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 351. COORDINATED PLANNING AND DELIVERY OF HEALTH AND HUMAN SERVICES

SUBCHAPTER B. ADVISORY COMMITTEES

DIVISION 1. COMMITTEES

1 TAC §351.821

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §351.821, concerning the Value-Based Payment and Quality Improvement Advisory Committee.

BACKGROUND AND PURPOSE

The Value-Based Payment and Quality Improvement Advisory Committee (VBPQIAC) was established in 2016 by the HHSC Executive Commissioner, under the authority of Texas Government Code §531.012. This statute requires the HHSC Executive Commissioner to establish and maintain advisory committees; establish rules for the operation of advisory committees; and for advisory committees to provide recommendations to the HHSC Executive Commissioner and the Texas Legislature.

The VBPQIAC advises the HHSC Executive Commissioner and Texas Health and Human Services agencies (HHS agencies) on quality improvement and value-based payment initiatives for Medicaid, other publicly funded health services, and the wider health care system. The VBPQIAC consolidated the functions of the previous Medicaid and CHIP Quality Based Payment Advisory Committee and the Texas Institute of Health Care Quality and Efficiency. Members meet approximately four times a year in Austin.

In §351.821, the VBPQIAC is set to abolish on December 31, 2023. Abolition of the VBPQIAC would result in the loss of a primary source of public input for key Medicaid value-based and quality improvement programs, such as the state's Alternative Payment Models initiative. The VBPQIAC maintains strong participation from stakeholders.

The proposed amendment would extend the VBPQIAC by four years to December 31, 2027, update membership categories by removing "Regional Healthcare Partnerships" and align the rule with current HHSC advisory committee rule formatting and standards.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §351.821 adds "HHSC" in front of "Executive Commissioner" and uses the acronym "VBPQIAC" for the Value-Based Payment and Quality Improvement Advisory Committee.

The proposed amendment to §351.821 is revised in several places to ensure the rule conforms with HHSC's standards for its advisory committee rules. The proposed amendment adds new subsection (e), relating to Meetings, new subsection (h), relating to Required Training, and new subsection (i), relating to Travel Reimbursement. The language relating to abolition is moved to subsection (j) and the date of abolition is updated from December 31, 2023, to December 31, 2027.

The proposed amendment to subsection (a), relating to Statutory authority, adds a reference to §351.801. Language is added to subsection (b) to reference HHSC and the Executive Commissioner. A new paragraph (2) is added to subsection (c), relating to bylaws. Subsection (d), relating to Reporting Requirements, is updated to comply with HHSC's standards for its advisory committee rules. Subsection (f), relating to Membership, is updated to clarify terms relating to members and language related to "Regional Healthcare Partnerships" in (f)(1)(A)(ii) is deleted and the clauses are renumbered. Regional Healthcare Partnerships are now obsolete due to the end of the Delivery System Reform Incentive Payment program, commonly known as DSRI. Subsection (g), relating to Officers, is updated to clarify terms related to officers.

FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years that the rule will be in effect, enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of state government because there is no change to state procedures or additional costs, and VBPQIAC members are not reimbursed for any committee participation-related expenses.

The rule does not have any fiscal implications to local governments because the rule does not apply to any local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

(1) the proposed rule will not create or eliminate a government program;

(2) implementation of the proposed rule will not affect the number of HHSC employee positions;

(3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;

(4) the proposed rule will not affect fees paid to HHSC;

(5) the proposed rule will not create a new rule;

(6) the proposed rule will expand an existing rule;

(7) the proposed rule will not change the number of individuals subject to the rule; and

(8) the proposed rule will not affect the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because the proposed amendment applies only to HHSC.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule does not impose a cost on regulated persons and the rule is necessary to protect the health, safety, and welfare of the residents of Texas.

PUBLIC BENEFIT AND COSTS

Stephanie Stephens, State Medicaid Director, has determined that for each year of the first five years the amended rule is in effect, the public benefit will be that the VBPQIAC will continue to advise HHS agencies on quality improvement and value-based payment initiatives for Medicaid, other publicly funded health services, and the wider health care system.

Trey Wood has also determined that for the first five years the amended rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the rule applies only to HHSC.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the 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 Jenn Hamilton at (512) 438-3214 in the HHSC Medicaid and CHIP Services Division, Office of Value-Based Initiatives.

Written comments on the proposal may be submitted to HHSC, Mail Code H250, P.O. Box 13247, Austin, Texas 78711-3247, or by email to HHSC_VBPQIAC@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 23R022" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.012(c)(1), which requires the Executive Commissioner to adopt rules consistent with Texas Government Code Chapter 2110 to govern an advisory committee's report requirements.

The amendment affects Texas Government Code §531.0055 and Texas Government Code §531.012.

§351.821. Value-Based Payment and Quality Improvement Advisory Committee.

(a) Statutory authority. The Value-Based Payment and Quality Improvement Advisory Committee (VBPQIAC [~~Quality Committee~~]) is established under [~~in accordance with~~] Texas Government Code §531.012 and is subject to §351.801 of this division (relating to Authority and General Provisions).

(b) Purpose. The VBPQIAC advises the Texas Health and Human Services (HHSC) Executive Commissioner and Health and Human Services system agencies (HHS agencies) on [~~Quality Committee provides a forum to promote public-private, multi-stakeholder collaboration in support of~~] quality improvement and value-based payment initiatives for Medicaid, other publicly funded health services, and the wider health care system.

(c) Tasks. The VBPQIAC [~~Quality Committee~~] performs the following tasks:

(1) studies and makes recommendations regarding:

(A) value-based payment and quality improvement initiatives to promote better care, better outcomes, and lower costs for publicly funded health care services;

(B) core metrics and a data analytics framework to support value-based purchasing and quality improvement in Medicaid and CHIP [~~Medicaid/CHIP~~];

(C) HHSC and managed care organization incentive and disincentive programs based on value; and

(D) the strategic direction for Medicaid and CHIP [~~Medicaid/CHIP~~] value-based programs; and

(2) adopts bylaws to guide the operation of the committee; and

(3) [~~(2)~~] pursues other deliverables consistent with its purpose to improve quality and efficiency in state health care services as requested by the HHSC Executive Commissioner or adopted into the work plan or bylaws of the committee.

(d) Reporting Requirements [~~Reports~~].

(1) No later than [~~By~~] December 31st of each [~~fiscal~~] year, the VBPQIAC [~~Quality Committee~~] files an annual [~~a~~] written report with the HHSC Executive Commissioner covering [~~that covers~~] the meetings and activities in the immediately preceding [~~fiscal~~] year. The report includes:

(A) a list of [~~lists~~] the meeting dates;

(B) [~~provides~~] the members' attendance records;

(C) a brief description of the [~~briefly describes~~] actions taken by the VBPQIAC [~~committee~~];

(D) a description of [~~describes~~] how the committee [~~has~~] accomplished its tasks;

[~~(E) summarizes the status of any rules that the committee recommended to HHSC;~~]

(E) [(F)] a description of the [describes anticipated] activities the VBPQIAC [committee] anticipates undertaking [will undertake] in the next [fiscal] year;

(F) [(G)] recommended [recommends] amendments to this section[, as needed]; and

(G) [(H)] the costs related [identifies the costs related] to the VBPQIAC [committee], including the cost of HHSC staff time spent supporting the VBPQIAC's [committee's] activities and the source of funds used to support the VBPQIAC's [committee's] activities.

(2) No later than [By] December 1st of each even-numbered year, the VBPQIAC [committee] submits a written report to the HHSC Executive Commissioner and Texas Legislature that:

(A) describes current trends and identifies best practices in health care for value-based payment and quality improvement; and

(B) provides recommendations consistent with the purposes of the VBPQIAC [Quality Committee].

(e) Meetings. [Date of abolition. The Quality Committee is abolished, and this section expires, on December 31, 2023.]

(1) Open meetings. The VBPQIAC complies with the requirements for open meetings under Texas Government Code Chapter 551, as if it were a governmental body.

(2) Frequency. The VBPQIAC will meet at least twice each year.

(3) Quorum. A majority of members constitutes a quorum for the purpose of transacting official business. (To calculate a majority for a committee with an even number of members, divide the membership by two and add one; for a committee with an odd number of members, divide the membership by two and round up to the next whole number.)

(f) Membership.

(1) The VBPQIAC [Quality Committee] is composed of 19 voting members and up to four non-voting ex officio members appointed by the HHSC Executive Commissioner. In selecting members to serve on the VBPQIAC, HHSC considers the applicants' qualifications, background, and interest in serving.

(A) The 19 [HHSC solicits] voting members represent [from] the following categories:

(i) Medicaid managed care organizations;

[(ii) Regional Healthcare Partnerships;]

(ii) [(iii)] hospitals;

(iii) [(iv)] physicians;

(iv) [(v)] nurses;

(v) [(vi)] pharmacies;

(vi) [(vii)] providers of long-term services and supports;

(vii) [(viii)] academic systems; and

(viii) [(ix)] [members from] other disciplines or organizations with expertise in health care finance, delivery, or quality improvement.

(B) Four non-voting, ex officio members may be appointed to the VBPQIAC as [The final composition of the committee is] determined by the HHSC Executive Commissioner.

[(C) The committee may include nonvoting, ex officio agency representatives as determined by the Executive Commissioner.]

(2) In selecting voting members, the Executive Commissioner considers ethnic and minority representation and geographic representation.

(3) Members are appointed for [to] staggered terms so that the terms of an equal or almost equal number of [approximately half the] members expire on December 31 [31st] of each [even-numbered] year. Regardless of the term limit, a member serves until his or her replacement has been appointed. This ensures sufficient, appropriate representation.

(A) If a vacancy occurs, the HHSC Executive Commissioner will appoint a person to serve the unexpired portion of that term.

(B) [(4)] Except as necessary to stagger terms, the term of each [voting] member is four years. A member may apply to serve one additional term.

(C) This subsection does not apply to ex officio members, who serve at the pleasure of the HHSC Executive Commissioner and do not have the authority to vote on items before the full committee.

(g) Officers. The VBPQIAC [Quality Committee] selects a chair and vice chair of the committee from among its members [a presiding officer and an assistant presiding officer].

(1) The chair [presiding officer] serves until December 31 [31st] of each odd-numbered year. The vice chair [assistant presiding officer] serves until December 31 [31st] of each even-numbered year.

(2) A member may serve up to two consecutive terms as chair or vice chair.

[(2) The presiding officer and the assistant presiding officer remain in their positions until the committee selects a successor; however, the individual may not remain in office past the individual's membership term.]

(3) A member is not eligible to serve in the role of chair or vice chair once another person has been appointed to fill the member's position on the VBPQIAC.

(h) Required Training. Each member must complete training on relevant statutes and rules, including this section, §351.801 of this division, Texas Government Code §531.012, Texas Government Code Chapters 551, 552, and 2110, the HHS Ethics Policy, and other relevant HHS policies. Training will be provided by HHSC.

(i) Travel Reimbursement. Unless permitted by the current General Appropriations Act, members of the VBPQIAC are not paid to participate in the VBPQIAC nor reimbursed for travel to and from meetings.

(j) Date of abolition. The VBPQIAC is abolished and this section expires on December 31, 2027.

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 June 29, 2023.

TRD-202302358

Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: August 13, 2023
For further information, please call: (512) 438-3214

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1 TAC §351.823

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §351.823, concerning the e-Health Advisory Committee.

BACKGROUND AND PURPOSE

The e-Health Advisory Committee (eHAC) was established in 2016 by the HHSC Executive Commissioner, under the authority of Texas Government Code §531.012. This statute requires the HHSC Executive Commissioner to establish and maintain advisory committees; establish rules for the operation of advisory committees; and for advisory committees to provide recommendations to the executive commissioner and the Texas Legislature.

The eHAC advises the HHSC Executive Commissioner and Health and Human Services (HHS) agencies on strategic planning, policy, rules, and services related to the use of health information technology, health information exchange systems, telemedicine, telehealth, and home telemonitoring services. Members meet approximately four times per year in Austin, at the discretion of the eHAC Chair.

In §351.823(i), the eHAC is set for abolition on December 31, 2023. In an eHAC meeting held June 6, 2022, committee members voted to recommend amending the committee rule to extend the eHAC so the committee can continue to advise on issues related to health information technology and exchange systems, as well as teleservices. In response, HHSC proposes to amend §351.823 to extend this committee for two years , from December 31, 2023, to December 31, 2025.

The proposed amendment to §351.823 includes several revisions to ensure the rule meets the HHSC standards for its advisory committee rules.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §351.823 is revised in several places to add "HHSC" in front of "Executive Commissioner" for clarity.

The proposed amendment to §351.823 makes the following changes to ensure the rule conforms with HHSC's standards for its advisory committee rules. The proposed amendment adds a new paragraph (6) in subsection (c), relating to bylaws; amends subsection (f), relating to Membership, subsection (g), relating to Officers, and subsection (h), relating to Required Training; and adds a new subsection (i), relating to travel reimbursement.

The proposed amendment to §351.823(e) adds "as if it were a governmental body" to align the rule with §351.801(c) (relating to Authority and General Provisions) and to ensure the rule conforms with HHSC's standards for advisory committee rules. Additional language is added regarding frequency of meetings and quorum.

The proposed amendment to §351.823(f)(2) replaces "Texas Health Service Regions" with "Public Health Regions" because Texas Health and Safety Code §121.007 authorizes the Department of State Health Services (DSHS) to establish "Public Health Regions." The proposed amendment also removes the website in the rule in the event it might change in the future.

The proposed amendment to §351.823 renumbers subsection (i) as subsection (j) and extends the date of abolition of the eHAC from December 31, 2023, to December 31, 2025.

The proposed amendment to §351.823 includes minor edits to correct a reference in subsection (a) and renumber the rules in subsections (f) and (g).

FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years that the rule will be in effect, enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of state government because there is no change to state procedures or additional costs, and eHAC members are not reimbursed for any eHAC participation-related expenses.

The rule does not have any fiscal implications to local governments because the rule does not apply to any local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rule will be in effect:

(1) the proposed rule will not create or eliminate a government program;

(2) implementation of the proposed rule will not affect the number of HHSC employee positions;

(3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;

(4) the proposed rule will not affect fees paid to HHSC;

(5) the proposed rule will not create a new rule;

(6) the proposed rule will expand an existing rule;

(7) the proposed rule will not change the number of individuals subject to the rule; and

(8) the proposed rule will not affect the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because the proposed amendment applies only to HHSC.

LOCAL EMPLOYMENT IMPACT

The proposed amendment will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule is necessary to protect the health, safety, and welfare of the residents of Texas.

PUBLIC BENEFIT AND COSTS

Stephanie Stephens, State Medicaid Director, has determined that for each year of the first five years the amended rule is in effect, the public benefit will be that the eHAC will continue to advise HHS agencies on strategic planning, policy, rules, and services related to the use of health information technology and exchange systems, telemedicine, telehealth, and home telemon-

itoring services in the interest of protecting the health, safety, and welfare of the residents of Texas.

Trey Wood has also determined that for the first five years the amended rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the rule applies only to HHSC.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the 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

Written comments on the proposal may be submitted to the HHSC Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 701 W. 51st Street, Austin, Texas 78751; or emailed to HHSRulesCoordinationOffice@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 23R018" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.012(c)(1), which requires the Executive Commissioner to adopt rules consistent with Texas Government Code Chapter 2110 to govern an advisory committee's report requirements.

The amendment affects Texas Government Code §531.0055 and Texas Government Code §531.012.

§351.823. e-Health Advisory Committee.

(a) Statutory authority. The e-Health Advisory Committee (committee) is established under Texas Government Code §531.012 and is subject to §351.801 of this division [~~subchapter~~] (relating to Authority and General Provisions).

(b) Purpose. The committee advises the Texas Health and Human Services Commission (HHSC) Executive Commissioner and Health and Human Services system agencies (HHS agencies) on strategic planning, policy, rules, and services related to the use of health information technology, health information exchange systems, telemedicine, telehealth, and home telemonitoring services.

(c) Tasks. The committee:

(1) advises HHS agencies on the development, implementation, and long-range plans for health care information technology and health information exchange, including the use of electronic health records, computerized clinical support systems, health information exchange systems for exchanging clinical and other types of health information, and other methods of incorporating health information technology in pursuit of greater cost-effectiveness and better patient outcomes in health care and population health;

(2) advises HHS agencies on incentives for increasing health care provider adoption and usage of an electronic health record and health information exchange systems;

(3) advises HHS agencies on the development, use, and long-range plans for telemedicine, telehealth, and home telemonitoring services, including consultations, reimbursements, and new benefits for inclusion in Medicaid telemedicine, telehealth, and home telemonitoring programs;

(4) makes recommendations to HHS agencies through regularly scheduled meetings and verbal or written recommendations communicated to HHSC [~~Texas Health and Human Services Commission (HHSC)~~] staff assigned to the committee; [~~and~~]

(5) performs other tasks consistent with its purpose as requested by the Executive Commissioner; and[~~.~~]

(6) adopts bylaws to guide the operation of the committee.

(d) Reporting Requirements.

(1) No later than December 1 of each even-numbered year, the committee files a written report with the HHSC Executive Commissioner and the Texas Legislature covering the meetings and activities not covered in its most recent report filed with the HHSC Executive Commissioner and Texas Legislature through September 30 of the even-numbered year the report is due to be filed. The report includes:

(A) a list of the meeting dates;

(B) the members' attendance records;

(C) a brief description of actions taken by the committee;

(D) a description of how the committee accomplished its tasks;

(E) a summary of the status of any rules that the committee recommended to HHSC;

(F) a description of activities the committee anticipates undertaking in the next fiscal year;

(G) recommended amendments to this section;

(H) any policy recommendations; and

(I) the costs related to the committee, including the cost of HHSC staff time spent supporting the committee's activities and the source of funds used to support the committee's activities.

(2) No later than December 1 of each odd-numbered year, the committee submits to the HHSC Executive Commissioner an informational briefing memorandum describing the committee's costs, accomplishments, and areas of focus that covers October 1 of the preceding year through September 30 of the odd-numbered year the informational briefing memorandum is due to be filed.

(e) Meetings.

(1) Open meetings. The committee complies with the requirements for open meetings under Texas Government Code Chapter 551, as if it were a governmental body.

(2) Frequency. The committee will meet at least three times a year at the call of the presiding officer.

(3) Quorum. A majority of members constitutes a quorum.

(f) Membership.

(1) The committee is composed of no more than 24 members appointed by the HHSC Executive Commissioner. In selecting members to serve on the committee, HHSC considers the applicants' qualifications, background, and interest in serving.

(2) [~~(1)~~] The committee includes representatives of HHS agencies, other state agencies, and other health and human services stakeholders concerned with the use of health information technology, health information exchange systems, telemedicine, telehealth, and home telemonitoring services. The committee comprises the following voting and non-voting ex officio members[~~, including~~]:

(A) Voting members representing the following categories: [~~at least two non-voting ex officio representatives from HHSC;~~]

[~~(B)~~] [~~at least one non-voting ex officio representative from the Texas Department of State Health Services;~~]

(i) [~~(C)~~] at least one representative from the Texas Medical Board;

(ii) [~~(D)~~] at least one representative from the Texas Board of Nursing;

(iii) [~~(E)~~] at least one representative from the Texas State Board of Pharmacy;

(iv) [~~(F)~~] at least one representative from the Statewide Health Coordinating Council;

(v) [~~(G)~~] at least one representative of a managed care organization;

(vi) [~~(H)~~] at least one representative of the pharmaceutical industry;

(vii) [~~(I)~~] at least one representative of a health science center in Texas;

(viii) [~~(J)~~] at least one expert on telemedicine;

(ix) [~~(K)~~] at least one expert on home telemonitoring services;

(x) [~~(L)~~] at least one representative of consumers of health services provided through telemedicine;

(xi) [~~(M)~~] at least one Medicaid provider or child health plan program provider;

(xii) [~~(N)~~] at least one representative from the Texas Health Services Authority established under Texas Health and Safety Code Chapter 182;

(xiii) [~~(O)~~] at least one representative of a local or regional health information exchange; and

(xiv) [~~(P)~~] at least one representative with expertise related to the implementation of electronic health records, computerized clinical support systems, and health information exchange systems for exchanging clinical and other types of health information.

(B) Non-voting ex officio members representing the following categories:

(i) at least two non-voting ex officio representatives from HHSC; and

(ii) at least one non-voting ex officio representative from the Texas Department of State Health Services.

(3) [~~(2)~~] When appointing members, the HHSC Executive Commissioner considers [~~will consider~~] the cultural, ethnic, and geographic diversity of Texas, including representation from at least 6 of the 11 Public [~~Texas~~] Health [~~Service~~] Regions as defined by the Texas Department of State Health Services in accordance with Texas Health and Safety Code §121.007 [~~(www.dshs.state.tx.us/regions/state.shtm)~~].

[~~(3) Except as may be necessary to stagger terms, the term of office of each member is two years. Individuals will normally serve one term. An individual may apply and be appointed for a second two-year term, which may be served consecutively or nonconsecutively.~~]

(4) [~~(A)~~] Members are appointed for staggered terms so that the terms of half of the members expire on December 31st of each year. Regardless of the term limit, a member serves until the member's replacement has been appointed. This ensures sufficient, appropriate representation.

(A) [~~(B)~~] If a vacancy occurs, the HHSC Executive Commissioner appoints a person [~~is appointed~~] to serve the unexpired portion of that term.

(B) Except as may be necessary to stagger terms, the term of each member is two years. A member may apply and be appointed for a second two-year term, which may be served consecutively or nonconsecutively.

(C) This section [~~paragraph~~] does not apply to non-voting ex officio members, who serve at the pleasure of the HHSC Executive Commissioner.

(g) Officers. The committee selects from its members the presiding officer and an assistant presiding officer.

(1) The presiding officer serves until July 1st of each even-numbered year. The assistant presiding officer serves until July 1 of each odd-numbered year.

(2) A member serves no more than two consecutive terms as presiding officer or assistant presiding officer.

(3) A member whose term has expired is not eligible to serve in the officer role of chair or vice chair once another person has been appointed to fill the member's position on the committee.

(h) Required Training. Each member must [~~shall~~] complete [~~all~~] training on relevant statutes and rules, including this section; [~~and~~] §351.801 of this subchapter; [~~and~~] Texas Government Code §531.012; Texas Government Code[~~, and~~] Chapters 551, 552, and 2110; the HHS Ethics Policy, and other relevant HHS policies. Training will be provided by HHSC.

(i) Travel Reimbursement. Unless permitted by the current General Appropriations Act, members of the committee are not paid to participate in the committee nor reimbursed for travel to and from meetings.

(j) [~~(i)~~] Date of abolition. The committee is abolished[~~,~~] and this section expires[~~,~~] on December 31, 2025 [~~2023~~].

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 July 29, 2023.

TRD-202302357
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: August 13, 2023
For further information, please call: (512) 239-8300

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 4. PRESCRIBED BURNING BOARD ENFORCEMENT PROGRAM

SUBCHAPTER A. ENFORCEMENT, INVESTIGATION, PENALTIES AND PROCEDURES

4 TAC §§4.1 - 4.7

The Texas Department of Agriculture (Department) proposes the repeal of Texas Administrative Code, Title 4, Part 1, Chapter 4, §§4.1 - 4.7.

The Department identified the need for the repeal of Chapter 4 during its rule review conducted pursuant to Texas Government Code, §2001.039, the adoption of which can be found in the Review of Agency Rules section of this issue.

The repeal of §4.1, concerning Definitions, is proposed because the repeal of the other rules within Chapter 4 make definitions unnecessary.

The repeal of §4.2 is proposed because Section 41 of Senate Bill 703 (SB 703), 87th Legislature, Regular Session (2021) amended §153.102(b), Texas Natural Resources Code to transfer mandatory rulemaking authority requiring a schedule of disciplinary sanctions from the Department to the Prescribed Burning Board.

The repeal of §4.3 is proposed because this rule restates the statutory requirements of Texas Natural Resources Code, §153.101 concerning how the Department receives and processes complaints concerning certified and insured prescribed burn managers.

The repeal of §4.4 is proposed due to a lack of business necessity as Texas Natural Resources Code, Chapter 153, Subchapter D governs the Department's duties and authority concerning complaints, enforcement, and penalties.

The repeal of §4.5 and §4.6 is proposed because the sections duplicate statutory provisions and provide unnecessary cross references to other rules.

The repeal of §4.7 is proposed due to a lack of business necessity because its provisions are redundant and restate Department policy.

LOCAL EMPLOYMENT IMPACT STATEMENT: The Department has determined that the proposed repeal of Chapter 4 will not affect a local economy, so the Department is not required to prepare a local employment impact statement under Texas Government Code, §2001.022.

GOVERNMENT GROWTH IMPACT STATEMENT: Pursuant to Texas Government Code, §2001.0221, Patrick Dudley, Program Director for Agriculture Commodity Boards and Producer Relations provides the following Texas Government Growth Impact Statement for the proposed repeals. For each year of the first five years the proposed repeal of Chapter 4 will be in effect, the Department has determined the following:

1. the proposed repeal does not create or eliminate a government program;

2. implementation of the proposed repeal does not require the creation or elimination of employee positions;

3. implementation of the proposed repeal does not require an increase or decrease in future legislative appropriations to the Department;

4. the proposed repeal does not require an increase or decrease in fees paid to the Department;

5. the proposed repeal does not create a new regulation;

6. the proposed repeal will repeal existing regulations;

7. the proposed repeal does not increase or decrease the number of individuals subject to the rule's applicability; and

8. the proposed repeal does not positively or adversely affect this state's economy.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT: Mr. Dudley has determined that for each year of the first five years the proposed repeal of Chapter 4 is in effect, enforcing or administering the proposed repeal does not have foreseeable implications relating to costs or revenues of the state or local governments.

PUBLIC BENEFITS: Mr. Dudley has also determined that for each year of the first five-year period the proposed repeal is in effect, the public benefit will be the elimination of rules that have been determined as redundant or are no longer supported by the legal authority required to promulgate rules.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL: Mr. Dudley has further determined that for each year of the first five-year period the proposed repeal is in effect, there will be no costs to persons as the rules in Chapter 4 will no longer exist as a result of the proposed repeal.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES: The Department has determined there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed repeal; therefore, preparation of an economic impact statement and a regulatory flexibility analysis, as detailed under Texas Government Code, §2006.002, is not required.

Comments on the proposed repeal of Chapter 4 may be submitted to Patrick Dudley, Program Director for Agriculture Commodity Boards and Producer Relations, P.O. Box 12847, Austin, Texas 78711, or by email to Patrick.Dudley@TexasAgriculture.gov. The deadline for public comment is 30 days after publication of the proposed repeal in the *Texas Register.*

The repeal is proposed under Section 12.016 of the Texas Agriculture Code (Code), which provides that the Department may adopt rules as necessary for the administration of its powers and duties under the Code.

Texas Agriculture Code, Chapter 12 and Texas Natural Resources Code, Chapter 153 are affected by the proposed repeals.

§4.1. Definitions.

§4.2. Schedule of Disciplinary Sanctions.

§4.3. Complaints and Investigation.

§4.4. Enforcement.

§4.5. Penalties.

§4.6. Contested Case.

§4.7. Settlement of a Contested Case.

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 June 29, 2023.

TRD-202302381
Skyler Shafer
Assistant General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: August 13, 2023
For further information, please call: (512) 936-9360

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PART 13. PRESCRIBED BURNING BOARD

CHAPTER 231. SCHEDULE OF DISCIPLINARY SANCTIONS

4 TAC §231.1

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 4 TAC §231.1 is not included in the print version of the Texas Register. The figure is available in the on-line version of the July 14, 2023, issue of the Texas Register.)

The Texas Prescribed Burning Board (Board), a semi-independent board administratively attached to the Texas Department of Agriculture (Department), proposes new Texas Administrative Code, Title 4, Part 13, Chapter 231, §231.1, concerning Schedule of Disciplinary Sanctions.

The new rule is proposed because Section 41 of Senate Bill 703, 87th Legislature, Regular Session (2021) amended §153.102(b), Texas Natural Resources Code to transfer mandatory rulemaking authority requiring a schedule of disciplinary sanctions from the Department to the Board. The proposed schedule of disciplinary sanctions is substantively the same as the one adopted by the Department, currently found at 4 Texas Administrative Code §4.2.

LOCAL EMPLOYMENT IMPACT STATEMENT: The Department and Board have determined that the proposed rule will not affect a local economy, so the Department and Board are not required to prepare a local employment impact statement under Texas Government Code, §2001.022.

GOVERNMENT GROWTH IMPACT STATEMENT: Pursuant to Texas Government Code, §2001.0221, on behalf of the Board and Department, Patrick Dudley, Coordinator for Agriculture Commodity Boards and Producer Relations provides the following Government Growth Impact Statement for the proposed rule. For each year of the first five years the proposed rule will be in effect, the Department and Board have determined the following:

1. the proposed rule does not create or eliminate a government program;

2. implementation of the proposed rule does not require the creation or elimination of employee positions;

3. implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the Department or Board;

4. the proposed rule does not require an increase or decrease in fees paid to the Department or Board;

5. the proposed rule creates a new regulation;

6. the proposed rule will not expand, limit, or repeal an existing regulation;

7. the proposed rule does not increase or decrease the number of individuals subject to the rule's applicability; and

8. the proposed rule does not positively or adversely affect this state's economy.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT: On behalf of the Board and Department, Mr. Dudley has determined that for each year of the first five years the proposed rule is in effect, enforcing or administering the proposed rule does not have foreseeable implications relating to costs or revenues of state or local governments.

PUBLIC BENEFITS AND PROBABLE ECONOMIC COST: Mr. Dudley has further determined, on behalf of the Board and Department, that for each year of the first five-year period the proposed rule is in effect, the public benefit will be to promote public safety by having an enforceable schedule of disciplinary sanctions for certified and insured prescribed burn managers. Mr. Dudley has also determined that for each year of the first five-year period the proposed rule is in effect, there will be no cost to persons who are required to comply with the proposed rule.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES: The Department and Board have determined there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed rule, therefore preparation of an economic impact statement and a regulatory flexibility analysis, as detailed under Texas Government Code, §2006.002, are not required.

Comments on the proposed rule may be submitted to Patrick Dudley, Program Director for Agriculture Commodity Boards and Producer Relations, P.O. Box 12847, Austin, Texas 78711, or by email to Patrick.Dudley@TexasAgriculture.gov. The deadline for comments is 30 days after publication of the proposed new rule in the *Texas Register.*

The rule is proposed under Texas Natural Resources Code, §153.102, which provides the Board, by rule, shall adopt a schedule of the disciplinary sanctions that the Department shall impose under Texas Natural Resources Code, Chapter 153.

Texas Natural Resources Code, Chapter 153, is affected by the proposal.

§231.1. Schedule of Disciplinary Sanctions.

Pursuant to §153.102(b) of the Texas Natural Resources Code, the Board has established the following schedule of disciplinary sanctions for violations of Chapter 153, Texas Natural Resources Code, and the rules adopted thereunder:

Figure: 4 TAC §231.1

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 June 29, 2023.

TRD-202302383
Skyler Shafer
Assistant General Counsel
Prescribed Burning Board
Earliest possible date of adoption: August 13, 2023
For further information, please call: (512) 936-9360

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TITLE 13. CULTURAL RESOURCES

PART 8. TEXAS FILM COMMISSION

CHAPTER 121. TEXAS MOVING IMAGE INDUSTRY INCENTIVE PROGRAM

13 TAC §121.3

The Texas Film Commission within the Economic Development and Tourism Office of the Office of the Governor Office of the Governor ("OOG") proposes amendments to 13 TAC §121.3, concerning Eligible Projects. The proposed amendments will align Texas Moving Image Industry Incentive Program ("TMIIIP") rules with changes made by the 88th Legislature.

EXPLANATION OF PROPOSED AMENDMENTS

The rule under consideration relates to TMIIIP, which was implemented to increase employment opportunities for Texas industry professionals, encourage tourism to the state, and boost economic activity in Texas cities and the overall Texas economy. The 88th Legislature passed House Bill 4539, which changed the residency threshold requirement for crew, actors, and extras from this state from 70% to 55%. The proposed amendments to §121.3 align the rule with Section 485.023, Texas Government Code, as modified by the 88th Legislature.

FISCAL NOTE

Stephanie Whallon, Director, Texas Film Commission, has determined that during each year of the first five years in which the proposed amendments are in effect, there will be no expected fiscal impact on state and local governments as a result of enforcing or administering the proposed amendments.

Ms. Whallon does not anticipate any measurable effect on local employment or the local economy as a result of the proposed amendments.

PUBLIC BENEFIT AND COSTS

Ms. Whallon has also determined that during each year of the first five years in which the proposed amendments are in effect, the rule change will yield the anticipated public benefit of increasing employment opportunities for Texas residents in the moving images industry by lowering an eligibility requirement for a TMIIIP grant in order to expand the number of qualifying projects.

Ms. Whallon has determined there are no measurable anticipated economic costs to persons required to comply with the proposed amendments.

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities. Since the OOG has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, is not required.

GOVERNMENT GROWTH IMPACT STATEMENT

Ms. Whallon has determined that during each year of the first five years in which the proposed amendments are in effect, the amendments:

1) will not create or eliminate a government program;

2) will not require the creation of new employee positions or the elimination of existing employee positions;

3) will not require an increase or decrease in future legislative appropriations to the OOG;

4) will not require an increase or decrease in fees paid to the OOG;

5) do not create a new regulation;

6) will expand certain existing regulations;

7) will not increase or decrease the number of individuals subject to the applicability of the rules; and

8) will positively affect the Texas economy.

TAKINGS IMPACT ASSESSMENT

The OOG has determined that no private real property interests are affected by the proposed rules and the proposed rules do not restrict, limit, or impose a burden on an owner's rights to the owner's private real property that would otherwise exist in the absence of government action. As a result, the proposed amendments do not constitute a taking or require a takings impact assessment under Government Code §2007.043.

SUBMISSION OF COMMENTS

Written comments regarding the proposed rule amendments may be submitted for 30 days following the date of publication of this notice by mail to Stephanie Whallon, Office of the Governor, Texas Film Commission, P.O. Box 12428, Austin, Texas 78711 or by email to TFCRules.Comments@gov.texas.gov with the subject line "TMIIIP Rule Review." The deadline for receipt of comments is 5:00 p.m., Central Time, on August 13, 2023.

STATUTORY AUTHORITY

The amendments are proposed under Section 485.022 of the Texas Government Code, which requires the Texas Film Commission to develop procedures for the administration and calculation of grant awards under TMIIIP. The amendments are also proposed in accordance with House Bill 4539, which was signed by Governor Abbott on June 12, 2023, and will take effect on September 1, 2023.

CROSS REFERENCE TO STATUTE

Chapter 121 of Texas Government Code. No other statutes, articles, or codes are affected by the proposed amendments.

§121.3. Eligible Projects.

(a) A project may be eligible for a grant under the Texas Moving Image Industry Incentive Program if it meets the stated minimum requirements listed in Subsections (b) - (h) of this Section, is appropriate in content, and represents a potential economic impact in Texas, as assessed in §121.9(c)(3) of this Chapter, that is sufficient to justify acceptance in the program.

(b) Feature Films.

(1) Feature Film Applicants must expend a minimum of $250,000 in in-state spending.

(2) Applicants must film at least 60% of a project in Texas. Applicants must fulfill this requirement by:

(A) completing at least 60% of Filming Days in Texas; or

(B) if the Texas Film Commission (Commission) provides prior written approval:

(i) completing at least 60% of the total project Man Hours in Texas; or

(ii) having at least 60% of the actual locations used and paid for, not including basecamps, in Texas.

(3) Except as provided in paragraph (4) of this Subsection, 55% [~~70%~~] of the Crew paid by the Applicant and 55% [~~70%~~] of the Cast paid by the Applicant, including extras, must be Texas Residents, unless it is determined and certified by the Commission in writing that a sufficient number of qualified Crew and Cast, including extras, are not available and every effort has been made by the production to meet the requirement by the Principal Start Date.

(4) For animated or documentary Feature Films, 55% [~~70%~~] of the combined total of Crew and Cast paid by the Applicant, including extras, must be Texas Residents, unless it is determined and certified by the Commission in writing that qualified Crew and Cast are not available and every effort has been made by the production to meet the requirement by the Principal Start Date.

(c) Television Programs.

(1) Television Program Applicants must expend a minimum of $250,000 in in-state spending.

(2) 60% of the project must be filmed in Texas. This must be fulfilled by completing at least 60% of the Filming Days in Texas, or, if permitted by the Commission in its sole discretion:

(A) completing at least 60% of the total Man Hours in Texas; or

(B) at least 60% of the actual locations used and paid for, not including basecamps, being located in Texas.

(3) Except as provided in paragraph (4) of this Subsection, 55% [~~70%~~] of the Crew paid by the Applicant and 55% [~~70%~~] of the Cast paid by the Applicant, including extras, must be Texas Residents, unless it is determined and certified by the Commission in writing that a sufficient number of qualified Crew and Cast, including extras, are not available and every effort has been made by the production to meet the requirement by the Principal Start Date.

(4) For animated or documentary Television Programs, 55% [~~70%~~] of the combined total of Crew and Cast paid by the Applicant, including extras, must be Texas Residents, unless it is determined and certified by the Commission in writing that qualified Crew and Cast are not available and every effort has been made by the production to meet the requirement by the Principal Start Date.

(d) Reality Television Projects.

(1) Reality Television Project Applicants must expend a minimum of $250,000 in in-state spending.

(2) 60% of the project must be filmed in Texas. This must be fulfilled by completing at least 60% of the Filming Days in Texas, or, if permitted by the Commission in its sole discretion:

(A) completing at least 60% of the total Man Hours in Texas; or

(B) at least 60% of the actual locations used and paid for, not including basecamps, being located in Texas.

(3) 55% [~~70%~~] of the combined total of Crew and Cast paid by the Applicant, including extras, must be Texas Residents, unless it is determined and certified by the Commission in writing that a sufficient number of qualified Crew and Cast, including extras, are not available and every effort has been made by the production to meet the requirement by the Principal Start Date.

(e) Commercials.

(1) Commercial Applicants must expend a minimum of $100,000 in in-state spending.

(2) 60% of the project must be filmed in Texas. This must be fulfilled by completing at least 60% of the Filming Days in Texas, or, if permitted by the Commission in its sole discretion:

(A) completing at least 60% of the total Man Hours in Texas; or

(B) at least 60% of the actual locations used and paid for, not including basecamps, being located in Texas.

(3) 55% [~~70%~~] of the combined total of Crew and Cast paid by the Applicant, including extras, must be Texas Residents, unless it is determined and certified by the Commission in writing that a sufficient number of qualified Crew and Cast, including extras, are not available and every effort has been made by the production to meet the requirement by the Principal Start Date.

(f) Digital Interactive Media Productions.

(1) Digital Interactive Media Production Applicants must expend a minimum of $100,000 in in-state spending.

(2) 60% of the project must be filmed in Texas. This must be fulfilled by completing at least 60% of the Filming Days in Texas, or, if permitted by the Commission in its sole discretion:

(A) completing at least 60% of the total Man Hours in Texas; or

(B) at least 60% of the actual locations used and paid for, not including basecamps, being located in Texas.

(3) 55% [~~70%~~] of the combined total of Crew and Cast paid by the Applicant must be Texas Residents, unless it is determined and certified by the Commission in writing that qualified Crew and Cast are not available and every effort has been made by the production to meet the requirement by the Principal Start Date.

(g) Educational or Instructional Videos.

(1) Educational or Instructional Video Applicants must expend a minimum of $100,000 in in-state spending.

(2) 60% of the project must be filmed in Texas. This must be fulfilled by completing at least 60% of the Filming Days in Texas, or, if permitted by the Commission in its sole discretion:

(A) completing at least 60% of the total Man Hours in Texas; or

(B) at least 60% of the actual locations used and paid for, not including basecamps, being located in Texas.

(3) 55% [~~70%~~] of the combined total of Crew and Cast paid by the Applicant, including extras, must be Texas Residents, unless it is determined and certified by the Commission in writing that qualified Crew and Cast are not available and every effort has been made by the production to meet the requirement by the Principal Start Date.

(h) Visual Effects Projects.

(1) Visual Effect Project for a Feature Film or Television Program:

(A) Applicants must expend a minimum of $250,000 in in-state spending.

(B) 60% of the project must be filmed in Texas. This must be fulfilled by completing at least 60% of the Filming Days in Texas, or, if permitted by the Commission in its sole discretion:

(i) completing at least 60% of the total Man Hours in Texas; or

(ii) at least 60% of the actual locations used and paid for, not including basecamps, being located in Texas.

(C) 55% [~~70%~~] of the Crew paid by the Applicant and 55% [~~70%~~] of the Cast paid by the Applicant, including extras, must be Texas Residents, unless it is determined and certified by the Commission in writing that a sufficient number of qualified Crew and Cast, including extras, are not available and every effort has been made by the production to meet the requirement by the Principal Start Date.

(2) Visual Effect Project for an Educational or Instruction Video or Commercial:

(A) Applicants must expend a minimum of $100,000 in in-state spending.

(B) 60% of the project must be filmed in Texas. This must be fulfilled by completing at least 60% of the Filming Days in Texas, or, if permitted by the Commission in its sole discretion:

(i) completing at least 60% of the total Man Hours in Texas; or

(ii) at least 60% of the actual locations used and paid for, not including basecamps, being located in Texas.

(C) 55% [~~70%~~] of the combined total of Crew and Cast paid by the Applicant, including extras, must be Texas Residents, unless it is determined and certified by the Commission in writing that a sufficient number of qualified Crew and Cast, including extras, are not available and every effort has been made by the production to meet the requirement by the Principal Start Date.

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 June 28, 2023.

TRD-202302352
Stephanie Whallon
Director, Texas Film Commission
Texas Film Commission
Earliest possible date of adoption: August 13, 2023
For further information, please call: (512) 463-2000

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TITLE 22. EXAMINING BOARDS

PART 41. TEXAS BEHAVIORAL HEALTH EXECUTIVE COUNCIL

CHAPTER 882. APPLICATIONS AND LICENSING

SUBCHAPTER F. LICENSING PROVISIONS RELATED TO MILITARY SERVICE MEMBERS, VETERANS, AND MILITARY SPOUSES

22 TAC §882.61

The Texas Behavioral Health Executive Council proposes amendments to §882.61, relating to Special Licensing Provisions for Service Members and Military Spouses.

Overview and Explanation of the Proposed Rule. The proposed amendments are intended to better align this rule with both state and federal law regarding licensing exemptions for service members and military spouses.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to applicants, licensees, and the general public because the proposed rule will provide greater clarity, consistency, and efficiency in the Executive Council's rules. 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 Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council esti-

mates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

REQUEST FOR PUBLIC COMMENTS. Comments on the proposed rule may be submitted by mail to Patrick Hyde, General Counsel, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7.300, Austin, Texas 78701 or via https://www.bhec.texas.gov/proposed-rule-changes-and-the-rulemaking-process/index.html. The deadline for receipt of comments is 5:00 p.m., Central Time, on August 13, 2023, which is at least 30 days from the date of publication of this proposal in the *Texas Register.*

Statutory Authority. The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council 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.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

The Executive Council also proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

Lastly, the Executive Council proposes this rule pursuant to the authority found in §55.0041 of the Tex. Occ. Code which instructs licensing agencies to adopt rules to recognize the out-of-state license of a military spouse.

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

§882.61. Special Licensing Provisions for Service Members and Military Spouses.

(a) Notwithstanding §882.23 of this chapter and in accordance with §55.0041 of the Occupations Code and the Veterans Auto and Education Improvement Act of 2022 (Public Law No. 117-333), a [A] service member or military spouse is authorized [shall be issued a license] to practice marriage and family therapy, professional counseling, psychology, or social work without a license if the person meets each of the following requirements:

(1) the service member or spouse notifies the Council on an agency approved form or as directed by agency staff, of the service member's or military spouse's intent to practice a particular profession in this state;

(2) the service member or military spouse provides verification of licensure in good standing in another jurisdiction in the similar scope of practice and in the discipline applied for in this state, and: [that has licensing requirements that are substantially equivalent to the requirements for licensure in this state;]

(A) has actively used the license during the two years immediately preceding the date of application; or

(B) for military spouses only, holds a license that has licensing requirements that are substantially equivalent to the requirements for licensure in this state;

[(3) the spouse submits a copy of the law reflecting the current licensing standards for the relevant profession in the state where the spouse is licensed, with the relevant portions highlighted for easy reference;]

(3) [(4)] the service member or military spouse submits proof of residency in this state (e.g. copy of a permanent change of station order) and a copy of the service member's or military spouse's military identification card; and

(4) [(5)] the Council provides confirmation to the service member or military spouse that it has verified the service member's or military spouse's license in the other jurisdiction and that the service member or military spouse is authorized to practice a particular profession.

(b) In order to meet the requirements of subsection (a)(2)(B) of this section, a military spouse must submit a copy of the law reflecting the current licensing standards for the relevant profession in the state where the spouse is licensed, with the relevant portions highlighted for easy reference. The Council shall then determine substantial equivalency based upon the determinations made by the member boards under §882.60(d) of this chapter. [(relating to Special Provisions Applying to Military Service Members, Veterans, and Spouses).]

(c) The Council may rely upon the following when verifying licensure under this subsection: official verification received directly from the other jurisdiction, a government website reflecting active licensure and good standing, or verbal or email verification directly from the other jurisdiction.

(d) A service member or military spouse authorized to practice [issued a license] under this rule is subject to all laws and regulations in the same manner as a regularly licensed provider.

(e) A service member or military spouse may practice [license issued] under this rule [is valid] while the [holder's] service member or military spouse is stationed at a military installation in this state. [or for three years from the date of issuance, whichever is less. A license issued under this rule cannot be renewed or extended.]

(f) In order to obtain and maintain the privilege to practice without a license in this state, a service member or military spouse must remain in good standing with every licensing authority that has issued a license to the service member or military spouse at a similar scope of practice and in the discipline applied for in this state.

(g) Subsection (a)(2)(A) of this section does not apply to service members or military spouses that are licensed and able to operate in this state through an interstate licensure compact. Service members or military spouses eligible to participate in an interstate licensure compact may either apply to practice through the authority of the interstate licensure compact or through other applicable state law.

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 June 28, 2023.

TRD-202302334
Darrel D. Spinks
Executive Director
Texas Behavioral Health Executive Council
Earliest possible date of adoption: August 13, 2023
For further information, please call: (512) 305-7705

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 131. FREESTANDING EMERGENCY MEDICAL CARE FACILITIES

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes in Title 25, Part 1, Chapter 131, concerning Freestanding Emergency Medical Care Facilities, the repeal of Subchapter A, concerning General Provisions, Subchapter B, concerning Licensing Requirements, Subchapter C, concerning Operational Requirements, Subchapter D, concerning Inspection and Investigation Procedures, and Subchapter E, concerning Enforcement. The repealed subchapters consist of §§131.1, 131.2, 131.21 - 131.31, 131.41 - 131.68, 131.81, 131.82, and 131.101 - 131.109.

BACKGROUND AND PURPOSE

The purpose of this proposal is to repeal the rules in Chapter 131, Freestanding Emergency Medical Care Facilities, Subchapters A - E, and propose new rules in Title 26, Part 1, Chapter 509, Freestanding Emergency Medical Care Facilities. A previous version of this repeal was proposed in the January 22, 2021, issue of the *Texas Register* (46 TexReg 517) and expired without being adopted. This version of the proposed repeal takes into account comments HHSC received during the previous public comment period, and the public will have another 31-day period to comment on this version of the proposed repeal.

The new rules for Title 26, Chapter 509 are proposed elsewhere in this issue of the *Texas Register* and are substantially the same with the rules proposed for repeal.

