

**Department of State Health Services
Agenda Item for State Health Services Council
August 10, 2005**

Agenda Item Title: Repeal 25 TAC 337.12 and 337.18, Rules Relating to Drinking Water Standards Governing Water Quality and Reporting Requirements for Public Water Systems.

Agenda Number:

Recommended Council Action:

For Discussion Only

For Discussion and Action by the Council

Background: The repeal is necessary to comply with §5.013 of the Texas Water Code that grants the Texas Natural Resource Conservation Commission, now titled the Texas Commission on Environmental Quality, jurisdiction for the state's water quality program including issuance of permits, enforcement of water quality rules, standards, orders, and permits, and water quality planning. Repeal of these sections is necessary because the rulemaking authority for these sections was transferred to TCEQ in 1992. Fees for the laboratory analysis of drinking water for bacteriological quality and chemical content previously listed in §337.18 are now in 25 TAC Chapter 73, §§73.54 and 73.55 respectively.

Summary: The repeal of §337.12 and §337.18 is necessary because the Texas Commission on Environmental Quality now administers the Water Hygiene program, and the fees for the drinking water laboratory analysis are now located in 25 TAC, Chapter 73.

Summary of Stakeholder Input to Date (including advisory committees): Because it has been several years since this program was moved to the Texas Water Commission there are no stakeholders identified.

Proposed Motion: Approval of proposed rules concerning drinking water quality and reporting requirements for public water systems for publication in the Texas Register for a 30 day comment period.

Agenda Item Approved by: _____

Presented by: Sherry Clay
Title: Quality Control Unit Manager,

Program/Division: Laboratory Services Section
Contact Name/Phone: Sherry Clay, 458-7318 ext. 2423

**Date
Submitted**
7/20/2005

Rulemaking Notification Form

1. Originating agency completes this form as soon as the agency recognizes the need for a rule change.
2. Originating agency submits this request with **the initial rule packet** to the appropriate HHS Senior Policy Advisor advising the entity after all internal agency development and review processes are completed.
(See Step 1 in Rulemaking Process.)

Agency Unit/Section/Division Laboratory Services Section, Prevention and Preparedness Division, DSHS			
Agency Program Contact Sherry Clay	E-mail Address sherry.clay@dshs.state.tx.us	Telephone No. 512-458-7318 ext. 2423	Mail Code M1947
Agency Attorney Contact Mike Greenberg	E-mail Address mike.greenberg@dshs.state.tx.us	Telephone No. 512-458-7111 ext. 6916	Mail Code CEN

1. This project involves (check all that apply): New Rule Rule Amendment Repeal of a Rule

2. Description (include applicable rule or chapter numbers and a description of planned rule project):

The Department of State Health Services proposes to the repeal of 25 TAC Chapter 337, §337.12 and §337.18 concerning drinking water standards governing drinking water quality and reporting requirements for public water systems. The repeal of these sections is necessary because the rulemaking authority for these sections was transferred to the Texas Commission on Environmental Quality in 1992. Fees for the laboratory analysis of drinking water for bacteriological quality and chemical content previously listed in §337.18 are now in 25 TAC 73, §§73.54 and 73.55 respectively.

This rule is being submitted for consideration at the August 10, 2005 Department of State Health Services Council Meeting.

3. Is this a Medicaid rule? Yes No

4. Rule initiated in response to: (check all that apply)

Legal Mandate	Citation or Name of Case	External Request	Internal Request
<input type="checkbox"/> State law		<input type="checkbox"/> HHSC	<input type="checkbox"/> Executive directive
<input type="checkbox"/> Federal law		<input type="checkbox"/> Advisory Council	<input type="checkbox"/> Policy clarification
<input type="checkbox"/> Lawsuit		<input type="checkbox"/> Advocates	<input type="checkbox"/> Field request
		<input type="checkbox"/> Providers	<input type="checkbox"/> State office program initiative
		<input type="checkbox"/> Other agency:	

Other: Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Section 73.25 was reviewed and the department has determined that reasons for adopting the section no longer exist because the responsibility for this section has been transferred to the Texas Commission for Environmental Quality.

5. Provide additional information that would be helpful to understand the issue (business need for the rule, background, need for anticipated public comment, budget implications, etc.):

The repeal of §337.12 and §337.18 is necessary because the Texas Commission on Environmental Quality now administers the Water Hygiene program, and the fees for the drinking water laboratory analysis are now located in 25 TAC, Chapter 73.

