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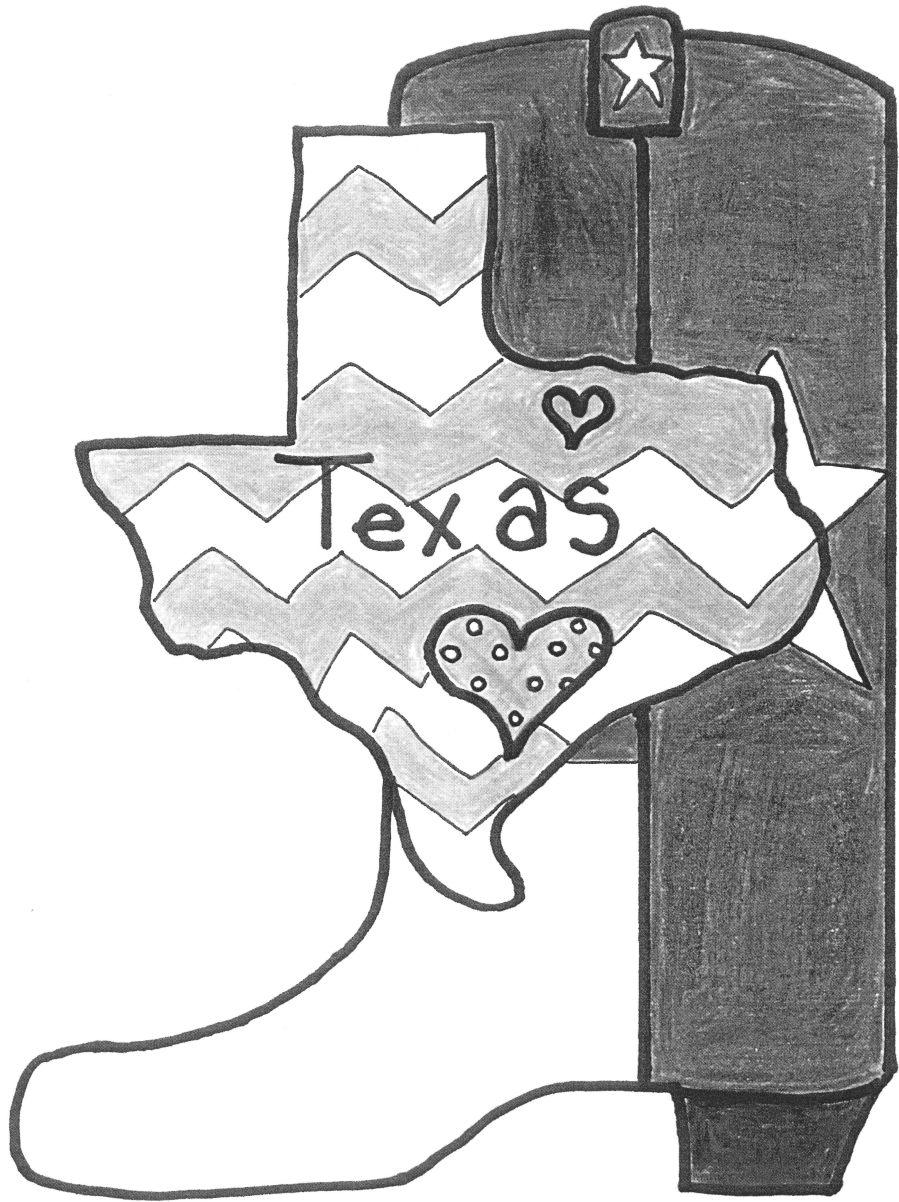
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THE GOVERNOR

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

Appointments

Appointments for May 22, 2020

Appointed to the Texas Ethics Commission, for a term to expire November 19, 2023, Chad M. Craycraft of Dallas, Texas (Mr. Craycraft is being reappointed).

Appointed to the Texas Ethics Commission, for a term to expire November 19, 2023, Mary K. "Katie" Kennedy of Houston, Texas (Ms. Kennedy is being reappointed).

Greg Abbott, Governor

TRD-202002172



Executive Order GA-24

Relating to the termination of air travel restrictions as part of the safe, strategic plan to Open Texas in response to the COVID-19 disaster.

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on March 13, 2020, certifying under Section 418.014 of the Texas Government Code that the novel coronavirus (COVID-19) poses an imminent threat of disaster for all counties in the State of Texas; and

WHEREAS, I issued proclamations renewing the disaster declaration for all counties in Texas on April 12 and May 12, 2020; and

WHEREAS, the Commissioner of the Texas Department of State Health Services, Dr. John Hellerstedt, has determined on March 19, April 17, and May 15, 2020, that COVID-19 represents a public health disaster within the meaning of Chapter 81 of the Texas Health and Safety Code; and

WHEREAS, I have issued executive orders and suspensions of Texas laws in response to COVID-19, aimed at protecting the health and safety of Texans and ensuring an effective response to this disaster; and

WHEREAS, I issued Executive Orders GA-11 and GA-12 on March 26 and March 29, 2020, respectively, to impose a mandatory self-quarantine for people traveling to Texas from certain areas experiencing substantial community spread of COVID-19; and

WHEREAS, I issued Executive Order GA-20 on April 27, 2020, to narrow the scope of these travel restrictions in light of social-distancing restrictions that have slowed the spread of COVID-19 in Texas and in other states; and

WHEREAS, in coping with the COVID-19 disaster, and especially as services are being reopened in Texas, government officials should look for the least restrictive means of combatting the threat to public health; and

WHEREAS, the "governor is responsible for meeting ... the dangers to the state and people presented by disasters" under Section 418.011 of the Texas Government Code, and the legislature has given the governor broad authority to fulfill that responsibility; and

WHEREAS, under Section 418.012, the "governor may issue executive orders ... hav[ing] the force and effect of law;"

NOW, THEREFORE, I, Greg Abbott, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, do hereby order that all restrictions contained in Executive Order GA-20 are terminated in their entirety, effective immediately. Any mandatory self-quarantine already in effect as a result of Executive Order GA-20 is hereby terminated, also effective immediately.

This executive order supersedes Executive Order GA-20, as well as Executive Orders GA-11 and GA-12 that it superseded, but does not supersede Executive Orders GA-10, GA-13, GA-17, GA-19, or GA-23. This executive order shall remain in effect and in full force until modified, amended, rescinded, or superseded by the governor.

Given under my hand this the 21st day of May, 2020.

Greg Abbott, Governor

TRD-202002027



Executive Order GA-25

Relating to in-person visitation at county and municipal jails during the COVID-19 disaster.

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on March 13, 2020, certifying under Section 418.014 of the Texas Government Code that the novel coronavirus (COVID-19) poses an imminent threat of disaster for all counties in the State of Texas; and

WHEREAS, I issued proclamations renewing the disaster declaration for all counties in Texas on April 12 and May 12, 2020; and

WHEREAS, the Commissioner of the Texas Department of State Health Services, Dr. John Hellerstedt, has determined on March 19, April 17, and May 15, 2020, that COVID-19 represents a public health disaster within the meaning of Chapter 81 of the Texas Health and Safety Code; and

WHEREAS, I have issued executive orders and suspensions of Texas laws in response to COVID-19, aimed at protecting the health and safety of Texans and ensuring an effective response to this disaster; and

WHEREAS, the jail population in Texas presents unique challenges in mitigating against and responding to the spread of COVID-19; and

WHEREAS, my office has worked with the Texas Commission on Jail Standards and with state and local officials to address these challenges while protecting the health of all Texans, including inmates in county and municipal jails; and

WHEREAS, I have temporarily suspended a rule of the Texas Commission on Jail Standards, at that agency's request, so that county and

municipal jails are not required to allow in-person visitation during the COVID-19 disaster; and

WHEREAS, some county and municipal jails are now reportedly considering resumption of in-person visitation, which would risk further spread of COVID-19, both inside and outside the jails, and consume personal protective equipment; and

WHEREAS, allowing in-person visitation would subject inmates and staff to an unacceptable risk of importing COVID-19 into county and municipal jails, where it could spread rapidly and threaten the health and safety of inmates and staff; and

WHEREAS, the "governor is responsible for meeting ... the dangers to the state and people presented by disasters" under Section 418.011 of the Texas Government Code, and the legislature has given the governor broad authority to fulfill that responsibility; and

WHEREAS, under Section 418.012, the "governor may issue executive orders... hav[ing] the force and effect of law;" and

WHEREAS, under Section 418.017(a), the "governor may use all available resources of state government and of political subdivisions that are reasonably necessary to cope with a disaster;" and

WHEREAS, under Section 418.018(c), the "governor may control ingress and egress to and from a disaster area and the movement of persons and the occupancy of premises in the area;" and

WHEREAS, failure to comply with any executive order issued during the COVID-19 disaster is an offense punishable under Section 418.173 by a fine not to exceed \$1,000, and may be subject to regulatory enforcement;

NOW, THEREFORE, I, Greg Abbott, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, do hereby order the following on a statewide basis effective immediately:

All county and municipal jails are closed to in-person visitation, and every person in Texas shall avoid in-person visitation at closed jails; provided, however, that this restriction does not apply to visitation by (i) an attorney meeting with a client; or (ii) a religious leader or member of the clergy. Any visitation allowed under this executive order should be conducted in accordance with guidance issued by the Texas Commission on Jail Standards.

This executive order shall remain in effect and in full force until modified, amended, rescinded, or superseded by the governor.

Given under my hand this the 22nd day of May, 2020.

Greg Abbott, Governor
TRD-202002090



Proclamation 41-3736

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on March 13, 2020, certifying under Section 418.014 of the Texas Government Code that the novel coronavirus (COVID-19) poses an imminent threat of disaster for all counties in the State of Texas; and

WHEREAS, I issued proclamations renewing the disaster declaration for all counties in Texas on April 12 and May 12, 2020; and

WHEREAS, I issued Executive Order GA-23 on May 18, 2020, to set forth an expanded list of "Covered Services" that are or will soon be allowed during the COVID-19 disaster; and

WHEREAS, Executive Order GA-23 provided that additional Covered Services could be added by proclamation thereafter;

NOW, THEREFORE, I, Greg Abbott, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, do hereby expand the enumerated list of Covered Services in Executive Order GA-23 by adding items 18(h) and 21(d) as follows:

18. Starting at 12:01 a.m. on Friday, May 22, 2020, for all Texas counties except Deaf Smith, El Paso, Moore, Potter, and Randall counties:

h. Outdoor motorsports events that operate at up to 25 percent of the normal operating limits as determined by the venue owner and that operate under guidelines that facilitate appropriate social distancing.

21. Starting at 12:01 a.m. on Sunday, May 31, 2020, for all Texas counties:

d. All professional sporting events (i) that operate at up to 25 percent of the normal operating limits as determined by the venue owner for outdoor events or, for indoor events, with no spectators physically present on the premises of the venue; (ii) that operate under guidelines that facilitate appropriate social distancing; and (iii) for which a plan has been submitted to DSHS that incorporates minimum standard health protocols recommended by DSHS as applicable.

Executive Order GA-23 is amended to the extent provided in this proclamation, including to eliminate the approval process set forth in item 21(a) of Executive Order GA-23 because of the expanded Covered Service set forth in item 21(d) above. This proclamation shall remain in effect and in full force for as long as Executive Order GA-23 is in effect and in full force, unless otherwise modified, amended, rescinded, or superseded by the governor.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 22nd day of May, 2020.

Greg Abbott, Governor
TRD-202002091



Proclamation 41-3737

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on March 13, 2020, certifying under Section 418.014 of the Texas Government Code that the novel coronavirus (COVID-19) poses an imminent threat of disaster for all counties in the State of Texas; and

WHEREAS, I issued proclamations renewing the disaster declaration for all counties in Texas on April 12 and May 12, 2020; and

WHEREAS, I issued Executive Order GA-23 on May 18, 2020, to set forth an expanded list of "Covered Services" that are or will soon be allowed during the COVID-19 disaster; and

WHEREAS, Executive Order GA-23 provided that additional Covered Services could be added by proclamation thereafter; and

WHEREAS, on May 22, 2020, I added several Covered Services by proclamation;

NOW, THEREFORE, I, Greg Abbott, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, do hereby expand further the enumerated list of Covered Services in Executive Order GA-23 by amending item 5 to

permit food-court dining areas within shopping malls to open and by adding items 20(b), 21(e), and 24(a) as follows:

Starting at 12:01 a.m. on Friday, May 29, 2020, for all Texas counties:

b. Water parks that operate at up to 25 percent of the normal operating limits as determined by the venue owner or, for indoor water parks, at up to 25 percent of the total listed occupancy of the water park; provided, however, that components that have video arcades must remain closed.

Starting at 12:01 a.m. on Sunday, May 31, 2020, for all Texas counties:

e. Recreational sports programs for adults; provided, however, that practices may begin, but games and similar competitions may not begin until June 15, 2020.

Starting immediately for all Texas counties:

Driver education programs.

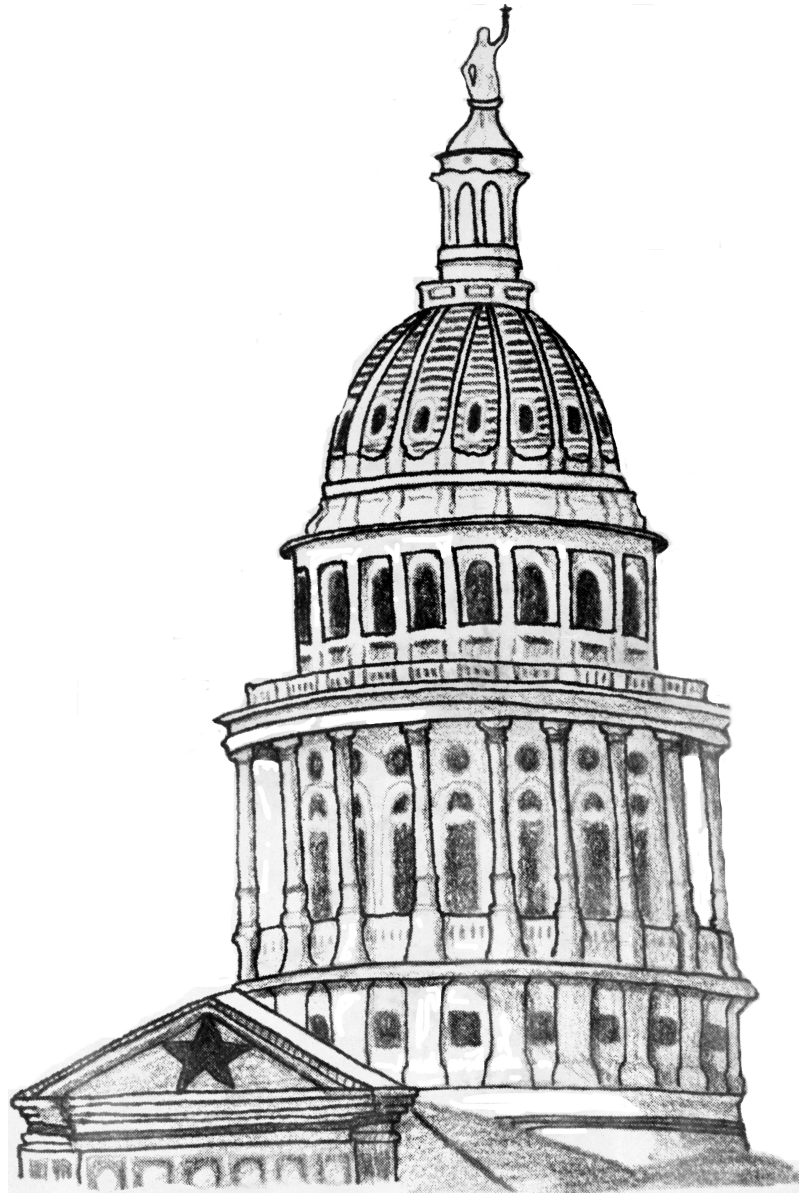
Executive Order GA-23, as amended by the May 22, 2020, proclamation, is further amended to the extent provided in this proclamation, including to remove water parks as one of the venues that people shall avoid visiting. This proclamation shall remain in effect and in full force for as long as Executive Order GA-23 is in effect and in full force, unless otherwise modified, amended, rescinded, or superseded by the governor.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 26th day of May, 2020.

Greg Abbott, Governor

TRD-202002161





THE ATTORNEY GENERAL

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

An index to the full text of these documents is available on the Attorney General's website at <https://www.texas.attorneygeneral.gov/attorney-general-opinions>. For information about pending requests for opinions, telephone (512) 463-2110.

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

Opinions

Opinion No. KP-0309

The Honorable Lyle Larson

Chair, Committee on Natural Resources

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether state or federal law preempts application of municipal development ordinances to a water control and improvement district's construction and maintenance of dams (RQ-0316-KP)

SUMMARY

The Legislature made the Texas Commission on Environmental Quality responsible for dam safety through subsections 5.013(a)(5)

and 12.052(a) of the Water Code. However, without evidence in the statutes of the Legislature's clear and unmistakable intent to preempt all local ordinances affecting dams, a court would likely conclude that a local regulation will be invalid only to the extent inconsistent with a state regulation.

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

TRD-202002147

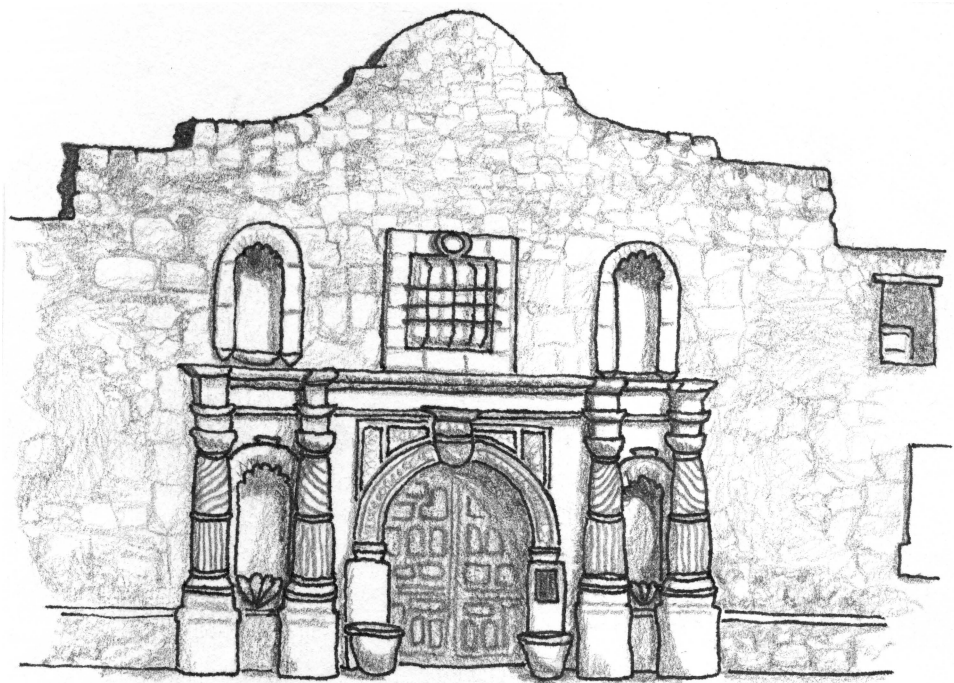
Lesley French

General Counsel

Office of the Attorney General

Filed: May 26, 2020





EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034).

TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 74. CURRICULUM REQUIREMENTS

SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING UNIVERSAL SCREENING FOR DYSLEXIA AND RELATED DISORDERS

19 TAC §74.1101

The Texas Education Agency (TEA) adopts on an emergency basis new §74.1101, concerning dyslexia screening. The new section implements the requirements of Governor Abbott's waiver of the Texas Education Code (TEC), §38.003(a), to screen each student in Kindergarten for dyslexia and related disorders at the end of the school year.

