the 2015 rule review plan adopted by the Board.

TRD-201700942
James Dusty Johnston
General Counsel
Texas Board of Nursing
Filed: March 8, 2017

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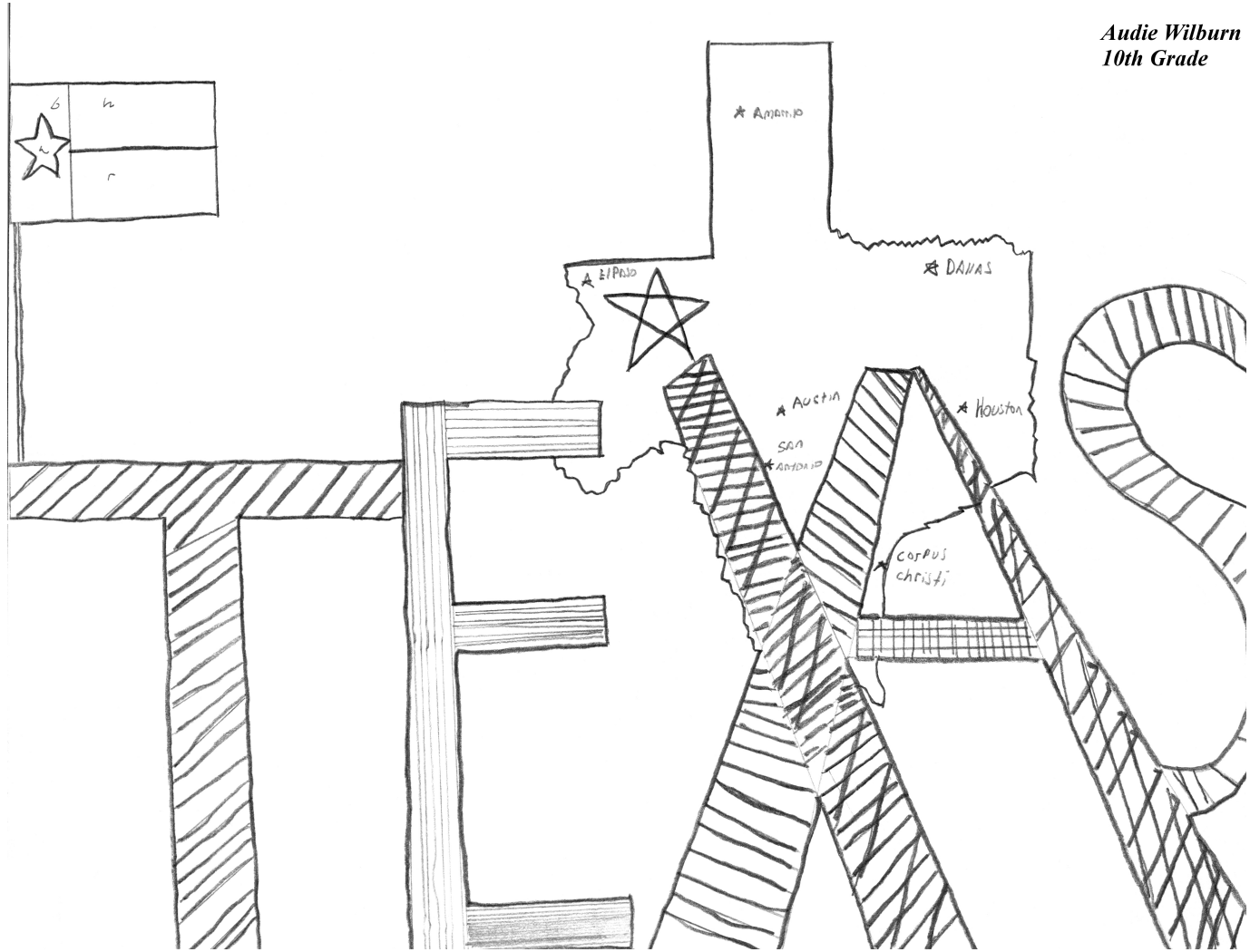
Audie Wilburn
10th Grade



Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 30 TAC §101.300(14)

$$E_H = \frac{(A_1 \times ER_1) + (A_2 \times ER_2)}{2}$$

Where:

EH = The historical adjusted emissions.

A_1 = The activity during the first of any two consecutive calendar years selected in accordance with §101.303(b)(2) or §101.304(b)(3) of this title (relating to Emission Reduction Credit Generation and Certification or Mobile Emission Reduction Credit Generation and Certification), not to exceed any applicable local, state, or federal requirement.

ER_1 = The emission rate during the first of any two consecutive calendar years selected in accordance with §101.303(b)(2) or §101.304(b)(3) of this title, not to exceed any applicable local, state, or federal requirement.

A_2 = The activity during the second of any two consecutive calendar years selected in accordance with §101.303(b)(2) or §101.304(b)(3) of this title, not to exceed any applicable local, state, or federal requirement.

ER_2 = The emission rate during the second of any two consecutive calendar years selected in accordance with §101.303(b)(2) or §101.304(b)(3) of this title, not to exceed any local, state, or federal requirement.

Figure: 30 TAC §101.303(c)(1)

$$ERC = BE - SE$$

Where:

ERC = The amount of emission reduction credits generated, in tenths of a ton per year.

BE = The facility's baseline emissions, which is the lowest of the historical adjusted emissions or the state implementation plan emissions.

SE = The facility's strategic emissions, which is the enforceable emission limit for the facility after implementation of the emission reduction strategy.

Figure: 30 TAC §101.370(15)

$$E_H = \frac{(A_1 \times ER_1) + (A_2 \times ER_2)}{2}$$

Where:

E_H = The historical adjusted emissions for a facility.

A_1 = The activity during the first of any two consecutive calendar years selected in accordance with §101.373(b)(2) or §101.374(b)(3) of this title (relating to Discrete Emission Reduction Credit Generation and Certification), not to exceed any applicable local, state, or federal requirement.

ER_1 = The emission rate during the first of any two consecutive calendar years selected in accordance with §101.373(b)(2) or §101.374(b)(3) of this title, not to exceed any applicable local, state, or federal requirement.

A_2 = The activity during the second of any two consecutive calendar years selected in accordance with §101.373(b)(2) or §101.374(b)(3) of this title, not to exceed any applicable local, state, or federal requirement.

ER_2 = The emission rate during the second of any two consecutive calendar years selected in accordance with §101.373(b)(2) or §101.374(b)(3) of this title, not to exceed any applicable local, state, or federal requirement.

Figure: 30 TAC §101.376(d)(2)(A)(i)

$$DECs = \sum_{i=1}^{N} [(EH_i \times ER_i) - (H_i \times R_i)] \times \frac{d}{2000}$$

Where:

N = The total number of emission units in the source or system cap.

i = Each emission unit in the source or system cap.

EH_i = The expected new daily heat input, in million British thermal units (mmBtu) per day.

ER_i = The expected new emission rate, in lb/MMBtu.

H_i = The actual daily heat input, in million British thermal units (MMBtu) per day, as calculated according to §§117.123(b)(1), 117.320(c)(1) and (2), 117.323(b)(1), 117.423(b)(1), 117.1020(c)(1), 117.1220(c)(1), or 117.3020(c) of this title as applicable.

R_i = The actual emission rate, in pounds (lb)/MMBtu, as defined in §§117.123(b)(1), 117.320(c)(1) and (2), 117.323(b)(1), 117.423(b)(1), 117.1020(c)(1), 117.1220(c)(1), or 117.3020(c) of this title as applicable.

d = The number of days that emissions are expected to exceed the source or system cap.

Figure: 30 TAC §101.376(d)(2)(A)(ii)

$$DECs = \sum_{i=1}^{N} [(EH_{Mi} \times ER_i) - (H_{Mi} \times R_i)] \times \frac{d}{2000}$$

Where:

N = The total number of emission units in the source or system cap.

i = Each emission unit in the source or system cap.

EH_{Mi} = The expected new maximum daily heat input, in million British thermal units (mmBtu) per day.

ER_i =The expected new emission rate, in lb/MMBtu.

HM_i = The maximum daily heat input, in MMBtu/day, as defined in §§117.123(b)(2), 117.320(c)(3), 117.323(b)(2), 117.423(b)(2), 117.1020(c)(2), or 117.1220(c)(2) of this title as applicable.

R_i = In lb/MMBtu, is defined as in §§117.123(b)(2), 117.320(c)(3), 117.323(b)(2), 117.423(b)(2), 117.1020(c)(2), or 117.1220(c)(2) of this title as applicable.

d = The number of days in the use period.

Figure: 30 TAC §101.376(d)(2)(C)

$$\underline{DECs = (ELA - PLA) \times (PER)}$$

Where:

ELA = The expected level of activity.

PLA = The permitted level of activity.

PER = The permitted emission rate per unit activity.

Figure: 30 TAC §290.47(c)(1)

Appendix C1: Boil Water Notice for Community Public Water Systems

<Date>

Due to <**See Instruction 1**>, the Texas Commission on Environmental Quality has required the <**See Instruction 2**> public water system to notify all customers to boil their water prior to consumption (e.g., washing hands/face, brushing teeth, drinking, etc). Children, seniors, and persons with weakened immune systems are particularly vulnerable to harmful bacteria, and all customers should follow these directions).

To ensure destruction of all harmful bacteria and other microbes, water for drinking, cooking, and ice making should be boiled and cooled prior to use for drinking water or human consumption purposes. The water should be brought to a vigorous rolling boil and then boiled for two minutes.

In lieu of boiling, individuals may purchase bottled water or obtain water from some other suitable source for drinking water or human consumption purposes.

When it is no longer necessary to boil the water, the public water system officials will notify customers that the water is safe for drinking water or human consumption purposes.

Once the boil water notice is no longer in effect, the public water system will issue a notice to customers that rescinds the boil water notice in a manner similar to this notice.

Please share this information with all the other people who drink this water, especially those who may not have received this notice directly (for example, people in apartments, nursing homes, schools, and businesses). You can do this by posting this notice in a public place or distributing copies by hand or mail.

If you have questions concerning this matter, you may contact <**See Instruction 3**> at <**See Instruction 4**>.

<**See Instruction 5**>

Instructions:
Delete instructions below on copy given to customers.

This is the mandatory language for your "Boil Water Notice". Please replace all of the above referenced <**See Instruction**> numbers with the information as follows:

<1> A description of the conditions that require a "Boil Water Notice" to be issued for the public water system that may include but are not limited to: reduced distribution system pressure, line break, low disinfection residuals, etc.

<2> Public Water System Name / Public Water System Identification Number

<3> Name of public water system official and any other primary contact names. **(Do not list TCEQ as the primary contact.)**

<4> Public water system official(s) phone number, business address, and any other useful contact numbers. Where appropriate, provide a telephone number or address where consumers may obtain a translated copy of the notice or assistance in the appropriate language.

<5> Public water systems may add optional language here concerning the actions they have taken to address the boil water notice situation.

The public water system customers and the executive director shall be able to reach the public water system at one of the numbers listed in this notice.

If a customer, individual, or employee wishes to contact the executive director, please call (512) 239-4691.

Figure: 30 TAC §290.47(c)(2)

Appendix C2: Boil Water Notice for Noncommunity Public Water Systems

<Date>

Due to <**See Instruction 1**>, the Texas Commission on Environmental Quality has required the <**See Instruction 2**> public water system to notify all customers, individuals, or employees that this establishment or business has implemented a boil water notice. All water provided by this establishment or business shall be boiled prior to use for drinking water or human consumption purposes prior to consumption (e.g., washing hands/face, brushing teeth, drinking, etc). Children, seniors, and persons with weakened immune systems are particularly vulnerable to harmful bacteria, and all customers should follow these directions).

To ensure destruction of all harmful bacteria and other microbes, water for drinking, cooking, and ice making should be boiled and cooled prior to use for drinking water or human consumption purposes. The water should be brought to a vigorous rolling boil and then boiled for two minutes.

In lieu of boiling, all customers, individuals, or employees may purchase bottled water or obtain water from some other suitable source for drinking water or human consumption purposes.

When it is no longer necessary to boil the water, the public water system officials of this establishment or business will notify customers, individuals, or employees that the water is safe for drinking water or human consumption purposes. Once the boil water notice is no longer in effect, the public water system officials will issue a notice to customers, individuals, or employees of this establishment or business that rescinds the boil water notice in a manner similar to this notice.

Please share this information with all the other people who drink this water, especially those who may not have received this notice directly (for example, people in apartments, nursing homes, schools, and businesses). You can do this by posting this notice in a public place or distributing copies by hand or mail.

If you have questions concerning this matter, you may contact <**See Instruction 3**> at <**See Instruction 4**>.

<**See Instruction 5**>

Instructions:

Delete instructions below on copy given to customers.
This is the mandatory language for your "Boil Water Notice". Please replace all of the above referenced <**See Instruction**> numbers with the information as follows:

<1> A description of the conditions that require a "Boil Water Notice" to be issued for the public water system that may include but are not limited to (e.g., reduced distribution system pressure, line break, low disinfection residuals, etc.).

<2> Public Water System Name / Public Water System Identification Number

<3> Name of public water system official and any other primary contact names. **(Do not list TCEQ as the primary contact.)**

<4> Public water system official(s) phone number, business address, and any other useful contact numbers. Where appropriate, provide a telephone number or address where consumers may obtain a translated copy of the notice or assistance in the appropriate language.

<5> Public water systems may add optional language here concerning the actions they have taken to address the boil water notice situation.

The public water system customers and the executive director shall be able to reach the public water system at one of the numbers listed in this notice.

If a customer, individual, or employee wishes to contact the executive director, please call (512) 239-4691.

Figure: 30 TAC §290.47(c)(3)

Appendix C3: Boil Water Notice Rescinded
<Date>

On <**See Instruction 1**>, the Texas Commission on Environmental Quality required the <**See Instruction 2**> public water system, <**See Instruction 3**>, to issue a Boil Water Notice to inform customers, individuals, or employees that due to conditions which occurred recently in the public water system, the water from this public water system was required to be boiled prior to use for drinking water or human consumption purposes.

The public water system has taken the necessary corrective actions to restore the quality of the water distributed by this public water system used for drinking water or human consumption purposes and has provided TCEQ with laboratory test results that indicate that the water no longer requires boiling prior to use as of <**See Instruction 4**>.

If you have questions concerning this matter, you may contact <**See Instruction 5**> at <**See Instruction 6**>.

<**See Instruction 7**>

Instructions:
Delete instructions below on copy given to customers.
This is the mandatory language for your "Boil Water Notice Rescinded" notice. Please replace all of the above referenced <**See Instruction**> numbers with the information as follows:

<1> Insert date that the initial Boil Water Notice was issued.

<2> Public Water System Name.

<3> Public Water System Identification Number.

<4> Boil Water Notice Rescind Date.

<5> Name of public water system official and any other primary contact names. **(Do not list TCEQ as the primary contact.)**

<6> Public water system official(s) phone number, business address, and any other useful contact numbers. Where appropriate, provide a telephone number or address where consumers may obtain a translated copy of the notice or assistance in the appropriate language.

<7> Public water systems may add optional language here concerning the actions they have taken to address the boil water notice situation.

The public water system customers and the executive director shall be able to reach the public water system at one of the numbers listed in this notice.

If a customer, individual, or employee wishes to contact the executive director, please call (512) 239-4691.

Figure: 30 TAC §290.109(d)(2)(A)(iii)

Population Served	Minimum Number of Samples per Month
1 to 1,000	1
1,001 to 2,500	2
2,501 to 3,300	3
3,301 to 4,100	4
4,101 to 4,900	5
4,901 to 5,800	6
5,801 to 6,700	7
6,701 to 7,600	8
7,601 to 8,500	9
8,501 to 12,900	10
12,901 to 17,200	15
17,201 to 21,500	20
21,501 to 25,000	25
25,001 to 33,000	30
33,001 to 41,000	40
41,001 to 50,000	50
50,001 to 59,000	60
59,001 to 70,000	70
70,001 to 83,000	80
83,001 to 96,000	90
96,001 to 130,000	100
130,001 to 220,000	120
220,001 to 320,000	150
320,001 to 450,000	180
450,001 to 600,000	210
600,001 to 780,000	240
780,001 to 970,000	270
970,001 to 1,230,000	300
1,230,001 to 1,520,000	330
1,520,001 to 1,850,000	360
1,850,001 to 2,270,000	390
2,270,001 to 3,020,000	420
3,020,001 to 3,960,000	450
3,960,001 or more	480

Figure: 30 TAC §290.117(e)(2)

Initial or Routine Entry Point and Distribution Water Quality Parameter (WQP) Monitoring			
Monitoring Period	**Initial/Routine WQP List**	**Location**	**Frequency**
Initial or routine monitoring	pH, alkalinity, calcium, conductivity, temperature, total dissolved solids, sodium, sulfate, chloride, hardness, manganese, iron and orthophosphate or silica[1]	Routine number of distribution sites and all entry point(s)WQP sites	Quarterly

[1]Orthophosphate (measured as phosphate-phosphorous (PO_4-P)) must be measured only when an inhibitor containing a phosphate compound is used; inhibitors that contain phosphate include orthophosphate and polyphosphate. Silica must be measured only when an inhibitor containing silicate compound is used.

Figure: 30 TAC §290.117(e)(3)

Water Quality Parameter (WQP) Entry Point and Distribution Monitoring After Installing Corrosion Control			
Monitoring Period	**Corrosion Control Installation WQP List**	**Location**	**Frequency**
After installation of corrosion control	pH, alkalinity, calcium, total dissolved solids, temperature, sodium, sulfate, chloride, hardness, manganese, iron and orthophosphate or silica[1]	Routine number of distribution sites	Quarterly
	pH, alkalinity, calcium, total dissolved solids, temperature, sodium, sulfate, chloride, hardness, manganese, iron, alkalinity dosage rate and concentration[2], and inhibitor dosage rate and inhibitor residual[3]	All entry points	At least every two weeks.

[1]Orthophosphate must be measured if an inhibitor containing a phosphate compound is used. Silica must be measured if an inhibitor containing silicate compound is used.
[2]Alkalinity must be measured if alkalinity is adjusted as part of corrosion control.
[3]Inhibitor dosage rates and inhibitor residual concentrations (orthophosphate or silica) must be measured if an inhibitor is used.