6. What other areas (within **originating agency** and **HHS enterprise**) may be affected by this rule project?

NA

7. When should the rule become effective? (*check only one*)

- Required effective date: _____ What authority requires this date? _____
- Preferred effective date: January 1, 2006
- No specific required or preferred effective date. (schedule to be determined)

Originating Agency Program Contact
(original signature on file)

Date

Center for Policy Innovation or HHS Senior Policy Advisor
(original signature on file)

Date

Agency Deputy Commissioner or HHS Deputy Executive Commissioner (for HHSC rules)
(original signature on file)

Date

Agency Unit/Section/Division Laboratory Services Section, Prevention and Preparedness Division, DSHS	Council Meeting Date August 25, 2005
Agency Program Contact Sherry Clay, QC Unit Manager	Telephone No. 512-458-7318 ext. 2423
Rule Topic Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Supply Systems.	

1. Rule Summary.

(Briefly summarize the rule change and why the rule may or may not have fiscal implications.)

The Department of State Health Services proposes the repeal of §337.12 and §337.18 concerning drinking water standards governing drinking water quality and reporting requirements for public water systems. The repeal is necessary to comply with §5.013 of the Texas Water Code that grants the Texas Natural Resource Conservation Commission, now titled the Texas Commission on Environmental Quality (TCEQ), jurisdiction for the state's water quality program including issuance of permits, enforcement of water quality rules, standards, orders, and permits, and water quality planning. The repeal of these sections is necessary because rulemaking authority for these sections was transferred to TECQ in 1992. Fees for the laboratory analysis of drinking water for bacteriological quality and chemical content previously listed in §337.18 are now in 25 TAC Chapter 73, §§73.54 and 73.55 respectively.

2. Fiscal Impact.

Does the rule have foreseeable fiscal implications to either costs or revenues of state government for the first five years the rule is in effect?

Yes **No** If yes, complete the following:

- (a) If there are estimated additional costs to the department, explain (1) what new responsibilities will be required; (2) what additional staff will be needed (numbers and classifications); and (3) what other expenses, such as capital or professional services, will be required. Explain any key assumptions that will be needed to reach the figures in the chart in 2(d).

NA

- (b) If there is an estimated reduction in costs, explain how the reductions will be accomplished.

NA

- (c) If there is an estimated increase in revenue, describe the source and amount. If there is an estimated loss of revenue, describe the source and amount.

Note: Staff may provide the information in (d) on a separate spreadsheet. If spreadsheet is attached, please check here:

(d)	1. Fiscal Year 2006	2. Fiscal Year 2007	3. Fiscal Year 2008	4. Fiscal Year 2009	5. Fiscal Year 2010
Estimated Additional/Reduction in Cost (specify reduction in parenthesis)					
STATE FUNDS					
FEDERAL FUNDS					
OTHER FUNDS					
TOTAL:					

Estimated Increase/Loss of Revenue (specify loss in parenthesis)					
STATE FUNDS					
FEDERAL FUNDS					
OTHER FUNDS					
TOTAL:					

3. Local Government Impact.

Does the rule have foreseeable positive or negative fiscal implications to either costs or revenues of local governments for the first five years the rule is in effect?

Yes No If yes, enter the amounts for each of the five years and explain key assumptions you used to reach the figures.

4. Small Businesses or Micro-Businesses Impact.

Does the rule have ANY adverse economic effect on small businesses or micro-businesses* (regardless of whether it will have an adverse effect on businesses in general)?

Yes No If yes, complete 4B–E. If no, complete 4A.

* A small business is a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit, is independently owned and operated, and has fewer than 100 employees OR less than \$1,000,000 in annual gross receipts.

A micro-business is a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit, is independently owned and operated, and has 20 or fewer employees.

A. If the rule **will not** have an adverse economic effect on either small businesses or micro-businesses, or both, explain why there will be no adverse effect on one or both.

Dr. Neill, Director, Laboratory Services Section, has determined that that there are no anticipated economic costs to small businesses, micro-businesses or persons because the rules are no longer necessary, and business practices will not be altered in order to comply with the proposed repeal of the sections. There will be no impact on local employment.

Complete (B)-(E) if rule will have an adverse economic effect on small businesses or micro-businesses or both.

Note: You must discuss both small businesses and micro-businesses in your analysis regardless of whether the rule will have an adverse economic effect on either one or both.

B. Explain why there will be an adverse economic effect, such as new fees, reduced revenues, or new regulatory requirements that will increase the cost of doing business.

C. Give an analysis of the cost to small businesses or micro-businesses of complying with the rule. Explain what assumptions you used to calculate these projected costs (for example, a survey of randomly selected assisted living facilities).