The new section is adopted on an emergency basis to take effect immediately. The TEA finds that an imminent peril to health, safety, and welfare exists due to the COVID-19 pandemic. As a consequence of the pandemic, the governor has declared a state of disaster for Texas and has ordered that schools be closed to in-classroom attendance for the remainder of the 2019-2020 school year. In recognition of this peril, the governor waived state law in TEC, §38.003(a), which requires the screening of students for dyslexia at the end of the school year. These screenings necessitate close proximity between students and teachers and would lead to unnecessary risk at a time when the state has taken extraordinary actions to reduce exposure to the virus and minimize its spread. The pandemic and its associated health risks require the adoption of the new section on fewer than 30 days' notice. The governor's waiver also recognizes the importance of interventions for students with dyslexia and requires TEA to adopt measures to ensure that school operations in the subsequent school year are implemented to ensure that the purposes of screening and treatment for dyslexia are accomplished, despite the delay in screening that may occur in the 2019-2020 school year. The emergency rule informs school districts and open-enrollment charter schools of their requirements should they utilize the governor's waiver of the end-of-year dyslexia screener required by TEC, §38.003(a), for Kindergarten students in the 2019-2020 school year. The emergency rule requires school districts and open-enrollment charter schools to provide a reading diagnostic at the beginning of the 2020-2021 school year, or at a time designated by the commissioner should circumstances make this infeasible, followed up with the screening requirement by the end of January 2021. These measures should allow the identification and interventions necessary to fulfill the purposes of the screening requirements and assist students at risk of

dyslexia, despite the delay in screening from the 2019-2020 school year.

STATUTORY AUTHORITY. The new section is adopted under TEC, §38.003(c-1), which authorizes TEA to develop procedures to ensure the purposes of dyslexia screening are accomplished. In addition, Governor Abbott's May 21, 2020 waiver of TEC, §38.003(a), is conditional upon a school district or an open-enrollment charter school complying with procedures adopted by TEA to ensure the purposes of the screening are fulfilled despite the delay in screening.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §38.003(c-1), and Governor Abbott's May 21, 2020 waiver of TEC, §38.003(a).

§74.1101. Dyslexia Screening Requirements for 2019-2020 and 2020-2021 School Years.

(a) Conditional waiver for 2019-2020 school year. The requirement established under Texas Education Code (TEC), §38.003(a), to screen each student in Kindergarten for dyslexia and related disorders by the end of the school year was waived by the governor for the 2019-2020 school year due to school closures resulting from the COVID-19 pandemic, subject to guidance and rules adopted by Texas Education Agency.

(b) Applicability. The waiver described under subsection (a) of this section applies to school districts and open-enrollment charter schools that implement the requirements of subsection (c) of this section.

(c) Requirements for 2020-2021 school year. School districts and open-enrollment charter schools must administer the reading diagnostic instrument required by TEC, §28.006, within the first 20 school days of the 2020-2021 school year.

(1) A student should be provided reading intervention as needed based on the reading diagnostic instrument results.

(2) A student should be referred for an evaluation if dyslexia or a related disorder is suspected.

(3) A student should be referred for a full and individual initial evaluation as required by state and federal law if a need for special education services is suspected in addition to suspicion of the presence of dyslexia.

(4) Students in Grade 1 must be screened for dyslexia and related disorders by the end of January 2021 in accordance with TEC, §38.003(a), and the "Dyslexia Handbook: Procedures Concerning Dyslexia and Related Disorders" adopted under §74.28 of this title (relating to Students with Dyslexia and Related Disorders).

(d) Alteration of timelines. The commissioner of education may alter the timelines under subsection (c) of this section for the state or an individual school district or open-enrollment charter school if circumstances resulting from the COVID-19 pandemic necessitate alteration.

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

Filed with the Office of the Secretary of State on May 22, 2020.

TRD-202002075

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Effective date: May 22, 2020

Expiration date: September 18, 2020

For further information, please call: (512) 475-1497



PROPOSED RULES

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 12. COMMISSION ON STATE EMERGENCY COMMUNICATIONS

CHAPTER 251. 9-1-1 SERVICE STANDARDS

1 TAC §251.1

The Commission on State Emergency Communications (CSEC) proposes amendments to 1 TAC §251.1, concerning Regional Strategic Plans for 9-1-1 Service.

BACKGROUND AND PURPOSE

CSEC proposes amendments to rule 251.1 (Title 1, Part 12, Chapter 251 of the Texas Administrative Code) relating to the Regional Planning Commission (RPC) regional strategic plans. The overarching purposes of the amendments are to disentangle Commission policy in rule 251.1 from the details of implementing the policy; and address requirements, reporting, etc. in 9-1-1 rules at a higher level that is technology neutral. Both of which allow for a shorter, less detailed rule once amended.

SECTION-BY-SECTION EXPLANATION

Section 251.1(a) is amended to insert text regarding Commission approval or disapproval of an RPC's regional strategic plan; and delete reference to "and subsections."

Section 251.1(b) is amended to insert text to clarify that the focus of a regional strategic plan is for an RPC to "describe how 9-1-1 service is to be provided and available 24x7x365;" and move the text regarding identifying all public safety agencies to new §251.1(c)(4).

Section 251.1(c) is amended to add new regional strategic plan requirements (c)(1) - (5), (9) - (10); move text from elsewhere in the current rule to (c)(11) - (12); delete the requirements (c)(2) and (5), and current (c)(8).

Section 251.1(d) regarding public safety answering point (PSAP) requirements is deleted in its entirety. Deletion of PSAP requirements is balanced by the addition of the "higher level" plan requirements in 251.1(c)(5) and (9). Deletion **does not** obviate an RPC's obligation to ensure that the PSAPs in its region are properly equipped, connected, powered (including uninterruptible power supply); and compliant with applicable laws and regulations, including the federal Americans with Disabilities Act;

Sections 251.1(e) and (f) pertaining to adding a PSAP, adding a call-taking position, or closing a PSAP are deleted in their entirety. The requirements and processes for each are in Commission Program Policy Statements.

Section 251.1(g) regarding RPC interlocal agreements is amended to insert text that such agreements must reflect "the RPC's Commission-approved regional strategic plan."

Section 251.1(h) regarding testing 9-1-1 equipment and 9-1-1 service is deleted in its entirety and the requirements are/will be incorporated into the PPS implementing the regional strategic plan requirements of §251.1(c).

General Changes. Consistent with transitions occurring in contracts and elsewhere, the term "shall" is deleted throughout the rule and replaced with "must" or "will" as appropriate.

FISCAL NOTE

Kelli Merriweather, CSEC's executive director, has determined that for each year of the first five fiscal years (FY) that amended §251.1 is in effect there will be no cost implications to the state or local governments as a result of enforcing or administering the amended sections. Notwithstanding streamlining and shortening the rule, incorporating new requirements such as an "information security plan," is estimated to increase the time an RPC needs to complete its statutorily required regional strategic plan. Any such increase in costs will be funded by an RPC out of state-appropriated and CSEC-allocated 9-1-1 service fees and/or equalization surcharge, and within anticipated appropriated amounts from the Texas Legislature.

PUBLIC BENEFITS AND COSTS

Ms. Merriweather has determined that for each year of the first five years the amended section is in effect, the public benefits anticipated as a result of the proposed revision will be to ensure RPC regional strategic plans reflect the wholesale transitioning of 9-1-1 service to Next Generation 9-1-1 service. Any increase in costs of complying with the amended rule will be borne by the state and paid for by the RPCs with allocated 9-1-1 service fees and/or 9-1-1 equalization surcharge, within anticipated appropriated amounts from the Texas Legislature.

RULE INCREASING COSTS TO REGULATED PERSONS

Government Code §2001.0045 precludes a state agency from adopting a proposed rule if the fiscal note imposes a cost on regulated persons, including another state agency, a special district, or a local government, unless on or before the effective date the state agency: (a) repeals a rule that imposes a total cost on regulated persons that is equal to or greater than the total cost imposed on regulated persons by the proposed rule; or (b) amends a rule to decrease the total cost imposed on regulated persons by an amount that is equal to or greater than the cost imposed on the persons by the rule. There are exceptions for certain types of rules under §2001.0045(c).

Section 2001.0045(b) applies to the proposed amended rule and no exceptions are applicable. Any increase in costs resulting

from additional requirements in the rule will be borne by the state and paid for by the RPCs with allocated 9-1-1 service fees and/or 9-1-1 equalization surcharge, within anticipated appropriated amounts from the Texas Legislature. Accordingly, no repeal or amendment of another rule to offset costs is required.

LOCAL EMPLOYMENT IMPACT STATEMENT

CSEC has determined that this proposal does not directly affect a local economy and therefore has not drafted a local employment impact statement as would otherwise be required under Administrative Procedures Act §2001.022.

GOVERNMENT GROWTH IMPACT STATEMENT

In compliance with the requirements of Texas Government Code §2001.0221, CSEC has determined that during the first five years that the rule will be in effect it would: 1. neither create nor eliminate a government program; 2. not result in an increase or decrease in the number of full-time equivalent employee needs; 3. not result in an increase or decrease in future legislative appropriations to the agency; 4. not increase or decrease any fees paid to the agency; 5. not create a new regulation; 6. not expand, limit, or repeal an existing regulation; 7. neither increase or decrease the number of individuals subject to regulation; and 8. not positively or adversely affect Texas' economy.

REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

CSEC has determined that this proposal is not a "major environmental rule" as defined by Government Code §2001.0225.

SMALL, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

In accordance with Government Code §2006.002(c), Ms. Merriweather has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as the rule being proposed affect only the relationship between CSEC and the Regional Planning Commissions. Accordingly, CSEC has not prepared an economic impact statement or regulatory flexibility analysis, nor has it contacted legislators in any rural communities regarding this proposal.

TAKINGS IMPACT ASSESSMENT

CSEC 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 Government Code §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted in writing c/o Patrick Tyler, Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942, by facsimile to (512) 305-6937, or by email to patrick.tyler@csec.texas.gov. Please include "Rulemaking Comments" in the subject line of your letter, fax, or email. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

STATEMENT OF AUTHORITY

The amended section is proposed pursuant to Health and Safety Code §§771.051, 771.0511, 771.055 - .057, and 771.078.

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

§251.1. *Regional Strategic Plans for 9-1-1 Service.*

(a) Purpose. The purpose of this rule is to establish a framework for a Regional Planning Commission (RPC) to use in the development and submission for Commission approval or disapproval of a regional strategic plan for 9-1-1 service, or amendments thereto, pursuant to Health and Safety Code §§771.055-771.057. A regional strategic plan will, at a minimum, include the elements [and subsections] required by statute, this rule, and Commission Program Policy Statements.

(b) Regional Strategic Plan Scope. A regional strategic plan must describe how 9-1-1 service is to be provided and available 24 hours a day, 7 days a week, 365 days a year, and address the entire geographic area within the boundaries of the RPC's 9-1-1 service area. [A regional strategic plan must identify all participating public safety agencies and Emergency Communication Districts.]

(c) Regional Strategic Plan Criteria. A [In addition to the elements required by Health and Safety Code §771.055; a] regional strategic plan must include the following and be updated at least once a biennium[; in order]:

(1) A description of how grant and any other funds allocated to the RPC by the Commission under this chapter are to be allocated in the region [Contingency routing plan];

(2) Projected financial operating information for the two state fiscal years following the submission of the [Network testing] plan;

(3) Strategic planning information for the five state fiscal years following submission of the [Local monitoring] plan;

(4) Identify all participating public safety agencies, and all Emergency Communication Districts and other RPCs with whom the RPC shares 9-1-1 service area boundaries [Capital asset plan];

(5) Call routing plan [Network diagrams];

(6) Local monitoring [Database maintenance] plan;

(7) Capital asset plan; [Equipment maintenance plan; and]

(8) Database maintenance plan; [Regional Emergency Services Internet Protocol Network (ESInet) plans.]

(9) Equipment maintenance plan;

(10) RPC Public Safety Answering Point (PSAP) Network plan;

(11) Information security program;

(12) Text-to-911 service (absent a Commission-approved waiver); and

(13) Financial and performance reporting at least quarterly on a schedule to be established by Commission staff.

{(d) A regional strategic plan must include at least one primary Public safety answering ppoint (PSAP) and the following equipment and service at all PSAPs:}

{(1) Automatic Number Identification (ANI) level of service;}

{(2) Automatic Location Identification (ALI) level of service;}

{(3) Wireless Phase I E9-1-1 level of service;}

{(4) Wireless Phase II E9-1-1 level of service;}

{(5) Text-to-911 service (absent a Commission-approved waiver);}

[(6) Telecommunication Device for the Deaf (TDD) or TDD compatible equipment in compliance with the Americans with Disabilities Act (ADA) and in compliance with Commission Rule 251.4, Guidelines Accessibility Equipment;]

[(7) A standby power supply for the 9-1-1 equipment;]

[(8) Forced disconnect feature to allow the PSAP to clear incoming circuits when necessary;]

[(9) The following must be redundant:]

[(A) Network connections between each service provider facility and the 9-1-1 Network Service Provider's selective router (SR);]

[(B) Network connections from the SR to the Primary PSAP and/or Host Customer Premises Equipment (CPE) location;]

[(C) Network connections from the ALI database to the Primary PSAP and/or Host CPE location;]

[(D) Network connections from Host CPE location to PSAP (absent a Commission-approved waiver);]

[(E) Database routers at the Primary PSAP and/or Host CPE location;]

[(F) Telephone sets and/or integrated ANI and ALI display call taking positions; and]

[(G) Any other equipment essential to the 9-1-1 call and text-taking functions;]

[(10) A published ten-digit emergency telephone number that can accept emergency calls 24 hours a day, 7 days a week, 365 days a year and which is answered by a qualified 9-1-1 call taker;]

[(11) A positive response to each 9-1-1 call where either the call is answered by personnel at the PSAP or a recorded announcement provides further information; and]

[(12) A positive response to each Text-to-911 by personnel at the PSAP or a recorded announcement providing further information.]

[(e) Adding a PSAP or 9-1-1 Call Taking Positions. Requests for an increase in the number of PSAPs or 9-1-1 call taking positions within a PSAP shall be submitted as part of a regional strategic plan or amendment thereto in accordance with Commission Program Policy Statements.]

[(f) Closing a PSAP. Requests to close a PSAP shall be submitted as part of a regional strategic plan or amendment thereto in accordance with Commission Program Policy Statements.]

(d) [(g)] Contracts. Each RPC must [shall] execute interlocal agreements between itself and each public agency or public safety agency in the RPC's region reflecting the RPC's Commission-approved regional strategic plan and addressing [that address], at a minimum, the planning, development, operation and provision of 9-1-1 service, the use of 9-1-1 funds, and the requirements in the contracts promulgated pursuant to Commission Rule 251.12, Commission and Regional Planning Commission Contracts for 9-1-1 Service.

[(h) Testing. Each RPC shall test all 9-1-1 equipment and 9-1-1 service, including Text-to-911. Testing shall occur when 9-1-1 service is implemented or equipment is installed, service or equipment is modified, and on a regular basis to ensure system reliability, including compliance with the ADA. A schedule for ongoing testing shall be developed by the RPC and shall be available to the Commission for monitoring.]

[(i) Performance Reporting. Each RPC shall submit financial and performance reports to the Commission at least quarterly on a schedule to be established by the Commission. The financial report shall identify actual implementation costs by county, budget allocation, and component. The performance report shall reflect the progress of implementing the region's strategic plan including, but not limited to, the status of equipment, services, and program deliverables in a format to be determined by the Commission.]

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

Filed with the Office of the Secretary of State on May 20, 2020.

TRD-202002000

Patrick Tyler

General Counsel

Commission on State Emergency Communications

Earliest possible date of adoption: July 5, 2020

For further information, please call: (512) 305-6915



1 TAC §251.3

The Commission on State Emergency Communications (CSEC) proposes amendments to §251.3.

BACKGROUND AND PURPOSE

CSEC proposes amendments to §251.3 (Title 1, Part 12, Chapter 251 of the Texas Administrative Code) relating to a Regional Planning Commission's (RPC) strategic plan amendment request for "Use of Revenue" under Health and Safety Code §771.07. The primary purpose of amending §251.3 is to limit the availability of use of revenue to preserve fund balances in CSEC's General Revenue Dedicated accounts.

SECTION-BY-SECTION EXPLANATION

The proposed amendments are to §251.3(a) only. As amended, the section clarifies that:

1. An RPC is precluded from using unexpended and unencumbered grant funds allocated by the CSEC from CSEC General Revenue Dedicated account fund balances for use of revenue; and

2. Allocated grant funds by CSEC funded from 9-1-1 service fee and equalization surcharge revenues remitted to the Comptroller of Public Accounts from the RPC's 9-1-1 service region are expended and encumbered first before any other source of funding of an RPC's grant—including from appropriations funded from General Revenue Dedicated fund balances.

FISCAL NOTE

Kelli Merriweather, CSEC's executive director, has determined that for each year of the first five fiscal years (FY) that amended §251.3 is in effect there will be no cost implications to the state or local governments as a result of enforcing or administering the amended sections.

PUBLIC BENEFITS AND COSTS

Ms. Merriweather has determined that for each year of the first five years the amended section is in effect, the public benefits anticipated because of the proposed revision will be to help preserve CSEC's General Revenue Dedicated fund balances. Preservation of fund balances will occur by lapsing back to the

Texas Treasury any remaining unexpended and unencumbered RPC grant amounts funded from such dedicated balances after an RPC has implemented its CSEC-approved Regional Strategic Plan for the affected fiscal year. There are no probable economic costs to persons, specifically an RPC, required to comply with the rule.

RULE INCREASING COSTS TO REGULATED PERSONS

Government Code §2001.0045 precludes a state agency from adopting a proposed rule if the fiscal note imposes a cost on regulated persons, including another state agency, a special district, or a local government, unless on or before the effective date the state agency: (a) repeals a rule that imposes a total cost on regulated persons that is equal to or greater than the total cost imposed on regulated persons by the proposed rule; or (b) amends a rule to decrease the total cost imposed on regulated persons by an amount that is equal to or greater than the cost imposed on the persons by the rule. There are exceptions for certain types of rules under §2001.0045(c).

Section §2001.0045(b) applies to the proposed amended rule and no exceptions are applicable. The proposed amended rule does not include a fiscal note imposing or increasing costs on regulated persons, including another state agency, a special district, or a local government. Accordingly, no repeal or amendment of another rule to offset costs is required.

LOCAL EMPLOYMENT IMPACT STATEMENT

CSEC has determined that this proposal does not directly affect a local economy and therefore has not drafted a local employment impact statement as would otherwise be required under Administrative Procedures Act §2001.022.

GOVERNMENT GROWTH IMPACT STATEMENT

In compliance with the requirements of Texas Government Code §2001.0221, CSEC has determined that during the first five years that the rule will be in effect it would: 1. neither create nor eliminate a government program; 2. not result in an increase or decrease in the number of full-time equivalent employee needs; 3. not result in an increase or decrease in future legislative appropriations to the agency; 4. not increase or decrease any fees paid to the agency; 5. not create a new regulation; 6. not expand, limit, or repeal an existing regulation; 7. neither increase or decrease the number of individuals subject to regulation; and 8. not positively or adversely affect Texas' economy.

REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

CSEC has determined that this proposal is not a "major environmental rule" as defined by Government Code §2001.0225.