SECTION-BY-SECTION SUMMARY

The proposed repeal of Title 25, Chapter 131, Subchapters A - E, allows similar rules to be proposed as new rules in Title 26, Chapter 509.

FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years that the proposed repealed rules will be in effect, enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rules will be in effect:

(1) the proposed rules will not create or eliminate a government program;

(2) implementation of the proposed rules will not affect the number of HHSC employee positions;

(3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;

(4) the proposed rules will affect fees paid to HHSC;

(5) the proposed rules will create new rules;

(6) the proposed rules will expand and repeal existing rules;

(7) the proposed rules will not change the number of individuals subject to the rules; and

(8) the proposed rules will not affect the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood has also determined that there may be no adverse economic effect on small businesses, micro-businesses, or rural communities required to comply with the proposal, as they will not be required to alter their current business practices. In addition, the proposal does not impose any additional costs on those required to comply with the rules.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas.

PUBLIC BENEFIT AND COSTS

Stephen Pahl, Deputy Executive Commissioner for Regulatory Services, has determined that for each year of the first five years the repeals are in effect, the public benefit will be clearer and more accurate information regarding Freestanding Emergency Medical Care Facilities.

Trey Wood has also determined that for the first five years the repeals are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed repeals, as they will not be required to alter their current business practices.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the 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

Written comments to the proposal may be submitted to the Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 701 W. 51st Street, Austin, Texas 78751; or emailed to HCR_PRU@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 23R024" in the subject line.

SUBCHAPTER A. GENERAL PROVISIONS

25 TAC §131.1, §131.2

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and to implement the Texas Health and Safety Code §254.101, which authorizes HHSC to adopt rules regarding freestanding emergency medical care facilities.

The repeals implement Texas Government Code §531.0055 and Texas Health and Safety Code, Chapter 254.

§131.1. Purpose.

§131.2. Definitions.

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
Department of State Health Services
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For further information, please call: (512) 834-4591

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SUBCHAPTER B. LICENSING REQUIREMENTS

25 TAC §§131.21 - 131.31

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and to implement the Texas Health and Safety Code §254.101, which authorizes HHSC to adopt rules regarding freestanding emergency medical care facilities.

The repeals implement Texas Government Code §531.0055 and Texas Health and Safety Code, Chapter 254.

§131.21. General.
§131.22. Classifications of Facilities.
§131.23. Exemptions from Licensure.
§131.24. Unlicensed Facilities.
§131.25. Application and Issuance of Initial License.
§131.26. Application and Issuance of Renewal License.
§131.27. Inactive Status and Closure.
§131.28. Change of Ownership.
§131.29. Conditions of Licensure.
§131.30. Time Periods for Processing and Issuing Licenses.
§131.31. Fees.

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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SUBCHAPTER C. OPERATIONAL REQUIREMENTS

25 TAC §§131.41 - 131.68

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and to implement the Texas Health and Safety Code §254.101, which authorizes HHSC to adopt rules regarding freestanding emergency medical care facilities.

The repeals implement Texas Government Code §531.0055 and Texas Health and Safety Code, Chapter 254.

§131.41. Operational Standards.
§131.42. Administration.
§131.43. Medical Director.
§131.44. Medical Staff.
§131.45. Facility Staffing and Training.
§131.46. Emergency Services.
§131.47. Anesthesia.
§131.48. Laboratory and Pathology Services.
§131.49. Pharmaceutical Services.
§131.50. Radiology.
§131.51. Respiratory Services.
§131.52. Surgical Services within the Scope of the Practice of Emergency Medicine.
§131.53. Medical Records.
§131.54 Infection Control.
§131.55. Sanitary Conditions and Hygienic Practices.
§131.56. Sterilization.
§131.57. Linen and Laundry Services.
§131.58. Waste and Waste Disposal.
§131.59. Patient Rights.
§131.60. Abuse and Neglect.
§131.61. Reporting Requirements.
§131.62. Complaints.
§131.63. Patient Safety Program.
§131.64. Quality Assessment and Performance Improvement.
§131.65. Disaster Preparedness/Emergency and Contingency Planning.
§131.66. Patient Transfer Policy.
§131.67 Patient Transfer Agreements.
§131.68. Miscellaneous Policies and Protocol.

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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SUBCHAPTER D. INSPECTION AND INVESTIGATION PROCEDURES

25 TAC §131.81, §131.82

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and to implement the Texas Health and Safety Code §254.101, which authorizes HHSC to adopt rules regarding freestanding emergency medical care facilities.

The repeals implement Texas Government Code §531.0055 and Texas Health and Safety Code, Chapter 254.

§131.81. Inspection and Investigation Procedures.

§131.82. Complaint Against a Department Surveyor.

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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SUBCHAPTER E. ENFORCEMENT

25 TAC §§131.101 - 131.109

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and to implement the Texas Health and Safety Code §254.101, which authorizes HHSC to adopt rules regarding freestanding emergency medical care facilities.

The repeals implement Texas Government Code §531.0055 and Texas Health and Safety Code, Chapter 254.

§131.101. Enforcement Actions.

§131.102. Denial of a License.

§131.103. Suspension; Revocation.

§131.104. Emergency Suspension.

§131.105. Probation.

§131.106. Injunction.

§131.107. Criminal Penalty.

§131.108. Administrative Penalty.

§131.109. Payment and Collection of Administrative Penalty; Judicial 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.

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 509. FREESTANDING EMERGENCY MEDICAL CARE FACILITIES

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes new rules in Texas Administrative Code Title 26, Part 1, Chapter 509, concerning Freestanding Emergency Medical Care Facilities. The new chapter consists of §§509.1, 509.2, 509.21 - 509.30, 509.41 - 509.66, 509.81 - 509.86, and 509.101 - 509.108.

BACKGROUND AND PURPOSE

The proposal is necessary to comply with House Bill (H.B.) 2041 and H.B. 1112, 86th Legislature, Regular Session, 2019, which amended Texas Health and Safety Code (HSC) Chapter 254, relating to the regulation of Freestanding Emergency Medical Care Facilities. H.B. 2041 requires freestanding emergency medical care (FEMC) facilities to comply with updated advertising requirements, which includes disclosure of facility fees and clarification of health benefit plans that are accepted by the facility, and it requires FEMC facilities to provide a disclosure statement to patients. H.B. 2041 requires an FEMC facility that closes or whose license is expired, suspended, or revoked to remove their signs from the facility. H.B. 1112 similarly requires a closed FEMC facility or an FEMC facility whose license is expired, suspended, or revoked to remove their signage. This proposal also complies with Senate Bill (S.B.) 425, 84th Legislature, Regular Session, 2015, which amended HSC Chapter 254 to require an FEMC facility to post a notice regarding facility fees and provide other consumer information to patients.

A previous version of these rules was proposed in the January 22, 2021, issue of the *Texas Register* (46 TexReg 520) and expired without being adopted. This new version takes into account comments HHSC received during the previous public comment

period, and the public will have another 31-day period to comment on this new version of these proposed rules.

The proposal will also revise sections in the subchapters on Inspection and Investigation Procedures and Enforcement to outline facility documentation expectations to increase consistency across facility rule sets, update language to reflect the transition to HHSC and the relocation of rules from Title 25 to Title 26, and correct outdated references and citations.

To implement this change, rules in Title 25 Chapter 131, Freestanding Emergency Medical Care Facilities, are being repealed and new rules proposed in Title 26 Chapter 509, Freestanding Emergency Medical Care Facilities. The repeal of Title 25 Chapter 131 is proposed elsewhere in this issue of the *Texas Register.*

SECTION-BY-SECTION SUMMARY

Proposed new Subchapter A, General Provisions, composed of §509.1 and §509.2, provides the purpose of the chapter and definitions used in the chapter. This new subchapter is consistent with the previous Title 25 Chapter 131, Subchapter A, but with edits to correct outdated titles, remove a term not used in the chapter, and update contact information.

Proposed new Subchapter B, Licensing Requirements, composed of §§509.21 - 509.30, provides guidelines on application for initial and renewal licensure, facility closures, facility types, changes of ownership, and fees. Section 509.26, Inactive Status and Closure, updates the previous language in repealed Title 25 §131.27 to clarify the inactive status and closure guidelines for a facility that does not provide services under its license for more than five calendar days. This section also implements H.B. 1112 and H.B. 2041 to require a facility remove signs indicating that the facility is in operation from within view of the general public when it closes or its license is expired, suspended, or revoked. Section 509.30, Fees, increases the term for initial and renewal licenses from one year to two years and accordingly doubles the corresponding license fees because that amount is reasonable and necessary to defray the cost of administering Texas Health and Safety Code Chapter 254 over that timeframe. This new subchapter is consistent with the previous Title 25 Chapter 131, Subchapter B, but with edits to correct citations and remove outdated information.

Proposed new §§509.41 - 509.66, in Subchapter C, Operational Requirements, detail requirements for proper facility operational standards, including administration, staffing, training, services provided, medical records, infection control, patient rights, and quality assurance. These new sections are consistent with the rules in previous Title 25, Chapter 131, Subchapter C, but with edits to remove outdated information on programs and requirements that no longer exist. Proposed new §509.41, Operational Standards, implements H.B. 1112 and H.B. 2041 to outline advertising and marketing requirements relating to insurers and health benefit plans. These changes also clarify the regulatory consequences of violating these requirements by making false, misleading, or deceptive claims. Proposed new §509.60, Patient Rights, further clarifies and simplifies marketing and advertising guidelines and implements H.B. 2041 by requiring facilities to post a notice of fees and provide a written disclosure statement that details the facility's fees and accepted health benefit plans to a patient or their legally authorized representative. Section 509.60 also implements S.B. 425 by requiring facilities to comply with HSC Chapter 324, Subchapter C.

Proposed new Subchapter D, Inspection and Investigation Procedures, composed of §§509.81 - 509.86, makes comprehensive updates to HHSC's inspection and investigation procedures for FEMC facilities to clarify provider expectations and provide greater consistency between this chapter and rules for other facility types.

Proposed new Subchapter E, Enforcement, composed of §§509.101 - 509.108, provides criteria for enforcement actions, including denial of licensure, suspension, revocation, probation, and administrative penalties. This new subchapter is consistent with the previous Title 25, Chapter 131, Subchapter B, but with edits to correct outdated titles, citations, and contact information, and increase consistency with Texas Health and Safety Code Chapter 254 and rules for other facility types.

FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of local governments.

For the first five years that the rules will be in effect, enforcing or administering the rules does have foreseeable implications relating to revenues of state government. New applicants for FEMC facilities will pay the initial license fee of $7,410 per year for two years rather than for one year as in the current rule. The proposal, therefore, causes the licensees to pay the initial license fee of $7,410 for an additional year, rather than paying the renewal fee of $3,035 in the second year. This second-year payment at the higher fee results in additional fee income to the agency of $4,375 ($7,410 - $3,035) for each new applicant in the second year of an initial applicant's license.

HHSC lacks data to estimate how many new applicants there will be for new FEMC facility licenses in any year and therefore cannot provide an estimate of the probable new revenue from this proposal.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rules will be in effect:

(1) the proposed rules will not create or eliminate a government program;

(2) implementation of the proposed rules will not affect the number of HHSC employee positions;

(3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;

(4) the proposed rules will affect fees paid to HHSC;

(5) the proposed rules will create new rules;

(6) the proposed rules will expand and repeal existing rules;

(7) the proposed rules will not change the number of individuals subject to the rules; and

(8) the proposed rules will not affect the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood has also determined that there may be an adverse economic effect on small businesses and micro-businesses as the rules are proposed.

The proposed rules require the approximately 215 FEMC facilities licensed statewide to comply with the new advertising, signage, and fee disclosure requirements outlined in Texas Health

and Safety Code, Chapter 254. In addition, FEMC facilities will be required to comply with updated investigations and enforcement procedures. HHSC lacks sufficient data to estimate the number of FEMC facilities designated as small businesses or micro-businesses that will be impacted by the proposed rules as well as the adverse economic effect of the proposal. No FEMC facilities meet the definition of a rural community.

HHSC has also determined that alternative methods to achieve the purpose of the proposed rules for small businesses or micro-businesses would not be consistent with the health, safety, and environmental and economic welfare of the state in providing adequate oversight to FEMC facilities or compliance with the Texas Health and Safety Code.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas.

PUBLIC BENEFIT AND COSTS

Stephen Pahl, Deputy Executive Commissioner for Regulatory Services, has determined that for each year of the first five years the rules are in effect, the public benefit will be increased transparency regarding facility fees and health benefit plans, more stringent advertising guidelines, and reduced confusion regarding whether a facility is open to the public. In addition, the public will benefit from more accurate and up-to-date rule language, greater clarity regarding facility expectations during inspections and investigations, and consistency with existing statutes.

Trey Wood has also determined that for the first five years the rules are in effect, persons who are required to comply with the proposed rules may incur economic costs because the proposed rules require FEMC facilities to develop, implement, and enforce policies and procedures that ensure accurate and transparent advertising, fee disclosures, and signage specified under Texas Health and Safety Code Chapter 254. Facilities will also be required to comply with new requirements regarding facility fees, inspections, and investigations. HHSC assumes those facilities may incur costs for required documentation and staff training, as well as new advertising and disclosure requirements. HHSC lacks sufficient information to provide an estimate of costs to persons required to comply at this time.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the 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

Written comments on the proposal may be submitted to the Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 701 W. 51st Street, Austin, Texas 78751; or emailed to HCR_PRU@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 23R024" in the subject line.

SUBCHAPTER A. GENERAL PROVISIONS

26 TAC §509.1, §509.2

STATUTORY AUTHORITY

The new rules are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and to implement Texas Health and Safety Code §254.101, which authorizes HHSC to adopt rules regarding FEMC facilities.

The new rules implement Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 254.

§509.1. Purpose.

(a) The purpose of this chapter is to implement Texas Health and Safety Code Chapter 254, referred to as "the Act" throughout this chapter, which requires freestanding emergency medical care facilities to be licensed by the Texas Health and Human Services Commission.

(b) This chapter provides:

(1) procedures for obtaining a freestanding emergency medical care facility license;

(2) minimum standards for freestanding emergency medical care facility functions and services;

(3) patient rights standards; discrimination or retaliation standards;

(4) patient transfer and other policy and protocol requirements;

(5) reporting, posting, and training requirements relating to abuse and neglect;

(6) standards for voluntary agreements;

(7) inspection and investigation procedures;

(8) enforcement standards; fire prevention and protection requirements;

(9) general safety standards;

(10) physical plant and construction requirements; and

(11) standards for preparing, submitting, reviewing, and approval of construction documents.

(c) Compliance with this chapter does not constitute release from the requirements of other applicable federal, state, or local laws, codes, rules, regulations, and ordinances. This chapter must be followed where it exceeds other requirements.

§509.2. Definitions.

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

(1) Act--Texas Health and Safety Code Chapter 254, titled Freestanding Emergency Medical Care Facilities.

(2) Action plan--A written document that includes specific measures to correct identified problems or areas of concern; identifies

strategies for implementing system improvements; and includes outcome measures to indicate the effectiveness of system improvements in reducing, controlling, or eliminating identified problem areas.

(3) Administrator--A person who is a physician, is a registered nurse, has a baccalaureate or postgraduate degree in administration or a health-related field, or has one year of administrative experience in a health-care setting.

(4) Advanced practice registered nurse (APRN)--A registered nurse authorized by the Texas Board of Nursing to practice as an advanced practice registered nurse in Texas. The term includes a nurse practitioner, nurse midwife, nurse anesthetist, and clinical nurse specialist. The term is synonymous with "advanced nurse practitioner."

(5) Adverse event--An event that results in unintended harm to the patient by an act of commission or omission rather than by the underlying disease or condition of the patient.

(6) Applicant--A person who seeks a freestanding emergency medical care facility license from the Texas Health and Human Services Commission (HHSC) and who is legally responsible for operation of the freestanding emergency medical care facility, whether by lease or ownership.

(7) Certified registered nurse anesthetist (CRNA)--A registered nurse who has current certification from the Council on Certification of Nurse Anesthetists and is currently authorized to practice as an advanced practice registered nurse by the Texas Board of Nursing.

(8) Change of ownership--Change in the person legally responsible for operation of the facility, whether by lease or by ownership.

(9) Designated provider--A provider of health care services selected by a health maintenance organization, a self-insured business corporation, a beneficial society, the Veterans Administration, TRICARE, a business corporation, an employee organization, a county, a public hospital, a hospital district, or any other entity to provide health care services to a patient with whom the entity has a contractual, statutory, or regulatory relationship that creates an obligation for the entity to provide the services to the patient.

(10) Disposal--Discharge, deposit, injection, dumping, spilling, leaking, or placing any solid waste or hazardous waste (containerized or uncontainerized) into or on any land or water so that solid waste or hazardous waste, or any constituent thereof, may enter the environment or be emitted into the air or discharge into any waters, including groundwaters.

(11) Emergency care--Health care services provided in a freestanding emergency medical care facility to evaluate and stabilize medical conditions of a recent onset and severity, including severe pain, that would lead a prudent layperson possessing an average knowledge of medicine and health to believe that the person's condition, sickness, or injury is of such a nature that failure to get immediate medical care could result in:

(A) placing the person's health in serious jeopardy;

(B) serious impairment to bodily functions;

(C) serious dysfunction of a bodily organ or part;

(D) serious disfigurement; or

(E) in the case of a pregnant woman, serious jeopardy to the health of the woman or fetus.

(12) Facility--A freestanding emergency medical care facility.

(13) Freestanding emergency medical care facility--A facility that is structurally separate and distinct from a hospital and which receives an individual and provides emergency care as defined in this section.

(14) Freestanding emergency medical care facility administration--The administrative body of a freestanding emergency medical care facility headed by an individual who has the authority to represent the facility and who is responsible for operation of the facility according to the policies and procedures of the facility's governing body.

(15) Governing body--The governing authority of a freestanding emergency medical care facility that is responsible for a facility's organization, management, control, and operation, including appointment of the medical staff; and includes the owner or partners for a freestanding emergency medical care facility owned or operated by an individual or partners or corporation.

(16) HHSC--Texas Health and Human Services Commission.

(17) Licensed vocational nurse (LVN)--A person who is currently licensed by the Texas Board of Nursing as a licensed vocational nurse.

(18) Licensee--The person or governmental unit named in the application for issuance of a facility license.

(19) Medical director--A physician who is board certified or board eligible in emergency medicine, or board certified in primary care with a minimum of two years of emergency care experience.

(20) Medical staff--A physician or group of physicians, podiatrist or group of podiatrists, and dentist or group of dentists who by action of the governing body of a facility are privileged to work in and use the facility.

(21) Owner--One of the following persons or governmental unit that will hold, or does hold, a license issued under the Act in the person's name or the person's assumed name:

(A) a corporation;

(B) a governmental unit;

(C) a limited liability company;

(D) an individual;

(E) a partnership, if a partnership name is stated in a written partnership agreement, or an assumed name certificate;

(F) all partners in a partnership if a partnership name is not stated in a written partnership agreement, or an assumed name certificate; or

(G) all co-owners under any other business arrangement.

(22) Patient--An individual who presents for diagnosis or treatment.

(23) Person--An individual, firm, partnership, corporation, association, or joint stock company, including a receiver, trustee, assignee, or other similar representative of such an entity.

(24) Physician--An individual licensed by the Texas Medical Board and authorized to practice medicine in the state of Texas.

(25) Physician assistant--An individual licensed as a physician assistant by the Texas State Board of Physician Assistant Examiners.

(26) Practitioner--A health care professional licensed in the state of Texas, other than a physician, podiatrist, or dentist. A practitioner shall practice in a manner consistent with their underlying practice act.

(27) Prelicensure conference--A conference held between HHSC staff and the applicant or the applicant's representative to review licensure rules and survey documents and provide consultation before the on-site licensure inspection.

(28) Premises--A building where patients receive emergency services from a freestanding emergency medical care facility.

(29) Quality assessment and performance improvement (QAPI)--An ongoing program that measures, analyzes, and tracks quality indicators related to improving health outcomes and patient care emphasizing a multidisciplinary approach. The program implements improvement plans and evaluates the implementation until resolution is achieved.

(30) Registered nurse (RN)--An individual who is currently licensed by the Texas Board of Nursing as a registered nurse.

(31) Sexual assault survivor--An individual who is a victim of a sexual assault, regardless of whether a report is made, or a conviction is obtained in the incident.

(32) Stabilize--To provide necessary medical treatment of an emergency medical condition to ensure, within reasonable medical probability, that the condition is not likely to deteriorate materially from or during the transfer of the individual from a facility.

(33) Transfer--Movement (including the discharge) of an individual outside a facility at the direction of and after personal examination and evaluation by the facility physician. Transfer does not include movement outside a facility of an individual who has been declared dead or who leaves the facility against the advice of a physician.

(34) Transfer agreement--A referral, transmission, or admission agreement with a hospital.

(35) Universal precautions--Procedures for disinfecting and sterilizing reusable medical devices and appropriate use of infection control, including hand washing, use of protective barriers, and use and disposal of needles and other sharp instruments, as those procedures are defined by the Centers for Disease Control and Prevention (CDC) of the United States Department of Health and Human Services. This term includes standard precautions as defined by CDC, which are designed to reduce the risk of transmission of bloodborne and other pathogens in healthcare facilities.

(36) Violation--Failure to comply with the Act, another statute, a rule or standard, or an order issued by the executive commissioner of HHSC or the executive commissioner's designee, adopted or enforced under the Act.

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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SUBCHAPTER B. LICENSING REQUIREMENTS

26 TAC §§509.21 - 509.30

STATUTORY AUTHORITY

The new rules are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and to implement Texas Health and Safety Code §254.101, which authorizes HHSC to adopt rules regarding FEMC facilities.

The new rules implement Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 254.

§509.21. General.

(a) License required.

(1) Except as provided in §509.22 of this subchapter (related to Exemptions from Licensure), a person may not establish or operate a freestanding emergency medical care facility in this state without a license issued by the Texas Health and Human Services Commission (HHSC).

(2) A facility or person shall not hold itself out to the public as a freestanding emergency medical care facility or advertise, market, or otherwise promote the services using the terms "emergency," "ER," or any similar term that would give the impression that the facility or person is providing emergency care.

(3) An applicant shall submit a license application in accordance with §509.24 of this subchapter (relating to Application and Issuance of Initial License). The applicant shall retain copies of all application documents submitted to HHSC.

(b) Compliance requirements. A facility shall comply with the provisions of the Act and this chapter during the licensing period.

(c) Scope of facility license.

(1) Each separate facility location shall have a separate license.

(2) HHSC issues a facility license for the premises and person or governmental unit named in the application.

(3) A facility shall not have more than one health facility license for the same physical address. The premises of a facility license shall be separated from any other occupancy or licensed health facility by a minimum of a one-hour fire rated wall.

(4) A facility license authorizes only emergency care services and procedures that are related to providing emergency care.

(d) License display requirements. A facility shall prominently and conspicuously display the facility license in a public area of the licensed premises that is readily visible to patients, employees, and visitors.

(e) License alterations prohibited. A facility license shall not be altered.

(f) License transfer prohibited. A facility license shall not be transferred or assigned. The facility shall comply with the provisions of §509.27 of this subchapter (relating to Change of Ownership) in the event of a change in the ownership of a facility.

(g) Changes that affect the license.

(1) A facility shall notify HHSC in writing before:

(A) any construction, renovation, or modification of the facility buildings as described in 25 TAC Chapter 131, Subchapter G (relating to Physical Plant and Construction Requirements); or

(B) facility operations cease.

(2) A facility shall notify HHSC in writing not later than the third calendar day after:

(A) a facility modifies its evacuation or smoke compartment relocation plans in accordance with the requirements of NFPA 101: Life Safety Code (2018); or

(B) a facility's fire alarm system or sprinkler system becomes non-operational.

(3) A facility shall notify HHSC in writing not later than the 10th calendar day after the effective date of:

(A) a change in certification or accreditation status; or

(B) a change in facility name, mailing address, telephone number, or administrator.

(4) A facility that becomes inactive or closes shall meet the requirements in §509.26 of this subchapter (relating to Inactive Status and Closure).

§509.22. Exemptions from Licensure.

The following facilities are not required to be licensed under this chapter:

(1) an office or clinic owned and operated by a manufacturing facility solely for the purposes of treating its employees and contractors;

(2) a temporary emergency clinic in a disaster area;

(3) an office or clinic of a licensed physician, dentist, optometrist, or podiatrist;

(4) a licensed nursing home;

(5) a licensed hospital;

(6) a hospital that is owned and operated by this state;

(7) a facility located within or connected to a licensed hospital or a hospital that is owned and operated by this state;

(8) a facility that is owned or operated by a licensed hospital or a hospital that is owned and operated by this state and is:

(A) surveyed as a service of the hospital by an organization that has been granted deeming authority as a national accreditation program for hospitals by the Centers for Medicare and Medicaid Services (CMS); or

(B) granted provider-based status by CMS; or

(9) a licensed ambulatory surgical center.

§509.23. Unlicensed Facilities.

(a) If the Texas Health and Human Services Commission (HHSC) has reason to believe that a person or facility may be providing emergency medical care services as defined in this chapter without a license, HHSC will notify the person or facility in writing by certified mail, return receipt requested. Not later than 20 calendar days after the date the person or facility receives the notice, the person or facility shall submit to HHSC either:

(1) an application for a license and the nonrefundable license fee;

(2) a claim for exemption under §509.22 of this subchapter (relating to Exemptions from Licensure); or

(3) documentation sufficient to establish that freestanding emergency medical care services are not being provided, including a notarized statement that freestanding emergency medical care services are not being provided and listing the types of services that are provided.

(b) If a person or facility submits an application for a license, HHSC will process the application in accordance with §509.25 of this subchapter (relating to Application and Issuance of Initial License).

(c) If the person or facility submits a claim for exemption, HHSC shall evaluate the claim for exemption and notify the person or facility in writing of the proposed decision within 30 calendar days following receipt of the claim for exemption.

(d) If the person or facility submits sufficient documentation, under subsection (a)(3) of this section, to establish that the facility does not provide freestanding emergency medical services, HHSC shall notify the person or facility in writing that no license is required not later than 30 calendar days after HHSC receives the documentation.

(e) If HHSC determines the documentation submitted under subsection (a)(3) of this section is insufficient, HHSC shall notify the person or facility in writing not later than 30 calendar days after HHSC received the documentation. The person or facility shall have the opportunity to respond not later than 10 calendar days after the date the facility receives the notice. Not later than 10 calendar days after the date HHSC receives the facility's response, HHSC shall notify the person or facility in writing of HHSC's determination.

§509.24. Application and Issuance of Initial License.

(a) All first-time applications for licensing are applications for an initial license, including applications from unlicensed operational facilities and licensed facilities for which a change of ownership or relocation is anticipated.

(b) The applicant shall submit the completed application, the information required in subsection (d) of this section, and the nonrefundable license fee to the Texas Health and Human Services Commission (HHSC) 90 days before the projected opening date of the facility.

(c) The applicant shall disclose to HHSC, if applicable:

(1) the name, address, and social security number of the owner or sole proprietor, if the owner of the facility is a sole proprietor;

(2) the name, address, and social security number of each general partner who is an individual, if the facility is a partnership;

(3) the name, address, and social security number of any individual who has an ownership interest of more than 25 percent in the corporation, if the facility is a corporation;

(4) the name, medical license number, and medical license expiration date of any physician licensed by the Texas Medical Board who has a financial interest in the facility or in any entity that has an ownership interest in the facility;

(5) the name, medical license number, and medical license expiration date of the medical chief of staff;

(6) the name, nursing license number, and nursing license expiration date of the director of nursing;

(7) affirmation that at least one physician licensed in the state of Texas and at least one registered nurse licensed in the state of Texas will be on site during all hours of operation;

(8) information concerning the applicant and the applicant's affiliates and managers, as applicable:

(A) denial, suspension, probation, or revocation of a facility license in any state or any other enforcement action, such as court civil or criminal action in any state;

(B) surrendering a license before expiration of the license or allowing a license to expire in lieu of HHSC proceeding with enforcement action;

(C) federal or state (any state) criminal felony arrests or convictions;

(D) Medicare or Medicaid sanctions or penalties relating to operation of a health care facility or home and community support services agency;

(E) operation of a health care facility or home and community support services agency that has been decertified or terminated from participation in any state under Medicare or Medicaid; or

(F) debarment, exclusion, or contract cancellation in any state from Medicare or Medicaid;

(9) for the two-year period preceding the application date, information concerning the applicant and the applicant's affiliates and managers, as applicable:

(A) federal or state (any state) criminal misdemeanor arrests or convictions;

(B) federal, state (any state), or local tax liens;

(C) unsatisfied final judgments;

(D) eviction involving any property or space used as a health care facility in any state;

(E) injunctive orders from any court; or

(F) unresolved final federal or state (any state) Medicare or Medicaid audit exceptions;

(10) the number of emergency treatment stations;

(11) a copy of the facility's patient transfer policy and procedure for the immediate transfer to a hospital of patients requiring emergency care beyond the capabilities of the facility developed in accordance with §509.65 of this chapter (relating to Patient Transfer Policy) and signed by the chairman and the secretary of the governing body that attests the date the policy was adopted by the governing body and its effective date;

(12) a copy of the facility's memorandum of transfer form, which contains at a minimum the information described in §509.65 of this chapter;

(13) a copy of a written agreement the facility has with a hospital, which provides for the prompt transfer to and the admission by the hospital of any patient when services are needed but are unavailable or beyond the capabilities of the facility in accordance with §509.66 of this chapter (relating to Patient Transfer Agreements); and

(14) a copy of a passing fire inspection report indicating approval by the local fire authority in whose jurisdiction the facility is based that is dated no earlier than one year before the opening date of the facility.

(d) The address provided on the application shall be the physical location at which the facility is or will be operating.

(e) Upon receipt of the application, HHSC shall review the application to determine whether it is complete. If HHSC determines that the application is not complete, HHSC shall notify the facility in writing.

(f) The applicant or the applicant's representative shall attend a prelicensure conference at the office designated by HHSC. HHSC may waive the prelicensure conference requirement.

(g) After the facility has participated in a prelicensure conference or the prelicensure conference has been waived at HHSC's discretion, the facility has received an approved architectural inspection conducted by HHSC, and HHSC has determined the facility is in compliance with subsections (c) - (e) of this section, HHSC shall issue a license to the facility to provide freestanding emergency medical care services in accordance with this chapter.

(h) The license shall be effective on the date the facility is determined to be in compliance with subsections (c) - (g) of this section.

(i) The license expires on the last day of the 24th month after issuance.

(j) If an applicant decides not to continue the application process for a license, the applicant may withdraw its application. The applicant shall submit to HHSC a written request to withdraw. HHSC shall acknowledge receipt of the request to withdraw.

(k) If the applicant does not complete all requirements of subsections (b) - (d) and (f) of this section within six months after the date HHSC's health care facility licensing unit receives confirmation that HHSC received the application and payment, HHSC will withdraw the application. Any fee paid for a withdrawn application is nonrefundable, as indicated by §509.30(d) of this subchapter (relating to Fees).

(l) During the initial licensing period, HHSC shall conduct an inspection of the facility to ascertain compliance with the provisions of the Act and this chapter.

(1) The facility shall request HHSC conduct an on-site inspection after the facility provides services to at least one patient.

(2) The facility shall be providing services at the time of the inspection.

§509.25. Application and Issuance of Renewal License.

(a) The Texas Health and Human Services Commission (HHSC) may send written notice of expiration of a license to a facility no later than 60 calendar days before the expiration date. If the applicant has not received notice, it is the duty of the applicant to notify HHSC and request a renewal application.

(b) The facility shall submit to HHSC no later than 30 calendar days before the expiration date of the license:

(1) a completed renewal application form;

(2) a nonrefundable license fee;

(3) a copy of a passing fire inspection report conducted within the last 12 months and one from the year prior indicating approval by the local fire authority in whose jurisdiction the facility is based, as HHSC requires annual fire safety inspections for a facility's continued licensure status; and

(4) if the facility is accredited by the Joint Commission or other accrediting organization, documented evidence of current accreditation status.

(c) HHSC shall issue a renewal license to a facility that submits a renewal application in accordance with subsection (b) of this section and meets the minimum standards for a license set forth in this chapter.

(d) Renewal licenses shall be valid for two years from the previous expiration date.

(e) If a facility fails to timely submit a complete application and fee in accordance with subsection (b) of this section, HHSC shall notify the facility that the facility shall cease providing freestanding emergency medical care (FEMC) services. If the facility provides HHSC with sufficient evidence the facility submitted a complete application and fee in a timely manner and the facility adhered to all required dates, HHSC will dismiss the cessation notice prohibiting the facility from providing FEMC services. If the facility does not provide sufficient evidence, the facility shall immediately return the license to HHSC within 30 days of HHSC's notification.

(f) If a facility does not correct a deficiency in the renewal application within 10 business days after the date HHSC notifies the facility of the deficiency, HHSC may deny the renewal application. Any fee paid for a denied renewal application is nonrefundable, as indicated by §509.30(d) of this subchapter (relating to Fees).

(g) If a license expires and a facility wishes to provide FEMC services after the expiration date of the license, the facility shall reapply for a license under §509.24 of this subchapter (relating to Application and Issuance of Initial License).

§509.26. Inactive Status and Closure.

(a) A facility that does not provide services under its license for more than five calendar days shall inform the Texas Health and Human Services Commission (HHSC), and HHSC will change the status of the facility license to inactive.

(1) To be eligible for inactive status, a facility must be in good standing with no pending enforcement action or investigation.

(2) The licensee is responsible for any license renewal requirements or fees, and for proper maintenance of patient records, while the license is inactive.

(3) A license may not remain inactive for more than 60 calendar days.

(4) To reactivate the license, the facility must inform HHSC no later than 60 calendar days after the facility stopped providing services under its license.

(5) A facility that does not reactivate its license by the 60th calendar day after it stopped providing services has constructively surrendered its license, and HHSC will consider the facility closed.

(b) A facility shall notify HHSC in writing before closure of the facility.

(1) The facility shall dispose of medical records in accordance with §509.54 of this chapter (relating to Medical Records).

(2) The facility shall appropriately discharge or transfer all patients before the facility closes.

(3) A license becomes invalid when a facility closes. The facility shall return the licensure certificate to HHSC not later than 30 calendar days after the facility closes.

(c) A facility that closes, or for which a license issued under this chapter expires or is suspended or revoked, shall immediately remove or cause to be removed any signs within view of the general public indicating that the facility is in operation as required under Texas Health and Safety Code §254.158 (relating to Removal of Signs).

§509.27. Change of Ownership.

(a) When a facility plans to change its ownership, the new owner shall submit:

(1) an application for an initial license and nonrefundable fee to the Texas Health and Human Services Commission (HHSC) no later than 30 calendar days before the date of the change of ownership in accordance with §509.24 of this subchapter (relating to Application and Issuance of Initial License); and

(2) notwithstanding §509.24(c)(14) of this subchapter, a copy of a passing fire inspection report conducted within the last 12 months and one from the year prior indicating approval by the local fire authority in whose jurisdiction the facility is based. Annual fire safety inspections are required for continued licensure status.

(b) In addition to the documents required in §509.24 of this subchapter, the applicant shall submit a copy of the signed bill of sale or lease agreement that reflects the effective date of the change of ownership.

(c) The applicant is not required to submit a transfer agreement that HHSC has previously approved if the applicant notifies HHSC in writing that it has adopted the transfer agreement.

(d) A facility is not required to submit an application for change of ownership if the facility changes only its name. If a facility changes its name, the facility must notify HHSC no later than 10 calendar days after the effective date of the change.

(e) For a change of ownership, HHSC may waive the initial licensure on-site health inspection required by §509.24(l) of this subchapter and the initial on-site construction inspection required by 25 TAC Chapter 131, Subchapter G (relating to Physical Plant and Construction Requirements).

(f) If the applicant does not complete all requirements of subsection (a) and (b) of this section within six months after the date HHSC's health facility licensing unit receives confirmation that HHSC received the application and payment, HHSC will withdraw the application. Any fee paid for a withdrawn application is nonrefundable, as indicated by §509.30(d) of this subchapter (relating to Fees).

(g) When the new owner has complied with the provisions of §509.24 of this subchapter, HHSC shall issue a license that is effective as of the date of the change of ownership.

(h) HHSC shall set the expiration date of the license in accordance with §509.24 of this subchapter.

(i) The previous owner's license becomes void as of the effective date of the new owner's license.

§509.28. Conditions of Licensure.

(a) A facility license is issued only for the premises and person or governmental unit named on the application.

(b) A facility license is issued for a single physical location and shall not include multiple buildings or offsite locations.

(c) A license shall not be transferred or assigned from one person or governmental unit to another person or governmental unit.

(d) A license shall not be transferred from one facility location to another.

(e) If a facility is relocating, the facility shall complete and submit a license application and nonrefundable fee no later than 30 calendar days before facility relocation. The Texas Health and Human Services Commission (HHSC) shall process the application in accordance with §509.24 of this subchapter (relating to Application and Issuance of Initial License). An initial license for the relocated facility is effective on the date the relocation occurred. The previous license is void on the date of relocation.

(f) A facility that changes its telephone number shall send HHSC written notice of the change no later than 30 calendar days after the number has changed.

(g) If a facility's name changes, the facility shall notify HHSC in writing no later than 30 calendar days after the effective date of the name change.

§509.29. Time Periods for Processing and Issuing Licenses.

(a) The date a license application is received is the date the application reaches the Texas Health and Human Services Commission (HHSC).

(b) An application for an initial license is complete when HHSC has received the application fee and received, reviewed, and found acceptable the information described in §509.24 of this subchapter (relating to Application and Issuance of Initial License).

(c) An application for a renewal license is complete when HHSC has received the application fee and received, reviewed, and found acceptable the information described in §509.25 of this subchapter (relating to Application and Issuance of Renewal License).

(d) HHSC shall process an application from an applicant for an initial license or a facility for a renewal license in accordance with the following time periods.

(1) The first time period begins on the date HHSC receives the complete application and ends on the date HHSC issues the license. The first time period is 45 calendar days.

(2) If HHSC receives an incomplete application, the first time period ends on the date HHSC issues a written notice to the applicant or facility that the application is incomplete. The written notice shall describe the specific information HHSC requires before HHSC considers the application complete.

(3) For incomplete applications, the second time period begins on the date HHSC receives the last item necessary to complete the application and ends on the date HHSC issues the license. The second time period is 45 calendar days.

(e) In the event HHSC does not process the application in the time periods stated in subsection (d) of this section, the applicant has the right to request that HHSC reimburse in full the fee paid in that particular application process. If HHSC does not agree that the established periods have been violated or finds that good cause existed for exceeding the established periods, HHSC shall deny the request.

(f) Good cause for exceeding the period established is considered to exist if:

(1) the number of applications for licenses to be processed exceeds by 15 percent or more the number processed in the same calendar quarter the preceding year;

(2) another public or private entity used in the application process caused the delay; or

(3) other conditions existed giving good cause for exceeding the established periods.

(g) If the request for reimbursement as authorized by subsection (e) of this section is denied, the applicant may then appeal to the HHSC Executive Commissioner (executive commissioner) for a resolution of the dispute. The applicant shall give written notice to the executive commissioner requesting reimbursement of the fee paid because the application was not processed within the established time period. HHSC shall submit a written report of the facts related to the processing of the application and good cause for exceeding the established time periods. HHSC shall make the final decision and provide written notification of the decision to the applicant and HHSC.

(h) If a hearing is proposed during the processing of the application, the hearing shall be conducted under Texas Government Code Chapter 2001 (relating to Administrative Procedure); 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act); and 1 TAC Chapter 155 (relating to Rules of Procedure).

§509.30. Fees.

(a) The fee for an initial license (includes change of ownership or relocation) is $14,820. The license term is two years.

(b) The fee for a renewal license is $6,070. The license term is two years.

(c) An application is not complete until the applicant pays the entire application fee and submits the application form.

(d) Fees paid to the Texas Health and Human Services Commission (HHSC) are not refundable, except as indicated in §509.29 of this subchapter (relating to Time Periods for Processing and Issuing Licenses).

(e) All fees shall be paid to HHSC.

(f) HHSC collects subscription and convenience fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through Texas Online, in accordance with Texas Government Code §2054.111 (relating to Use of State Electronic Internet Portal Project) and §2054.252 (State Electronic Internet Portal Project).

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 June 29, 2023.

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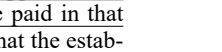
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: August 13, 2023
For further information, please call: (512) 834-4591



SUBCHAPTER C. OPERATIONAL REQUIREMENTS

26 TAC §§509.41 - 509.66

STATUTORY AUTHORITY

The new rules are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and to implement Texas Health and Safety Code §254.101, which authorizes HHSC to adopt rules regarding FEMC facilities.

The new rules implement Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 254.

§509.41. Operational Standards.

(a) A facility shall have an identified governing body fully responsible for organization, management, control, and operation of the facility, including the appointment of the facility's medical director. The medical director shall be board certified or board eligible in emergency medicine, or board certified in primary care with at least two years emergency care experience.

(b) The governing body shall adopt, implement, and enforce written policies and procedures for the total operation and all services provided by the facility.

(c) The governing body is responsible for all services furnished in the facility, whether furnished directly or under contract. The governing body shall ensure services are provided in a safe and effective manner that permits the facility to comply with all applicable rules and standards.

(d) The governing body shall ensure the medical staff has on file current written bylaws, rules, and regulations that are adopted, implemented, and enforced.

(e) The governing body shall disclose all owners of the facility to the Texas Health and Human Services Commission (HHSC).

(f) The governing body shall meet at least annually and keep minutes or other records necessary for orderly conduct of the facility. Each meeting held by the facility governing body shall be a separate meeting with separate minutes from any other governing body meeting.

(g) If the governing body elects, appoints, or employs officers and administrators to carry out its directives, the governing body shall define the authority, responsibility, and functions of all such positions.

(h) The governing body shall develop a process for appointing or reappointing medical staff, and for assigning or curtailing medical privileges.

(i) The governing body shall provide (in a manner consistent with state law and based on evidence of education, training, and current competence) for the initial appointment, reappointment, and assignment or curtailment of privileges and practice for non-physician health care personnel and practitioners.

(j) The governing body shall encourage personnel to participate in continuing education that is relevant to their responsibilities within the facility.

(k) The governing body shall adopt, implement, and enforce written policies to ensure compliance with applicable state and federal laws.

(l) In accordance with Texas Health and Safety Code §254.157 (relating to Certain Advertising Prohibited), a facility may not advertise or hold itself out as a network provider, including by stating that the facility "takes" or "accepts" any insurer, health maintenance organization, health benefit plan, or health benefit plan network, unless the facility is a network provider of a health benefit plan issuer.

(m) A facility may not post the name or logo of a health benefit plan issuer in any signage or marketing materials if the facility is an out-of-network provider for all of the issuer's health benefit plans.

(n) A facility shall assess, and the governing body shall review, patient satisfaction with services and environment no less than annually.

§509.42. Governing Body Responsibilities.

The governing body shall address and is fully responsible, either directly or by appropriate professional delegation, for operation and performance of the facility. Governing body responsibilities include:

(1) determining the mission, goals, and objectives of the facility;

(2) ensuring that facilities and personnel are adequate and appropriate to carry out the mission;

(3) ensuring a physical environment that protects the health and safety of patients, personnel, and the public;

(4) establishing an organizational structure and specifying functional relationships among the various components of the facility;

(5) adopting, implementing, and enforcing bylaws or similar rules and regulations for the orderly development and management of the facility;

(6) adopting, implementing, and enforcing policies or procedures necessary for orderly conduct of the facility;

(7) reviewing and approving the facility's training program for staff;

(8) ensuring that all equipment used by facility staff or patients is properly used and maintained per manufacturer recommendations;

(9) adopting, implementing, and enforcing policies or procedures related to emergency planning and disaster preparedness, including reviewing the facility's disaster preparedness plan at least annually;

(10) ensuring there is a quality assessment and performance improvement (QAPI) program to evaluate the provision of patient care, including quarterly review and monitoring of QAPI activities;

(11) reviewing legal and ethical matters concerning the facility and its staff, when necessary, and responding appropriately;

(12) maintaining effective communication throughout the facility;

(13) establishing a system of financial management and accountability that includes an audit or financial review appropriate to the facility;

(14) adopting, implementing, and enforcing policies for provision of radiological services;

(15) adopting, implementing, and enforcing policies for provision of laboratory services;

(16) adopting, implementing, and enforcing policies for provision of pharmacy services;

(17) adopting, implementing, and enforcing policies for collection, processing, maintenance, storage, retrieval, authentication, and distribution of patient medical records and reports;

(18) adopting, implementing, and enforcing a policy on the rights of patients and complying with all state and federal patient rights requirements;

(19) adopting, implementing, and enforcing policies for provision of an effective procedure for the immediate transfer to a licensed hospital of patients requiring emergency care beyond the capabilities of the facility, including a transfer agreement with a hospital licensed in this state in accordance with §509.66 of this subchapter (relating to Patient Transfer Agreements);

(20) adopting, implementing, and enforcing policies for all individuals that arrive at the facility to ensure they are provided an appropriate medical screening examination within the capability of the facility, including ancillary services routinely available to determine whether or not the individual needs emergency care as defined in §509.2 of this chapter (relating to Definitions), and that if emergency care is determined to be needed, the facility shall provide any necessary stabilizing treatment or arrange an appropriate transfer the individual as defined in §509.65 of this subchapter (relating to Patient Transfer Policy);

(21) adopting, implementing, and enforcing protocols to be used in determining death and for filing autopsy reports that comply

with Texas Health and Safety Code Chapter 671 (relating to Determination of Death and Autopsy Reports);

(22) approving all major contracts or arrangements affecting the medical care provided under its auspices, including those concerning:

(A) services of physicians and practitioners;

(B) use of external laboratories; and

(C) an effective procedure for obtaining emergency laboratory, radiology, and pharmaceutical services when these services are not immediately available due to system failure;

(23) formulating long-range plans in accordance with the mission, goals, and objectives of the facility;

(24) operating the facility without limitation because of color, race, age, sex, religion, national origin, or disability;

(25) ensuring that all marketing and advertising concerning the facility does not imply that it provides care or services that the facility is not capable of providing; and

(26) developing a system of risk management appropriate to the facility, including:

(A) periodic review of all litigation involving the facility, its staff, physicians, and practitioners regarding activities in the facility;

(B) periodic review of all incidents reported by staff and patients;

(C) review of all deaths, trauma, or adverse reactions occurring on premises; and

(D) evaluation of patient complaints.

§509.43. Administration.

(a) The facility administration shall adopt, implement, and enforce administrative policies, procedures, and controls to ensure orderly and efficient management of the facility. Administrative responsibilities shall include:

(1) enforcing policies delegated by the governing body;

(2) employing qualified management personnel;

(3) long- and short-range planning for the needs of the facility, as determined by the governing body;

(4) using methods of communicating and reporting, designed to ensure orderly flow of information within the facility;

(5) controlling purchase, maintenance, and distribution of the equipment, materials, and facilities of the facility;

(6) establishing lines of authority, accountability, and supervision of personnel;

(7) establishing controls relating to custody of the official documents of the facility; and

(8) maintaining confidentiality, security, and physical safety of data on patients and staff.

(b) The facility administration shall adopt, implement, and enforce personnel policies to facilitate attainment of the mission, goals, and objectives of the facility. Personnel policies shall:

(1) define and delineate functional responsibilities and authority;

(2) require employment of personnel with qualifications commensurate with job responsibilities and authority, including appropriate licensure or certification;

(3) require documented periodic appraisal of each person's job performance;

(4) specify responsibilities and privileges of employment;

(5) be made known to employees at the time of employment; and

(6) provide and document adequate orientation and training to familiarize all personnel with the facility's policies, procedures, equipment, and facilities.