Figure: 30 TAC §290.275(1)

Appendix A – Converting Maximum Contaminant Level Compliance Values for Consumer Confidence Reports (CCR)				
Key				
AL	Action Level			
MCL	Maximum Contaminant Level			
MCLG	Maximum Contaminant Level Goal			
MFL	million fibers per liter			
mrem/year	millirems per year (a measure of radiation absorbed by the body)			
n/a	Not Applicable			
NTU	Nephelometric Turbidity Units			
pCi/L	picocuries per liter (a measure of radioactivity)			
ppm	parts per million, or milligrams per liter (mg/L)			
ppb	parts per billion, or micrograms per liter (µg/L)			
ppt	parts per trillion, or nanograms per liter			
ppq	parts per quadrillion, or picograms per liter			
TT	Treatment Technique			
Contaminant	**MCL in compliance units (mg/L)**	**multiply by...**	**MCL in CCR units**	**MCLG in CCR units**
Microbiological Contaminants				
1. Total Coliform Bacteria			TT	0
2. *E. coli*	Routine and repeat samples are total coliform-positive and either is *E. coli*-positive or system fails to take repeat samples following *E. coli*-positive routine sample or system fails to analyze total coliform-positive repeat sample for *E. coli.*		Routine and repeat samples are total coliform-positive and either is *E. coli*-positive or system fails to take repeat samples following *E. coli*-positive routine sample or system fails to analyze total coliform-positive repeat sample for *E. coli.*	0

3. Fecal indicators (enterococci or coliphage)			TT. An uncorrected fecal indicator positive sample at the raw groundwater source is a TT for the Ground Water Rule (GWR).	n/a
4. Total organic carbon			TT (ppm)	n/a
5. Turbidity			TT (NTU)	n/a
Radioactive Contaminants				
6. Beta/photon emitters	4 mrem/yr		4 mrem/yr	0
7. Alpha emitters	15 pCi/L		15 pCi/L	0
8. Combined radium	5 pCi/L		5 pCi/L	0
9. Uranium	30 µg/L		30 µg/L	0
Inorganic Contaminants				
10. Antimony	.006	1000	6 ppb	6
11. Arsenic	.010	1000	10 ppb	n/a
12. Asbestos	7 MFL		7 MFL	7
13. Barium	2		2 ppm	2
14. Beryllium	.004	1000	4 ppb	4
15. Bromate	.010	1000	10 ppb	0
16. Cadmium	.005	1000	5 ppb	5
17. Chloramines	MRDL=4		MRDL=4 ppm	4
18. Chlorine	MRDL=4		MRDL=4 ppm	4
19. Chlorine Dioxide	MRDL=.8	1000	MRDL=800 ppb	800
20. Chlorite	1.0		1 ppm	0.8
21. Chromium	.1	1000	100 ppb	100
22. Copper	AL=1.3		AL=1.3 ppm	1.3
23. Cyanide	.2	1000	200 ppb	200
24. Fluoride	4		4 ppm	4
25. Lead	AL=.015	1000	AL=15 ppb	0
26. Mercury (inorganic)	.002	1000	2 ppb	2
27. Nitrate (as Nitrogen)	10		10 ppm	10
28. Nitrite (as Nitrogen)	1		1 ppm	1
29. Selenium	.05	1000	50 ppb	50
30. Thallium	.002	1000	2 ppb	0.5

Synthetic Organic Contaminants including Pesticides and Herbicides				
31. 2,4-D	.07	1000	70 ppb	70
32. 2,4,5-TP (Silvex)	.05	1000	50 ppb	50
33. Acrylamide			TT	0
34. Alachlor	.002	1000	2 ppb	0
35. Atrazine	.003	1000	3 ppb	3
36. Benzo(a)pyrene (PAH)	.0002	1,000,000	200 ppt	0
37. Carbofuran	.04	1000	40 ppb	40
38. Chlordane	.002	1000	2 ppb	0
39. Dalapon	.2	1000	200 ppb	200
40. Di(2-ethylhexyl) adipate	.4	1000	400 ppb	400
41. Di(2-ethylhexyl) phthalate	.006	1000	6 ppb	0
42. Dibromochloropropane	.0002	1,000,000	200 ppt	0
43. Dinoseb	.007	1000	7 ppb	7
44. Diquat	.02	1000	20 ppb	20
45. Dioxin (2,3,7,8-TCDD)	.00000003	1,000,000,000	30 ppq	0
46. Endothall	.1	1000	100 ppb	100
47. Endrin	.002	1000	2 ppb	2
48. Epichlorohydrin			TT	0
49. Ethylene dibromide	.00005	1,000,000	50 ppt	0
50. Glyphosate	.7	1000	700 ppb	700
51. Heptachlor	.0004	1,000,000	400 ppt	0
52. Heptachlor epoxide	.0002	1,000,000	200 ppt	0
53. Hexachlorobenzene	.001	1000	1 ppb	0
54. Hexachloro-cyclopentadiene	.05	1000	50 ppb	50
55. Lindane	.0002	1,000,000	200 ppt	200
56. Methoxychlor	.04	1000	40 ppb	40
57. Oxamyl (Vydate)	.2	1000	200 ppb	200
58. PCBs (Polychlorinated biphenyls)	.0005	1,000,000	500 ppt	0
59. Pentachlorophenol	.001	1000	1 ppb	0
60. Picloram	.5	1000	500 ppb	500
61. Simazine	.004	1000	4 ppb	4
62. Toxaphene	.003	1000	3 ppb	0

Volatile Organic Contaminants				
63. Benzene	.005	1000	5 ppb	0
64. Carbon tetrachloride	.005	1000	5 ppb	0
65. Chlorobenzene	.1	1000	100 ppb	100
66. o-Dichlorobenzene	.6	1000	600 ppb	600
67. p-Dichlorobenzene	.075	1000	75 ppb	75
68. 1,2-Dichloroethane	.005	1000	5 ppb	0
69. 1,1-Dichloroethylene	.007	1000	7 ppb	7
70. cis-1,2-Dichloroethylene	.07	1000	70 ppb	70
71. trans-1,2-Dichloroethylene	.1	1000	100 ppb	100
72. Dichloromethane	.005	1000	5 ppb	0
73. 1,2-Dichloropropane	.005	1000	5 ppb	0
74. Ethylbenzene	.7	1000	700 ppb	700
75. Haloacetic acids	0.060	1000	60 ppb	n/a
76. Styrene	.1	1000	100 ppb	100
77. Tetrachloroethylene	.005	1000	5 ppb	0
78. 1,2,4-Trichlorobenzene	.07	1000	70 ppb	70
79. 1,1,1-Trichloroethane	.2	1000	200 ppb	200
80. 1,1,2-Trichloroethane	.005	1000	5 ppb	3
81. Trichloroethylene	.005	1000	5 ppb	0
82. TTHMs (Total trihalomethanes)	.080	1000	80 ppb	n/a
83. Toluene	1		1 ppm	1
84. Vinyl Chloride	.002	1000	2 ppb	0
85. Xylenes	10		10 ppm	10

Figure: 30 TAC §290.275(2)

Appendix B - Sources of Regulated Contaminants			
Key			
AL	Action Level		
MCL	Maximum Contaminant Level		
MCLG	Maximum Contaminant Level Goal		
MFL	million fibers per liter		
mrem/year	millirems per year (a measure of radiation absorbed by the body)		
n/a	Not Applicable		
NTU	Nephelometric Turbidity Units		
pCi/L	picocuries per liter (a measure of radioactivity)		
ppm	parts per million, or milligrams per liter (mg/L)		
ppb	parts per billion, or micrograms per liter (µg/L)		
ppt	parts per trillion, or nanograms per liter		
ppq	parts per quadrillion, or picograms per liter		
TT	Treatment Technique		
Contaminant (units)	**MCLG**	**MCL**	**Major sources in drinking water**
Microbiological Contaminants			
1. Total Coliform Bacteria	0	TT	Naturally present in the environment.
2. *E. coli*	0	Routine and repeat samples are total coliform-positive and either is *E. coli*-positive or system fails to take repeat samples following *E. coli*-positive routine sample or system fails to analyze total coliform-positive repeat sample for *E. coli.*	Human and animal fecal waste.
3. Fecal indicators (enterococci or coliphage)	n/a	TT. An uncorrected fecal indicator positive sample at the raw groundwater source is a TT for the Ground Water Rule (GWR).	Human and animal fecal waste.

4. Total organic carbon (ppm)	n/a	TT	Naturally present in the environment.
5. Turbidity (*Cryptosporidium*)* (*Legionella*)* *Federal and state surface water treatment rules require systems using surface water or ground water under the direct influence of surface water to (1) disinfect their water, and (2) filter their water so that these contaminants are controlled.	n/a (0) (0)	TT (TT) (TT)	Soil runoff. (Human and animal fecal waste.) (Found naturally in water; multiplies in heating systems.)
Radioactive Contaminants			
6. Beta/photon emitters (mrem/yr)	0	4	Decay of natural and man-made deposits.
7. Alpha emitters (pCi/L)	0	15	Erosion of natural deposits.
8. Combined radium (µg/L)	0	5	Erosion of natural deposits.
Inorganic Contaminants			
9. Uranium (µg/L)	0	30	Erosion of natural deposits.
10. Antimony (ppb)	6	6	Discharge from petroleum refineries; fire retardants; ceramics; electronics; solder.
11. Arsenic (ppb)	n/a	10	Erosion of natural deposits; Runoff from orchards; Runoff from glass and electronics production wastes.

12. Asbestos (MFL)	7	7	Decay of asbestos cement water mains; Erosion of natural deposits.
13. Barium (ppm)	2	2	Discharge of drilling wastes; Discharge from metal refineries; Erosion of natural deposits.
14. Beryllium (ppb)	4	4	Discharge from metal refineries and coal-burning factories; Discharge from electrical, aerospace, and defense industries.
15. Bromate (ppb)	0	10	By-product of drinking water disinfection.
16. Cadmium (ppb)	5	5	Corrosion of galvanized pipes; Erosion of natural deposits; Discharge from metal refineries; runoff from waste batteries and paints.
17. Chloramines (ppm)	MRDLG=4	MRDL=4	Water additive used to control microbes.
18. Chlorine (ppm)	MRDLG=4	MRDL=4	Water additive used to control microbes.
19. Chlorine Dioxide (ppb)	800	800	Water additive used to control microbes.
20. Chlorite (ppm)	1.0	1.0	By-product of drinking water disinfection.
21. Chromium (ppb)	100	100	Discharge from steel and pulp mills;

			Erosion of natural deposits.
22. Copper (ppm)	1.3	AL=1.3	Corrosion of household plumbing systems; Erosion of natural deposits.
23. Cyanide (ppb)	200	200	Discharge from steel/metal factories; Discharge from plastic and fertilizer factories.
24. Fluoride (ppm)	4	4	Erosion of natural deposits; Water additive which promotes strong teeth; Discharge from fertilizer and aluminum factories.
25. Lead (ppb)	0	AL=15	Corrosion of household plumbing systems; Erosion of natural deposits.
26. Mercury (inorganic) (ppb)	2	2	Erosion of natural deposits; Discharge from refineries and factories; Runoff from landfills; Runoff from cropland.
27. Nitrate (as Nitrogen) (ppm)	10	10	Runoff from fertilizer use; Leaching from septic tanks, sewage; Erosion of natural deposits.
28. Nitrite (as Nitrogen) (ppm)	1	1	Runoff from fertilizer use; Leaching

			from septic tanks, sewage; Erosion of natural deposits.
29. Selenium (ppb)	50	50	Discharge from petroleum and metal refineries; Erosion of natural deposits; Discharge from mines.
30. Thallium (ppb)	0.5	2	Leaching from ore-processing sites; Discharge from electronics, glass, and drug factories.
Synthetic Organic Contaminants including Pesticides and Herbicides			
31. 2,4-D (ppb)	70	70	Runoff from herbicide used on row crops.
32. 2,4,5-TP (Silvex) (ppb)	50	50	Residue of banned herbicide.
33. Acrylamide	0	TT	Added to water during sewage/wastewater treatment.
34. Alachlor (ppb)	0	2	Runoff from herbicide used on row crops.
35. Atrazine (ppb)	3	3	Runoff from herbicide used on row crops.
36. Benzo(a)pyrene (PAH) (nanograms/L)	0	200	Leaching from linings of water storage tanks and distribution lines.
37. Carbofuran (ppb)	40	40	Leaching of soil fumigant used on rice and alfalfa.
38. Chlordane (ppb)	0	2	Residue of banned termiticide.
39. Dalapon (ppb)	200	200	Runoff from herbicide used on rights of way.

40. Di(2-ethylhexyl) adipate (ppb)	400	400	Discharge from chemical factories.
41. Di(2-ethylhexyl)phthalate (ppb)	0	6	Discharge from rubber and chemical factories.
42. Dibromochloropropane (ppt)	0	200	Runoff/leaching from soil fumigant used on soybeans, cotton, pineapples, and orchards.
43. Dinoseb (ppb)	7	7	Runoff from herbicide used on soybeans and vegetables.
44. Diquat (ppb)	20	20	Runoff from herbicide use.
45. Dioxin (2,3,7,8-TCDD) (ppq)	0	30	Emissions from waste incineration and other combustion; Discharge from chemical factories.
46. Endothall (ppb)	100	100	Runoff from herbicide use.
47. Endrin (ppb)	2	2	Residue of banned insecticide.
48. Epichlorohydrin	0	TT	Discharge from industrial chemical factories; An impurity of some water treatment chemicals.
49. Ethylene dibromide (ppt)	0	50	Discharge from petroleum refineries.
50. Glyphosate (ppb)	700	700	Runoff from herbicide use.
51. Heptachlor (ppt)	0	400	Residue of banned termiticide.
52. Heptachlor epoxide (ppt)	0	200	Breakdown of heptachlor.
53. Hexachlorobenzene (ppb)	0	1	Discharge from metal refineries and

			agricultural chemical factories.
54. Hexachlorocyclopentadiene (ppb)	50	50	Discharge from chemical factories.
55. Lindane (ppt)	200	200	Runoff/leaching from insecticide used on cattle, lumber, gardens.
56. Methoxychlor (ppb)	40	40	Runoff/leaching from insecticide used on fruits, vegetables, alfalfa, livestock.
57. Oxamyl (Vydate) (ppb)	200	200	Runoff/leaching from insecticide used on apples, potatoes, and tomatoes.
58. PCBs (Polychlorinated biphenyls) (ppt)	0	500	Runoff from landfills; Discharge of waste chemicals.
59. Pentachlorophenol (ppb)	0	1	Discharge from wood preserving factories.
60. Picloram (ppb)	500	500	Herbicide runoff.
61. Simazine (ppb)	4	4	Herbicide runoff.
62. Toxaphene (ppb)	0	3	Runoff/leaching from insecticide used on cotton and cattle.
Volatile Organic Compounds			
63. Benzene (ppb)	0	5	Discharge from factories; Leaching from gas storage tanks and landfills.
64. Carbon tetrachloride (ppb)	0	5	Discharge from chemical plants and other industrial activities.
65. Chlorobenzene (ppb)	100	100	Discharge from chemical and

			agricultural chemical factories.
66. o-Dichlorobenzene (ppb)	600	600	Discharge from industrial chemical factories.
67. p-Dichlorobenzene (ppb)	75	75	Discharge from industrial chemical factories.
68. 1,2-Dichloroethane (ppb)	0	5	Discharge from industrial chemical factories.
69. 1,1-Dichloroethylene (ppb)	7	7	Discharge from industrial chemical factories.
70. cis-1,2-Dichloroethylene (ppb)	70	70	Discharge from industrial chemical factories.
71. trans-1,2-Dichloroethylene (ppb)	100	100	Discharge from industrial chemical factories.
72. Dichloromethane (ppb)	0	5	Discharge from pharmaceutical and chemical factories.
73. 1,2-Dichloropropane (ppb)	0	5	Discharge from industrial chemical factories.
74. Ethylbenzene (ppb)	700	700	Discharge from petroleum refineries.
75. Haloacetic acids (HAA) (ppb)	n/a	60	By-product of drinking water disinfection.
76. Styrene (ppb)	100	100	Discharge from rubber and plastic factories; Leaching from landfills.
77. Tetrachloroethylene (ppb)	0	5	Leaching from PVC pipes; Discharge from factories and dry cleaners.
78. 1,2,4-Trichlorobenzene (ppb)	70	70	Discharge from textile-finishing factories.

79. 1,1,1-Trichloroethane (ppb)	200	200	Discharge from metal degreasing sites and other factories.
80. 1,1,2-Trichloroethane (ppb)	3	5	Discharge from industrial chemical factories.
81. Trichloroethylene (ppb)	0	5	Discharge from metal degreasing sites and other factories.
82. TTHMs (Total trihalomethanes) (ppb)	n/a	80	By-product of drinking water disinfection.
83. Toluene (ppm)	1	1	Discharge from petroleum factories.
84. Vinyl Chloride (ppb)	0	2	Leaching from PVC piping; Discharge from plastics factories.
85. Xylenes (ppm)	10	10	Discharge from petroleum factories; Discharge from chemical factories.

Figure: 30 TAC §290.275(3)

Appendix C- - Health Effects Language

Microbiological Contaminants

(1) Coliforms are bacteria that are naturally present in the environment and are used as an indicator that other, potentially harmful, waterborne pathogens may be present or that a potential pathway exists through which contamination may enter the drinking water distribution system. We found coliforms indicating the need to look for potential problems in water treatment or distribution. When this occurs, we are required to conduct assessment(s) to identify problems and to correct any problems that were found during these assessments.

(2) *Escherichia* (*E. coli)* are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Human pathogens in these wastes can cause short-term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a greater health risk for infants, young children, the elderly, and people with severely-compromised immune systems.

(3) Fecal indicators (enterococci or coliphage). Fecal indicators are microbes whose presence indicates that the water may be contaminated with human or animal wastes. Microbes in these wastes can cause short-term health effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, some of the elderly, and people with severely compromised immune systems.

(4) Total organic carbon. Total organic carbon (TOC) has no health effects. However, TOC provides a medium for the formation of disinfection by-products. These by-products include trihalomethanes (THMs) and haloacetic acids (HAAs). Drinking water containing these by-products in excess of the maximum contaminant level (MCL) may lead to adverse health effects, liver or kidney problems, or nervous system effects, and may lead to an increased risk of getting cancer.

(5) Turbidity. Turbidity has no health effects. However, turbidity can interfere with disinfection and provide a medium for microbial growth. Turbidity may indicate the presence of disease-causing organisms. These organisms include bacteria, viruses, and parasites that can cause symptoms such as nausea, cramps, diarrhea, and associated headaches.

Radioactive Contaminants

(6) Beta/photon emitters. Certain minerals are radioactive and may emit forms of radiation known as photons and beta radiation. Some people who drink water containing beta and photon emitters in excess of the MCL over many years may have an increased risk of getting cancer.

(7) Alpha emitters. Certain minerals are radioactive and may emit a form of radiation known as alpha radiation. Some people who drink water containing alpha emitters in excess of the MCL over many years may have an increased risk of getting cancer.

(8) Combined Radium 226/228. Some people who drink water containing radium 226 or 228 in excess of the MCL over many years may have an increased risk of getting cancer.

(9) Uranium. Some people who drink water containing uranium in excess of the MCL over many years may have an increased risk of getting cancer and kidney toxicity.

Inorganic Contaminants

(10) Antimony. Some people who drink water containing antimony well in excess of the MCL over many years could experience increases in blood cholesterol and decreases in blood sugar.

(11) Arsenic. Some people who drink water containing arsenic in excess of the MCL over many years could experience skin damage or problems with their circulatory system, and may have an increased risk of getting cancer.

(12) Asbestos. Some people who drink water containing asbestos in excess of the MCL over many years may have an increased risk of developing benign intestinal polyps.

(13) Barium. Some people who drink water containing barium in excess of the MCL over many years could experience an increase in their blood pressure.

(14) Beryllium. Some people who drink water containing beryllium well in excess of the MCL over many years could develop intestinal lesions.

(15) Bromate. Some people who drink water containing bromate in excess of the MCL over many years could experience an increased risk of getting cancer.

(16) Cadmium. Some people who drink water containing cadmium in excess of the MCL over many years could experience kidney damage.

(17) Chloramines. Some people who use water containing chloramines well in excess of the maximum residual disinfectant level (MRDL) could experience irritating effects to their eyes and nose. Some people who drink water containing chloramines well in excess of theMRDL could experience stomach discomfort or anemia.

(18) Chlorine. Some people who use water containing chlorine well in excess of the MRDL could experience irritating effects to their eyes and nose. Some people who drink water containing chlorine well in excess of the MRDL could experience stomach discomfort.

(19) Chlorine dioxide. Some infants and young children who drink water containing chlorine dioxide in excess of the MRDL could experience nervous system effects. Similar effects may occur in fetuses of pregnant women who drink water containing chlorine dioxide in excess of the MRDL. Some people may experience anemia.

(20) Chlorite. Some infants and young children who drink water containing chlorite in excess of the MCL could experience nervous system effects. Similar effects may occur in fetuses of pregnant women who drink water containing chlorite in excess of the MCL. Some people may experience anemia.

(21) Chromium. Some people who use water containing chromium well in excess of the MCL over many years could experience allergic dermatitis.

(22) Copper. Copper is an essential nutrient, but some people who drink water containing copper in excess of the action level over a relatively short amount of time could experience gastrointestinal distress. Some people who drink water containing copper in excess of the

action level over many years could suffer liver or kidney damage. People with Wilson's Disease should consult their personal doctor.