SMALL, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

In accordance with Government Code §2006.002(c), Ms. Merriweather has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as the rule being proposed affect only the relationship between CSEC and the Regional Planning Commissions. Accordingly, CSEC has not prepared an economic impact statement or regulatory flexibility analysis, nor has it contacted legislators in any rural communities regarding this proposal.

TAKINGS IMPACT ASSESSMENT

CSEC 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 Government Code §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted in writing c/o Patrick Tyler, Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942, by facsimile to (512) 305-6937, or by email to patrick.tyler@csec.texas.gov. Please include "Rulemaking Comments" in the subject line of your letter, fax, or email. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

STATEMENT OF AUTHORITY

The amended section is proposed pursuant to Health and Safety Code Chapter §§771.051, 771.052, 771.055, 771.056, 771.057, 771.075, and 771.0751.

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

§251.3. *Use of Revenue in Certain Counties.*

(a) Purpose. The purpose of this rule is to implement §771.0751 Health and Safety Code, which authorizes a Regional Planning Commission (RPC) to use 9-1-1 fees and surcharges in certain counties, in addition to other authorized or required uses, for any costs deemed necessary by the Commission and attributable to designing a 9-1-1 system or the establishing and operating of a public safety answering point (PSAP) or other answering point and related operations. Use of revenue is limited to unexpended and unencumbered allocated grant funds from 9-1-1 service fees (wireline/VoIP, wireless, and prepaid wireless) and equalization surcharge remitted to the Comptroller of Public Accounts from the RPC's service region for the fiscal year use of revenue is requested. Allocated grant funds exceeding an RPC's 9-1-1 service fee and equalization surcharge revenues are not eligible for use of revenue. Allocated grant funds of RPC 9-1-1 service fee and equalization surcharge revenues are expended and encumbered first before any other source of funding of an RPC's grant, including from appropriations from General Revenue Dedicated fund balances.

(b) Eligibility. The eligibility for approval of funding under this rule is as follows:

(1) A county participating in its RPC's regional strategic plan with a population of at least 1,000,000 as reported by the Texas Demographic Center.

(2) A county participating in its RPC's regional strategic plan that has the highest population within the region as reported by the Texas Demographic Center.

(c) Requests. Requests for funding under this rule shall be submitted by the RPC as an amendment to its regional strategic plan at fiscal year close out when all encumbrances and payables have been expended in accordance with Commission rules and Commission Program Policy Statements. The request must demonstrate that all basic regional 9-1-1 needs have been met prior to funding under this rule. The request must include a letter signed by the RPC's Executive Director authorizing the request and include (1) a description of the design of the 9-1-1 system; and/or (2) each PSAP or other answering point to receive funding and the respective amount to be received. For each PSAP or other answering point listed, a written request must be included from the PSAP or other answering point specifying how the funds will be used and that funds received will be expended as specified.

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 May 21, 2020.

TRD-202002003

Patrick Tyler

General Counsel

Commission on State Emergency Communications

Earliest possible date of adoption: July 5, 2020

For further information, please call: (512) 305-6915



CHAPTER 254. REGIONAL POISON CONTROL CENTERS

1 TAC §254.2

The Commission on State Emergency Communications (CSEC) proposes amendments to rule §254.2.

BACKGROUND AND PURPOSE

CSEC proposes amendments to rule §254.2 (Title 1, Part 12, Chapter 254 of the Texas Administrative Code) relating to its Poison Control Coordinating Committee (PCCC). The primary purpose of amending §254.2 is to extend the duration of the PCCC.

SECTION-BY-SECTION EXPLANATION

The proposed amendments are to:

Section 254.2(o)--Extend the duration of the PCCC to September 1, 2023;

Section 254.2(b)(3)--Delete the "and" at the end of the section;

Section 254.2(b)(4)--Delete the "." at the end of the section and insert "; and" to allow for new 254.2(b)(5);

Section 254.2(b)(5)--Incorporates by reference new coordinating, partnering, and evaluation activities recently adopted by CSEC in the PCCC Bylaws;

Section 254.2(h)--Add "of this section" following "subsection (h)" to clarify the reference;

Section 254.2(i)--Add to PCCC reporting to align with the CSEC-approved PCCC bylaws, and to update by adding and deleting text preceding the list of other PCCC reporting requirements;;

Section 254.2(i)(1)--Change the requirement of quarterly reporting by the PCCC to a September 1 of each year annual report;

Section 254.2(i)(1)(C)--Delete the "." at the end of the section and insert ";" to extend the enumerated list; and

Section 254.2(i)(2)--Insert a missing "and" following the semicolon.

FISCAL NOTE

Kelli Merriweather, CSEC's executive director, has determined that for each year of the first five* fiscal years (FY) that amended §254.2 is in effect there will be no cost implications to the state or local governments as a result of enforcing or administering the amended sections. (* As proposed the rule will expire automatically in less than five years on September 1, 2023, to align with CSEC's current sunset date.)

PUBLIC BENEFITS AND COSTS

Ms. Merriweather has determined that for each year of the first five years the amended section is in effect, the public benefits anticipated as a result of the proposed revision will be to continue, in an official capacity, the advisory and coordinating functions of the PCCC for an additional three years; and further integrate the PCCC's activities into CSEC's statewide Poison Control Program consistent with the CSEC-approved PCCC bylaws. Costs of complying with the rule are borne by CSEC directly through staff time spent supporting the PCCC's activities and indirectly through grants to each Regional Poison Control Center comprising the PCCC; and by members volunteering their time.

RULE INCREASING COSTS TO REGULATED PERSONS

Government Code §2001.0045 precludes a state agency from adopting a proposed rule if the fiscal note imposes a cost on regulated persons, including another state agency, a special district, or a local government, unless on or before the effective date the state agency: (a) repeals a rule that imposes a total cost on regulated persons that is equal to or greater than the total cost imposed on regulated persons by the proposed rule; or (b) amends a rule to decrease the total cost imposed on regulated persons by an amount that is equal to or greater than the cost imposed on the persons by the rule. There are exceptions for certain types of rules under §2001.0045(c).

Section §2001.0045(b) applies to the proposed amended rule and no exceptions are applicable. The proposed amended rule does not include a fiscal note imposing or increasing costs on regulated persons, including another state agency, a special district, or a local government. Accordingly, no repeal or amendment of another rule to offset costs is required.

LOCAL EMPLOYMENT IMPACT STATEMENT

CSEC has determined that this proposal does not directly affect a local economy and therefore has not drafted a local employment impact statement as would otherwise be required under Administrative Procedures Act §2001.022.

GOVERNMENT GROWTH IMPACT STATEMENT

In compliance with the requirements of Texas Government Code §2001.0221, CSEC has determined that during the first five years that the rule will be in effect it would: 1. neither create nor eliminate a government program; 2. not result in an increase or decrease in the number of full-time equivalent employee needs; 3. not result in an increase or decrease in future legislative appropriations to the agency; 4. not increase or decrease any fees paid to the agency; 5. not create a new regulation; 6. not expand, limit, or repeal an existing regulation; 7. neither increase or decrease the number of individuals subject to regulation; and 8. not positively or adversely affect Texas' economy.

REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

CSEC has determined that this proposal is not a "major environmental rule" as defined by Government Code §2001.0225.

SMALL, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

In accordance with Government Code §2006.002(c), Ms. Merriweather has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as the rule being proposed affect only the relationship between CSEC and the Regional Planning Commissions. Accordingly, CSEC has not prepared an economic impact statement or

regulatory flexibility analysis, nor has it contacted legislators in any rural communities regarding this proposal.

TAKINGS IMPACT ASSESSMENT

CSEC 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 Government Code §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted in writing c/o Patrick Tyler, Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942, by facsimile to (512) 305-6937, or by email to patrick.tyler@csec.texas.gov. Please include "Rulemaking Comments" in the subject line of your letter, fax, or email. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

STATEMENT OF AUTHORITY

The amended section is proposed under Health and Safety Code §777.008 and Government Code Chapter 2110. The former establishes the PCCC and the latter requires state agencies to describe by rule an advisory committee's purpose and tasks, the manner in which the Committee reports to CSEC, and the duration of the Committee.

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

§254.2 Poison Control Coordinating Committee

(a) Purpose. Establish the Poison Control Coordinating Committee (Committee) created by Health and Safety Code §777.008. The Committee shall coordinate the activities of the regional poison control centers (RPCCs) and advise the Commission on State Emergency Communications (Commission) on:

- (1) promoting public safety and injury prevention through well-coordinated poison control activities within the state of Texas;
- (2) providing information and educational programs for communities and health care professionals;
- (3) providing poison prevention education to the public, and informing and educating health professionals on the management of poison and overdose victims;
- (4) providing technical assistance to state agencies requesting toxicology assistance; and
- (5) providing consultation services concerning medical toxicology.

(b) Tasks. The Committee is tasked with:

- (1) advising the Commission on rules relating to the poison control program;
- (2) advising the Commission regarding the requirements of Health and Safety Code, Chapter 777, Regional Poison Control Centers;
- (3) advising the Commission on the guidelines for an RPCC to achieve and maintain accreditation through the American Association of Poison Control Centers (AAPCC); and
- (4) coordinating with Commission staff the poison control program's input into the Commission's Strategic Plan and Legislative Appropriations Request.; and
- (5) coordinating, partnering, and evaluating in accordance with the Commission's adopted Committee bylaws.

(c) Composition. The Committee is composed of:

- (1) one public member appointed by the Commission;
 - (2) six members who represent the six RPCCs, one member each appointed by the chief executive officer of each RPCC or the functional equivalent;
 - (3) one member appointed by the commissioner of the Department of State Health Services (DSHS); and
 - (4) one member who is a health care professional designated as the poison control program coordinator appointed by the Commission.
- (d) Bylaws. The Committee shall draft bylaws for approval by the Commission.
- (e) Terms of Office. Each member shall be appointed for a term of six years.

- (1) Member terms begin on September 1 of the year of appointment.
- (2) Members shall continue to serve after the expiration of their term until a replacement member is appointed.
- (3) If a vacancy occurs, a person shall be appointed to serve the unexpired portion of that member's term.
- (4) Members serve staggered terms, with the terms of one-third of the members expiring August 31 of each odd-numbered year. To implement staggered terms, the initial terms of each member are as follows:

- (A) public member and two RPCC members--2011;
 - (B) DSHS member and two RPCC members--2013;
- and
- (C) Commission member and two RPCC members--2015.

(f) Committee Meeting Attendance. Members shall attend scheduled Committee meetings.

- (1) A member shall notify the presiding officer or Commission staff if the member is unable to attend a scheduled meeting.
- (2) It is grounds for removal, including by the Commission, if a member cannot discharge the member's duties for a substantial part of the member's appointed term because of illness or disability, is absent from more than half of the Committee meetings during a fiscal year, or is absent from at least three consecutive Committee meetings. The validity of an action of the Committee is not affected by the fact that it is taken when a ground for removal of a member exists.

(g) Statement by Members.

- (1) The Commission and the Committee shall not be bound in any way by any statement or action on the part of any Committee member except when a statement or action is in pursuit of specific instructions from the Commission or Committee.
- (2) The Committee and its members may not participate in legislative activity in the name of the Commission or the Committee except with approval through the Commission's legislative process. Committee members are not prohibited from representing themselves, their RPCC, or other entities in the legislative process.

(h) Reimbursement for Expenses. In accordance with the requirements set forth in Government Code, Chapter 2110, a Committee member may only receive reimbursement for the member's expenses, including travel expenses, incurred for each day the member engages

in official Committee business from appropriated funds if authorized by the General Appropriations Act or budget execution process.

(1) No compensatory per diem shall be paid to Committee members unless required by law.

(2) A Committee member who is an employee of a state agency, other than the Commission or DSHS, may not receive reimbursement for expenses from the Commission.

(3) A nonmember of the Committee who is appointed to serve on a subcommittee may not receive reimbursement for expenses from appropriated funds unless authorized in accordance with subsection (h) of this section and approved by the Commission's Executive Director.

(4) Each member who is to be reimbursed for expenses shall submit to Commission staff the member's receipts for expenses and any required official forms no later than 14 days after each Committee meeting.

(5) Requests for reimbursement of expenses shall be made on official state travel vouchers prepared by Commission staff.

(i) Reporting to the Commission. The Committee shall submit written reports to the Commission in accordance with Committee bylaws; and additionally as follows [as requested and including]:

(1) by September 1 of each year submit an annual [at least quarterly and according to the schedule established by the Commission, a] report to the Commission that includes, but is not limited to, the following:

(A) an update on the Committee's work, including:

(i) Committee meeting dates;

(ii) member attendance records;

(iii) description of actions taken by the Committee;

(iv) description of how the Committee has accomplished or addressed the tasks and issues assigned to the Committee by the Commission;

(v) information on available grants and any grant funding received by the RPCCs; and

(vi) anticipated future activities of the Committee;

(B) description of the usefulness of the Committee's work; and

(C) statement of costs related to the Committee, including the cost of Commission staff time spent in support of the Committee.;

(2) by June 1 in even-numbered years, a report advising and making recommendations regarding development of the Commission's biennial Strategic Plan and Legislative Appropriations Request; and

(3) by June 1 in odd-numbered years, a report on the distribution of appropriated funding, the implementation of legislative requirements, and other information as may be determined by the Commission.

(j) Commission Staff. Support for the Committee shall be provided by Commission staff.

(k) Advisory Committee. The Committee is an advisory committee in that it does not supervise or control public business or policy. As an advisory committee, the Committee is not subject to the Open Meetings Act (Texas Government Code, Chapter 551).

(l) Applicable law. The Committee is subject to Government Code, Chapter 2110, concerning state agency advisory committees.

(m) Commission Evaluation. The Commission shall annually evaluate the Committee's work, usefulness, and the costs related to the Committee, including the cost of Commission staff time spent supporting the Committee's activities.

(n) Report to the Legislative Budget Board. The Commission shall report to the Legislative Budget Board the information developed in subsection (m) of this section on a biennial basis as part of the Commission's Legislative Appropriations Request.

(o) Review and Duration. Before September 1, 2023 [By September 1, 2020], the Commission will initiate and complete a review of the Committee to determine whether the Committee should be continued or abolished. If the Committee is not continued, it shall be automatically abolished on that 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 May 21, 2020.

TRD-202002004

Patrick Tyler

General Counsel

Commission on State Emergency Communications

Earliest possible date of adoption: July 5, 2020

For further information, please call: (512) 305-6915



TITLE 16. ECONOMIC REGULATION

PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 35. ENFORCEMENT

SUBCHAPTER A. TRANSPORTATION OF LIQUOR

16 TAC §35.7

The Texas Alcoholic Beverage Commission proposes new rule 35.7, relating to minimum requirements for Alcohol Delivery Compliance Software Applications.

In 2019, the 86th Texas Legislature passed Senate Bill 1450 which amended the Alcoholic Beverage Code to allow holders of certain mixed beverage permits, such as restaurants, to deliver alcohol to off-premise locations along with food orders. The bill also created a new type of permit, the consumer delivery permit, which authorizes its holders to employ or contract with delivery drivers to deliver alcoholic beverages from retail locations to consumers (new Tex. Alco. Bev. Code Ch. 57).

The legislature provided that a consumer delivery permit holder may use a software application in deliveries of alcohol to the consumer to qualify for certain limitations on liability under the new consumer delivery permit. It directed the TABC to adopt minimum standards for such software applications (Tex. Alco. Bev. Code §57.09(a)(2)). Proposed new rule §35.7 provides the TABC's proposed minimum standards for alcohol delivery compliance software applications.

Among other things, proposed rule §35.7 includes requirements designed to ensure that alcoholic beverages are not delivered to persons who are intoxicated or under the age of 21. The software application must also provide for ascertaining whether a particular type of alcoholic beverage can be delivered legally to the consumer's address (wet/dry status). An applicant or permit holder may request an evaluation of its software application from the TABC, which will provide an opinion as to its compliance with the requirements of the rule; however, pre-approval is not required.

Shana Horton, Rules Attorney, has determined that for each year of the first five years that the proposed amendments will be in effect, there will be no fiscal impact on state or local government attributable to the rule.

The proposed amendments will have no fiscal or regulatory impact on rural communities. There will be a positive effect on micro-businesses, small businesses, and persons regulated by the commission whose sales at retail stores or restaurants with mixed beverage permits may increase due to the rule's facilitation of consumer delivery options. The proposed amendments do not impose an additional regulatory burden on small businesses, micro-businesses, and persons regulated by the commission. The use of a software application that is compliant with this rule is optional.

This paragraph constitutes the commission's government growth impact statement for the proposed amendments. The analysis addresses the first five years the proposed amendments would be in effect. The proposed rule neither creates nor eliminates a government program. The proposed rule does not require the creation of new employee positions or the elimination of existing employee positions. The agency anticipates that the provisions of this rule will be absorbed using existing agency resources. The agency will work with an outside firm contracted to assess whether a software application meets the requirements of the rule, at the request of the applicant or permit holder. The agency does not anticipate more than a few such requests based upon the universe of potential consumer delivery permit holders. Implementation of the proposed amendments require neither an increase nor a decrease in future legislative appropriations to the commission. The proposed rule does not increase or decrease fees paid to the agency; the fee for a consumer delivery permit was previously adopted by rule. The proposed rule does not create a new regulation. The proposed rule does not expand, limit, or repeal an existing regulation. The proposed rule neither increases nor decreases the number of individuals subject to the rule's applicability. The proposed rule will have a small positive impact on the state's economy by facilitating sales and collection of associated state taxes on alcoholic beverages delivered to the consumer.

Ms. Horton has determined that for each year of the first five years that the proposed amendments will be in effect, the public will benefit because it will incentivize the regulated community to use a compliant software application in the delivery of alcoholic beverages that is designed to promote public safety by ensuring that alcoholic beverages are delivered in compliance with the law.

Comments on the proposed amendments may be submitted in writing to Shana Horton, Rules Attorney, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, by facsimile transmission to (512) 206-3498, or by email to rules@tabc.texas.gov. Written comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the proposed amendments on June 23, 2020, at 10:00 a.m. in the commission meeting room at commission headquarters, located at 5806 Mesa Drive in Austin, Texas. The commission has designated this hearing as the appropriate forum to make oral comments under Government Code §2001.029. DUE TO PUBLIC HEALTH CONCERNS RELATED TO COVID-19, THIS HEARING MAY BE HELD BY VIDEOCONFERENCE ONLY. Interested persons should visit the TABC's public web site prior to the meeting date to receive further instructions or call Shana Horton, Rules Attorney, at (512) 206-3451.

The proposed amendments are authorized by Alcoholic Beverage Code §57.09(a)(2), which requires the Texas Alcoholic Beverage Commission (commission) to establish minimum requirements for alcoholic beverage delivery software applications.

This rulemaking implements Tex. Alco. Bev. Code §57.09(a)(2).
§35.7. Alcoholic Beverage Delivery Compliance Software Applications.

(a) Definition. In this section, the term "software application" means an alcohol delivery compliance software application.

(b) To qualify for limitations on liability for the actions of its delivery drivers under Alcoholic Beverage Code § 57.08 by using a software application, a consumer delivery permit holder must require its drivers to use a software application when delivering alcoholic beverages that meets the minimum requirements of this rule.

(c) The software application must enable the delivery driver to:

(1) access electronically readable data from a government-issued driver's license or identification card;

(2) manually enter the birthdate of the holder of the driver's license or identification card, in the event that the information cannot be read electronically for any reason;

(3) provide an affirmation electronically that at the time of delivery, the person accepting the alcoholic beverage delivery:

(A) does not display signs of intoxication;

(B) presents a valid, unexpired government-issued driver's license or identification card; and

(C) is 21 years of age or older;

(4) cancel the transaction in the event that delivery is not completed;

(5) indicate the reason for any non-delivery of alcoholic beverage(s), which at a minimum must include the options to select:

(A) person receiving the delivery displayed signs of intoxication;

(B) person receiving the delivery failed to present a valid, unexpired government-issued driver's license or identification card demonstrating that the holder is at least 21 years of age; or

(C) unable to complete delivery within a reasonable amount of time after leaving the retailer's premises, which is now closed; and

(6) record the disposition of any undelivered alcohol.