(c) A facility shall adopt, implement, and enforce personnel policies that address and are relevant to all employees and contractors.

(d) A facility shall develop appropriate job descriptions for each employee position.

§509.44. Medical Director.

(a) The medical director shall be on-site at the facility when necessary to fulfill the responsibilities of the position, as described by this chapter and the governing body.

(b) Notwithstanding subsection (a) of this section, each facility's medical director shall be on-site at the facility for at least 12 hours per month.

(c) The medical director's responsibilities shall include:

(1) organizing the emergency services to be provided at the facility;

(2) supervising and overseeing the infection control program and quality assessment and performance improvement (QAPI) program; and

(3) regularly attending meetings of the infection control program and QAPI program.

(d) The medical director shall have the authority to contract with outside persons for performance of the facility's peer review activities, as necessary.

§509.45. Medical Staff.

(a) The medical staff shall periodically conduct appraisals of its members according to medical staff bylaws.

(b) The medical staff shall examine credentials of candidates for medical staff membership and make recommendations to the governing body on the appointment of the candidate.

(c) The medical staff shall be well-organized and accountable to the governing body for the quality of the medical care provided to patients.

(1) The medical staff shall be organized in a manner approved by the governing body.

(2) If the medical staff has an executive committee, the members of the committee shall be doctors of medicine or osteopathy.

(3) The facility shall maintain records of medical staff meetings.

(4) The governing body shall assign responsibility for organization and conduct of the medical staff only to an individual physician.

(5) Each medical staff member shall sign a statement signifying they will abide by medical staff and facility policies.

(d) The medical staff shall adopt, implement, and enforce written bylaws, rules, and regulations to carry out its responsibilities. The bylaws shall:

(1) be approved by the governing body;

(2) include a statement of the duties and privileges of each category of medical staff (e.g., active, courtesy, consultant);

(3) describe the organization of the medical staff;

(4) describe the qualifications a candidate must meet for the medical staff to recommend the governing body appoint the candidate; and

(5) include criteria for determining the privileges to be granted and a procedure for applying the criteria to individuals requesting privileges. To be privileged, a physician must have at least one year of experience in emergency services, and current certification in advanced cardiac life support, pediatric advanced life support, and advanced trauma life support.

§509.46. Facility Staffing and Training.

(a) A facility shall have personnel qualified to operate emergency equipment and to provide emergency care to patients that is on site and available at all times.

(b) A facility shall comply with the following nursing services staffing and training requirements.

(1) There shall be an organized nursing service under the direction of a qualified registered nurse (RN). The facility shall be staffed to ensure the nursing needs of all patients are met.

(2) There shall be a written plan of administrative authority for all nursing services with responsibilities and duties of each category of nursing personnel delineated and a written job description for each category. The scope of nursing services shall be limited to nursing care rendered to patients as authorized by Texas Occupations Code Chapter 301 (relating to Nurses).

(A) The responsible individual for nursing services shall be a qualified RN whose responsibility and authority shall be clearly defined and shall include supervision of both personnel performance and patient care.

(B) There shall be a written delineation of functions, qualifications, and patient care responsibilities for all categories of nursing personnel.

(C) Nursing services shall be provided in accordance with current recognized standards or recommended practices.

(3) There shall be an adequate number of RNs on duty to meet minimum staff requirements, including supervisory and staff RNs, to ensure the immediate availability of an RN for emergency care or for any patient when needed.

(4) There shall be other nursing personnel in sufficient numbers to provide nursing care not requiring the service of an RN. An RN shall assign the nursing care of each patient to other nursing personnel in accordance with the patient's needs and the preparation and qualifications of the nursing staff available.

(5) An RN qualified, at a minimum, with current certification in advanced cardiac life support and pediatric advanced life support shall be on duty at the facility at all times whenever patients are present in the facility.

(6) All direct care staff members shall maintain current certification and competency in basic cardiac life support.

(7) The facility shall establish a nursing peer review committee to conduct nursing peer review, to the extent required by Texas Occupations Code Chapter 303 (relating to Nursing Peer Review).

(c) In addition to meeting the requirements for nursing staff under subsection (b) of this section, a facility shall comply with the following minimum staffing requirements:

(1) A facility that provides only topical anesthesia, local anesthesia, or minimal sedation shall have a second individual, who is trained and currently certified in basic cardiac life support, on duty at the facility until all patients have been discharged from the facility.

(2) A facility that provides moderate sedation or analgesia shall have the following additional staff:

(A) a second individual, who is trained and currently certified in basic cardiac life support, on duty at the facility until all patients have been discharged from the facility; and

(B) an individual trained and currently certified in advanced cardiac life support and pediatric advanced life support, until all patients have been discharged.

(3) A facility that provides deep sedation or analgesia or regional anesthesia shall have the following additional staff:

(A) a second individual, who is trained and currently certified in basic cardiac life support, on duty at the facility until all patients have been discharged from the facility; and

(B) an individual who is trained and currently certified in advanced cardiac life support and pediatric advanced life support, on duty and sufficiently free of other duties to enable the individual to respond rapidly to emergency situations, until all patients have been discharged.

§509.47. Emergency Services.

(a) A facility shall provide to each patient, without regard to the individual's ability to pay, an appropriate medical screening, examination, and stabilization within the facility's capability, including ancillary services routinely available to the facility, to determine whether an emergency medical condition exists, and any necessary stabilizing treatment.

(b) The organization of emergency services shall be appropriate to the scope of the services offered. The services shall be organized under the direction of a qualified physician member of the medical staff who is the medical director or clinical director.

(c) A facility shall maintain patient medical records for all emergency patients. The medical records shall contain patient identification, complaints, name of physician, name of nurse, time admitted to the emergency suite, treatment, time discharged, and disposition.

(d) A facility shall comply with the following personnel requirements.

(1) There shall be adequate medical and nursing personnel qualified in emergency care to meet the written emergency procedures and needs anticipated by the facility.

(2) As determined by the medical staff, there must always be at least one person qualified and at least one nurse with current advanced cardiac life support and pediatric advanced life support certification on duty and on-site a to initiate immediate appropriate lifesaving measures.

(3) Qualified personnel shall always be physically present in the emergency treatment area.

(4) One or more physicians shall always be on-site during facility hours of operation.

(5) A facility shall maintain schedules, names, and telephone numbers of all physicians and others on emergency call duty, including alternates. The facility shall retain the schedules for at least one year.

(e) Adequate age-appropriate supplies and equipment shall be available and in readiness for use. Equipment and supplies shall be available for the administration of intravenous medications as well as facilities for the control of bleeding and emergency splinting of fractures. The facility shall periodically test the emergency equipment according to its policy.

(f) Age-appropriate emergency equipment and supplies shall include:

(1) emergency call system;

(2) oxygen;

(3) mechanical ventilatory assistance equipment, including airways, manual breathing bag, and mask;

(4) cardiac defibrillator;

(5) cardiac monitoring equipment;

(6) laryngoscopes and endotracheal tubes;

(7) suction equipment;

(8) emergency drugs and supplies specified by the medical staff;

(9) stabilization devices for cervical injuries;

(10) blood pressure monitoring equipment; and

(11) pulse oximeter or similar medical device to measure blood oxygenation.

(g) A facility shall participate in the local Emergency Medical Service (EMS) system, based on the facility's capabilities and capacity, and the locale's existing EMS plan and protocols.

(h) A facility shall comply with the following emergency services requirements for sexual assault survivors.

(1) This subsection does not affect the duty of a facility to comply with subsection (a) of this section.

(2) The facility shall develop, implement, and enforce policies and procedures to ensure that after a sexual assault survivor presents to the facility following a sexual assault, the facility shall provide the care specified under Texas Health and Safety Code Chapter 323, Subchapter A (relating to Emergency Services for Survivors of Sexual Assault).

§509.48. Anesthesia.

(a) If a facility furnishes anesthesia services, the facility shall provide these services in a well-organized manner under the medical direction of a physician approved by the governing body and qualified in accordance with Texas Occupations Code Title 3, Subtitle B (relating to Physicians) and Texas Occupations Code Chapter 301 (relating to Nurses), as appropriate.

(b) A facility that furnishes anesthesia services shall comply with Texas Occupations Code Chapter 162, Subchapter C (relating to Anesthesia in Outpatient Setting), unless the facility is exempt under Texas Occupations Code §162.103 (relating to Applicability).

(c) A facility is responsible for and shall document all anesthesia services administered in the facility.

(d) Anesthesia services provided in the facility shall be limited to those that are recommended by the medical staff and approved by the governing body, which may include the following.

(1) Topical anesthesia--An anesthetic agent applied directly or by spray to the skin or mucous membranes, intended to produce transient and reversible loss of sensation to the circumscribed area.

(2) Local anesthesia--Administering an agent that produces a transient and reversible loss of sensation to a circumscribed portion of the body.

(3) Regional anesthesia--Anesthetic injected around a single nerve, a network of nerves, or vein that serves the area involved in a surgical procedure to block pain.

(4) Minimal sedation (anxiolysis)--A drug-induced state during which patients respond normally to oral commands. Although cognitive function and coordination may be impaired, ventilatory and cardiovascular functions are unaffected.

(5) Moderate sedation or analgesia ("conscious sedation")--A drug-induced depression of consciousness during which patients respond purposefully to oral commands, either alone or accompanied by light tactile stimulation. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained. (Reflex withdrawal from a painful stimulus is not considered a purposeful response.)

(6) Deep sedation or analgesia--A drug-induced depression of consciousness during which patients cannot be easily aroused but respond purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. Patients may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained. (Reflex withdrawal from a painful stimulus is not considered a purposeful response.)

(e) The medical staff shall develop written policies and practice guidelines for the anesthesia service, which the governing body shall adopt, implement, and enforce. The policies and guidelines shall include consideration of the applicable practice standards and guidelines of the American Society of Anesthesiologists, the American Association of Nurse Anesthetists, and the licensing rules and standards applicable to those categories of licensed professionals qualified to administer anesthesia.

(f) Only personnel who have been approved by the facility to provide anesthesia services shall administer anesthesia. All approvals or delegations of anesthesia services as authorized by law shall be documented and include the training, experience, and qualifications of the person who provided the service. A qualified registered nurse (RN) who is not a certified registered nurse anesthetist (CRNA) may, in accordance with the orders of the physician or CRNA, administer topical anesthesia, local anesthesia, minimal sedation and moderate sedation, in accordance with all applicable rules, polices, directives, and guidelines issued by the Texas Board of Nursing. When an RN who is not a CRNA administers sedation, as permitted in this paragraph, the facility shall:

(1) verify the RN has the requisite training, education, and experience;

(2) maintain documentation to support that the RN has demonstrated competency in administering sedation;

(3) with input from the facility's qualified anesthesia providers, develop, implement, and enforce detailed written policies and procedures to guide the RN; and

(4) ensure that, when administering sedation during a procedure, the RN has no other duties except to monitor the patient.

(g) Anesthesia shall not be administered unless the physician has evaluated the patient immediately before the procedure to assess the risk of the anesthesia and of the procedure to be performed.

(h) A patient who has received anesthesia shall be evaluated for proper anesthesia recovery by the physician, or the person administering the anesthesia, before discharge using criteria approved by the medical staff.

(i) A patient shall be evaluated immediately before leaving the facility by a physician, the person administering the anesthesia, or an RN acting in accordance with physician's orders and written policies, procedures, and criteria developed by the medical staff.

(j) Emergency equipment and supplies appropriate for the type of anesthesia services provided shall always be maintained and accessible to staff.

(k) All facilities shall provide at least the following functioning equipment and supplies:

(1) suctioning equipment, including a source of suction and suction catheters in appropriate sizes for the population being served;

(2) a source of compressed oxygen;

(3) basic airway management equipment, including oral and nasal airways, face masks, and self-inflating breathing bag valve set;

(4) blood pressure monitoring equipment; and

(5) emergency medications specified by the medical staff and appropriate to the type of procedures and anesthesia services provided by the facility.

(l) In addition to the equipment and supplies required under subsection (k) of this section, a facility that provides moderate sedation/analgesia, deep sedation/analgesia, or regional analgesia shall provide:

(1) intravenous equipment, including catheters, tubing, fluids, dressing supplies, and appropriately sized needles and syringes;

(2) advanced airway management equipment, including laryngoscopes and an assortment of blades, endotracheal tubes, and stylets in appropriate sizes for the population being served;

(3) a mechanism for monitoring blood oxygenation, such as pulse oximetry;

(4) electrocardiographic monitoring equipment;

(5) cardiac defibrillator; and

(6) pharmacologic antagonists, as specified by the medical staff and appropriate to the type of anesthesia services provided.

§509.49. Laboratory and Pathology Services.

(a) A facility shall maintain directly, or have immediately available on the premises, adequate laboratory services to meet the needs of its patients.

(b) Laboratory services shall comply with the Clinical Laboratory Improvement Amendments of 1988 (CLIA 1988), in accordance with the requirements specified in Code of Federal Regulations, Title 42 (42 CFR), Part 493 (relating to Laboratory Requirements). CLIA 1988 applies to all facilities with laboratories that examine human specimens for the diagnosis, prevention, or treatment of any disease or impairment, or for health assessment.

(c) A facility shall ensure that all laboratory services provided to its patients through a contractual agreement are performed in a facility certified in the appropriate specialties and subspecialties of service in accordance with the requirements specified in 42 CFR Part 493 to comply with CLIA 1988.

(d) Emergency laboratory services shall be available on the premises during hours of operation, including:

(1) assays for cardiac markers;

(2) hematology;

(3) chemistry; and

(4) pregnancy testing.

(e) A written description of services provided shall be available to the medical staff.

(f) The laboratory shall ensure proper receipt and reporting of tissue specimens.

(g) The medical staff and a pathologist shall determine which tissue specimens require a macroscopic (gross) examination and which require both macroscopic and microscopic examination.

(h) When blood and blood components are stored, the facility shall have written procedures readily available containing directions on how to maintain the blood and blood components within permissible temperatures and including instructions to follow in the event of a power failure or other disruption of refrigeration.

(1) Blood transfusions shall be prescribed in accordance with facility policy and administered in accordance with a written protocol for administering blood and blood components and using infusion devices and ancillary equipment.

(2) Personnel administering blood transfusions and intravenous medications shall have special training for this duty according to adopted, implemented, and enforced facility policy.

(3) Blood and blood components shall be transfused through a sterile, pyrogen-free transfusion set that has a filter designed to retain particles potentially harmful to the recipient.

(4) Facility staff shall observe the patient for potential adverse reactions during the transfusion and for an appropriate time thereafter and document the observations and patient's response.

(5) Pre-transfusion and post-transfusion vital signs shall be recorded.

(6) Following the transfusion, the blood transfusion record or a copy shall be made a part of the patient's medical record.

(i) The facility shall establish a mechanism for ensuring that the patient's physician or other licensed health care professional is made aware of critical value lab results, as established by the medical staff, before or after the patient is discharged. A physician shall read, date, sign, and authenticate all laboratory reports.

(j) A facility that provides laboratory services shall adopt, implement, and enforce written policies and procedures to manage, minimize, or eliminate the risks to laboratory personnel of exposure to potentially hazardous chemicals in the laboratory.

§509.50. Pharmaceutical Services.

(a) The facility shall be licensed as required by the Texas State Board of Pharmacy.

(b) The facility shall adopt, implement, and enforce policy and procedures for pharmaceutical services.

(c) The facility shall provide drugs, controlled substances, and biologicals in a safe and effective manner in accordance with professional practices and comply with all state and federal laws and regulations regarding pharmaceutical services.

(d) The facility may make pharmaceutical services available through contractual agreement. Pharmaceutical services provided under contract shall meet the same ethical practices, professional practices, and legal requirements that would be required if those services were provided directly by the facility.

§509.51. Radiology.

(a) The facility shall adopt, implement, and enforce policies and procedures for emergency radiological procedures.

(b) The facility shall provide radiological services that are immediately available on the premises to meet the emergency needs of patients and to adequately support the facility's clinical capabilities, including plain film X-ray.

(c) The facility shall provide computed tomography (CT) scan services and ultrasound services that are immediately available on the premises.

(d) A physician shall read, date, sign, and authenticate all examination reports.

(e) The radiology department shall meet all applicable federal, state, and local laws, codes, standards, rules, regulations, and ordinances.

(f) Procedure manuals shall include procedures for all examinations performed, infection control in the facility, treatment and examination rooms, personnel dress code, and equipment cleaning.

(g) Policies shall address the quality aspects of radiology services, including:

(1) performing radiology services only on the written order of a physician, advanced practice registered nurse, or other authorized practitioner (such orders shall be accompanied by a concise statement of the reason for the examination); and

(2) limiting the use of any radioactive sources in the facility to physicians who have been granted privileges for such use based on their training, experience, and current competence.

(h) Policies shall address safety, including:

(1) regulating use, removal, handling, and storage of any radioactive material that is required to be licensed by the Texas Department of State Health Services Radiation Control Program;

(2) precautions against electrical, mechanical, and radiation hazards;

(3) proper shielding where radiation sources are used;

(4) acceptable monitoring devices for all personnel who might be exposed to radiation that shall be worn by such personnel in any area with a radiation hazard;

(5) maintenance of radiation exposure records on personnel; and

(6) authenticated dated reports of all examinations performed added to the patient's medical record.

§509.52. Respiratory Services.

(a) The facility shall meet the respiratory needs of the patients in accordance with acceptable standards of practice.

(b) The facility shall adopt, implement, and enforce policies and procedures that describe the provision of respiratory care services in the facility.

(c) The organization of the respiratory care services shall be appropriate to the scope and complexity of the services offered.

(d) Personnel qualified to perform specific procedures and the amount of supervision required for personnel to carry out specific procedures shall be designated in writing.

(e) If blood gases or other clinical laboratory tests are performed, staff shall comply with Clinical Laboratory Improvement Amendments of 1988 in accordance with the requirements specified in Code of Federal Regulations, Title 42, Part 493 (relating to Laboratory Services).

(f) Respiratory services shall be provided only on, and in accordance with, the orders of a physician, advanced practice registered nurse, or other authorized practitioner.

§509.53. Surgical Services within the Scope of the Practice of Emergency Medicine.

(a) Surgical procedures performed in the facility shall be limited to those emergency procedures that are approved by the governing body on the recommendation of medical staff.

(b) Adequate supervision of surgical procedures conducted in the facility shall be a responsibility of the governing body, recommended by medical staff, and provided by appropriate medical staff.

(c) Surgical procedures shall be performed only by physicians or practitioners who are licensed to perform surgical procedures in Texas and who have been granted privileges to perform those procedures by the governing body, on the recommendation of the medical staff, and after medical review of the physician's or practitioner's documented education, training, experience, and current competence.

(d) Surgical procedures to be performed in the facility shall be reviewed periodically as part of the peer review portion of the facility's quality assessment and performance improvement program.

(e) An appropriate history, physical examination, and pertinent preoperative diagnostic studies shall be incorporated into the patient's medical record before a surgical procedure.

(f) Unless otherwise provided by law, the necessity or appropriateness of the proposed surgical procedure, as well as any available alternative treatment techniques, shall be discussed with the patient, or if applicable, with the patient's legal representative before the surgical procedure.

(g) Licensed nurses and other personnel assisting in the provision of surgical services shall be appropriately trained and supervised and available in sufficient numbers for the surgical care provided.

(h) Each treatment or examination room shall be designed and equipped so that the types of surgical procedures conducted can be performed in a manner that protects the lives and ensures the physical safety of all persons in the area.

(1) If flammable agents are present in a treatment or examination room, the room shall be constructed and equipped in compliance with standards established by the National Fire Protection Association (NFPA 99, Annex 2, Flammable Anesthetizing Locations, 1999) and with applicable state and local fire codes.

(2) If nonflammable agents are present in a treatment or examination room, the room shall be constructed and equipped in compliance with standards established by the National Fire Protection As-

sociation (NFPA 99, Chapters 4 and 8, 1999) and with applicable state and local fire codes.

(i) With the exception of those tissues exempted by the governing body after medical review, tissues removed shall be examined by a pathologist, whose signed or authenticated report of the examination shall be made a part of the patient's medical record.

(j) A description of the findings and techniques of surgical procedures shall be accurately and completely incorporated into the patient's medical record immediately after the procedure by the physician or practitioner who performed the procedure. If the description is dictated, an accurate written summary shall be immediately available to the physicians and practitioners providing patient care and shall become a part of the patient's medical record.

(k) The facility shall provide adequate space, equipment, and personnel to ensure a safe environment for treating patients during surgical procedures, including adequate safeguards to protect the patient from cross infection.

(1) The facility shall isolate patients with communicable diseases.

(2) Acceptable aseptic techniques shall be used by all persons.

(3) Suitable equipment for rapid and routine sterilization shall be available.

(4) The facility shall implement environmental controls that ensure a safe and sanitary environment.

(l) Written policies and procedures for decontaminating, disinfecting, sterilizing, and storing sterile supplies shall be adopted, implemented, and enforced as described in §509.57 of this subchapter (relating to Sterilization).

(m) Emergency power adequate for the type of surgical procedures performed shall be available.

(n) Periodic calibration and preventive maintenance of all equipment shall be provided in accordance with manufacturer's guidelines.

(o) Unless otherwise provided by law, the informed consent of the patient or, if applicable, of the patient's legal representative shall be obtained before a surgical procedure is performed.

(p) The facility shall establish a written procedure for observing and caring for the patient during and after surgical procedures.

(q) The facility shall establish written protocols for instructing patients in self-care after surgical procedures, including written instructions to be given to patients who receive conscious sedation or regional anesthesia.

(r) Patients who have received anesthesia, other than solely topical anesthesia, shall be allowed to leave the facility only in the company of a responsible adult, unless the physician, physician assistant, or an advanced practice registered nurse writes an order that the patient may leave without the company of a responsible adult.

(s) The facility shall develop an effective written procedure for the immediately transferring to a hospital patients requiring emergency care beyond the capabilities of the facility. The facility shall have a written transfer agreement with a hospital as set forth in §509.65 of this subchapter (relating to Patient Transfer Policy).

§509.54. Medical Records.

(a) The facility shall develop and maintain a system for collecting, processing, maintaining, storing, retrieving, authenticating, and distributing patient medical records.

(b) The facility shall establish an individual medical record for each patient.

(c) All clinical information relevant to a patient shall be readily available to physicians or practitioners involved in the care of that patient.

(d) Except when otherwise required or permitted by law, any record that contains clinical, social, financial, or other data on a patient shall be strictly confidential and shall be protected from loss, tampering, alteration, improper destruction, and unauthorized or inadvertent disclosure.

(e) The facility shall designate a person to be in charge of medical records. The person's responsibilities include:

(1) confidential, secure, and safe storage of medical records;

(2) timely retrieval of individual medical records on request;

(3) specific identification of each patient's medical record;

(4) supervision of collecting, processing, maintaining, storing, retrieving, and distributing medical records; and

(5) maintenance of a predetermined organized medical record format.

(f) The facility shall retain medical records in their original or legally reproduced form for a period of at least 10 years. A legally reproduced form is a medical record retained in hard copy, microform (microfilm or microfiche), or electronic medium. The facility shall retain films, scans, and other image records for a period of at least five years.

(1) The facility shall not destroy medical records that relate to any matter that is involved in litigation if the facility knows the litigation has not been finally resolved.

(2) For medical records of a patient less than 18 years of age at the time of last treatment, the facility may dispose of those medical records after the date of the patient's 20th birthday or after the 10th anniversary of the date on which the patient was last treated, whichever date is later, unless the records are related to a matter that is involved in litigation that the facility knows has not been finally resolved.

(3) If a facility plans to close, the facility shall arrange for disposition of the medical records in accordance with applicable law. The facility shall notify the Texas Health and Human Services Commission at the time of closure of the disposition of the medical records, including where the medical records will be stored and the name, address, and phone number of the custodian of the records.

(g) Except when otherwise required by law, the content and format of medical records, including the sequence of information, shall be uniform.

(h) Medical records shall be available to authorized physicians and practitioners any time the facility is open to patients.

(i) The facility shall include in patients' medical records:

(1) complete patient identification;

(2) date, time, and means of arrival and discharge;

(3) allergies and untoward reactions to drugs recorded in a prominent and uniform location;

(4) all medications administered and the drug dose, route of administration, frequency of administration, and quantity of all drugs administered or dispensed to the patient by the facility and entered on the patient's medical record;

(5) significant medical history of illness and results of physical examination, including the patient's vital signs;

(6) a description of any care given to the patient before the patient's arrival at the facility;

(7) a complete detailed description of treatment and procedures performed in the facility;

(8) clinical observations including the results of treatment, procedures, and tests;

(9) diagnostic impression;

(10) a pre-anesthesia evaluation by an individual qualified to administer anesthesia when administered;

(11) a pathology report on all tissues removed, except those exempted by the governing body;

(12) documentation of a properly executed informed consent when necessary;

(13) for patients with a length of stay greater than eight hours, an evaluation of nutritional needs and evidence of how identified needs were met;

(14) evidence of patient evaluation by a physician or advanced practice registered nurse before dismissal; and

(15) conclusion at the termination of evaluation or treatment, including final disposition, the patient's condition on discharge or transfer, and any instructions given to the patient or family for follow-up care.

(j) Medical advice given to a patient by telephone shall be entered in the patient's medical record and dated, timed, and authenticated.

(k) Entries in medical records shall be legible, accurate, complete, dated, timed, and authenticated by the person responsible for providing or evaluating the service provided no later than 48 hours after discharge.

(l) To ensure continuity of care, medical records shall be transferred to the physician, practitioner, or facility to whom the patient was referred, if applicable.

§509.55. Infection Control.

(a) The facility shall provide a sanitary environment to avoid sources and transmission of infections and communicable diseases. The facility shall have an infection control program for prevention, control, and surveillance of infections and communicable diseases.

(1) The facility shall designate an infection control professional. The facility shall adopt, implement, and enforce policies governing prevention, control, and surveillance of infections and communicable diseases.

(2) The facility shall have a system for identifying, reporting, investigating, and controlling health care-associated infections and communicable diseases between patients and personnel.

(3) The infection control professional shall maintain a log of all reportable diseases and health care-associated infections designated as epidemiologically significant according to the facility's infection control policies.

(4) The facility shall adopt, implement, and enforce a written policy for reporting all reportable diseases to the local health authority and the Texas Department of State Health Services Infectious Disease Prevention Section, in accordance with 25 TAC Chapter 97 (relating to Communicable Diseases).

(5) The infection control program shall include active participation by the medical staff, nursing staff, pharmacist, and other practitioners as appropriate.

(b) The medical director is responsible for ensuring the facility-wide quality assessment and performance improvement program and training programs address problems identified by the infection control professional.

(c) The medical director is responsible for ensuring that the facility implements successful corrective action plans in affected problem areas.

(d) The facility shall adopt, implement, and enforce a written policy to monitor compliance of the facility and its personnel and medical staff with universal precautions in accordance with Texas Health and Safety Code Chapter 85 (relating to Acquired Immune Deficiency Syndrome and Human Immunodeficiency Virus Infection).

§509.56. Sanitary Conditions and Hygienic Practices.

(a) General infection control measures. Universal precautions shall be followed in the facility for all patient care activities in accordance with Code of Federal Regulations, Title 29 §1910.1030(d)(1) - (3) (relating to Bloodborne Pathogens) and Texas Health and Safety Code Chapter 85, Subchapter I (relating to Prevention of Transmission of HIV and Hepatitis B Virus by Infected Health Care Workers).

(b) Physical environment.

(1) A facility shall develop, implement, and enforce policies and procedures to provide and actively monitor a safe, functional, comfortable, and sanitary environment that minimizes or prevents transmission of infectious diseases for all patients and visitors and the public.

(2) Blood spills shall be cleaned immediately or as soon as is practical with a disposable cloth and an appropriate chemical disinfectant.

(A) If a commercial liquid chemical disinfectant is used, the surface shall be subjected to intermediate-level disinfection in accordance with the manufacturer's directions for use.

(B) If a solution of chlorine bleach (sodium hypochlorite) is used, the solution shall be at least 1:100 sodium hypochlorite and mixed in accordance with the manufacturer's directions for use. The surface to be treated shall be compatible with this type of chemical treatment.

(C) The facility shall use dedicated cleaning supplies (i.e., mop, bucket) for cleaning blood spills.

§509.57. Sterilization.

(a) A person qualified by education, training, and experience shall supervise the sterilization of all supplies and equipment. Staff responsible for sterilizing supplies and equipment shall participate in a documented continuing education program. New employees shall receive initial orientation and on-the-job training. Staff using chemical disinfectants shall have received training on their use.

(b) The facility shall adopt, implement, and enforce written policies and procedures for decontamination and sterilization activities. Policies shall include receiving, cleaning, decontaminating, disinfecting, preparing, and sterilizing reusable items, as well as assembling,

wrapping, storing, distributing, and quality control of sterile items and equipment. The infection control practitioner or committee shall review and approve these written policies at least every other year.

(c) Every facility shall provide equipment adequate for sterilizing supplies and equipment, as needed. Equipment shall be maintained and operated to accurately sterilize the various materials required.

(d) Where cleaning, preparation, and sterilization functions are performed in the same room or unit, the physical facilities, equipment, and policies and procedures for their use, shall effectively separate soiled or contaminated supplies and equipment from clean or sterilized supplies and equipment. Hand-washing facilities shall be provided, and a separate sink shall be provided for safe disposal of liquid waste.

(e) All containers for solutions, drugs, flammable solvents, ether, alcohol, and medicated supplies shall be clearly labeled to indicate contents. Containers that are sterilized by the facility shall be labeled to be identifiable before and after sterilization. Sterilized items shall have a load control identification that indicates the sterilizer used, the cycle or load number, and the sterilization date.

(f) A facility shall comply with the following sterilizer requirements.

(1) Steam sterilizers (saturated steam under pressure) shall be used to sterilize heat- and moisture-stable items. Steam sterilizers shall be used according to manufacturer's written instructions.

(2) Ethylene oxide (EO) sterilizers shall be used for processing heat- and moisture-sensitive items. EO sterilizers and aerators shall be used and vented according to the manufacturer's written instructions.

(3) Flash sterilizers shall be used only for emergency sterilization of clean, unwrapped instruments and porous items.

(g) A facility shall comply with the following sterilization preparation requirements.

(1) All items to be sterilized shall be prepared to reduce the bioburden. All items shall be thoroughly cleaned, decontaminated, and prepared in a clean, controlled environment.

(2) All articles to be sterilized shall be arranged so all surfaces will be directly exposed to the sterilizing agent for the prescribed time and temperature.

(3) All wrapped articles to be sterilized shall be packaged in materials recommended for the specific type of sterilizer and material to be sterilized.

(h) A facility shall comply with the following external chemical indicator requirements.

(1) External chemical indicators, also known as sterilization process indicators, shall be used on each package to be sterilized, including items being flash sterilized to indicate that items have been exposed to the sterilization process.

(2) The indicator results shall be interpreted according to manufacturer's written instructions and indicator reaction specifications.

(3) A log shall be maintained with the load identification, indicator results, and identification of the contents of the load.

(i) Biological indicators are commercially available microorganisms (e.g., United States Food and Drug Administration-approved strips or vials of Bacillus species endospores) that can be used to verify the performance of waste treatment equipment and processes or sterilization equipment and processes.

(1) The efficacy of the sterilizing process shall be monitored with reliable biological indicators appropriate for the type of sterilizer used.

(2) Biological indicators shall be included in at least one run each week of use for steam sterilizers, at least one run each day of use for low-temperature hydrogen peroxide gas sterilizers, and every load for EO sterilizers.

(3) Biological indicators shall be included in every load that contains implantable objects.

(4) A log shall be maintained with the load identification, biological indicator results, and identification of the contents of the load.

(5) If a test is positive, the sterilizer shall immediately be taken out of service.

(A) Implantable items shall be recalled and reprocessed if a biological indicator test (spore test) is positive.

(B) All available items shall be recalled and reprocessed if a sterilizer malfunction is found, and a list of those items not retrieved in the recall shall be submitted to infection control.

(C) A malfunctioning sterilizer shall not be put back into use until it has been serviced and successfully tested according to the manufacturer's recommendations.

(j) A facility shall comply with the following disinfection requirements.

(1) The facility shall adopt, implement, and enforce written policies, approved by the infection control committee, for the use of chemical disinfectants.

(2) The manufacturer's written instructions for the use of disinfectants shall be followed.

(3) An expiration date, determined according to manufacturer's written recommendations, shall be marked on the container of disinfection solution currently in use.

(4) Disinfectant solutions shall be kept covered and used in well-ventilated areas.

(5) Chemical germicides that are registered with the United States Environmental Protection Agency as "sterilants" may be used either for sterilization or high-level disinfection.

(6) All staff personnel using chemical disinfectants shall receive training on their use.

(k) A facility shall comply with the following performance record requirements.

(1) Performance records for all sterilizers shall be maintained for each cycle. These records shall be retained and available for review for a minimum of five years.

(2) Each sterilizer shall be monitored continuously during operation for pressure, temperature, and time at desired temperature and pressure. A record shall be maintained and shall include:

(A) the sterilizer identification;

(B) sterilization date;

(C) cycle number;

(D) contents of each load;

(E) duration and temperature of exposure phase (if not provided on sterilizer recording charts);

(F) identification of operator or operators;

(G) results of biological tests and dates performed;

(H) time-temperature recording charts from each sterilizer;

(I) gas concentration and relative humidity (if applicable); and

(J) any other test results.

(l) Storage of sterilized items shall comply with the following requirements.

(1) Sterilized items shall be transported to maintain cleanliness and sterility and to prevent physical damage.

(2) Sterilized items shall be stored in well-ventilated, limited access areas with controlled temperature and humidity.

(3) The facility shall adopt, implement, and enforce a policy that describes the mechanism used to determine the shelf life of sterilized packages.

(m) Qualified personnel shall perform preventive maintenance of all sterilizers on a scheduled basis according to adopted, implemented, and enforced policy, using the sterilizer manufacturer's service manual as a reference. A preventive maintenance record shall be maintained for each sterilizer. These records shall be retained at least two years and shall be available for review at the facility within two hours of request by the Texas Health and Human Services Commission.

§509.58. Linen and Laundry Services.

(a) The facility shall adopt, implement, and enforce policies to provide sufficient clean linen to ensure the comfort of the patient.

(b) For purposes of this subsection, contaminated linen is linen that has been soiled with blood or other potentially infectious materials or may contain sharps. Other potentially infectious materials means:

(1) the following human body fluids: semen, vaginal secretions, cerebrospinal fluid, synovial fluid, pleural fluid, pericardial fluid, peritoneal fluid, amniotic fluid, saliva in dental procedures, any body fluid that is visibly contaminated with blood, and all body fluids in situations where it is difficult or impossible to differentiate between body fluids;

(2) any unfixed tissue or organ (other than intact skin) from a human (living or dead); and

(3) Human Immunodeficiency Virus (HIV)-containing cell or tissue cultures, organ cultures, and HIV or Hepatitis B Virus (HBV)-containing culture medium or other solutions; and blood, organs, or other tissues from experimental animals infected with HIV or HBV.

(c) The facility, whether it operates its own laundry or uses a commercial service, shall ensure that employees of a facility involved in transporting, processing, or otherwise handling clean or soiled linen shall be given initial and follow-up in-service training to ensure a safe product for patients and to safeguard employees in their work.

(d) Employees who have contact with contaminated linen shall wear gloves and other appropriate personal protective equipment.

(e) Clean linen shall be handled, transported, and stored by methods that will ensure its cleanliness.

(f) Contaminated linen shall be handled as little as possible and with a minimum of agitation.

(1) Contaminated linen shall not be sorted or rinsed in patient care areas.

(2) Contaminated linen shall be bagged or put into carts at the location where it was used.

(3) Contaminated linen shall be placed and transported in bags or containers that are labeled or color-coded.

(4) Bags containing contaminated linen shall be closed before transport.

(5) Whenever contaminated linen is wet and presents a reasonable likelihood of soak-through or leakage from the bag or container, the linen shall be deposited and transported in bags that prevent leakage of fluids to the exterior.

(g) All linen placed in chutes shall be bagged.

(h) If chutes are not used to convey linen to a central receiving or sorting room, adequate space shall be allocated in the facility for holding the bagged contaminated linen.

(i) Linen shall be processed in the following manner.

(1) If hot water is used, linen shall be washed with detergent in water with a temperature of at least 71 degrees Centigrade (160 degrees Fahrenheit) for 25 minutes.

(2) If low-temperature (less than or equal to 70 degrees Centigrade, 158 degrees Fahrenheit) laundry cycles are used, chemicals suitable for low-temperature washing at proper use concentration shall be used.

(3) Fabrics soiled with blood may be commercially dry cleaned (because dry cleaning eliminates the risk of pathogen transmission).

(4) Flammable liquids shall not be used to process laundry but may be used for equipment maintenance.

§509.59. Waste and Waste Disposal.

(a) Special waste and liquid or sewage waste management.

(1) Facilities shall comply with the requirements set forth by the Texas Commission on Environmental Quality (TCEQ) in 30 TAC Chapter 326 (relating to Medical Waste Management).

(2) All sewage and liquid wastes shall be disposed of in a municipal sewerage system or a septic tank system permitted by the TCEQ in accordance with 30 TAC Chapter 285 (relating to On-Site Sewage Facilities).

(3) Facilities shall comply with the requirements set forth in 25 TAC Chapter 1, Subchapter K (relating to Definition, Treatment, and Disposition of Special Waste from Health Care-Related Facilities).

(b) Waste receptacles.

(1) Waste receptacles shall be conveniently available in all toilet rooms, patient areas, staff work areas, and waiting rooms. Receptacles shall be routinely emptied of their contents at a central location into closed containers.

(2) Waste receptacles shall be properly cleaned with soap and hot water, followed by treatment of inside surfaces of the receptacles with a germicidal agent.

(3) All containers for other municipal solid waste shall be leak-resistant, have tight-fitting covers, and be rodent-proof.

(4) Non-reusable containers shall be of suitable strength to minimize animal scavenging or rupture during collection operations.

§509.60. Patient Rights.

(a) Patients shall be treated with respect, consideration, and dignity.

(b) Patients shall be provided appropriate privacy.

(c) Patient records shall be treated confidentially. Patients shall be given the opportunity to approve or refuse release of patient records, except when release of the records is authorized by law.

(d) Patients shall be provided, to the degree known, appropriate information concerning their diagnosis, treatment, and prognosis. When it is medically inadvisable to give such information to a patient, the information shall be provided to a person designated by the patient or a legally authorized person.

(e) Patients shall be given the opportunity to participate in decisions involving their health care, except when the patient's participation is contraindicated for medical reasons.

(f) The facility shall provide information to patients and staff concerning:

(1) patient rights, including those specified in subsections (a) - (e) of this section;

(2) patient conduct and responsibilities;

(3) services available at the facility;

(4) fees for services provided;

(5) payment policies; and

(6) methods for expressing complaints and suggestions to the facility.

(g) Marketing or advertising shall not be misleading to patients.

(h) A facility shall post a notice of fees in accordance with Texas Health and Safety Code §254.155 (relating to Notice of Fees).

(i) A facility shall provide to a patient or a patient's legally authorized representative a written disclosure statement, detailing the facility's fees and health benefit plans, in accordance with Texas Health and Safety Code §254.156 (relating to Disclosure Statement Required).

(j) A facility shall comply with Texas Health and Safety Code Chapter 324, Subchapter C (relating to Billing of Facility Services and Supplies).

§509.61. Abuse and Neglect.

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

(1) Abuse--The negligent or willful infliction of injury, unreasonable confinement, intimidation, or cruel punishment, including pain or sexual abuse, that adversely affects the physical, mental, or emotional welfare of a patient.

(2) Exploitation--The use of a patient's resources for monetary or personal benefit, profit, or gain without the informed consent of the patient.

(3) Illegal conduct--Conduct prohibited by law.

(4) Neglect--The failure to provide goods or services that are necessary to avoid adversely affecting the physical, mental, or emotional welfare of a patient.

(5) Unethical conduct--Conduct prohibited by the ethical standards adopted by state or national professional organizations for their respective professions or by rules established by the state licensing agency for the respective profession.

(6) Unprofessional conduct--Conduct prohibited under rules adopted by the state licensing agency for the respective profession.

(b) The facility or a person associated with a facility, including an employee, volunteer, health care professional, or other person, shall immediately report all incidents of abuse, neglect, exploitation, illegal conduct, unethical conduct, or unprofessional conduct to the Texas Health and Human Services Commission (HHSC) and any other appropriate regulatory agency. This includes any information that would reasonably cause a person to believe that an incident of abuse, neglect, exploitation, illegal conduct, unethical conduct, or unprofessional conduct has occurred, is occurring, or will occur.

(c) A facility shall prominently and conspicuously post for display a statement of the duty to report abuse, neglect, exploitation, illegal conduct, unethical conduct, or unprofessional conduct.

(1) The display shall be posted in a public area of the facility and shall be readily visible to patients, residents, volunteers, employees, and visitors.

(2) The statement shall be in English and in a second language as appropriate to the demographic makeup of the community served.

(3) The statement shall contain the contact information for HHSC Complaint and Incident Intake.

§509.62. Reporting Requirements.

(a) A facility shall report the following incidents to the Texas Health and Human Services Commission (HHSC):

(1) the death of a patient while under the care of the facility;

(2) a patient stay exceeding 23 hours; and

(3) 9-1-1 activation or the emergency transfer of a patient from the facility to a hospital.

(b) Reports under subsection (a) of this section shall be on a form provided by HHSC. The report shall contain a written explanation of the incident and the name of the individual responsible. The report shall be submitted online or through a telephone call to HHSC Complaint and Incident Intake not later than the 10th business day after the incident.

(c) A facility shall report any abuse, theft, or diversion of controlled drugs in accordance with applicable federal and state laws and shall report the incident to the chief executive officer of the facility.

(d) A facility shall report occurrences of fires in the facility as specified under 25 TAC Chapter 131, Subchapter F (relating to Fire Prevention Safety Requirements).

§509.63. Quality Assessment and Performance Improvement.

(a) Each facility shall develop, implement, maintain, and evaluate an effective, ongoing, facility-wide, data-driven, interdisciplinary quality assessment and performance improvement (QAPI) program. The program shall be individualized to the facility and meet the criteria and standards described in this section.

(b) The program shall reflect the complexity of the facility's organization and services involved. All facility services (including services furnished under contract or arrangement) shall focus on indicators related to improved health outcomes and prevention and reduction of medical errors.

(c) The program shall include an ongoing program that achieves measurable improvement in health outcomes and reduction of medical errors by using indicators or performance measures asso-

ciated with improved health outcomes and with the identification and reduction of medical errors.

(d) The facility shall demonstrate that facility staff, including the medical, nursing, and pharmacy staff, evaluate the provision of emergency care and patient services, set treatment goals, identify opportunities for improvement, develop and implement improvement plans, and evaluate the implementation until resolution is achieved.

(e) The facility shall measure, analyze, and track quality indicators, or other aspects of performance that the facility adopts or develops, that reflect processes of care and facility operations.

(f) The facility shall provide evidence supporting that the facility continuously reviews aggregate patient data, including identification and tracking of patient infections, for trends.

(g) Core staff members, including the medical, nursing, and pharmacy staff, shall actively participate in the QAPI activities, including QAPI meetings.

(1) QAPI meetings shall be held monthly, or more often as necessary, to identify or correct problems.

(2) QAPI meetings shall be documented.

(h) The facility's QAPI program shall include:

(1) an ongoing review of key elements of care using comparative and trend data to include aggregate patient data;

(2) identification of areas where performance measures or outcomes indicate an opportunity for improvement;

(3) appointment of interdisciplinary improvement teams to:

(A) identify, measure, analyze, and track indicators for variation from desired outcomes;

(B) create and implement improvement plans;

(C) evaluate the implementation of the improvement plans; and

(D) continue monitoring and improvement activities until resolution of the improvement plan;

(4) establishing and monitoring quality indicators related to improved health outcomes, which includes establishing and monitoring a level of performance consistent with current professional knowledge for each quality assessment indicator that must influence or relate to the desired outcomes themselves;

(5) monthly measurement, analysis, and tracking of at least the following indicators:

(A) infection control (staff and patient screening; standard precautions);

(B) adverse events;

(C) mortality (review of each death and monitoring modality specific mortality rates);

(D) complaints and suggestions (from patients, family, or staff);

(E) staffing to include orientation, training, delegation, licensing and certification, and non-adherence to policies and procedures by facility staff;

(F) safety (fire and disaster preparedness, use of the Texas Health and Human Services Commission (HHSC) emergency/disaster notification form, and disposal of special waste); and

(G) clinical records review to include treatment errors and medication errors; and

(6) the facility shall continuously monitor performance, take actions that result in performance improvement, and track performance to ensure that improvements are sustained over time. The facility shall immediately correct any identified problems that threaten the health and safety of patients.

(i) HHSC may review a facility's QAPI activities to determine compliance with this section.

(1) An HHSC inspector shall verify that the facility has a QAPI program, which addresses concerns relating to quality of care provided to its patients and that the core staff members have knowledge of and the ability to access the facility's QAPI program.

(2) HHSC may not require disclosure of QAPI program records, except when disclosure is necessary for HHSC to determine compliance with this section.

§509.64. Safety and Preparedness.

(a) The facility shall follow the requirements in 25 TAC Chapter 131, Subchapter F (relating to Fire Prevention and Safety Requirements).

(b) The facility shall submit emergency and disaster information to the Texas Health and Human Services Commission (HHSC) using the HHSC Emergency/Disaster Notification form located on HHSC's website.

(c) The facility shall obtain an annual fire safety inspection from the local fire authority in whose jurisdiction the facility is based.

§509.65. Patient Transfer Policy.

(a) General.

(1) The governing body of each facility shall adopt, implement, and enforce a policy relating to patient transfers that is consistent with this section and contains each of the requirements in subsection (b) of this section. The policies shall identify facility staff that has authority to represent the facility and the physician regarding transfers from the facility.

(2) The governing body shall adopt the transfer policy after consultation with the medical staff, and the transfer policy shall apply to transfers to hospitals licensed under Texas Health and Safety Code Chapter 241 (relating to Hospitals) and Chapter 577 (relating to Private Mental Hospitals and Other Mental Health Facilities), as well as transfers to hospitals that are exempt from licensing.

(3) The transfer policy shall govern transfers not covered by a transfer agreement.

(4) The transfer policy shall include a written operational plan to provide for patient transfer transportation services if the facility does not provide its own patient transfer transportation services.

(5) The governing body, after consultation with the medical staff, shall implement its transfer policy by adopting transfer agreements with hospitals in accordance with §509.66 of this subchapter (relating to Patient Transfer Agreements).

(6) The transfer policy shall recognize and comply with the applicable requirements of Texas Health and Safety Code Chapter 61 (relating to Indigent Health Care and Treatment Act).

(7) The transfer policy shall acknowledge contractual obligations and comply with statutory or regulatory obligations that may exist concerning a patient and a designated provider.

(8) The transfer policy shall require that all reasonable steps are taken to secure the written informed consent of a patient, or a person acting on a patient's behalf, when refusing a transfer or related examination and treatment. Reasonable steps include:

(A) a factual explanation of the increased medical risks to the patient reasonably expected from not being transferred, examined, or treated at the transferring hospital;

(B) a factual explanation of any increased risks to the patient from not effecting the transfer; and

(C) a factual explanation of the medical benefits reasonably expected from the provision of appropriate treatment at another hospital.

(9) The informed refusal of a patient, or a person acting on a patient's behalf, to examination, evaluation, or transfer shall be documented and signed if possible by the patient or by a person acting on the patient's behalf, dated and witnessed by the attending physician or facility employee, and placed in the patient's medical record.

(10) The transfer policy shall recognize the right of an individual to request a transfer into the care of a physician and a hospital of the individual's own choosing.