(23) Cyanide. Some people who drink water containing cyanide well in excess of the MCL over many years could experience nerve damage or problems with their thyroid.

(24) Fluoride. Some people who drink water containing fluoride in excess of the MCL over many years could get bone disease, including pain and tenderness of the bones. Children may get mottled teeth.

(25) Lead. Infants and children who drink water containing lead in excess of the action level could experience delays in their physical or mental development. Children could show slight deficits in attention span and learning abilities. Adults who drink this water over many years could develop kidney problems or high blood pressure.

(26) Mercury (inorganic). Some people who drink water containing inorganic mercury well in excess of the MCL over many years could experience kidney damage.

(27) Nitrate. Infants below the age of six months who drink water containing nitrate in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue-baby syndrome.

(28) Nitrite. Infants below the age of six months who drink water containing nitrite in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue-baby syndrome.

(29) Selenium. Selenium is an essential nutrient. However, some people who drink water containing selenium in excess of the MCL over many years could experience hair or fingernail losses, numbness in fingers or toes, or problems with their circulation.

(30) Thallium. Some people who drink water containing thallium in excess of the MCL over many years could experience hair loss, changes in their blood, or problems with their kidneys, intestines, or liver.

Synthetic Organic Contaminants Including Pesticides and Herbicides

(31) 2,4-D. Some people who drink water containing the weed killer 2,4-D well in excess of the MCL over many years could experience problems with their kidneys, liver, or adrenal glands.

(32) 2,4,5-TP (Silvex). Some people who drink water containing silvex in excess of the MCL over many years could experience liver problems.

(33) Acrylamide. Some people who drink water containing high levels of acrylamide over a long period of time could have problems with their nervous system or blood, and may have an increased risk of getting cancer.

(34) Alachlor. Some people who drink water containing alachlor in excess of the MCL over many years could have problems with their eyes, liver, kidneys, or spleen, or experience anemia, and may have an increased risk of getting cancer.

(35) Atrazine. Some people who drink water containing atrazine well in excess of the MCL over many years could experience problems with their cardiovascular system or reproductive difficulties.

(36) Benzo(a)pyrene (PAH). Some people who drink water containing benzo(a)pyrene in excess of the MCL over many years may experience reproductive difficulties and may have an increased risk of getting cancer.

(37) Carbofuran. Some people who drink water containing carbofuran in excess of the MCL over many years could experience problems with their blood, or nervous or reproductive systems.

(38) Chlordane. Some people who drink water containing chlordane in excess of the MCL over many years could experience problems with their liver or nervous system, and may have an increased risk of getting cancer.

(39) Dalapon. Some people who drink water containing dalapon well in excess of the MCL over many years could experience minor kidney changes.

(40) Di (2-ethylhexyl) adipate. Some people who drink water containing di (2-ethylhexyl) adipate well in excess of the MCL over many years could experience general toxic effects such as weight loss, liver enlargement, or possible reproductive difficulties.

(41) Di (2-ethylhexyl) phthalate. Some people who drink water containing di (2-ethylhexyl) phthalate in excess of the MCL over many years may have problems with their liver, or experience reproductive difficulties, and may have an increased risk of getting cancer.

(42) Dibromochloropropane (DBCP). Some people who drink water containing DBCP in excess of the MCL over many years could experience reproductive difficulties and may have an increased risk of getting cancer.

(43) Dinoseb. Some people who drink water containing dinoseb well in excess of the MCL over many years could experience reproductive difficulties.

(44) Dioxin (2,3,7,8-TCDD). Some people who drink water containing dioxin in excess of the MCL over many years could experience reproductive difficulties and may have an increased risk of getting cancer.

(45) Diquat. Some people who drink water containing diquat in excess of the MCL over many years could get cataracts.

(46) Endothall. Some people who drink water containing endothall in excess of the MCL over many years could experience problems with their stomach or intestines.

(47) Endrin. Some people who drink water containing endrin in excess of the MCL over many years could experience liver problems.

(48) Epichlorohydrin. Some people who drink water containing high levels of epichlorohydrin over a long period of time could experience stomach problems, and may have an increased risk of getting cancer.

(49) Ethylene dibromide. Some people who drink water containing ethylene dibromide in excess of the MCL over many years could experience problems with their liver, stomach, reproductive system, or kidneys, and may have an increased risk of getting cancer.

(50) Glyphosate. Some people who drink water containing glyphosate in excess of the MCL over many years could experience problems with their kidneys or reproductive difficulties.

(51) Heptachlor. Some people who drink water containing heptachlor in excess of the MCL over many years could experience liver damage and may have an increased risk of getting cancer.

(52) Heptachlor epoxide. Some people who drink water containing heptachlor epoxide in excess of the MCL over many years could experience liver damage, and may have an increased risk of getting cancer.

(53) Hexachlorobenzene. Some people who drink water containing hexachlorobenzene in excess of the MCL over many years could experience problems with their liver or kidneys, or adverse reproductive effects, and may have an increased risk of getting cancer.

(54) Hexachlorocyclopentadiene. Some people who drink water containing hexachlorocyclopentadiene well in excess of the MCL over many years could experience problems with their kidneys or stomach.

(55) Lindane. Some people who drink water containing lindane in excess of the MCL over many years could experience problems with their kidneys or liver.

(56) Methoxychlor. Some people who drink water containing methoxychlor in excess of the MCL over many years could experience reproductive difficulties.

(57) Oxamyl. Some people who drink water containing oxamyl in excess of the MCL over many years could experience slight nervous system effects.

(58) PCBs (polychlorinated byphenols). Some people who drink water containing PCBs in excess of the MCL over many years could experience changes in their skin, problems with their thymus gland, immune deficiencies, or reproductive or nervous system difficulties, and may have an increased risk of getting cancer.

(59) Pentachlorophenol. Some people who drink water containing pentachlorophenol in excess of the MCL over many years could experience problems with their liver or kidneys, and may have an increased risk of getting cancer.

(60) Picloram. Some people who drink water containing picloram in excess of the MCL over many years could experience problems with their liver.

(61) Simazine. Some people who drink water containing simazine in excess of the MCL over many years could experience problems with their blood.

(62) Toxaphene. Some people who drink water containing toxaphene in excess of the MCL over many years could have problems with their kidneys, liver, or thyroid, and may have an increased risk of getting cancer.

Volatile Organic Contaminants

(63) Benzene. Some people who drink water containing benzene in excess of the MCL over many years could experience anemia or a decrease in blood platelets, and may have an increased risk of getting cancer.

(64) Carbon Tetrachloride. Some people who drink water containing carbon tetrachloride in excess of the MCL over many years could experience problems with their liver and may have an increased risk of getting cancer.

(65) Chlorobenzene. Some people who drink water containing chlorobenzene in excess of the MCL over many years could experience problems with their liver or kidneys.

(66) o-Dichlorobenzene. Some people who drink water containing o-dichlorobenzene well in excess of the MCL over many years could experience problems with their liver, kidneys, or circulatory systems.

(67) p-Dichlorobenzene. Some people who drink water containing p-dichlorobenzene in excess of the MCL over many years could experience anemia, damage to their liver, kidneys, or spleen, or changes in their blood.

(68) 1,2-Dichloroethane. Some people who drink water containing 1,2-dichloroethane in excess of the MCL over many years may have an increased risk of getting cancer.

(69) 1,1-Dichloroethylene. Some people who drink water containing 1,1-dichloroethylene in excess of the MCL over many years could experience problems with their liver.

(70) cis-1,2-Dichloroethylene. Some people who drink water containing cis-1,2-dichloroethylene in excess of the MCL over many years could experience problems with their liver.

(71) trans-1,2-Dicholoroethylene. Some people who drink water containing trans-1,2-dichloroethylene well in excess of the MCL over many years could experience problems with their liver.

(72) Dichloromethane. Some people who drink water containing dichloromethane in excess of the MCL over many years could have liver problems and may have an increased risk of getting cancer.

(73) 1,2-Dichloropropane. Some people who drink water containing 1,2-dichloropropane in excess of the MCL over many years may have an increased risk of getting cancer.

(74) Ethylbenzene. Some people who drink water containing ethylbenzene well in excess of the MCL over many years could experience problems with their liver or kidneys.

(75) Haloacetic acids (HAAs). Some people who drink water containing HAAs in excess of the MCL over many years may have an increased risk of getting cancer.

(76) Styrene. Some people who drink water containing styrene well in excess of the MCL over many years could have problems with their liver, kidneys, or circulatory system.

(77) Tetrachloroethylene. Some people who drink water containing tetrachloroethylene in excess of the MCL over many years could have problems with their liver, and may have an increased risk of getting cancer.

(78) 1,2,4-Trichlorobenzene. Some people who drink water containing 1,2,4-trichlorobenzene well in excess of the MCL over many years could experience changes in their adrenal glands.

(79) 1,1,1,-Trichloroethane. Some people who drink water containing 1,1,1-trichloroethane in excess of the MCL over many years could experience problems with their liver, nervous system, or circulatory system.

(80) 1,1,2-Trichloroethane. Some people who drink water containing 1,1,2-trichloroethane well in excess of the MCL over many years could have problems with their liver, kidneys, or immune systems.

(81) Trichloroethylene. Some people who drink water containing trichloroethylene in excess of the MCL over many years could experience problems with their liver and may have an increased risk of getting cancer.

(82) TTHMs (Total Trihalomethanes). Some people who drink water containing trihalomethanes in excess of the MCL over many years may experience problems with their liver, kidneys, or central nervous systems, and may have an increased risk of getting cancer.

(83) Toluene. Some people who drink water containing toluene well in excess of the MCL over many years could have problems with their nervous system, kidneys, or liver.

(84) Vinyl Chloride. Some people who drink water containing vinyl chloride in excess of the MCL over many years may have an increased risk of getting cancer.

(85) Xylenes. Some people who drink water containing xylenes in excess of the MCL over many years could experience damage to their nervous system.

Figure: 40 TAC §746.1015

Education	Experience
(1) A bachelor's degree with 12 college credit hours in child development and six college credit hours in management,	and at least one year of experience in a licensed child-care center;
(2) An associate's of applied science degree in child development or a closely related field with six college credit hours in child development and six college credit hours in management. A "closely related field" is any educational instruction pertaining to the growth, development, physical or mental care, or education of children ages birth through 13 years,	and at least two years of experience in a licensed child-care center;
(3) Sixty college credit hours with nine college credit hours in child development and six college credit hours in management,	and at least two years of experience in a licensed child-care center;
(4) A child-care administrator's certificate from a community college with at least 15 college credit hours in child development and three college credit hours in management,	and at least two years of experience in a licensed child-care center;
(5) A Child Development Associate credential or Certified Child-Care Professional credential with six college credit hours in management,	and at least two years of experience in a licensed child-care center;
(6) A day-care administrator's credential issued by a professional organization or educational institution and approved by Licensing based on criteria specified in Subchapter P of Chapter 745 of this title, (relating to Day-Care Administrator's Credential Program),	and at least two years of experience in a licensed child-care center; or
(7) Nine college credit hours in child development and nine college credit hours in management,	and at least three years of experience in a licensed child-care center.

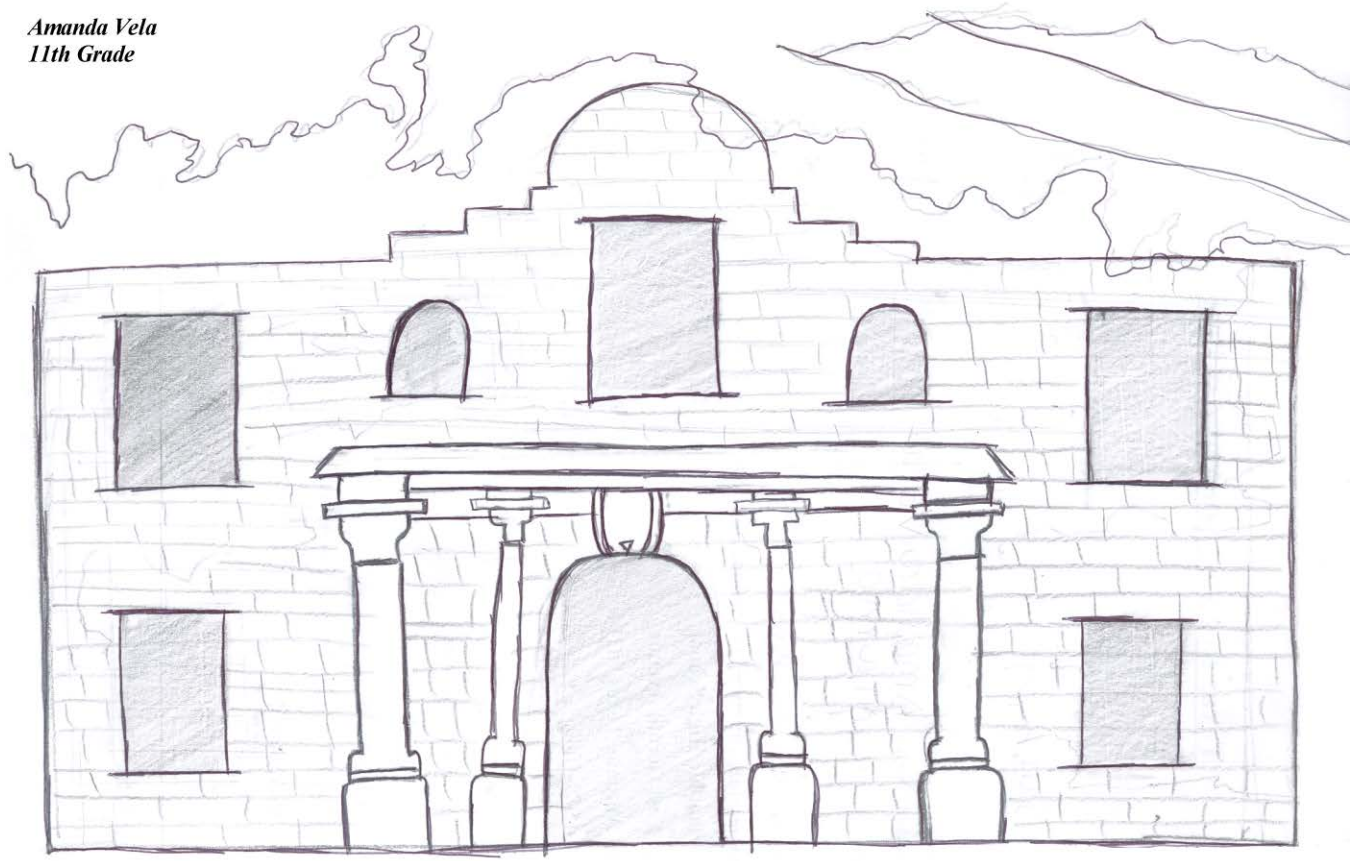
Figure: 40 TAC §746.1017

Education	Experience
(1) A bachelor's degree with 12 college credit hours in child development and three college credit hours in management,	and at least one year of experience in a licensed child-care center or a licensed or registered child-care home;
(2) An associate's of applied science degree in child development or a closely related field with six college credit hours in child development and three college credit hours in management. A "closely related field" is any educational instruction pertaining to the growth, development, physical or mental care, or education of children ages birth through 13 years,	and at least one year of experience in a licensed child-care center or a licensed or registered child-care home;
(3) Sixty college credit hours with six college credit hours in child development and three college credit hours in management,	and at least one year of experience in a licensed child-care center or a licensed or registered child-care home;
(4) A Child Development Associate credential or Certified Child-Care Professional credential with three college credit hours in management,	and at least one year of experience in a licensed child-care center or a licensed or registered child-care home;
(5) A child-care administrator's certificate from a community college with at least 15 college credit hours in child development and three college credit hours in management,	and at least two years of experience in a licensed child-care center or a licensed or registered child-care home;
(6) A day-care administrator's credential issued by a professional organization or an educational institution and approved by Licensing based on criteria specified in Subchapter P of Chapter 745 of this title (relating to Day-Care Administrator's Credential Program),	and at least two years of experience in a licensed child-care center or licensed or registered child-care home; or
(7) Seventy-two clock hours of training in child development and 30 clock hours in management,	and at least three years of experience in a licensed child-care center or a licensed or registered child-care home.

Figure: 40 TAC §746.1301

Type of training:	Who is required to take the training?
(1) Orientation to your child care center within seven days of employment;	All employees.
(2) 24 clock hours of pre-service training: (A) A caregiver must complete eight hours before the caregiver may be counted in the child/caregiver ratio; and (B) A caregiver must complete the remaining 16 hours within 90 days of employment;	Only caregivers, although a caregiver may be exempt from pre-service training as specified in §746.1307 of this title (relating to Are any caregivers exempt from the pre-service training?).
(3) 24 clock hours of annual training;	Only caregivers.
(4) CPR and first-aid training; and	Employees and/or caregivers as specified in §746.1315 of this title (relating to Who must have first-aid and CPR training?).
(5) Transportation training.	Any employee or caregiver who transports a child whose chronological or developmental age is younger than nine years old, as specified in §746.1316 of this title (relating to What additional training must a person have in order to transport a child in care?).

Amanda Vela
11th Grade



IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 03/20/17 - 03/26/17 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 03/20/17 - 03/26/17 is 18% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-201701058
Leslie Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: March 14, 2017

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Texas Education Agency

Correction of Error

The Texas Education Agency adopted amendments to 19 TAC Chapter 89, Adaptations for Special Populations, Subchapter AA, Commissioner's Rules Concerning Special Education Services, Division 2, Clarification of Provisions in Federal Regulations and State Law, and Division 7, Dispute Resolution. The amendments were published in the March 17, 2017 issue of the *Texas Register* (42 TexReg 1247).

Due to error by the Texas Education Agency, the summary of public comments inadvertently attributed two comments to the Texas State Teachers Association. However, the comments should have been attributed to the Texas Classroom Teachers Association. The Texas Classroom Teachers Association submitted the following comments.

Comment: The Texas Classroom Teachers Association (TCTA), Disability Rights Texas (DRTx), and a parent who is a member of the Coalition of Texans With Disabilities and of the Down Syndrome Association of Central Texas recommended that 19 TAC §89.1050(c)(1)(B) be amended to include language requiring the regular education teacher who is a member of a student's admission, review, and dismissal (ARD) committee be, to the extent practicable, a teacher who is responsible for implementing a portion of the student's individualized education program (IEP).

Agency Response: The agency agrees and has modified §89.1050(c)(1)(B) at adoption.

Comment: TCTA and DRTx recommended that §89.1075(d) be amended to include language requiring school districts to develop a process for teachers who instruct a student with a disability to provide input into the development of the student's IEP.

Agency Response: This comment is outside the scope of the proposed rulemaking. However, the recommended change is included as a requirement in the Texas Education Code, §29.001(11)(B), to which school districts and charter schools must adhere.