(d) Delivery address verification.

(1) The consumer delivery permit holder is responsible for ensuring the type of alcoholic beverage ordered can legally be delivered to the delivery address (wet/dry status). This may be accomplished au-

tomatically, either during the online ordering process or by the software application, or by the delivery driver, using the software application.

(2) If the consumer delivery permit holder's online ordering process or the software application automatically verifies that the type of alcoholic beverage ordered can legally be delivered to the delivery address, the software application must enable the delivery driver to affirm that the delivery address is the same address entered during the online ordering process.

(3) The mechanism or program employed to comply with this section must use, at a minimum, publicly available information provided by the commission regarding the eligibility for sale of each type of alcohol to the delivery address.

(e) In addition to other requirements of this rule, a software application used in the delivery of alcohol to a consumer pursuant to Alcoholic Beverage Code § 28.1001 must enable the delivery driver to affirm that:

(1) the amount of distilled spirits delivered does not exceed 375 milliliters;

(2) all alcoholic beverages are delivered in containers sealed by the manufacturer; and

(3) food was delivered concurrently with the alcoholic beverage(s).

(f) The software application must use industry standard mechanisms to authenticate the identity of each delivery driver using the software application. At a minimum, the software application must use a generally accepted single-factor authentication method to verify the identity of the user, such as a password or biometric identification.

(g) The consumer delivery permit holder must maintain the following information for each transaction and must provide it to the commission upon request:

(1) whether the consumer passed or failed age verification, based on either the reading of the electronically readable data from the driver's license or identification card or manual entry of the birthdate on the driver's license or identification card presented at the time of delivery;

(2) the physical address to which the alcoholic beverage was delivered;

(3) the specific alcoholic beverage(s) or type(s) of alcohol delivered (e.g., malt beverages, wine, and/or distilled spirits);

(4) time stamps for when the order was received, when the delivery driver obtained the alcoholic beverages from the retailer, and when the alcoholic beverages were either delivered to the consumer or the transaction was canceled;

(5) information related to the disposition of undelivered alcoholic beverages; and

(6) the software application compliance features used on the date of the transaction.

(h) The information listed in subsection (g) of this section:

(1) must be stored for at least six months; and

(2) if the information is the subject of an ongoing commission enforcement action, must be stored in the consumer delivery permit holder's usual manner until the enforcement action is closed.

(i) Information from a government-issued driver's license or identification card accessed under this section must be maintained and used in a manner compliant with Alcoholic Beverage Code § 109.61.

(j) The consumer delivery permit holder may submit its software application compliance features to the commission for review prior to rollout of the initial version, and at any time the software application compliance features are updated in a manner that may impact its compliance with the requirements of this rule. The commission will provide the permit holder with an opinion as to whether the software application compliance features meet rule requirements or need changes to come into compliance.

(k) The commission may perform periodic audits to verify compliance with this rule.

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 May 20, 2020.

TRD-202001996

Shana Horton

Rules Attorney

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: July 5, 2020

For further information, please call: (512) 206-3451



PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 65. BOILERS

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 65, Subchapter A, §65.2 and Subchapter I, §65.64, regarding the Boilers program. These proposed changes are referred to herein as "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 65, implement Texas Health and Safety Code, Chapter 755, Boilers.

The proposed rules simplify and clarify the process to apply for extensions of the internal inspection interval for boilers (extensions) in §65.64; add specific conditions under which boiler operators may obtain extensions; and add four new related definitions to §65.2. The proposed rules are necessary to provide clarity and certainty to boiler operators to plan the frequency of internal inspections. Health and Safety Code, §755.026 provides for the availability of extensions and the proposed rules supply additional specific conditions under which the Department may approve the extensions.

A task group was first convened on May 22, 2018, to examine and deliberate the criteria under which the Department may approve extension requests. The task group created amendments to the extensions rule and the related definitions. The Board of Boiler Rules (Board) discussed the rules and voted to propose them at its meeting on July 13, 2018. After the public comment period and discussion by the Board at its meeting on December 5, 2018, the Board voted to return the extension rules to the task group for further review and modification. Following communication among staff, task group members, and stakeholders, the Board met on August 19, 2019, and voted to again propose the extension rules. After the public comment period and the receipt of oral and written comments, at its meeting on November 7, 2019, the Board deliberated and voted to return the proposed

extension rules to the task group for additional review. Subsequently, the Department communicated with task group members and stakeholders, reviewed the relevant information, and held an informative Boiler Summit public meeting to explain the statutory and rule requirements for extensions and the proposed rule modifications, as well as to collect input and answer questions about the application of the rules in the field.

The task group met to discuss the information exchanged in the Summit meeting and recommended one change to the wording of the proposed rules. The Department added the correction of a citation in the rules and presented the changes to the Board at its meeting on February 26, 2020. The Board discussed the input from the Summit and the task group and voted to recommend that the proposed rules without further changes be published in the *Texas Register* for public comment.

SECTION-BY-SECTION SUMMARY

The proposed amendments to §65.2 add definitions for "continuous water treatment," "operation," "out of service," and "standby" and relate to the amendments proposed to §65.64. The section is also renumbered accordingly.

The proposed amendments to §65.64 clarify the requirements for extension of the interval between internal inspections, and simplify the language used in the section.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to the state or local governments as a result of enforcing or administering the proposed rules. Mr. Couvillon has also determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase or loss in revenue to the state or to local governments as a result of enforcing or administering the proposed rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

Mr. Couvillon has determined that the proposed rules will not affect any local economy, so the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

PUBLIC BENEFITS

Mr. Couvillon also has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be increased safety of boiler operation in Texas. The proposed amendments provide clarification of the conditions under which the Department may or may not approve extensions. An extension request for a boiler that does not meet the stated conditions may result in the need for a comprehensive internal inspection of the boiler before it may receive a new certificate of operation.

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, there may be a benefit to persons who are required to comply with the proposed rules. Boiler operators will benefit from increased certainty as to the conditions under which they may obtain extensions and therefore some operators may succeed in increasing the interval between required, costly inspections by positioning themselves to satisfy these criteria.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

There will be no adverse effect on small businesses, micro-businesses, or rural communities as a result of the proposed rules. Because the agency has determined that the proposed rules 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, are not required.

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

The proposed rules do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed rules. For each year of the first five years the proposed rules will be in effect, the agency has determined the following:

1. The proposed rules do not create or eliminate a government program.
2. Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions.
3. Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency.
4. The proposed rules do not require an increase or decrease in fees paid to the agency.
5. The proposed rules do not create a new regulation.
6. The proposed rules expand an existing regulation. The addition of conditions and criteria for extensions in §65.64 expands the rule but does not expand its scope or applicability.
7. The proposed rules do not increase or decrease the number of individuals subject to the rules' applicability.
8. The proposed rules do not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

The Department 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 his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed rules do not constitute a taking or require a takings impact assessment under Government Code §2007.043.

PUBLIC COMMENTS

Comments on the proposed rules may be submitted electronically on the Department's website at

<https://ga.tdlr.texas.gov:1443/form/gcerules>; by facsimile to (512) 475-3032; or by mail to Monica Nunez, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711. The deadline for comments is 30 days after publication in the *Texas Register*.

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §65.2

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code Chapter 51 and Texas Health and Safety Code Chapter 755, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code Chapter 51 and Texas Health and Safety Code Chapter 755. No other statutes, articles, or codes are affected by the proposed rules.

§65.2. Definitions.

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

(1) - (19) (No change.)

(20) Continuous Water Treatment--A verifiable program that controls and limits corrosion and deposits in a boiler.

(21) [(20)] Department--Texas Department of Licensing and Regulation.

(22) [(21)] Deputy Inspector--An inspector appointed by the executive director.

(23) [(22)] Disconnected Boiler--A boiler in which all fuel, water, steam and electricity are removed from any connection on the boiler. These connections shall provide an isolated gap and the source shall be safely isolated to prevent potential leaks or electrical hazards.

(24) [(23)] Electric Boiler--A boiler in which the source of heat is electricity, such as an electrode type boiler and an immersion resistance element type boiler.

(25) [(24)] Electrode Type Boiler--An electric boiler in which heat is generated by the passage of electric current using water as the conductor.

(26) [(25)] Executive Director--The executive director of the department.

(27) [(26)] External Inspection--An inspection of the exterior of a boiler and its appurtenances that is made, if possible, while the boiler is in operation.

(28) [(27)] Heat Recovery Steam Generator (HRSG)--A boiler which produces steam where its principle source of thermal energy is a hot gas stream having high ramp rates, such as the exhaust of a gas turbine.

(29) [(28)] Heating Boiler--A steam heating boiler, hot water heating boiler, hot water supply boiler, or potable water heater that is directly fired with oil, gas, solar energy, electricity, coal, or other solid or liquid fuel.

(30) [(29)] High-Temperature Water Boiler--A water boiler designed for operation at pressures exceeding 160 pounds per square inch gage (1100 kilopascals) or temperatures exceeding 250 degrees Fahrenheit (121 degrees Celsius).

(31) [(30)] Hot Water Heating Boiler--A boiler designed for operation at a pressure not exceeding 160 pounds per square inch gage (1100 kilopascals) or temperatures not exceeding 250 degrees Fahrenheit (121 degrees Celsius) at or near the boiler outlet.

(32) [(31)] Hot Water Supply Boiler--A boiler designed for operation at pressures not exceeding 160 pounds per square inch gage (1100 kilopascals) or temperatures not exceeding 250 degrees Fahrenheit (121 degrees Celsius) at or near the boiler outlet if the boiler's heat input exceeds 200,000 British thermal units per hour (58.6 kilowatts); water temperature exceeds 210 degrees Fahrenheit (99 degrees Celsius); or nominal water-containing capacity exceeds 120 gallons (454 Liters).

(33) [(32)] Immersion Resistance Element Type Boiler--An electric boiler in which heat is generated by the passage of an electric current through a resistance heating element immersed in water.

(34) [(33)] Inspection Agency--An authorized inspection agency providing inspection services.

(35) [(34)] Inspector--The chief inspector, a deputy inspector, or an authorized inspector.

(36) [(35)] Install--To place, position or fit into position and then to connect, change or modify in such a manner as to bring the boiler into service.

(37) [(36)] Installation--The act of installing a boiler or associated equipment.

(38) [(37)] Internal inspection--A complete and thorough inspection of the interior waterside and fireside areas of a boiler as construction allows.

(39) [(38)] Maximum Allowable Working Pressure (MAWP)--The greatest pressure at which a boiler is designed to operate.

(40) [(39)] Metric (SI)--An international system of measurement.

(41) [(40)] Metrication--The process of converting between US customary units and metric (SI) units.

(42) [(41)] Modular Boiler--A steam or hot water heating assembly consisting of a group of individual boilers called modules, intended to be installed as a unit, with a single inlet and single outlet. Modules may be under one jacket or may be individually jacketed.

(43) [(42)] Multiple Pressure Steam Generator--A boiler consisting of several sections of heat exchange surface designed for different pressure levels.

(44) [(43)] National Board--The National Board of Boiler and Pressure Vessel Inspectors.

(45) [(44)] National Board Inspection Code--The manual for boiler and pressure vessel inspectors published by the National Board.

(46) [(45)] Nominal--The accepted ASME standard used to designate a size or capacity of an item.

(47) [(46)] Non-Code Boiler--A complete boiler not constructed to the appropriate ASME Code.

(48) [(47)] Nonstandard Boiler--A boiler that does not qualify as a standard boiler.

(49) [(48)] Nuclear Boiler--A nuclear power plant system, including its pressure vessels, piping systems, pumps, valves, and stor-

age tanks that produces and controls an output of thermal energy from nuclear fuel and the associated systems essential to the function of the power system.

(50) Operation--The condition of a boiler in which the energy source is being applied to the boiler.

(51) Out of Service--The condition of a boiler in which it is neither in operation nor in standby.

(52) [(49)] Owner or Operator--Any person, firm, or corporation owning or operating boilers within the State of Texas.

(53) [(50)] Person--An individual, corporation, partnership, association or other legal entity.

(54) [(51)] Pool Heater--A hot water supply boiler or a potable water heater designed to provide hot water to a pool.

(55) [(52)] Portable Boiler--A boiler primarily intended for use at a temporary location.

(56) [(53)] Potable Water Heater--A boiler designed for operation at pressures not exceeding 160 pounds per square inch gage (1100 kilopascals) and water temperatures not exceeding 210 degrees Fahrenheit (99 degrees Celsius) if the boiler's heat input exceeds 200,000 British thermal units per hour (58.6 kilowatts) or nominal water-containing capacity exceeds 120 gallons (454 liters).

(57) [(54)] Power Boiler--A high-temperature water boiler or a boiler in which steam is generated at a pressure exceeding 15 pounds per square inch gage (103 kilopascals) for a purpose external to the boiler.

(58) [(55)] Preliminary order--A written order issued by the chief inspector or any commissioned boiler inspector to require repairs or alterations to render a boiler safe for use or to require that operation of the boiler be discontinued. The Boiler Inspection report which requires repairs to be made or the boiler operation to be ceased which is signed by the chief inspector or a commissioned boiler inspector is a Preliminary Order.

(59) [(56)] Process Steam Generator--An evaporator, heat exchanger, or vessel in which steam is generated by the use of heat resulting from the operation of a processing system that contains a number of pressure vessels, such as used in the manufacture of chemical and petroleum products.

(60) [(57)] Reinstalled Boiler--A boiler removed from its original setting and reinstalled at the same location or at a new location without change of ownership.

(61) [(58)] Repair--The work necessary to restore pressure-retaining items to a safe and satisfactory operating condition.

(62) [(59)] Rules--The rules promulgated and enforced by the commission in accordance with Texas Health and Safety Code, §755.032 and Texas Occupations Code, Chapter 51.

(63) [(60)] Safety Appliance--A safety device such as a safety valve or a pressure relief valve for a boiler provided to diminish the danger of accidents.

(64) [(61)] Secondhand Boiler--A boiler in which the location and ownership have changed.

(65) [(62)] Serious Accident--An explosion resulting in any degree of distortion to the wall of the boiler or related equipment or damage to the building where the boiler is located. Or, emergency medical services are dispatched to the location of a boiler accident in which one or more persons require on-site medical services, transport to a medical facility or the accident results in a fatality.

(66) [(63)] Special Inspection--An inspection by the chief inspector or deputy inspector other than those in Texas Health and Safety Code, §§755.025 - 755.027.

(67) [(64)] Stacked Boiler--A design in which one boiler is placed onto a rack above another boiler, as designed by the boiler manufacturer with a rack nameplate, and as approved by the department.

(68) [(65)] Standard Boiler--A boiler that bears the stamp of a nationally recognized engineering professional society, or the stamp of any jurisdiction that has adopted a standard of construction equivalent to the standard required by the executive director.

(69) Standby--The condition of a boiler in which the owner or operator has (1) placed the boiler into operation at low fire or (2) can place the boiler into operation within 48 hours' notice.

(70) [(66)] Steam Heating Boiler--A boiler designed for operation at pressures not exceeding 15 pounds per square inch gage (103 kilopascals).

(71) [(67)] System Pressure--The pressure of the boiler system, which is governed by the highest safety valve or pressure relief valve set pressure as allowed by ASME Code and this chapter.

(72) [(68)] Texas Commission--Authorization to inspect boilers and enforce Texas Health and Safety Code, Chapter 755, and 16 Texas Administrative Code, Chapter 65, on behalf of the department.

(A) ASME Only Commission--Only authorizes an inspector to conduct ASME new construction activities.

(B) In-Service Only Commission--Only authorizes an inspector to conduct boiler in-service activities.

(C) ASME and In-Service Commission--Authorizes an inspector to conduct both activities in subparagraphs (A) and (B).

(73) [(69)] Unfired Steam Boiler--An unfired pressure vessel in which steam is generated. The term does not include: vessels known as evaporators or heat exchangers; or vessels in which steam is generated by using the heat that results from the operation of a processing system that contains a number of pressure vessels, as used in the manufacture of chemical and petroleum products.

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 May 22, 2020.

TRD-202002076

Brad Bowman

General Counsel

Texas Department of Licensing and Regulation

Earliest possible date of adoption: July 5, 2020

For further information, please call: (512) 475-4879



SUBCHAPTER I. INSPECTION OF BOILERS

16 TAC §65.64

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code Chapter 51 and Texas Health and Safety Code Chapter 755, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code Chapter 51 and Texas Health and Safety Code Chapter 755. No other statutes, articles, or codes are affected by the proposed rules.

§65.64. Extension of Interval between Internal Inspections.

(a) To extend the interval between internal inspections [~~For the interval between internal inspection to be extended~~] as provided for in Texas Health and Safety Code, §755.026, the following procedure must be followed:[:]

(1) No less than three business days before the expiration date of the current certificate of operation, the owner or operator shall submit a request for extension for each boiler, in a manner prescribed by the department, including: [Not less than thirty (30) days and not more than sixty (60) days prior to the expiration date of the current certificate of operation, the owner or operator shall submit in a manner prescribed by the department a request for each boiler, stating the desired length of extension, which will be no more than one (1) year from the expiration date of the current certificate of operation, the date of the last internal inspection, and a statement certifying that records are available showing compliance with Texas Health and Safety Code, §755.026, and pay the required fees.]

(A) the desired length of extension for a time period no more than one (1) year following the expiration date of the current certificate of operation; and

(B) the date of the last internal inspection.

(2) Records that demonstrate compliance with Texas Health and Safety Code, §755.026 and this section shall be available for review upon request by the Authorized Inspector or the department.

(3) [(2)] The department shall notify the owner or operator and the inspection agency having jurisdiction of the maximum extension period that may be approved.

(4) [(3)] Before [Prior to] the expiration of the current certificate of operation, the inspection agency shall review all relevant records and [;] make an external inspection[; and submit the external inspection report to the department]. The inspection agency shall submit the inspection report in accordance with Texas Health and Safety Code, §755.027.

(5) [(4)] Upon completion of the requirements in paragraphs (1) - (4) [(1) - (3)] and payment of all required fees, a new certificate of operation may be issued for the extended period of operation.

[(5)] Violations noted during the external inspection may be cause for denial of the extension request.]

(6) If the department denies an extension request, the boiler shall be internally inspected before [prior to] the expiration of the certificate of operation[; unless authorized in writing to continue operation until an internal inspection can be conducted].

(7) Boilers for which the certificate of operation has expired must pass internal and external inspections before a new certificate of operation may be issued.

(b) The interval between internal inspections may be extended if, at all times since the last internal inspection, continuous water treatment has been maintained and any of the following apply:

(1) the boiler was in operation;

(2) the boiler was in standby:

(A) water sampling and water treatment are not required during the time that a boiler is in standby.

(B) notwithstanding subsection (b)(2)(A), continuous water treatment, including water sampling and water treatment, is required during the time that a boiler is in standby and is in operation at low fire;

(3) the boiler was out of service for repairs for periods not exceeding 15 consecutive days; or

(4) the boiler was out of service for repairs for any periods exceeding 15 consecutive days and accurate and complete records clearly demonstrate that the interval between internal inspections may be safely extended.