(b) Requirements for transfer of patients from facilities to hospitals.

(1) The transfer policy shall provide that the transfer of a patient may not be predicated upon arbitrary, capricious, or unreasonable discrimination based upon race, religion, national origin, age, sex, physical condition, economic status, insurance status, or ability to pay.

(2) The transfer policy shall recognize the right of an individual to request transfer into the care of a physician and hospital of the individual's own choosing; however, if a patient requests or consents to transfer for economic reasons and the patient's choice is predicated upon or influenced by representations made by the transferring physician or facility administration regarding the availability of medical care and hospital services at a reduced cost or no cost to the patient, physician or facility administration shall fully disclose to the patient the eligibility requirements established by the patient's chosen physician or hospital.

(3) The transfer policy shall provide that each patient who arrives at the facility is:

(A) evaluated by a physician at the time the patient presents; and

(B) personally examined and evaluated by the physician before an attempt to transfer is made.

(4) The policy of the transferring facility and receiving hospital shall provide that licensed nurses and other qualified personnel are available and on duty to assist with patient transfers. The policy shall provide that written protocols or standing delegation orders are in place to guide facility personnel when a patient requires transfer to another hospital.

(5) Special requirements related to the transfer of patients who have emergency medical conditions:

(A) If a patient at a facility has an emergency medical condition that has not been stabilized, or when stabilization of the patient's vital signs is not possible because the facility does not have the appropriate equipment or personnel to correct the underlying process, the facility shall evaluate and treat the patient and transfer the patient as quickly as possible.

(B) The transfer policy shall provide that the facility may not transfer a patient with an emergency medical condition that has not been stabilized unless:

(i) the individual or the individual's legally authorized representative, after being informed of the facility's obligations under this section and the risk of transfer, requests the transfer, in writing, and indicates the reasons for the request, as well as that he or she is aware of the risks and benefits of the transfer; or

(ii) a physician has signed a certification, which includes a summary of the risks and benefits, that, based on the information available at the time of transfer, the medical benefits reasonably expected from the provision of appropriate medical treatment at a hospital outweigh the increased risks to the patient and, in the case of labor, to the unborn child from effecting the transfer.

(C) Except as is specifically provided in subsection (a)(6) and (7) of this section, the transfer policy shall provide that the transfer of patients who have emergency medical conditions, as determined by a physician, shall be undertaken for medical reasons only. The facility must provide medical treatment within its capacity that minimizes the risks to the individual's health and, in the case of a woman in labor, the health of the unborn child.

(6) The transfer policy shall provide for the following physician's duties and standard of care requirements.

(A) The transferring physician shall determine and order life support measures that are medically appropriate to stabilize the patient before transfer and to sustain the patient during transfer.

(B) The transferring physician shall determine and order the utilization of appropriate personnel and equipment for the transfer.

(C) In determining the use of medically appropriate life support measures, personnel, and equipment, the transferring physician shall exercise that degree of care that a reasonable and prudent physician exercising ordinary care in the same or similar locality would use for the transfer.

(D) Except as allowed under paragraph (5)(B) of this subsection, before each patient transfer, the physician who authorizes the transfer shall personally examine and evaluate the patient to determine the patient's medical needs and to ensure that the proper transfer procedures are used.

(E) Before transfer, the transferring physician shall ensure that a receiving hospital and physician that are appropriate to the medical needs of the patient have accepted responsibility for the patient's medical treatment and hospital care.

(7) The facility's medical staff shall review appropriate records of patients transferred from the facility to determine that the appropriate standard of care has been met.

(8) A facility shall comply with the following medical record requirements.

(A) The facility's policy shall require that a copy of those portions of the patient's medical record that are available and relevant to the transfer and to the continuing care of the patient be forwarded to the receiving physician and receiving hospital with the patient. If all necessary medical records for the continued care of the patient are not available at the time the patient is transferred, the records shall be forwarded to the receiving physician and hospital as soon as possible.

(B) The medical record shall contain at least:

(i) a brief description of the patient's medical history and physical examination;

(ii) a working diagnosis and recorded observations of physical assessment of the patient's condition at the time of transfer;

(iii) the reason for the transfer;

(iv) the results of all diagnostic tests, such as laboratory tests;

(v) pertinent radiological films and reports; and

(vi) any other pertinent information.

(9) A facility shall comply with the following memorandum of transfer requirements.

(A) The facility's policy shall require that a memorandum of transfer be completed for every patient who is transferred.

(B) The memorandum shall contain the:

(i) patient's full name, if known;

(ii) patient's race, religion, national origin, age, sex, physical handicap, if known;

(iii) patient's address and next of kin, address, and phone number, if known;

(iv) names, telephone numbers, and addresses of the transferring and receiving physicians;

(v) names, addresses, and telephone numbers of the transferring facility and receiving hospital;

(vi) time and date on which the patient first presented or was presented to the transferring physician and transferring facility;

(vii) time and date on which the transferring physician secured a receiving physician;

(viii) name, date, and time hospital administration was contacted in the receiving hospital;

(ix) signature, time, and title of the transferring facility administration who contacted the receiving hospital;

(x) certification required by paragraph (5)(B)(ii) of this subsection, if applicable (the certification may be part of the memorandum of transfer form or may be on a separate form attached to the memorandum of transfer form);

(xi) time and date on which the receiving physician assumed responsibility for the patient;

(xii) time and date on which the patient arrived at the receiving hospital;

(xiii) signature and date of receiving hospital administration;

(xiv) type of vehicle and company used to transport the patient;

(xv) type of equipment and personnel needed in the transfer;

(xvi) name and city of hospital to which patient was transported;

(xvii) diagnosis by transferring physician; and

(xviii) attachments by transferring facility.

(C) A copy of the memorandum of transfer shall be retained by the transferring facility. The memorandum shall be filed separately from the patient's medical record and in a manner that will facilitate its inspection by HHSC. All memorandum of transfer forms filed separately shall be retained for at least five years.

(c) Violations. A facility violates the Act and this section if:

(1) the facility fails to comply with the requirements of this section; or

(2) the governing body fails or refuses to:

(A) adopt a transfer policy that is consistent with this section and contains each of the requirements in subsection (b) of this section;

(B) adopt a memorandum of transfer form that meets the minimum requirements for content contained in this section; or

(C) enforce its transfer policy and the use of the memorandum of transfer.

§509.66. Patient Transfer Agreements.

(a) General provisions.

(1) Patient transfer agreements between a facility and hospitals are mandatory.

(2) The facility shall submit the transfer agreement to the Texas Health and Human Services Commission (HHSC) for review to determine if the agreement meets the requirements of subsection (b) of this section.

(3) Multiple transfer agreements may be entered into by a facility based upon the type or level of medical services available at other hospitals.

(b) Minimum requirements for patient transfer agreements. Patient transfer agreements shall include specific language that is consistent with:

(1) Texas Health and Safety Code Chapter 61 (relating to Indigent Health Care Treatment Act), in accordance with §509.65(a)(6) of this subchapter (relating to Patient Transfer Policy);

(2) discrimination, in accordance with §509.65(b)(1) of this subchapter;

(3) patient's right to request transfer, in accordance with §509.65(b)(2) of this subchapter;

(4) transfer of patients with emergency medical conditions, in accordance with §509.65(b)(5) of this subchapter;

(5) physician's duties and standard of care, in accordance with §509.65(b)(6) of this chapter;

(6) medical records, in accordance with §509.65(b)(8) of this subchapter; and

(7) memorandum of transfer, in accordance with §509.65(b)(9) of this chapter.

(c) Review of transfer agreements.

(1) The facility shall submit the following documents to HHSC for review so HHSC may determine whether the transfer agreements comply with this section's requirements:

(A) a copy of the current or proposed agreement signed by the representatives of the facility and the hospital;

(B) the date of the adoption of the agreement; and

(C) the effective date of the agreement.

(2) HHSC may waive the documents submission required under paragraph (1) of this subsection to avoid the repetitious submission of required documentation and approved agreements.

(3) If a governing body or a governing body's designee executes a transfer agreement and the entire text of that agreement consists of the entire text of an agreement that has been previously approved by HHSC, the governing body or the governing body's designee is not required to submit the later agreement for review. On the date the later agreement is fully executed and before the later agreement is implemented, the governing body or the governing body's designee shall give notice to HHSC that the later agreement has been executed.

(4) HHSC shall review the agreement not later than 30 calendar days after the date HHSC receives the agreement to determine if the agreement is consistent with the requirements of this section.

(5) After HHSC review of the agreement, if HHSC determines that the agreement is consistent with the requirements contained in this section, HHSC shall notify the facility administration that the agreement has been approved.

(6) If HHSC determines that the agreement is not consistent with the requirements contained in this section, HHSC shall give notice to the facility administration that the agreement is deficient and provide recommendations for correction.

(7) A transfer agreement will be considered in compliance if it is consistent with the rules that were in effect at the time the transfer agreement was executed and approved by HHSC.

(d) Amendments to an agreement.

(1) The governing body of a facility or governing body's designee may adopt proposed amendments to a transfer agreement that has been approved by HHSC. Before the facility implements the amendments, the governing body or the governing body's designee shall submit the proposed amendments to HHSC for review in the same manner as the agreement was submitted.

(2) HHSC shall review the amendments and approve or reject them in the same manner as provided for the review of the agreement.

(e) Complaints. Complaints alleging a violation of a transfer agreement shall be treated in the same manner as complaints alleging violations of the Act or this chapter.

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 June 29, 2023.

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Karen Ray
Chief Counsel
Health and Human Services Commission
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For further information, please call: (512) 834-4591

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SUBCHAPTER D. INSPECTION AND INVESTIGATION PROCEDURES

26 TAC §§509.81 - 509.86

STATUTORY AUTHORITY

The new rules are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and to implement Texas Health and Safety Code §254.101, which authorizes HHSC to adopt rules regarding FEMC facilities.

The new rules implement Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 254.

§509.81. Integrity of Inspections and Investigations.

(a) In order to preserve the integrity of the Texas Health and Human Services Commission's (HHSC's) inspection and investigation process, a facility:

(1) shall not record, listen to, or eavesdrop on any HHSC interview with facility staff or patients unless HHSC has granted permission; or

(2) shall not record, listen to, or eavesdrop on any internal discussion by or among HHSC staff unless it first informs HHSC staff that it will do so and obtains HHSC's written approval before beginning to record, listen to, or eavesdrop on the discussion.

(b) A facility shall inform HHSC when security cameras or other existing recording devices in the facility are in operation during any internal discussion by or among HHSC staff.

(c) This section does not prohibit an individual from recording an HHSC interview with the individual.

§509.82. Inspections.

(a) The Texas Health and Human Services Commission (HHSC) may conduct an unannounced, on-site inspection of a facility at any reasonable time, including when treatment services are provided, to inspect, investigate, or evaluate compliance with or prevent a violation of:

(1) any applicable statute or rule;

(2) a facility's plan of correction;

(3) an order or special order of the executive commissioner or the executive commissioner's designee;

(4) a court order granting injunctive relief; or

(5) for other purposes relating to regulation of the facility.

(b) An applicant or licensee, by applying for or holding a license, consents to entry and inspection of any of its facilities by HHSC.

(c) HHSC inspections to evaluate a facility's compliance may include:

(1) initial, change of ownership, or relocation inspections for the issuance of a new license;

(2) inspections related to changes in status, such as new construction or changes in services, designs, or bed numbers;

(3) routine inspections, which may be conducted without notice and at HHSC's discretion, or prior to renewal;

(4) follow-up on-site inspections, conducted to evaluate implementation of a plan of correction for previously cited deficiencies;

(5) inspections to determine if an unlicensed facility is offering or providing, or purporting to offer or provide, treatment; and

(6) entry in conjunction with any other federal, state, or local agency's entry.

(d) A facility shall cooperate with any HHSC inspection and shall permit HHSC to examine the facility's grounds, buildings, books, records, and other documents and information maintained by or on behalf of the facility.

(e) A facility shall permit HHSC access to interview members of the governing body, personnel, and patients, including the opportunity to request a written statement.

(f) A facility shall permit HHSC to inspect and copy any requested information, unless prohibited by law. If it is necessary for HHSC to remove documents or other records from the facility, HHSC provides a written description of the information being removed and when it is expected to be returned. HHSC makes a reasonable effort, consistent with the circumstances, to return any records removed in a timely manner.

(g) HHSC shall maintain the confidentiality of facility records as applicable under state and federal law.

(h) Upon entry, HHSC holds an entrance conference with the facility's designated representative to explain the nature, scope, and estimated duration of the inspection.

(i) During the inspection, the HHSC representative gives the facility representative an opportunity to submit information and evidence relevant to matters of compliance being evaluated.

(j) When an inspection is complete, the HHSC representative holds an exit conference with the facility representative to inform the facility representative of any preliminary findings of the inspection, including possible health and safety concerns. The facility may provide any final documentation regarding compliance during the exit conference.

§509.83. Complaint Investigations.

(a) At the time of the initial physician assessment, a facility shall provide each patient and applicable consenter with a written statement identifying the Texas Health and Human Services Commission (HHSC) as the agency responsible for investigating complaints against the facility.

(1) The statement shall inform persons that they may direct a complaint to HHSC Complaint and Incident Intake (CII) and include current CII contact information, as specified by HHSC.

(2) The facility shall prominently and conspicuously post this statement in patient common areas and in visitor's areas and waiting rooms so that it is readily visible to patients, employees, and visitors. The information shall be in English and in a second language appropriate to the demographic makeup of the community served.

(b) HHSC evaluates all complaints. A complaint must be submitted using HHSC's current CII contact information for that purpose, as described in subsection (a) of this section.

(c) HHSC documents, evaluates, and prioritizes complaints based on the seriousness of the alleged violation and the level of risk to patients, personnel, and the public.

(1) Allegations determined to be within HHSC's regulatory jurisdiction relating to freestanding emergency medical care facilities may be investigated under this chapter.

(2) HHSC may refer complaints outside HHSC's jurisdiction to an appropriate agency, as applicable.

(d) HHSC shall conduct investigations to evaluate a facility's compliance following a complaint of abuse, neglect, or exploitation; or a complaint related to the health and safety of patients.

(e) HHSC may conduct an unannounced, on-site investigation of a facility at any reasonable time, including when treatment services are provided, to inspect or investigate:

(1) a facility's compliance with any applicable statute or rule;

(2) a facility's plan of correction;

(3) a facility's compliance with an order of the executive commissioner or the executive commissioner's designee;

(4) a facility's compliance with a court order granting injunctive relief; or

(5) for other purposes relating to regulation of the facility.

(f) An applicant or licensee, by applying for or holding a license, consents to entry and investigation of any of its facilities by HHSC.

(g) A facility shall cooperate with any HHSC investigation and shall permit HHSC to examine the facility's grounds, buildings, books, records, and other documents and information maintained by, or on behalf of, the facility.

(h) A facility shall permit HHSC access to interview members of the governing body, personnel, and patients, including the opportunity to request a written statement.

(i) HHSC shall maintain the confidentiality of facility records as applicable under state and federal law.

(j) A facility shall permit HHSC to inspect and copy any requested information. If it is necessary for HHSC to remove documents or other records from the facility, HHSC provides a written description of the information being removed and when it is expected to be returned. HHSC makes a reasonable effort, consistent with the circumstances, to return any records removed in a timely manner.

(k) Upon entry, the HHSC representative holds an entrance conference with the facility's designated representative to explain the nature, scope, and estimated duration of the investigation.

(l) The HHSC representative holds an exit conference with the representative to inform the facility representative of any preliminary findings of the investigation. The facility may provide any final documentation regarding compliance during the exit conference.

(m) Once an investigation is complete, HHSC reviews the evidence from the investigation to evaluate whether there is a preponderance of evidence supporting the allegations contained in the complaint.

§509.84. Notice.

(a) A facility is deemed to have received any Texas Health and Human Services Commission (HHSC) correspondence on the date of receipt, or three business days after mailing, whichever is earlier.

(b) When HHSC finds deficiencies:

(1) HHSC provides the facility with a written Statement of Deficiencies (SOD) within 10 business days after the exit conference via U.S. Postal Service or electronic mail.

(2) Within 10 calendar days after the facility's receipt of the SOD, the facility shall return to HHSC a written Plan of Correction (POC) that addresses each cited deficiency, including timeframes for corrections, together with any additional evidence of compliance.

(A) HHSC determines if a POC and proposed timeframes are acceptable, and, if accepted, notifies the facility in writing.

(B) If HHSC does not accept the POC, HHSC notifies the facility in writing and requests the facility submit a modified POC

and any additional evidence no later than 10 business days after HHSC notifies the facility in writing.

(C) The facility shall correct the identified deficiencies and submit to HHSC evidence verifying implementation of corrective action within the timeframes set forth in the POC, or as otherwise specified by HHSC.

(3) Regardless of the facility's compliance with this subsection or HHSC's acceptance of a facility's POC, HHSC may, at any time, propose to take enforcement action as appropriate under this chapter.

§509.85. Professional Conduct.

In addition to any enforcement action under this chapter, the Texas Health and Human Services Commission reports, in writing, to the appropriate licensing board any issue or complaint relating to the conduct of a licensed professional, intern, or applicant for professional licensure.

§509.86. Complaint Against an HHSC Representative.

A facility may register a complaint against a Texas Health and Human Services Commission (HHSC) representative who conducts an inspection or investigation under this subchapter by following the procedure listed on the HHSC website.

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 June 29, 2023.

TRD-202302362
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: August 13, 2023
For further information, please call: (512) 834-4591

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SUBCHAPTER E. ENFORCEMENT

26 TAC §§509.101 - 509.108

STATUTORY AUTHORITY

The new rules are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and to implement Texas Health and Safety Code §254.101, which authorizes HHSC to adopt rules regarding FEMC facilities.

The new rules implement Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 254.

§509.101. Enforcement.

(a) Enforcement is a process by which a sanction is proposed, and if warranted, imposed on an applicant or licensee regulated by the Texas Health and Human Services Commission (HHSC) for failure to comply with applicable statutes, rules, and orders.

(b) HHSC has jurisdiction to enforce violations of the Act and this chapter.

(c) HHSC may deny, suspend, or revoke a license or impose an administrative penalty for:

(1) failure to comply with any applicable provision of Texas Health and Safety Code (HSC), including Chapter 254 (relating to Freestanding Emergency Medical Care Facilities);

(2) failure to comply with any provision of this chapter or any other applicable laws;

(3) the facility, or any of its employees, commits an act which causes actual harm or risk of harm to the health or safety of a patient;

(4) the facility, or any of its employees, materially alters any license issued by HHSC;

(5) failure to comply with minimum standards for licensure;

(6) failure to provide a complete license application;

(7) failure to comply with an order of the executive commissioner or another enforcement procedure under the Act;

(8) a history of failure to comply with the applicable rules relating to patient environment, health, safety, and rights;

(9) the facility aiding, committing, abetting, or permitting the commission of an illegal act;

(10) the facility, or any of its employees, committing fraud, misrepresentation, or concealment of a material fact on any documents required to be submitted to HHSC or required to be maintained by the facility pursuant to the Act and the provisions of this chapter;

(11) failure to timely pay an assessed administrative penalty as required by HHSC;

(12) failure to submit an acceptable plan of correction for cited deficiencies within the timeframe required by HHSC;

(13) failure to timely implement plans of corrections to deficiencies cited by HHSC within the dates designated in the plan of correction; or

(14) failure to comply with applicable requirements within a designated probation period.

(d) If HHSC proposes to deny, suspend, revoke a license, or impose an administrative penalty, HHSC shall send a notice of the proposed action by certified mail, return receipt requested, at the address shown in the current records of HHSC, or HHSC may personally deliver the notice. The notice to deny, suspend, or revoke a license, or impose an administrative penalty, shall state the alleged facts or conduct to warrant the proposed action, provide an opportunity to demonstrate or achieve compliance, and shall state that the applicant or license holder has an opportunity for a hearing before taking the action.

(e) Within 20 calendar days after receipt of the notice, the applicant or licensee may notify HHSC, in writing, of acceptance of HHSC's determination or request a hearing.

(f) A request for a hearing by the applicant or licensee shall be in writing and submitted to HHSC within 20 calendar days after receipt of the notice. Receipt of the notice is presumed to occur on the third day after the date HHSC mails the notice to the last known address of the applicant or licensee.

(1) A hearing shall be conducted pursuant to Government Code Chapter 2001 (relating to Administrative Procedure) and 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act).

(2) If an applicant or licensee does not request a hearing in writing within 20 calendar days after receiving notice of the proposed action, the applicant or licensee is deemed to have waived the opportunity for a hearing and HHSC shall take the proposed action.

§509.102. Denial of a License.

The Texas Health and Human Services Commission (HHSC) has jurisdiction to enforce violations of the Act and this chapter. HHSC may deny a license if the applicant:

(1) fails to provide timely and sufficient information required by HHSC that is directly related to the application; or

(2) has had the following actions taken against the applicant within the two-year period preceding the application:

(A) decertification or cancellation of its contract under the Medicare or Medicaid program in any state;

(B) federal Medicare or state Medicaid sanctions or penalties;

(C) unsatisfied federal or state tax liens;

(D) unsatisfied final judgments;

(E) eviction involving any property or space used as a freestanding emergency medical care (FEMC) facility in any state;

(F) unresolved federal Medicare or state Medicaid audit exceptions;

(G) denial, suspension, or revocation of an FEMC facility license, a hospital license, a private psychiatric hospital license, or a license for any health care facility in any state; or

(H) a court injunction prohibiting ownership or operation of a facility.

§509.103. Suspension; Revocation.

(a) The Texas Health and Human Services Commission (HHSC) may deny a person or entity a license or suspend or revoke an existing license on the grounds that the person or entity has been convicted of a felony or misdemeanor that directly relates to the duties and responsibilities of the ownership or operation of a facility.

(b) In determining whether a criminal conviction directly relates, HHSC shall apply the requirements and consider the provisions of Texas Occupations Code Chapter 53 (relating to Consequences of Criminal Conviction).

(c) The following felonies and misdemeanors directly relate to the duties and responsibilities of the ownership or operation of a health care facility because these criminal offenses indicate an ability or a tendency for the person to be unable to own or operate a facility:

(1) a misdemeanor violation of the Act;

(2) a misdemeanor or felony involving moral turpitude;

(3) a misdemeanor or felony relating to deceptive business practices;

(4) a misdemeanor or felony of practicing any health-related profession without a required license;

(5) a misdemeanor or felony under any federal or state law relating to drugs, dangerous drugs, or controlled substances;

(6) a misdemeanor or felony under Texas Penal Code (TPC) Title 5, involving a patient or a client of any health care facility, a home and community support services agency or a health care professional;

(7) a misdemeanor or felony under TPC:

(A) Title 4, concerning offenses of attempting or conspiring to commit any of the offenses in this paragraph;

(B) Title 5, concerning offenses against the person;

(C) Title 7, concerning offenses against property;

(D) Title 8, concerning offenses against public administration;

(E) Title 9, concerning offenses against public order and decency;

(F) Title 10, concerning offenses against public health, safety, and morals; or

(G) Title 11, concerning offenses involving organized crime.

(8) Offenses listed in this subsection are not exclusive in that HHSC may consider similar criminal convictions from other state, federal, foreign, or military jurisdictions that indicate an inability or tendency for the person or entity to be unable to own or operate a facility.

(d) HHSC shall revoke a license on the licensee's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.

§509.104. Emergency Suspension.

(a) The Texas Health and Human Services Commission (HHSC) may issue an emergency order to suspend a facility's license issued under this chapter, if HHSC has reasonable cause to believe that the conduct of a license holder creates an immediate danger to public health and safety.

(b) An emergency suspension under this section is effective immediately without a hearing on notice to the license holder.

(c) On written request of the license holder to HHSC for a hearing, HHSC shall refer the matter to the State Office of Administrative Hearings. An administrative law judge of the office shall conduct a hearing, not earlier than the 10th day or later than the 30th day after the date HHSC receives the hearing request, to determine if the emergency suspension is to be continued, modified, or rescinded.

(d) A hearing and any appeal under this section are governed by HHSC rules for a contested case hearing and Texas Government Code Chapter 2001 (relating to Administrative Procedure).

§509.105. Probation.

(a) If the Texas Health and Human Services Commission (HHSC) finds that a facility is in repeated noncompliance with the Act or this chapter but that the noncompliance does not endanger public health and safety, HHSC may place the facility on probation rather than suspending or revoking the facility's license.

(b) HHSC shall provide notice to the facility of the probation and of the items of noncompliance not later than the 10th day before the date the probation period begins.

(c) HHSC shall designate a period of not less than 30 days during which the facility remains under probation.

(d) During the probation period, the facility shall correct the items of noncompliance and report the corrections to HHSC for approval.

(e) HHSC may verify the corrective actions through an on-site inspection.

(f) HHSC may suspend or revoke the license of a facility that does not correct items of noncompliance or that does not comply with the Act or this chapter within the applicable probation period.

§509.106. Injunction.

Pursuant to Texas Health and Safety Code §254.203 (relating to Injunction), the Texas Health and Human Services Commission (HHSC)

may petition a district court for a temporary restraining order to restrain a continuing violation of the standards or licensing requirements provided under the Act or Texas Health and Safety Code Section 254.158 (relating to Removal of Signs) if HHSC finds that the violation creates an immediate threat to the health and safety of the patients of a facility or of the public.

§509.107. Administrative Penalty.

(a) The Texas Health and Human Services Commission (HHSC) may impose an administrative penalty on a person licensed under the Act who violates the Act, this chapter, or an order adopted under this chapter.

(b) The amount of the penalty may not exceed $1,000 for each violation. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(c) The amount shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(2) the threat to health or safety caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) whether the violator demonstrated good faith efforts to come into compliance; and

(6) any other matter that justice may require.

(d) If HHSC initially determines that a violation occurred, HHSC shall give written notice of the report by certified mail to the person.

(e) The notice under subsection (d) of this section shall include:

(1) a brief summary of the alleged violation;

(2) a statement of the amount of the recommended penalty; and

(3) a statement of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(f) Within 20 calendar days after the date the person receives the notice under subsection (d) of this section, the person in writing may:

(1) accept the determination and recommended penalty of HHSC; or

(2) make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

(g) If the person accepts the determination and recommended penalty or if the person fails to respond to the notice, the executive commissioner or the executive commissioner's designee by order shall approve the determination and impose the recommended penalty.

(h) If the person requests a hearing, the executive commissioner shall refer the matter to the State Office of Administrative Hearings (SOAH), which will set the hearing date. HHSC shall give written notice of the time and place of the hearing to the person. An administrative law judge with SOAH will conduct the hearing.

(i) The administrative law judge will make findings of fact and conclusions of law and issue to the executive commissioner a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty.

(j) Based on the findings of fact, conclusions of law, and proposal for a decision, the executive commissioner by order may:

(1) find that a violation occurred and impose a penalty; or

(2) find that a violation did not occur.

(k) The notice of the order under subsection (j) of this section that HHSC sends to the person in accordance with Texas Government Code Chapter 2001 (relating to Administrative Procedure) must include a statement of the right of the person to judicial review of the order.

§509.108. Payment of Administrative Penalty; Judicial Review.

(a) Within 30 calendar days after the date an order of the executive commissioner under §509.107(k) of this subchapter (relating to Administrative Penalty) that imposes an administrative penalty becomes final, the person shall:

(1) pay the penalty; or

(2) pursuant to Texas Health and Safety Code (HSC) §254.206 (relating to Payment and Collection of Administrative Penalty; Judicial Review), file a petition for judicial review of the executive commissioner's order contesting the occurrence of the violation, the amount of the penalty, or both.

(b) Within the 30-day period prescribed by subsection (a) of this section, a person who files a petition for judicial review may:

(1) stay enforcement of the penalty by:

(A) paying the penalty to the court for placement in an escrow account; or

(B) giving the court a supersedeas bond that is approved by the court for the amount of the penalty, and that is effective until all judicial review of the commissioner's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) sending a copy of the affidavit to the executive commissioner by certified mail.

(3) If the executive commissioner receives a copy of an affidavit under paragraph (2)(B) of this subsection, the executive commissioner may file with the court, within five days after the date the copy is received, a contest to the affidavit. In accordance with HSC §254.206(c), the court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or to give a supersedeas bond.

(c) If the person does not pay the penalty and the enforcement of the penalty is not stayed, HHSC may refer the matter to the attorney general for collection of the penalty. As provided by HSC §254.206(d), the attorney general may sue to collect the penalty.

(d) A decision by the court is governed by HSC §254.206(e) and (f) and provides the following.

(1) If the court sustains the finding that a violation occurred, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty.

(2) If the court does not sustain the finding that a violation occurred, the court shall order that a penalty is not owed.

(e) The remittance of penalty and interest is governed by HSC §254.206(g) and provides the following.

(1) If the person paid the penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person within 30 days after the date that the judgment of the court becomes final.

(2) The interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank.

(3) The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

(f) The release of supersedeas bond is governed by HSC §254.206(h) and provides the following.

(1) If the person gave a supersedeas bond and the court does not uphold the penalty, the court shall order, when the court's judgment becomes final, the release of the bond.

(2) If the person gave a supersedeas bond and the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the reduced amount.

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
Health and Human Services Commission
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For further information, please call: (512) 834-4591

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 3. LIFE, ACCIDENT, AND HEALTH INSURANCE AND ANNUITIES

SUBCHAPTER HH. STANDARDS FOR REASONABLE COST CONTROL AND UTILIZATION REVIEW FOR CHEMICAL DEPENDENCY TREATMENT CENTERS

The Texas Department of Insurance (TDI) proposes to repeal 28 TAC §§3.8001 - 3.8030, which established chemical dependency treatment standards, including cost control and utilization review standards, and adopt new 28 TAC §3.8001, regulating chemical dependency treatment standards.

EXPLANATION. The proposed repeal of §§3.8001 - 3.8030 and proposed adoption of new §3.8001 implement Insurance Code §1368.007. Section 1368.007 requires that TDI adopt by rule chemical dependency treatment standards for use by group health benefit plans, other third-party reimbursement sources, and chemical dependency treatment centers. These standards must provide for (1) reasonable control of costs necessary for inpatient and outpatient treatment of chemical dependency, including guidelines for treatment periods; and (2) appropriate utilization review of treatment, as well as necessary extensions of treatment. When providing coverage for chemical dependency treatment, health benefit plan issuers are also governed by other laws, including utilization review standards in Insurance Code Chapter 4201 and parity requirements for mental health conditions and substance use disorders in Insurance Code Chapter 1355, Subchapter F. Coordination of statutory language is addressed in rules implementing parity requirements at 28 TAC §21.2403. TDI encourages issuers to consider all applicable laws when designing policies and procedures related to coverage for chemical dependency treatment.

Proposed new §3.8001 requires group health benefit plan issuers subject to Insurance Code Chapter 1368 to use the applicable screening criteria published in the 27th edition of the MCG Care Guidelines (formerly Milliman Care Guidelines) or the 3rd edition of the American Society of Addiction Medicine (ASAM) Criteria for any utilization review of treatment required under Insurance Code Chapter 1368. This section will be updated as needed. The MCG Care Guidelines and ASAM Criteria meet Insurance Code §1368.007 treatment standards and the state standards for screening criteria used in utilization review and are already widely used by most health benefit plans. Following the MCG Care Guidelines or ASAM Criteria will ensure that issuers cover an appropriate continuum of care for treatment of substance use disorders and support the health, safety, and welfare of Texas insureds. To provide adequate time for issuers to transition to the new standards, TDI proposes an effective date of 180 days after the date the rule is adopted.

The following paragraphs summarize the proposal.

New §3.8001. Chemical Dependency Treatment Standards. Proposed new §3.8001 identifies the treatment standards that must be used for coverage of chemical dependency treatment. Subsection (a) explains that the purpose of the rule is to implement Insurance Code §1368.007. Subsection (b) clarifies that the section applies to a group health benefit plan that is subject to Insurance Code Chapter 1368. Subsection (c) specifies that the treatment standards adopted by the section are the 27th edition of the MCG Care Guidelines or the 3rd edition of the ASAM Criteria. Subsection (d) requires that group health benefit plans use either the MCG Care Guidelines or the ASAM Criteria for any treatment required to be covered under Insurance Code Chapter 1368.

Repeal of §§3.8001 - 3.8030. TDI proposes to repeal §§3.8001 - 3.8030.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Rachel Bowden, director of Regulatory Initiatives in the Life and Health Division, has determined that there will be no fiscal impact on state and local governments to enforce or administer the section during each year of the first five years the proposed repeal and new section are in effect other than that imposed by the statute. Ms. Bowden made this determination because the proposed repeal and new section do not increase or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed new rule.

Ms. Bowden does not anticipate any effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed repeal and new section are in effect, Ms. Bowden expects that administering the proposed repeal and new section will have the public benefit of ensuring that TDI's rules conform to Insurance Code §1368.007 and §4201.153. The proposed changes will ensure that health benefit plan issuers are using screening criteria that are current and clinically valid. The updated MCG Care Guidelines and ASAM Criteria will provide a clear framework for coverage of an appropriate continuum of care for chemical dependency treatment. Replacing the treatment standards as proposed will protect the health, safety, and welfare of Texas insureds and those receiving chemical dependency treatment services.

Ms. Bowden expects that the proposed repeal and new section will increase the cost of compliance with Insurance Code §1368.007 for any group health benefit plan issuer that is not already using one of the proposed MCG Care Guidelines or ASAM Criteria. An issuer that is currently using a different treatment standard would need to purchase a license to access either the MCG Care Guidelines or ASAM Criteria. Access to both MCG Care Guidelines and ASAM Criteria is licensed on a nationwide, per-member basis, ranging from $2,600 per year for low-subscriber plans to over $375,000 per year for larger plans.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposal will not have an adverse economic effect or a disproportionate economic impact on rural communities, but it may have an adverse economic effect on small or micro businesses, to the extent that they offer group health benefit plans that are subject to Insurance Code Chapter 1368. The cost analysis in the Public Benefit and Cost Note section of this proposal also applies to these small and micro businesses. The department estimates that the proposed rule will affect approximately between one and three small or micro businesses.

The objective of this proposal is to ensure that group health benefit plan issuers are using up-to-date and clinically valid screening criteria when making coverage determinations for chemical dependency treatment. TDI has considered the following options to minimize any adverse effects on small and micro businesses while accomplishing the proposal's objectives:

(1) not repealing current sections and proposing the new section and allowing issuers, including those that are small or micro businesses, to continue using the standards contained in the current sections;

(2) phasing in a deadline for all issuers or just small or micro businesses to begin using the new treatment standards; and

(3) permitting all issuers or just small or micro businesses to use any chemical dependency treatment standards that satisfied the requirements under Insurance Code §4201.153.

In considering Option 1, TDI believes that, absent the repeal of the current sections and adoption of the new section, some issuers may inappropriately deny care on the basis of outdated standards contained in the current rules. To ensure that all issuers use current standards to evaluate proposed care and protect the health, safety, and welfare of the residents of this state, TDI rejected this option.

In considering Option 2, TDI believes all issuers, and particularly small and micro businesses, should have adequate time to transition to the new treatment standards. Issuers that are not already using the MCG Care Guidelines or ASAM Criteria will need time to evaluate which standard to use, purchase a license, and train staff on the new standards. More time may help issuers negotiate purchases and incorporate the transition into broader operational decisions. It may also enable issuers to train staff and implement the new standards using existing resources. Therefore, TDI anticipates making the new section effective 180 days after adoption.

In considering Option 3, TDI believes that failing to adopt specific treatment standards would not satisfy the requirements of Insurance Code §1368.007, which requires TDI to "adopt standards formulated and approved by the department." While Insurance Code §4201.153 requires screening criteria used by utilization review agents to meet certain standards, it does not require uniformity. Differences in standards selected by each utilization review agent could lead to inconsistent determinations. Specifying the standards as proposed, which are closely aligned in substance, will provide more clarity to providers of chemical dependency treatment. Because of this, TDI rejected this option.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that the proposal does impose a cost on regulated persons. However, no additional rule amendments are required under Government Code §2001.0045 because the proposed rule is necessary to implement Insurance Code §1368.007 and §4201.153 and to protect the health, safety, and welfare of the residents of this state by ensuring that outdated standards for treatment of chemical dependency are repealed and standards reflecting the most current accepted practices are adopted.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed rule is in effect, the proposed rule:

- will not create or eliminate a government program;

- will not require the creation of new employee positions or the elimination of existing employee positions;

- will not require an increase or decrease in future legislative appropriations to TDI;

- will not require an increase or decrease in fees paid to the agency;

- will create a new regulation;

- will repeal regulations;

- will not increase or decrease the number of individuals subject to the rule's applicability; and

- will not positively nor adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal 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. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on August 14, 2023. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

The commissioner of insurance will also consider written and oral comments on the proposal in a public hearing under Docket No. 2838 at 2:00 p.m., central time, on August 8, 2023, in Room 2.029 of the Barbara Jordan State Office Building, 1601 Congress Avenue, Austin, Texas 78701.

28 TAC §§3.8001 - 3.8030

STATUTORY AUTHORITY. TDI proposes the repeal of §§3.8001 - 3.8030 under Insurance Code §§1355.258, 1368.007, 4201.003, and 36.001.

Insurance Code §1355.258 requires the commissioner to adopt rules necessary to implement Chapter 1355, Subchapter F.

Insurance Code §1368.007 requires that TDI adopt by rule chemical dependency treatment standards for use by insurers, other third-party reimbursement sources, and chemical dependency treatment centers. These standards must provide for (1) reasonable control of costs necessary for inpatient and outpatient treatment of chemical dependency, including guidelines for treatment periods; and (2) appropriate utilization review of treatment, as well as necessary extensions of treatment.

Insurance Code §4201.003 authorizes the commissioner to adopt rules to implement Chapter 4201.

Insurance Code §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.

CROSS-REFERENCE TO STATUTE. The repeal of §§3.8001 - 3.8030 implements Insurance Code Chapter 1368.

§3.8001. Definitions.

§3.8002. Purpose and General Provisions.

§3.8003. Criteria.

§3.8004. Admission and Monitoring.

§3.8005. Utilization Review.

§3.8007. Admission Criteria for Inpatient (Hospital or 24-hour Residential) Detoxification Services.

§3.8008. Continued Stay Criteria for Inpatient (Hospital or 24-hour Residential) Detoxification Services.

§3.8009. Discharge Criteria for Inpatient (Hospital or 24-hour Residential) Detoxification Services.

§3.8010. Recommended Length of Stay for Inpatient (Hospital or 24-hour Residential) Detoxification Services.

§3.8011. Admission Criteria for Inpatient Rehabilitation/Treatment (Hospital or 24-hour Residential) Services.

§3.8012. Continued Stay Criteria for Inpatient Rehabilitation/Treatment (Hospital or 24-hour Residential) Services.

§3.8013. Discharge Criteria for Inpatient Rehabilitation/Treatment (Hospital or 24-hour Residential) Services.

§3.8014. Recommended Length of Stay for Inpatient Rehabilitation/Treatment (Hospital or 24-hour Residential) Services.

§3.8015. Admission Criteria for Partial Hospitalization Services.

§3.8016. Continued Stay Criteria for Partial Hospitalization Services.

§3.8017. Discharge Criteria for Partial Hospitalization Services.

§3.8018. Recommended Length of Stay for Partial Hospitalization Services.

§3.8019. Admission Criteria for Intensive Outpatient Rehabilitation/Treatment Service.

§3.8020. Continued Stay Criteria for Intensive Outpatient Rehabilitation/Treatment Service.

§3.8021. Discharge Criteria for Intensive Outpatient Rehabilitation/Treatment Service.

§3.8022. Recommended Length of Stay for Intensive Outpatient Rehabilitation Treatment Service.

§3.8023. Admission Criteria for Outpatient Treatment Service.

§3.8024. Continued Stay Criteria for Outpatient Treatment Services.

§3.8025. Discharge Criteria for Outpatient Treatment Service.

§3.8026. Recommended Length of Stay for Outpatient Treatment Service.

§3.8027. Admission Criteria for Outpatient Detoxification Treatment Service.

§3.8028. Continued Stay Criteria for Outpatient Detoxification Treatment Services.

§3.8029. Discharge Criteria for Outpatient Treatment Service.

§3.8030. Recommended Length of Stay for Outpatient Detoxification Treatment Service.

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 June 28, 2023.

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Jessica Barta
General Counsel
Texas Department of Insurance
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For further information, please call: (512) 676-6555

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28 TAC §3.8001

STATUTORY AUTHORITY. TDI proposes new §3.8001 under Insurance Code §§1355.258, 1368.007, 4201.003, and 36.001.

Insurance Code §1355.258 mandates that the commissioner adopt rules necessary to implement Chapter 1355, Subchapter F.

Insurance Code §1368.007 requires that TDI adopt by rule chemical dependency treatment standards for use by insurers, other third-party reimbursement sources, and chemical dependency treatment centers. These standards must provide for (1) reasonable control of costs necessary for inpatient and outpatient treatment of chemical dependency, including guidelines for treatment periods; and (2) appropriate utilization review of treatment, as well as necessary extensions of treatment.

Insurance Code §4201.003 provides that the commissioner may adopt rules necessary to implement Chapter 4201.

Insurance Code §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.

CROSS-REFERENCE TO STATUTE. Proposed new §3.8001 implements Insurance Code Chapter 1368.

§3.8001. Chemical Dependency Treatment Standards.

(a) Purpose. This section implements Insurance Code §1368.007, concerning Treatment Standards.

(b) Applicability. This section applies to a group health benefit plan that is subject to Insurance Code Chapter 1368, concerning Availability of Chemical Dependency Coverage.

(c) Treatment standards. For the purpose of this section, the department adopts the treatment standards in the 27th edition of the MCG Care Guidelines and the 3rd edition of the American Society of Addiction Medicine (ASAM) Criteria.

(d) Coverage required. For any treatment for which coverage is required under Insurance Code Chapter 1368, a group health benefit plan must use the MCG Care Guidelines or ASAM Criteria, as applicable to the treatment and care provided.

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 June 28, 2023.

TRD-202302351
Jessica Barta
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: August 13, 2023
For further information, please call: (512) 676-6555

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 50. ACTION ON APPLICATIONS AND OTHER AUTHORIZATIONS

SUBCHAPTER G. ACTION BY THE EXECUTIVE DIRECTOR

30 TAC §50.131

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments of §50.131.

Background and Summary of the Factual Basis for the Proposed Rules

The proposed amendments would conform an agency rule with statutory requirements. The agency would delete 30 Texas Administrative Code (TAC) §50.131(c)(1) and renumber the remaining parts of §50.131(c). This would remove the exemption from the agency's motion to overturn process for the executive director's (ED) decision on registrations for authorization under an air quality standard permit. If the proposed change in the rule is adopted and becomes effective, it would be clear that applicants and affected persons who wish to challenge the ED's decision to issue a registration for a standard permit may request that the commission overturn that decision through the agency's motion to overturn process. This administrative action would be required before such a decision could be challenged in district court. Thus, the administrative remedy would have to be exhausted prior to a judicial challenge. This change is being proposed to more closely align the agency's rules with Texas Health and Safety Code, §382.061(b), which requires all ED actions on permits to be reviewable by the commission.

Section by Section Discussion

Current §50.131(c)(1) is proposed for repeal. The remaining paragraphs of §50.131(c) are proposed to be renumbered from (c)(2) - (c)(7) to (c)(1) - (c)(6).

Fiscal Note: Costs to State and Local Government

Kyle Girten, Analyst in the Budget and Planning Division, has determined that for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of implementation or enforcement of the proposed rule.

Public Benefits and Costs

Mr. Girten determined that for each year of the first five years the proposed rules are in effect, the benefit is increased consistency with statutory requirements, and the public will have an increased ability to challenge the ED's decisions on applications for registration to use standard permits. The proposed rulemaking is not anticipated to result in fiscal implications for businesses or individuals.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

Rural Community Impact Statement

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The amendments would apply statewide and have the same effect in rural communities as in urban communities.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation of the proposed rule for the first five-year period the proposed rules are in effect.

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 rule does not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking does not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking amends an existing regulation. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rule should not impact positively or negatively the state's economy.

Regulatory Impact Analysis Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule the specific intent

of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendments of §50.131 are not specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor do they 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. Rather, this rulemaking removes language from the rule to more closely align the rule with statutory requirements relating to the review by the commission of ED decisions on air quality standard permit registrations through a motion-to-overturn opportunity in the commission's rules.

Texas Government Code, §2001.0225, only applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; 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 adopt a rule solely under the general authority of the commission. The proposed amendments of §50.131 do not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement or contract, and were not developed solely under the general powers of the agency but are authorized by specific sections of the Texas Government Code and the Texas Water Code that are cited in the statutory authority section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

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 evaluated the proposed rulemaking and performed an analysis of whether Texas Government Code, Chapter 2007, is applicable. The proposed amendments 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. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). Therefore, this rulemaking action would not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

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

Written comments on the consistency of this rulemaking with the Coastal Management Program 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

Section 50.131 is not an applicable requirement under 30 TAC Chapter 122, Federal Operating Permits Program; and therefore, no effect on sites subject to the Federal Operating Permits program is expected if the commission adopts this proposed rule.

Announcement of Hearing

The commission will hold a hold a hybrid virtual and in-person public hearing on this proposal in Austin on August 1, 2023, at 10:00 a.m. in Building E, Room 201S at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Individuals who plan to attend the hearing virtually and want to provide oral comments and/or want their attendance on record must register by Friday, July 28, 2023. To register for the hearing, please email Rules@tceq.texas.gov and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on Monday, July 31, 2023, to those who register for the hearing.

Members of the public who do not wish to provide oral comments but would like to view the hearing may do so at no cost at:

https://teams.microsoft.com/l/meetup-join/19%3ameeting_ZTFhMzIwYjctMWVmYi00N2M0LWFiYzUtMzAzMzhiOTU3ZTQ3%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%22e74a40ea-69d4-469d-a8ef-06f2c9ac2a80%22%2c%22IsBroadcastMeeting%22%3atrue%7d

Persons who are planning to attend the hearing and have special communication or other accommodation needs 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 Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to *fax4808@tceq.texas.gov.* Electronic comments may be submitted at: https://tceq.commentinput.com/comment/search. File size restrictions may apply to comments being submitted via the TCEQ Public Comments system. All comments should reference Rule Project Number 2023-130-050-LS. The comment period closes on August 14, 2023. Please choose one of the methods provided to submit your written comments.

Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html.* For further information, please contact Amy Browning, Environmental Law Division, amy.browning@tceq.texas.gov, (512) 239-0891.

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; and TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director. The amendments are also adopted under Texas Health and Safety Code (THSC), §382.011, which authorizes the commission to control the quality of the state's air; THSC, §382.017, which authorizes the commission to adopt any rules necessary to carry out its powers and duties to control the quality of the state's air; and THSC §382.061, which concerns the delegation of powers and duties from the commission to the executive director. In addition, the amendments are also adopted under Texas Government Code (Tex. Gov't Code), §2001.004, which requires state agencies to adopt procedural rules and Tex. Gov't Code §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation.

The rulemaking implements TWC, §§5.013, 5.102, 5.103, and 5.122; and THSC, §§382.011, 382.017, and 382.061.

§50.131 , Purpose and Applicability.

(a) The purpose of this subchapter is to delegate authority to the executive director and to specify applications on which the executive director may take action on behalf of the commission. This subchapter does not affect the executive director's authority to act on an application where that authority is delegated elsewhere.