TRD-201701052

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §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. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is April 24, 2017. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on April 24, 2017. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: Aaron Echaniz; DOCKET NUMBER: 2017-0237-LII-E; IDENTIFIER: RN109435370; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: irrigator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(2) COMPANY: Azteca Milling, L.P.; DOCKET NUMBER: 2016-1945-AIR-E; IDENTIFIER: RN100215086; LOCATION: Plainview, Hale County; TYPE OF FACILITY: corn milling plant; RULES VIOLATED: 30 TAC §122.143(4) and §122.146(2), Federal Operating Permit Number O3468, General Terms and Conditions, and Texas Health

and Safety Code (THSC), §382.085(b), by failing to submit a Permit Compliance Certification no later than 30 days after the end of the certification period; 30 TAC §116.110(a) and §116.116(b)(1) and THSC, §382.085(b) and §382.0518(a), by failing to obtain a permit amendment prior to commencing construction of additional sources of air contaminants; and 30 TAC §116.315(a) and THSC, §382.085(b), by failing to submit an application for renewal at least six months prior to the expiration of a permit; PENALTY: $29,626; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(3) COMPANY: Brian Keith Black; DOCKET NUMBER: 2016-2073-MSW-E; IDENTIFIER: RN109153502; LOCATION: Orange, Orange County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW); RULE VIOLATED: 30 TAC §330.15(a), by failing to not cause, suffer, allow, or permit the collection, storage, transportation, processing, or disposal of MSW; PENALTY: $1,187; ENFORCEMENT COORDINATOR: Steven Stump, (512) 239-1343; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(4) COMPANY: Buckeye Texas Processing LLC; DOCKET NUMBER: 2016-1855-IWD-E; IDENTIFIER: RN106620438; LOCATION: Corpus Christi, Nueces County; TYPE OF FACILITY: crude oil refining facility; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0005024000, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, Outfall Numbers 201 and 301, by failing to comply with permitted effluent limitations; PENALTY: $4,387; ENFORCEMENT COORDINATOR: James Boyle, (512) 239-2527; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(5) COMPANY: City of Big Sandy; DOCKET NUMBER: 2016-2141-PWS-E; IDENTIFIER: RN101389625; LOCATION: Big Sandy, Upshur County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(c)(2)(A), (h), and (i)(1) and §290.122(c)(2)(A) and (f), by failing to collect lead and copper tap samples at the required 20 sample sites, have the samples analyzed, and report the results to the executive director (ED), and failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to collect lead and copper tap samples; and 30 TAC §290.117(c)(2)(B), (h), and (i)(1), by failing to collect lead and copper tap samples at the required ten sample sites, have the samples analyzed, and report the results to the ED; PENALTY: $802; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(6) COMPANY: City of Boerne; DOCKET NUMBER: 2016-1648-MWD-E; IDENTIFIER: RN105653398; LOCATION: Boerne, Kendall County; TYPE OF FACILITY: wastewater treatment and recycling facility; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(b)(14)(ix) and (c), by failing to obtain authorization under a Texas Pollutant Discharge Elimination System (TPDES) General Permit to discharge stormwater associated with wastewater treatment; 30 TAC §305.125(1) and (5), and §319.9(a) and TPDES Permit Number WQ0010066002, Definitions and Standard Permit Conditions Number 3.a., by failing to properly calculate effluent loading results from flow-proportional composite samples; 30 TAC §210.25(b)(1) and TPDES Permit Number WQ0010066002, General Requirements, Number 1, by failing to place signage at all areas where reclaimed water is stored or where there exist hose bibs or faucets; and 30 TAC §217.327, by failing to mark hydrants and outlets for non-potable water in both English and Spanish reading NON-POTABLE WATER, DO NOT DRINK and NO BEBA EL AGUA; PENALTY: $17,601; Supplemental Environmental Project offset amount of $14,081; ENFORCEMENT COORDINATOR: Melissa Castro, (512) 239-0855; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(7) COMPANY: City of Littlefield; DOCKET NUMBER: 2017-0092-MSW-E; IDENTIFIER: RN102217593; LOCATION: Littlefield, Lamb County; TYPE OF FACILITY: type IV arid exempt landfill; RULES VIOLATED: 30 TAC §330.131 and municipal solid waste Permit Number 1298, Site Operating Plan Section 10.1 Accesss Control, Site Security, by failing to control access to the facility by means of artificial barriers, natural barriers, or a combination of both, appropriate to protect human health and safety and the environment; PENALTY: $1,000; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(8) COMPANY: City of Redwater; DOCKET NUMBER: 2016-1795-PWS-E; IDENTIFIER: RN101387421; LOCATION: Redwater, Bowie County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(d)(2)(B) and §290.110(b)(4) and Texas Health and Safety Code, §341.0315(c), by failing to maintain a disinfectant residual of at least 0.5 milligrams per liter of total chlorine throughout the distribution system at all times; PENALTY: $225; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(9) COMPANY: City of Refugio; DOCKET NUMBER: 2016-1838-PWS-E; IDENTIFIER: RN101387256; LOCATION: Refugio, Refugio County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.42(l), by failing to compile and maintain a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.121(a) and (b), by failing to maintain a complete and up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; 30 TAC §290.119(a)(2), by failing to analyze samples used to determine compliance with the treatment technique requirements and maximum residual disinfectant levels by a laboratory approved by the executive director; and 30 TAC §290.46(j), by failing to complete a customer service inspection certificate prior to providing continuous service to new construction or any existing service when the water purveyor has reason to believe that cross connections or other potential contamination hazards exist; PENALTY: $329; ENFORCEMENT COORDINATOR: James Fisher, (512) 239-2537; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(10) COMPANY: Dale K. Farrow; DOCKET NUMBER: 2016-2071-WQ-E; IDENTIFIER: RN106727043; LOCATION: Ponta, Cherokee County; TYPE OF FACILITY: aggregate production operation; RULES VIOLATED: TWC, §26.121(a)(1), by failing to prevent the unauthorized discharge of industrial wastewater into or adjacent to any water in the state; 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to develop and implement a Stormwater Pollution Prevention Plan at the Site, in accordance with Texas Pollutant Discharge Elimination System Multi-Sector General Permit TXR050000 for industrial facilities; and 30 TAC §321.64, by failing to divert all uncontaminated runoff around wastewater treatment and retention facilities; PENALTY: $2,764; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(11) COMPANY: Del Valle Independent School District; DOCKET NUMBER: 2016-2053-MWD-E; IDENTIFIER: RN104416383; LOCATION: Creedmoor, Travis County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §30.350(d), (e), and (j) and §305.125(1) and TCEQ Permit Number WQ0014567002, Special Provisions Number 2, by failing to employ or contract with one or more licensed wastewater treatment facility operators or wastewater system operations companies holding a valid license or registration; and TWC, §26.121(a)(1) and 30 TAC §305.42(a) and §305.65, by failing to maintain authorization to discharge wastewater into or adjacent to any water in the state; PENALTY: $17,876; ENFORCEMENT COORDINATOR: Austin Henck, (512) 239-6155; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(12) COMPANY: E. S. WATER UTILITY CONSOLIDATORS INCORPORATED; DOCKET NUMBER: 2017-0010-PWS-E; IDENTIFIER: RN101253128; LOCATION: Conroe, Montgomery County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3) and §290.122(c)(2)(A) and (f), by failing to timely submit a Disinfectant Level Quarterly Operating Report (DLQOR) to the executive director (ED) each quarter by the tenth day of the month following the end of the quarter for the first quarter of 2016, and failing provide to public notification and submit a copy of the public notification to the ED regarding the failure to submit a DLQOR for the first quarter of 2016; 30 TAC §290.117(f)(1)(A)(ii) and (i)(7) and §290.122(b)(2)(A) and (f), by failing to perform and submit a corrosion control study to identify optimal corrosion control treatment for the system within 12 months after the end of the January 1, 2014 - December 31, 2014, monitoring period in which the system exceeded the lead action level and failed to provide public notification and submit a copy of the public notification to the ED regarding the failure to perform and submit a corrosion control study; and 30 TAC §290.117(i)(6) and (j), by failing to mail consumer notification of lead tap water monitoring results to persons served at the locations that were sampled and failing to submit to the TCEQ a copy of the consumer notification and certification that the consumer notification had been distributed to the persons served at the locations in a manner consistent with TCEQ requirements for the January 1, 2016 - June 30, 2016, monitoring period; PENALTY: $187; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(13) COMPANY: Explorer Pipeline Company; DOCKET NUMBER: 2016-2092-AIR-E; IDENTIFIER: RN100225432; LOCATION: Houston, Harris County; TYPE OF FACILITY: pipeline breakout station; RULES VIOLATED: 30 TAC §122.132(d)(2) and §122.143(4) and Texas Health and Safety Code, §382.085(b), by failing to include the preconstruction authorizations that are applicable to emission units at the Site in the Federal Operating Permit renewal application; PENALTY: $3,750; ENFORCEMENT COORDINATOR: Shelby Orme, (512) 239-4575; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(14) COMPANY: Gardendale Mobile Home Park, LLC; DOCKET NUMBER: 2016-1753-PWS-E; IDENTIFIER: RN101197283; LOCATION: Gardendale, Ector County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the executive director (ED) regarding the failure to conduct routine coliform monitoring and the failure to submit the Disinfectant Level Quarterly Operating Report (DLQOR); 30 TAC §290.117(c)(2)(C), (h), and (i)(1) and §290.122(c)(2)(A) and (f), by failing to collect lead and copper tap samples at the required five sample sites, have the samples analyzed, and report the results to the ED, and failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to collect lead and copper tap samples; 30 TAC §§290.46(f)(4), 290.106(e), and 290.122(c)(2)(A) and (f), by failing to report the results of asbestos sampling to the ED, and failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to report the results of asbestos sampling to the ED; and 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a DLQOR to the ED each quarter by the tenth day of the month following the end of each quarter; PENALTY: $1,036; ENFORCEMENT COORDINATOR: James Fisher, (512) 239-2537; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(15) COMPANY: Intercontinental Terminals Company LLC; DOCKET NUMBER: 2016-1917-AIR-E; IDENTIFIER: RN100210806; LOCATION: La Porte, Harris County; TYPE OF FACILITY: liquid storage tank farm; RULES VIOLATED: 30 TAC §101.201(c) and §122.143(4), Federal Operating Permit (FOP) Number O1061, Special Terms and Conditions (STC) Number 2.F, and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit a final record within 14 days after the end of the emissions event; 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), FOP Number O1061, STC Number 14, THSC, §382.085(b), and New Source Review Permit Number 1078, Special Conditions Number 5, by failing to prevent unauthorized emissions; and 30 TAC §101.201(a)(1)(B) and §122.143(4), FOP Number O1061, STC Number 2.F, and THSC, §382.085(b), by failing to submit the initial notification for a reportable emissions event no later than 24 hours after the discovery of an emissions event; PENALTY: $4,251; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(16) COMPANY: JACKSON WATER SUPPLY CORPORATION; DOCKET NUMBER: 2016-2004-PWS-E; IDENTIFIER: RN101177194; LOCATION: Tyler, Smith County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(d)(2)(A) and §290.110(b)(4) and Texas Health and Safety Code, §341.0315(c), by failing to maintain a disinfectant residual of at least 0.20 milligrams per liter of free chlorine throughout the distribution system at all times; PENALTY: $150; ENFORCEMENT COORDINATOR: Ross Luedtke, (512) 239-3157; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(17) COMPANY: JPM Business Incorporated dba Grab N Go Foodmart 6; DOCKET NUMBER: 2016-1989-PST-E; IDENTIFIER: RN101792141; LOCATION: Van, Van Zandt County; TYPE OF FACILITY: retail convenience facility; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month; and 30 TAC §334.10(b)(1)(B), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: $6,000; ENFORCEMENT COORDINATOR: Ken Moller, (512) 239-6111; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(18) COMPANY: Odfjell Terminals (Houston) Incorporated; DOCKET NUMBER: 2016-1081-AIR-E; IDENTIFIER: RN100218411; LOCATION: Seabrook, Harris County; TYPE OF FACILITY: organic liquid storage terminal; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), Texas Health and Safety Code (THSC), §382.085(b), New Source Review (NSR) Permit Number 8865, Special Conditions (SC) Number 1, and Federal Operating Permit (FOP) Number O3027, Special Terms and Conditions (STC) Number 17, by failing to maintain nitrogen oxides and volatile

organic compounds emissions below the permitted annual emissions rates for the Operating Flare, Emissions Point Number (EPN) FL-1; 30 TAC §116.115(c) and §122.143(4), THSC, §382.085(b), NSR Permit Number 8865, SC Number 14D, and FOP Number O3027, STC Number 17, by failing to maintain the net heating value of gas combusted in the Operating Flare, EPN FL-1, greater than or equal to 300 British thermal units per standard cubic foot; and 30 TAC §122.143(4) and §122.145(2)(A), THSC, §382.085(b), and FOP Number O3027, General Terms and Conditions, by failing to report all instances of deviations; PENALTY: $69,555; Supplemental Environmental Project offset amount of $27,822; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(19) COMPANY: PADDY'S ONE-STOP, INCORPORATED; DOCKET NUMBER: 2016-1925-PST-E; IDENTIFIER: RN101557775; LOCATION: Carrollton, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b)(1)(B), by failing to maintain underground storage tank (UST) records and make them immediately available for inspection upon request by agency personnel; and 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month; PENALTY: $8,250; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(20) COMPANY: Parker County; DOCKET NUMBER: 2015-0912-WQ-E; IDENTIFIER: RN105457998; LOCATION: Weatherford, Parker County; TYPE OF FACILITY: municipal separate storm sewer system; RULES VIOLATED: 30 TAC §305.125(1), 40 Code of Federal Regulations §122.34(g)(3), and Texas Pollutant Discharge Elimination System General Permit Number TXR040393 Part IV, Section B(2), by failing to submit a concise annual report to the executive director by March 13, 2015; PENALTY: $938; ENFORCEMENT COORDINATOR: Had Darling, (512) 239-2520; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(21) COMPANY: SMITH INTERNATIONAL, INCORPORATED; DOCKET NUMBER: 2016-1476-PWS-E; IDENTIFIER: RN104100177; LOCATION: Houston, Harris County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.117(i)(5) and (k) and §290.122(b)(2)(B) and (f), and 40 Code of Federal Regulations (CFR) §141.85(a) and (b) and §141.90(f)(1), by failing to deliver the public education materials following the lead action level exceedance that occurred during the January 1, 2013 - December 31, 2015, monitoring period and failing to provide the executive director (ED) with copies of the public education materials and certification that distribution of said materials is being conducted in a manner consistent with TCEQ requirements, and failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to deliver the public education materials; 30 TAC §290.117(d)(2)(A), (h), and (i)(2) and §290.122(c)(2)(A) and (f) and 40 CFR §141.88 and §141.90(b), by failing to collect one lead and copper sample from each of the facility's entry points no later than 180 days after the end of the January 1, 2013 - December 31, 2015, monitoring period during which the lead action level was exceeded, have the samples analyzed, and report the results to the ED, and failing to issue public notification and submit a copy of the public notification to the ED regarding the failure to collect one lead and copper sample from each of the facility's entry points no later than 180 days after the end of the January 1, 2013 - December 31, 2015 monitoring period; 30 TAC §290.117(g)(2)(A) and §290.122(b)(2)(B) and (f) and 40 CFR §141.83 and §141.90(d)(1), by failing to submit a recommendation to the ED for source water treatment within 180 days after the end of the January 1, 2013 - December 31, 2015, monitoring period during which the lead action level was exceeded, and failing to issue public notification and submit a copy of the public notification to the ED regarding the failure to submit a recommendation to the ED for source water treatment; 30 TAC §290.117(f)(3)(A) and §290.122(b)(2)(B) and (f) and 40 CFR §§141.81(e)(1), 141.82(a), and 141.90(c)(2), by failing to submit a recommendation to the ED for optimal corrosion control treatment within six months after the end of the January 1, 2013 - December 31, 2015, monitoring period during which the lead action level was exceeded, and failing to issue public notification and submit a copy of the public notification to the ED regarding the failure to submit a recommendation to the ED for optimal corrosion control treatment; 30 TAC §290.117(e)(2), (h), and (i)(3) and 40 CFR §141.87 and §141.90(a), by failing to conduct water quality parameter sampling at each of the facility's entry points and the required distribution sample site for the first six-month period following the January 1, 2013 - December 31, 2015, monitoring period during which the lead action level was exceeded, have the samples analyzed, and report the results to the ED; and 30 TAC §290.117(i)(6) and (j) and 40 CFR §141.85(d) and §141.90(f)(3), by failing to provide a consumer notification of lead tap water monitoring results to persons served at the sites that were tested, and failing to mail a copy of the consumer notification of tap results to the ED along with certification that the consumer notification has been distributed for the January 1, 2016 - June 30, 2016, monitoring period; PENALTY: $575; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(22) COMPANY: Targa Pipeline Mid-Continent WestTex LLC; DOCKET NUMBER: 2016-1908-AIR-E; IDENTIFIER: RN100215714; LOCATION: Midkiff, Reagan County; TYPE OF FACILITY: natural gas processing plant; RULES VIOLATED: 30 TAC §122.143(4) and §122.146(2), Texas Health and Safety Code, §382.085(b), and Federal Operating Permit Number O3120, General Terms and Conditions and Special Terms and Conditions Number 10, by failing to submit a permit compliance certification no later than 30 days after the end of the certification period; PENALTY: $4,200; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(23) COMPANY: Terra Verde Utility Company, LLC; DOCKET NUMBER: 2016-1905-MWD-E; IDENTIFIER: RN102681483; LOCATION: Hockley, Waller County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0014901001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $7,000; ENFORCEMENT COORDINATOR: James Boyle, (512) 239-2527; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(24) COMPANY: Troy D. Montgomery; DOCKET NUMBER: 2017-0012-LII-E; IDENTIFIER: RN105005938; LOCATION: Granbury, Hood County; TYPE OF FACILITY: landscaping business; RULES VIOLATED: 30 TAC §344.24(a) and §344.35(d)(2) and (3), by failing to comply with local landscape irrigation regulations for permitting or inspections as required by the city, town, county, special purpose district, public water supply, or political subdivision of the state; and 30 TAC §344.63(4), by failing to comply with the requirements for a completed installation of an irrigation system; PENALTY: $226; ENFORCEMENT COORDINATOR: Raime Hayes-Falero, (713) 767-3567; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(25) COMPANY: Wendell Edmonson; DOCKET NUMBER: 2017-0238-WOC-E; IDENTIFIER: RN109498444; LOCATION: Edmonson, Hale County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

TRD-201701060
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: March 14, 2017

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Enforcement Orders

An agreed order was adopted regarding Zahn Enterprises, Inc. d/b/a C & D Waste Landfill, Docket No. 2015-1124-MSW-E on March 14, 2017, assessing $2,813 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Elizabeth Harkrider, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding causeway marina llc, Docket No. 2016-0894-PST-E on March 14, 2017, assessing $3,505 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Isaac Ta, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Mcdade Valero LLC dba MNJ Grocery, Docket No. 2016-0703-PST-E on March 14, 2017, assessing $3,563 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Adam Taylor, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Sidak's Petro Inc d/b/a Sidak's Petro, Docket No. 2016-0606-PST-E on March 14, 2017, assessing $2,981 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Audrey Liter, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Z & H ENTERPRISES INC d/b/a 5 CORNERS FOOD MART, Docket No. 2016-1094-PST-E on March 14, 2017, assessing $5,005 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Eric Grady, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201701085
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 15, 2017

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Notice of District Petition

Notice issued February 21, 2017

TCEQ Internal Control No. D-12292016-032; Broad Reach Partners II, LP and Broad Reach Partners III, LP (Petitioners) filed a petition for creation of Brazoria County Municipal Utility District No. 66 (District) with the TCEQ. The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioners holds title to a majority in value of the land to be included in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 147.37 acres located within Brazoria County, Texas; and (4) all of the land within the proposed District is within the corporate limits of the City of Manvel, Texas, and no portion of the land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Resolution No. 2011-R-05, passed and approved May 9, 2011, and by Resolution No. 2015-R-18 amending Resolution No. 2011-R-05, passed and approved on May 11, 2015, the City of Manvel, Texas, gave its consent to the creation of the proposed District, pursuant to Texas Water Code §54.016. The petition further states that the proposed District will: (1) purchase, construct, acquire, maintain and operate waterworks and sanitary sewer system for commercial and residential purposes; (2) construct, acquire, improve, extend, maintain and operate works, improvements, facilities, plants, equipment, and appliances helpful or necessary to provide more adequate drainage for the proposed District; (3) control, abate and amend local storm waters or other local harmful excesses of waters; (4) road facilities; and (5) purchase, construct, acquire, improvement, maintain and operate such additional facilities, systems, plants and enterprises as shall be consistent with all of the purposes for which the proposed District is created, all as more particularly described in an engineer's report filed simultaneously with the filing of this petition. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioner, from the information available at this time, that the cost of said project will be approximately $17,945,000 ($14,670,000 utilities plus $2,110,000 roads plus $1,165,000 parks and recreational facilities).