(c) For public health and safety reasons, a boiler that has been out of service for repairs for periods exceeding 15 consecutive days is presumed to require an internal inspection if it can be safely and competently performed. An owner or operator who intends to request an extension under this section for a boiler that has been or will be out of service for a period exceeding 15 consecutive days should:

(1) contact the department and the Authorized Inspection Agency having jurisdiction as soon as practicable when the owner or operator becomes aware that the boiler will be or has been out of service for a period exceeding 15 consecutive days;

(2) provide written information or documentation that includes:

(A) The anticipated length of the repair;

(B) The nature of the repair; and

(C) Any other information that the department and the Authorized Inspection Agency require in order to make a determination whether eligibility for an extension will be preserved; and

(3) if there is a significant change in the conditions upon which the department determined that the inspection interval could be extended, update the department and the Authorized Inspection Agency.

(d) A request for extension of the interval between internal inspections may be denied for failure to comply with any applicable provision of the Texas Health and Safety Code, Chapter 755, or this chapter.

(e) [(b)] An additional extension for up to one hundred twenty (120) days may be allowed as provided for in Texas Health and Safety Code, §755.026, when it is established an emergency exists.

(1) Before [Prior to] the expiration date of the current certificate of operation, the owner or operator shall submit to the department, in the manner prescribed by the department, a request stating an emergency exists with an explanation of the emergency and the date of the last internal inspection. The request shall be submitted along with the inspection agency's external inspection report, confirming compliance with Texas Health and Safety Code, §755.026.

(2) The department shall notify the owner or operator and the inspection agency having jurisdiction of the maximum extension period that may be approved.

(3) Upon completion of the requirements in paragraphs (1) and (2) and payment of all required fees, a new certificate of operation may be issued for the extended period of operation.

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 May 22, 2020.



PART 8. TEXAS RACING COMMISSION

CHAPTER 303. GENERAL PROVISIONS

SUBCHAPTER G. HORSE INDUSTRY

ESCROW ACCOUNT

DIVISION 1. GENERAL PROVISIONS

16 TAC §303.301

The Texas Racing Commission ("the Commission") proposes amendments to 16 TAC §303.301, Definitions. The proposed amendments would add a definition of "event" to clarify the types of activities that qualify for funding from the Horse Industry Escrow Account ("the Account").

FISCAL IMPLICATIONS FOR STATE AND LOCAL GOVERNMENT

Chuck Trout, Executive Director, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implications for local or state government as a result of enforcing the amendments. Enforcing or administering the amendments does not have foreseeable implications relating to cost or revenues of the state or local governments.

ANTICIPATED PUBLIC BENEFIT AND COST

Mr. Trout has determined that for each year of the first five years that the amendments are in effect, the anticipated public benefit will be clarity regarding what activities qualify for funding from the Account. There is no probable economic cost to persons required to comply with the amendments.

LOCAL EMPLOYMENT IMPACT STATEMENT

Mr. Trout has determined that the proposed amendments will not adversely affect the local economy, so the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

GOVERNMENT GROWTH IMPACT STATEMENT

For each year of the first five years that the proposed amendments are in effect, the government growth impact is as follows: the new sections do not create or eliminate a government program; the amendments do not create any new employee positions or eliminate any existing employee positions; implementation of the amendments does not require an increase or decrease in future legislative appropriations to the agency; the amendments do not require an increase or decrease in fees paid to the agency; the amendments do not create new regulations; the amendments do not expand existing regulations; the amendments do not repeal existing regulations; the amendments do not increase or decrease the number of individuals subject to the rule's applicability; and the amendments are not expected to have an adverse effect on this state's economy.

EFFECT ON SMALL AND MICRO-BUSINESSES

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

IMPACT ON EMPLOYMENT CONDITIONS

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

ADVERSE ECONOMIC EFFECT ON RURAL COMMUNITIES

There will be no adverse effect on rural communities as a result of the proposed amendments. Because the agency has determined that the proposed amendments will have no adverse economic effect on rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, is not required.

REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

Mr. Trout has determined that these proposed amendments do not constitute a "major environmental rule" as defined by Government Code, §2001.0225. Accordingly, an environmental impact analysis is not required.

TAKINGS IMPACT STATEMENT

Mr. Trout has determined that the proposed amendments will not affect private real property and will not restrict, limit, or impose a burden on an owner's right to his or her private real property and, therefore, will not constitute a taking. As a result, a takings impact assessment is not required, as provided by Government Code §2007.043.

EFFECT ON AGRICULTURAL, HORSE, AND GREYHOUND INDUSTRIES

The proposed amendments will not have an adverse effect on the state's agricultural, horse breeding, horse training, greyhound breeding, or greyhound training industries.

PUBLIC COMMENTS

All comments or questions regarding the proposed amendments may be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Jean Cook, Assistant to the Executive Director for the Texas Racing Commission, at P.O. Box 12080, Austin, Texas 78711-2080, telephone (512) 833-6699, or fax (512) 833-6907.

STATUTORY AUTHORITY

The amendments are proposed under Tex. Occ. Code §2023.004, which authorizes the Commission to adopt rules to administer the Act, and §2028.201, which requires the Commission to adopt rules relating to Tex. Occ. Code Subchapter E, Chapter 2028.

No other statute, code, or article is affected by the proposed amendments.

§303.301. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings:

- (1) Account - the horse industry escrow account.
- (2) Association - a horse racetrack association.

(3) Event - a planned occasion or activity, such as a competition or other public gathering.

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 May 21, 2020.

TRD-202002001

Chuck Trout

Executive Director

Texas Racing Commission

Earliest possible date of adoption: July 5, 2020

For further information, please call: (512) 833-6699



DIVISION 3. BREED REGISTRIES

16 TAC §§303.321, 303.322, 303.325

The Texas Racing Commission ("the Commission") proposes amendments to 16 TAC §§ 303.321, Allocations to Breed Registries; 303.322, Limitations on Use of Funds by Breed Registries; and 303.325, Quarterly Reports. The proposed amendments would clarify certain parts of the rules that were adopted in October 2019 regarding the horse industry escrow account ("account") created by House Bill 2463 (86th Legislature, Regular Session, 2019). Amendments to Section 303.321 would require events funded from the account to serve certain types of public purposes, would require breed registries to use forms approved by the executive director when applying for funding from the account, and would delete a provision allowing the executive director to act on behalf of the Commission to approve requests prior to January 1, 2020. Amendments to Section 303.322 would clarify the 5% limitation on administrative costs paid from the fund and the requirement to comply with the Texas Uniform Grant Management Standards and would require unused funds from canceled events to be repaid within 45 days. Amendments to Section 303.325 would clarify the quarterly reporting requirements.

FISCAL IMPLICATIONS FOR STATE AND LOCAL GOVERNMENT

Chuck Trout, Executive Director, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implications for local or state government as a result of enforcing the amendments. Enforcing or administering the amendments does not have foreseeable implications relating to cost or revenues of the state or local governments.

ANTICIPATED PUBLIC BENEFIT AND COST

Mr. Trout has determined that for each year of the first five years that the amendments are in effect, the anticipated public benefit will be clarity regarding requirements for applying for, using, and reporting on funding from the account.

LOCAL EMPLOYMENT IMPACT STATEMENT

Mr. Trout has determined that the proposed amendments will not adversely affect the local economy, so the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

GOVERNMENT GROWTH IMPACT STATEMENT

For each year of the first five years that the proposed amendments are in effect, the government growth impact is as follows: the amendments do not create or eliminate a government program; the amendments do not create any new employee positions or eliminate any existing employee positions; implementation of the amendments does not require an increase or decrease in future legislative appropriations to the agency; the amendments do not require an increase or decrease in fees paid to the agency; the amendments do not create new regulations; the amendments do not expand existing regulations; the amendments do not repeal existing regulations; the amendments do not increase or decrease the number of individuals subject to the rule's applicability; and the amendments, in conjunction with the other sections in new Subchapter G of this chapter, are not expected to have an adverse effect on this state's economy.

EFFECT ON SMALL AND MICRO-BUSINESSES

The proposed amendments are expected to have no adverse economic effect on small or micro-businesses, and therefore preparation of an economic impact statement and a regulatory flexibility analysis is not required.

IMPACT ON EMPLOYMENT CONDITIONS

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

ADVERSE ECONOMIC EFFECT ON RURAL COMMUNITIES

There will be no adverse effect on rural communities as a result of the proposed amendments. Because the agency has determined that the proposed amendments will have no adverse economic effect on rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, is not required.

REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

Mr. Trout has determined that these proposed amendments do not constitute a "major environmental rule" as defined by Government Code, §2001.0225. Accordingly, an environmental impact analysis is not required.

TAKINGS IMPACT STATEMENT

Mr. Trout has determined that the proposed amendments will not affect private real property and will not restrict, limit, or impose a burden on an owner's right to his or her private real property and, therefore, will not constitute a taking. As a result, a takings impact assessment is not required, as provided by Government Code §2007.043.

EFFECT ON AGRICULTURAL, HORSE, AND GREYHOUND INDUSTRIES

The proposed amendments will not have an adverse effect on the state's agricultural, horse breeding, horse training, greyhound breeding, or greyhound training industries.

PUBLIC COMMENTS

All comments or questions regarding the proposed amendments may be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Jean Cook, Assistant to the Executive Director for the Texas Racing Commission, at P.O. Box 12080, Austin, Texas 78711-2080, telephone (512) 833-6699, or fax (512) 833-6907.

STATUTORY AUTHORITY

The amendments are proposed under Tex. Occ. Code §2023.004, which authorizes the Commission to adopt rules to administer the Act, and §2028.201, which requires the Commission to adopt rules relating to Tex. Occ. Code Subchapter E, Chapter 2028.

No other statute, code, or article is affected by the proposed amendments.

§303.321. *Allocations to Breed Registries.*

(a) A breed registry is eligible to request funds from the horse industry escrow account if it is listed in Section 2030.002(a) of the Act.

(b) Events funded from the horse industry escrow account must serve the public purpose of increasing the development, expansion, or diversification of the economy, employment, growth of enterprise, or tourism of the state.

(c) A breed registry requesting an allocation from the horse industry escrow account shall do so using forms approved by the executive director.

(d) ~~[(b)]~~ When requesting an allocation from the horse industry escrow account, an eligible breed registry shall indicate the event(s) for which it intends to use the funds and provide the following information for each event:

- (1) the date(s) or approximate date(s);
- (2) a detailed description of the event;
- (3) the dollar amount requested for the event;
- (4) a detailed explanation of the budget for the event, with any costs related to personnel, the purchase of assets, and other administrative expenses stated separately; and
- (5) the anticipated economic impact of the event on the horse industry.

~~(e) [(e)]~~ The Commission may approve a request for allocation of funds submitted by an eligible breed registry if, after considering the factors set forth in the Act, §2028.204(b), it finds that the request satisfies the requirement that the funds be used for events to further the horse industry. Requests may be approved in full or in part, at the discretion of the Commission.

~~(f) [(d)]~~ ~~If [In the event that]~~ the total of funds requested by eligible breed registries exceeds the funds expected to be available in the account, the Commission may approve requests on a pro rata basis, may approve funding for certain events but not others, or a combination. Priority shall be given to events that the Commission finds likely to have the greatest economic impact in the following areas:

- (1) the state's horse racing industry;
- (2) live racing at the state's racetracks;
- (3) the horse breeding industry;
- (4) the state of Texas as a whole; and
- (5) non-racing horse industry activities.

~~[(e) Notwithstanding subsections (e) and (d) of this section, prior to January 1, 2020, the executive director may act on behalf of the Commission to approve requests for allocation from the account.]~~

§303.322. *Limitations on Use of Funds by Breed Registries.*

(a) A breed registry may use horse industry escrow account funds only for events that further the horse industry. The Commission may require a breed registry to repay funds if the breed registry fails to expend the funds in accordance with Section 2028.204 of the Act

and this section on the earlier of 45 days after the cancellation of any previously approved and funded event or [within] twelve months of the date it receives the funds. All funds expended with respect to any canceled event or event that does not otherwise occur shall be accounted for and such accounting shall accompany the return of the balance of such related canceled event funds.

(b) The following types of costs may not be paid from funds allocated from the account:

- (1) capital improvements;
- (2) donations or contributions made to any individual or organization without express approval from the Commission for such contribution or donation;
- (3) costs of entertainment, amusements, social activities, and incidental costs relating thereto, including tickets to shows or sports events, meals, alcoholic beverages, lodging, rentals, transportation, tips, and gratuities;
- (4) fines, penalties, or other costs resulting from violations of or failure to comply with federal, state, or local laws and regulations;
- (5) liability insurance coverage not specific to a particular event or series of events for which the Commission has allocated funds from the account;
- (6) expenses related to litigation;
- (7) professional association fees or dues for the breed registry or an individual;
- (8) legislative expenses such as salaries and other expenses associated with lobbying the state or federal legislature or similar local governmental bodies, whether incurred for purposes of legislation or executive direction; or
- (9) fundraising.

(c) The following types of costs may only be paid with funds allocated from the account, in an amount not to exceed five percent of the amount ~~[total]~~ allocated for the event for which it is allocated ~~[to the breed registry or of the approved allocation for any event]~~, if specifically approved by the Commission:

- (1) operating expenses, including the salaries of breed registry staff, interest and other financial costs related to borrowing and the cost of financing, contributions to a contingency reserve or any similar provision for unforeseen events, and audits or other accounting services; and
- (2) the purchase of capital assets.

(d) A breed registry may pay a cost out of funds awarded from the horse industry escrow account if it satisfies subsections (a) through (c) of this section and is reasonable and adequately documented.

(1) A cost is reasonable if the cost does not exceed that which would be incurred by a prudent individual or organization under the circumstances prevailing at the time the decision was made to incur the cost and it is necessary to achieve the purpose for which the funds were sought.

(2) A cost is adequately documented if the cost is supported by Generally Accepted Accounting Principles, the breed registry's accounting records, and documented in accordance with §303.325 of this subchapter (relating to Quarterly Reports).

(e) Use of funds allocated to a breed registry from the account shall comply with the current Uniform Grant Management Standards or Texas Grant Management Standards.

§303.325. *Quarterly Reports.*

(a) A breed registry receiving funds from the horse industry escrow account shall submit to the Commission a report every quarter. The report must include:

(1) the amount of funds expended toward each event for which funds have been allocated;

(2) for each [completed] event completed during the previous calendar quarter, the total amount of funds expended toward the event, [and] a breakdown of the funds expended for that event, and copies of documentation of all amounts expended; and

(3) the following certification: "By my signature below, I certify that (1) all of the information in this report is correct, (2) all funds expended from the horse industry escrow account were used in accordance with Section 2028.204 of the Texas Racing Act and the Rules of the Texas Racing Commission, and (3) the breed registry has all documentation required by 16 TAC § 303.324."

(b) Quarterly reports shall be submitted to the Commission no later than November 30, February 28, May 31, and August 31 of each year for the previous calendar quarter.

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 May 21, 2020.

TRD-202002002

Chuck Trout

Executive Director

Texas Racing Commission

Earliest possible date of adoption: July 5, 2020

For further information, please call: (512) 833-6699



TITLE 22. EXAMINING BOARDS

PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

CHAPTER 153. RULES RELATING TO PROVISIONS OF THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT

22 TAC §153.19

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to 22 TAC §153.19, Licensing for Persons with Criminal History and Fitness Determination.

The proposed amendments correct a reference within the rule.

Chelsea Buchholtz, Commissioner, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for the state or units of local government as a result of enforcing or administering the proposed amendments. There is no adverse economic impact anticipated for local or state employment, rural communities, small businesses, or micro businesses as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the pro-

posed amendments. Accordingly, no Economic Impact statement or Regulatory Flexibility Analysis is required.

Ms. Buchholtz has also determined that for each year of the first five years the proposed amendments and rules are in effect the public benefits anticipated as a result of enforcing the proposed amendments will be transparency and improved guidance and information for license holders and members of the public about TALCB's investigative processes and a reduction in complaint resolution timeframes.

Growth Impact Statement:

For each year of the first five years the proposed amendments and rules are in effect the amendments and rules will not:

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- require an increase or decrease in fees paid to the agency;
- create a new regulation;
- expand, limit or repeal an existing regulation; and
- increase the number of individuals subject to the rule's applicability.

For each year of the first five years the proposed amendments are in effect, there is no anticipated impact on the state's economy.

Comments on the proposed amendments may be submitted to Kathleen Santos, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to: general.counsel@talcb.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code §1101.151, which allows TALCB to adopt rules for certifying or licensing an appraiser or appraiser trainee.

The statute affected by these amendments is Chapter 1103, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

§153.19. *Licensing for Persons with Criminal History and Fitness Determination.*

(a) No currently incarcerated individual is eligible to obtain or renew a license. A person's license will be revoked upon the person's incarceration following a felony conviction, felony probation revocation, revocation of parole, or revocation of mandatory suspension.

(b) The Board may suspend or revoke an existing valid license, disqualify an individual from receiving a license, deny to a person the opportunity to be examined for a license or deny any application for a license, if the person has been convicted of a felony, had their felony probation revoked, had their parole revoked, or had their mandatory supervision revoked. Any such action may be taken after consideration of the required factors in Chapter 53, Occupations Code and this section.

(c) A license holder must conduct himself or herself with honesty, integrity, and trustworthiness. After considering the required factors in Chapter 53, Occupations Code, the Board determines that a conviction or deferred adjudication deemed a conviction under Chapter 53, Occupations Code, of the following crimes to be directly related to the

duties and responsibilities of a certified general or certified residential appraiser, a licensed appraiser or appraiser trainee:

- (1) offenses involving fraud or misrepresentation;
- (2) offenses against real or personal property belonging to another;
- (3) offenses against public administration, including tampering with a government record, witness tampering, perjury, bribery, and corruption;
- (4) offenses involving the sale or other disposition of real or personal property belonging to another without authorization of law; and
- (5) offenses of attempting or conspiring to commit any of the foregoing offenses.

(d) When determining whether a conviction of a criminal offense not listed in subsection (c)[(a)] of this section directly relates to the duties and responsibilities of a licensed occupation regulated by the Board, the Board considers:

- (1) the nature and seriousness of the crime;
- (2) the relationship of the crime to the purposes for requiring a license to engage in the occupation;
- (3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved;
- (4) the relationship of the crime to the ability or capacity required to perform the duties and discharge the responsibilities of the licensed occupation; and
- (5) any correlation between the elements of the crime and the duties and responsibilities of the licensed occupation.

(e) - (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 May 18, 2020.

TRD-202001964

Kathleen Santos

General Counsel

Texas Appraiser Licensing and Certification Board

Earliest possible date of adoption: July 5, 2020

For further information, please call: (512) 936-3652



22 TAC §153.24

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to 22 TAC §153.24, Complaint Processing.

The proposed amendments specify who can sign an agreed order in lieu of the chair of the Board, should the chair not be available or need to recuse him or herself.

Chelsea Buchholtz, Commissioner, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for the state or units of local government as a result of enforcing or administering the proposed amendments. There is no adverse economic impact anticipated for local or state employment, rural communities, small

businesses, or micro businesses as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments. Accordingly, no Economic Impact statement or Regulatory Flexibility Analysis is required.

Ms. Buchholtz has also determined that for each year of the first five years the proposed amendments and rules are in effect the public benefits anticipated as a result of enforcing the proposed amendments will be transparency and improved guidance and information for license holders and members of the public about TALCB's investigative processes and a reduction in complaint resolution timeframes.

Growth Impact Statement:

For each year of the first five years the proposed amendments and rules are in effect the amendments and rules will not:

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- require an increase or decrease in fees paid to the agency;
- create a new regulation;
- expand, limit or repeal an existing regulation; or
- increase the number of individuals subject to the rule's applicability.

For each year of the first five years the proposed amendments are in effect, there is no anticipated impact on the state's economy.