(b) This subchapter applies to applications that are administratively complete on or after September 1, 1999 and to certifications of Water Quality Management Plan (WQMP) updates. Except as provided by subsection (c) of this section, this subchapter applies to:

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

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

(3) certificates of adjudication;

(4) district matters under Texas Water Code (TWC), Chapters 49 - 66;

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

(6) extensions of time to commence or complete construction;

(7) industrial and hazardous waste permits;

(8) municipal solid waste permits;

(9) on-site wastewater disposal system permits;

(10) radioactive waste or radioactive material permits or licenses;

(11) underground injection control permits;

(12) water rights permits;

(13) wastewater permits;

(14) weather modification measures permits;

(15) driller licenses under TWC, Chapter 32;

(16) pump installer licenses under TWC, Chapter 33;

(17) irrigator or installer registrations under TWC, Chapter 34; and

(18) municipal management district matters under Texas Local Government Code, Chapter 375.

(c) In addition to those things excluded from coverage under §50.102 of this title (relating to Applicability), this subchapter does not apply to:

~~[(1) air quality standard permits under Chapter 116 of this title;]~~

(1) [~~(2)~~] air quality exemptions from permitting and permits by rule under Chapter 106 of this title (relating to Permits by Rule) except for concrete batch plants which are not contiguous or adjacent to a public works project;

(2) [~~(3)~~] consolidated proceedings covering additional matters not within the scope of subsection (b) of this section;

(3) [~~(4)~~] district matters under TWC, Chapters 49 - 66, as follows:

(A) an appeal under TWC, §49.052 by a member of a district board concerning his removal from the board;

(B) an application under TWC, Chapter 49, Subchapter K, for the dissolution of a district;

(C) an application under TWC, §49.456 for authority to proceed in bankruptcy;

(D) an appeal under TWC, §54.239, of a board decision involving the cost, purchase, or use of facilities; or

(E) an application under TWC, §54.030 for conversion of a district to a municipal utility district;

(4) [~~(5)~~] actions of the executive director under Chapters 101, 111 - 115, 117, and 118 of this title (relating to General Air Quality Rules; Control of Air Pollution From Visible Emissions and Particulate Matter; Control of Air Pollution From Sulfur Compounds; Standards of Performance for Hazardous Air Pollutants and for Designated Facilities and Pollutants; Control of Air Pollution From Motor Vehicles; Control of Air Pollution From Volatile Organic Compounds; Control of Air Pollution From Nitrogen Compounds; and Control of Air Pollution Episodes);

(5) [~~(6)~~] all compost facilities authorized to operate by registration under Chapter 332 of this title (relating to Composting); and

(6) [~~(7)~~] an application for creation of a municipal management district under Texas Local Government Code, Chapter 375.

(d) Regardless of subsection (b) or (c) of this section, when the rules governing a particular type of application allow a motion for reconsideration, §50.139(b) - (f) of this title (relating to Motion to Overturn Executive Director's Decision) applies. If the rules under which the executive director evaluates a registration application provide criteria for evaluating the application, the commission's reconsideration will be limited to those criteria.

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 June 30, 2023.

TRD-202302386

Guy Henry
Acting Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: August 13, 2023
For further information, please call: (512) 239-2678

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CHAPTER 290. PUBLIC DRINKING WATER
SUBCHAPTER D. RULES AND REGULATIONS FOR PUBLIC WATER SYSTEMS

30 TAC §§290.38, 290.39, 290.41 - 290.47

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figures in 30 TAC §290.47 are not included in the print version of the Texas Register. The figures are available in the on-line version of the July 14, 2023, issue of the Texas Register.)

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to 30 Texas Administrative Code §§290.38, 290.39, and 290.41 - 290.47.

Background and Summary of the Factual Basis for the Proposed Rules

In 2021, the 87th Legislature passed Senate Bill (SB) 3, which relates to preparing for, preventing, and responding to weather emergencies and power outages. SB 3 requires that certain water service providers ensure emergency operations during an extended power outage. SB 3 amended Texas Water Code (TWC), Chapter 13, by adding §13.1394, Standards of Emergency Operations, and amending §13.1395, Standards of Emergency Operations in Certain Counties. New TWC §13.1394, requires that affected utilities create an emergency preparedness plan that shows how an affected utility will provide emergency operations and submit that plan to the commission for review and approval. TWC §13.1394, stipulates that a water service provider must maintain 20 pounds per square inch (psi) of pressure, or a water pressure approved by the executive director, during power outages that last longer than 24 hours as soon as it is safe and practicable following a natural disaster. The statute also specifies that the commission has 90 days to review the plan, once the plan is submitted, and either approve it or recommend changes. Once the commission approves the plan the water service provider must operate in accordance with the plan and maintain any generators in accordance with manufacturer's specifications. TWC §13.1394 also specifies that the commission will conduct inspections to ensure compliance and that waivers to these requirements are available under certain circumstances. SB 3 stated in Section 36(b) that each affected utility was to submit to the commission an emergency preparedness plan required by TWC §13.1394, no later than March 1, 2022, and stated in 36(c) that the emergency preparedness plan was to be implemented no later than July 1, 2022, unless the affected utility had obtained an adjusted, commission approved timeline.

Amended TWC §13.1395, excludes from the requirement of creating an emergency preparedness plan those raw water services that are unnecessary or otherwise subject to interruption or curtailment during emergencies pursuant to contract.

In response to the widespread power and equipment failures and drinking water outages and shortages during Winter Storm Uri in 2021, the commission organized an after-action review to evaluate the factors that impacted public water systems across the state. This review resulted in findings and recommendations to enhance and integrate additional public water system critical infrastructure resiliency measures. These findings and recommendations were presented to the commission during a work session, held on May 19, 2022.

Section by Section Discussion

§290.38, Definitions

The commission proposes to add a definition to §290.38 for "accredited laboratory" to clarify the requirements for laboratories used to analyze drinking water samples for determination of compliance with maximum contaminant levels, actions levels, and microbial contaminants. This proposed change corresponds to the definition of "certified laboratory" in §290.38(12), which indicates that laboratories must be accredited, rather than certified, after June 30, 2008. Laboratory accreditation is issued by the commission under Texas Water Code, Chapter 5, Subchapter R, and its associated commission rules.

The commission proposes to add a definition to §290.38 for "adverse weather conditions". This proposed change is a recommendation which resulted from the after-action review findings.

The commission proposes to amend the definition of "affected utility" by adding language to encompass the definitions of affected utility in TWC §13.1394 and §13.1395. The commission proposes these amendments to reflect the requirements of TWC §13.1394(a)(1) and §13.1395(a)(1).

The commission proposes to amend the definition of "approved laboratory" to clarify that laboratory approval is required for determining compliance with treatment technique requirements in addition to maximum or minimum allowable constituent levels currently stated in rule.

The commission proposes to amend the definition of "emergency operations" to clarify the minimum required water pressure that affected utilities must provide during emergency operations. This clarification is consistent with the requirements under TWC §13.1394, which is 20 pounds per square inch, or a pressure approved by the executive director, and TWC §13.1395, which is 35 pounds per square inch.

The commission also proposes to amend sequential numbering for this section as necessary.

§290.39, General Provisions

The commission's proposed amendments for this section will clarify existing rules and also add provisions relating to TWC §13.1394 and §13.1395 to implement SB 3.

The commission proposes to amend §290.39(a) to include a statement that authority for this subchapter includes TWC §13.1394.

The commission proposes to amend §290.39(c)(4) by adding language that references TWC §13.1394 and §13.1395, replacing §§290.39(c)(4)(A) through 290.39(c)(4)(E) with a reference to §290.39(o) instead. This will reduce repetitive language already contained in §290.39(o).

The commission proposes to amend §290.39(n) to add a subsection tagline. This amendment will meet Texas Register rule

standards and guidelines and will make the subsection consistent with other subsections in §290.39.

The commission proposes to amend the tagline of §290.39(o) to clarify that this subsection applies to affected utilities as defined in TWC §13.1394 and §13.1395.

The commission proposes to amend §290.39(o)(1) to remove a date and reference to the use of another emergency preparedness plan that meets the requirements of the rule. The templates, included in Appendix G, may be used for the submittal of emergency preparedness plans for affected utilities as defined in TWC §13.1394 and §13.1395.

The commission proposes to amend §290.39(o)(2), and add §§290.39(o)(2)(A) through 290.39(o)(2)(C), to include language from TWC §13.1394(d) and §13.1395(d), requiring affected utilities who provide or convey surface water to wholesale customers to demonstrate in their emergency preparedness plan the ability to do so during emergencies, unless they provide raw water service that is unnecessary or subject to interruption or curtailment during emergencies under a contract.

The commission proposes to amend §290.39(o)(3) by adding a reference to the requirement that affected utilities select one of the options listed in §§290.45(h)(1)(A) through 290.45(h)(1)(N) when operating as an affected utility as defined in TWC §13.1394, or options listed in §§290.45(i)(1)(A) through 290.45(i)(1)(H) when operating as an affected utility as defined in TWC §13.1395. The amended reference clarifies which options are applicable under each water code section.

The commission proposes to amend §290.39(o)(4) to remove outdated language and to clarify the requirement for implementation of an approved emergency preparedness plan applies to all affected utilities defined in TWC §13.1394 and §13.1395.

§290.41, Water Sources

The commission proposes to add §290.41(f) requiring that all critical equipment associated with a raw water source be weatherized against adverse weather conditions. Weatherization techniques may be chosen by the affected utility to protect critical equipment against the types of adverse weather conditions experienced in its region of the state. The commission proposes this addition in response to the after-action review, which found that additional maintenance to critical equipment and increased protection against adverse weather conditions would have reduced the impacts to water infrastructure during the winter storm.

§290.42, Water Treatment

The commission proposes amendments and additions to this section in response to the after-action review, which found that additional maintenance to critical equipment and increased protection against adverse weather conditions would have reduced the impacts to water infrastructure during the winter storm.

The commission proposes to amend §290.42(l) to include additional minimum content requirements for a plant operations manual so that operators will have the necessary information for the continuation of operations.

The commission proposes to add §290.42(l)(1) to require that a plant operations manual include a description of planned protective measures for critical plant equipment during adverse weather conditions, replacement part information, information on manufacturer's user manuals, vendor/technician information, and information on alternative sources of equipment outside the area.

The commission proposes to add §290.42(l)(2) to require that a plant operations manual identify all chemicals used for the treatment of drinking water, the entity's chemical vendor information, and information on alternative sources of chemicals outside the area.

The commission proposes to add §290.42(l)(3), and §§290.42(l)(3)(A) through 290.42(l)(3)(F) to require that a plant operations manual include the following routine activities: protocol, schedules, and documentation related to chemical pump feed rate verification, chemical dose adjustments, process control sampling, calibration and accuracy verifications; operations of critical plant equipment, to include plant start-up and shut-down under normal and emergency conditions, while in manual and automated settings, as applicable, and the inclusion of manufacturer's specifications for maintaining and troubleshooting of critical plant equipment.

The commission proposes to add §290.42(l)(4) to require that a plant operations manual include information outlining a continuity of operations plan in the event that critical equipment fails, or key personnel are not available. This information could include arrangements for emergency plant coverage or mutual aid agreements with other utilities for equipment or personnel.

The commission proposes to add §290.42(l)(5) to require that a plant operations manual be reviewed and, if necessary, updated when a significant change occurs, as outlined in §290.39(j), after emergency events that impact plant operation, but at least every three years. This requirement is intended to ensure that a plant operations manual is evaluated and kept up-to-date.

The commission proposes to add §290.42(o) to require that all critical components associated with drinking water treatment facilities be weatherized against adverse weather conditions. Weatherization techniques may be chosen by the affected utility to protect critical equipment against the types of adverse weather conditions experienced in their region of the state.

§290.43, Water Storage

The commission proposes to amend §290.43(b)(1) to add new language that includes a setback distance of 150 feet between an elevated or ground storage tank and an on-site sewage facility (OSSF) spray field. This addition is consistent with the setback distance between a public water supply well and an OSSF spray field, which is a standard determined to provide adequate protection of public health. This addition streamlines the approval process by eliminating the requirement for a system to submit an exception if they cannot meet the previous setback distance of 500 feet between a storage tank and OSSF spray field, while still protecting public health.

The commission proposes to amend §290.43(d)(2) to clarify that only one pressure gauge is required when more than one pressure tank is connected by a common manifold. This amendment streamlines the approval process by eliminating the requirement for a system to submit an exception if they plan to use only one pressure gauge.

The commission proposes to add §290.43(g) to require that all critical equipment associated with water storage facilities be weatherized against adverse weather conditions. Weatherization techniques may be chosen by the affected utility to protect critical equipment against the types of adverse weather conditions experienced in their region of the state. The commission proposes this addition in response to the after-action review, which found that additional maintenance to critical equipment

and increased protection against adverse weather conditions would have reduced the impacts to water infrastructure during the winter storm.

§290.44, Water Distribution

The commission proposes to amend §290.44(d) to correct a compound word error and to specify that the distribution system of public water systems that are affected utilities, defined in TWC §13.1394 or §13.1395, must be designed to implement the requirements of §290.45(h) and §290.45(i), respectively.

The commission proposes to amend §290.44(i)(2)(J) to clarify that an accredited laboratory must analyze samples used to determine compliance for microbial contaminants. This proposed change is intended to make this regulation consistent with §290.119 and the definition of accredited laboratory.

The commission proposes to add §290.44(k) to require that all critical equipment associated with water transmission facilities be weatherized against adverse weather conditions. Weatherization techniques may be chosen by the affected utility to protect critical equipment against the types of adverse weather conditions experienced in their region of the state. The commission proposes this addition in response to the after-action review, which found that additional maintenance to critical equipment and increased protection against adverse weather conditions would have reduced the impacts to water infrastructure during the winter storm.

§290.45, Minimum Water System Capacity Requirements

The commission proposes to amend §§290.45(a)(2), 290.45(g)(1)(F) and 290.45(g)(6)(A)(i) to correct a compound word error.

The commission proposes to amend §290.45(a)(7) to include the minimum emergency pressure requirement of 20 psi or a pressure approved by the executive director for affected utilities under TWC §13.1394.

The commission proposes to add §290.45(a)(8) to include requirements for an affected utility to review their emergency preparedness plan at least once every three years and to submit a new or revised emergency preparedness plan to the executive director for approval within 90 days after certain conditions occur. Subparagraphs (A) - (D) describe the conditions which require a new or revised emergency preparedness plan to the executive director. These proposed requirements are intended to provide resiliency and continuity of operations to affected utilities and to eliminate the unnecessary burden of submitting an entire emergency preparedness plan for changes to personnel and emergency contacts.

The commission proposes to amend §290.45(b)(1)(D)(v) and §290.45(b)(2)(H) to clarify the rules by deleting the generator maintenance requirement portion of the rule, clarifying that minimum pressure requirements must be met in the event of loss of normal power and adding language which states emergency power must be maintained as required by proposed §290.46(m)(8).

The commission proposes to amend §290.45(b)(3) to clarify that affected utilities, defined in TWC §13.1394 or §13.1395, must have an emergency preparedness plan approved by the executive director and meet the requirements for emergency operations contained in §290.45(h) and §290.45(i), respectively.

The commission proposes to amend §290.45(c)(3) to clarify that affected utilities, defined in TWC §13.1394 or §13.1395, must have an emergency preparedness plan approved by the executive director and must meet the requirements for emergency operations contained in §290.45(h) or §290.45(i), respectively.

The commission proposes to amend §290.45(d)(4) to clarify that affected utilities, defined in TWC §13.1394 or §13.1395, must have an emergency preparedness plan approved by the executive director and meet the requirements for emergency operations contained in §290.45(h) and §290.45(i), respectively.

The commission proposes to amend §290.45(e)(1) to clarify that if a contract prohibits a water purchaser from securing water from sources other than the contracted wholesaler during emergency operations, the wholesaler is responsible for meeting applicable capacity requirements.

The commission proposes to amend §290.45(e)(3) to clarify that if emergency power is required it must be sufficient to meet the minimum pressure requirements, and to add that all wholesale contracts executed or amended on or after January 1, 2025, must specify if the wholesaler will supply water, pressure, or both water and pressure during emergency operations. This addition is meant for the wholesale entity to clarify whether it intends to provide both water and pressure to the purchasing entity or if the wholesale entity only intends to provide water under emergency operations. This addition is not intended to conflict with a wholesaler's "Force Majeure" clause but is required to ensure compliance with TWC §13.1394 and §13.1395.

The commission proposes to amend §290.45(e)(4) to clarify that affected utilities, defined in TWC §13.1394 or §13.1395, must have an emergency preparedness plan approved by the executive director and meet the requirements for emergency operations contained in §290.45(h) or §290.45(i), respectively.

The commission proposes to amend §290.45(f)(6) to clarify that this paragraph references capacity requirements, consistent with other portions of §290.45, and to add that all wholesale contracts executed or amended on or after January 1, 2025, must specify if the wholesaler intends to supply water, pressure, or both water and pressure during emergency operations. This requirement is meant for the wholesale entity to clarify whether it intends to provide both water and pressure to the purchasing entity or if the wholesale entity only intends to provide water under emergency operations. This requirement is not intended to conflict with a wholesaler's "Force Majeure" clause but is required for wholesalers to comply with TWC §13.1394 and §13.1395.

The commission proposes to amend §290.45(g)(5)(A)(i) to include a requirement to provide 20 psi or a pressure approved by the executive director in distribution, as stated in TWC §13.1394, when operating emergency power facilities.

The commission proposes to amend §290.45(g)(5)(A)(iv) to clarify that affected utilities, defined in TWC §13.1394 or §13.1395, must have an emergency preparedness plan approved by the executive director and meet the requirements for emergency operations contained in §290.45(h) and §290.45(i), respectively.

The commission proposes to amend §290.45(g)(5)(B) to clarify that affected utilities, defined in TWC §13.1394 or §13.1395, must have an emergency preparedness plan approved by the executive director and meet the requirements for emergency operations contained in §290.45(h) and §290.45(i), respectively.

The commission proposes to amend §290.45(g)(5)(B)(i) - (iii) to add language that emergency power facilities must be maintained as prescribed in §290.46(m)(8), that the emergency

power must be activated before the distribution pressure falls below 20 psi or a pressure approved by the executive director, or 35 psi, as required by TWC §13.1394 and §13.1395, respectively, and increase the fuel requirement to operate emergency power facilities during emergency operations for at least 48 hours. The emergency power maintenance and the increase in available fuel requirements are in response to the after-action review, which found that additional maintenance to critical equipment and increased protection against adverse weather conditions would have reduced the impacts to water infrastructure during the winter storm.

The commission proposes to delete §290.45(g)(5)(D) which requires public water systems to maintain and submit an emergency response plan that details the procedures to follow and individuals to contact during a power outage. This requirement is redundant because it is required by all affected utilities in their emergency preparedness plan and all non-affected utilities in their plant operations manual.

The commission proposes to add a new §290.45(h) to differentiate the requirements between affected utilities defined in TWC §13.1394 and §13.1395 and to specify emergency power requirements in addition to the existing power requirements for public water systems in §290.45. The commission proposes to amend sequential numbering for this section and correct any cross-references within this chapter, as necessary.

The commission proposes to add new §290.45(h)(1) and subsequent subparagraphs to include the fourteen emergency operation options, as listed in TWC §13.1394(c)(1) through 13.1394(c)(14) for emergency preparedness plans.

The commission proposes to add new §290.45(h)(2) to require that affected utilities that provide raw surface water to wholesale customers must include in their emergency preparedness plan how they intend to provide raw water services during emergencies, except during instances when raw water services are unnecessary or otherwise subject to interruption or curtailment during emergencies under a contract, as stated in TWC §13.1394(d).

The commission proposes to add new §290.45(h)(3) which requires that auxiliary power facilities for affected utilities be inspected, maintained, tested, and operated in accordance with the manufacturer's specifications and as outlined in proposed §290.46(m)(8). The commission proposes this addition to implement TWC §13.1394(h). The commission also proposes this addition in response to the after-action review, which found that additional maintenance to critical equipment and increased protection against adverse weather conditions would have reduced the impacts to water infrastructure during the winter storm.

The commission proposes to add new §290.45(h)(4) to allow an affected utility to adopt and enforce limitations on water use while providing emergency operations, as stated in TWC §13.1394(k).

The commission proposes to add new §290.45(h)(5) to add that during emergency operations, affected utilities with elevated storage must operate in accordance with their approved emergency preparedness plan, which may or may not include using elevated storage, as stated in TWC §13.1394(e).

The commission proposes to add new §290.45(h)(6) which requires an affected utility maintain on-site, or make readily available during emergency operations, an amount of fuel necessary to operate any emergency power equipment during emergency operations for at least 48 hours. The commission proposes this in response to the after-action review, which found that additional maintenance to critical equipment and increased protection against adverse weather conditions would have reduced the impacts to water infrastructure during the winter storm.

The commission proposes to add new 290.45(h)(7) to require that each affected utility implement an emergency preparedness plan upon approval by the executive director under TWC §13.1394.

The commission proposes to amend §290.45(i) to add language that specifies that this subsection applies to affected utilities as defined in TWC §13.1395 and to remove repetitive language. This amendment will differentiate the requirements for affected utilities under TWC §13.1394 and §13.1395.

The commission proposes to amend §290.45(i)(1)(G) to remove reference for this emergency preparedness option to apply to existing facilities only and to correct a compound word error.

The commission proposes to amend §290.45(i)(2) to clarify that the requirements under this paragraph do not apply to raw water services that are unnecessary or otherwise subject to interruption or curtailment during emergencies pursuant to a contract, as indicated in TWC §13.1395(d).

The commission proposes to amend §290.45(i)(3) to require maintenance of an emergency generator, which is part of an approved emergency preparedness plan, by adding language that requires the generator to be maintained in accordance with Level 2 maintenance requirements contained in the current National Fire Protection Association (NFPA) 110 Standard and manufacturer's recommendations if the affected utility serves 1,000 connections or greater, or manufacturer's specifications and as outlined in §290.46(m)(8) if the affected utility serves fewer than 1,000 connections. The commission proposes this amendment in response to the after-action review, which found that additional maintenance to critical equipment and increased protection against adverse weather conditions would have reduced the impacts to water infrastructure during the winter storm.

The commission proposes to amend §290.45(i)(5) to abbreviate "Texas Water Code" to TWC.

The commission proposes to amend §290.45(i)(6) to clarify that an affected utility must provide enough fuel necessary to operate emergency power facilities during emergency operations for at least 48 hours. The commission proposes this amendment in response to the after-action review, which found that additional maintenance to critical equipment and increased protection against adverse weather conditions would have reduced the impacts to water infrastructure during the winter storm.

The commission proposes to add §290.45(i)(7) to require that each affected utility implement an emergency preparedness plan upon approval by the executive director under TWC §13.1395.

§290.46, Minimum Acceptable Operating Practices for Public Water Systems

The commission proposes to amend §290.46(f)(5) to clarify that public water systems that are affected utilities, as defined by TWC §13.1394 or §13.1395, must maintain records related to their emergency preparedness plan for as long as the plan is applicable.

The commission proposes to amend §290.46(f)(5)(B) to add that an affected utility must maintain copies of operating, inspection, testing, and maintenance records for auxiliary power equipment

and associated components required to be maintained or actions performed as prescribed in §290.46(m)(8). These record requirements support implementation of TWC §13.1394(i), because the statute requires that the commission periodically inspect affected utilities to ensure compliance with their approved emergency preparedness plan.

The commission proposes to amend §290.46(g) to clarify that an accredited laboratory must analyze samples used to determine compliance for microbial contaminants. This proposed change is for consistency with §290.119 and the definition of accredited laboratory.

The commission proposes to amend §290.46(i) to correct a spelling error.

The commission proposes to add §290.46(m)(8) to require that emergency generators be maintained and tested monthly under at least 30% load based on manufacturer's name plate kilowatt (kW) rating for at least 30 minutes, or as recommended by the manufacturer, to ensure functionality during emergency situations. The commission proposes this requirement in response to the after-action review, which found that additional maintenance to critical equipment and increased protection against adverse weather conditions would have reduced the impacts to water infrastructure during the winter storm.

The commission proposes to add §290.46(m)(8)(A) to require that emergency generators operated at water systems serving 1,000 connections or greater to be maintained in accordance with Level 2 maintenance requirements contained in the current NFPA 110 Standard and the manufacturer's recommendations. In addition, the water system must maintain an inventory of spare parts, lubricants, and coolants for critical generator components. The commission proposes this requirement in response to the after-action review, which found that additional maintenance to critical equipment and increased protection against adverse weather conditions would have reduced the impacts to water infrastructure during the winter storm

The commission proposes to add §290.46(m)(8)(B) to require that emergency generators operated at water systems with fewer than 1,000 connections to be maintained according to §§290.46(m)(8)(B)(i) through 290.46(m)(8)(B)(x) and with any additional requirements prescribed in the manufacturer's specifications or Level 2 maintenance requirements contained in NFPA 110 Standard. In addition, the public water system must maintain an inventory of spare parts, lubricants, and coolants for critical generator components. The commission proposes this requirement in response to the after-action review, which found that additional maintenance to critical equipment and increased protection against adverse weather conditions would have reduced the impacts to water infrastructure during the winter storm.

The commission proposes to add §290.46(m)(8)(B)(i) to require inspection and maintenance of the generator fuel system prior to monthly generator start-up. The commission proposes this requirement in response to the after-action review, which found that additional maintenance to critical equipment and increased protection against adverse weather conditions would have reduced the impacts to water infrastructure during the winter storm.

The commission proposes to add §§290.46(m)(8)(B)(i)(I) through 290.46(m)(8)(B)(i)(V) to require inspection of the fuel tank for fuel levels, contamination, and condensation in the portion of the tank occupied by air; inspection of fuel lines and fittings for breaks, degradation, and replacement; inspection of fuel filters and water separators for clogging, sediment buildup, and replacement; inspection of the fuel transfer pumps, float switches and valves, where provided between holding tanks and the generator, to verify that they are operating properly; and inspection of fuel tank grounding rods, cathodic and generator lightning protection for damage that may render the protection ineffective. The commission proposes these requirements in response to the after-action review, which found that additional maintenance to critical equipment and increased protection against adverse weather conditions would have reduced the impacts to water infrastructure during the winter storm.

The commission proposes to add §290.46(m)(8)(B)(ii) to require inspection of the fuel pump to verify that it is working properly when the generator is operating under load. The commission proposes this requirement in response to the after-action review, which found that additional maintenance to critical equipment and increased protection against adverse weather conditions would have reduced the impacts to water infrastructure during the winter storm.

The commission proposes to add §290.46(m)(8)(B)(iii) to require inspection and maintenance of the generator lubrication system, prior to monthly generator start up. The commission proposes this requirement in response to the after-action review, which found that additional maintenance to critical equipment and increased protection against adverse weather conditions would have reduced the impacts to water infrastructure during the winter storm.

The commission proposes to add §290.46(m)(8)(B)(iii)(I) and §290.46(m)(8)(B)(iii)(II) to require inspection of oil lines and oil reservoirs for adequate oil levels, leaks, breaks, degradation, and oil replacement, as well as the greasing of all bearing components and grease fittings. The commission proposes these requirements in response to the after-action review, which found that additional maintenance to critical equipment and increased protection against adverse weather conditions would have reduced the impacts to water infrastructure during the winter storm.

The commission proposes to add §290.46(m)(8)(B)(iv) to require inspection and maintenance of the generator coolant system, prior to monthly generator start up. The commission proposes this requirement in response to the after-action review, which found that additional maintenance to critical equipment and increased protection against adverse weather conditions would have reduced the impacts to water infrastructure during the winter storm.

The commission proposes to add §§290.46(m)(8)(B)(iv)(I) through 290.46(m)(8)(B)(iv)(III) to require inspection of the block heater, coolant lines and coolant reservoirs for adequate coolant levels, leaks, breaks, and degradation; inspection of coolant filters for clogging, sediment buildup, and coolant filter replacement; and inspection of the radiator, fan system, belts, and air intake and filters for obstruction, cracks, breaks, and leaks. The commission proposes these requirements in response to the after-action review, which found that additional maintenance to critical equipment and increased protection against adverse weather conditions would have reduced the impacts to water infrastructure during the winter storm.

The commission proposes to add §290.46(m)(8)(B)(v) to require inspection of the exhaust manifold and muffler, and that fumes are directed away from enclosed areas when the generator is operating under load. The commission proposes this require-

ment in response to the after-action review, which found that additional maintenance to critical equipment and increased protection against adverse weather conditions would have reduced the impacts to water infrastructure during the winter storm.

The commission proposes to add §290.46(m)(8)(B)(vi) to require that a carbon monoxide monitor equipped with automatic alarms and generator shutdowns must be present and operational inside enclosed structures where generators are located. The commission proposes this requirement as a safety measure for utility staff.

The commission proposes to add §290.46(m)(8)(B)(vii) to require inspection and maintenance of the generator's electrical system be conducted prior to monthly generator start up. The commission proposes this requirement in response to the after-action review, which found that additional maintenance to critical equipment and increased protection against adverse weather conditions would have reduced the impacts to water infrastructure during the winter storm.

The commission proposes to add §290.46(m)(8)(B)(vii)(I) and §290.46(m)(8)(B)(vii)(II) to require inspection of battery chargers, wiring and cables for damage, corrosion, and connection continuity, verification that batteries are mounted and secured, that all contacts are tightened onto battery terminals, and inspection of each battery unit for electrolyte levels, adequate charge retention and appropriate discharge voltage. The commission proposes these requirements in response to the after-action review, which found that additional maintenance to critical equipment and increased protection against adverse weather conditions would have reduced the impacts to water infrastructure during the winter storm.

The commission proposes to add §290.46(m)(8)(B)(viii) to require inspection of generator engine starters and alternators when the generator is operating under load to verify that they are operating properly. The commission proposes this requirement in response to the after-action review, which found that additional maintenance to critical equipment and increased protection against adverse weather conditions would have reduced the impacts to water infrastructure during the winter storm.

The commission proposes to add §290.46(m)(8)(B)(ix) to require a monthly inspection of the Programmable Logic Controllers (PLC) and Uninterrupted Power Supplies (UPC), where applicable, to ensure that they are water-tight, not subject to floods, are properly ventilated, and that backup power supplies have adequate charge. The commission proposes this requirement in response to the after-action review, which found that additional maintenance to critical equipment and increased protection against adverse weather conditions would have reduced the impacts to water infrastructure during the winter storm.

The commission proposes to add §290.46(m)(8)(B)(x) to require a monthly inspection of the generator's switch gears to ensure they are water-tight and in good, working condition. The commission proposes this requirement in response to the after-action review, which found that additional maintenance to critical equipment and increased protection against adverse weather conditions would have reduced the impacts to water infrastructure during the winter storm.

The commission proposes to add §290.46(m)(9) to require that all critical components necessary for the continued operations of the water system's facilities be weatherized against adverse weather conditions. Weatherization techniques may be chosen by the affected utility to protect critical equipment against the types of adverse weather conditions experienced in their region of the state. The commission proposes this requirement in response to the after-action review, which found that additional maintenance to critical equipment and increased protection against adverse weather conditions would have reduced the impacts to water infrastructure during the winter storm.

The commission proposes to amend subsection §290.46(q) to clarify the subject matter of the subsection, which is special precautions, protective measures, and boil water notices. Overall, the proposed amendments to the subsection clarify when to issue notices and defines language that must be used when a special precaution, protective measure, or boil water notice is issued or rescinded, as well as the timeframe and documentation required to the executive director. The proposed amendments also rearrange portions of the subsection for clarity. These proposed amendments do not result in requirements that are less stringent than federal drinking water requirements.

The commission proposes to amend §290.46(q)(1) to remove the tagline and to clarify that along with boil water notices, this paragraph applies to special precautions and protective measures. A subparagraph will be added to include the situations that require these types of notices. The delivery method to customers and to the executive director for the initial and rescind notices, along with requirements for multilingual postings, are proposed to be deleted from this paragraph and relocated into proposed §§290.46(q)(2) through 290.46(q)(4).

The commission proposes to add §290.46(q)(1)(A), to include §§290.46(q)(1)(A)(i) through 290.46(q)(1)(A)(iii), and new §290.46(q)(1)(A)(iv) and 290.46(q)(1)(A)(v), which describe the situations that require a boil water notice. Included in these situations are instances of low system water pressure, *E. coli* or MCL violations, turbidity exceedances, low distribution residuals, and waterborne disease outbreaks. These changes are proposed to clarify the instances that require a boil water notice, special precaution, or protective measure. Additionally, the commission proposes to delete the summarized conditions for combined filter effluent because the precise requirements are located in the reference and to amend §290.46(q)(1)(A)(i) through §290.46(q)(1)(A)(iii) to remove the taglines.

The commission proposes to add §290.46(q)(1)(B) to clarify that situations requiring special precautions or protective measures (other than boil water notices) may be determined by the public water system or at the discretion of the executive director. Executive director discretion will be determined as described in §290.46(q)(5).

The commission proposes to add §290.46(q)(2) to clarify that all boil water notices, special precautions, and protective measures must be issued using one or more of the Tier 1 delivery methods specified in §290.122(a)(2) and by using language and format specified by the executive director.

The commission proposes to add §290.46(q)(3) to clarify when and how a boil water notice, special precaution, or protective measure should be delivered to the executive director.

The commission proposes to add §290.46(q)(4) to clarify that a boil water notice, special precaution, or protective measure must be multilingual where appropriate based on local demographics.

The commission proposes to amend §290.46(q)(5) to remove the tagline, and to amend §290.46(q)(5)(A)(ii) and §290.46(q)(5)(A)(iii) to move the description of waterborne disease outbreak and the failure to maintain adequate dis-

infectant residuals into the situations that require boil water notices, special precautions or protective measures, under §290.46(q)(1)(A).

The commission proposes to amend §290.46(q)(5)(B) to add that the executive director may require additional actions be performed in order to rescind a notice, depending on local conditions and the nature of the event that triggered the initial notice. The executive director will provide such additional actions in writing.

The commission proposes to amend §290.46(q)(5)(C) to clarify that a public water system shall provide any required information to the executive director to document that the public water system has met the rescind requirements for special precautions, protective measures and boil water notices required at the discretion of the executive director.

The commission proposes to amend §290.46(q)(6) to remove the tagline, to add language regarding notifying customers when a boil water notice, special precaution or protective measure has been rescinded, to reorganize the paragraph into subparagraphs and clauses that include the actions that must be performed prior to rescinding a boil water notice, and to amend sequential numbering as necessary.

The commission proposes to amend §290.46(q)(6)(A)(ii) and move the reference to flushing affected areas of a distribution system to §290.46(q)(6)(A)(iii).

The commission proposes to add §290.46(q)(6)(A)(iv) to address situations in which the executive director may require, in writing, that additional actions be completed, and that the executive director receives and approves documentation of those actions prior to rescinding a boil water notice.

The commission proposes to amend §290.46(q)(6)(B) to include that the method of rescind notice delivery to customers be in a manner similar to the original notice.

The commission proposes to amend §290.46(q)(6)(C) to include that the public water system must submit a Certificate of Delivery for the rescind notice to be consistent with §290.122(f).

The commission proposes to amend §290.46(r) to clarify that an affected utility, as defined in TWC §13.1394 or TWC §13.1395, must maintain a minimum of 20 psi or a pressure approved by the executive director, or 35 psi, respectively, throughout the distribution system as soon as safe and practicable during an extended power outage following the occurrence of a natural disaster. The commission proposes the latter amendments pursuant to TWC §13.1394.

The commission proposes to amend §290.46(r) and §290.46(x)(4) to correct a compound word error.

§290.47, Appendices

The commission proposes to amend §290.47(c) and remove boil water notice templates which will allow executive director's staff to make warranted modifications to these templates and add to this subsection a table containing a non-exhaustive list of critical equipment, components and facilities that must be protected from adverse weather conditions. The commission proposes this change to assist water operators with the identification of facilities and components that if lost or impacted by adverse weather would result in water system being unable to produce, treat, store, or distribute treated water to customers.

The commission proposes to amend §290.47(g) to add an emergency preparedness plan template, under §290.47(g)(1), for use by those affected utilities defined in TWC §13.1394, and to amend the template, under §290.47(g)(2), for use by those affected utilities defined in TWC §13.1395. The commission proposes these changes to comply with TWC §13.1394 and §13.1395 requirements regarding the creation of templates by rule.

Fiscal Note: Costs to State and Local Government

Kyle Girten, Analyst in the Budget and Planning Division, has determined that for the first five-year period the proposed rules are in effect, fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rules.

The agency estimates the implementation of amendments to the proposed rules will result in increased costs for public water systems for weatherization (§§290.38, 290.41, 290.42, 290.43, 290.44, 290.46, and 290.47) and fuel storage capacity (§290.45). There are approximately 3,212 government-owned public water systems, and the costs related to implementation of these requirements varies.

Most amendments to these rules are to implement changes made in SB 3, 87th Texas Legislature (2021), including specific changes to the TWC. Section 36 of the legislation already requires entities to submit emergency preparedness plans and receive TCEQ approval. Therefore, while there may have been costs to state and local government resulting from those statutory changes, there are no anticipated fiscal impacts as a result of the requirements related to emergency preparedness plans.

Public Benefits and Costs

Mr. Girten determined that for each year of the first five years the proposed rules are in effect, the anticipated public benefit will be compliance with state law.

The agency estimates the implementation of amendments to the proposed rules will result in increased costs initially for public water systems for weatherization (§§290.38, 290.41, 290.42, 290.43, 290.44, 290.46, and 290.47) and fuel storage capacity (§290.45). After the initial costs of installing these measures, affected utilities could experience long-term cost savings associated with the protection of critical water treatment, storage, and distribution equipment from severe weather events. Approximately 3,896 public water systems are owned by businesses or individuals, and the costs and savings related to implementation of these requirements varies.

Amendments to the rules are proposed primarily to implement changes made in SB 3, 87th Texas Legislature (2021), including the specific changes to the TWC. Section 36 of the legislation already requires entities to submit emergency preparedness plans and receive TCEQ approval. Therefore, while there may have been costs and other benefits to public or private entities resulting from those statutory changes, there are no anticipated fiscal impacts related to emergency preparedness plans.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the rules do not adversely affect a local economy in a material way for the first five years that they are in effect.

Rural Communities Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rules do not adversely affect rural com-

munities in a material way for the first five years that they are in effect. The amendments would apply statewide and have the same effect in rural communities as in urban communities.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rules for the first five-year period that they are in effect.

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 that they are in effect.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking does not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking does repeal regulations to comply with changes to state law. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rules should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis Determination

The commission reviewed this rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the rulemaking is not subject to §2001.0225. A "major environmental rule" means a rule with a specific intent 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.

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 ensure that affected utilities as defined by Texas Water Code §13.1394 and §13.1395 have emergency preparedness plans to provide potable water service during emergency operations and to clarify existing drinking water rules.

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). Section 2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This 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 Texas Health and Safety Code (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; and is not based solely under the general powers of the agency, but specifically under THSC §341.031, which authorizes the commission to establish public drinking water standards and adopt and enforce rules to implement the federal Safe Drinking Water Act, as well under as SB 3, which authorizes the commission to promulgate rules in its implementation of TWC §13.1394 and §13.1395, and the other general powers of the Commission.

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

The commission proposes these rules to clarify existing requirements and for the specific purpose of implementing SB 3, 87th R.S. (2021), which requires the commission to receive, review, and monitor compliance with affected utilities' emergency preparedness plans to ensure provision of potable water service during emergency operations.

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)(13). 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). Lack of potable water service during emergency operations constitutes a real and substantial threat to public health and safety and requires appropriate governmental regulation. The rules significantly advance the public health and safety purpose by ensuring appropriate governmental regulation of affected utilities' emergency preparedness plans and their implementation 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 rules

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 affected utilities to submit emergency preparedness plans, comply with their emergency preparedness plans, and operate under their emergency preparedness plans during emergency operations. Therefore, the rules would not constitute a taking under Texas Government Code Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rules and found that they are neither identified in 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 proposed rules are not subject to the Texas Coastal Management Program.

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

Announcement of Hearing

The commission will hold a hold a hybrid virtual and in-person public hearing on this proposal in Austin on Friday, August 11, 2023, at 10:00 a.m. in building E, room 201S at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Individuals who plan to attend the hearing virtually and want to provide oral comments and/or want their attendance on record must register by Wednesday, August 9, 2023. To register for the hearing, please email Rules@tceq.texas.gov and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on Thursday, August 10, 2023, to those who register for the hearing.

Any public participant who does not wish to provide oral comments but would like to view the hearing may do so at no cost at:

https://teams.microsoft.com/l/meetup-join/19%3ameeting_NzJlNGM0NGUtOTNlYy00ZWM2LTllNjQtOTZmMjExNTcyOTg0%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%22e74a40ea-69d4-469d-a8ef-06f2c9ac2a80%22%2c%22IsBroadcastMeeting%22%3atrue%7d

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.

Submittal of Comments

Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to *fax4808@tceq.texas.gov.* Electronic comments may be submitted at: https://tceq.commentinput.com/comment/search. File size restrictions may apply to comments being submitted via the TCEQ Public Comments system. All comments should reference Rule Project Number 2023-125-290-OW. The comment period closes on August 13, 2023. Please choose one of the methods provided to submit your written comments.

Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html*. For further information, please contact Christina DuPont, Water Supply Division at (512) 239-0537 or by email at christina.dupont@tceq.texas.gov.

Statutory Authority

These amendments are proposed under the authority of the Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; §5.103, which establishes the commission's general authority to adopt rules; §5.105, which establishes the commission's authority to set policy by rule; Texas Health and Safety Code (THSC), §341.031, which establishes the commission's authority to establish public drinking water standards and adopt and enforce rules to implement the federal Safe Drinking Water Act; and SB 3, specifically TWC, §13.1394 and §13.1395, which authorized the commission to promulgate rules in its implementation of these statutes.

The proposed amendments implement TWC, §13.1394, as added by Senate Bill (SB 3) of the 87th Texas Legislative Session (2021), and TWC, §13.1395 and §13.1396, as amended by SB 3 of the 87th Texas Legislative Session. Additional amendments proposed by the commission provide clarity to existing rules.

§290.38. Definitions.

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

(1) Accredited laboratory--A laboratory accredited by the executive director to analyze drinking water samples to determine compliance with maximum contaminant levels, action levels, and microbial contaminants in accordance with §290.119 of this title (relating to Analytical Procedures).

(2) Adverse Weather Conditions--Any significant temperature, wind velocity, accumulation of precipitation including drought, or other weather pattern that may trigger the issuance of a national weather service watch, advisory, or warning.

(3) [~~(1)~~] Affected utility--

(A) A retail public utility (§291.3 of this title (relating to Definitions of Terms)), exempt utility (§291.103 of this title (relating to Certificates Not Required)), or provider or conveyor of potable or raw water service that furnishes water service to more than one customer is an affected utility as defined in TWC §13.1394; or [~~:~~]

(B) A retail public utility (§291.3 of this title (relating to Definitions of Terms)), exempt utility (§291.103 of this title (relating to Certificates Not Required)), or provider or conveyor of potable or raw water service that furnishes water service to more than one customer is an affected utility, as defined in TWC §13.1395, in a county with a population of:

(i) [~~(A) in a county with a population of~~] 3.3 million or more; or

(ii) [~~(B) in a county with a population of~~] 550,000 or more adjacent to a county with a population of 3.3 million or more.

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

(5) [~~(3)~~] American National Standards Institute (ANSI) standards--The standards of the American National Standards Institute, Inc.

(6) [~~(4)~~] American Society of Mechanical Engineers (ASME) standards--The standards of the ASME.

(7) [~~(5)~~] American Water Works Association (AWWA) standards--The latest edition of the applicable standards as approved and published by the AWWA.

(8) [~~(6)~~] Approved laboratory--A laboratory approved by the executive director to analyze water samples to determine their compliance with treatment technique requirements and [~~certain~~] maximum or minimum allowable constituent levels in accordance with §290.119 of this title (relating to Analytical Procedures).

(9) [~~(7)~~] ASTM International standards--The standards of ASTM International (formerly known as the American Society for Testing and Materials).

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

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

(12) [~~(10)~~] Baseline performance--In reference to a membrane treatment facility, the detailed assessment of observed operational conditions at the time the membrane facility is placed in service for the purpose of tracking changes over time and determining when maintenance or service is required. Examples of parameters where baseline performance data is collected include: net driving pressure, normalized permeate flow, salt rejection, and salt passage.

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

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

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

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

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

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

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

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

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

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

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

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

(22) [~~(20)~~] Disinfectant--A chemical or a treatment which is intended to kill or inactivate pathogenic microorganisms in water.

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

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

(25) [~~(23)~~] Drinking water--All water distributed by any agency or individual, public or private, for the purpose of human con-

sumption or which may be used in the preparation of foods or beverages or for the cleaning of any utensil or article used in the course of preparation or consumption of food or beverages for human beings. The term "drinking water" shall also include all water supplied for human consumption or used by any institution catering to the public.

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

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

(28) [~~(26)~~] Emergency operations--The operation of an affected utility during an extended power outage at a minimum water pressure of 20 [~~35~~] pounds per square inch (psi) or a pressure approved by the executive director as required under TWC §13.1394 and 35 psi as required under TWC §13.1395.

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

(30) [~~(28)~~] Extended power outage--A power outage lasting for more than 24 hours.

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

(32) [~~(30)~~] Flux--The throughput of a pressure-driven membrane filtration system expressed as flow per unit of membrane area. For example, gallons per square foot per day or liters per hour per square meter.

(33) [~~(31)~~] Grantee--For purposes of this chapter, any person receiving an ownership interest in a public water system, whether by sale, transfer, descent, probate, or otherwise.

(34) [~~(32)~~] Grantor--For purposes of this chapter, any person who conveys an ownership interest in a public water system, whether by sale, transfer, descent, probate, or otherwise.

(35) [~~(33)~~] Groundwater--Any water that is located beneath the surface of the ground and is not under the direct influence of surface water.

(36) [~~(34)~~] Groundwater under the direct influence of surface water--Any water beneath the surface of the ground with:

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

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

(C) site-specific characteristics including measurements of water quality parameters, well construction details, existing geological attributes, and other features that are similar to groundwater sources that have been identified by the executive director as being under the direct influence of surface water.

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

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

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

(40) [~~(38)~~] Innovative/alternate treatment--Any treatment process that does not have specific design requirements in §290.42(a) - (f) of this title (relating to Water Treatment).

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

(42) [~~(40)~~] International Fire Code (IFC)--The standards of the International Code Council.

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

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

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

(46) [~~(44)~~] Log removal value (LRV)--Removal efficiency for a target organism, particulate, or surrogate expressed as log10 (i.e., log10 (feed concentration) - log10 (filtrate concentration)).

(47) [~~(45)~~] Maximum contaminant level (MCL)--The MCL for a specific contaminant is defined in the section relating to that contaminant.

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

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

(50) [~~(48)~~] Membrane LRVC-Test --The number that reflects the removal efficiency of the membrane filtration process demonstrated during challenge testing. The value is based on the entire set of log removal values (LRVs) obtained during challenge testing, with one representative LRV established per module tested.

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

(52) [~~(50)~~] Membrane sensitivity--The maximum log removal value that can be reliably verified by a direct integrity test.

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

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

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

(56) [~~(54)~~] National Fire Protection Association (NFPA) standards--The standards of the NFPA.

(57) [~~(55)~~] NSF International--The organization and the standards, certifications, and listings developed by NSF International (formerly known as the National Sanitation Foundation) related to drinking water.

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

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

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

(61) [~~(59)~~] Pass--In reference to a reverse osmosis or nanofiltration membrane system, stages of pressure vessels in series in which the permeate from one stage is further processed in a following stage.

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

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

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

(A) the International Plumbing Code; or

(B) the Uniform Plumbing Code.

(65) [~~(63)~~] Potable water customer service line--The sections of potable water pipe between the customer's meter and the customer's point of use.

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

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

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

(A) bypass arrangements;

(B) jumper connections;

(C) removable sections or spools; and

(D) swivel or changeover assemblies.