D. Compare the cost to small businesses or micro-businesses of complying with the rule with the cost to the largest businesses affected by the rule, analyzing, when possible:

- cost per employee,
- cost per hour of labor, or
- cost per each \$100 of sales.

E. Give an analysis of whether it is legal and feasible to reduce the economic effect of the rule on small businesses or micro-businesses, while still accomplishing the intent of the state or federal law being implemented with the rule.

.....

5. Other Cost Impacts.

If there will be costs to persons who must comply with this rule change, other than costs identified in preceding sections, enter estimated costs for the first five fiscal years of implementation:

FY 1	FY 2	FY 3	FY 4	FY 5
NA	NA	NA	NA	NA

Explain assumptions used to arrive at these costs.

NA

6. Fiscal Impact on Local Employment:

- Rule **will not** have an impact.
- Rule **will** have an impact. You must complete an Economic Impact Request and submit it to TWC at least 30 days before the Council meeting.

7. Takings Impact Assessment.

Does the proposed rule create a burden on private “real property” (i.e. real estate or the buildings and other structures attached to real estate)?

- Yes** **No** If **yes**, contact Legal **immediately** to determine if you are required to complete a Takings Impact Assessment.

Approvals

_____ Signature – Budget Analyst (original signature on file)	_____ Date	_____ Telephone No.
_____ Signature – Budget Director (original signature on file)	_____ Date	_____ Telephone No.
_____ Signature – Chief Financial Officer (original signature on file)	_____ Date	_____ Telephone No.
_____ Signature – Deputy Executive Commissioner (as appropriate) (original signature on file)	_____ Date	_____ Telephone No.

Title 25. Health Services
Part 1. Department of State Health Services
Chapter 337. Water Hygiene
Subchapter A. Drinking Water Standards Governing Drinking Water Quality and Reporting
Requirements for Public Water Supply Systems
Repeal §337.12 and §337.18

Proposed Preamble

The Executive Commissioner of the Health and Human Services Commission on behalf of the Department of State Health Services (department) proposes the repeal of §337.12 and §337.18 concerning drinking water standards governing drinking water quality and reporting requirements for public water systems.

BACKGROUND AND PURPOSE

The repeal is necessary to comply with §5.013 of the Texas Water Code that grants the Texas Natural Resource Conservation Commission, now titled the Texas Commission on Environmental Quality, jurisdiction for the state's water quality program including issuance of permits, enforcement of water quality rules, standards, orders, and permits, and water quality planning. Repeal of these sections is necessary because the rulemaking authority for these sections was transferred to TCEQ in 1992. Fees for the laboratory analysis of drinking water for bacteriological quality and chemical content previously listed in §337.18 are now in 25 TAC Chapter 73, §§73.54 and 73.55 respectively.

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 337.12 and 337.18 have been reviewed and the department has determined that reasons for adopting the sections no longer exist because the rule making authority for Water Hygiene was transferred to the Texas Commission on Environmental Quality.

SECTION-BY-SECTION SUMMARY

The repeal of §337.12 and §337.18 is necessary because the Texas Commission on Environmental Quality now administers the Water Hygiene program, and the fees for the drinking water laboratory analysis are now located in 25 TAC, Chapter 73.

FISCAL NOTE

Dr. Susan Neill, Director, Laboratory Services Section has determined that for each year of the first five-year period that the sections are no longer in effect, there will be no fiscal implications to state or local governments as a result of the repeal of these sections.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Dr. Neill has also determined that there are no anticipated economic costs to small businesses, micro-businesses or persons because the rules are no longer necessary, and business practices will not be altered in order to comply with the proposed repeal of the sections. There will be no impact on local employment.

PUBLIC BENEFIT

In addition, Dr. Neill has also determined that for each year of the first five years the repeal of the sections is in effect, the public benefit anticipated as a result of the repeal is to reflect that the Texas Commission on Environmental Quality is the agency now responsible for the administration of Water Hygiene.

REGULATORY ANALYSIS

The department has determined that this proposal is not a “major environmental rule” as defined by Government Code, §2001.0225. “Major environmental rule” is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed repeal 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, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be directed to Mrs. Sherry S. Clay, Manager, Quality Control Unit, Laboratory Services Section, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3199, or by email to sherry.clay@dshs.state.tx.us. Comments will be accepted for 30 days following the date of publication of this proposal in the Texas Register.