INFORMATION SECTION.

To view the complete issued notice, view the notice on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al

(512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-201701082
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 15, 2017

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Notice of Hearing

HONEY HOLDING I LTD.

SOAH Docket No. 582-17-1839

TCEQ Docket No. 2016-1284-IWD

Permit No. WQ0005155000

APPLICATION.

Honey Holding I Ltd., 11711 Interstate 10 East, Baytown, Texas 77523, which operates Honey Solutions, has applied to the Texas Commission on Environmental Quality (TCEQ) for a new permit, Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0005155000 to authorize the discharge of honey container washwater at a daily average flow not to exceed 5,000 gallons per day via Outfall 001. The TCEQ received this application on January 15, 2015.

The facility is located on the north frontage road at 11711 Interstate 10 East, approximately 2 miles east of the intersection of Interstate 10 and State Highway 146 South, in Baytown, Chambers County, Texas 77523. The effluent is discharged to a roadside ditch; thence to Cedar Bayou Tidal in Segment No. 0901 of the Trinity-San Jacinto Coastal Basin. The unclassified receiving waters have minimal aquatic life use for the roadside ditch. The designated uses for Segment No. 0901 are high aquatic life use and primary contact recreation.

In accordance with Title 30 Texas Administrative Code (TAC) Section 307.5 and the TCEQ implementation procedures (June 2010) for the Texas Surface Water Quality Standards, an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in Cedar Bayou Tidal, which has been identified as having high aquatic life uses. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received.

The TCEQ Executive Director has prepared a draft permit which, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at West Chambers Library, 10616 Eagle Drive, Mont Belvieu, Texas. As a public courtesy, we have provided the following Web page to an online map of the site or the facility's general location. The online map is not part of the application or the notice:

<http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=29.823888&lng=-94.8775&zoom=13&type=4>.

For the exact location, refer to the application.

CONTESTED CASE HEARING.

The State Office of Administrative Hearings (SOAH) will conduct a formal contested case hearing at:

9:00 a.m. - May 12, 2017

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The contested case hearing will be a legal proceeding similar to a civil trial in state district court. The hearing will address the disputed issues of fact identified in the TCEQ order concerning this application issued on November 30, 2016. In addition to these issues, the judge may consider additional issues if certain factors are met.

The hearing will be conducted in accordance with Chapter 2001, Texas Government Code; Chapter 26, Texas Water Code; and the procedural rules of the TCEQ and SOAH, including 30 TAC Chapter 80 and 1 TAC Chapter 155. The hearing will be held unless all timely hearing requests have been withdrawn or denied.

To request to be a party, you must attend the hearing and show you would be adversely affected by the application in a way not common to members of the general public. Any person may attend the hearing and request to be a party. Only persons named as parties may participate at the hearing.

In accordance with 1 Tex. Admin. Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at *www.soah.texas.gov,* or in printed format upon request to SOAH."

INFORMATION.

If you need more information about the hearing process for this application, please call the Public Education Program, toll free, at (800) 687-4040. General information about the TCEQ can be found at our web site at *http://www.tceq.texas.gov/.*

Further information may also be obtained from Honey Holding I Ltd., at the address stated above or by calling Mr. Gordon Brown, Sr. Vice President, at (281) 576-1700.

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week prior to the hearing.

Issued: March 10, 2017

TRD-201701087
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 15, 2017

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Notice of Opportunity to Comment on a Default Order of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Order (DO). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the proce-

dure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **April 24, 2017.** The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of the proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239 3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on April 24, 2017.** Comments may also be sent by facsimile machine to the attorney at (512) 239 3434. The commission's attorney is available to discuss the DO and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the DO shall be submitted to the commission in **writing.**

(1) COMPANY: David P. Dey d/b/a Wildwood Mobile Home Village; DOCKET NUMBER: 2016-0746-PWS-E; TCEQ ID NUMBER: RN101193357; LOCATION: 5501 East Farm-to-Market Road 40 (also known as Acuff Road) near Lubbock, Lubbock County; TYPE OF FACILITY: public water system; RULES VIOLATED: Texas Health and Safety Code (THSC), §341.0315(c) and 30 TAC §290.45(b)(1)(C)(ii), by failing to provide a total storage capacity of 200 gallons per connection; THSC, §341.0315(c) and 30 TAC §290.45(b)(1)(C)(iii), by failing to provide at least two service pumps with a total capacity of 2.0 gallons per minute per connection; 30 TAC §290.46(s)(1), by failing to calibrate the facility's two well meters at least once every three years; 30 TAC §290.46(u), by failing to either plug and seal an abandoned public water supply well in accordance with 16 TAC Chapter 76 or submit the test results proving that the well is in a non-deteriorated condition; TWC, §5.702 and 30 TAC §290.51(a)(6), by failing to pay Public Health Service fees and associated late fees for TCEQ Financial Administration Account Number 91520046; 30 TAC §290.106(c)(4) and (e), by failing to collect arsenic samples and report the results to the executive director (ED); 30 TAC §290.106(c)(6) and (e), by failing to collect nitrate samples and report the results to the ED; 30 TAC §290.117(c)(2)(A), (h), and (i)(1), by failing to collect lead and copper tap samples at the required ten sample sites, have the samples analyzed, and report the results to the ED; 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to provide a Disinfectant Level Quarterly Operating Report to the ED; and 30 TAC §290.122(b)(3)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to comply with the maximum contaminant level for arsenic; PENALTY: $3,939; STAFF ATTORNEY: Lena Roberts, Litigation Division, MC 175, (512) 239-0019; REGIONAL OFFICE: Lubbock Regional Office, 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

TRD-201701056

Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: March 14, 2017

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Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §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. TWC, §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 **April 24, 2017.** TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711 3087 and must be **received by 5:00 p.m. on April 24, 2017.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC, §7.075 provides that comments on an AO shall be submitted to the commission in **writing.**

(1) COMPANY: 3AR INC d/b/a HANDERSON TEXACO FOOD MART a/k/a Quickway; DOCKET NUMBER: 2016-0754-PST-E; TCEQ ID NUMBER: RN101573665; LOCATION: 101 South Ector Drive, Euless, Tarrant County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $3,375; STAFF ATTORNEY: Isaac Ta, Litigation Division, MC 175, (512) 239-0683; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Bassam Zahra d/b/a Saveway FS; DOCKET NUMBER: 2016-0627-PST-E; TCEQ ID NUMBER: RN102355690; LOCATION: 1802 Southeast 14th Street, Grand Prairie, Dallas County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.7(d)(3), by failing to notify the agency of any changes or additional information regarding the UST system within 30 days of the date of occurrence of the change or addition; TWC, §26.3475(d) and 30 TAC §334.49(c)(2)(C), by failing to inspect the impressed current cathodic protection system at least once every 60 days to ensure the rectifier and other system components are operating properly; TWC,

§26.3475(d) and 30 TAC §334.49(c)(4)(C), by failing to inspect and test the corrosion protection system for operability and adequacy of protection at a frequency of at least once every three years; and 30 TAC §334.54(b)(2), by failing to maintain all piping, pumps, manways, tank access points, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons; PENALTY: $9,015; STAFF ATTORNEY: Ian Groetsch, Litigation Division, MC 175, (512) 239-2225; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Buddys Investment Inc d/b/a Flash Mart Walnut; DOCKET NUMBER: 2016-1771-PST-E; TCEQ ID NUMBER: RN102713377; LOCATION: 2410 Walnut Hill Lane, Dallas, Dallas County; TYPE OF FACILITY: underground storage tank system and a convenience store with retail sales of gasoline; RULES VIOLATED: Texas Health and Safety Code, §382.085(b) and 30 TAC §115.241(b)(4), by failing to submit the Stage II decommissioning checklist and submittal form with applicable results to the TCEQ no later than ten calendar days after the decommissioning activity at the station; PENALTY: $1,937; STAFF ATTORNEY: Elizabeth Lieberknecht, Litigation Division, MC 175, (512) 239-0620; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: JAYALAKSHMI GROUP LLC dba Seguin Food Mart; DOCKET NUMBER: 2016-0965-PST-E; TCEQ ID NUMBER: RN102833704; LOCATION: 945 South Austin Street, Seguin, Guadalupe County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $2,438; STAFF ATTORNEY: Clayton Smith, Litigation Division, MC 175, (512) 239-6224; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(5) COMPANY: Nasser Farahnakian d/b/a Sunrise Food Mart; DOCKET NUMBER: 2015-1773-PST-E; TCEQ ID NUMBER: RN105837108; LOCATION: 9001 Highway 44, Corpus Christi, Nueces County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and 30 TAC §334.74, by failing to investigate a suspected release of regulated substance within 30 days of discovery; PENALTY: $27,000; STAFF ATTORNEY: Audrey Liter, Litigation Division, MC 175, (512) 239-0684; REGIONAL OFFICE: Corpus Christi Regional Office, NRC Building, Suite 1200, 6300 Ocean Drive, Unit 5839, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(6) COMPANY: Sunwest Grocery, LLC; DOCKET NUMBER: 2016-1539-PST-E; TCEQ ID NUMBER: RN101556256; LOCATION: 3324 Luisa Lane, Alvarado, Johnson County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $3,375; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201701055

Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: March 14, 2017

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Notice of Opportunity to Comment on Shutdown/Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Orders (S/DOs). Texas Water Code (TWC), §26.3475 authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overfill prevention, and/or after December 22, 1998, cathodic protection violations documented at the facility. The commission 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, the proposed technical requirements necessary to bring the entity back into compliance, and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **April 24, 2017.** The commission will consider any written comments received and the commission may withdraw or withhold approval of an S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed S/DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed S/DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711 3087 and must be **received by 5:00 p.m. on April 24, 2017.** Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission attorneys are available to discuss the S/DOs and/or the comment procedure at the listed phone numbers; however, comments on the S/DOs shall be submitted to the commission in **writing.**

(1) COMPANY: Benton Rainey dba Delta Family Mart; DOCKET NUMBER: 2016-0964-PST-E; TCEQ ID NUMBER: RN102839560; LOCATION: 301 West Dallas Avenue, Cooper, Delta County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); 30 TAC §334.602(a), by failing to designate, train, and certify at least one individual for each class of operator - Class A, B, and C - for the facility; and 30 TAC §334.10(b)(1)(B), by fail-

ing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: $7,500; STAFF ATTORNEY: Clayton Smith, Litigation Division, MC 175, (512) 239-6224; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(2) COMPANY: Rakesh Jain d/b/a Sea Isle Supermarket; DOCKET NUMBER: 2016-0899-PST-E; TCEQ ID NUMBER: RN102849981; LOCATION: 22220 San Luis Pass Road, Galveston, Galveston County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition; and TWC, §26.3475(c)(1) and (d); 30 TAC §§334.49(a)(2) and (c)(4)(C); 334.50(b)(1)(A); and 334.54(b)(2) and (c)(1) and (2), by failing to properly temporarily remove the UST system from service; PENALTY: $5,598; STAFF ATTORNEY: Isaac Ta, Litigation Division, MC 175, (512) 239-0683; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: Robin Annette Wiley and Kenneth D. Wiley d/b/a Wileys Food Store; DOCKET NUMBER: 2016-1190-PST-E; TCEQ ID NUMBER: RN101894400; LOCATION: 502 South Bryan Avenue, Lamesa, Dawson County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); 30 TAC §334.72, by failing to report a suspected release to the TCEQ within 24 hours of discovery; 30 TAC §334.74, by failing to investigate a suspected release within 30 days of discovery; and TWC, §26.3475(d) and 30 TAC §334.49(a)(1), by failing to provide corrosion protection for the UST system; PENALTY: $28,606; STAFF ATTORNEY: Isaac Ta, Litigation Division, MC 175, (512) 239-0683; REGIONAL OFFICE: Midland Regional Office, 9900 W IH-20, Suite 100, Midland, Texas 79706-5406, (432) 570-1359.

(4) COMPANY: SUHA ENTERPRISES INC d/b/a Diamond Food Mart; DOCKET NUMBER: 2016-1087-PST-E; TCEQ ID NUMBER: RN101781862; LOCATION: 3098 East Commerce Street, San Antonio, Bexar County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the pressurized piping associated with the UST system; and 30 TAC §334.602(a), by failing to identify and designate at least one named individual for each class of operator - Class A, B, and C - for the facility; PENALTY: $10,629; STAFF ATTORNEY: Clayton Smith, Litigation Division, MC 175, (512) 239-6224; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-201701054
Kathleen C. Decker
Director, Litigation Division
Texas Commission of Environmental Quality
Filed: March 14, 2017

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Notice of Public Hearings on Proposed Revisions to 30 TAC Chapter 101 and to the State Implementation Plan

The Texas Commission on Environmental Quality (commission) will conduct public hearings to receive testimony regarding proposed revisions to 30 TAC Chapter 101, General Air Quality Rules, §§101.300, 101.302 - 101.304, 101.306, 101.370, 101.372 - 101.374, and 101.376, and corresponding revisions to the state implementation plan (SIP) under the requirements of Texas Health and Safety Code, §382.017; Texas Government Code, Chapter 2001, Subchapter B; and 40 Code of Federal Regulations §51.102 of the United States Environmental Protection Agency concerning SIPs.

The proposed rulemaking revises the Emissions Reduction Credit and Discrete Emissions Reduction Credit Programs to address implementation issues that were identified with the generation of emissions credits for area and mobile sources.

The commission will hold public hearings on this proposal in Houston on April 18, 2017 at 2:00 p.m. in the Auditorium of the Texas Department of Transportation located at 7600 Washington Avenue; in Arlington on April 19, 2017 at 10:00 a.m. in the Transportation Council Room at North Central Texas Council of Governments located at 616 Six Flags Drive; and in Austin on April 20, 2017 at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearings are structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearings; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearings.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Written comments may be submitted to Derek Baxter, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www1.tceq.texas.gov/rules/ecomments/.* File size restrictions may apply to comments being submitted via the *eComments* system. All comments should reference Rule Project Number 2016-041-101-AI. The comment period closes April 24, 2017. Copies of the proposed rulemaking can be obtained from the commission's website at *http://www.tceq.texas.gov/rules/propose_adopt.html.* For further information, please contact Guy Hoffman, Air Quality Section, (512) 239-1981.

TRD-201700998
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: March 10, 2017

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Notice of Water Rights Application

Notices issued March 8, 2017

APPLICATION NO. 13183; San Jacinto River Authority, P.O. Box 329, Conroe, Texas 77305, Applicant, seeks a Water Use Permit to authorize the use of the bed and banks of the West Fork San Jacinto River, San Jacinto River Basin to convey its surface water-based return flows actually discharged by the City of Conroe for subsequent diversion and use for municipal, industrial, agricultural, and mining purposes in its

service area in Montgomery and Harris Counties. The application and partial fees were received on February 12, 2015. Additional information and fees were received on May 11, 2015, and February 1, 2016. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on February 17, 2016, and amended on May 4, 2016. The Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would include special conditions, including, but not limited to, streamflow restrictions and a requirement that Applicant may only divert daily surface water based return flows that are actually discharged. The application, technical memoranda, and Executive Director's draft permit are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Bldg. F., Austin, Texas 78753. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided below by April 7, 2017.

APPLICATION NO. 12788; The City of Conroe, P.O. Box 3066, Conroe, Texas 77305, Applicant, seeks a Water Use Permit to authorize the use of the bed and banks of the West Fork San Jacinto River, San Jacinto River Basin to convey return flows for subsequent diversion and use for municipal, industrial, and agricultural purposes in Montgomery County. The application and fees were received on October 19 and November 18, 2011. Additional information was received on April 27, May 9, and May 15, 2012, April 8, May 23, and June 20, 2014, July 30, August 12, and September 8, 2015. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on May 16, 2012, and amended on January 27, 2016. Additional information was received on January 27, April 4, July 7, August 29, and October 3, 2016. The Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would include special conditions, including, but not limited to, streamflow restrictions and a requirement that Applicant may only divert daily groundwater-based return flows that are actually discharged. The application, technical memoranda, and Executive Director's draft permit are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Bldg. F., Austin, Texas 78753. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided below by April 7, 2017.

APPLICATION NO. 08-2410J; North Texas Municipal Water District, P.O. Box 2408, Wylie, Texas 75098, Applicant, seeks to amend Certificate of Adjudication No. 08-2410 to modify the currently authorized limits on overdrafting the firm yield of Lake Lavon on the East Fork Trinity River, Trinity River Basin, Collin County. The application and partial fees were received on July 7, 2016. Additional information and fees were received on August 19 and September 15 and 16, 2016. The application was declared administratively complete and filed with the Office of the Chief Clerk on October 4, 2016. The Executive Director has completed the technical review of the application and prepared a draft amendment. The draft amendment, if granted, would include special conditions, including, but not limited to, maintenance of an accounting plan. The application, technical memoranda, and Executive Director's draft permit are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Bldg. F., Austin, Texas 78753. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided below by April 7, 2017.

To view the complete issued notice, view the notice on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement (I/we) request a contested case hearing; and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ 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, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Public Education Program at (800) 687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.texas.gov. Si desea información en español, puede llamar al (800) 687-4040.

Issued in Austin, Texas on March 14, 2017

TRD-201701080
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 15, 2017

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Texas Ethics Commission

List of Late Filers

Below is a list from the Texas Ethics Commission naming the filers who failed to pay the penalty fine for failure to file the report, or filing a late report, in reference to the specified filing deadline. If you have any questions, you may contact Sue Edwards at (512) 463-5800.

Deadline: Lobby Activities Report due January 10, 2017

Charles Briscoe, 6910 Twin Crest Dr., Austin, Texas 78752

Ben Campbell, 12660 Lost Prairie Dr., Fort Worth, Texas 76244

Bryon Andrew Campbell, 900 Grange Hall Dr. #3103, Euless, Texas 76039

James Andrew Campbell, P.O. Box 195892, Dallas, Texas 75219

Wil Galloway, 408 W. 14th St., Austin, Texas 78701

Anthony Haley, 1212 Guadalupe, Ste. 1003, Austin, Texas 78701

Tony Hernandez, 404 Rio Grande St. #121, Austin, Texas 78701

Jayne Lawler, 807 Parchell, Houston, Texas 77009

Zachary Male, 12885 Research Blvd., Ste. 204, Austin, Texas 78750

E. Lee Parsley, 1621-B Enfield Rd., Austin, Texas 78703

Ross Peavey, Capitol Station, Box 12715, Austin, Texas 78711

Vanus J. Priestley, P.O. Box 200194, Austin, Texas 78720

Todd M. Smith, 2204 Hazeltine Ln., Austin, Texas 78747

Alma Walzer, 1012 Bryce Dr., Mission, Texas 78572

Michael J. Warner, 4727 Arvilla, Houston, Texas 77021

TRD-201700954
Seana Willing
Executive Director
Texas Ethics Commission
Filed: March 9, 2017

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Texas Facilities Commission

Request for Proposals #303-8-20599

The Texas Facilities Commission (TFC), on behalf of the Office of the Attorney General (OAG), announces the issuance of Request for Proposals (RFP) #303-8-20599. TFC seeks a five (5) or ten (10) year lease of approximately 5,870 square feet of office space in Addison, Dallas, or Richardson, Texas.

The deadline for questions is April 5, 2017, and the deadline for proposals is April 19, 2017, at 3:00 p.m. The award date is May 17, 2017. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Program Specialist, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=131498.

TRD-201700945
Kay Molina
General Counsel
Texas Facilities Commission
Filed: March 8, 2017

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Request for Proposals #303-9-20600

The Texas Facilities Commission (TFC), on behalf of the Department of State Health Services (DSHS), announces the issuance of Request for Proposals (RFP) #303-9-20600. TFC seeks a five (5) or ten (10) year lease of approximately 13,457 square feet of office space in Amarillo, Randall County, Texas.