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

(70) [~~(68)~~] psi--Pounds per square inch.

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

(72) [~~(70)~~] Public health engineering practices--Requirements in this chapter or guidelines promulgated by the executive director.

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

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

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

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

(77) [~~(75)~~] Sanitary control easement--A legally binding document securing all land, within 150 feet of a public water supply well location, from pollution hazards. This document must fully describe the location of the well and surrounding lands and must be filed in the county records to be legally binding. For an example, see commission Form 20698.

(78) [~~(76)~~] Sanitary survey--An onsite review of a public water system's adequacy for producing and distributing safe drinking water by evaluating the following elements: water source; treatment; distribution system; finished water storage; pump, pump facilities, and controls; monitoring, reporting, and data verification; system management, operation and maintenance; and operator compliance.

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

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

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

(82) [~~(80)~~] Significant deficiency--Significant deficiencies cause, or have the potential to cause, the introduction of contamination into water delivered to customers. This may include defects in design, operation, or maintenance of the source, treatment, storage, or distribution systems.

(83) [~~(81)~~] Stage--In reference to a reverse osmosis or nanofiltration membrane system, a set of pressure vessels installed in parallel.

(84) [~~(82)~~] System--Public water system as defined in this section unless otherwise modified (i.e., distribution system).

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

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

(87) [~~(85)~~] Vessel--In reference to a reverse osmosis or nanofiltration membrane system, a cylindrical housing unit where membrane modules are placed in a series to form one unit.

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

(89) [~~(87)~~] Wastewater main--Any pipe or constructed conveyance which receives flow from one or more wastewater laterals.

(90) [~~(88)~~] Water system--Public water system as defined in this section unless otherwise modified (i.e., distribution system).

§290.39. General Provisions.

(a) Authority for requirements. Texas Health and Safety Code (THSC), Chapter 341, Subchapter C prescribes the duties of the commission relating to the regulation and control of public drinking water systems in the state. The statute requires that the commission ensure that public water systems: supply safe drinking water in adequate quantities, are financially stable and technically sound, promote use of regional and area-wide drinking water systems, and review completed plans and specifications and business plans for all contemplated public water systems not exempted by THSC, §341.035(d). The statute also requires the commission be notified of any subsequent material changes, improvements, additions, or alterations in existing systems and, consider compliance history in approving new or modified public water systems. Texas Water Code (TWC), §13.1394 and §13.1395, prescribe [~~§13.1395, prescribes~~] the duties of the commission relating to standards for emergency operations of affected utilities. The statute requires that the commission ensure that affected utilities provide water service as soon as safe and practicable during an extended power outage following the occurrence of a natural disaster.

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

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

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

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

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

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

(3) A person who is not required to complete the steps in paragraph (1) of this subsection, or who completes the steps in paragraph (1) of this subsection and is denied service or determines that the

existing provider's cost estimate is not feasible for the development to be served, shall submit to the executive director:

(A) plans and specifications for the system; and

(B) a business plan for the system.

(4) Emergency Preparedness Plan for Public Water Systems that are Affected Utilities, as defined in TWC §13.1394 and §13.1395, must be submitted as described in §290.39(o) of this title.

~~[(A) Each public water system that is also an affected utility, as defined by §290.38 of this title (relating to Definitions), is required to submit to the executive director, receive approval for, and adopt an emergency preparedness plan in accordance with §290.45 of this title (relating to Minimum Water System Capacity Requirements) using either the template in Appendix G of §290.47 of this title (relating to Appendices) or another emergency preparedness plan that meets the requirements of this section. Emergency preparedness plans are required to be prepared under the direction of a licensed professional engineer when an affected utility has been granted or is requesting an alternative capacity requirement in accordance with §290.45(g) of this title, or is requesting to meet the requirements of TWC §13.1395, as an alternative to any rule requiring elevated storage, or as determined by the executive director on a case-by-case basis.]~~

~~[(B) Each affected utility that supplies, provides, or conveys surface water to wholesale customers shall include in its emergency preparedness plan under subparagraph (A) of this paragraph provision for the actual installation and maintenance of automatically starting auxiliary generators or distributive generation facilities for each raw water intake pump station, water treatment plant, pump station, and pressure facility necessary to provide water to its wholesale customers.]~~

~~[(C) The executive director shall review an emergency preparedness plan submitted under subparagraph (A) of this paragraph. If the executive director determines that the plan is not acceptable, the executive director shall recommend changes to the plan. The executive director must make its recommendations on or before the 90th day after the executive director receives the plan. In accordance with commission rules, an emergency preparedness plan must include one of the options listed in §290.45(h)(1)(A) - (H) of this title.]~~

~~[(D) Each affected utility shall install any required equipment to implement the emergency preparedness plan approved by the executive director immediately upon operation.]~~

~~[(E) The executive director may grant a waiver of the requirements for emergency preparedness plans to an affected utility if the executive director determines that compliance with this section will cause a significant financial burden on customers of the affected utility. The affected utility shall submit financial, managerial, and technical information as requested by the executive director to demonstrate the financial burden.]~~

(d) Submission of plans.

(1) Plans, specifications, and related documents will not be considered unless they have been prepared under the direction of a licensed professional engineer. All engineering documents must have engineering seals, signatures, and dates affixed in accordance with the rules of the Texas Board of Professional Engineers.

(2) Detailed plans must be submitted for examination at least 30 days prior to the time that approval, comments or recommendations are desired. From this, it is not to be inferred that final action will be forthcoming within the time mentioned.

(3) The limits of approval are as follows.

(A) The commission's public drinking water program furnishes consultation services as a reviewing body only, and its licensed professional engineers may neither act as design engineers nor furnish detailed estimates.

(B) The commission's public drinking water program does not examine plans and specifications in regard to the structural features of design, such as strength of concrete or adequacy of reinforcing. Only the features covered by this subchapter will be reviewed.

(C) The consulting engineer and/or owner must provide surveillance adequate to assure that facilities will be constructed according to approved plans and must notify the executive director in writing upon completion of all work. Planning materials shall be submitted to the Texas Commission on Environmental Quality, Water Supply Division, MC 159, P.O. Box 13087, Austin, Texas 78711-3087.

(e) Submission of planning material. In general, the planning material submitted shall conform to the following requirements.

(1) Engineering reports are required for new water systems and all surface water treatment plants. Engineering reports are also required when design or capacity deficiencies are identified in an existing system. The engineering report shall include, at least, coverage of the following items:

(A) statement of the problem or problems;

(B) present and future areas to be served, with population data;

(C) the source, with quantity and quality of water available;

(D) present and estimated future maximum and minimum water quantity demands;

(E) description of proposed site and surroundings for the water works facilities;

(F) type of treatment, equipment, and capacity of facilities;

(G) basic design data, including pumping capacities, water storage and flexibility of system operation under normal and emergency conditions; and

(H) the adequacy of the facilities with regard to delivery capacity and pressure throughout the system.

(2) All plans and drawings submitted may be printed on any of the various papers which give distinct lines. All prints must be clear, legible and assembled to facilitate review.

(A) The relative location of all facilities which are pertinent to the specific project shall be shown.

(B) The location of all abandoned or inactive wells within 1/4-mile of a proposed well site shall be shown or reported.

(C) If staged construction is anticipated, the overall plan shall be presented, even though a portion of the construction may be deferred.

(D) A general map or plan of the municipality, water district, or area to be served shall accompany each proposal for a new water supply system.

(3) Specifications for construction of facilities shall accompany all plans. If a process or equipment which may be subject to probationary acceptance because of limited application or use in Texas is proposed, the executive director may give limited approval. In such a case, the owner must be given a bonded guarantee from the man-

ufacturer covering acceptable performance. The specifications shall include a statement that such a bonded guarantee will be provided to the owner and shall also specify those conditions under which the bond will be forfeited. Such a bond will be transferable. The bond shall be retained by the owner and transferred when a change in ownership occurs.

(4) A copy of each fully executed sanitary control easement and any other documentation demonstrating compliance with §290.41(c)(1)(F) of this title (relating to Water Sources) shall be provided to the executive director prior to placing the well into service. Each original easement document, if obtained, must be recorded in the deed records at the county courthouse. For an example, see commission Form 20698.

(5) Construction features and siting of all facilities for new water systems and for major improvements to existing water systems must be in conformity with applicable commission rules.

(6) For public water systems using reverse osmosis or nanofiltration membranes, the engineering report must include the requirements specified in paragraph (1)(A) - (H) of this subsection, and additionally must provide sufficient information to ensure effective treatment. Specifically:

(A) Provide a clear identification of the proposed raw water source.

(i) If the well has been constructed, a copy of the State of Texas Well Report according to 16 TAC Chapter 76 (relating to Water Well Drillers and Water Well Pump Installers), a cementing certificate (as required by §290.41(c)(3)(A) of this title), and a copy of the complete physical and chemical analysis of the raw water from the well as required by §290.41(c)(3)(G) of this title; or

(ii) If the well has not been constructed, the approximate longitude and latitude for the new well and the projected water quality.

(B) Provide a description of the pretreatment process that includes:

(i) target water quality of the proposed pretreatment process;

(ii) constituent(s) to be removed or treated;

(iii) method(s) or technologies used; and

(iv) operating parameters, such as chemical dosages, filter loading rates, and empty bed contact times.

(C) The design of a reverse osmosis or nanofiltration membrane system shall be based on the standard modeling tools of the manufacturer. The model must be run for both new membranes and end-of-life membranes. All design parameters required by the membrane manufacturer's modeling tool must be included in the modeled analysis. At a minimum, the model shall provide:

(i) system flow rate;

(ii) system recovery;

(iii) number of stages;

(iv) number of passes;

(v) feed pressure;

(vi) system configuration with the number of vessels per stage, the number of passes (if applicable), and the number of elements per vessel;

(vii) flux (in gallons per square foot per day) for the overall system;

(viii) selected fouling factor for new and end-of-life membranes; and

(ix) ion concentrations in the feed water for all constituents required by the manufacturer's model and the projected ion concentrations for the permeate water and concentrate water.

(D) In lieu of the modeling requirements as detailed in subparagraph (C) of this paragraph, the licensed professional engineer may provide either a pilot study or similar full-scale data in accordance with §290.42(g) of this title (relating to Water Treatment). Alternatively, for reverse osmosis or nanofiltration units rated for flow rates less than 300 gallons per minute, the design specifications can be based on the allowable operating parameters of the manufacturer.

(E) Provide documentation that the components and chemicals for the proposed treatment process conform to American National Standards Institute/NSF International (ANSI/NSF) Standard 60 for Drinking Water Treatment Chemicals and ANSI/NSF Standard 61 for Drinking Water System Components.

(F) Provide the details for post-treatment and re-mineralization to reduce the corrosion potential of the finished water. If carbon dioxide and/or hydrogen sulfide is present in the reverse osmosis permeate, include the details for a degasifier for post-treatment.

(G) For compliance with applicable drinking water quality requirements in Subchapter F of this chapter (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems), provide the projected water quality at the entry point to the distribution system and the method(s) used to make the water quality projections.

(H) When blending is proposed, provide the blending ratio, source of the water to be blended, and the calculations showing the concentrations of regulated constituents in the finished water.

(I) Provide a description of the disinfection byproduct formation potential based on total organic carbon and other precursor sample results.

(J) Provide the process control details to ensure the integrity of the membrane system. The engineering report shall identify specific parameters and set points that indicate when membrane cleaning, replacement, and/or inspection is necessary.

(i) The parameters 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.

(ii) Define the allowable change from baseline performance.

(7) Before reverse osmosis or nanofiltration membrane systems can be used to produce drinking water, but after the reverse osmosis or nanofiltration membrane system has been constructed at the water system, the licensed professional engineer must submit an addendum to the engineering report required by paragraph (6) of this subsection to the executive director for review and approval. The addendum shall include the following verification data of the full-scale treatment process:

(A) Provide the initial baseline performance of the plant. The baseline net driving pressure, normalized permeate flow, and salt rejection (or salt passage) must be documented when the reverse osmosis or nanofiltration membrane systems are placed online.

(B) Provide the frequency of cleaning or membrane replacement. The frequency must be based on a set time interval or at a set point relative to baseline performance of the unit(s).

(C) If modeling is used as the basis for the design, provide verification of the model's accuracy. If the baseline performance evaluation shows that the modeling projection in the engineering report were inaccurate, the licensed professional engineer shall determine if the deviation from the modeled projections resulted from incorrect water quality assumptions or from other incorrect data in the model. The model shall be considered inaccurate if the overall salt passage or the required feed pressure is 10% greater than the model projection. For any inaccurate model, provide a corrected model with the addendum to the engineering report.

(D) Provide verification of plant capacity. The capacity of the reverse osmosis and nanofiltration membrane facility shall be based on the as-built configuration of the system and the design parameters in the engineering report with adjustments as indicated by the baseline performance. Refer to paragraph (6)(C) of this subsection and §290.45(a)(6) of this title for specific considerations.

(E) Provide a complete physical and chemical analysis of the water. The analyses shall be in accordance with §290.41(c)(3)(G) of this title for the raw water (before any treatment), the water produced from the membrane systems, and the water after any post-treatment. Samples must be submitted to an accredited laboratory for chemical analyses.

(8) The calculations for sizing feed pump(s) and chemical storage tank(s) must be submitted to demonstrate that a project meets chemical feed and storage capacity requirements.

(f) Submission of business plans. The prospective owner of the system or the person responsible for managing and operating the system must submit a business plan to the executive director that demonstrates that the owner or operator of the system has available the financial, managerial, and technical capability to ensure future operation of the system in accordance with applicable laws and rules. The executive director may order the prospective owner or operator to demonstrate financial assurance to operate the system in accordance with applicable laws and rules as specified in Chapter 37, Subchapter O of this title (relating to Financial Assurance for Public Drinking Water Systems), or as specified by commission rule, unless the executive director finds that the business plan demonstrates adequate financial capability. A business plan shall include the information and be presented in a format prescribed by the executive director. For community water systems, the business plan shall contain, at a minimum, the following elements:

(1) description of areas and population to be served by the potential system;

(2) description of drinking water supply systems within a two-mile radius of the proposed system, copies of written requests seeking to obtain service from each of those drinking water supply systems, and copies of the responses to the written requests;

(3) time line for construction of the system and commencement of operations;

(4) identification of and costs of alternative sources of supply;

(5) selection of the alternative to be used and the basis for that selection;

(6) identification of the person or entity which owns or will own the drinking water system and any identifiable future owners of the drinking water system;

(7) identification of any other businesses and public drinking water system(s) owned or operated by the applicant, owner(s), parent organization, and affiliated organization(s);

(8) an operations and maintenance plan which includes sufficient detail to support the budget estimate for operation and maintenance of the facilities;

(9) assurances that the commitments and resources needed for proper operation and maintenance of the system are, and will continue to be, available, including the qualifications of the organization and each individual associated with the proposed system;

(10) for retail public utilities as defined by TWC §13.002:

(A) projected rate revenue from residential, commercial, and industrial customers; and

(B) pro forma income, expense, and cash flow statements;

(11) identification of any appropriate financial assurance, including those being offered to capital providers;

(12) a notarized statement signed by the owner or responsible person that the business plan has been prepared under his direction and that he is responsible for the accuracy of the information; and

(13) other information required by the executive director to determine the adequacy of the business plan or financial assurance.

(g) Business plans not required. A person is not required to file a business plan if the person:

(1) is a county;

(2) is a retail public utility as defined by TWC §13.002, unless that person is a utility as defined by that section;

(3) has executed an agreement with a political subdivision to transfer the ownership and operation of the water supply system to the political subdivision;

(4) is a Class A utility, as defined by TWC §13.002, that has applied for or been granted an amendment of a certificate of convenience and necessity under TWC §13.258, for the area in which the construction of the public drinking water supply system will operate; or

(5) is a noncommunity, non-transient water system and the person has demonstrated financial assurance under THSC, Chapter 361 or Chapter 382 or TWC Chapter 26.

(h) Beginning and completion of work.

(1) No person may begin construction on a new public water system before receiving written approval of plans and specifications and, if required, approval of a business plan from the executive director. No person may begin construction of modifications to a public water system without providing notification to the executive director and submitting and receiving approval of plans and specifications if requested in accordance with subsection (j) of this section.

(2) The executive director shall be notified in writing by the design engineer or the owner before construction is started.

(3) Upon completion of the water works project, the engineer or owner shall notify the executive director in writing as to its completion and attest to the fact that the completed work is substantially in accordance with the plans and change orders on file with the commission.

(i) Changes in previously approved plans and specifications. Any addenda or change orders which may involve a health hazard or

relocation of facilities, such as wells, treatment units, and storage tanks, shall be submitted to the executive director for review and approval.

(j) Changes in existing systems or supplies. Public water systems shall notify the executive director prior to making any significant change or addition to the system's production, treatment, storage, pressure maintenance, or distribution facilities. Significant changes in existing systems or supplies shall not be instituted without the prior approval of the executive director.

(1) Public water systems shall submit plans and specifications to the executive director for the following significant changes:

(A) proposed changes to existing systems which result in an increase or decrease in production, treatment, storage, or pressure maintenance capacity;

(B) proposed changes to the disinfection process used at plants that treat surface water or groundwater that is under the direct influence of surface water including changes involving the disinfectants used, the disinfectant application points, or the disinfectant monitoring points;

(C) proposed changes to the type of disinfectant used to maintain a disinfectant residual in the distribution system;

(D) proposed changes in existing distribution systems when the change is greater than 10% of the number of connections, results in the water system's inability to comply with any of the applicable capacity requirements of §290.45 of this title, or involves interconnection with another public water system; and

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

(2) Public water systems shall notify the executive director in writing of the addition of treatment chemicals, including long-term treatment changes, that will impact the corrosivity of the water. These are considered to be significant changes that require written approval from the executive director.

(A) Examples of long-term treatment changes that could impact the corrosivity of the water include the addition of a new treatment process or modification of an existing treatment process. Examples of modifications include switching secondary disinfectants, switching coagulants, and switching corrosion inhibitor products. Long-term changes can include dose changes to existing chemicals if the system is planning long-term changes to its finished water pH or residual inhibitor concentration. Long-term treatment changes would not include chemical dose fluctuations associated with daily raw water quality changes.

(B) After receiving the notification, the executive director will determine whether the submittal of plans and specifications will be required. Upon request of the executive director, the water system shall submit plans and specifications in accordance with the requirements of subsection (d) of this section.

(3) Plans and specifications may not be required for changes that are specifically addressed in paragraph (1)(D) of this subsection in the following situations:

(A) Unless plans and specifications are required by Chapter 293 of this title (relating to Water Districts), the executive director will not require another state agency or a political subdivision to submit planning material on distribution line improvements if the entity has its own internal review staff and complies with all of the following criteria:

(i) the internal review staff includes one or more licensed professional engineers that are employed by the political subdivision and must be separate from, and not subject to the review or supervision of, the engineering staff or firm charged with the design of the distribution extension under review;

(ii) a licensed professional engineer on the internal review staff determines and certifies in writing that the proposed distribution system changes comply with the requirements of §290.44 of this title (relating to Water Distribution) and will not result in a violation of any provision of §290.45 of this title;

(iii) the state agency or political subdivision includes a copy of the written certification described in this subparagraph with the initial notice that is submitted to the executive director.

(B) Unless plans and specifications are required by Chapter 293 of this title, the executive director will not require planning material on distribution line improvements from any public water system that is required to submit planning material to another state agency or political subdivision that complies with the requirements of subparagraph (A) of this paragraph. The notice to the executive director must include a statement that a state statute or local ordinance requires the planning materials to be submitted to the other state agency or political subdivision and a copy of the written certification that is required in subparagraph (A) of this paragraph.

(4) Public water systems shall notify the executive director in writing of proposed replacement or change of membrane modules, which may be a significant change. After receiving the notification, the executive director will determine whether the submittal of plans and specifications will be required. Upon request of the executive director, the system shall submit plans and specifications in accordance with the requirements of subsection (d) of this section. In its notification to the executive director, the system shall include the following information:

(A) The membrane module make/type, model, and manufacturer;

(B) The membrane plant's water source (groundwater, surface water, groundwater under the direct influence of surface water, or other);

(C) Whether the membrane modules are used for pathogen treatment or not;

(D) Total number of membrane modules per membrane unit; and

(E) The number of membrane modules being replaced or changed for each membrane unit.

(5) Public water systems that furnish for public or private use drinking water containing added fluoride may not permanently terminate the fluoridation of water unless it provides both written notice to the executive director 60 days before the termination and written notice to customers as required by §290.122(j) of this title (relating to Public Notification).

(k) Planning material acceptance. Planning material for improvements to an existing system which does not meet the requirements of all sections of this subchapter will not be considered unless the necessary modifications for correcting the deficiencies are included in the proposed improvements, or unless the executive director determines that reasonable progress is being made toward correcting the deficiencies and no immediate health hazard will be caused by the delay.

(l) Exceptions. Requests for exceptions to one or more of the requirements in this subchapter shall be considered on an individual basis. Any water system which requests an exception must demonstrate to the satisfaction of the executive director that the exception will not

compromise the public health or result in a degradation of service or water quality.

(1) The exception must be requested in writing and must be substantiated by carefully documented data. The request for an exception shall precede the submission of engineering plans and specifications for a proposed project for which an exception is being requested.

(2) Any exception granted by the commission is subject to revocation.

(3) Any request for an exception which is not approved by the commission in writing is denied.

(4) The executive director may establish site-specific requirements for systems that have been granted an exception. The requirements may include, but are not limited to: site-specific design, operation, maintenance, and reporting requirements.

(5) Water systems that are granted an exception shall comply with the requirements established by the executive director under paragraph (4) of this subsection.

(m) Notification of system startup or reactivation. The owner or responsible official must provide written notification to the commission of the startup of a new public water supply system or reactivation of an existing public water supply system. This notification must be made immediately upon meeting the definition of a public water system as defined in §290.38 of this title.

(n) Actions required of the owner or operator of a public drinking water system. The commission may require the owner or operator of a public drinking water supply system that was constructed without the approval required by THSC, §341.035, that has a history of noncompliance with THSC, Chapter 341, Subchapter C or commission rules, or that is subject to a commission enforcement action to take the following action:

(1) provide the executive director with a business plan that demonstrates that the system has available the financial, managerial, and technical resources adequate to ensure future operation of the system in accordance with applicable laws and rules. The business plan must fulfill all the requirements for a business plan as set forth in subsection (f) of this section;

(2) provide adequate financial assurance of the ability to operate the system in accordance with applicable laws and rules. The executive director will set the amount of the financial assurance, after the business plan has been reviewed and approved by the executive director.

(A) The amount of the financial assurance will equal the difference between the amount of projected system revenues and the projected cash needs for the period of time prescribed by the executive director.

(B) The form of the financial assurance will be as specified in Chapter 37, Subchapter O of this title and will be as specified by the executive director.

(C) If the executive director relies on rate increases or customer surcharges as the form of financial assurance, such funds shall be deposited in an escrow account as specified in Chapter 37, Subchapter O of this title and released only with the approval of the executive director.

(o) Emergency Preparedness Plans for Affected Utilities as defined in TWC §13.1394 and §13.1395.

(1) Each public water system that is also an affected utility [~~and that exists as of November 1, 2011~~] is required to adopt and submit to the executive director an emergency preparedness plan in accordance with §290.45 of this title and may use [~~using~~] the template in Appendix G of §290.47 of this title[~~or another emergency preparedness plan that meets the requirements of this subchapter no later than February 1, 2012~~]. Emergency preparedness plans are required to be prepared under the direction of a licensed professional engineer when an affected utility has been granted or is requesting an alternative capacity requirement in accordance with §290.45(g) of this title, or is requesting to meet the requirements of TWC §13.1394 or §13.1395, as an alternative to any rule requiring elevated storage, or as determined by the executive director on a case-by-case basis.

(2) Each affected utility that supplies, provides, or conveys surface water to wholesale customers shall include the following provisions in its emergency preparedness plan. [~~under this subsection provisions for the actual installation and maintenance of automatically starting auxiliary generators or distributive generation facilities for each raw water intake pump station, water treatment plant, pump station, and pressure facility necessary to provide water to its wholesale customers.~~]

(A) An affected utility as defined by TWC §13.1394 shall provide provisions for demonstrating the capability of each raw water intake pump, water treatment plant, pump station, and pressure facility necessary to provide water to its wholesale customers during emergencies.

(B) An affected utility as defined by TWC §13.1395 shall provide provisions for the installation and maintenance of automatically starting auxiliary generators or distributive generation facilities for each raw water intake pump station, water treatment plant, pump station, and pressure facility necessary to provide water to its wholesale customers, or demonstrate the capability of providing raw water to its wholesale customers during emergencies through alternative means acceptable to the commission.

(C) Subparagraphs (A) and (B) do not apply to raw water services that are unnecessary or otherwise subject to interruption or curtailment during emergencies under a contract, as referenced in TWC §13.1394 and §13.1395.

(3) The executive director shall review an emergency preparedness plan submitted under this subsection. If the executive director determines that the plan is not acceptable, the executive director shall recommend changes to the plan. The executive director must make its recommendations on or before the 90th day after the executive director receives the plan. In accordance with the commission rules, an emergency preparedness plan must include one of the options listed in §290.45(h)(1)(A) - (N) [~~§290.45(h)(1)(A) - (H)~~] of this title when operating under TWC §13.1394, or options listed in §290.45(i)(1)(A) - (H) of this title when operating under TWC §13.1395.

(4) An [~~Not later than June 1, 2012, each~~] affected utility, defined in TWC §13.1394 and §13.1395, shall implement the emergency preparedness plan approved by the executive director.

(5) An affected utility may file with the executive director a written request for an extension not to exceed 90 days, of the date by which the affected utility is required under this subsection to submit the affected utility's emergency preparedness plan or of the date by which the affected utility is required under this subsection to implement the affected utility's emergency preparedness plan. The executive director may approve the requested extension for good cause shown.

(6) The executive director may grant a waiver of the requirements for emergency preparedness plans to an affected utility if the executive director determines that compliance with this section will cause a significant financial burden on customers of the affected utility.

The affected utility shall submit financial, managerial, and technical information as requested by the executive director to demonstrate the financial burden.

§290.41. Water Sources.

(a) Water quality. The quality of water to be supplied must meet the quality criteria prescribed by the commission's drinking water standards contained in Subchapter F of this chapter (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems).

(b) Water quantity. Sources of supply, both ground and surface, shall have a safe yield capable of supplying the maximum daily demands of the distribution system during extended periods of peak usage and critical hydrologic conditions. The pipelines and pumping capacities to treatment plants or distribution systems shall be adequate for such water delivery. Minimum capacities required are specified in §290.45 of this title (relating to Minimum Water System Capacity Requirements).

(1) A retail public utility as defined by Texas Water Code, §13.002(19) and each entity from which the utility is obtaining wholesale water service for the utility's retail system shall report to the executive director when the utility or entity is reasonably certain that the water supply will be available for less than 180 days. The reporting must be accomplished by utilizing the online "PWS Drought Contingency Plan Reporting Form."

(2) If reporting cannot be accomplished in accordance with paragraph (1) of this subsection, then the retail public utility or entity from which the utility is obtaining wholesale water service may report to the executive director by United States Postal Service mail, program e-mail, or facsimile.

(c) Groundwater sources and development.

(1) Groundwater sources shall be located so that there will be no danger of pollution from flooding or from unsanitary surroundings, such as privies, sewage, sewage treatment plants, livestock and animal pens, solid waste disposal sites or underground petroleum and chemical storage tanks and liquid transmission pipelines, or abandoned and improperly sealed wells.

(A) No well site which is within 50 feet of a tile or concrete sanitary sewer, sewerage appurtenance, septic tank, storm sewer, or cemetery; or which is within 150 feet of a septic tank perforated drainfield, areas irrigated by low dosage, low angle spray on-site sewage facilities, absorption bed, evapotranspiration bed, improperly constructed water well, or underground petroleum and chemical storage tank or liquid transmission pipeline will be acceptable for use as a public drinking water supply. Sanitary or storm sewers constructed of ductile iron or polyvinyl chloride (PVC) pipe meeting American Water Works Association (AWWA) standards, having a minimum working pressure of 150 pounds per square inch (psi) or greater, and equipped with pressure type joints may be located at distances of less than 50 feet from a proposed well site, but in no case shall the distance be less than ten feet.

(B) No well site shall be located within 500 feet of a sewage treatment plant or within 300 feet of a sewage wet well, sewage pumping station, or a drainage ditch which contains industrial waste discharges or the wastes from sewage treatment systems.

(C) No water wells shall be located within 500 feet of animal feed lots, solid waste disposal sites, lands on which sewage plant or septic tank sludge is applied, or lands irrigated by sewage plant effluent.

(D) Livestock in pastures shall not be allowed within 50 feet of water supply wells.

(E) All known abandoned or inoperative wells (unused wells that have not been plugged) within 1/4-mile of a proposed well site shall be reported to the commission along with existing or potential pollution hazards. These reports are required for community and non-transient, noncommunity groundwater sources. Examples of existing or potential pollution hazards which may affect groundwater quality include, but are not limited to: landfill and dump sites, animal feedlots, military facilities, industrial facilities, wood-treatment facilities, liquid petroleum and petrochemical production, storage, and transmission facilities, Class 1, 2, 3, 4, and 5 injection wells, and pesticide storage and mixing facilities. This information must be submitted prior to construction or as required by the executive director.

(F) A sanitary control easement or sanitary control easements covering land within 150 feet of the well, or executive director approval for a substitute authorized by this subparagraph, shall be obtained.

(i) The sanitary control easement(s) secured shall provide that none of the pollution hazards covered in subparagraphs (A) - (E) of this paragraph, or any facilities that might create a danger of pollution to the water to be produced from the well, will be located thereon.

(ii) For the purpose of a sanitary control easement, an improperly constructed water well is one which fails to meet the surface and subsurface construction standards for public water supply wells. Residential type wells within a sanitary control easement must be constructed to public water well standards.

(iii) A copy of the recorded sanitary control easement(s) shall be included with plans and specifications submitted to the executive director for review.

(iv) With the approval of the executive director, the public water system may submit any of the following as a substitute for obtaining, recording, and submitting a copy of the recorded sanitary control easement(s) covering land within 150 feet of the well:

(I) a copy of the recorded deed and map demonstrating that the public water system owns all real property within 150 feet of the well;

(II) a copy of the recorded deed and map demonstrating that the public water system owns a portion of real property within 150 feet of the well, and a copy of the sanitary control easement(s) that the public water system has obtained, recorded, and submitted to the executive director applicable to the remaining portion of real property within 150 feet of the well not owned by the public water system; or

(III) for a political subdivision, a copy of an ordinance or land use restriction adopted and enforced by the political subdivision which provides an equivalent or higher level of sanitary protection to the well as a sanitary control easement.

(v) If the executive director approves a sanitary control easement substitute identified in clause (iv)(I) or (II) of this subparagraph for a public water system and the public water system conveys the property it owns within 150 feet of the well to another person or persons, the public water system must at that time obtain, record, and submit to the executive director a copy of the recorded sanitary control easement(s) applicable to the conveyed portion of the property within 150 feet of the well, unless the executive director approves a substitute identified in clause (iv) of this subparagraph.

(2) The premises, materials, tools, and drilling equipment shall be maintained so as to minimize contamination of the groundwater during drilling operation.

(A) Water used in any drilling operation shall be of safe sanitary quality. Water used in the mixing of drilling fluids or mud shall contain a chlorine residual of at least 0.5 milligrams per liter (mg/L).

(B) The slush pit shall be constructed and maintained so as to minimize contamination of the drilling mud.

(C) No temporary toilet facilities shall be maintained within 150 feet of the well being constructed unless they are of a sealed, leakproof type.

(3) The construction, disinfection, protection, and testing of a well to be used as a public water supply source must meet the following conditions.

(A) Before placing the well into service, a public water system shall furnish a copy of the well completion data, which includes the following items: the Driller's Log (geological log and material setting report); a cementing certificate; the results of a 36-hour pump test; the results of the microbiological and chemical analyses required by subparagraphs (F) and (G) of this paragraph; a legible copy of the recorded deed or deeds for all real property within 150 feet of the well; a legible copy of the sanitary control easement(s) or other documentation demonstrating compliance with paragraph (1)(F) of this subsection; an original or legible copy of a United States Geological Survey 7.5-minute topographic quadrangle showing the accurate well location to the executive director; and a map demonstrating the well location in relation to surrounding property boundaries. All the documents listed in this paragraph must be approved by the executive director before final approval is granted for the use of the well.

(B) The casing material used in the construction of wells for public use shall be new carbon steel, high-strength low-alloy steel, stainless steel or plastic. The material shall conform to AWWA standards. The casing shall extend a minimum of 18 inches above the elevation of the finished floor of the pump room or natural ground surface and a minimum of one inch above the sealing block or pump motor foundation block when provided. The casing shall extend at least to the depth of the shallowest water formation to be developed and deeper, if necessary, in order to eliminate all undesirable water-bearing strata. Well construction materials containing more than 0.25% lead are prohibited.

(C) The space between the casing and drill hole shall be sealed by using enough cement under pressure to completely fill and seal the annular space between the casing and the drill hole. The well casing shall be cemented in this manner from the top of the shallowest formation to be developed to the earth's surface. The driller shall utilize a pressure cementation method in accordance with the most current AWWA Standard for Water Wells (A100), Appendix C: Section C.2 (Positive Displacement Exterior Method); Section C.3 (Interior Method Without Plug); Section C.4 (Positive Placement, Interior Method, Drillable Plug); and Section C.5 (Placement Through Float Shoe Attached to Bottom of Casing). The grouting mixture used to pressure cement the annular space shall be neat cement as specified in the most current AWWA Standard for Water Wells and to which a maximum of 6%, by dry weight, bentonite and 2%, by dry weight, calcium chloride may be added. The minimum annular space between the outside diameter of the casing pipe and the borehole shall be no less than 1 1/2 inches in radial thickness or three inches in net diametrical difference and the pressure grouting shall be from the bottom upward utilizing one of the methods listed in this subparagraph for all public water system groundwater well construction. Cementation methods other than those listed in this subparagraph may be used on a site-specific basis with the prior written approval of the executive director. A cement bonding log, as well as any other documentation deemed necessary, may be required by the executive director to assure complete sealing of the annular space.

(D) When a gravel packed well is constructed, all gravel shall be of selected and graded quality and shall be thoroughly disinfected with a 50 mg/L chlorine solution as it is added to the well cavity.

(E) Safeguards shall be taken to prevent possible contamination of the water or damage by trespassers following the completion of the well and prior to installation of permanent pumping equipment.

(F) Upon well completion, or after an existing well has been reworked, the well shall be disinfected in accordance with current AWWA standards for well disinfection except that the disinfectant shall remain in the well for at least six hours.

(i) Before placing the well in service, the water containing the disinfectant shall be flushed from the well and then samples of water shall be collected and submitted for microbiological analysis until three successive daily raw water samples are free of coliform organisms. The analysis of these samples must be conducted by a laboratory accredited by the Texas Commission on Environmental Quality.

(ii) Appropriate facilities for treatment of the water shall be provided where a satisfactory microbiological record cannot be established after repeated disinfection. The extent of water treatment required will be determined on the basis of geological data, well construction features, nearby sources of contamination and, perhaps, on the basis of quantitative microbiological analyses.

(G) A complete physical and chemical analysis of the water produced from a new well shall be made after 36 hours of continuous pumping at the design withdrawal rate. Shorter pump test periods can be accepted for large capacity wells producing from areas of known groundwater production and quality so as to prevent wasting of water. Samples must be submitted to an accredited laboratory for chemical analyses. Tentative approval may be given on the basis of tests performed by in-plant or private laboratories, but final acceptance by the commission shall be on the basis of results from the accredited laboratory. Appropriate treatment shall be provided if the analyses reveal that the water from the well fails to meet the water quality criteria as prescribed by the drinking water standards. These criteria include turbidity, color and threshold odor limitations, and excessive hydrogen sulfide, carbon dioxide, or other constituents or minerals which make the water undesirable or unsuited for domestic use. Additional chemical and microbiological tests may be required after the executive director conducts a vulnerability assessment of the well.

(H) Below ground-level pump rooms and pump pits will not be allowed in connection with water supply installations.

(I) The well site shall be fine graded so that the site is free from depressions, reverse grades, or areas too rough for proper ground maintenance so as to ensure that surface water will drain away from the well. In all cases, arrangements shall be made to convey well pump drainage, packing gland leakage, and floor drainage away from the wellhead. Suitable drain pipes located at the outer edge of the concrete floor shall be provided to collect this water and prevent its ponding or collecting around the wellhead. This wastewater shall be disposed of in a manner that will not cause any nuisance from mosquito breeding or stagnation. Drains shall not be directly connected to storm or sanitary sewers.

(J) In all cases, a concrete sealing block extending at least three feet from the well casing in all directions, with a minimum

thickness of six inches and sloped to drain away at not less than 0.25 inches per foot shall be provided around the wellhead.

(K) Wellheads and pump bases shall be sealed by a gasket or sealing compound and properly vented to prevent the possibility of contaminating the well water. A well casing vent shall be provided with an opening that is covered with 16-mesh or finer corrosion-resistant screen, facing downward, elevated and located so as to minimize the drawing of contaminants into the well. Wellheads and well vents shall be at least two feet above the highest known watermark or 100-year flood elevation, if available, or adequately protected from possible flood damage by levees.

(L) If a well blow-off line is provided, its discharge shall terminate in a downward direction and at a point which will not be submerged by flood waters.

(M) A suitable sampling cock shall be provided on the discharge pipe of each well pump prior to any treatment.

(N) Flow-measuring devices shall be provided for each well to measure production yields and provide for the accumulation of water production data. These devices shall be located to facilitate daily reading.

(O) All completed well units shall be protected by intruder-resistant fences, the gates of which are provided with locks or shall be enclosed in locked, ventilated well houses to exclude possible contamination or damage to the facilities by trespassers. The gates or wellhouses shall be locked during periods of darkness and when the plant is unattended.

(P) An all-weather access road shall be provided to each well site.

(Q) If an air release device is provided on the discharge piping, it shall be installed in such a manner as to preclude the possibility of submergence or possible entrance of contaminants. In this respect, all openings to the atmosphere shall be covered with 16-mesh or finer, corrosion-resistant screening material or an acceptable equivalent.

(4) Pitless units may be desirable in areas subject to vandalism or extended periods of subfreezing weather.

(A) Pitless units shall be shop fabricated from the point of connection with the well casing to the unit cap or cover, be threaded or welded to the well casing, be of watertight construction throughout, and be of materials and weight at least equivalent and compatible to the casing. The units must have a field connection to the lateral discharge from the pitless unit of threaded, flanged, or mechanical joint connection.

(B) The design of the pitless unit shall make provisions for an access to disinfect the well, a properly designed casing vent, a cover at the upper terminal of the well that will prevent the entrance of contamination, a sealed entrance connection for electrical cable, and at least one check valve within the well casing. The unit shall have an inside diameter as great as that of the well casing up to and including casing diameters of 12 inches.

(C) If the connection to the casing is by field weld, the shop-assembled unit must be designed specifically for field welding to the casing. The only field welding permitted will be that needed to connect a pitless unit to the well casing.

(D) With the exception of the fact that the well was constructed using a pitless unit, the well must otherwise meet all of the requirements of paragraph (3) of this subsection.

(d) Springs and other water sources.

(1) Springs and other similar sources of flowing artesian water shall be protected from potential contaminant sources in accordance with the requirements of subsection (c)(1) of this section.

(2) Before placing the spring or similar source into service, completion data similar to that required by subsection (c)(3)(A) of this section must be submitted to the executive director for review and approval to the Texas Commission on Environmental Quality, Water Supply Division, MC 159, P.O. Box 13087, Austin, Texas 78711-3087.

(3) Springs and similar sources shall be constructed in a manner which will preclude the entrance of surface water and debris.

(A) The site shall be fine graded so that it is free from depressions, reverse grades, or areas too rough for proper ground maintenance in order to ensure that surface water will drain away from the source.

(B) The spring or similar source shall be encased in an open-bottomed, watertight basin which intercepts the flowing water below the surface of the ground. The basin shall extend at least 18 inches above ground level. The top of the basin shall also be at least two feet above the highest known watermark or 100-year flood elevation, if available, or adequately protected from possible flood damage by levees.

(C) In all cases, a concrete sealing block shall be provided which extends at least three feet from the encasement in all directions. The sealing block shall be at least six inches thick and be sloped to drain away from the encasement at not less than 0.25 inches per foot.

(D) The top of the encasement shall be provided with a sloped, watertight roof which prevents the ponding of water and precludes the entrance of animals, insects, and other sources of contamination.

(E) The roof of the encasement shall be provided with a hatch that is not less than 30 inches in diameter. The hatch shall have a raised curbing at least four inches in height with a lockable cover that overlaps the curbing at least two inches in a downward direction. Where necessary, a gasket shall be used to make a positive seal when the hatch is closed. All hatches shall remain locked except during inspections and maintenance.

(F) The encasement shall be provided with a gooseneck vent or roof ventilator which is equipped with approved screens to prevent entry of animals, birds, insects, and heavy air contaminants. Screens shall be fabricated of corrosion-resistant material and shall be 16-mesh or finer. Screens shall be securely clamped in place with stainless or galvanized bands or wires.

(G) The encasement shall be provided with an overflow which is designed to prevent the entry of animals, birds, insects, and debris. The discharge opening of the overflow shall be above the surface of the ground and shall not be subject to submergence.

(4) Springs and similar sources must be provided with the appurtenances required by subsection (c)(3)(L) - (Q) of this section.

(5) All systems with new springs or similar sources must monitor microbiological source water quality at the new springs or similar sources in accordance with §290.111 of this title (relating to Surface Water Treatment) on a schedule determined by the executive director. The system must notify the agency of the new spring or similar source prior to construction. The executive director may waive these requirements if the spring or similar source has been determined not to be under the direct influence of surface water.

(e) Surface water sources and development.

(1) To determine the degree of pollution from all sources within the watershed, an evaluation shall be made of the surface water source in the area of diversion and its tributary streams. The area where surface water sources are diverted for drinking water use shall be evaluated and protected from sources of contamination.

(A) Where surface water sources are subject to continuous or intermittent contamination by municipal, agricultural, or industrial wastes and/or treated effluent, the adverse effects of the contamination on the quality of the raw water reaching the treatment plant shall be determined by site evaluations and laboratory procedures.

(B) The disposal of all liquid or solid wastes from any source on the watershed must be in conformity with applicable regulations and state statutes.

(C) Shore installations, marinas, boats and all habitations on the watershed shall be provided with satisfactory sewage disposal facilities. Septic tanks and soil absorption fields, tile or concrete sanitary sewers, sewer manholes, or other approved toilet facilities shall not be located in an area within 75 feet horizontally from the lake water surface at the uncontrolled spillway elevation of the lake or 75 feet horizontally from the 50-year flood elevation, whichever is lower.

(D) Disposal of wastes from boats or any other watercraft shall be in accordance with §§321.1 - 321.11 of this title (relating to Boat Sewage Disposal).

(E) Pesticides or herbicides which are used within the watershed shall be applied in strict accordance with the product label restrictions.

(F) Before approval of a new surface water source, the system shall provide the executive director with information regarding specific water quality parameters of the potential source water. These parameters are pH, total coliform, Escherichia coli, turbidity, alkalinity, hardness, bromide, total organic carbon, temperature, color, taste and odor, regulated volatile organic compounds, regulated synthetic organic compounds, regulated inorganic compounds, and possible sources of contamination. If data on the incidence of Giardia cysts and Cryptosporidium oocysts has been collected, the information shall be provided to the executive director. This data shall be provided to the executive director as part of the approval process for a new surface water source.

(G) All systems with new surface water intakes or new bank filtration wells must monitor microbiological source water quality at the new surface water intakes or new bank filtration wells in accordance with §290.111 of this title on a schedule determined by the executive director. The system must notify the agency of the new surface water intake or bank filtration well prior to construction.

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

(A) Intakes shall not be located in areas subject to excessive siltation or in areas subject to receiving immediate runoff from wooded sloughs or swamps.

(B) Raw water intakes shall not be located within 1,000 feet of boat launching ramps, marinas, docks, or floating fishing piers which are accessible by the public.

(C) A restricted zone of 200 feet radius from the raw water intake works shall be established and all recreational activities and trespassing shall be prohibited in this area. Regulations governing this zone shall be in the city ordinances or the rules and regulations promulgated by a water district or similar regulatory agency. The restricted zone shall be designated with signs recounting these restrictions. The signs shall be maintained in plain view of the public and shall be visible from all parts of the restricted area. In addition, special buoys may be required as deemed necessary by the executive director. Provisions shall be made for the strict enforcement of such ordinances or regulations.

(D) Commission staff shall make an on-site evaluation of any proposed raw water intake location. The evaluation must be requested prior to final design and must be supported by preliminary design drawings. Once the final intake location has been selected, the executive director shall be furnished with an original or legible copy of a United States Geological Survey 7.5-minute topographic quadrangle showing the accurate intake location.

(E) Intakes shall be located and constructed in a manner which will allow raw water to be taken from a variety of depths and which will permit withdrawal of water when reservoir levels are very low. Fixed level intakes are acceptable if water quality data is available to establish that the effect on raw water quality will be minimal.

(F) Water intake works shall be provided with screens or grates to minimize the amount of debris entering the plant.

(G) Intakes shall not be located within 500 feet of a sewage treatment plant or lands irrigated with sewage effluent.

(3) The raw water pump station shall be located in a well-drained area and shall be designed to remain in operation during flood events.

(4) An all weather road shall be provided to the raw water pump station.

(5) The raw water pump station and all appurtenances must be installed in a lockable building that is designed to prevent intruder access or enclosed by an intruder-resistant fence with lockable gates.

(f) Weatherization. All critical components necessary for the continuous provision of raw water from the source must be protected from adverse weather conditions.

§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. 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.

(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 requirements 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-re-

sistant 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 incompatibility of chemicals or the state in which they are being fed (solid, liquid, or gas).

(B) Chemical feed equipment shall be sized to provide proper dosage under all operating conditions.

(i) Devices designed for determining the chemical feed rate shall be provided for all chemical feeders.

(ii) The capacity of the chemical feeders shall be such that accurate control of the dosage can be achieved at the full range of feed rates expected to occur at the facility.

(iii) Chemical feeders shall be provided with tanks for chemical dissolution when applicable.

(C) Chemical feeders, valves, and piping must be compatible with the chemical being fed.

(D) Chemical feed systems shall be designed to minimize the possibility of leaks and spills and provide protection against backpressure and siphoning.

(E) If enclosed feed lines are used, they shall be designed and installed so as to prevent clogging and be easily maintained.

(F) Dry chemical feeders shall be located in a separate room that is provided with facilities for dust control.

(G) Coagulant feed systems shall be designed so that coagulants are applied to the water prior to or within the mixing basins or chambers so as to permit their complete mixing with the water.

(i) Coagulant feed points shall be located downstream of the raw water sampling tap.

(ii) Coagulants shall be applied continuously during treatment plant operation.

(H) Chlorine feed units, ammonia feed units, and storage facilities shall be separated by solid, sealed walls.

(I) Chemical application points shall be provided to achieve acceptable finished water quality, adequate taste and odor control, corrosion control, and disinfection.

(g) Other treatment processes. Innovative/alternate treatment processes will be considered on an individual basis, in accordance with §290.39(l) of this title. Where innovative/alternate treatment systems are proposed, the licensed professional engineer must provide pilot test data or data collected at similar full-scale operations demonstrating that the system will produce water that meets the requirements of Subchapter F of this chapter. 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 LRVC-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 reference. This manual should be of sufficient detail to provide the operator with routine maintenance and repair procedures, with protocols to be utilized in the event of a natural or man-made catastrophe, as well as provide telephone numbers of water system personnel, system officials, and local/state/federal agencies to be contacted in the event of an emergency. 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. This manual must include, at a minimum, the following information to ensure the continuity of operations.