Comments on the proposed amendments may be submitted to Kathleen Santos, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188, or emailed to: general.counsel@talcb.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code §1101.151, which allows TALCB to adopt rules for certifying or licensing an appraiser or appraiser trainee.

The statute affected by these amendments is Chapter 1103, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

§153.24. Complaint Processing.

(a) - (n) (No change.)

(o) Agreed resolutions of complaint matters pursuant to Texas Occupations Code §1103.458 or §1103.459 must be signed by:

(1) the Board Chair or if the Board Chair is unavailable or must recuse him or herself, the Board Chair's designee, whom shall be (in priority order) the Board Vice Chair, the Board Secretary, or another Board member;

(2) Respondent;

(3) a representative of the Standards and Enforcement Services Division; and

(4) the Commissioner.

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 May 18, 2020.

TRD-202001965

Kathleen Santos

General Counsel

Texas Appraiser Licensing and Certification Board

Earliest possible date of adoption: July 5, 2020

For further information, please call: (512) 936-3652



PART 17. TEXAS STATE BOARD OF PLUMBING EXAMINERS

CHAPTER 361. ADMINISTRATION

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §361.1

The Texas State Board of Plumbing Examiners (Board) proposes amendments to 22 Texas Administrative Code §361.1.

BACKGROUND AND PURPOSE

The amendment to §361.1, concerning definitions, indicates that although *cleaning* a drain or sewer line constitutes "service" of plumbing (and therefore the act of plumbing), *inspection*, alone, of a drain, of a sewer line, or of other plumbing, using a scope or camera, does not constitute the service of plumbing or the act of plumbing.

Fiscal Impact on State and Local Government

Lisa G. Hill, Executive Director, has determined that for the first five-year period the rule is in effect, there are no foreseeable increases or reductions in costs to the state or local governments as a result of enforcing or administering the rule. The Executive Director has further determined that for the first five-year period the rule is in effect, there will be no foreseeable loss in revenue for the state or local governments as a result of enforcing or administering the rule.

Public Benefits / Costs to Regulated Persons

The Executive Director has determined that for each of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be a rule that is clearer and consistent with the definition of "plumbing" in Texas Occupations Code chapter 1301.

The Executive Director has further determined that for the first five years the rule is in effect, there are no substantial costs anticipated for persons required to comply with the rule.

One-for-One Rule Analysis

Given the rule does not have a fiscal note which imposes a cost on regulated persons, including another state agency, a special district, or local government, the Board asserts proposal and adoption of the rule is not subject to the requirements of Government Code §2001.0045.

Government Growth Impact Statement

For each of the first five years the proposed amendments are in effect, the agency has determined the following: (1) the rule does

not create or eliminate a government program; (2) implementation of the rule does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the rule does not require an increase or decrease in future legislative appropriations to the agency; (4) the rule does not require an increase or decrease in fees paid to the agency; (5) the rule does not create a new regulation; (6) the rule does not expand an existing regulation; the rule limits an existing regulation because the Board may no longer regulate the practice of sewer scope inspections; (7) the rule decreases the number of individuals subject to the rule's applicability; and (8) the rule does not positively or adversely affect this state's economy.

Local Employment Impact Statement

The Executive Director has determined that no local economies are substantially affected by the rule, and, as such, the Board is exempted from preparing a local employment impact statement pursuant to Government Code §2001.022.

Fiscal Impact on Small and Micro-Businesses, and Rural Communities

The Executive Director has determined that the rule will not have an adverse effect on small or micro-businesses, or rural communities, because there are no substantial anticipated costs to persons who are required to comply with the rule. As a result, the Board asserts preparation of an economic impact statement and a regulatory flexibility analysis, as provided by Government Code §2006.002, are not required.

Takings Impact Assessment

The Board has determined that there are no private real property interests affected by the rule; thus, the Board asserts preparation of a takings impact assessment, as provided by Government Code §2007.043, is not required.

Environmental Rule Analysis

The Board has determined that this proposal is not brought with the specific intent to protect the environment or reduce risks to human health from environmental exposure; thus, the Board asserts this proposal is not a "major environmental rule" as defined by Government Code §2001.0225. As a result, the Board asserts preparation of an environmental impact analysis, as provided by said §2001.0225, is not required.

Public Comments

Written comments regarding the amendments may be submitted by mail to Lisa G. Hill at P.O. Box 4200, Austin, Texas 78765-4200, or by email to info@tsbpe.texas.gov with the subject line "Public Comment - Definitions." All comments must be received within 30 days of publication of this proposal.

Statutory Authority

This proposal is made under the authority of §1301.251(2) of the Occupations Code, which requires the Board to adopt and enforce rules necessary to administer and enforce chapter 1301 of the Occupations Code (Plumbing License Law). This proposal affects the Plumbing License Law.

No other statute is affected by this proposal. Amended §361.1 is proposed under the authority of, and to implement, Texas Occupations Code §1301.002(7).

§361.1. Definitions.

(a) The following words and terms, when used in this part, have the following meanings, unless the context clearly indicates otherwise:

(1) - (36) (No change.)

(37) Plumbing--

(A) (No change.)

(B) The installation, repair, service, maintenance, alteration, or renovation of all piping, fixtures, appurtenances, and appliances on premises where persons live, work, or assemble that supply gas, medical gasses and vacuum, water, liquids, or any combination of these, or dispose of waste water or sewage. Plumbing includes the treatment of rainwater to supply a plumbing fixture or appliance. The term "service" includes, but is not limited to, cleaning a drain or sewer line using a cable or pressurized fluid, or performing a camera inspection through a code-approved existing opening].

(38) - (56) (No change.)

(b) (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 May 22, 2020.

TRD-202002084

Lisa G. Hill

Executive Director

Texas State Board of Plumbing Examiners

Earliest possible date of adoption: July 5, 2020

For further information, please call: (512) 936-5226



CHAPTER 367. ENFORCEMENT

22 TAC §367.10

The Texas State Board of Plumbing Examiners (Board) proposes amendments to 22 Texas Administrative Code §367.10.

BACKGROUND AND PURPOSE

Section 367.10 governs the instances when a plumbing company must provide disclosure of the license information of the Master Plumber acting as the Responsible Master Plumber (RMP) for the company, and of certain information concerning the Board's regulatory oversight including on company service vehicles, invoices, and advertisements. The proposed amendments, if adopted, would relax requirements concerning the display of an individual's certificate of licensure, and the signage required for plumbing service vehicles. With respect to advertising, the proposed amendments make changes to modernize the rule and account for changes in technology, such as the Internet and digital advertising platforms, and changes in the marketplace such as the proliferation of franchisor/franchisee relationships. The proposed amendments, if adopted, would expand the advertising and promotional activities expressly deemed to be exempt from the rule's requirements, thereby limiting existing regulations.

SECTION-BY-SECTION SUMMARY

Section 367.10(a) is amended to eliminate its current text and is replaced by renumbered and amended subsection (b). Subsection (a) presently requires RMPs to display their original cer-

tificate of licensure in their place of business. A consumer can verify the license status of an individual in real time through the Internet by and through the Board's licensing database system. Plumbing services are rendered on the jobsite, typically the consumer's home or business. As a result, the consumer does not typically visit the plumbing company's office which might afford them the opportunity to inspect a certificate of licensure. Instead, the consumer can inspect the plumber's license card (pocket card) which is intended for this purpose. Moreover, most plumbing companies are small or micro-businesses, many of which operate exclusively out of a residence or from a service vehicle, and do not have a place of business in which to display their certificate of licensure in any meaningful way. Taking the foregoing into consideration, the Board has determined the requirements of subsection (a) should be eliminated.

Section 367.10(b) is renumbered to become subsection (a) and is amended to eliminate paragraph (1), which currently prohibits magnetic signs from being utilized for purposes of displaying the plumbing company's name and the RMP's license number. This change would lower the cost for compliance for regulated individuals, particularly for small and micro-businesses, and including individuals who may utilize their personal vehicle for work, and may wish to eliminate its commercial appearance when not engaged in plumbing. Changes in the marketplace also point favorably towards eliminating this restriction. Market segmentation and specialization means that many plumbing projects are sub-contracted out to plumbers who may work on projects for several different plumbing companies at a time. Versatility in signage through use of magnetic signs would promote compliance for such individuals at minimal cost, while simultaneously providing more accurate information in the field to the Board's Field Investigators, thereby improving investigation by the Board of consumer complaints.

Section 367.10(c) is renumbered as subsection (b) but is not otherwise changed.

Section 367.10(d) is renumbered as subsection (c) and is amended to remove and replace certain language concerning advertisements by a plumbing company. Subsection (d) currently imposes a requirement for the RMP's license number and the name of the plumbing company to be stated on all advertisements by a plumbing company. The proposed amendments, if adopted, would remove the current paragraphed list which largely offers guidance on what activities constitute advertisements for purposes of the rule. This information could be more easily conveyed in explanatory materials on the Board's website. Instead, the paragraphed list is replaced with a list of several activities deemed to be exempt from the advertising rule, thereby limiting existing regulations restricting advertising, and simultaneously accounting for new forms of advertising.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Lisa G. Hill, Executive Director, has determined that for the first five-year period the rule is in effect, there are no foreseeable increases or reductions in costs to the state or local governments as a result of enforcing or administering the rule. The Executive Director has further determined that for the first five-year period the rule is in effect, there will be no foreseeable loss in revenue for the state or local governments as a result of enforcing or administering the rule.

PUBLIC BENEFITS / COSTS TO REGULATED PERSONS

The Executive Director has determined that for each of the first five years the rule is in effect, the public benefit anticipated as

a result of enforcing the rule will be a rule that is more readable and provides additional clarity on its application to some modern forms of advertising. As discussed, *supra*, allowance of magnetic signs should assist the Board in investigating consumer complaints, thereby benefitting the public. Limiting or removing regulations will also allow the Board to reallocate resources of its enforcement functions toward the investigation of violations of Chapter 1301 of the Occupations Code and Board rules that more directly impact the public's health, safety, and welfare.

The Executive Director has further determined that for the first five years the rule is in effect, there are no substantial costs anticipated for persons required to comply with the rule. The proposed amendments have the potential to reduce costs to regulated persons as noted in the Section-by-Section Summary, discussed *supra*.

ONE-FOR-ONE RULE ANALYSIS

Given the rule does not have a fiscal note which imposes a cost on regulated persons, including another state agency, a special district, or local government, the Board asserts proposal and adoption of the rule is not subject to the requirements of Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

For each of the first five years the proposed amendments are in effect, the agency has determined the following: (1) the rule does not create or eliminate a government program; (2) implementation of the rule does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the rule does not require an increase or decrease in future legislative appropriations to the agency; (4) the rule does not require an increase or decrease in fees paid to the agency; (5) the rule does not create a new regulation; (6) the rule does not expand an existing regulation; the rule limits some existing regulations, while eliminating others; (7) the rule does not increase or decrease the number of individuals subject to the rule's applicability; and (8) the rule does not positively or adversely affect this state's economy.

LOCAL EMPLOYMENT IMPACT STATEMENT

The Executive Director has determined that no local economies are substantially affected by the rule, and, as such, the Board is exempted from preparing a local employment impact statement pursuant to Government Code §2001.022.

FISCAL IMPACT ON SMALL AND MICRO-BUSINESSES, AND RURAL COMMUNITIES

The Executive Director has determined that the rule will not have an adverse effect on small or micro-businesses, or rural communities, because there are no substantial anticipated costs to persons who are required to comply with the rule. As a result, the Board asserts preparation of an economic impact statement and a regulatory flexibility analysis, as provided by Government Code §2006.002, are not required.

TAKINGS IMPACT ASSESSMENT

The Board has determined that there are no private real property interests affected by the rule; thus, the Board asserts preparation of a takings impact assessment, as provided by Government Code §2007.043, is not required.

ENVIRONMENTAL RULE ANALYSIS

The Board has determined that this proposal is not brought with the specific intent to protect the environment or reduce risks to

human health from environmental exposure; thus, the Board asserts this proposal is not a "major environmental rule" as defined by Government Code §2001.0225. As a result, the Board asserts preparation of an environmental impact analysis, as provided by said §2001.0225, is not required.

PUBLIC COMMENTS

Written comments regarding the amendments may be submitted by mail to Lisa G. Hill at P.O. Box 4200, Austin, Texas 78765-4200, or by email to info@tsbpe.texas.gov with the subject line "Public Comment - Display of RMP." All comments must be received within 30 days of publication of this proposal.

STATUTORY AUTHORITY

This proposal is made under the authority of §1301.251(2) of the Occupations Code, which requires the Board to adopt and enforce rules necessary to administer and enforce chapter 1301 of the Occupations Code (Plumbing License Law or PLL). This proposal affects the Plumbing License Law.

No other statute is affected by this proposal. Amended §367.10 is proposed under the authority of, and to implement, §§1301.252 and 1301.302 of the PLL.

§367.10. Display of RMP Name and License Number.

(a) Display of License Number on Service Vehicle. Both the RMP of record and owner of a plumbing company shall ensure that the RMP's license number and the company name are displayed on both sides of all service vehicles owned or operated by the company, or otherwise used in conjunction with providing plumbing work by, or on behalf of, the company. The license number must be preceded by the letters "M", "MPL", or "RMP". The letters and numbers must be placed on the body of the vehicle and must be of a contrasting color, and at least two inches in height. [The RMP of record shall display his or her certificate of licensure in his or her place of business in a conspicuous location.]

(b) Disclosure of Licensure and Regulatory Oversight on Contracts. Both the RMP of record and owner of a plumbing company shall ensure that the first page of each written or electronic proposal, invoice or contract for plumbing services includes, in at least twelve-point font: [Both the RMP of record and owner of a plumbing company shall ensure that the RMP's license number and the company name are permanently displayed on both sides of all service vehicles owned or operated by the RMP or the company and used in conjunction with plumbing work:]

(1) the first and last name of the RMP of record; [For the purposes of this subsection, a magnetic sign is not a permanent sign.]

(2) the license number of the RMP of record; [The letters and numbers shall be at least two (2) inches high and shall be in a color sufficiently different from the body of the vehicle so that the letters and numbers shall be plainly legible at a distance of not less than one hundred (100) feet.]

(3) the phrase "regulated by the Texas State Board of Plumbing Examiners"; and

(4) the Board's mailing address, phone number, and website address (tsbpe.texas.gov).

(5) For the purposes of this subsection, the terms "proposal," "invoice" and "contract" include any and all documents used to define the scope and/or cost of the work to be performed for a consumer. This would include items such as written estimates, service invoices, billing invoices, receipts or any document, written or elec-

tronic, which defines the services and cost of the plumbing services provided to the consumer.

(c) Disclosure of Licensure on Advertisements. Both the RMP of record and owner of a plumbing company shall ensure that all advertisements by a plumbing company designed to solicit plumbing business state the license number of the RMP of record, regardless of the type of media used. This includes business cards, "flyers," referral coupons, or other handouts. The following advertising does not require disclosure of the license number [the first page of each written or electronic proposal; invoice or contract for plumbing services includes, in at least twelve (12) point font]:

(1) nationally-placed, or interstate television advertising; provided, a statement is included indicating that license numbers for local providers are available upon request [the first and last name of the RMP of record];

(2) Internet advertising by a franchisor on behalf of its franchisees; provided, a statement is included indicating that license numbers for local providers are available upon request [the license number of the RMP of record];

(3) advertisements that do not contain a visual component, such as radio advertisements or solicitations by phone call; provided, the solicitor must include a statement indicating that the plumbing company complies with state licensing requirements. The license number of the RMP of record must be made available upon request [the words "regulated by the Texas State Board of Plumbing Examiners"];

(4) promotional items of nominal value such as ball caps, T-shirts or other clothing (including company uniforms); [the Board's mailing address and telephone number; and]

(5) signs located on or adjacent to the plumbing company's permanent business location; or [for the purposes of this subsection, the terms "proposal", "invoice" and "contract" include any and all documents used to define the scope and cost of the work to be performed for a consumer. This would include items such as service invoices, billing invoices, receipts or any document written or electronic which defines the services and cost of the plumbing services provided to the consumer. The consumer need not sign the document for it to be considered a contract.]

(6) telephone book listings or other company information aggregated by a third party for which the plumbing company does not possess editorial control or influence over the content, and does not otherwise participate in the dissemination or promotion of such content.

~~[(d) Both the RMP of record and owner of a plumbing company shall ensure that all advertisements for plumbing services, regardless of the type of media used, clearly display or verbally state the company name and license number of the RMP of record.]~~

~~[(1) For the purposes of this subsection, the term media includes but is not limited to:]~~

~~[(A) newspapers;]~~

~~[(B) telephone directories;]~~

~~[(C) printed materials such as flyers and other handouts;]~~

~~[(D) business cards;]~~

~~[(E) signs and billboards;]~~

~~[(F) radio;]~~

~~[(G) television; and]~~

~~[(H) the Internet.]~~

~~[(2) For the purposes of this subsection, uniforms or other clothing displaying a plumbing company name or logo and a sign affixed to the contractor's permanent business location are not considered an advertisement.]~~

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 May 22, 2020.

TRD-202002086

Lisa G. Hill

Executive Director

Texas State Board of Plumbing Examiners

Earliest possible date of adoption: July 5, 2020

For further information, please call: (512) 936-5226

TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 319. GENERAL REGULATIONS INCORPORATED INTO PERMITS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §§319.1, 319.2, 319.4 - 319.9, 319.11, 319.12, 319.22, 319.23, 319.25, 319.28, and 319.29; and to repeal §319.3.

Background and Summary of the Factual Basis for the Proposed Rules

The United States Environmental Protection Agency (EPA) periodically updates the list of approved federal Clean Water Act (CWA) analytical methods to reflect advances in technology, refine quality assurance and quality control requirements, and provide regulated entities more choices of approved compliance monitoring methods. On August 28, 2017, the EPA published the "Clean Water Act Methods Update Rule for the Analysis of Effluent" in the *Federal Register* (Volume 82, No. 165, pp. 40836-40941). In addition to changes in the analytical methods, revised 40 Code of Federal Regulations (CFR) §136.5 clarifies that while requests for a limited-use alternate test procedure (ATP) are sent to the state agency responsible for issuance of National Pollutant Discharge Elimination System (NPDES) permits, approval can only be granted by the EPA's Regional ATP Coordinator. Current rules in Chapter 319 conflict with updated 40 CFR §136.5 by indicating ATP approval will come from the TCEQ. This rulemaking would amend Chapter 319 to clarify the procedure for ATP approval in accordance with the EPA's 2017 federal CWA Methods Update Rule.

Section by Section Discussion

The proposed rulemaking would clarify the procedures for approval of ATPs, remove inconsistencies, and improve readability. The proposed rulemaking would also include administrative and technical changes.

The commission proposes to amend the title of Chapter 319 from "General Regulations Incorporated into Permits" to "General Requirements for Wastewater Permits" to provide clarity.

The commission proposes to replace the term "waste" with "wastewater" throughout the chapter to clarify that regulations apply to wastewater permits (§§319.1, 319.28, and 319.29) and to replace "disposal" and "treatment" with "application", where appropriate, when describing no discharge permits (i.e., Texas Land Application Permits or TLAPs) throughout for clarity and consistency (§319.2 and §319.5). The commission proposes to remove "or his designee" throughout the chapter when referring to actions by the executive director since such reference is unnecessary.

The commission proposes to amend Chapter 319 to update references to ensure current and accurate cross-references, improve readability, improve rule structure, and use consistent terminology. These changes are non-substantive and may not specifically be discussed in the Section by Section Discussion of this preamble.