The deadline for questions is April 7, 2017 and the deadline for proposals is April 21, 2017 at 3:00 p.m. The award date is May 17, 2017. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Program Specialist, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=131618.

TRD-201701071
Kay Molina
General Counsel
Texas Facilities Commission
Filed: March 14, 2017

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Texas Department of Insurance

Company Licensing

Application for AMERICAN PHOENIX LIFE AND REASSURANCE COMPANY, a foreign life, accident and/or health company, to change its name to EQUITABLE NATIONAL LIFE INSURANCE COMPANY, INC. The home office is in Salt Lake City, Utah.

Application to do business in the State of Texas by WALDEN DENTAL PLANS, INC., a domestic health maintenance organization. The home office is in Houston, Texas.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Jeff Hunt, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201700901
Norma Garcia
General Counsel
Texas Department of Insurance
Filed: March 8, 2017

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Texas Department of Licensing and Regulation

Enforcement Plan - Orthotists and Prosthetists Penalty Matrix

The Texas Commission of Licensing and Regulation (Commission) provides this public notice that at their regularly scheduled meeting held March 1, 2017, the Commission adopted the Texas Department of Licensing and Regulation's (Department) revised enforcement plan which was established in compliance with Texas Occupations Code, §51.302(c).

The enforcement plan gives all license holders notice of the specific ranges of penalties and license sanctions that apply to specific alleged violations of the statutes and rules enforced by the Department. The enforcement plan also presents the criteria that are considered by the Department's Enforcement staff in determining the amount of a proposed administrative penalty or the magnitude of a proposed sanction. The enforcement plan is revised to include the penalty matrix for the Orthotists and Prosthetists program.

The Texas Legislature enacted Senate Bill 202 (S.B. 202), 84th Legislature, Regular Session (2015), which transferred regulatory authority of 13 programs, to include Orthotists and Prosthetists from the Texas Department of State Health Services to the Commission and Department. The Orthotists and Prosthetists penalty matrix provides for a single range of penalties for each class to eliminate confusion and allow the industry to fully understand the penalties assessed. The matrix separates standard of care violations from the others to allow for an expert witness, when needed, to assist the Department in understanding the violation. This penalty matrix may differ slightly from others as the agency focuses on aligning strategic plan goals with agency resources.

The Advisory Board of Orthotists and Prosthetists recommended approval of the revised matrix at their meeting held January 20, 2017. The penalty matrix was presented to the Commission on March 1, 2017, and was adopted as recommended.

A copy of the revised enforcement plan is posted on the Department's website and may be downloaded at www.tdlr.texas.gov. You may also contact the Enforcement Division at (512) 539-5600 or by e-mail at enforcement@tdlr.texas.gov to obtain a copy of the revised plan.

ORTHOTICS AND PROSTHETICS (OPS)

Texas Occupations Code, Chapter 605

16 Texas Administrative Code, Chapter 114

Class A:

$50 up to $1,000

Failure to Notify Department Violations

• Failed to report to the Department violations of the Act or this chapter committed by a licensed assistant	114.27(c)(8)
• Failed to notify Department of change in the accredited facility designation of the on-site practitioner(s) in charge name and license number within 30 days after the change	114.29(e)(1)(C); 114.70(b)
• Failed to notify Department of change in the accredited facility designation of the on-site safety manager(s) name and license number within 30 days after the change	114.29(e)(3)(B); 114.70(b)
• Failed to notify the Department of any change(s) of name or mailing address within 30 days after a change	114.70(b)

Posting and Public Information Violation

• Failed to publicly display the license certificate in the primary place of employment	114.21(e)(1)
• Failed to carry the license or obtain duplicate licenses to be displayed at each location of employment when without a primary office or when employed at multiple locations	114.21(e)(2)
• Displayed or carried a copy of a license instead of the original	114.21(e)(3)
• Allowed license to be copied for a purpose other than for license verification	114.21(f)
• Failed to sign, date and mark license copies with the word "COPY" across the document's face	114.21(f)
• Failed to prominently display facility accreditation certificate in facility available for public inspection	114.29(f)(3)

• Failed to prominently display consumer complaint notice sign in facility	114.29(f)(5); 114.70(d)
• Failed to prominently display the license certificates of practitioners in facility available for public inspection	114.29(f)(8)
• Failed to display a visible sign with facility hours of operation and, when appropriate, information regarding temporary closures	114.29(f)(9)

Advertising Without a License or Accreditation Violations

• Used terms or letters indicating directly or by implication that an orthotic or prosthetic service will be provided when not licensed or accredited	605.251; 605.301(2)(c); 605.351; 114.29(f)(6)
• Advertised or otherwise held-out as able to practice orthotics or prosthetics without a license	605.251

Facility, Equipment and Sanitation Violations

• Failed to clean examination/treatment room(s) after each patient	114.29(j)(2)
• Failed to have hand sanitizer/hand soap, hand towels or hand dryers available at the sinks for use by employees/patients	114.29(j)(3)
• Failed to have exam tables covered in material for disposable one-time use or can be disinfected, replaced or cleaned after providing service to each patient	114.29(j)(4)
• Failed to have gloves and disinfectants available in examination/treatment areas	114.29(j)(5)
• Failed to keep the floors, walls, ceilings, shelves, furniture, furnishings and fixtures clean and in good repair or failed to repair or fill-in cracks or similar disrepair not readily accessible	114.29(j)(6)
• Failed to keep plumbing fixtures clean or failed to repair any disrepair with plumbing not readily accessible	114.29(j)(7)
• Failed to have suitable facility plumbing providing hot and cold running water at all times	114.29(j)(8)
• Failed to provide at least one facility restroom	114.29(j)(9)
• Facility being utilized for living or sleeping purposes or utilized for any other purpose tending to make the premises unsanitary, unsafe or endanger the public health and safety	114.29(j)(10)

• Failed to separate the facility patient waiting areas from other areas	114.29(k)(1)
• Failed to provide chairs with armrests or failed to provide chairs without armrests or wheels upon request	114.29(k)(2); 114.29(l)(3)
• Failed to provide a facility telephone for patient use	114.29(k)(3)
• Failed to provide private patient rooms	114.29(l)(1)
• Failed to maintain facility machine use training records documenting staff training for each machine	114.29(m)(2)

Class B:

$500 to $3,000 and/or up to 6-month probated suspension

Health and Safety Violations

• Failed to wash hands with hand sanitizer/soap and water before providing service to client	114.29(j)(1)
• Storing chemical supplies in restrooms or other areas accessible to the public	114.29(j)(9)
• Failed to provide at least one set of parallel bars, wall-mounted mirror or mirror with base for patient facility ambulation trials	114.29(l)(2)
• Failed to have facility equipment, tools, and materials for casting, measuring, fitting, repairs and adjustments of orthoses/prosthesis	114.29(o)(2)
• Failed to have safety equipment, including safety glasses or goggles and dust masks for persons working in facility	114.29(m)(1)
• Failed to provide proper facility machine use training	114.29(m)(2)
• Failed to have safety guards on facility machines as required by the manufacturer	114.29(m)(3)

Administrative Violations Related to Assistants

• Failed to file with the Department a supervision agreement before the assistant clinical residency begins	114.27(b)(1)

• Failed to provide the assistant clinical resident and Department with supervisor's written documentation on beginning, terminating or completing the assistant clinical residency	114.27(b)(3)
• Failed to review and sign off on patient care notes made by assistant clinical resident by supervising practitioner within 10 days from the date the service was provided	114.27(b)(5); 114.27(c)(1)
• Allowed the assistant clinical residency to begin with supervisor before approval from the Department	114.27(b)(2)

Administrative Violations

• Failure of an accredited facility to have a licensed practitioner in charge	114.29(e)(1)
• Failed to have an accredited facility residency program director licensed in the same discipline in which the professional clinical residency is being conducted providing direct/indirect resident supervision	114.29(e)(2)
• Failed to have one person designated facility safety manager to develop, carry out and monitor the facility safety program	114.29(e)(3); 114.29(j)(6)

Unlicensed Activity

• Practiced, attempted, offered to practice orthotics or prosthetics with an expired license	60.31(g); 114.40(f)(1); 114.40(f)(2); 114.90(c)(10)
• Practiced, attempted, offered to practice orthotics or prosthetics patient care as an accredited facility with an expired license	60.31(g);114.40(e)(5); 114.40(f)(1); 114.40(f)(3); 114.90(c)(10)

Class C:

$1000 to $5,000 and/or 1-year probated suspension up to revocation

Administrative Violations

• Altered a license or a copy of a license	114.21(g)
• Failed to cooperate with the Department inspector in the performance of the inspection	114.29(i)(6)

• Used or allowed a person to use a license or registration for any fraudulent, misleading or deceptive purpose	114.90(c)(4)
• Failed or refused to provide acceptable documentation of continuing education records for renewal	114.90(b)(20)
• Failed to cooperate with the Department during an investigation of a complaint by not furnishing required documentation or responding to a request for information or a subpoena issued by the Department	114.90(d)(21); 114.90(d)(27); 114.90(f)
• Interfered with a department investigation or disciplinary proceeding by misrepresentation of facts, by threats, retaliation or harassment against anyone	114.90(d)(22)
• Filed a complaint with the Department that is frivolous or made in bad faith	114.90(h)

Records Violations

• Failed to include accurate and current patient progress notes	114.29(n)(1)
• Failed to keep patient records private	114.29(n)(2); 114.90(d)(13)
• Made patient records available without the patient's signed consent or as permitted by law	114.29(n)(3)
• Failed to maintain patient records for a minimum of five (5) years	114.29(n)(4)

Standard of Care Violations – Related to Supervision

• Provision of care by assistant clinical resident or licensed assistant without appropriate supervision	114.27(b)(4) and (9); 114.27(c)(6)
• Provided patient care to orthotic/prosthetic patients including ancillary or assistant patient care services as a registered technician	114.28(d)
• Licensed assistant provided ancillary patient care services in a discipline other than that of the supervisor's license	605.255(b); 114.27(c)(2); 114.27(c)(3); 114.27(c)(4)
• Student registrant working without appropriate supervision	605.258(b)
• Failed to supervise and be responsible for the acts/omissions of the licensed assistant by supervising practitioner	114.27(c)(5); 114.27(c)(7)

• Failed to supervise a technician by a licensed prosthetist, orthotist, prosthetist/orthotist, prosthetist assistant, orthotist assistant, or prosthetist/orthotist assistant	114.28(a)
• Practitioner in charge failed to supervise and maintain supervision of clinical or technical personnel	114.90(d)(8)
• Practitioner in charge failed to provide facility on-site supervision	114.90(d)(8)

Standard of Care Violations – Related to Treatment

• Persistently or flagrantly over-treated a client or patient	114.90(c)(12)
• Failed to maintain acceptable standards of prosthetics or orthotics practices set forth by department rules	114.90(d)(5)
• Failed or unable to practice prosthetics/orthotics with reasonable skill and safety due to use of alcohol, drugs, chemicals or from mental or physical conditions	114.90(d)(6)
• Treated or agreed to treat human ailments by means other than appropriate prosthetic/orthotic treatments	114.90(d)(7)
• Provided prosthetic/orthotic services or products in a way that the person knows or should know violates the Act or chapter	114.90(d)(9)
• Failed to assess and evaluate a patient's status	114.90(d)(10)
• Provided or attempted to provide services for which the licensee lacks education or experience	114.90(d)(11)
• Delegated functions to an individual lacking the ability, knowledge or license/registration to perform the functions	114.90(d)(12)
• Failed to follow universal precautions or infection control standards as required by the Health & Safety Code	114.90(d)(18)
• Fitted a prosthesis or orthosis without a prescription	605.2515; 114.90(d)(23)
• Fitted a prosthesis or orthosis inaccurately or modifying the prescription without authorization	114.90(d)(24)
• Performed an act or omission constituting gross neglect, such as conduct involving malice, willfulness or wanton and reckless disregard of others' rights	605.353(a)(4); 114.90(e)(1)
• Performed an act or omission constituting malpractice by failing to perform services or provide products for which compensation has	605.353(a)(4); 114.90(e)(2)(A)

been received or failed to perform services or provide products with reasonable care, skill, expedience, and faithfulness	
• Performed an act or omission constituting malpractice by failing to do that which a person or ordinary prudence would have done or would not have done under the same or similar circumstances	605.353(a)(4); 114.90(e)(2)(B)

Misrepresentation

• Failed to submit truthful continuing education documentation or information to the Department; committed fraud, misrepresentation, or concealment of a material fact with continuing education requirements	605.353(a)(2); 114.90(b)(2); 114.90(d)(19); 114.50(p)
• Impersonated or acted as a proxy for a licensee or registrant at a continuing education activity	605.353(a)(2); 114.90(b)(4)
• Used a proxy to participate in a continuing education activity	605.353(a)(2); 114.90(b)(5)
• Provided false or misleading information to the Department regarding a Department inquiry	605.353(a)(2); 114.90(b)(6)
• Placed or caused to be placed false, misleading or deceptive advertising	605.353(a)(2); 114.90(c)(1)
• Made or allowed false, misleading or deceptive representations concerning services or products provided or to be provided.	605.353(a)(2); 114.90(c)(2)
• Made or allowed false, misleading or deceptive representations on an employment application	605.353(a)(2); 114.90(c)(3)
• Forged, altered or falsified a physician's or healthcare professional's order	605.353(a)(2); 114.90(c)(6)
• Delivered prosthetic/orthotic services or products through means of misrepresentation, deception or subterfuge	605.353(a)(2); 114.90(c)(7)
• Made, filed, or caused another person to make or file a report or record the licensee knows to be inaccurate, incomplete, false or illegal	605.353(a)(2) 114.90(c)(9)

• Other fraud or deceit concerning services provided	605.353(a)(2); 114.90(c)(15)

Unlicensed Activity

• Knowingly employed or professionally associated with a person or entity providing orthotic or prosthetic services without the required license or accreditation	605.251; 114.90(c)(5)
• Provided orthotic care in a facility not accredited in orthotics	114.90(d)(25)
• Provided prosthetic care in a facility not accredited in prosthetics	114.90(d)(26)
• Practiced, attempted to practice, or offered to practice orthotics/prosthetics, or acted as an assistant without a license	605.251; 114.90(c)(10)
• Fabricated or assembled an orthosis or prosthesis without a prescription or device distributor license	605.2515
• Practicing in a place other than an accredited facility or exempt facility	114.29(c)(1); 114.27(c)(9)
• Operated an unaccredited facility	114.29(f)(1); 114.29(g); 114.90(c)(10); 114.90(d)(14); 114.90(d)(25) and (26)

Unprofessional or Unethical Conduct

• Persistently or flagrantly overcharged a client, patient or third party	605.353(a)(3) 114.90(c)(11)
• Took, without authorization, patient medication, supplies, equipment or personal items	605.353(a)(3) 114.90(c)(14)
• Accepted or paid, or agreed to pay or accept illegal remuneration for the securing or soliciting of patients	605.353(a)(3) 114.90(c)(8)
• Discriminated based on race, color, national origin, religion, gender, age or disability in the practice of prosthetics/orthotics	605.353(a)(3) 114.90(d)(1)
• Surrendered a license to avoid disciplinary action or prosecution	605.353(a)(3) 114.90(d)(2)
• Licensee had previous disciplinary action	605.353(a)(3) 114.90(d)(3)

• Engaged in conduct prohibited by state, federal or local law	605.353(a)(3) 114.90(d)(4)
• Engaged in other unprofessional or unethical conduct	605.353(a)(3) 114.90(d)(29)
• Assaulted or caused, permitted or allowed physical or emotional injury or impairment of dignity or safety to patient/client	605.353(a)(3) 114.90(d)(15)
• Made abusive, harassing or seductive remarks to a patient, client or co-worker in the workplace	605.353(a)(3) 114.90(d)(16)
• Engaged in sexual contact as defined by the Penal Code § 21.01 with a patient or client as the result of patient or client relationship	605.353(a)(3) 114.90(d)(17)

Class D:

$5,000 and/or Revocation

• Obtained or attempted to obtain a license by fraud, misrepresentation, or concealment of material fact	60.23(a)(1); 60.23(a)(2); 605.353(a)(1); 114.90(b)(1); 114.90(b)(7)
• Cheated on an examination	60.52(a)
• Impersonate or act as a proxy for an examination candidate	114.90(b)(3);
• Used a proxy to take an examination	114.20(b)(5)
• Failed to comply with a previous order of the Commission or Executive Director	51.353(a); 114.90(c)(13); 114.90(d)(28)
• Failed to pay the Department for a dishonored payment or processing fee	60.82; 51.210(c); 114.80(f)

TRD-201701084
Brian E. Francis
Executive Director
Texas Department of Licensing and Regulation
Filed: March 15, 2017

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Texas Lottery Commission

Scratch Ticket Game Number 1828 "Texas Loteria"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 1828 is "TEXAS LOTERIA". The play style is "row/column/diagonal".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 1828 shall be $3.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 1828.

A. Display Printing - That area of the Scratch 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 Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: THE MOCKINGBIRD SYMBOL, THE CACTUS SYMBOL, THE STRAWBERRY SYMBOL, THE ROADRUNNER SYMBOL, THE BAT SYMBOL, THE PIÑATA SYMBOL, THE COWBOY SYMBOL, THE NEWSPAPER SYMBOL, THE SUNSET SYMBOL, THE COWBOY HAT SYMBOL, THE COVERED WAGON SYMBOL, THE MARACAS SYMBOL, THE LONE STAR SYMBOL, THE CORN SYMBOL, THE HEN SYMBOL, THE SPEAR SYMBOL, THE GUITAR SYMBOL, THE FIRE SYMBOL, THE MORTAR PESTLE SYMBOL, THE WHEEL SYMBOL, THE PECAN TREE SYMBOL, THE JACKRABBIT SYMBOL, THE BOAR SYMBOL, THE ARMADILLO SYMBOL, THE LIZARD SYMBOL, THE CHILE PEPPER SYMBOL, THE HORSESHOE SYMBOL, THE HORSE SYMBOL, THE SHOES SYMBOL, THE BLUEBONNET SYMBOL, THE CHERRIES SYMBOL, THE OIL RIG SYMBOL, THE MOONRISE SYMBOL, THE RATTLESNAKE SYMBOL, THE WINDMILL SYMBOL, THE SPUR SYMBOL and THE SADDLE SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1828 - 1.2D

PLAY SYMBOL	CAPTION
THE MOCKINGBIRD SYMBOL	THEMOCKINGBIRD
THE CACTUS SYMBOL	THE CACTUS
THE STRAWBERRY SYMBOL	THESTRAWBERRY
THE ROADRUNNER SYMBOL	THEROADRUNNER
THE BAT SYMBOL	THE BAT
THE PIÑATA SYMBOL	THE PIÑATA
THE COWBOY SYMBOL	THECOWBOY
THE NEWSPAPER SYMBOL	THENEWSPAPER
THE SUNSET SYMBOL	THE SUNSET
THE COWBOY HAT SYMBOL	THECOWBOYHAT
THE COVERED WAGON SYMBOL	THECOVEREDWAGON
THE MARACAS SYMBOL	THEMARACAS
THE LONE STAR SYMBOL	THELONESTAR
THE CORN SYMBOL	THE CORN
THE HEN SYMBOL	THE HEN
THE SPEAR SYMBOL	THE SPEAR
THE GUITAR SYMBOL	THE GUITAR
THE FIRE SYMBOL	THE FIRE
THE MORTAR PESTLE SYMBOL	THEMORTARPESTLE
THE WHEEL SYMBOL	THE WHEEL
THE PECAN TREE SYMBOL	THEPECANTREE
THE JACKRABBIT SYMBOL	THEJACKRABBIT
THE BOAR SYMBOL	THE BOAR
THE ARMADILLO SYMBOL	THEARMADILLO
THE LIZARD SYMBOL	THELIZARD
THE CHILE PEPPER SYMBOL	THECHILEPEPPER
THE HORSESHOE SYMBOL	THEHORSESHOE
THE HORSE SYMBOL	THE HORSE
THE SHOES SYMBOL	THE SHOES
THE BLUEBONNET SYMBOL	THEBLUEBONNET
THE CHERRIES SYMBOL	THECHERRIES
THE OIL RIG SYMBOL	THEOILRIG
THE MOONRISE SYMBOL	THEMOONRISE
THE RATTLESNAKE SYMBOL	THERATTLESNAKE
THE WINDMILL SYMBOL	THEWINDMILL
THE SPUR SYMBOL	THE SPUR
THE SADDLE SYMBOL	THESADDLE

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Scratch Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1828), a seven (7) digit Pack number, and a three (3) digit Scratch Ticket number. Scratch Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 1828-0000001-001.