STATUTORY AUTHORITY

The proposed repeal is authorized under Health and Safety Code, §§12.031 and 12.032 which allow the department to charge fees to a person who receives public health services from the department, §12.034 which requires the department to establish collection procedures, §12.035 which requires the department to deposit all money collected for fees and charges under §§12.032 and §12.033 in the state treasury to the credit of the department's public health service fee fund, and §12.0122 which allows the department to enter into a contract for laboratory services, and Government Code §531.0055 and Health and Safety Code §1001.075 which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Chapter 1001, Health and Safety Code.

The proposed repeal affects the Health and Safety Code, Chapters 12, and 1001; and Government Code, Chapter 531.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Cathy Campbell, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

Sections for repeal.

§337.12

§337.18

Sections for Repeal:

~~Chapter 337. WATER HYGIENE~~

~~Subchapter A. DRINKING WATER STANDARDS GOVERNING DRINKING WATER QUALITY AND REPORTING REQUIREMENTS FOR PUBLIC WATER SUPPLY SYSTEMS.~~

~~§337.12. Approved Laboratory.~~

~~(a) All samples for chemical, radiological, or bacteriological analysis must be submitted to a laboratory approved by the department, with the exception of turbidity and any control tests, such as chlorine residual, alkalinity, and pH, which are not used to determine compliance with these standards. Such control tests may be run in the plant laboratory.~~

~~(b) To be approved by the department to perform microbiological analyses, a laboratory shall be certified in accordance with the requirements of the United States Environmental Protection Agency Manual for the Certification of Laboratories Analyzing Drinking Water, Chapter V, Microbiology, which is herein adopted by reference. Copies are indexed and filed in the Bureau of Laboratories, Texas Department of Health, 1100 West 49th Street, Austin, Texas, and are available for public inspection during regular business hours.~~

~~(c) Methods of analysis shall be as specified in 40 Code of Federal Regulations §141.21(f) (microbiological), §141.22(a) (turbidity), §141.23(f) (inorganics), §141.24(e), (f), and (g) (organics), and §141.25 (radionuclides) of the National Primary Drinking Water Regulations, or by any alternative analytical technique as specified by the department and approved by the administrator under 40 Code of Federal Regulations §141.27.~~

~~(d) The department adopts by reference the federal regulations referred to in subsection (c) of this section. Copies are available for review in the Division of Water Hygiene, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.~~

~~§337.18. Fees for Services to Drinking Water Systems.~~

~~(a) Purpose and scope.~~

~~—(1) The purpose of this section is to establish fees for services provided by the department to drinking water systems.~~

~~—(2) The scope of this section covers fees for services such as analyzing drinking water for chemical content, testing for bacteriological quality, inspecting public water systems, reviewing plans for new systems and major improvements to existing systems, and providing technical assistance as required.~~

~~(b) Services to public water systems.~~

~~—(1) The services which are covered under this subsection do not cover bacteriological testing. Provisions covering bacteriological testing are covered in subsection (c) of this section.~~

~~—(2) The department will provide services to public water systems, as follows:~~

~~—(A) analyze drinking water for chemical content;~~

~~—(B) inspect public water systems;~~

~~—(C) review plans for new systems and major improvements to existing systems; and~~

~~—(D) provide technical assistance as needed.~~

~~—(3) The fees which the department will charge for services provided to community water systems under this subsection will be according to the following schedule.~~

Figure: ~~25 TAC, 337.18(b)(3)~~

~~(4) New public water systems will not be assessed a fee for services until water is supplied to the first connection. Fees will not be assessed to those public water systems which are currently paying another fee to the department which includes an inspection of the water system (i.e., youth camps and migrant labor camps).~~

~~-(5) The department will charge a fee of \$25 for services provided under this subsection to noncommunity water systems.~~

~~-(6) All fees are due by January 1 of each year, shall be paid by check or money order, and shall be made payable to the Texas Department of Health.~~

~~(c) Failure to make payments as required under subsection (b) of this section will subject the violator to the penalty provisions of the Health and Safety Code, Chapter 341.~~

25 TAC, §337.18(b)(3)

<u>NUMBER OF CONNECTIONS*</u>	<u>FEE</u>
1—49	\$50
50—199	100
200—499	250
500—999	400
1,000—1,999	500
2,000—4,999	1,000
5,000—9,999	1,500
10,000—29,999	2,000
30,000—99,999	3,000
100,000—199,999	4,000
200,000 and greater	5,000

~~*Number of connections will be determined from data collected from the latest sanitary survey report. State, federal, and certain community water system installations determined by the department which serve large populations through a few connections shall have the number of connections for fee purposes determined by dividing the population served by a value of 10. Examples of such installations are universities, children’s homes, correctional facilities, military facilities, etc., which generally do not bill customers for water service.~~