§319.3, Prior Permit Reporting Requirements

The commission proposes to repeal §319.3 in its entirety. This section was determined to be obsolete in the agency's last rules review of this chapter (Non-Rule Project No. 2019-028-319-OW). This section applied to reporting procedures for permits issued prior to December 19, 1969 until reporting forms are developed by the executive director. Discharge monitoring reporting (DMR) forms have been developed and are available for all permittees to report their effluent monitoring results. All wastewater permits require that monitoring results be submitted online using the NetDMR reporting system available through the TCEQ website unless the permittee requests and obtains an electronic reporting waiver.

§319.5, Required Sampling Location and Frequency of Analysis or Measurement

The commission proposes to amend §319.5(e) to specify that the executive director may establish more frequent monitoring schedules than provided in Chapter 319. This revision emphasizes the executive director's authority to require more frequent pollutant monitoring to protect human health and the environment. The commission further proposes to amend §319.5(e) to replace "locations(s) designated herein" with "sampling point described in the permit" for clarity and plain language usage and to revise the requirements for reporting additional sampling by removing "that indicate permit noncompliance" and removing "The permittee may report results of such monitoring that indicate permit compliance" to clarify that all samples taken shall be included in the discharge monitoring report. The commission also proposes to amend §319.5(e) to include "discharge monitoring report or" when describing monthly reporting by the permittee. This revision would use the correct terminology for monthly wastewater reports and provides accuracy.

§319.6, Quality Assurance

The commission proposes to amend §319.6 to replace the term "blanks" with "method blanks," replace "standards" with "laboratory control sample," and replace "spikes" with "matrix spikes." These revisions would provide clarity and adopt the terminology used in 40 CFR §136.7. The commission also proposes to specify this section is for wastewater analyses and move Table 4 from Figure: 30 TAC §319.9(d) and place it in §319.6 as Table 1 in Figure: 30 TAC §319.6. This table pertaining to "Required Quality Control Analysis" is better aligned with the information provided in §319.6. In addition, the commission proposes to revise Figure: 30 TAC §319.6 items A - F to provide clarity.

§319.7, Documentation of Monitoring Activities

The commission proposes to amend §319.7(a) to include reference to 30 TAC §305.125(11)(C) for the records required by permittees instead of providing a list. This revision would improve readability, consolidate the requirements, and provide consistency with the established rule.

The commission proposes to amend §319.7(c) to include reference to §305.125(11)(B) and amend §319.7(d) to include "discharge monitoring report or" when describing monthly reporting by the permittee. These revisions would use the correct terminology for monthly wastewater reports and provide accuracy.

The commission proposes to remove §319.7(e) to eliminate redundancy. The imposition of criminal and/or civil penalties is authorized under §305.125(20).

§319.8, Required Signatures for Effluent Reports

The commission proposes to amend §319.8 to include reference to §305.128 and remove §319.8(1) - (3) to improve readability and provide consistency with the established rule.

§319.9, Self-Monitoring and Quality Assurance Schedules

The commission proposes to amend the title of the section from "Self-Monitoring and Quality Assurance Schedules" to "Self-Monitoring Frequency" to improve accuracy.

The commission proposes to amend the formatting and titles for all tables in this section to improve readability and accuracy. The table items associated with bacteria measurement frequency are now presented in the text of the section to allow easier citation and reference. The table for measurement frequencies for domestic wastewater has been revised by combining the column for "0 to less than 0.10 MGD" with "0.10 to less than 0.50 MGD" into the new column "0 to less than 0.50 MGD" because the contents of these two columns are identical.

The commission proposes to remove §319.9(d) and relocate and rename Table 4 as Table 1 in Figure: 30 TAC §319.6.

§319.11, Sampling and Laboratory Testing Methods

The commission proposes to amend §319.11(c) to revise "Effluents" to "Effluent samples" for clarity.

The commission proposes to amend §319.11(d) to specify "the latest edition of" *Water Measurements Manual* and including "published by the" United States Department of the Interior. These revisions would provide accuracy and clarity.

The commission proposes to amend §319.11(e) to require compliance with 30 TAC Chapter 25, Environmental Testing Laboratory Accreditation and Certification. This change would provide consistency with established rules. The commission further proposes to replace "as recommended in" with "according to" for clarity.

The commission proposes to amend §319.11(f) to replace "non-standard" with "alternate" to be consistent with terminology.

§319.12, Alternate Sampling and Laboratory Testing Methods

The commission proposes to amend §319.12 to align with federal rules in 40 CFR Part 136. The EPA clarified the provisions for ATPs in the 2017 CWA Methods Update Rule. Revised 40 CFR §136.5 clarifies that while requests for a limited-use ATP are sent to the state agency responsible for issuance of NPDES permits, approval can only be granted by the EPA's Regional ATP Coordinator. Proposed §319.12(a) would clarify the procedure

for ATP approval to align with federal rules for permits subject to the CWA, and proposed §319.12(b) would establish the procedures for ATP review and approval for state permits and maintain the TCEQ's authority to approve ATPs for TLAPs.

§319.22, *Quality Levels-Inland Waters*

The commission proposes to amend §319.22 to specify the section is applicable to inland waters in the text of the section and add a header to the table for clarity.

§319.23, *Quality Levels-Tidal Waters*

The commission proposes to amend §319.23 to specify the section is applicable to tidal waters in the text of the section and add a header to the table for clarity.

§319.25, *Sampling and Analysis*

The commission proposes to amend §319.25 to include references to other sections in Chapter 319 to provide clarity and eliminate redundancy.

Fiscal Note: Costs to State and Local Government

Jené Bearse, Analyst in the Budget and Planning Division, determined that for the first five-year period the proposed rules are in effect, no fiscal implications would be anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rules.

This rulemaking addresses the need for the language regarding the alternative test procedures to be in alignment with the federal regulations. The rulemaking also removes inconsistencies and an obsolete section.

Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated would be improved readability.

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 would not adversely affect a local economy in a material way for the first five years that the proposed rulemaking is in effect.

Rural Communities Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking would not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The rulemaking 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 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 rulemaking would 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 would not create or eliminate a government program and would not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking would not require the creation of new employee positions, eliminate current employee positions, or require an increase or decrease in fees paid to the agency. The proposed rulemaking would not create, expand, repeal or limit an existing regulation, nor would the proposed rulemaking 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.

Draft Regulatory Impact Analysis Determination

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking 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. "Major environmental rule" is defined as a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. This rulemaking would not adversely affect, in a material way, the economy, a section of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The rulemaking proposes changes to Chapter 319 to clarify the procedure for ATP approval in accordance with the EPA's 2017 federal CWA Methods Update Rule. The rulemaking would also remove inconsistencies and improve readability. Proposed §319.12(a) would clarify the procedure to review and approve ATPs to align with federal rules, and proposed §319.12(b) would establish the procedure for ATP approval for state permits. Therefore, the commission finds that this rulemaking is not a "Major environmental rule."

Furthermore, the rulemaking does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225, only applies to a state agency's adoption of a major environmental rule that: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds 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) adopts a rule solely under the general powers of the agency instead of under a specific state law.

Specifically, the rulemaking would not exceed a standard set by federal law. Also, the rulemaking would not exceed an express requirement of state law nor exceed a requirement of a delegation agreement. Finally, the rulemaking was not developed solely under the general powers of the agency but would, in part, clarify the procedure for ATP approval to align with federal rules in 40 CFR Part 136 and establish the procedure for ATP approval for state permits. Under Texas Government Code, §2001.0225,

only a "Major environmental rule" requires a regulatory impact analysis. Because the adopted rulemaking does not constitute a "Major environmental rule," a regulatory impact analysis is not required.

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 performed an assessment of this rule in accordance with Texas Government Code, §2007.043. The specific purpose of the rulemaking is to initiate changes to Chapter 319 to clarify the procedure for ATP approval in accordance with the EPA's 2017 federal CWA Methods Update Rule. The revised 40 CFR §136.5 clarifies that while requests for a limited-use ATP are sent to the state agency responsible for issuance of NPDES permits, approval can only be granted by the EPA's Regional ATP Coordinator. The rulemaking would also remove inconsistencies and improve readability. Proposed §319.12(a) would clarify the procedure for ATP approval to align with federal rules, and proposed §319.12(b) would establish the procedure ATP approval for state permits.

This rulemaking would impose no burdens on private real property because the adopted rulemaking neither relates to, nor has any impact on, the use or enjoyment of private real property, and there is no reduction in value of the property as a result of this rulemaking.

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 would 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.

Submittal of Comments

Written comments may be submitted to Andreea Vasile, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <https://www6.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2019-115-319-OW. The comment period closes on July 6, 2020. 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 Sarah A. Johnson, Wastewater Permitting Section, at (512) 239-4649.

SUBCHAPTER A. MONITORING AND REPORTING SYSTEM

30 TAC §§319.1, 319.2, 319.4 - 319.9, 319.11, 319.12

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; TWC, §5.102, which establishes the general authority of the commission necessary to carry out its jurisdiction; TWC, §5.103, which requires the commission, by rule, to establish and approve all general policy of the commission; TWC, §5.105, which establishes the general authority of the commission to adopt rules necessary to carry out its powers and duties under the TWC and other laws of this state; TWC, §26.011, which requires the commission to establish the level of quality to be maintained in and control the quality of the water in the state; TWC, §26.027, which authorizes the commission to issue permits for the discharge of waste pollutants into or adjacent to water in the state; and TWC, §26.127, which requires the executive director to establish a water quality sampling and monitoring program.

This proposed amendment implements TWC, §26.127.

§319.1. *Monitoring and Reporting Requirements.*

All holders of wastewater [waste] discharge permits are required to periodically report the status of their compliance with the terms and conditions of their permits and with other relevant statutes in a manner approved by the executive director. The report shall contain results of flow measurements and results of analyses of samples taken, or the equivalent information determined by methods approved by the executive director. The status of all requirements of the permit shall be reported. The report may contain such other information concerning the discharges covered by the permit as the executive director may reasonably prescribe in order to establish a system for monitoring the quantity and quality of wastewater [waste] discharged into or adjacent to any water in the state and for monitoring the quality of any water in the state.

§319.2. *Exclusions for Land Application or Evaporation.*

Unless otherwise specified in the permit or otherwise ordered by the commission, land application [disposal] or evaporation facilities shall be excluded from the reporting procedure in §319.1 of this title (relating to Monitoring and Reporting Requirements). The commission may exempt other permittees from reporting requirements on a case-by-case basis, provided that the permitted facility shall not directly or indirectly affect the quality of water in the state. Such exclusion shall be set forth in the permit. An exclusion from the reporting procedure, however, does not relieve a permittee from monitoring and record keeping requirements.

§319.4. *Parameters To Be Monitored.*

Each permittee will be required to monitor, on a regular basis, each parameter included in its permit [~~which is also included on its commission monthly effluent report form~~]. Each permittee may also be required to monitor any other parameter(s) the executive director may reasonably deem necessary to adequately monitor the quality or quantity of any discharge. If the analysis of additional parameters is required, the permittee shall be provided written notification prior to the initiation of the requirement.

§319.5. *Required Sampling Location and Frequency of Analysis or Measurement.*

(a) Required samples and measurements shall be taken of the effluent from the sampling point described in the permit. Should the permit not specify a sampling point, samples shall be collected immediately following the last treatment unit. These procedures shall be followed unless an alternative sampling and/or measuring point is approved in advance in writing by the executive director [~~or his designee~~].

(b) Samples shall be taken and measurements shall be made at the minimum frequencies specified in the permit for each parameter. If a permit does not specify a sampling frequency, the permittee shall follow the frequencies set forth in [Tables 1 and 2 in] §319.9 of this title (relating to Self-Monitoring Frequency) [and Quality Assurance Schedules], basing the frequency of analysis on the currently applicable permitted average daily flow. Table 1 shall be applicable to treated domestic sewage effluent, while Table 2 shall be applicable to all other wastewater effluents.] If a parameter included in a permit is not listed in the applicable table, the permittee will be instructed by the executive director in writing as to what frequency of analysis shall be followed.

(c) The permit may specify different sampling and/or measurement frequencies than specified in [Table 1 or Table 2 of] §319.9 of this title [(relating to Self-Monitoring and Quality Assurance Schedules)] on a case-by-case basis, and in such cases the permit controls.

(d) For land application [disposal] or evaporation facilities, the monitoring requirements shall be specified in the permit. The permittee shall monitor flow to a land application [treatment] site on a daily basis and an evaporation system on a weekly basis when utilized. The specific plot or site used for land application [treatment] shall be specified in the permit by name or description.

(e) The monitoring requirements set out in this subchapter are minimum requirements unless the permit specifies a lesser frequency. The executive director may establish a more frequent measurement schedule, if necessary, to protect human health or the environment. Additional measurements, samples, analyses, and recordation are encouraged in order to facilitate more effective management and control of facility operations. If the permittee monitors any pollutant at the sampling point described in the permit [location(s) designated herein] more frequently than required by this subchapter or the permit using approved analytical methods as specified in §319.11 of this title (relating to Sampling and Laboratory Testing Methods), [at a minimum,] the results of such monitoring [that indicate permit noncompliance] shall be included in the calculation and reporting of the value submitted on the required discharge monitoring report or monthly effluent report. [The permittee may report results of such monitoring that indicate permit compliance.] Increased frequency of sampling shall be indicated on the report.

(f) Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in the permit.

§319.6. Quality Assurance.

The permittee shall assure the quality of all measurements through the use of method blanks, laboratory control samples [standards], duplicate analyses, and matrix spikes. At a minimum, the quality assurance requirements for wastewater analyses shall comply with [specified in] Table 1 of this section [3 in §319.9 of this title (relating to Self-Monitoring and Quality Assurance Schedules) shall be utilized].

Figure: 30 TAC §319.6

§319.7. Documentation of Monitoring Activities.

(a) For each measurement or sample taken [pursuant to the monitoring requirements of this chapter], the permittee shall maintain records of the following information:

(1) the records required in §305.125(11)(C) of this title (relating to Standard Permit Conditions) [exact place, date, and time of sample collection or measurement]; and

{(2) the dates the analyses were performed;}

{(3) the identity of person(s) who collected the samples or made the measurements and the identity of person(s) and laboratory who performed the analyses;}

{(4) the results of all required analyses or measurements; and}

{(5) the technique or method of analysis, including the results of adequate verifications of analytical precision and/or accuracy verified by means of the recommended guidelines in the Environmental Protection Agency manual entitled Handbook for Analytical Quality Control in Water and Wastewater Laboratories, which are to be determined on the day the analyses are performed. The permittee shall meet the quality control requirements specified in §319.6 of this title (relating to Quality Assurance) [Table 3].

(b) The permittee shall be subject to routine inspection of its compliance with subsection (a) of this section.

(c) All records and information resulting from the required monitoring activities [, including, but not limited to, all records concerning measurements and analyses performed and concerning calibration and maintenance of flow measurement and other instrumentation,] shall be retained at the facility site in accordance with §305.125(11)(B) of this title [for a minimum of three years, or for a longer period if requested by the executive director or his designee].

(d) Unless otherwise specified in the permit, a discharge monitoring report or monthly effluent report must be submitted each month by the 20th day of the following month for each discharge which is described in the permit whether or not a discharge is made for that month.

{(e) Knowingly making any false statement on any report may result in the imposition of criminal and/or civil penalties as provided by state law.}

§319.8. Required Signatures for Effluent Reports.

Each effluent report shall be signed in accordance with §305.128 of this title (relating to Signatories to Reports). [contain two signatures. One signature must be that of the superintendent of the wastewater treatment facility or other person occupying a similar position associated with the operation of the treatment facility. The other signature shall be one from the following.]

{(1) If submitted by a public entity, a state or federal agency, or a corporation, the report should be signed by a principal executive officer, ranking elected official, commanding officer, or other employee duly authorized by the principal executive officer.}

{(2) If submitted by a partnership, the report should be signed by a general partner.}

{(3) If submitted by a sole proprietor, the report should be signed by the proprietor.}

§319.9. Self-Monitoring Frequency [and Quality Assurance Schedules].

(a) The following table sets forth the self-monitoring schedules applicable to treated domestic sewage effluent.

Figure: 30 TAC §319.9(a)

[Figure: 30 TAC §319.9(a)]

(b) The following table sets forth the bacteria self-monitoring schedules applicable to treated domestic sewage effluent that is discharged to water in the state.

Figure: 30 TAC §319.9(b)

[Figure: 30 TAC §319.9(b)]

(c) The following table sets forth the self-monitoring schedules applicable to nondomestic wastewater effluent.

Figure: 30 TAC §319.9(c)

[Figure: 30 TAC §319.9(c)]

{(d) The following table sets forth the quality assurance requirements for wastewater analyses.}

[Figure: 30 TAC §319.9(d)]

§319.11. *Sampling and Laboratory Testing Methods.*

(a) All sample collection shall be conducted according to recommendations found in the latest edition of *Standard Methods for the Examination of Water and Wastewater* (prepared and published jointly by the American Public Health Association, the American Waterworks Association, and the Water Pollution Control Federation), or the United States Environmental Protection Agency manual entitled *Methods for Chemical Analysis of Water and Wastes* (1979), or the United States Environmental Protection Agency manual entitled *Biological Field and Laboratory Methods for Measuring the Quality of Surface Waters and Effluents* (1973).

(b) Sample containers, holding times, and preservation methods shall meet requirements specified in 40 Code of Federal Regulations (CFR) Part 136.

(c) Effluent samples [~~Effluents~~] shall be analyzed according to test methods specified in 40 CFR Part 136 or more recent editions of *Standard Methods for the Examination of Water and Wastewater* than those cited in 40 CFR Part 136.

(d) Flow measurements, equipment, installation, and procedures shall conform to those prescribed in the latest edition of *Water Measurement Manual*, published by the United States Department of the Interior, Bureau of Reclamation, [~~Washington, D.C.,~~] or methods that are equivalent as approved by the executive director.

(e) All laboratory tests submitted to demonstrate compliance with the permit must meet the requirements of Chapter 25 of this title (relating to Environmental Testing Laboratory Accreditation and Certification). Laboratories shall routinely use and document intralaboratory quality control practices according to [as recommended in] the latest edition of the United States Environmental Protection Agency manual entitled *Handbook for Analytical Quality Control in Water and Wastewater Laboratories*. These practices must [with] include the use of internal quality control check samples.

(f) The sampling and laboratory facilities, data, and records of quality control are subject to periodic inspection by commission personnel. Should the procedures specified in this section not be suitable to any particular situation, alternate [nonstandard] sampling and testing techniques may be employed in accordance with the procedures outlined in §319.12 of this title (relating to Alternate Sampling and Laboratory Testing Methods).

§319.12. *Alternate Sampling and Laboratory Testing Methods.*

(a) For Texas Pollutant Discharge Elimination System (NPDES) permits, if a permittee determines the sampling and testing methods required by §319.11 of this title (relating to Sampling and Laboratory Testing Methods) are not suited to its particular situation, the permittee shall make a written request for authorization to use alternate sampling and testing procedures. Applications for alternate sampling and testing procedures shall be submitted to the executive director following the requirements of 40 Code of Federal Regulations §136.5. The permittee shall comply with the sampling and testing requirements in §319.11 of this title until written approval to use alternate methods is received from the United States Environmental Protection Agency. A permittee shall only use procedures included in the references cited in §319.11 of this title unless other test procedures have been specified in the permit. [Should a permittee determine that the required standard sampling and testing techniques are not suited to its particular situation, the permittee shall make a written request for authorization to use alternate test procedures.]