H. Pack - A Pack of the "TEXAS LOTERIA" Scratch Ticket Game contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 075 while the other fold will show the back of Ticket 001 and front of 075.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch 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.

J. Scratch Game Ticket, Scratch Ticket or Ticket - Texas Lottery "TEXAS LOTERIA" Scratch Ticket Game No. 1828.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch 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 Scratch Ticket. A prize winner in the "TEXAS LOTERIA" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 30 (thirty) Play Symbols. The player scratches the CALLER'S CARD area to reveal 14 symbols. The player scratches ONLY the symbols on the PLAY BOARD that match the symbols revealed on the CALLER'S CARD. If the player reveals a complete row, column or diagonal line, the player wins the prize for that line. El jugador raspa las CARTA DEL GRITON para revelar 14 símbolos. El jugador raspa SOLAMENTE los símbolos en la TABLA DE JUEGO que son iguales a los símbolos revelados en las CARTA DEL GRITON para revelar una línea completa horizontal, vertical o diagonal para ganar el premio para esa línea. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly 30 (thirty) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Scratch 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 Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly 30 (thirty) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Scratch Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 30 (thirty) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 30 (thirty) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch 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-Scratch Ticket Number must be printed in the Pack-Scratch Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch 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 Scratch 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 Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. A Ticket can win up to three (3) times in accordance with the approved prize structure.

B. Adjacent Non-Winning Tickets within a Pack will not have matching Play Symbol patterns. Two (2) Tickets have matching Play Symbol patterns if they have the same Play Symbols in the same spots.

C. No matching Play Symbols in the CALLER'S CARD play area.

D. At least eight (8), but no more than twelve (12), CALLER'S CARD Play Symbols will match a symbol on the PLAY BOARD play area on a Ticket.

E. CALLER'S CARD Play Symbols will have a random distribution on the Ticket unless restricted by other parameters, play action or prize structure.

F. No matching Play Symbols are allowed on the PLAY BOARD play area.

2.3 Procedure for Claiming Prizes.

A. To claim a "TEXAS LOTERIA" Scratch Ticket Game prize of $3.00, $4.00, $7.00, $10.00, $17.00, $20.00, $30.00, $33.00, $50.00, $80.00 or $300, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $30.00, $33.00, $50.00, $80.00 or $300 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "TEXAS LOTERIA" Scratch Ticket Game prize of $3,000 or $50,000, the claimant must sign the winning Scratch 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 Scratch 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 "TEXAS LOTERIA" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. 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:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch 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 under $600 from the "TEXAS LOTERIA" Scratch Ticket 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 $600 or more from the "TEXAS LOTERIA" Scratch Ticket 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 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch 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 Scratch Ticket in the space designated. If

more than one name appears on the back of the Scratch 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 Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 40,800,000 Scratch Tickets in Scratch Ticket Game No. 1828. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1828 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$3	4,624,000	8.82
$4	2,176,000	18.75
$7	1,360,000	30.00
$10	680,000	60.00
$17	544,000	75.00
$20	544,000	75.00
$30	136,000	300.00
$33	136,000	300.00
$50	51,000	800.00
$80	25,160	1,621.62
$300	17,680	2,307.69
$3,000	580	70,344.83
$50,000	28	1,457,142.86

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 3.96. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 1828 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 1828, 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-201701090
Bob Biard
General Counsel
Texas Lottery Commission
Filed: March 15, 2017

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Scratch Ticket Game Number 1850 "COMBO PLAY"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 1850 is "COMBO PLAY". The play style is "multiple games".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 1850 shall be $3.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 1850.

A. Display Printing - That area of the Scratch 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 Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02,

03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, $3.00, $5.00, $10.00, $20.00, $30.00, $50.00, $100, $500, $3,000 and $50,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1850 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	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
25	TWFV
$3.00	THR$
$5.00	FIV$
$10.00	TEN$
$20.00	TWY$
$30.00	TRTY$
$50.00	FFTY$
$100	ONHN
$500	FVHN
$3,000	THTH
$50,000	50TH

E. Serial Number- A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Scratch Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Pack-Scratch Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1850), a seven (7) digit Pack number, and a three (3) digit Scratch Ticket number. Scratch Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 1850-0000001-001.

H. Pack - A Pack of the "COMBO PLAY" Scratch Ticket Game contains 125 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). Ticket 125 will be shown on the front of the Pack; the back of Ticket 125 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack. Every other Pack will reverse i.e., reverse order will be: the back of Ticket 001 will be shown on the front of the Pack and the front of Ticket 125 will be shown on the back of the Pack.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch 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.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "COMBO PLAY" Scratch Ticket Game No. 1850.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch 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 Scratch Ticket. A prize winner in the "COMBO PLAY" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 39 (thirty-nine) Play Symbols. MONEY MULTIPLIER: Each time the player reveals YOUR LUCKY NUMBER Play Symbol within a GAME, the player wins the PRIZE for that GAME. DIAMOND DOLLARS: If the player matches any of YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. Each game is played separately. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly 39 (thirty-nine) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Scratch 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 Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly 39 (thirty-nine) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Scratch Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 39 (thirty-nine) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 39 (thirty-nine) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch 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-Scratch Ticket Number must be printed in the Pack-Scratch Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch 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 Scratch 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 Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

Programmed Game Parameters.

A. A Ticket can win up to twenty (20) times in accordance with the approved prize structure.

B. Adjacent Non-Winning Tickets within a Pack will not have matching Play Symbol and Prize Symbol patterns. Two (2) Tickets have matching Play Symbol and Prize Symbol patterns if they have the same Play Symbol and Prize Symbol in the same spots.

C. The top Prize Symbol will appear on every Ticket unless restricted by other parameters, play action or prize structure.

D. MONEY MULTIPLIER: Non-winning Prize Symbols will never appear more than one (1) time.

E. MONEY MULTIPLIER: Non-winning Play Symbols will all be different.

F. MONEY MULTIPLIER: Non-winning Prize Symbols will never be the same as the winning Prize Symbol(s).

G. DIAMOND DOLLARS: Each Ticket will have four (4) different "WINNING NUMBERS" Play Symbols.

H. DIAMOND DOLLARS: Non-winning "YOUR NUMBERS" Play Symbols will all be different.

I. DIAMOND DOLLARS: Non-winning Prize Symbols will never appear more than two (2) times.

J. DIAMOND DOLLARS: Non-winning Prize Symbols will never be the same as the winning Prize Symbol(s).

K. DIAMOND DOLLARS: No prize amount in a non-winning spot will correspond with the "YOUR NUMBERS" Play Symbol (i.e., 5 and $5).

2.3 Procedure for Claiming Prizes.

A. To claim a "COMBO PLAY" Scratch Ticket Game prize of $3.00, $5.00, $9.00, $10.00, $15.00, $30.00, $50.00, $100, $200 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $30.00, $50.00, $100, $200 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "COMBO PLAY" Scratch Ticket Game prize of $3,000 or $50,000, the claimant must sign the winning Scratch 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 Scratch 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 "COMBO PLAY" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. 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:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch 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 under $600 from the "COMBO PLAY" Scratch Ticket 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 $600 or more from the "COMBO PLAY" Scratch Ticket 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 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch 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 Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch 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 Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Ticket Prizes. There will be approximately 7,080,000 Scratch Tickets in Scratch Ticket Game No. 1850. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1850 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$3	623,040	11.36
$5	453,120	15.63
$9	283,200	25.00
$10	113,280	62.50
$15	56,640	125.00
$30	56,640	125.00
$50	23,600	300.00
$100	15,163	466.93
$200	2,360	3,000.00
$500	354	20,000.00
$3,000	20	354,000.00
$50,000	5	1,416,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 4.35. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 1850 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 1850, 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-201701083

Bob Biard
General Counsel
Texas Lottery Commission
Filed: March 15, 2017

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Scratch Ticket Game Number 1870 "Ultimate Millions"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 1870 is "ULTIMATE MILLIONS". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 1870 shall be $50.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 1870.

A. Display Printing - That area of the Scratch 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 and the back of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 03, 04, 06, 07, 08, 09, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 2X SYMBOL, 5X SYMBOL, 10X SYMBOL, 50X SYMBOL, MONEYBAG SYMBOL, $75.00, $100, $150, $200, $500, $1,000, $10,000 and $5MILL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1870 – 1.2D

PLAY SYMBOL	CAPTION
01	ONE
03	THR
04	FOR
06	SIX
07	SVN
08	EGT
09	NIN
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
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY

41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV
48	FRET
49	FRNI
51	FFON
52	FFTO
53	FFTH
54	FFFR
55	FFFV
56	FFSX
57	FFSV
58	FFET
59	FFNI
60	SXTY
2X SYMBOL	WIN2X
5X SYMBOL	WIN5X
10X SYMBOL	WIN10X
50X SYMBOL	WIN50X
MONEYBAG SYMBOL	WIN
$75.00	SVFV$
$100	ONHN
$150	ONFF
$200	TOHN
$500	FVHN
$1,000	ONTH
$10,000	10TH
$5MILL	TPPZ

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Scratch Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Pack-Scratch Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1870), a seven (7) digit Pack number, and a three (3) digit Scratch Ticket number. Scratch Ticket numbers start with 001 and end with 020 within each Pack. The format will be: 1870-0000001-001.

H. Pack - A Pack of the "ULTIMATE MILLIONS" Scratch Ticket Game contains 020 Tickets, packed in plastic shrink-wrapping and fan-folded in pages of one (1). The Packs will alternate. One will show the

front of Ticket 001 and back of 020 while the other fold will show the back of Ticket 001 and front of 020.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch 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.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "ULTIMATE MILLIONS" Scratch Ticket Game No. 1870.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch 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 Scratch Ticket. A prize winner in the "ULTIMATE MILLIONS" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 70 (seventy) Play Symbols. If a player matches any of YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the PRIZE for that number. If a player reveals a "2X" Play Symbol, the player wins DOUBLE the PRIZE for that symbol. If a player reveals a "5X" Play Symbol, the player wins 5 TIMES the PRIZE for that symbol. If a player reveals a "10X" Play Symbol, the player wins 10 TIMES the PRIZE for that symbol. If a player reveals a "50X" Play Symbol, the player wins 50 TIMES the PRIZE for that symbol. If a player reveals a "MONEYBAG" Play Symbol, the player wins the PRIZE for that symbol instantly! No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly 70 (seventy) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Scratch 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 Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly 70 (seventy) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Scratch Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 70 (seventy) Play Symbols on the Scratch Ticket must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 70 (seventy) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch 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-Scratch Ticket Number must be printed in the Pack-Scratch Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch 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 Scratch 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 Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets in a Pack will not have matching play data, spot for spot.

B. The top Prize Symbol will appear on every Ticket unless restricted by other parameters, play action or prize structure.

C. No matching non-winning YOUR NUMBERS Play Symbols on a Ticket.

D. No matching WINNING NUMBERS Play Symbols on a Ticket.

E. The Multiplier Play Symbols "2X" (WIN2X), "5X" (WIN5X), "10X" (WIN10X) and "50X" (WIN50X) will only appear on intended winning Tickets as dictated by the prize structure.

F. A Ticket may have up to six (6) matching non-winning Prize Symbols unless restricted by other parameters, play action or prize structure.

G. A non-winning Prize Symbol will never match a winning Prize Symbol.

H. The "MONEYBAG" (WIN) Play Symbol may appear multiple times on winning Tickets unless restricted by other parameters, play action or prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim an "ULTIMATE MILLIONS" Scratch Ticket Game prize of $75.00, $100, $150, $200 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $75.00, $100, $150, $200 or $500, Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim an "ULTIMATE MILLIONS" Scratch Ticket Game prize of $1,000, $10,000 or $5,000,000, the claimant must sign the winning Scratch 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 Scratch 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 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 "Ultimate Millions" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. 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:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch 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 under $600 from the "ULTIMATE MILLIONS" Scratch Ticket 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 $600 or more from the "ULTIMATE MILLIONS" Scratch Ticket 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 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch 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 Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch 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 Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Ticket Prizes. There will be approximately 3,600,000 Scratch Tickets in Scratch Ticket Game No. 1870. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1870– 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$75	720,000	5.00
$100	270,000	13.33
$150	69,000	52.17
$200	49,500	72.73
$500	20,250	177.78
$1,000	12,000	300.00
$10,000	210	17,142.86
$5,000,000	3	1,200,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 3.16. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 1870 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 1870, 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-201701057
Bob Biard
General Counsel
Texas Lottery Commission
Filed: March 14, 2017

♦ ♦ ♦

Texas Department of Motor Vehicles

Notice of Request for Applications

The Automobile Burglary and Theft Prevention Authority **(ABTPA)** authorized the issuance of the Fiscal Years 2018 and 2019 **(FY18-19) Request for Applications (RFA)** at its regularly scheduled meeting held on January 18, 2017. ABTPA is authorized in statute to provide grants to local law enforcement and other organizations to combat motor vehicle burglary and theft and to inform automobile owners about methods to prevent automobile burglary or theft. Eligible applicants may request funds for program operation by submission of an application consistent with the information, including the requirements and conditions stated in this RFA. This RFA is posted in the *Texas Register* as required by law for at least thirty (30) days prior to the due date of Applications.

Due Date

Grant Applications from eligible applicants must be completely submitted *electronically* on or before **5:00 p.m., June 2, 2017.**

Instructions on electronic submission will be available on or before April 3, 2017, at *www.txwatchyourcar.com.*

The *required* Resolution and any *optional* supporting documents must be scanned and e-mailed as attachments to *GrantsABTPA@txdmv.gov* on or before **5:00 p.m., June 2, 2017.**

OR

The Resolution and other supporting documents must be mailed with a postmark on or before **June 2, 2017.**

Applicable Authority and Rules

- Automobile Burglary and Theft Prevention Authority grant programs are governed by one or more of the following statutes, rules, standards and guidelines

- Texas Revised Civil Statutes Article 4413(37)

Texas Administrative Code: Title 43; Part 3; Chapter 57

- Uniform Grant Management Standards (UGMS) as promulgated by the Texas Comptroller of Public Accounts

- The current Automobile Burglary and Theft Prevention Grant Administrative Guide and subsequent adopted grantee instruction manuals

- This Request for Applications issued on March 24, 2017

Eligible Applicants

Law enforcement agencies, local prosecutors, judicial agencies, neighborhood organizations, community organizations, business organizations, and nonprofit organizations for programs designed to reduce the incidence of economic automobile theft are eligible to apply for grants for automobile burglary and theft prevention assistance projects. Nonprofit and other organizations shall provide sufficient documentation with their grant application to inform ABTPA about the level of community support and the potential viability of the organization's existing activities in providing automobile burglary and theft prevention assistance.

Application Category

Applicants meeting the eligibility requirements are also required to meet qualifications listed in the specific type of application that may be submitted. There are three different grant application types:

Continued Grant Category - Only available to agencies that have an FY17 grant. The application must be submitted for substantially the same program as the previous year, or FY2017. The requested funds, match funds, and in-kind match must be within 5% of the previous year. The number of staff positions must be within 5% of the total positions. These are annual competitive grants that require a minimum cash match of 20% for the program described in the application.

Modified Grant Category - Only available to agencies that have an FY17 grant. Current grantees will only enter the portion where a change of greater than 5% is made between the continued grant application and the awarded (including modifications) FY2017 budget. Changes in personnel, fringe, travel, supplies, contract, equipment or changes in number of personnel, match percent or amount would be included in this category. These are annual competitive grants that require a minimum cash match of 20% for the program described in the application.

New Grant Category - Available to all law enforcement agencies and eligible organizations. These are annual competitive grants that require a minimum cash match of 20% for the program described in the application.

Grant Type

This is a total program budget reimbursement grant. Applicants that are awarded grants will expend local funds and will be reimbursed at the agreed match rate for all allowable, reasonable and necessary costs incurred on a quarterly basis.

Grant Term

The grant cycle is one (1) year funding cycle to begin on September 1, 2017, and end August 31, 2018. The ABTPA may provide a second year of funding subject to availability of funds under the same grant application with adjustments allowed based on program need prior to making a new award in FY2019. No obligations or expenses may be incurred or made outside of the grant period.

Method of Application

The grant Application is submitted *electronically*. **Instructions on electronic submission will be available on or before April 3, 2017 at *www.txwatchyourcar.com.***

Resolution Required

A Resolution (Order or Ordinance) by the applicant governing body is required to make application for these funds. The resolution shall provide that the governing body applies for the funds for the purpose provided in statute (*Texas Revised Civil Statutes Article 4413(37)*, to return the grant funds in the event of loss or misuse, and designate the officials that the governing body chooses as its agents to administer the grant if awarded.

Only the governing body that submits an application needs to adopt and submit a Resolution. Participating jurisdictions in multi-agency taskforces shall agree to the grant through interagency agreements as provided under Texas Local Government Code Chapter 362 and Texas Government Code Chapter 791.

In the event a governing body has delegated the application authority to a city manager, chief of police, sheriff or other official then applicants must provide a copy of the delegation order along with the Resolution signed by the official. A sample Resolution is attached as Appendix A, Figure 2.

Non-profit Agencies must submit the Resolution signed by its Executive Director and provide authorization from its Board of Directors, a list of agency officers/directors, a copy of the agency's mission/purpose, by-laws, and information about its program accountability and internal control system. Authority rules require a bond to be posted in the event of the agency being awarded a grant. The amount of the bond will be set by the Authority if an award is offered.

Program Category

To be eligible for consideration for funding, a project must be designed to support one or more of the following ABTPA program categories:

Law Enforcement, Detection, and Apprehension - provide financial support to law enforcement agencies for economic automobile theft enforcement teams (referred to as taskforces). Taskforces will develop organized methods to combat motor vehicle burglary and theft through enforcement of law, detection of criminal enterprise and/or apprehension of law violators and groups.

Prosecution/Adjudication/Conviction - provide financial support to prosecutors and judicial agencies for programs designed to reduce the incidence of economic automobile burglary and theft. Taskforces may incorporate this program category into the organized methods to combat motor vehicle burglary and theft.

Prevention, Anti-Theft Devices and Automobile Registration - provide financial support to law enforcement agencies, local prosecutors, judicial agencies, and neighborhood, community, business, and nonprofit organizations designed to reduce the incidence of economic automobile burglary and theft. This program category must provide methods to distribute equipment or technology and/or to test experimental equipment or technology designed for automobile theft and burglary deterrence. The application shall demonstrate how the financial support will assist automobile owners in preventing automobile burglary or theft and/or to establish a uniform program to prevent stolen motor vehicles from entering Mexico.

Reduction of the Sale of Stolen Vehicles or Parts - provide financial support to law enforcement agencies (enforcement teams referred to as taskforces), local prosecutors, judicial agencies, and neighborhood, community, business, and nonprofit organizations for economic automobile theft (including parts). Applicants will develop organized methods to combat the sale of stolen vehicles and parts using vehicle identification number inspection, inspections of facilities that operate motor vehicle part and component distribution enterprises, labeling etching methods including component part labeling and contradicting other fraudulent means to sell stolen vehicles or parts.