(1) Identify critical plant equipment and planned protective measures for this equipment during adverse weather conditions. This will include relevant equipment maintenance schedules, the location and part numbers for backup and replacement parts, reference to pertinent manufacturer's user manuals, and vendor/technician information to include how and where to source equipment outside of the area during localized adverse weather events.

(2) Identify all necessary water treatment chemicals and chemical vendors. This will include relevant chemical vendor contact information, order/replacement schedules, and information on how and where to source chemicals outside of the area during localized adverse weather events.

(3) Standard operating procedures for:

(A) Chemical feed-rate verification and documentation procedures;

(B) Dose adjustment criteria, protocols, and documentation procedures;

(C) Process control sampling locations, frequencies, and documentation procedures;

(D) Calibration and accuracy verification protocol, frequencies and documentation procedures related to online and benchtop monitoring equipment;

(E) Operation protocol to include start-up and shutdown for critical units under normal and emergency conditions for both manual, and automated settings, as applicable; and

(F) Copies of or links to manufacturer's specifications for maintaining and troubleshooting all critical plant equipment.

(4) Continuation of operations plan to prevent or mitigate disastrous impacts to the water system if a critical treatment unit or critical equipment fails or there is a temporary or permanent loss of key personnel.

(5) This manual must be reviewed and updated when significant changes, as described in §290.39(j) of this title, are made, after emergency events that impact public water system operation, or at least every three years.

(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.

(o) Weatherization. All critical drinking water treatment components necessary to achieve compliance with primary standards and treatment technique requirements must be protected from adverse weather conditions.

§290.43. Water Storage.

(a) Capacity. The minimum clearwell, storage tank, and pressure maintenance capacity shall be governed by the requirements in §290.45 of this title (relating to Minimum Water System Capacity Requirements).

(b) Location of clearwells, standpipes, and ground storage and elevated tanks.

(1) No public water supply elevated storage or ground storage tank shall be located:

(A) within 500 feet of any;

(i) municipal or industrial sewage treatment plant; [~~or any~~]

(ii) land which is spray irrigated with [~~treated~~] sewage treatment plant effluent; or

(iii) land on which sewage treatment plant sludge, septic tank sewage sludge, or biosolids is applied; or

(B) within 150 feet of any land spray irrigated with effluent from onsite sewage facilities as defined in §285.2 of this title (related to Definitions). [~~sludge disposal.~~]

(2) Insofar as possible, clearwells or treated water tanks shall not be located under any part of any buildings and, when possible, shall be constructed partially or wholly above ground.

(3) No storage tank or clearwell located below ground level is allowed within 50 feet of a sanitary sewer or septic tank. However, if the sanitary sewers are constructed of 150 pounds per square inch (psi) pressure-rated pipe with pressure-tested, watertight joints as used in water main construction, the minimum separation distance is ten feet.

(4) No storage tank or clearwell located below ground level is allowed within 150 feet of a septic tank soil absorption system.

(c) Design and construction of clearwells, standpipes, ground storage tanks, and elevated tanks. All facilities for potable water storage shall be covered and designed, fabricated, erected, tested, and disinfected in strict accordance with current American Water Works Association (AWWA) standards and shall be provided with the minimum number, size and type of roof vents, man ways, drains, sample connections, access ladders, overflows, liquid level indicators, and other appurtenances as specified in these rules. The roof of all tanks shall be designed and erected so that no water ponds at any point on the roof and, in addition, no area of the roof shall have a slope of less than 0.75 inch per foot.

(1) Roof vents shall be gooseneck or roof ventilator and be designed by the engineer based on the maximum outflow from the tank. Vents shall be installed in strict accordance with current AWWA standards and shall be equipped with approved screens to prevent entry of animals, birds, insects and heavy air contaminants. Screens shall be fabricated of corrosion-resistant material and shall be 16-mesh or finer. Screens shall be securely clamped in place with stainless or galvanized bands or wires and shall be designed to withstand winds of not less than tank design criteria (unless specified otherwise by the engineer).

(2) All roof openings shall be designed in accordance with current AWWA standards. If an alternate 30-inch diameter access opening is not provided in a storage tank, the primary roof access opening shall not be less than 30 inches in diameter. Other roof openings required only for ventilating purposes during cleaning, repairing or painting operations shall be not less than 24 inches in diameter or as specified by the licensed professional engineer. An existing tank without a 30-inch in diameter access opening must be modified to meet this requirement when major repair or maintenance is performed on the tank. Each access opening shall have a raised curbing at least four inches in height with a lockable cover that overlaps the curbing at least two inches in a downward direction. Where necessary, a gasket shall be used to make a positive seal when the hatch is closed. All hatches shall remain locked except during inspections and maintenance.

(3) Overflows shall be designed in strict accordance with current AWWA standards. If the overflow terminates at any point other than the ground level, it shall be located near enough and at a position accessible from a ladder or the balcony for inspection purposes. The overflow(s) shall be sized to handle the maximum possible fill rate without exceeding the capacity of the overflow(s). The discharge opening of the overflow(s) shall be above the surface of the ground and shall not be subject to submergence. The discharge opening shall be covered with a gravity-hinged and weighted cover, an elastomeric duckbill valve, or other approved device to prevent the entrance of insects and other nuisances. When the tank is not overflowing, the cover shall close automatically and fit tightly with no gap over 1/16 inch.

(4) All clearwells and water storage tanks shall have a liquid level indicator located at the tank site. The indicator can be a float with a moving target, an ultrasonic level indicator, or a pressure gauge calibrated in feet of water. If an elevated tank or standpipe has a float with moving target indicator, it must also have a pressure indicator

located at ground level. Pressure gauges must not be less than three inches in diameter and calibrated at not more than two-foot intervals. Remote reading gauges at the owner's treatment plant or pumping station will not eliminate the requirement for a gauge at the tank site unless the tank is located at the plant or station.

(5) Inlet and outlet connections shall be located so as to prevent short-circuiting or stagnation of water. Clearwells used for disinfectant contact time shall be appropriately baffled.

(6) Clearwells and potable water storage tanks shall be thoroughly tight against leakage, shall be located above the groundwater table, and shall have no walls in common with any other plant units containing water in the process of treatment. All associated appurtenances including valves, pipes, and fittings shall be tight against leakage.

(7) Each clearwell or potable water storage tank shall be provided with a means of removing accumulated silt and deposits at all low points in the bottom of the tank. Drains shall not be connected to any waste or sewage disposal system and shall be constructed so that they are not a potential agent in the contamination of the stored water. Each clearwell or potable water storage tank must be designed to drain the tank.

(8) All clearwells, ground storage tanks, standpipes, and elevated tanks shall be painted, disinfected, and maintained in strict accordance with current AWWA standards. However, no temporary coatings, wax grease coatings, or coating materials containing lead will be allowed. No other coatings will be allowed which are not approved for use (as a contact surface with potable water) by the United States Environmental Protection Agency, NSF International (NSF), or United States Food and Drug Administration. All newly installed coatings must conform to American National Standards Institute/NSF (ANSI/NSF) Standard 61 and must be certified by an organization accredited by ANSI.

(9) No tanks or containers shall be used to store potable water that have previously been used for any nonpotable purpose. Where a used tank is proposed for use, a letter from the previous owner or owners must be submitted to the executive director which states the use of the tank.

(10) Access manways in the riser pipe, shell area, access tube, bowl area or any other location opening directly into the water compartment shall be located in strict accordance with current AWWA standards. These openings shall not be less than 24 inches in diameter. However, in the case of a riser pipe or access tube of 36 inches in diameter or smaller, the access manway may be 18 inches times 24 inches with the vertical dimension not less than 24 inches. The primary access manway in the lower ring or section of a ground storage tank shall be not less than 30 inches in diameter. Where necessary, for any access manway which allows direct access to the water compartment, a gasket shall be used to make a positive seal when the access manway is closed.

(d) Design and construction of pressure (hydropneumatic) tanks. All hydropneumatic tanks must be located wholly above grade and must be of steel construction with welded seams except as provided in paragraph (8) of this subsection.

(1) Metal thickness for pressure tanks shall be sufficient to withstand the highest expected working pressures with a four to one factor of safety. Tanks of 1,000 gallons capacity or larger must meet the standards of the American Society of Mechanical Engineers (ASME) Section VIII, Division 1 Codes and Construction Regulations and must have an access port for periodic inspections. An ASME name plate must be permanently attached to those tanks. Tanks installed before July 1, 1988, are exempt from the ASME coding requirement, but all new installations must meet this regulation. Exempt tanks can be relocated within a system but cannot be relocated to another system.

(2) All pressure tanks shall be provided with a pressure release device and an easily readable pressure gauge. When more than one pressure tank is connected by a common manifold pipe and pressure switch to allow the tanks to operate as a single unit, the unit shall be provided at least one pressure gauge.

(3) Facilities shall be provided for maintaining the air-water-volume at the design water level and working pressure. Air injection lines must be equipped with filters or other devices to prevent compressor lubricants and other contaminants from entering the pressure tank. A device to readily determine air-water-volume must be provided for all tanks greater than 1,000 gallon capacity. Galvanized tanks which are not provided with the necessary fittings and which were installed before July 1, 1988 shall be exempt from this requirement.

(4) Protective paint or coating shall be applied to the inside portion of any pressure tank. The coating shall be as specified in subsection (c)(8) of this section.

(5) No pressure tank that has been used to store any material other than potable water may be used in a public water system. A letter from the previous owner or owners must be provided as specified in subsection (c)(9) of this section.

(6) Pressure tank installations should be equipped with slow closing valves and time delay pump controls to eliminate water hammer and reduce the chance of tank failure.

(7) All associated appurtenances including valves, pipes and fittings connected to pressure tanks shall be thoroughly tight against leakage.

(8) Where seamless fiberglass tanks are utilized, they shall not exceed 300 gallons in capacity.

(9) No more than three pressure tanks shall be installed at any one site without the prior approval of the executive director.

(e) Facility security. All potable water storage tanks and pressure maintenance facilities must be installed in a lockable building that is designed to prevent intruder access or enclosed by an intruder-resistant fence with lockable gates. Pedestal-type elevated storage tanks with lockable doors and without external ladders are exempt from this requirement. The gates and doors must be kept locked whenever the facility is unattended.

(f) Service pumps. Service pump installations taking suction from storage tanks shall provide automatic low water level cutoff devices to prevent damage to the pumps. The service pump circuitry shall also resume pumping automatically once the minimum water level is reached in the tank.

(g) Weatherization. All critical components necessary for the safe and sufficient storage of raw water or treated drinking water must be protected from adverse weather conditions.

§290.44. Water Distribution.

(a) Design and standards. All potable water distribution systems including pump stations, mains, and both ground and elevated storage tanks, shall be designed, installed, and constructed in accordance with current American Water Works Association (AWWA) standards with reference to materials to be used and construction procedures to be followed. In the absence of AWWA standards, commission review may be based upon the standards of the American Society for Testing and Materials (ASTM), commercial, and other recognized standards utilized by licensed professional engineers.

(1) All newly installed pipes and related products must conform to American National Standards Institute/NSF International (ANSI/NSF) Standard 61 and must be certified by an organization accredited by ANSI.

(2) All plastic pipes for use in public water systems must also bear the NSF International Seal of Approval (NSF-pw) and have an ASTM design pressure rating of at least 150 pounds per square inch (psi) or a standard dimension ratio of 26 or less.

(3) No pipe which has been used for any purpose other than the conveyance of drinking water shall be accepted or relocated for use in any public drinking water supply.

(4) Water transmission and distribution lines must be installed in accordance with the manufacturer's instructions. However, the top of the waterline must be located below the frost line and in no case shall the top of the waterline be less than 24 inches below ground surface.

(5) The hydrostatic leakage rate shall not exceed the amount allowed or recommended by AWWA formulas.

(b) Lead ban. The following provisions apply to the use of lead in plumbing.

(1) The use of pipes and pipe fittings that contain more than 0.25% lead or solders and flux that contains more than 0.2% lead is prohibited in the following circumstances:

(A) for installation or repair of any public water supply; and

(B) for installation or repair of any plumbing in a residential or nonresidential facility providing water for human consumption and connected to a public drinking water supply system.

(2) This requirement will be waived for lead joints that are necessary for repairs to cast iron pipe.

(3) The following are exempt from prohibitions on the use of lead pipes, solder, and flux:

(A) pipes, pipe fittings, plumbing fittings, or fixtures, including backflow preventers, that are used exclusively for nonpotable services such as manufacturing, industrial processing, irrigation, outdoor watering, or any other uses where the water is not anticipated to be used for human consumption; or

(B) toilets, bidets, urinals, fill valves, flush-o-meter valves, tub fillers, shower valves, service saddles, fire hydrants or water distribution main gate valves that are two inches in diameter or larger.

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

(d) Minimum pressure requirement. The system must be designed to maintain a minimum pressure of 35 psi at all points within the distribution network at flow rates of at least 1.5 gallons per minute per connection. When the system is intended to provide firefighting [~~fire~~ ~~fighting~~] capability, it must also be designed to maintain a minimum pressure of 20 psi under combined fire and drinking water flow conditions. The distribution system of public water systems that are also affected utilities, defined in TWC §13.1394 or §13.1395, must be designed to meet the requirements of §290.45(h) or (i) [~~§290.45(h)~~] of this title (relating to Minimum Water System Capacity Requirements).

(1) Air release devices shall be installed in the distribution system at all points where topography or other factors may create air locks in the lines. Air release devices shall be installed in such a manner as to preclude the possibility of submergence or possible entrance of contaminants. In this respect, all openings to the atmosphere shall be covered with 16-mesh or finer, corrosion-resistant screening material or an acceptable equivalent.

(2) When service is to be provided to more than one pressure plane or when distribution system conditions and demands are such that low pressures develop, the method of providing increased pressure shall be by means of booster pumps taking suction from storage tanks. If an exception to this requirement is desired, the designing engineer must furnish for the executive director's review all planning material for booster pumps taking suction from other than a storage tank. The planning material must contain a full description of the supply to the point of suction, maximum demands on this part of the system, location of pressure recorders, safety controls, and other pertinent information. Where booster pumps are installed to take suction directly from the distribution system, a minimum residual pressure of 20 psi must be maintained on the suction line at all times. Such installations must be equipped with automatic pressure cut-off devices so that the pumping units become inoperative at a suction pressure of less than 20 psi. In addition, a continuous pressure recording device may be required at a predetermined suspected critical pressure point on the suction line in order to record the hydraulic conditions in the line at all times. If such a record indicates critical minimum pressures, less than 20 psi, adequate storage facilities must be installed with the booster pumps taking suction from the storage facility. Fire pumps used to maintain pressure on automatic sprinkler systems only for fire protection purposes are not considered as in-line booster pumps.

(3) Service connections that require booster pumps taking suction from the public water system lines must be equipped with automatic pressure cut-off devices so that the pumping units become inoperative at a suction pressure of less than 20 psi. Where these types of installations are necessary, the preferred method of pressure maintenance consists of an air gapped connection with a storage tank and subsequent repressurization facilities.

(4) Each community public water system shall provide accurate metering devices at each residential, commercial, or industrial service connection for the accumulation of water usage data. A water system that furnishes the services or commodity only to itself or its employees when that service or commodity is not resold to or used by others is exempt from this requirement.

(5) The system shall be provided with sufficient valves and blowoffs so that necessary repairs can be made without undue interruption of service over any considerable area and for flushing the system when required. The engineering report shall establish criteria for this design.

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

(e) Location of waterlines. The following rules apply to installations of waterlines, wastewater mains or laterals, and other con-

veyances/appurtenances identified as potential sources of contamination. Furthermore, all ratings specified shall be defined by ASTM or AWWA standards unless stated otherwise. New mains, service lines, or laterals are those that are installed where no main, service line, or lateral previously existed, or where existing mains, service lines, or laterals are replaced with pipes of different size or material.

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

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

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

(4) Where the nine-foot separation distance cannot be achieved, the following criteria shall apply.

(A) New waterline installation - parallel lines.

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

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

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

(B) New waterline installation - crossing lines.

(i) Where a new potable waterline crosses above a wastewater main or lateral, the segment of the waterline pipe shall be centered over and must be perpendicular to the wastewater main or lateral such that the joints of the waterline pipe are equidistant and at least nine feet horizontally from the centerline of the wastewater main or lateral. When crossing an existing wastewater main or lateral and it is disturbed or shows signs of leaking, the wastewater main or lateral shall be replaced for at least nine feet in both directions (18 feet total) with at least 150 psi pressure-rated pipe embedded in cement stabilized sand (see clause (v) of this subparagraph) for the total length of one pipe segment plus 12 inches beyond the joint on each end.

(I) The potable waterline shall be at least two feet above an existing, non-pressure rated wastewater main or lateral.

(II) The potable waterline shall be at least six inches above an existing, pressure-rated wastewater main or lateral.

(ii) Where a new potable waterline crosses a new, non-pressure rated wastewater main or lateral, the segment of the waterline pipe shall be centered over and shall be perpendicular to the wastewater main or lateral such that the joints of the waterline pipe are equidistant and at least nine feet horizontally from the centerline of the wastewater main or lateral. The potable waterline shall be at least two feet above the wastewater main or lateral. Whenever possible, the crossing shall be centered between the joints of the wastewater main or lateral. The wastewater pipe shall have a minimum pipe stiffness of 115 psi at 5.0% deflection. The wastewater main or lateral shall be embedded in cement stabilized sand (see clause (v) of this subparagraph) for the total length of one pipe segment plus 12 inches beyond the joint on each end. The materials and method of installation shall conform to one of the following options:

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

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

(iii) When a new waterline crosses under a wastewater main or lateral, the waterline shall be encased as described for wastewater mains or laterals in clause (ii) of this subparagraph or constructed of ductile iron or steel pipe with mechanical or welded joints as appropriate. An absolute minimum separation distance of one foot between the waterline and the wastewater main or lateral shall be provided. When a new waterline crosses under a wastewater main, the procedures in §217.53(d) of this title (relating to Pipe Design) must be followed.

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

(v) Where cement stabilized sand bedding is required, the cement stabilized sand shall have a minimum of 10% cement per cubic yard of cement stabilized sand mixture, based on loose dry weight volume (at least 2.5 bags of cement per cubic yard of mixture). The cement stabilized sand bedding shall be a minimum of

six inches above and four inches below the wastewater main or lateral. The use of brown coloring in cement stabilized sand for wastewater main or lateral bedding is recommended for the identification of pressure rated wastewater mains during future construction.

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

(6) Location of fire hydrants. Fire hydrants shall not be installed within nine feet vertically or horizontally of any wastewater main, wastewater lateral, or wastewater service line regardless of construction.

(7) Location of potable or raw water supply or suction lines. Suction mains to pumping equipment shall not cross wastewater mains, wastewater laterals, or wastewater service lines. Raw water supply lines shall not be installed within five feet of any tile or concrete wastewater main, wastewater lateral, or wastewater service line.

(8) Proximity of septic tank drainfields. Waterlines shall not be installed closer than ten feet to septic tank drainfields.

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

(1) Pipe shall not be laid in water or placed where it can be flooded with water or sewage during its storage or installation.

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

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

(g) Interconnections.

(1) Each proposal for a direct connection between public drinking water systems under separate administrative authority will be considered on an individual basis.

(A) Documents covering the responsibility for sanitary control shall accompany the submitted planning material.

(B) Each water supply shall be of a safe, potable quality.

(2) Where an interconnection between systems is proposed to provide a second source of supply for one or both systems, the system being utilized as a second source of supply must be capable of supplying a minimum of 0.35 gallons per minute per connection for the total number of connections in the combined distribution systems.

(h) Backflow, siphonage.

(1) No water connection from any public drinking water supply system shall be allowed to any residence or establishment where an actual or potential contamination hazard exists unless the public water facilities are protected from contamination.

(A) At any residence or establishment where an actual or potential contamination hazard exists, additional protection shall be required at the meter in the form of an air gap or backflow prevention assembly. The type of backflow prevention assembly required shall be determined by the specific potential hazard identified in §290.47(f) of this title (relating to Appendices).

(B) At any residence or establishment where an actual or potential contamination hazard exists and an adequate internal cross-connection control program is in effect, backflow protection at the water service entrance or meter is not required.

(i) An adequate internal cross-connection control program shall include an annual inspection and testing by a licensed backflow prevention assembly tester on all backflow prevention assemblies used for health hazard protection.

(ii) Copies of all such inspection and test reports must be obtained and kept on file by the water purveyor.

(iii) It will be the responsibility of the water purveyor to ensure that these requirements are met.

(2) No water connection from any public drinking water supply system shall be connected to any condensing, cooling, or industrial process or any other system of nonpotable usage over which the public water supply system officials do not have sanitary control, unless the said connection is made in accordance with the requirements of paragraph (1) of this subsection. Water from such systems cannot be returned to the potable water supply.

(3) Overhead bulk water dispensing stations must be provided with an air gap between the filling outlet hose and the receiving tank to protect against back siphonage and cross-contamination.

(4) All backflow prevention assemblies that are required according to this section and associated table located in §290.47(f) of this title shall be tested upon installation by a licensed backflow prevention assembly tester and certified to be operating within specifications. Backflow prevention assemblies which are installed to provide protection against health hazards must also be tested and certified to be operating within specifications at least annually by a licensed backflow prevention assembly tester.

(A) Backflow prevention assembly testers shall have completed an executive director-approved course on cross-connection control and backflow prevention assembly testing, pass an examination administered by the executive director, and hold a current license as a backflow prevention assembly tester.

(i) Backflow prevention assembly testers are qualified to test and repair assemblies on any domestic, commercial, industrial, or irrigation service.

(ii) Backflow prevention assembly testers may test and repair assemblies on firelines only if they are permanently employed by an Approved Fireline Contractor. The Texas Department of Insurance's State Fire Marshal's Office requires that any person performing maintenance on firelines must be employed by an Approved Fireline Contractor.

(B) Gauges used in the testing of backflow prevention assemblies shall be tested for accuracy annually in accordance with the University of Southern California's Manual of Cross-Connection Control or the AWWA's Recommended Practice for Backflow Prevention and Cross-Connection Control (AWWA Manual M14). Public water systems shall require testers to include test gauge serial numbers on the Backflow Prevention Assembly Test and Maintenance Report (commission Form 20700), and ensure testers have gauges tested for accuracy.

(C) A test report must be completed by the recognized backflow prevention assembly tester for each assembly tested. The signed and dated original must be submitted to the public water supplier for recordkeeping purposes. Any form which varies from the format specified in commission Form 20700 must be approved by the executive director prior to being placed in use.

(5) The use of a backflow prevention assembly at the service connection shall be considered as additional backflow protection and shall not negate the use of backflow protection on internal hazards as outlined and enforced by local plumbing codes.

(6) At any residence or establishment where there is no actual or potential contamination hazard, a backflow prevention assembly is not required.

(i) Water hauling. When drinking water is distributed by tank truck or trailer, it must be accomplished in the following manner.

(1) Water shall be obtained from an approved source.

(2) The equipment used to haul the water must be approved by the executive director and must be constructed as follows.

(A) The tank truck or trailer shall be used for transporting drinking water only and shall be labeled "Drinking Water." Tanks which have been used previously for purposes other than transporting potable liquids shall not be used for hauling drinking water.

(B) The tank shall be watertight and of an approved material which is impervious and easily cleaned and disinfected. Any paint or coating and any plastic or fiberglass materials used as contact surfaces must be approved by the United States Environmental Protection Agency, the United States Food and Drug Administration, or the NSF. Effective January 1, 1993, any newly installed surfaces shall conform to ANSI/NSF Standard 61 and must be certified by an organization accredited by ANSI.

(C) The tank shall have a manhole and a manhole cover which overlaps the raised manhole opening by a minimum of two inches and terminates in a downward direction. The cover shall fit firmly on the manhole opening and shall be kept locked.

(D) The tank shall have a vent which is faced downward and located to minimize the possibility of drawing contaminants into the stored water. The vent must be screened with 16-mesh or finer corrosion-resistant material.

(E) Connections for filling and emptying the tank shall be properly protected to prevent the possible entrance of contamination. These openings must be provided with caps and keeper chains.

(F) A drain shall be provided which will completely empty the tank for cleaning or repairs.

(G) When a pump is used to transfer the water from the tank, the pump shall be permanently mounted with a permanent connection to the tank. The discharge side of the pump shall be properly protected between uses by a protective cap and keeper chain.

(H) Hoses used for the transfer of drinking water to and from the tank shall be used only for that purpose and labeled for drinking water only. The hoses shall conform to ANSI/NSF Standard 61 and must be certified by an entity recognized by the commission. Hoses and related appurtenances must be cleaned and disinfected on a regular basis during prolonged use or before start-up during intermittent use. Hoses must be properly stored between uses and must be provided with caps and keeper chains or have the ends connected together.

(I) The tank shall be disinfected monthly and at any time that contamination is suspected.

(J) At least one sample per month from each tank shall be collected and submitted for microbiological analysis to one of the executive director's accredited [~~commission's~~ ~~approved~~] laboratories for each month of operation.

(K) A minimum free chlorine residual of 0.5 milligrams per liter (mg/L) or, if chloramines are used as the primary disinfectant, a chloramine residual of 1.0 mg/L (measured as total chlorine) shall be maintained in the water being hauled. Chlorine or chlorine containing compounds may be added on a "batch" basis to maintain the required residual.

(L) Operational records detailing the amount of water hauled, purchases, microbiological sampling results, chlorine residual readings, dates of disinfection, and source of water shall be maintained.

(j) If a structure is connected to a public water supply system and has a rainwater harvesting system, the structure must have appropriate cross-connection safeguards in accordance with subsection (h)(1) of this section.

(1) A privately owned rainwater harvesting system with a capacity of more than 500 gallons that is connected to a public water system for a back-up supply shall have a backflow prevention assembly or an air gap installed at the storage facility for the harvested rainwater to ensure physical separation between the rainwater harvesting system and the public water system.

(2) At each residence or facility where water from a rainwater harvesting system is used for potable purposes and there is a connection to a public water system, the public water system shall ensure that the rainwater harvesting system is installed and maintained by a master plumber or journeyman plumber licensed by the Texas State Board of Plumbing Examiners and who holds an endorsement issued by the Texas State Board of Plumbing Examiners as a Water Supply Protection Specialist.

(3) A person who intends to connect a rainwater harvesting system to a public water system must give written notice of that intention to the municipality or the owner or operator of the public water system in which the rainwater harvesting system is located.

(4) The public water system used as a back-up supply for the rainwater harvesting system may be connected only to the water storage tank and may not be connected to the plumbing of a structure.

(k) Weatherization. All critical distribution system components necessary for the continued transmission of water must be adequately protected from adverse weather conditions.

§290.45. Minimum Water System Capacity Requirements.

(a) General provisions.

(1) The requirements contained in this section are to be used in evaluating both the total capacities for public water systems and the capacities at individual pump stations and pressure planes which serve portions of the system that are hydraulically separated from, or incapable of being served by, other pump stations or pressure planes.

The capacities specified in this section are minimum requirements only and do not include emergency fire flow capacities for systems required to meet requirements contained in §290.46(x) and (y) of this title (relating to Minimum Acceptable Operating Practices for Public Drinking Water Systems).

(2) The executive director will require additional supply, storage, service pumping, and pressure maintenance facilities if a normal operating pressure of 35 pounds per square inch (psi) cannot be maintained throughout the system, or if the system's maximum daily demand exceeds its total production and treatment capacity. The executive director will also require additional capacities for a system that is unable to maintain a minimum pressure of 20 psi during firefighting, [~~fire fighting,~~] line flushing, other unusual conditions, and systems that are required to provide fire flow as specified in §290.46(x) and (y) of this title.

(3) The executive director may establish additional capacity requirements for a public water system using the method of calculation described in subsection (g)(2) of this section if there are repeated customer complaints regarding inadequate pressure or if the executive director receives a request for a capacity evaluation from customers of the system.

(4) Throughout this section, total storage capacity does not include pressure tank capacity.

(5) The executive director may exclude the capacity of facilities that have been inoperative for the past 120 days and will not be returned to an operative condition within the next 30 days when determining compliance with the requirements of this section.

(6) The capacity of the treatment facilities shall not be less than the required raw water or groundwater production rate or the anticipated maximum daily demand of the system. The production capacity of a reverse osmosis or nanofiltration membrane system shall be the quantity of permeate water after post-treatment that can be delivered to the distribution system. The amount available for customer use must consider:

(A) the quantity of feed water discharged to waste;

(B) the quantity of bypass water used for blending;

(C) the quantity of permeate water used for cleaning and maintenance; and

(D) any other loss of raw water or groundwater available for use due to other processes at the reverse osmosis or nanofiltration facility.

(7) If a public water system that is an affected utility fails to provide a minimum of 20 psi or a pressure approved by the executive director, or 35 psi, as required by TWC §13.1394 and §13.1395 respectively, throughout the distribution system during emergency operations as soon as it is safe and practicable following the occurrence of a natural disaster, a revised emergency preparedness plan or justification regarding pressure drop shall be submitted for review and approval within 180 days of the date normal power is restored. Based on the review of the revised emergency preparedness plan, the executive director may require additional or alternative auxiliary emergency facilities.

(8) A public water system that is an affected utility is required to review its emergency preparedness plan once every three years. An affected utility shall submit a new or revised emergency preparedness plan to the executive director for approval within 90 days after any of the following conditions occur:

(A) An affected utility chooses to implement a different option or options other than those in the most recent approved emergency preparedness plan;

(B) A previously non-affected utility meets the definition of an affected utility;

(C) An affected utility makes a significant change as described in §290.39(j) of this title that affects emergency operations; or

(D) An affected utility makes changes to utility contact information, personnel changes, or emergency communications contacts. For these changes, the affected utility must submit only the updated applicable pages of the emergency preparedness plan to the executive director.

(b) Community water systems.

(1) Groundwater supplies must meet the following requirements.

(A) If fewer than 50 connections without ground storage, the system must meet the following requirements:

(i) a well capacity of 1.5 gallons per minute (gpm) per connection; and

(ii) a pressure tank capacity of 50 gallons per connection.

(B) If fewer than 50 connections with ground storage, the system must meet the following requirements:

(i) a well capacity of 0.6 gpm per connection;

(ii) a total storage capacity of 200 gallons per connection;

(iii) two or more service pumps having a total capacity of 2.0 gpm per connection; and

(iv) a pressure tank capacity of 20 gallons per connection.

(C) For 50 to 250 connections, the system must meet the following requirements:

(i) a well capacity of 0.6 gpm per connection;

(ii) a total storage capacity of 200 gallons per connection;

(iii) two or more pumps having a total capacity of 2.0 gpm per connection at each pump station or pressure plane. For systems which provide an elevated storage capacity of 200 gallons per connection, two service pumps with a minimum combined capacity of 0.6 gpm per connection are required at each pump station or pressure plane. If only wells and elevated storage are provided, service pumps are not required; and

(iv) an elevated storage capacity of 100 gallons per connection or a pressure tank capacity of 20 gallons per connection.

(D) For more than 250 connections, the system must meet the following requirements:

(i) two or more wells having a total capacity of 0.6 gpm per connection. Where an interconnection is provided with another acceptable water system capable of supplying at least 0.35 gpm for each connection in the combined system under emergency conditions, an additional well will not be required as long as the 0.6 gpm per connection requirement is met for each system on an individual basis. Each water system must still meet the storage and pressure maintenance requirements on an individual basis unless the interconnection

is permanently open. In this case, the systems' capacities will be rated as though a single system existed;

(ii) a total storage capacity of 200 gallons per connection;

(iii) two or more pumps that have a total capacity of 2.0 gpm per connection or that have a total capacity of at least 1,000 gpm and the ability to meet peak hourly demands with the largest pump out of service, whichever is less, at each pump station or pressure plane. For systems which provide an elevated storage capacity of 200 gallons per connection, two service pumps with a minimum combined capacity of 0.6 gpm per connection are required at each pump station or pressure plane. If only wells and elevated storage are provided, service pumps are not required;

(iv) an elevated storage capacity of 100 gallons per connection or a pressure tank capacity of 20 gallons per connection. If pressure tanks are used, a maximum capacity of 30,000 gallons is sufficient for up to 2,500 connections. An elevated storage capacity of 100 gallons per connection is required for systems with more than 2,500 connections. Alternate methods of pressure maintenance may be proposed and will be approved if the criteria contained in subsection (g)(5) of this section are met; and

(v) emergency power for systems which serve more than 250 connections and do not meet the elevated storage requirement. Sufficient emergency power must be provided to deliver a minimum of 0.35 gpm per connection and meet minimum pressure requirements to the distribution system in the event of the loss of normal power supply. Alternately, an emergency interconnection can be provided with another public water system that has emergency power and is able to supply at least 0.35 gpm for each connection in the combined system. Emergency power must be maintained as required by §290.46(m)(8) of this title. [~~facilities in systems serving 1,000 connections or greater must be serviced and maintained in accordance with level 2 maintenance requirements contained in the current National Fire Protection Association (NFPA) 110 Standard. Although not required, compliance with NFPA 110 Standard is highly recommended for systems serving less than 1,000 connections. Logs of all emergency power use and maintenance must be maintained and kept on file for a period of not less than three years. These records must be made available, upon request, for executive director review.~~]

(E) Mobile home parks with a density of eight or more units per acre and apartment complexes which supply fewer than 100 connections without ground storage must meet the following requirements:

(i) a well capacity of 1.0 gpm per connection; and

(ii) a pressure tank capacity of 50 gallons per connection with a maximum of 2,500 gallons required.

(F) Mobile home parks and apartment complexes which supply 100 connections or greater, or fewer than 100 connections and utilize ground storage must meet the following requirements:

(i) a well capacity of 0.6 gpm per connection. Systems with 250 or more connections must have either two wells or an approved interconnection which is capable of supplying at least 0.35 gpm for each connection in the combined system;

(ii) a total storage of 200 gallons per connection;

(iii) at least two service pumps with a total capacity of 2.0 gpm per connection; and

(iv) a pressure tank capacity of 20 gallons per connection.

(2) Surface water supplies must meet the following requirements:

(A) a raw water pump capacity of 0.6 gpm per connection with the largest pump out of service;

(B) a treatment plant capacity of 0.6 gpm per connection under normal rated design flow;

(C) transfer pumps (where applicable) with a capacity of 0.6 gpm per connection with the largest pump out of service;

(D) a covered clearwell storage capacity at the treatment plant of 50 gallons per connection or, for systems serving more than 250 connections, 5.0% of daily plant capacity;

(E) a total storage capacity of 200 gallons per connection;

(F) a service pump capacity that provides each pump station or pressure plane with two or more pumps that have a total capacity of 2.0 gpm per connection or that have a total capacity of at least 1,000 gpm and the ability to meet peak hourly demands with the largest pump out of service, whichever is less. For systems which provide an elevated storage capacity of 200 gallons per connection, two service pumps with a minimum combined capacity of 0.6 gpm per connection are required at each pump station or pressure plane;

(G) an elevated storage capacity of 100 gallons per connection or a pressure tank capacity of 20 gallons per connection. If pressure tanks are used, a maximum capacity of 30,000 gallons is sufficient for systems of up to 2,500 connections. An elevated storage capacity of 100 gallons per connection is required for systems with more than 2,500 connections. Alternate methods of pressure maintenance may be proposed and will be approved if the criteria contained in subsection (g)(5) of this section are met; and

(H) emergency power for systems which serve more than 250 connections and do not meet the elevated storage requirement. Sufficient emergency power must be provided to deliver a minimum of 0.35 gpm per connection and meet minimum pressure requirements to the distribution system in the event of the loss of normal power supply. Alternately, an emergency interconnection can be provided with another public water system that has emergency power and is able to supply at least 0.35 gpm for each connection in the combined system. Emergency power must be maintained as required by §290.46(m)(8) of this title. [~~facilities in systems serving 1,000 connections or greater must be serviced and maintained in accordance with level 2 maintenance requirements contained in the current NFPA 110 Standard. Although not required, compliance with NFPA 110 Standard is highly recommended for systems serving less than 1,000 connections. Logs of all emergency power use and maintenance must be maintained and kept on file for a period of not less than three years. These records must be made available, upon request, for executive director review.~~]

(3) Any community public water system that is an affected utility, defined in TWC §13.1394 or §13.1395 shall have an emergency preparedness plan approved by the executive director and must meet the requirements for emergency operations contained in subsection (h) or (i) of this section. This includes any affected utility that provides 100 gallons of elevated storage capacity per connection.

(c) Noncommunity water systems serving transient accommodation units. The following water capacity requirements apply to noncommunity water systems serving accommodation units such as hotel rooms, motel rooms, travel trailer spaces, campsites, and similar accommodations.

(1) Groundwater supplies must meet the following requirements.

(A) If fewer than 100 accommodation units without ground storage, the system must meet the following requirements:

(i) a well capacity of 1.0 gpm per unit; and

(ii) a pressure tank capacity of ten gallons per unit with a minimum of 220 gallons.

(B) For systems serving fewer than 100 accommodation units with ground storage or serving 100 or more accommodation units, the system must meet the following requirements:

(i) a well capacity of 0.6 gpm per unit;

(ii) a ground storage capacity of 35 gallons per unit;

(iii) two or more service pumps which have a total capacity of 1.0 gpm per unit; and

(iv) a pressure tank capacity of ten gallons per unit.

(2) Surface water supplies, regardless of size, must meet the following requirements:

(A) a raw water pump capacity of 0.6 gpm per unit with the largest pump out of service;

(B) a treatment plant capacity of 0.6 gpm per unit;

(C) a transfer pump capacity (where applicable) of 0.6 gpm per unit with the largest pump out of service;

(D) a ground storage capacity of 35 gallons per unit with a minimum of 1,000 gallons as clearwell capacity;

(E) two or more service pumps with a total capacity of 1.0 gpm per unit; and

(F) a pressure tank capacity of ten gallons per unit with a minimum requirement of 220 gallons.

(3) A noncommunity public water system that is an affected utility, defined in TWC §13.1394 or §13.1395 shall meet the requirements of subsection (h) or (i) of this section.

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

(1) The following table is applicable to paragraphs (2) and (3) of this subsection and shall be used to determine the maximum daily demand for the various types of facilities listed.
Figure: 30 TAC §290.45(d)(1) (No change.)

(2) Groundwater supplies must meet the following requirements.

(A) Subject to the requirements of subparagraph (B) of this paragraph, if fewer than 300 persons per day are served, the system must meet the following requirements:

(i) a well capacity which meets or exceeds the maximum daily demand of the system during the hours of operation; and

(ii) a minimum pressure tank capacity of 220 gallons with additional capacity, if necessary, based on a sanitary survey conducted by the executive director.

(B) Systems which serve 300 or more persons per day or serve fewer than 300 persons per day and provide ground storage must meet the following requirements:

(i) a well capacity which meets or exceeds the maximum daily demand;

(ii) a ground storage capacity which is equal to 50% of the maximum daily demand;

(iii) if the maximum daily demand is less than 15 gpm, at least one service pump with a capacity of three times the maximum daily demand;

(iv) if the maximum daily demand is 15 gpm or more, at least two service pumps with a total capacity of three times the maximum daily demand; and

(v) a minimum pressure tank capacity of 220 gallons with additional capacity, if necessary, based on a sanitary survey conducted by the executive director.

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

(A) a raw water pump capacity which meets or exceeds the maximum daily demand of the system with the largest pump out of service;

(B) a treatment plant capacity which meets or exceeds the system's maximum daily demand;

(C) a transfer pump capacity (where applicable) sufficient to meet the maximum daily demand with the largest pump out of service;

(D) a clearwell capacity which is equal to 50% of the maximum daily demand;

(E) two or more service pumps with a total capacity of three times the maximum daily demand; and

(F) a minimum pressure tank capacity of 220 gallons with additional capacity, if necessary, based on a sanitary survey conducted by the executive director.

(4) A noncommunity public water system that is an affected utility, defined in TWC §13.1394 or §13.1395, shall meet the requirements of subsection (h) or (i) of this section.

(e) Water wholesalers. The following additional requirements apply to systems which supply wholesale treated water to other public water supplies.

(1) All wholesalers must provide enough production, treatment, and service pumping capacity to meet or exceed the combined maximum daily commitments specified in their various contractual obligations. If a contract prohibits a purchaser from securing water from sources other than the contracted wholesaler during emergency operations, the wholesaler is responsible for meeting applicable capacity requirements.

(2) For wholesale water suppliers, minimum water system capacity requirements shall be determined by calculating the requirements based upon the number of retail customer service connections of that wholesale water supplier, if any, fire flow capacities, if required by §290.46(x) and (y) of this title and adding that amount to the maximum amount of water obligated or pledged under all wholesale contracts.

(3) Emergency power is required for each portion of the system which supplies more than 250 connections under direct pressure and does not provide an elevated storage capacity of at least 100 gallons per connection. If emergency power is required, it must be sufficient to deliver 20% of the minimum required service pump capacity and meet minimum pressure requirements in the event of the loss of normal power supply. When the wholesaler provides water through an air gap into the purchaser's storage facilities it will be the purchaser's responsibility to meet all minimum water system capacity requirements including emergency power. For wholesale contracts executed or amended on or after January 1, 2025, the contract must specify if the wholesaler

will supply water, pressure, or both water and pressure during emergency operations to comply with TWC §13.1394 or §13.1395.

(4) A wholesaler that is an affected utility, defined in TWC §13.1394 or §13.1395, must meet the requirements specified in subsection (h) or (i) of this section.

(f) Purchased water systems. The following requirements apply only to systems which purchase treated water to meet all or part of their production, storage, service pump, or pressure maintenance capacity requirements.

(1) The water purchase contract must be available to the executive director in order that production, storage, service pump, or pressure maintenance capacity may be properly evaluated. For purposes of this section, a contract may be defined as a signed written document of specific terms agreeable to the water purchaser and the water wholesaler, or in its absence, a memorandum or letter of understanding between the water purchaser and the water wholesaler.

(2) The contract shall authorize the purchase of enough water to meet the monthly or annual needs of the purchaser.

(3) The contract shall also establish the maximum rate at which water may be drafted on a daily and hourly basis. In the absence of specific maximum daily or maximum hourly rates in the contract, a uniform purchase rate for the contract period will be used.

(4) The maximum authorized daily purchase rate specified in the contract, or a uniform purchase rate in the absence of a specified daily purchase rate, plus the actual production capacity of the system must be at least 0.6 gpm per connection.

(5) For systems which purchase water under direct pressure, the maximum hourly purchase authorized by the contract plus the actual service pump capacity of the system must be at least 2.0 gpm per connection or provide at least 1,000 gpm and be able to meet peak hourly demands, whichever is less.

(6) The purchaser is responsible for meeting all capacity [~~production~~] requirements. If additional capacity to meet increased demands cannot be attained from the wholesaler through a new or amended contract, additional capacity must be obtained from water purchase contracts with other entities, new wells, or surface water treatment facilities. However, if the water purchase contract prohibits the purchaser from securing water from sources other than the wholesaler, the wholesaler is responsible for meeting applicable capacity [~~all production~~] requirements. For wholesale contracts executed or amended on or after January 1, 2025, the contract must specify if the wholesaler will supply water, pressure, or both water and pressure during emergency operations to comply with TWC §13.1394 or §13.1395.

(7) All other minimum capacity requirements specified in this section and §290.46(x) and (y) of this title shall apply.

(g) Alternative capacity requirements. Public water systems may request approval to meet alternative capacity requirements in lieu of the minimum capacity requirements specified in this section. Any water system requesting to use an alternative capacity requirement must demonstrate to the satisfaction of the executive director that approving the request will not compromise the public health or result in a degradation of service or water quality and comply with the requirements found in §290.46(x) and (y) of this title. Alternative capacity requirements are unavailable for groundwater systems serving fewer than 50 connections without total storage as specified in subsection (b)(1) of this section or for noncommunity water systems as specified in subsections (c) and (d) of this section.

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

(A) a detailed inventory of the major production, pressurization, and storage facilities utilized by the system;

(B) records kept by the water system that document the daily production of the system. The period reviewed shall not be less than three years. The applicant may not use a calculated peak daily demand;

(C) data acquired during the last drought period in the region, if required by the executive director;

(D) the actual number of active connections for each month during the three years of production data;

(E) description of any unusual demands on the system such as fire flows or major main breaks that will invalidate unusual peak demands experienced in the study period;

(F) any other relevant data needed to determine that the proposed alternative capacity requirement will provide at least 35 psi in the public water system except during line repair or during firefighting [~~fire fighting~~] when it cannot be less than 20 psi; and

(G) a copy of all data relied upon for making the proposed determination.

(2) Alternative capacity requirements for existing public water systems must be based upon the maximum daily demand for the system, unless the request is submitted by a licensed professional engineer in accordance with the requirements of paragraph (3) of this subsection. The maximum daily demand must be determined based upon the daily usage data contained in monthly operating reports for the system during a 36 consecutive month period. The 36 consecutive month period must end within 90 days of the date of submission to ensure the data is as current as possible.

(A) Maximum daily demand is the greatest number of gallons, including groundwater, surface water, and purchased water delivered by the system during any single day during the review period. Maximum daily demand excludes unusual demands on the system such as fire flows or major main breaks.

(B) For the purpose of calculating alternative capacity requirements, an equivalency ratio must be established. This equivalency ratio must be calculated by multiplying the maximum daily demand, expressed in gpm per connection, by a fixed safety factor and dividing the result by 0.6 gpm per connection. The safety factor shall be 1.15 unless it is documented that the existing system capacity is adequate for the next five years. In this case, the safety factor may be reduced to 1.05. The conditions in §291.93(3) of this title (relating to Adequacy of Water Utility Service) concerning the 85% rule shall continue to apply to public water systems that are also retail public utilities.

(C) To calculate the alternative capacity requirements, the equivalency ratio must be multiplied by the appropriate minimum capacity requirements specified in subsection (b) of this section. Standard rounding methods are used to round calculated alternative production capacity requirement values to the nearest one-hundredth.

(3) Alternative capacity requirements which are proposed and submitted by licensed professional engineers for review are subject to the following additional requirements.

(A) A signed and sealed statement by the licensed professional engineer must be provided which certifies that the proposed alternative capacity requirements have been determined in accordance with the requirements of this subsection.

(B) If the system is new or at least 36 consecutive months of data is not available, maximum daily demand may be based upon at least 36 consecutive months of data from a comparable public water system. A licensed professional engineer must certify that the data from another public water system is comparable based on consideration of the following factors: prevailing land use patterns (rural versus urban); number of connections; density of service populations; fire flow obligations; and socio-economic, climatic, geographic, and topographic considerations as well as other factors as may be relevant. The comparable public water system shall not exhibit any of the conditions listed in paragraph (6)(A) of this subsection.

(4) The executive director shall consider requests for alternative capacity requirements in accordance with the following requirements.

(A) For those requests submitted under the seal of a licensed professional engineer, the executive director must mail written acceptance or denial of the proposed alternative capacity requirements to the public water system within 90 days from the date of submission. If the executive director fails to mail written notification within 90 days, the alternative capacity requirements submitted by a licensed professional engineer automatically become the alternative capacity requirements for the public water system.

(B) If the executive director denies the request:

(i) the executive director shall mail written notice to the public water system identifying the specific reason or reasons for denial and allow 45 days for the public water system to respond to the reason(s) for denial;

(ii) the denial is final if no response from the public water system is received within 45 days of the written notice being mailed; and

(iii) the executive director must mail a final written approval or denial within 60 days from the receipt of any response timely submitted by the public water system.

(5) Although elevated storage is the preferred method of pressure maintenance for systems of over 2,500 connections, it is recognized that local conditions may dictate the use of alternate methods utilizing hydropneumatic tanks and on-site emergency power equipment. Alternative capacity requirements to the elevated storage requirements may be obtained based on request to and approval by the executive director. Special conditions apply to systems qualifying for an elevated storage alternative capacity requirement.

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

(i) A signed and sealed statement by a licensed professional engineer must be provided which certifies that the pressure maintenance facilities are sized, designed, and capable of providing a minimum pressure of at least 35 psi at all points within the distribution network at flow rates of 1.5 gpm per connection or greater. In addition, the engineer must certify that the emergency power facilities are capable of providing the greater of the average daily demand or 0.35 gpm per connection while maintaining distribution pressures of at least 20 psi or a pressure approved by the executive director, or 35 psi, as required by TWC §13.1394 and §13.1395, respectively, and that emergency power facilities powering production and treatment facilities are capable of supplying at least 0.35 gpm per connection to storage.

(ii) The system's licensed professional engineer must conduct a hydraulic analysis of the system under peak conditions. This must include an analysis of the time lag between the loss of the normal power supply and the commencement of emergency power as well as the minimum pressure that will be maintained within the distribution system during this time lag. In no case shall this minimum pressure within the distribution system be less than 20 psi. The results of this analysis must be submitted to the executive director for review.

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

(iv) A public water system that is an affected utility, defined in TWC §13.1394 or §13.1395, must conduct the modeling requirements contained in clauses (i) - (iii) of this subparagraph using the requirements specified in subsection (h) or (i) of this section.

(B) Emergency power facilities must be maintained and provided with necessary appurtenances to assure immediate and dependable operation in case of normal power interruption. A public water system that is an affected utility, defined in TWC §13.1394 or §13.1395, must meet the requirements specified in subsection (h) or (i) of this section.

(i) The facilities must be serviced and maintained in accordance with Level [~~level~~] 2 maintenance requirements contained in the current NFPA 110 Standard and the manufacturers' recommendations if the affected utility serves 1,000 connections or greater, or in accordance with manufacturer's recommendations and as prescribed in §290.46(m)(8) of this title if the affected utility serves fewer than 1,000 connections.

(ii) The switching gear must be capable of bringing the emergency power generating equipment on-line during a power interruption such that the pressure in the distribution network does not fall below 20 psi or a pressure approved by the executive director, or 35 psi, as required by TWC §13.1394 and §13.1395, respectively. [~~at any time.~~]

(iii) The minimum on-site fuel storage capacity shall be determined by the fuel demand of the emergency power facilities and the frequency of fuel delivery. An amount of fuel equal to that required to operate the emergency power facilities during emergency operations [~~under-load~~] for a period of at least 48 [~~eight~~] hours must always be maintained on site or made readily available.

(iv) Residential rated mufflers or other means of effective noise suppression must be provided on each emergency power motor.

(C) Battery-powered or uninterrupted power supply pressure monitors and chart recorders which are configured to activate immediately upon loss of normal power must be provided for pressure maintenance facilities. These records must be kept for a minimum of three years and made available for review by the executive director. Records must include chart recordings of all power interruptions including interruptions due to periodic emergency power under-load testing and maintenance.

[~~(D) An emergency response plan must be submitted detailing procedures to be followed and individuals to be contacted in the event of loss of normal power supply.~~]

(6) Any alternative capacity requirement granted under this subsection is subject to review and revocation or revision by the executive director. If permission to use an alternative capacity requirement is revoked, the public water system must meet the applicable minimum capacity requirements of this section.

(A) The following conditions, if attributable to the alternative capacity requirements, may constitute grounds for revocation or revision of established alternative capacity requirements or for denial of new requests, if the condition occurred within the last 36 months:

(i) documented pressure below 35 psi at any time not related to line repair, except during firefighting [~~fire fighting~~] when it cannot be less than 20 psi;

(ii) water outages due to high water usage;

(iii) mandatory water rationing due to high customer demand or overtaxed water production or supply facilities;

(iv) failure to meet a minimum capacity requirement or an established alternative capacity requirement;

(v) changes in water supply conditions or usage patterns which create a potential threat to public health; or

(vi) any other condition where the executive director finds that the alternative capacity requirement has compromised [~~the~~] public health or resulted in a degradation of service or water quality.

(B) If the executive director finds any of the conditions specified in subparagraph (A) of this paragraph, the process for revocation or revision of an alternative capacity requirement shall be as follows, unless the executive director finds that failure of the service or other threat to public health and safety is imminent under subparagraph (C) of this paragraph.

(i) The executive director must mail the public drinking water system written notice of the executive director's intent to revoke or revise an alternative capacity requirement identifying the specific reason(s) for the proposed action.

(ii) The public water system has 30 days from the date the written notice is mailed to respond to the proposed action.

(iii) The public water system has 30 days from the date the written notice is mailed to request a meeting with the agency's public drinking water program personnel to review the proposal. If requested, such a meeting must occur within 45 days of the date the written notice is mailed.

(iv) After considering any response from or after any requested meeting with the public drinking water system, the executive director must mail written notification to the public drinking water system of the executive director's final decision to continue, revoke, or revise an alternative capacity requirement identifying the specific reason(s) for the decision.

(C) If the executive director finds that failure of the service or other threat to public health and safety is imminent, the executive director may issue written notification of the executive director's final decision to revoke or revise an alternative capacity requirement at any time.

(h) Affected utilities as defined in TWC §13.1394. This subsection applies to all affected utilities, as defined in TWC §13.1394, and is in addition to any other requirements pertaining to emergency power found in this chapter.

(1) Affected utilities must provide one or more of the following options to ensure the emergency operation of its water system during an extended power outage at a minimum of 20 psi, or a pressure approved by the executive director, whichever is applicable, and in accordance with the affected utility's approved emergency preparedness plan:

(A) the maintenance of automatically starting auxiliary generators;

(B) the sharing of auxiliary generator capacity with one or more affected utilities, including through participation in a statewide mutual aid program;

(C) the negotiation of leasing and contracting agreements, including emergency mutual aid agreements with other retail public utilities, exempt utilities, or providers, or conveyers of potable water or raw water service, if the agreements provide for coordination with the division of emergency management in the governor's office;

(D) the use of portable generators capable of serving multiple facilities equipped with quick-connect systems;

(E) the use of on-site electrical generation or electrical distribution generation facilities;

(F) hardening of the electric transmission and electric distribution system against damage from natural disasters during an extended power outage;

(G) the maintenance of direct engine or right-angle drives;

(H) designation of the water system as a critical load facility or redundant, isolated or dedicated electrical feeds;

(I) water storage capabilities with sufficient storage to provide water to customers during an extended power outage;

(J) water supplies can be delivered from outside the service area of the affected utility by opening an emergency interconnect or using a water hauler;

(K) affected utility has ability to provide water through artesian flows;

(L) affected utility has ability to open valves between pressure zones to provide redundant interconnectivity between pressure zones;

(M) affected utility will implement emergency water demand rules to maintain emergency operations; or

(N) any other alternative determined by the executive director to be acceptable.

(2) Each affected utility that supplies, provides, or conveys raw surface water shall include in its emergency preparedness plan, under paragraph (1) of this subsection, provisions for demonstrating the capability of each raw water intake pump station, pump station, and pressure facility necessary to provide raw water service to its wholesale customers during emergencies. This does not apply to raw water services that are unnecessary or otherwise subject to interruption or curtailment during emergencies under a contract.

(3) Emergency generators used as part of an approved emergency preparedness plan must be inspected, maintained, tested, and operated in accordance with the manufacturer's specifications and as outlined in 290.46(m)(8) of this title.

(4) An affected utility may adopt and is encouraged to enforce limitations on water use while the utility is providing emergency operations.

(5) As soon as safe and practicable following the occurrence of a natural disaster, an affected utility must operate in accordance with its approved emergency preparedness plan, which may include using elevated storage. An affected utility may meet the requirements of TWC §13.1394 including having a currently approved emergency preparedness plan, in lieu of any other rules regarding elevated storage requirements, provided that, under normal operating conditions, the affected utility continues to meet the pressure requirements

of §290.46(r) of this title (related to Minimum Acceptable Operating Practices for Public Drinking Water Systems) and the production, treatment, total storage, and service pump capacity requirements of this subchapter.

(6) An affected utility must maintain on-site, or make readily available during emergency operations, an amount of fuel necessary to operate any required emergency power equipment necessary to maintain emergency operations for at least 48 hours.

(7) Each affected utility must implement its emergency preparedness plan upon approval by the executive director.

(i) [~~(h)~~] Affected utilities as defined by TWC §13.1395. This subsection applies to all affected utilities as defined by TWC §13.1395 and is in addition to any other requirements pertaining to emergency power [~~requirements~~] found in this subchapter.

(1) Affected utilities must provide one of the following options of sufficient power to meet the capacity requirements of paragraph (1) or (2) of this subsection, whichever is applicable, and in accordance with the affected utility's approved emergency preparedness plan:

(A) the maintenance of automatically starting auxiliary generators;

(B) the sharing of auxiliary generator capacity with one or more affected utilities;

(C) the negotiation of leasing and contracting agreements, including emergency mutual aid agreements with other retail public utilities, exempt utilities, or providers, or conveyors of potable or raw water service, if the agreements provide for coordination with the division of emergency management in the governor's office;

(D) the use of portable generators capable of serving multiple facilities equipped with quick-connect systems;

(E) the use of on-site electrical generation or electrical distributed generation facilities;

(F) hardening of the electric transmission and electric distribution system against damage from natural disasters during an extended power outage;

(G) [~~for existing facilities,~~] the maintenance of direct engine or right-angle [~~right angle~~] drives; or

(H) any other alternative determined by the executive director to be acceptable.

(2) Each affected utility that supplies, provides, or conveys surface water to wholesale customers shall install and maintain automatically starting auxiliary generators or distributive generation facilities for each raw water intake pump station, water treatment plant, pump station, and pressure facility necessary to provide water to its wholesale customers. This does not apply to raw water services that are unnecessary or otherwise subject to interruption or curtailment during emergencies under a contract.

(3) Emergency generators used as part of an approved emergency preparedness plan must be maintained, tested, and operated in accordance with Level 2 maintenance requirements contained in the current NFPA 110 Standard and the manufacturers specifications if the affected utility serves 1,000 connections or greater, or the manufacturer's specifications and as outlined in §290.46(m)(8) of this title for affected utilities serving fewer than 1,000 connections.

(4) An affected utility may adopt and is encouraged to enforce limitations on water use while the utility is providing emergency operations.

(5) As soon as safe and practicable following the occurrence of a natural disaster, an affected utility must operate in accordance with its approved emergency preparedness plan, which may include using elevated storage. An affected utility may meet the requirements of TWC [~~Texas Water Code,~~] §13.1395, including having a currently approved emergency preparedness plan, in lieu of any other rules regarding elevated storage requirements, provided that, under normal operating conditions, the affected utility continues to meet the pressure requirements of §290.46(r) of this title and the production, treatment, total storage and service pump capacity requirements of this subchapter.

(6) An affected utility must maintain on-site, or make readily available during emergency operations, an amount of fuel necessary to operate any required emergency power equipment necessary to maintain emergency operations for at least 48 hours.

(7) Each affected utility must implement their emergency preparedness plan upon approval by the executive director.

§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 under TWC §13.1394 or §13.1395 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, inspection, testing, and maintenance records for auxiliary power equipment, and associated components required to be maintained, or actions performed as prescribed in §290.46(m)(8) of this title. [~~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 an accredited [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 ensure [~~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.

(8) Emergency generators must be appropriately tested and maintained monthly under at least 30% load based on the manufacturer's name plate kilowatt (kW) rating for at least 30 minutes, or as recommended by the manufacturer, to ensure functionality during emergency situations.

(A) Emergency generators operated at water systems serving 1,000 connections or greater must be maintained in accordance with Level 2 maintenance requirements contained in the current National Fire Protection Association (NFPA) 110 Standard and manufacturer's recommendation. In addition, the water system must maintain an inventory of spare parts, lubricants, and coolants for critical generator components.

(B) Emergency generators operated at water systems serving fewer than 1,000 connections must be maintained according to clauses (i) - (x) of this subparagraph, supplemented with any additional requirements not listed below as prescribed in the manufacturer's specifications, or Level 2 maintenance requirements contained in NFPA 110 Standard. In addition, the public water system must maintain an inventory of spare parts, lubricants, and coolants for critical generator components.

(i) Prior to monthly generator start-up, inspect and perform any needed maintenance on the generator fuel system.

(I) Document tank levels and inspect fuel tanks for fuel contamination and condensation in the portion of the tank occupied by air. If contamination is suspected, replace or polish the contaminated fuel before use.

(II) Inspect fuel lines and fittings for breaks and degradation. Replace fuel lines if needed.

(III) Inspect fuel filters and water separators for water accumulation, clogging and sediment buildup. Replace fuel filters and separators at the frequency recommended by the manufacturer, or as needed.

(IV) Inspect fuel transfer pumps, float switches and valves, where provided, between holding tanks and the generator to verify that they are operating properly.

(V) Where provided, inspect fuel tank grounding rods, cathodic and generator lightning protection for damage that may render the protection ineffective.

(ii) While the generator is operating under load, inspect the fuel pump to verify that it is operating properly.

(iii) Prior to monthly generator start up, inspect and perform any needed maintenance on the generator lubrication system.

(I) Inspect oil lines and oil reservoirs for adequate oil levels, leaks, breaks and degradation. Change oil at the frequency recommended by the manufacturer.

(II) Grease all bearing components and grease fittings at the frequency recommended by the manufacturer.

(iv) Prior to monthly generator start up, inspect and perform any needed maintenance on the generator coolant system.

(I) Inspect the block heater, coolant lines and coolant reservoirs for adequate coolant levels, leaks, breaks and degradation; replace as needed.

(II) Inspect coolant filters for clogging and sediment buildup. Replace coolant filters at the frequency recommended by the manufacturer, or as needed.

(III) Inspect the radiator, fan system, belts and air intake and filters for obstruction, cracks, breaks, and leaks; replace as needed.

(v) While the generator is operating under load, inspect the exhaust manifold and muffler to verify that they are not obstructed or leaking, are in good working condition and that fumes are directed away from enclosed areas.

(vi) Where a generator is located inside an enclosed structure, a carbon monoxide monitor equipped with automatic alarms and generator shutdowns must be present and operational.

(vii) Prior to monthly generator start up, inspect and perform any needed maintenance on the generator electrical system.

(I) Confirm that all batteries are mounted and properly secured. Inspect battery chargers, wiring and cables for damage, corrosion, connection continuity, and that all contacts are securely tightened onto battery terminals.

(II) Inspect each battery unit for adequate electrolyte levels, charge retention and appropriate discharge voltage.

(viii) While the generator is operating under load, inspect engine starters and alternators to verify that they are operating properly.

(ix) At least once per month, inspect Programmable Logic Controllers (PLC) and Uninterrupted Power Supplies (UPC), where applicable, to ensure that they are water-tight and not subject to floods, are properly ventilated, and that backup power supplies have adequate charge.

(x) At least once per month, inspect switch gears to ensure they are water-tight and in good, working condition.

(9) All critical components as described in the table in §290.47(c) associated to the source, treatment, storage, or other facilities necessary for the continued operations and distribution of water to customers must be protected from adverse weather conditions. Weatherization methods must be maintained in good condition and replaced as needed to ensure adequate protection.

(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, special precaution, or protective measure 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 subparagraph (A) and (B) of this paragraph. [~~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.]

(A) Situations requiring boil water notices:

(i) [(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.

(ii) [(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.

(iii) [(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.]

(iv) A public water system shall issue a boil water notice to customers if 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 (relating to Disinfectant Residuals) for more than 24 hours.

(v) A public water system shall issue a boil water notice to customers if a waterborne disease outbreak occurs as defined in 40 Code for Federal Regulations §141.2.

(B) Situations requiring special precautions or protective measures may be determined by the public water system or at the discretion of the executive director, as described in paragraph (5) of this subsection.

(2) Boil water notices, special precautions, or protective measures 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 shall be issued using the applicable language and format specified by the executive director.

(3) A copy of boil water notice, special precaution, or protective measure issued shall be provided to the executive director electronically, within 24 hours or no later than the next business day after the 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.

(4) Boil water notices, special precautions, or protective measures shall be multilingual where appropriate, based upon local demographics.

(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 (relating to Surface Water Treatment) 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 (relating to Definitions); or

(ii) waterborne emergencies [a waterborne disease outbreak, as defined in 40 Code of Federal Regulations §141.2, or other waterborne emergencies] for situations that do not meet the [this] definition of waterborne disease outbreak as defined in 40 Code of Federal Regulations §141.2, but that still have the potential to have serious adverse health effects [on health] as a result of short-term exposure. These can [could] include, but are not limited to, 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. The executive director may specify, in writing, additional required actions to the requirements described in paragraph (6) of this subsection for a public water system to rescind the notice.

(C) The public water system shall provide any required information to the executive director to document that the public water system has met the rescind requirements for special precautions, protective measures, and boil water notices required at the discretion of the executive director under this paragraph.

(6) Once the boil water notice, special precaution, or protective measure is no longer in effect, the public water system shall notify customers that the notice has been rescinded. A public water system shall not rescind a notice or notify customers that a notice has been rescinded until the public water system has met all the applicable requirements, as described in subparagraph (A) of this paragraph.

(A) Required actions prior to rescinding a boil water notice include:[. 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:~~]

(i) [~~(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 (relating to Appendices);

(ii) [~~(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;

(iii) [~~(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 and the affected areas of the distribution system have been thoroughly flushed;

(iv) [~~(D)~~] additional actions may be required by the executive director, in writing, and these additional actions shall be completed and documentation provided to the executive director for approval prior to the public water system rescinding the notice,[~~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

(v) [~~(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).

(B) [~~(F)~~] A public water system shall notify customers [~~throughout the distribution system or in the affected area(s) of the distribution system~~] that the[~~a boil water~~] notice has been rescinded within 24 hours or no later than the next business day, using [~~the~~] language and format specified by the executive director [~~in Figure: 30 TAC §290.47(e)(3) of this title,~~] once the public water system has met the requirements of this paragraph. The method of delivery of the rescind notice must be in a manner similar to the original notice.

(C) The public water system shall provide a copy of the rescind [~~"Boil Water Notice Rescinded"~~] notice, [~~and~~] a copy of the associated microbiological laboratory analysis results, as required by subparagraph (A)[~~(E)~~] of this paragraph, and a signed Certificate of Delivery 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 firefighting [~~fire fighting~~]. As soon as safe and practicable following the occurrence of a natural disaster, a public water system that is an affected utility, as defined in TWC §13.1394 or §13.1395, shall maintain a minimum of 20 psi or a pressure approved by the executive director, or 35 psi, respectively, 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 purpose by a municipality or other political subdivision of this state or a water supply or sewer service corporation, but does not include any person or corporation not otherwise a public utility that furnishes the services or commodity only to itself or its employees or tenants as an incident of that employee service or tenancy when that service or commodity is not resold to or used by others.

(C) "Residential area" means:

(i) an area designated as a residential zoning district by a governing ordinance or code or an area in which the principal land use is for private residences;

(ii) a subdivision for which a plat is recorded in the real property records of the county and that contains or is bounded by public streets or parts of public streets that are abutted by residential property occupying at least 75% 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 firefighting [~~fire fighting~~]. That flow is in addition to the public utility's maximum daily demand for purposes other than firefighting [~~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.)

(1) To attain recognition as a "Superior Public Water System", the following additional requirements must be met:

(A) Physical facilities shall comply with the requirements in these sections.

(B) There shall be a minimum of two licensed operators with additional operators required for larger systems.

(C) The system's microbiological record for the previous 24 months period shall indicate no violations (frequency, number or maximum contaminant level) of the drinking water standards.

(D) The quality of the water shall comply with all primary water quality parameters listed in the drinking water standards.

(E) The chemical quality of the water shall comply with all secondary constituent levels listed in the drinking water standards.

(F) The system's operation shall comply with applicable state statutes and minimum acceptable operating practices set forth in §290.46 of this title (relating to Minimum Acceptable Operating Practices for Public Drinking Water Systems).

(G) The system's capacities shall meet or exceed minimum water system capacity requirements set forth in §290.45 of this title (relating to Minimum Water System Capacity Requirements).

(H) The system shall have at least two wells, two raw water pumps or a combination of these with enough capacity to provide average daily consumption with the largest well or pump out of service. This requirement shall also apply to treatment plant pumps necessary for operation in accordance with §290.42 of this title (relating to Water Treatment).

(I) The water system shall be well maintained and the facilities shall present a pleasing appearance to the public.

(2) To attain recognition as an "Approved Public Water System," all additional requirements listed under subsection (a)(1) of this section with exception of secondary constituents, subsection (a)(1)(E) of this section must be met. Public water systems which provide water quality that exceeds the secondary chemical standards may be excluded from this recognition program at the discretion of the executive director. Signs. Systems which have met the requirements for recognition as a superior or approved system may erect signs denoting this honor. Inspections. To receive or maintain recognition as a superior or approved water system, the system must be inspected and evaluated by commission personnel as to physical facilities, appearance and operation. Systems which fail to meet the above requirements in this section will be denied recognition or will have their recognition revoked. The signs shall be immediately removed on notice from the executive director.

(b) Appendix B. Sample Retail Service Agreement.
Figure: 30 TAC §290.47(b) (No change.)

(c) Appendix C. Critical Water System Components [~~Boil Water Notices.~~]
Figure: 30 TAC §290.47(c)

~~[(1) Appendix C1: Boil Water Notice for Community Public Water Systems.]~~
~~[Figure: 30 TAC §290.47(e)(1)]~~

~~[(2) Appendix C2: Boil Water Notice for Noncommunity Public Water Systems.]~~
~~[Figure: 30 TAC §290.47(e)(2)]~~

~~[(3) Appendix C3: Boil Water Notice Rescinded.]~~
~~[Figure: 30 TAC §290.47(e)(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 Templates [~~Template~~].
[~~Figure: 30 TAC §290.47(g)~~]

(1) G1: Emergency Preparedness Plan Template for Affected Utilities defined under TWC §13.1394.
Figure: 30 TAC §290.47(g)(1)

(2) G2: Emergency Preparedness Plan Template for Affected Utilities defined under TWC §13.1395.
Figure: 30 TAC §290.47(g)(2)

(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 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 June 30, 2023.

TRD-202302390
Guy Henry
Acting Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: August 13, 2023
For further information, please call: (512) 239-2678

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CHAPTER 291. UTILITY REGULATIONS SUBCHAPTER L. STANDARDS OF EMERGENCY OPERATIONS

30 TAC §§291.160 - 291.163

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to 30 Texas Administrative Code §§291.160, 291.161, and 291.162, and the addition of new §291.163.

Background and Summary of the Factual Basis for the Proposed Rules

In 2021, the 87th Legislature passed Senate Bill (SB) 3, which relates to preparing for, preventing, and responding to weather emergencies and power outages. SB 3 requires that certain water service providers ensure emergency operations during an extended power outage. SB 3 amended Texas Water Code (TWC), Chapter 13, by adding §13.1394, Standards of Emergency Operations, amending §13.1395, Standards of Emergency Operations in Certain Counties. New TWC §13.1394, requires that affected utilities create an emergency preparedness plan that shows how an affected utility will provide emergency operations and submit that plan to the commission for review and approval. TWC §13.1394, stipulates that a water service provider must maintain 20 pounds per square inch (psi) of pressure, or a water pressure approved by the executive director, during power outages that last longer than 24 hours as soon as it is safe and practicable following a natural disaster. The statute also specifies that the commission has 90 days to review the plan, once the plan is submitted, and either approve it or recommend changes. Once the commission approves the plan the water service provider must operate in accordance with the plan and maintain any generators in accordance with manufacturer's specifications. TWC §13.1394 also specifies that the commission will conduct inspections to ensure compliance and that waivers to

these requirements are available under certain circumstances. SB 3 stated in Section 36(b) that each affected utility was to submit to the commission an emergency preparedness plan required by TWC §13.1394, no later than March 1, 2022, and stated in Section 36(c) that the emergency preparedness plan was to be implemented no later than July 1, 2022, unless the affected utility had obtained an adjusted, commission approved timeline. The commission notes that these additions to the TWC, made by SB 3, give the commission the authority to regulate water service providers that have not previously been regulated by the TCEQ because, as the definition appears in TWC §13.1394, not all affected utilities are public water systems.

Amended TWC §13.1395, excludes from the requirement of creating an Emergency Preparedness Plan those raw water services that are unnecessary or otherwise subject to interruption or curtailment during emergencies pursuant to contract.

In response to the widespread power and equipment failures and drinking water outages and shortages during Winter Storm Uri in 2021, the commission organized an after-action review to evaluate the factors that impacted public water systems across the state. This review resulted in findings and recommendations to enhance and integrate additional public water system critical infrastructure resiliency measures. These findings and recommendations were presented to the commission during a work session, held on May 19, 2022.

Section by Section Discussion

§291.160, Purpose

The commission proposes to amend §291.160 to add a reference to TWC §13.1394 and to adjust the verb tense of the section based on the addition.

§291.161, Definitions

The commission proposes to amend the definition of "affected utility" by adding language to encompass the definitions of affected utility in TWC §13.1394 and §13.1395. The commission proposes these amendments to reflect the requirements in TWC §13.1394(a)(1) and §13.1395(a)(1). Current subsection lettering will be revised to accommodate the amended definition.

The commission proposes to amend the definition of "emergency operations" to clarify the minimum water pressure that affected utilities must provide during emergency operations. This clarification is consistent with the requirements under TWC §13.1394, which is 20 pounds per square inch, or a pressure approved by the executive director, and TWC §13.1395, which is 35 pounds per square inch.

§291.162, Emergency Operation of An Affected Utility

The commission proposes to amend the title of §291.162 to clarify that this section is applicable to affected utilities as defined in TWC §13.1395.

The commission proposes to amend §291.162(d) to clarify that this subsection does not apply to raw water services that are unnecessary or otherwise subject to interruption or curtailment during emergencies under a contract as stated in TWC §13.1395.

The commission proposes to amend §291.162(e) to revise the appendix reference from "Appendix J" to "Appendix G2" for consistency with proposed amendment to §290.47.

The commission proposes to amend §291.162(f) with language that refers to the generator maintenance requirements listed in proposed amendments to §290.46(m)(8). This proposed change is a recommendation approved by the commission as a result of the After-Action Review, which found that additional maintenance to critical equipment and increased protection against adverse weather conditions would have reduced the impacts to water infrastructure during the winter storm.

The commission proposes to amend §291.162(i) to change "subchapter" to "section" based on the proposed addition of §291.163 to the subchapter. This amendment will make language consistent with proposed additions to §291.163(i).

The commission proposes to delete §291.162(j) and (k) because the deadlines listed in these subsections have passed and are no longer applicable; subsection lettering will be revised to accommodate these deletions.

The commission proposes to amend new §291.162(j) to clarify that affected utilities created after December 31, 2012, are required to have emergency preparedness plans approved and implemented prior to providing water to customers.

§291.163, Emergency Operation of an Affected Utility as defined in TWC §13.1394

The commission proposes to add new §291.163 to provide regulatory requirements for affected utilities as defined in TWC §13.1394.

The commission proposes to add §291.163(a) which requires an affected utility to adopt and submit to the executive director for approval an emergency preparedness plan that demonstrates the utility's ability to provide emergency operations and a timeline for implementing the plan, as required by TWC §13.1394(b)(2)(A) and §13.1394(b)(2)(B).

The commission proposes to add §291.163(b) which requires the executive director to review the emergency preparedness plan submitted by an affected utility, to determine if the plan is acceptable, and to request additional information or recommend changes if the plan is not acceptable. The executive director's request for information or recommended changes must be made on or before the 90th day after the executive director receives the plan as required by TWC §13.1394(c).

The commission proposes to add §291.163(c), to include §291.163(c)(1) through §291.163(c)(14), which provides the 14 emergency operation options available to affected utilities as listed in TWC §13.1394(c)(1) through §13.1394(c)(14).

The commission proposes to add §291.163(d) which requires affected utilities that provide raw surface water to wholesale customers to include in their emergency preparedness plan how they intend to provide raw water services to their wholesale customers during emergencies. This requirement does not apply to raw water services that are unnecessary or otherwise subject to interruption or curtailment during emergencies under a contract under TWC §13.1394(d).

The commission proposes to add §291.163(e) which addresses the requirement for the commission to develop an emergency preparedness plan template. This new subsection informs affected utilities that they may use the template included in Appendix G1 of §290.47 to create their emergency preparedness plan as required under TWC §13.1394(g).

The commission proposes to add §291.163(f) which requires that any generator used as part of an approved emergency preparedness plan must be inspected, operated and maintained according to the manufacturer's specifications, per TWC §13.1394(h) and the requirements listed in §290.46(m)(8), which

are proposed in a companion rulemaking in response to the After-Action Review, which found that additional maintenance to critical equipment and increased protection against adverse weather conditions would have reduced the impacts to water infrastructure during the winter storm.

The commission proposes to add §291.163(g) which allows the executive director to grant an affected utility a financial waiver to the requirement of submitting an emergency preparedness plan pursuant to TWC §13.1394(j). The executive director will consider whether complying with the emergency preparedness plan requirements would cause a significant financial burden on the affected utilities customers. The proposed rule requires that the affected utility submit documentation to the executive director that must demonstrate the significant financial burden on customers before a waiver is granted.

The commission proposes to add §291.163(h) which allows an affected utility to adopt and enforce limitations on water use while the utility is providing emergency operations pursuant to TWC §13.1394(k).

The commission proposes to add §291.163(i), which states that information provided by an affected utility under this section is confidential and is not subject to disclosure under Texas Government Code, Chapter 552 as stated in TWC §13.1394(l).

The commission proposes to add §291.163(j), which provides that affected utilities which are established after December 31, 2022, must have an emergency preparedness plan approved and implemented prior to providing water to customers. The commission proposes this addition based on emergency preparedness plan submission and implementation deadlines in March and July 2022, respectively, included in SB 3 for existing affected utilities.

The commission proposes to add §291.163(k) which provides that an affected utility that cannot provide a minimum of 20 psi, or a water pressure approved by the commission, during emergency operations to revise and submit their emergency preparedness plan within 180 days of restoration of power, and that based on a review of the plan, the executive director may require additional or alternative auxiliary emergency facilities to implement TWC §13.1394(b)(1).

Fiscal Note: Costs to State and Local Government

Kyle Girten, Analyst in the Budget and Planning Division, has determined that for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rules.

Amendments to the rule are proposed primarily to implement changes made in SB 3, 87th Texas Legislature (2021), including the specific changes to the TWC. Section 36 of the legislation already includes requirements to submit emergency preparedness plans and receive TCEQ approval. Therefore, while there may have been costs to state and local government resulting from those statutory changes, there are no anticipated fiscal impacts as a result of the proposed rulemaking.

Public Benefits and Costs

Mr. Girten determined that for each year of the first five years the proposed rules are in effect, the anticipated public benefit will be compliance with state law. Amendments to the rules are proposed primarily to implement changes made in SB 3, 87th Texas Legislature (2021), including the specific changes to the TWC. Section 36 of the legislation already requires entities to submit emergency preparedness plans and receive TCEQ approval. Therefore, while there may have been costs and other benefits to public or private entities resulting from those statutory changes, there are no anticipated fiscal impacts as a result of the proposed rulemaking.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the rules do not adversely affect a local economy in a material way for the first five years that they are in effect.

Rural Communities Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that they are in effect. The amendments would apply statewide and have the same effect in rural communities as in urban communities.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rules for the first five-year period that they are in effect.

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 rulemaking does not adversely affect a small or micro-business in a material way for the first five years that they are in effect.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking does not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking does repeal regulations to comply with changes to state law. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rules should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis Determination

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

First, the 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 ensure that affected utilities have emergency preparedness

plans to provide potable water service during emergency operations.

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 proposed 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). Section 2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This 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 Texas Health and Safety Code (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; and is not based solely under the general powers of the agency, but specifically under TWC §5.107 which establishes the commission's authority to collect regulatory assessments from utility service providers under TWC Chapter 13; THSC §341.031, which allows the commission to establish public drinking water standards and adopt and enforce rules to implement the federal Safe Drinking Water Act, as well as under SB 3, which authorizes the commission to promulgate rules in its implementation of TWC §13.1394 and §13.1395, and the other general powers of the Commission.

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

The commission proposes these rules to clarify existing requirements and for the specific purpose of implementing SB 3, 87th R.S. (2021), which requires the commission to receive, review, and monitor compliance with affected utilities' emergency preparedness plans to ensure provision of potable water service during emergency operations.

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)(13). 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). Lack of potable water service during emergency operations constitutes a real and substantial threat to public health and safety and requires appropriate governmental regulation. The rules significantly advance the public health and safety purpose by ensuring appropriate governmental regulation of affected utilities' emergency preparedness plans 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 affected utilities to submit emergency preparedness plans, comply with their emergency preparedness plans, and operate under their emergency preparedness plans during emergency operations. Therefore, the rules would not constitute a taking under Texas Government Code Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rules and found that they are neither identified in 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 proposed rules are not subject to the Texas Coastal Management Program.

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

Announcement of Hearing

The commission will hold a hold a hybrid virtual and in-person public hearing on this proposal in Austin on Friday, August 11, 2023, at 10:00 a.m. in building E, room 201S at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Individuals who plan to attend the hearing virtually and want to provide oral comments and/or want their attendance on record must register by Wednesday, August 9, 2023. To register for the hearing, please email Rules@tceq.texas.gov and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on Thursday, August 10, 2023, to those who register for the hearing.

For the public who do not wish to provide oral comments but would like to view the hearing may do so at no cost at:

https://teams.microsoft.com/l/meetup-join/19%3ameeting_NzJlNGM0NGUtOTNlYy00ZWM2LTllNjQtOTZmMjExNTcyOTg0%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%22e74a40ea-69d4-469d-a8ef-06f2c9ac2a80%22%2c%22IsBroadcastMeeting%22%3atrue%7d

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.

Submittal of Comments

Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to *fax4808@tceq.texas.gov.* Electronic comments may be submitted at: https://tceq.commentinput.com/comment/search. File size restrictions may apply to comments being submitted via the TCEQ Public Comments system. All comments should reference Rule Project Number 2023-125-290-OW. The comment period closes on August 13, 2023. Please choose one of the methods provided to submit your written comments.

Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html.* For further information, please contact Christina DuPont, Water Supply Division at (512) 239-0537 or by email at christina.dupont@tceq.texas.gov.

Statutory Authority

These amendments and the new rule are proposed under the authority of the Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; §5.103, which establishes the commission's general authority to adopt rules; §5.105, which establishes the commission's authority to set policy by rule; and Texas Health and Safety Code (THSC), §341.0315, which requires public water systems to comply with commission rules adopted to ensure the supply of safe drinking water.

The proposed amendments implement TWC §13.1394, as added by requirements in Senate Bill (SB) 3 of the 87th Texas Legislative Session (2021), and TWC §13.1395. Additional commission proposed amendments provide clarity to existing rules.

§291.160. Purpose.

Texas Water Code, Chapter 13, Subchapter E, §13.1394 and §13.1395, prescribes the duties of the commission relating to standards for emergency operations of affected utilities. The statutes require [~~statute requires~~] that the commission ensure that affected utilities provide water service as soon as safe and practicable during an extended power outage. This subchapter sets forth requirements and implementation of emergency operation planning of affected utilities as defined in this subchapter. Public water systems must comply with the emergency operations requirements as defined in Chapter 290, Subchapter D of this title (relating to Rules and Regulations for Public Water Systems).

§291.161. Definitions.

For the purposes of this subchapter, the following definitions apply.

(1) Affected utility--

(A) Any retail public utility, exempt utility, or provider or conveyor of potable or raw water service that furnishes water service to more than one customer is an affected utility as defined in TWC §13.1394; or[~~:~~]

(B) Any retail public utility, exempt utility, or provider or conveyor of potable or raw water service that furnishes water service to more than one customer is an affected utility as defined in TWC §13.1395 in a county with a population of:

(i) [~~(A) In a county with a population of~~] 3.3 million or more; or

(ii) [~~(B) In a county with a population of~~] 550,000 or more adjacent to a county with a population of 3.3 million or more.

(2) Emergency operations--The operation of an affected utility [~~a water system~~] during an extended power outage at a minimum water pressure of 20 pounds per square inch (psi), or a water pressure approved by the executive director as required under TWC §13.1394 or 35 psi as required under TWC §13.1395. [~~35 pounds per square inch.~~]

(3) Extended power outage--A power outage lasting for more than 24 hours.

(4) Population--The population shown by the most recent federal decennial census.

§291.162. Emergency Operation of an Affected Utility as defined in TWC §13.1395.

(a) An affected utility shall adopt and submit to the executive director for its approval an emergency preparedness plan that demonstrates the utility's ability to provide emergency operations.

(b) The executive director shall review an emergency preparedness plan submitted by an affected utility. If the executive director determines that the plan is not acceptable, the executive director shall recommend changes to the plan. The executive director must make its recommendations on or before the 90th day after the executive director receives the plan.

(c) An emergency preparedness plan shall provide for one of the following:

(1) the maintenance of automatically starting auxiliary generators;

(2) the sharing of auxiliary generator capacity with one or more affected utilities;

(3) the negotiation of leasing and contracting agreements, including emergency mutual aid agreements with other retail public utilities, exempt utilities, or providers or conveyors of potable or raw water service, if the agreements provide for coordination with the division of emergency management in the governor's office;

(4) the use of portable generators capable of serving multiple facilities equipped with quick-connect systems;

(5) the use of on-site electrical generation or distributed generation facilities;

(6) hardening the electric transmission and distribution system serving the water system;

(7) for existing facilities, the maintenance of direct engine or right angle drives; or

(8) any other alternative determined by the executive director to be acceptable.

(d) Each affected utility that supplies, provides, or conveys surface water to wholesale customers shall include in its emergency preparedness plan provisions for the actual installation and mainte-

nance of automatically starting auxiliary generators or distributive generation facilities for each raw water intake pump station, water treatment plant, pump station, and pressure facility necessary to provide water to its wholesale customers. This subsection does not apply to raw water services that are unnecessary or otherwise subject to interruption or curtailment during emergencies under a contract.

(e) The affected utility may use the template in Appendix G2 [J] of §290.47 of this title (relating to Appendices) to assist in preparation of the plan.

(f) An emergency generator used as part of an approved emergency preparedness plan must be operated and maintained according to the manufacturer's specifications and the requirements listed in §290.46(m)(8) of this title (relating to Minimum Acceptable Operating Practices for Public Drinking Water Systems).

(g) The executive director may grant a waiver of the requirements of this section to an affected utility if the executive director determines that compliance with this section will cause a significant financial burden on customers of the affected utility. The affected utility shall submit financial, managerial, and technical information as requested by the executive director to demonstrate the financial burden.

(h) An affected utility may adopt and is encouraged to enforce limitations on water use while the utility is providing emergency operations.

(i) Information provided by an affected utility under this section [subchapter] is confidential and is not subject to disclosure under Texas Government Code, Chapter 552.

[(j) Affected utilities that are existing as of November 1, 2011, shall submit the emergency preparedness plan to the executive director no later than February 1, 2012.]

[(k) Affected utilities that are existing as of November 1, 2011, shall implement the emergency preparedness plan approved by the executive director no later than June 1, 2012.]

(j) [(l)] Affected utilities which are established after December 31, 2012 [the effective date of this rule] must have emergency preparedness plans approved and implemented prior to providing water to customers.

(k) [(m)] An affected utility may file with the executive director a written request for an extension, not to exceed 90 days, of the date by which the affected utility is required under this subchapter to submit the affected utility's emergency preparedness plan or the date the affected utility is required to implement the plan.

(l) [(n)] If an affected utility fails to provide a minimum of 35 pounds per square inch throughout the distribution system during emergency operations as soon as it is safe and practicable following the occurrence of a natural disaster, a revised emergency preparedness plan shall be submitted for review and approval within 180 days of the date normal power is restored. Based on the review of the revised emergency preparedness plan, the executive director may require additional or alternative auxiliary emergency facilities.

§291.163. Emergency Operation of an Affected Utility as defined in TWC §13.1394.

(a) An affected utility shall adopt and submit to the executive director for approval an emergency preparedness plan that demonstrates the utility's ability to provide emergency operations and a timeline for implementing the plan.

(b) The executive director shall review an emergency preparedness plan submitted by an affected utility. If the executive director determines that the plan is not acceptable, the executive director shall request additional information or recommend changes to the plan. The executive director shall communicate to the affected utility the request for information or recommendations on or before the 90th day after the executive director receives the plan.

(c) An emergency preparedness plan shall include one or more of the following:

(1) the maintenance of automatically starting auxiliary generators;

(2) the sharing of auxiliary generator capacity with one or more affected utilities, including through participation in a statewide mutual aid program;

(3) the negotiation of leasing and contracting agreements, including emergency mutual aid agreements with other retail public utilities, exempt utilities, or providers or conveyors of potable or raw water service, if the agreements provide for coordination with the division of emergency management in the governor's office;

(4) the use of portable generators capable of serving multiple facilities equipped with quick-connect systems;

(5) the use of on-site electrical generation or distributed generation facilities;

(6) hardening the electric transmission and distribution system serving the water system;

(7) the maintenance of direct engine or right-angle drives;

(8) designation of the water system as a critical load facility or redundant, isolated, or dedicated electrical feeds;

(9) water storage capabilities;

(10) water supplies delivered from outside the service area of the affected utility;

(11) the ability to provide water through artesian flows;

(12) redundant interconnectivity between pressure zones;

(13) emergency water demand rules to maintain emergency operations; or

(14) any other alternative determined by the executive director to be acceptable.

(d) Each affected utility that supplies, provides, or conveys raw surface water to wholesale customers shall include in its emergency preparedness plan provisions for demonstrating the capability of each raw water intake pump station, pump station, and pressure facility necessary to provide water service to its wholesale customers. This subsection does not apply to raw water services that are unnecessary or otherwise subject to interruption or curtailment during emergencies under a contract.

(e) The affected utility may use the template in Appendix G1 of §290.47 of this title (relating to Appendices) to assist in preparation of the plan.

(f) An emergency generator used as part of an approved emergency preparedness plan must be inspected, operated and maintained according to the manufacturer's specifications and the requirements listed in §290.46(m)(8) of this title (relating to Minimum Acceptable Operating Practices for Public Drinking Water Systems).

(g) The executive director may grant a waiver of the requirements of this section to an affected utility if the executive director determines that compliance with this section will cause a significant financial burden on customers of the affected utility. The affected util-

ity shall submit financial, managerial, and technical information as requested by the executive director to demonstrate the financial burden.

(h) An affected utility may adopt and is encouraged to enforce limitations on water use while the utility is providing emergency operations.

(i) Information provided by an affected utility under this section is confidential and is not subject to disclosure under Texas Government Code, Chapter 552.

(j) Affected utilities, established after December 31, 2022, must have emergency preparedness plans approved and implemented prior to providing water to customers.

(k) If an affected utility fails to provide a minimum of 20 psi, or a water pressure approved by the commission, throughout the distribution system during emergency operations as soon as it is safe and practicable following the occurrence of a natural disaster, a revised emergency preparedness plan shall be submitted for review and approval within 180 days of the date normal power is restored. Based on the review of the revised emergency preparedness plan, the executive director may require additional or alternative auxiliary emergency 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 June 30, 2023.

TRD-202302389
Guy Henry
Acting Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: August 13, 2023
For further information, please call: (512) 239-2678

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TITLE 34. PUBLIC FINANCE

PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

CHAPTER 41. HEALTH CARE AND INSURANCE PROGRAMS
SUBCHAPTER B. LONG-TERM CARE, DISABILITY AND LIFE INSURANCE

34 TAC §§41.15 - 41.20

The Teacher Retirement System of Texas (TRS) proposes to repeal §§41.15 - 41.20 under Subchapter B (relating to Long-Term Care, Disability, and Life Insurance) of Chapter 41 in Part 3 of Title 34 of the Texas Administrative Code.

BACKGROUND AND PURPOSE

TRS proposes to repeal Subchapter B of Chapter 41, which contains six existing rules, in order to streamline and clarify Chapter 41 of TRS rules (relating to Health Care and Insurance Programs) by eliminating obsolete administrative rules. Additionally, repealing the six rules under Subchapter B will allow TRS to use these rule numbers for future rulemaking relating to Subchapter A of Chapter 41 (relating to Retiree Health Care Benefits (TRS-Care)). The six existing rules that TRS proposes to repeal are not currently in use, and TRS recommended their repeal in its four-year rule review, which was adopted on August 12, 2022. Their repeal will have no effect on TRS health plans or its participants.

FISCAL NOTE

Don Green, TRS Chief Financial Officer, has determined that for each year of the first five years the proposed repealed rules will be in effect, there will be no foreseeable fiscal implications for state or local governments as a result of administering the proposed repealed rules.

PUBLIC COST/BENEFIT

For each year of the first five years the proposed repealed rules will be in effect, Mr. Green also has determined that the public benefit anticipated as a result of adopting the proposed repealed rules will streamline and clarify Chapter 41 by eliminating stale or obsolete administrative rules. Additionally, repealing Subchapter B will allow TRS to use these rule numbers for future rulemaking relating to Subchapter A of Chapter 41.

Mr. Green has also determined that the public will incur no new costs as a result of the proposed repealed rules.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

TRS has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed repealed rules. Therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under Government Code §2006.002.

LOCAL EMPLOYMENT IMPACT STATEMENT

TRS has determined that there will be no effect on local employment because of the proposed repealed rules. Therefore, no local employment impact statement is required under Government Code §2001.022.

GOVERNMENT GROWTH IMPACT STATEMENT

TRS has determined that for the first five years the proposed repealed rules are in effect, the proposed repealed rules will not create or eliminate any TRS programs; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to TRS; will not eliminate any fees currently paid to TRS; will not create a new regulation; will not expand or limit an existing regulation; will not increase or decrease the number of individuals subject to the rule's applicability; and will not affect the state's economy.

The proposed repealed rules will repeal six existing rules for the reasons stated above in this preamble.

TAKINGS IMPACT ASSESSMENT

TRS has determined that there are no private real property interests affected by the proposed repealed rules, therefore, a takings impact assessment is not required under Government Code §2007.043.

COSTS TO REGULATED PERSONS

TRS has determined that Government Code §2007.045 does not apply to the proposed repealed rules because the proposed repealed rules do not impose a cost on regulated persons.

COMMENTS

Comments may be submitted in writing to Brian Guthrie, TRS Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. Written comments must be received by TRS no later than 30 days after publication of this notice in the *Texas Register.*

STATUTORY AUTHORITY

The proposed repealed rules are proposed under the authority of Government Code § 1576.006, which provides that board of trustees may adopt rules as necessary to administer Chapter 1576 of the Insurance Code; and Government Code §825.102, which authorizes the board of trustees to adopt rules for the transaction of the business of the board.

CROSS-REFERENCE TO STATUTE

The proposed repealed rules affect the following statutes: Insurance Code §1576.001 through Insurance Code §1576.013, which relate to TRS provided Group Long-Term Care Insurance for Public School Employees.

§41.15. Requirements to Bid on Group Long-Term Care Insurance Under Chapter 1576 of the Insurance Code.

§41.16. Coverage Offered Under the Texas Public School Employees and Retirees Group Long-Term Care Insurance Program.

§41.17. Definitions.

§41.18. Eligibility for the Texas Public School Employees and Retirees Group Long-Term Care Insurance Program.

§41.19. Initial Enrollment Periods for Texas Public School Employees and Retirees Group Long-Term Care Insurance Program.

§41.20. Effective Date of Coverage Under the Texas Public School Employees and Retirees Group Long-Term Care Insurance Program.

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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Don Green
Chief Financial Officer
Teacher Retirement System of Texas
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