Educational Programs and Marketing - provide financial support to law enforcement agencies and other entities to assist automobile owners in preventing automobile burglary or theft. Develop and provide specialized training or education program(s) on automobile burglary

and theft prevention, interdiction and prosecution to law enforcement, prosecutors, and other groups combatting motor vehicle theft and burglary. Provide education in automobile burglary and theft prevention to business groups and the public.

Priority Funding

The statute provides that the *"authority shall allocate grant funds primarily based on the number of motor vehicles stolen in, or the motor vehicle burglary or theft rate...(TRCS Art.4413(37)§6(k),"* additionally, the following grant features will be given priority consideration in evaluating **modified and new** grant applications:

Cooperative Priority - Applications for grant programs that place an emphasis on filling in the law enforcement coverage gap (area and personnel). Applications that increase collaboration and cooperation between multiple jurisdictions will be prioritized. This will also include grant programs that expand existing multi-jurisdictional agreements to include additional jurisdictions.

Crime Analysts and Trend Analysis - Applications that introduce, increase, or expand the use of crime analysts or significant crime trend analysis. Crime analysts that will use data analysis and other methods to support the interdiction of criminals and to disrupt criminal economic enterprises. These positions will also monitor and track the confluence of motor vehicle crime with other major crimes such as organized crime, human trafficking, and drug distribution.

Programs to combat pattern, organized and economic crime - Applications that introduce, increase, or expand efforts to combat pattern, organized and economic crime. A crime pattern is a group of two or more crimes that possess similar characteristics such as lack of connection between victim and offenders. Organized crime includes efforts by criminals to conspire to commit burglary of a motor vehicle and motor vehicle theft. Grant applications that include specific initiatives to target pattern, organized and economic crime will receive prioritization.

Funding Co-location - Applications that demonstrate and provide for managed coordination and operations to improve collaboration and expand the use of resources to combat motor vehicle burglary and theft. It may include collaborative management of resources such as personnel, surveillance equipment, license plate readers, and bait vehicle deployment. Co-location includes establishing a shared physical space or effective communication methods between taskforces and jurisdictions as an effective way to increase collaboration, leverage resources, experience and specialized expertise. The guiding principle of the co-location priority is that resources (human and equipment) provided by the grant will be well managed, available across jurisdictions, and cohesive within the taskforce operations.

Prosecutorial elements - Applications that include Specialized Motor Vehicle Crime Prosecutors to focus specifically on motor vehicle burglary and theft and economic motor vehicle theft (including organized motor vehicle crime) may receive prioritization in considering grant awards. Specialized prosecutors will be available to assist in pursuing convictions related to motor vehicle burglary and theft, economic motor vehicle theft, organized crime related to motor vehicle burglary and theft and motor vehicle crime. Funded prosecutors may develop subject matter resource material and deliver training for all prosecutors around the state.

Supporting Documents

Documents that provide evidence of local support or commitment from other officials or agencies for the application may be submitted following the same instructions as the Resolution. Interagency agreements shall be submitted prior to payments being authorized if an award is made. ABTPA recommends that interagency agreements be completed after award determinations are made to ensure correct amounts are reflected in those agreements.

Supplanting Prohibited

Grant funds provided by the Authority under this RFA shall not be used to supplant federal, state or local funds that otherwise would be available for the same purposes. Supplanting means the replacement of other funds with ABTPA grant funds. It shall also include using existing resources already available to a program activity as cash match.

Cash Match Requirement

All programs must provide **at least** a twenty (20%) percent cash match. Multijurisdictional agencies must provide details for the method of cash match in Intergovernmental Agreements *(Texas Government Code, Chapter 791).* Interagency agreements shall be submitted prior to payments being authorized if an award is made.

Formulas to calculate cash match:

1. Total ABTPA grant funds requested multiplied by percent of match required = Total Amount of Cash Match Required

2. Total Project Cost minus Total Cash Match Required = Total Authority Grant Request

NICB and DPS in Lieu of Cash - Applicants may enter into formal agreements with the Texas Department of Public Safety (DPS) or the National Insurance Crime Bureau (NICB) to work on grant funded activities. The amount of salary and other direct costs related to the work on grant activity provided by the DPS and NICB may be counted and reported as in lieu of Cash. Time certifications are required to be made by the employee for these positions every month for part-time and every six months for full-time employees.

In-Kind Match

Resources and funds from third-parties that can be quantified should be reported in the proper category in the application. In-Kind contributions shall not be considered cash match. In-kind match is encouraged to be used as an added value inducement to the ABTPA and to adequately document true costs required to implement the program.

Reporting and Attendance Requirements

Applicants that are awarded grants will be required to provide:

Quarterly Progress Reports - The ABTPA requires submission of quarterly progress reports to demonstrate progress toward meeting goals and activities provided in the grant application. These include: 1) Monthly progress toward statutorily required performance measures; 2) Monthly progress recorded on the *Goals, Strategies and Activities report;* and 3) Summary and Success section.

Quarterly Financial Reports - Reports of actual expenses are provided to request funds. All expenditures must be in accordance with local policies and procedures and grant requirements. Grantees shall review all expenditures, ensure all applicable regulations are followed, and maintain documentation that is true and complete. All expenses must be supported by appropriate documentation.

Webinar Attendance:

At least one representative from the applicant organization will attend a monthly training session via teleconference or webinar that includes information on ABTPA grant administration, information sharing on law enforcement issues and other ABTPA issues critical to operating an ABTPA taskforce.

Funding Requirements and Conditions

a) State Funds Availability - All awards by the ABTPA are subject to availability of state funds.

b) Right of Refusal - The Authority reserves the right to reject any or all of the applications submitted.

c) Awards - Publishing the RFA does not obligate the Authority to fund any programs.

d) Partial Funding - The Authority may choose to offer funds for all or any portion of a program submitted in the Application.

e) Substitution - The Authority may offer alternative funding sources, special conditions or alternative program elements in response to submitted Applications.

f) Competitive Application Process - The Application process for the Authority's Grant Program is competitive. Awards are based on a review of the grant Application. New programs that submit an *Intent to Apply* and that were provided guidance on how to proceed are not guaranteed funding by the Authority nor removed from the competitive nature of the award process.

g) Review Criteria - Authority staff and designated ABTPA Board member(s) will review each grant using subjective and objective tools and comparative analysis. The weight given to each section or combination of sections is at the sole discretion of the Authority.

h) Questions and Clarification - During the review period, the applicant may be contacted by Authority staff to ask questions or seek clarification on information written in the application. Failure to promptly respond will not disqualify an applicant but information that arrives beyond the review period cannot be considered.

i) Final Selection - The Authority may select and award programs that best meet the statutory purposes and that reflect its current priorities. No appeal may be made from the Authority's decisions.

j) Changes in Application - If an applicant proposes changes to be made in the program type or participation of jurisdictions after an award is made then the Authority will review the changes and make modifications or alter the grant including the amount as deemed appropriate to the Authority.

k) Delayed Start - An applicant that is awarded a grant and that does not begin operations within 45 days of the beginning of the grant term is considered terminated.

Selection Process:

Eligible applications will be reviewed. Grant award decisions by ABTPA are final and not subject to judicial review. Grants will be awarded on or before September 1, 2017.

Applications that do not meet the stated requirements of this RFA and that are not eligible for review will be notified ten (10) working days after the due date.

Contact Person

Bryan E. Wilson, ABTPA Director

Texas Automobile Burglary and Theft Prevention Authority

4000 Jackson Avenue

Austin, Texas 78731

(512) 465-1485

GrantsABTPA@txdmv.gov

ABTPA Application Checklist

Each Applicant must:

1) Complete the on-line Application on or before **June 2, 2017**;
2) Submit the Resolution and any other supporting documents by:
   a. Scan and e-mail on or before **5:00 PM, June 2, 2017** to *GrantsABTPA@txdmv.gov*; **OR**
   b. Mail with a postmark on or before **June 2, 2017**.

Appendix A
Automobile Burglary and Theft Prevention Authority Resolution

2018 **Blank City/County/Agency Name** Resolution or Order or Ordinance
Automobile Burglary and Theft Prevention Authority Grant Program

WHEREAS, under the provisions of the Texas Revised Civil Statutes Article 4413(37) and Texas Administrative Code Title 43; Part 3; Chapter 57, entities are eligible to receive grants from the Automobile Burglary and Theft Prevention Authority to provide financial support to law enforcement agencies for economic automobile theft enforcement teams and to combat motor vehicle burglary in the jurisdiction; and

WHEREAS, this grant program will assist this jurisdiction to combat motor vehicle burglary and theft; and

WHEREAS, _____ (Entity Name) has agreed that in the event of loss or misuse of the grant funds, _____ (Entity Name) assures that the grant funds will be returned in full to the Automobile Burglary and Theft Prevention Authority.

NOW THEREFORE, BE IT RESOLVED and ordered that the [*County Judge/Sheriff/City Manager/Police Chief/Executive Director, etc.]* of this [*county/city/agency]* is designated as the Authorized Official to apply for, accept, decline, modify, or cancel the grant application for the Automobile Burglary and Theft Prevention Authority Grant Program and all other necessary documents to accept said grant; and

BE IT FURTHER RESOLVED that _____ (*Position-Example- ABTPA Commander, Chief of Police, etc.*) is designated as the Program Director and _____ (*Position-Example-County Auditor, City CFO, etc.*) is designated as the Financial Officer for this grant.

Adopted this _____day of _____, 2017.

_____
NAME
County Judge/Mayor/Executive Director/City Manager

TRD-201701070

David Richards
General Counsel
Texas Department of Motor Vehicles
Filed: March 14, 2017

♦ ♦ ♦

Panhandle Regional Planning Commission

Legal Notice

The Panhandle Regional Planning Commission (PRPC) seeks a vendor or vendors that can supply pre-paid fuel cards usable for the purchase of fuel by workforce development program customers at outlets in the Panhandle Workforce Development Area (PWDA).

Cards must be available pre-loaded in various denominations directly from the vendor and limited to fuel purchases only.

PRPC makes no guarantees of purchases from the selected vendor(s) and reserves the right to use alternative methods to purchase fuel.

Interested vendors may obtain a copy of the solicitation packet by contacting Leslie Hardin, at (806) 372-3381/ (800) 477-4562 or *lhardin@theprpc.org*. The packet may also be picked up at PRPC's offices located at 415 S.W. 8th Avenue in Amarillo, Texas. The required information should be submitted to PRPC no later than April 14, 2017.

PRPC as administrative and fiscal agent for the Panhandle Workforce Development Board dba Workforce Solutions Panhandle, a proud partner of the AmericanJobCenter Network, is an Equal Opportunity Employer / Program. Auxiliary aids and services are available upon request to individuals with disabilities. Relay Texas: 711

TRD-201701037
Leslie Hardin
WFD Contracts Coordinator
Panhandle Regional Planning Commission
Filed: March 13, 2017

♦ ♦ ♦

Legal Notice

The Panhandle Regional Planning Commission (PRPC) is seeking proposals from qualified organizations with demonstrated competence, knowledge, qualifications, successful performance, and reasonable fees to implement a "Summer Earn and Learn" program to develop work opportunities for students with disabilities in coordination with the workforce development programs administered in the Panhandle Workforce Development Area (PWDA). The purpose of this solicitation is to enable PRPC to evaluate and select an entity capable of performing these services and to enter into negotiation for a contract at a fair and reasonable price.

Interested proposers may obtain a copy of the solicitation packet by contacting Leslie Hardin at (806) 372-3381/ (800) 477-4562 or lhardin@theprpc.org. The proposals must be submitted to PRPC no later than April 14, 2017.

PRPC as administrative and fiscal agent for the Panhandle Workforce Development Board dba Workforce Solutions Panhandle, a proud partner of the AmericanJobCenter Network, is an Equal Opportunity Employer / Program. Auxiliary aids and services are available upon request to individuals with disabilities. Relay Texas: 711

TRD-201701092
Leslie Hardin
WFD Contracts Coordinator
Panhandle Regional Planning Commission
Filed: March 15, 2017

♦ ♦ ♦

Public Utility Commission of Texas

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas (commission) received an application on March 7, 2017, to amend a state-issued certificate of franchise authority, under Public Utility Regulatory Act §§66.001 - 66.016.

Project Title and Number: Application of Vyve Broadband A, LLC for Amendment to its State-Issued Certificate of Franchise Authority, Project Number 46912.

The requested amendment is to expand the service area footprint to include all of the unincorporated territory in Bowie County within a 10 mile diameter circle around the city limits of New Boston, Texas, a 4 mile diameter circle around the city limits of Hooks, Texas, a 5 mile diameter circle around the city limits of Maud, Texas, and a 5 mile diameter circle around the city limits of DeKalb, Texas; and all of the unincorporated territory in Dallam County within a 2 mile diameter circle around the city limits of Dalhart, Texas.

Information on the application may be obtained by contacting the commission by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All inquiries should reference Project Number 46912.

TRD-201701033
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 10, 2017

♦ ♦ ♦

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas (commission) received an application on March 10, 2017, to amend a state-issued certificate of franchise authority, under Public Utility Regulatory Act §§66.001 - 66.016.

Project Title and Number: Application of Unified Communications, Inc., d/b/a ZochNet, d/b/a ZochNet Cable, d/b/a ZochTV for an Amendment to a State-Issued Certificate of Franchise Authority, Project Number 46935.

Unified Communications, Inc. seeks to amend SICFA No. 90038 to reflect a change in ownership. Central Texas Cable Partners, Inc. d/b/a Reveille Broadband was issued SICFA No. 90038 on October 7, 2008. Unified Communications, Inc. reports it has purchased the assets of Central Texas Cable Partners, Inc. d/b/a Reveille Broadband per an asset purchase agreement signed on February 12, 2017.

Information on the application may be obtained by contacting the commission by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All inquiries should reference Project Number 46935.

TRD-201701088

Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 15, 2017

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Notice of Application for a New Water Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application for a new water certificate of convenience and necessity (CCN) in Brazoria County.

Docket Style and Number: Application of Wolfe Air Park Civic Club, Inc. to Obtain a Water Certificate of Convenience and Necessity in Brazoria County, Docket Number 46923.

The Application: Wolfe Air Park Civic Club, Inc. filed an application to obtain a new water certificate of convenience and necessity in Brazoria County. The total service area being requested includes approximately 99 acres and 42 current customers.

Persons wishing to intervene or comment on the action sought should contact the commission by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 46923.

TRD-201701089
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 15, 2017

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Notice of Application for Approval of the Provision of Non-Emergency 311 Service

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) for approval to provide non-emergency 311 services.

Docket Style and Number: Application of Southwestern Bell Telephone Company d/b/a AT&T Texas for Approval to Provide Non-Emergency 311 Service. Docket Number 46926.

The Application: On March 8, 2017, Southwestern Bell Telephone Company d/b/a AT&T Texas filed an application with the Commission under 16 Texas Administrative Code § 26.127, for approval to provide non-emergency 311 service (NE311) for the City of Amarillo.

NE311 service is available to local governmental entities to provide to their residents an easy to-remember number to call for access to non-emergency services. By implementing NE311 service, communities can improve 911 response times for those callers with true emergencies. Each local government entity that elects to implement NE311 service will determine the types of non-emergency calls that will be handled by their 311 call center.

Persons who wish to comment on this application should notify the commission by April 24, 2017. Requests for further information should be mailed to the commission at P.O. Box 13326, Austin, Texas 78711-3326, or you may call the commission's Customer Protection Division at (512) 936-7120 or toll free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 46926.

TRD-201701034
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 10, 2017

♦ ♦ ♦

Notice of Application for Service Area Exception

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on March 10, 2017, to amend a certificate of convenience and necessity for a service area exception within Moore County, Texas.

Docket Style and Number: Joint Application of Rita Blanca Cooperative, Inc. and Southwestern Public Service Company to Amend a Certificate of Convenience and Necessity for a Service Area Exception in Moore County. Docket Number 46937.

The Application: Rita Blanca Cooperative, Inc. and Southwestern Public Service Company filed an application for a service area boundary exception to allow SPS to provide service to a specific customer located within the certificated service area of Rita Blanca. Rita Blanca has provided an affidavit of relinquishment for the proposed change.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than March 31, 2017, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the Commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 46937.

TRD-201701091
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 15, 2017

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Notice of Application to Amend a Service Provider Certificate of Operating Authority

On March 7, 2017, Tele Circuit Network Corporation d/b/a Tele Circuit filed an application with the Public Utility Commission of Texas (commission) to amend service provider certificate of operating authority number 60795, reflecting a change in type of provider.

Docket Style and Number: Application of Tele Circuit Network Corporation d/b/a Tele Circuit for an Amendment to a Service Provider Certificate of Operating Authority, Docket Number 46913.

Persons wishing to comment on the action sought should contact the commission by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than March 31, 2017. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 46913.

TRD-201701032
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 10, 2017

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Notice of Filing to Withdraw Services

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) to withdraw services under 16 Texas Administrative Code §26.208(h).

Docket Title and Number: Application of United Telephone Company, Inc. d/b/a CenturyLink to Withdraw Services Under 16 Texas Administrative Code §26.208(h), Docket Number 46862.

The Application: On February 16, 2017, CenturyLink filed an application with the Commission to withdraw Privacy ID services from its General Exchange Tariff. CenturyLink seeks to withdraw the services due to an equipment failure. CenturyLink explained subscribers were migrated to a comparable plan and their monthly rate was reduced. The proceeding was docketed and suspended on February 17, 2017, to allow adequate time for review and intervention.

Information on the application may be obtained by contacting the commission by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All inquiries should reference Docket Number 46862.

TRD-201700943
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 8, 2017

♦ ♦ ♦

Notice of Filing to Withdraw Services

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) to withdraw services under 16 Texas Administrative Code §26.208(h).

Docket Title and Number: Application of Central Telephone Company of Texas dba CenturyLink to Withdraw Services Under 16 Texas Administrative Code §26.208(h), Docket Number 46863.

The Application: On February 16, 2017, CenturyLink filed an application with the Commission to withdraw Privacy ID services from its General Customer Services Tariff. CenturyLink seeks to withdraw the services due to an equipment failure. CenturyLink explained subscribers were migrated to a comparable plan and their monthly rate was reduced. The proceeding was docketed and suspended on February 17, 2017, to allow adequate time for review and intervention.

Information on the application may be obtained by contacting the commission by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All inquiries should reference Docket Number 46863.

TRD-201700944
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 8, 2017

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Rio Grande Council of Governments

Public Notice: Nominations for Voting Membership Region E Far West Texas Water Planning Group

Nominations for Voting Membership Region E Far West Texas Water Planning Group

The Far West Texas Water Planning Group is seeking nominations to fill two (2) voting positions on the Far West Texas Water Planning Group. The positions are as follows:

Small Business - Terms expire January 19, 2019.

Economic Development - Small Businesses. Terms expire August 6, 2018.

Conditions of Membership: In order to be eligible for voting membership on the Planning Group, a person must represent the interest for which a member is sought, be willing to participate in the regional water planning process, and abide by the Bylaws of the Region E Far West Texas Water Planning Group. Nominations (Nomination letter and a resume or biography of nominee are required) must be received by **5:30 p.m. MDT, Friday, April 21, 2017,** addressed to:

Annette Gutierrez

Administrative Officer

Far West Texas Water Planning Group

Attn: Omar L. Martinez

8037 Lockheed Drive, Suite 100

El Paso, Texas 79925

TRD-201701053
Annette Gutierrez
RGCOG Executive Director
Rio Grande Council of Governments
Filed: March 13, 2017

♦ ♦ ♦

Akshay Patel
12th Grade

How to Use the Texas Register

Information Available: The 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.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Review of Agency Rules - notices of state agency rules review.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

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 40 (2015) is cited as follows: 40 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 "40 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 40 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, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: http://www.sos.state.tx.us. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC*) is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to Update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
1 TAC §91.1…….....950 *(P)*

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