~~[(1) Applications for alternate testing procedures will be made to the executive director.]~~

~~[(2) Items that shall be included with an application for alternate testing procedures are:]~~

~~[(A) name and address of the firm making the discharge;]~~

~~[(B) Texas Water Commission permit number;]~~

~~[(C) list of parameters for which alternate procedures are being requested;]~~

~~[(D) copy of the method of the alternate procedures; and]~~

~~[(E) the justification for the alternate test procedures.]~~

~~[(3) Additional information such as the comparability of data may also be requested by the executive director or his designee.]~~

(b) For non-TPDES permits, if a permittee determines the sampling and testing methods required by §319.11 of this title are not suited to its particular situation, the permittee shall make a written request for authorization to use alternate sampling and testing procedures. Applications for alternate sampling and testing procedures shall be submitted to the executive director. The permittee shall comply with the sampling and testing requirements in §319.11 of this title until written approval to use alternate methods is received from the executive director. [In no instance shall a permittee use procedures not included in the references cited in §319.11 of this title (relating to Sampling and Laboratory Testing Methods) until written approval to do so has been received from the executive director or his designee. For TPDES permits a permittee shall only use procedures included in the references cited in §319.11 of this title (relating to Sampling and Laboratory Testing Methods) unless other test procedures have been specified in the permit.]

(1) Items that shall be included with an application for alternate sampling and testing procedures are:

(A) name and address of the applicant;

(B) Texas Commission on Environmental Quality permit number;

(C) list of parameters for which alternate procedures are being requested;

(D) copy of the method of the alternate procedures; and

(E) justification for the alternate sampling and test procedures.

(2) Additional information such as the comparability of data may also be requested by the executive director.

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

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Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

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For further information, please call: (512) 239-1806



30 TAC §319.3

Statutory Authority

The repeal is proposed under TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; TWC, §5.102, which establishes the general authority of the commission necessary to carry out its jurisdiction; TWC, §5.103, which requires the commission, by rule, to establish and approve all general policy of the commission; TWC, §5.105, which establishes the general authority of the commission to adopt rules necessary to carry out its powers and duties under the TWC and other laws of this state; TWC, §26.011, which requires the commission to establish the level of quality to be maintained in and control the quality of the water in the state; TWC, §26.027, which authorizes the commission to issue permits for the discharge of waste pollutants into or adjacent to water in the state; and TWC, §26.127, which requires the executive director to establish a water quality sampling and monitoring program. The repeal is also in accordance with implementing United States Environmental Protection Agency's (EPA's) National Pollutant Discharge Elimination System Electronic Reporting Rule, which became effective on December 21, 2015. This EPA Rule has been implemented by program staff via the NetDMR reporting requirements.

The proposed repeal implements TWC, §26.127.

§319.3. *Prior Permit Reporting Requirements.*

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. HAZARDOUS METALS

30 TAC §§319.22, 319.23, 319.25, 319.28, 319.29

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; TWC, §5.102, which establishes the general authority of the commission necessary to carry out its jurisdiction; TWC, §5.103, which requires the commission, by rule, to establish and approve all general policy of the commission; TWC, §5.105, which establishes the general authority of the commission to adopt rules necessary to carry out its powers and duties under the TWC and other laws of this state; TWC, §26.011, which requires the commission to establish the level of quality to be maintained in and control the quality of the water in the state; TWC, §26.027, which authorizes the commission to issue permits for the discharge of waste pollutants into or adjacent to water in the state; and TWC, §26.127, which requires the executive director to establish a water quality sampling and monitoring program.

This proposed amendment implements TWC, §26.127.

§319.22. *Quality Levels--Inland Waters.*

Discharges to inland waters shall not exceed the [The] allowable concentrations of each of the hazardous metals in Table 1 Figure of this section; stated in terms of milligrams per liter (mg/L), for discharge to inland waters are as follows].

Figure: 30 TAC §319.22

[Figure: 30 TAC §319.22]

§319.23. *Quality Levels--Tidal Waters.*

Discharges to tidal waters shall not exceed the [The] allowable concentrations of each of the hazardous metals in Table 1 Figure of this section; stated in terms of milligrams per liter (mg/L), for discharge of tidal waters are as follows].

Figure: 30 TAC §319.23

[Figure: 30 TAC §319.23]

§319.25. *Sampling and Analysis.*

Sampling and laboratory testing procedures shall comply with §319.11 of this title (relating to Sampling and Laboratory Testing Methods) or §319.12 of this title (relating to Alternate Sampling and Laboratory Testing Methods). [Test procedures for the analyses of hazardous metals shall comply with any procedures specified in the regulations of the commission and shall conform to regulations published pursuant to the Federal Water Pollution Control Act Amendments of 1972, §304(g). In the event a question arises concerning sampling and analysis, the executive director shall authorize or approve the method or methods of sampling and analysis to be used in measuring or calculating the quantity of a hazardous metal in an effluent.]

§319.28. *Wastewater [Waste] Discharge Amendment.*

Every wastewater [waste] discharge permit which does not currently specify effluent limitations for any of the hazardous metals covered by this subchapter is hereby amended to incorporate the terms of this subchapter. In all wastewater [waste] discharge permits which the commission may issue, renew, or amend, the quality levels specified in this subchapter shall apply where the commission does not establish specific effluent limitations regarding a particular hazardous metal.

§319.29. *Limitations in Wastewater [Waste] Discharge Permits Controlling.*

Where wastewater [waste] discharge permits specify effluent limitations for any of the hazardous metals covered by this subchapter, the limitations contained in the permit shall be controlling.

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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CHAPTER 325. HAZARDOUS SUBSTANCES INVENTORY

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to repeal §§325.1 - 325.3, and simultaneously proposes new §§325.1 - 325.4.

Background and Summary of the Factual Basis for the Proposed Rules

The Tier II Chemical Reporting program (program) was transferred from the Texas Department of State Health Services to the Texas Commission on Environmental Quality as a result of the passage of House Bill 942, 84th Texas Legislature, effective September 1, 2015. The program has been fully established within the Critical Infrastructure Division, including the development of a new online reporting system and database.

The purpose of this rulemaking is to repeal and replace existing rules to remove obsolete references, provide consistency with federal rules, provide clarity to definitions, provide consistency with the federal Emergency Planning and Community Right-to-Know Act (EPCRA), add requirements stemming from the new online reporting system, develop clear guidance pertaining to submitting hazardous substances inventories, known as Tier II Reports, and reduce the number of reports that can be consolidated within a submission.

Section by Section Discussion

The commission proposes to repeal Chapter 325, §§325.1 - 325.3, in its entirety and propose a new reformatted Chapter 325. This proposal is necessary to provide consistency, update references, and to accommodate new requirements.

§325.1, General Provisions

The commission proposes new §325.1 to establish exclusions to this chapter to assist facility operators to comply with Texas Health and Safety Code (THSC), Chapters 505, 506, and 507. These exclusions would also be compatible with EPCRA.

§325.2, Definitions

The commission proposes new §325.2 to establish specific definitions for facility operators to comply with, specifically, definitions that would comply with THSC, Chapters 505, 506, and 507. These definitions would also be compatible with the federal EPCRA.

§325.3, Reporting Requirements

The commission proposes new §325.3 to establish how to submit Tier II Reports, when to submit Tier II Reports, and where to submit Tier II Reports, complying with THSC, Chapters 505, 506, and 507. These requirements are also compatible with the federal EPCRA.

§325.4, Compliance and Fees

The commission proposes new §325.4 to establish information on the commission's investigations of facilities and the required report submission fees, complying with THSC, Chapters 505, 506, and 507.

Fiscal Note: Costs to State and Local Government

Jené Bearse, Analyst in the Budget and Planning Division, determined that fiscal implications are anticipated for the agency for the first five-year period the proposed rules are in effect.

This rulemaking addresses the need to repeal and replace existing rules to remove obsolete references, provide consistency with federal regulations, provide clear guidance pertaining to submitting hazardous substances inventory, and reduce the number of Tier II reports that can be consolidated within a submission.

The agency estimates that the fee consolidation change will generate an additional \$593,000 per year for the next five years from individuals with more than three non-manufacturing facilities that

are required to report hazardous materials under the Tier II program.

In developing this estimate, the agency used data from fiscal year 2019. The revenue fluctuates annually because of the many variables such as the type of facility (manufacturing, non-manufacturing, and public employer), the type of Tier II report, the number of chemicals at the facility, and the number of facilities consolidated in the report. Federal facilities are not required to pay a fee or file a report.

No fiscal implications are anticipated for units of local government as a result of administration or enforcement of the proposed rulemaking.

Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated will be improved readability and compliance with federal law and regulations. The revenue generated by the reduction in the number of consolidated reports within a submission will increase the program's ability to fund itself.

Individuals with more than three non-manufacturing facilities will likely experience a fiscal impact. The agency estimates that there are 1,249 non-manufacturing operators that submit greater than three facilities per report each year. Under the current rules, these individuals may consolidate up to seven facilities under each report with the accompanying fee of \$50 or \$100, depending on the number of hazardous chemicals reported. The agency estimates that the fee consolidation changes will generate an additional \$593,000 per year for the next five years. The average increase in cost per facility is estimated to be \$9.00 per year.

In developing this estimate, the agency used data from fiscal year 2019. The revenue fluctuates annually because of the many variables such as the type of facility (manufacturing, non-manufacturing, and public employer), the type of Tier II report, the number of chemicals at the facility, and the number of facilities consolidated in the report. Federal facilities are not required to pay a fee or file a report.

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 rules are 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 rules would apply statewide and have the same effect in rural communities as in urban communities.

Small Business and Micro-Business Assessment

No significant 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 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 rulemaking 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; the program was established at the agency through legislative action in 2015. The rulemaking is expected to affect the agency's Tier II fee revenue collection and may affect the legislative appropriation of those funds. The proposed rulemaking does not require the creation of new employee positions or eliminate current employee positions. The proposed rulemaking is expected to increase the fees paid to the agency. The proposed rulemaking does repeal an existing regulation and replaces it with one that is consistent with federal regulations and rules, providing more clarity for the public. 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

All of commission's rules are designed to protect the environment and reduce risk. This proposed rulemaking is simply the transfer of rules already determined not to meet the definition of a "Major environmental rule" when promulgated by the Texas Department of State Health Services to the commission. The commission's executive director has determined they do not meet any of the four applicability criteria in Texas Government Code, §2001.0225(a)(1-4) to require a regulatory analysis determination. The proposed rules do not exceed a standard set by federal or state law, unless the rules are specifically required by state law. The proposed rules do not exceed an express requirement of state law, unless the rules are specifically required by federal law. The proposed rules do not exceed a requirement of a federal delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. The proposed rules do not adopt a rule solely under the general powers of the agency instead of under a specific state law.

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 these proposed rules and performed analysis of whether these proposed rules constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of these proposed rules is to promulgate well-established rules from the DSHS to TCEQ as a result of the passage of HB 942, effective September 1, 2015, which transferred the program to the commission. The program has been fully established within the Critical Infrastructure Division, including the development of a new online reporting system and database. The proposed rules would substantially advance this stated purpose by providing for the Tier II Chemical Reporting Program within the existing 30 TAC, which is the Title for commission, from Title 25 which is the Title for the DSHS.

Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulations do not affect

a landowner's rights in private real property because this rulemaking does not burden (constitutionally); nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. In other words, these rules have existed at the DSHS for many years without any burden, restriction, or limitation of an owner's right to property and reduce its value by 25% or more.

Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulations do not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally); nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. In other words, these rules have existed for many years without any burden, restriction, or limitation of an owner's right to property and reduce its value by 25% or more.

In addition, they do not burden, restrict, or limit an owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. Therefore, these rules will not constitute a taking under the 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.

Submittal of Comments

Written comments on this rulemaking 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 (512) 239-4808. Electronic comments may be submitted at: <https://www6.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2020-015-325-CE. The comment period closes on July 6, 2020. 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 Melinda Johnston, Critical Infrastructure Division, (512) 239-5832.

30 TAC §§325.1 - 325.3

Statutory Authority

The repealed rules are proposed under Texas Water Code (TWC), §5.102, which provides the commission the power to perform any acts necessary and convenient to the exercise of its jurisdiction and powers as provided by this code and other laws; TWC, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule.

The repealed rules implement House Bill 942, 84th Texas Legislature, effective September 1, 2015. HB 942 transferred the Tier

II Chemical Reporting program, requiring the repeal of administrative rules, from the Texas Department of State Health Services and replacing them with these proposed rules at Texas Commission on Environmental Quality. The program has been fully established within the Critical Infrastructure Division, including the development of a new online reporting system and database.

§325.1. *General Provisions and Definitions.*

§325.2. *Responsibilities and Requirements.*

§325.3. *Compliance and 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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Texas Commission on Environmental Quality

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30 TAC §§325.1 - 325.4

Statutory Authority

The new rules are proposed under Texas Water Code (TWC), §5.102, which provides the commission the power to perform any acts necessary and convenient to the exercise of its jurisdiction and powers as provided by this code and other laws; TWC, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule.

The new rules implement House Bill 942, 84th Texas Legislature, effective September 1, 2015. HB 942 transferred the Tier II Chemical Reporting program, requiring the repeal of administrative rules, from the Texas Department of State Health Services and replacing them with these proposed rules at the Texas Commission on Environmental Quality. The program has been fully established within the Critical Infrastructure Division, including the development of a new online reporting system and database.

§325.1. *General Provisions.*

(a) Purpose. The purpose of this chapter is to provide facility operators with specific criteria needed to comply with the Manufacturing Facility Community Right-to-Know Act, Texas Health and Safety Code (THSC), Chapter 505; the Public Employer Community Right-to-Know Act, THSC, Chapter 506; and the Nonmanufacturing Facilities Community Right-to-Know Act, THSC, Chapter 507.

(b) Scope. This chapter is applicable to operators of all facilities covered by THSC, Chapters 505, 506, or 507.

(c) Compatibility with Federal Laws. In order to avoid confusion among manufacturing facilities, public facilities, nonmanufacturing facilities, and persons living in this state, the Texas Commission on Environmental Quality shall implement the Manufacturing Facility Community Right-To-Know Act, the Public Employer Community Right-to-Know Act, and the Nonmanufacturing Facilities Community Right-to-Know Act compatibly with the federal Emergency Planning

and Community Right-To-Know Act (EPCRA), which is also known as the Superfund Amendments and Reauthorization Act of 1986 (SARA), Title III (42 United States Code (USC), §§11001 et seq.), and related regulations (40 Code of Federal Regulations (CFR) Parts 355 -370), promulgated by the United States Environmental Protection Agency (EPA).

(d) Applicability. This rule does not apply to:

(1) any hazardous waste, as that term is defined by the federal Resource Conservation and Recovery Act (RCRA) of 1976, as amended (42 USC, §§6901 et seq.), when subject to regulations issued under RCRA by the EPA;

(2) tobacco or tobacco products;

(3) wood or wood products in the same form and concentration as is distributed to the general public;

(4) any substance that meets the definition of an article, as defined in this section;

(5) food, drugs, cosmetics, or alcoholic beverages in a retail food sale establishment that are packaged for sale to consumers;

(6) food, drugs, or cosmetics intended for personal consumption by an employee while in the facility;

(7) any consumer product or hazardous substance, as those terms are defined in the Consumer Product Safety Act (15 USC, §§2051 et seq.) and Federal Hazardous Substances Act (15 USC, §§1261 et seq.), respectively, if the employer can demonstrate it is used in the facility in the same manner as normal consumer use and if the use results in a duration and frequency of exposure that is not greater than exposures experienced by consumers;

(8) any drug, as that term is defined by the Federal Food, Drug, and Cosmetic Act (21 USC, §§301 et seq.), when it is in solid, final form for direct administration to the patient, such as tablets or pills;

(9) the transportation of any substance or chemical subject to this chapter;

(10) radioactive waste;

(11) a hazardous substance in a sealed package that is received and subsequently sold or transferred in that package if:

(A) the seal remains intact while the substance is in the facility;

(B) the substance does not remain in the facility longer than five working days; and

(C) the substance is not an extremely hazardous substance at or above the threshold planning quantity or 500 pounds, whichever is less, as listed by the EPA in 40 CFR, Part 355, Appendices A and B;

(12) any substance to the extent it is used in a research laboratory or a hospital or other medical facility under the direct supervision of a technically qualified individual, as defined in the section;

(13) any substance to the extent it is being used in routine agricultural operations or is a fertilizer that is held for sale by a retailer to the ultimate consumer in its final form; and

(14) ionizing and nonionizing radioactive material;

(e) Severability. Should any section or subsection in this subchapter be found to be void for any reason, such finding shall not affect any other sections.

§325.2. Definitions.

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

(1) 505 Act--The Manufacturing Facility Community Right-To-Know Act, Texas Health and Safety Code, Chapter 505.

(2) 506 Act--The Public Employer Community Right-To-Know Act, Texas Health and Safety Code, Chapter 506.

(3) 507 Act--The Nonmanufacturing Facilities Community Right-To-Know Act, Texas Health and Safety Code, Chapter 507.

(4) Appropriate facility identifiers--A physical location identification which provides a physical street address or other location identifiers, which are sufficient for emergency planning purposes and for data management by the commission.

(5) Article--A manufactured item:

(A) that is formed to a specific shape or design during manufacture;

(B) that has end-use functions dependent in whole or in part on its shape or design during end use; and

(C) that does not release, or otherwise result in exposure to, a hazardous chemical under normal conditions of use.

(6) Current Tier II threshold--

(A) A quantity which is assigned to a hazardous or extremely hazardous substance in the most recent version of the federal Emergency Planning and Community Right-to-Know Act and related regulations, and which determines whether a hazardous or extremely hazardous substance must be included on a Tier II Report.

(B) For retail gas stations engaged in selling gasoline and/or diesel fuels principally to the public for motor vehicle use, the threshold is 75,000 gallons for all grades of gasoline combined and 100,000 gallons for diesel. The gasoline and/or diesel must be stored entirely in underground tanks and must be in compliance with Chapter 334 of this title (relating to Underground and Aboveground Storage Tanks).

(7) Commission--The Texas Commission on Environmental Quality.

(8) EPCRA or SARA, Title III--The federal Emergency Planning and Community Right-To-Know Act, also known as the Superfund Amendments and Reauthorization Act of 1986, Title III, 42 United States Code, §§11001 - 11050, and regulations promulgated by the United States Environmental Protection Agency in 40 Code of Federal Regulation Parts 355 - 370.

(9) Executive Director--The executive director of the Texas Commission on Environmental Quality.

(10) Extremely Hazardous Substance (EHS)--Any substance as defined in the federal Emergency Planning and Community Right-to-Know Act, 42 United States Code, §11002, or listed by the United States Environmental Protection Agency in 40 Code of Federal Regulations Part 355, Appendices A and B.

(11) Facility--All buildings, equipment, structures, and other stationary items that are located on a single site or on contiguous or adjacent sites and that are owned or operated by the same person or by any person who controls, is controlled by, or is under common control with that person. Each facility will be assigned an identification number according to commission procedures.

(12) Facility operator--The person who controls the day-to-day operations of the facility and which is held responsible for the facil-

ity's regulatory responsibilities under the federal Occupational Safety and Health Act of 1970 (29 United States Code, §§651 et seq.), or the Texas Hazard Communication Act (Texas Health and Safety Code, Chapter 502). The facility operator will be assigned an identification number according to commission procedures.

(13) Fire chief--The administrative head of the fire department, including a volunteer fire department, having jurisdiction over a facility.

(14) Hazardous chemical or substance--A substance given that term by 29 Code of Federal Regulations §1910.1200(c).

(15) Headquarters facility--Either the facility itself when the facility is staffed more than 20 hours per week, or, for facilities which are staffed 20 hours per week or less, the headquarters facility is an office which is staffed full time by the facility operator and which serves as the central office for staff who are responsible for overseeing the operations of the facility.

(16) Latitude and longitude--A mapping coordinate system, designated in units to four decimal degrees, by means of which a location can be determined and described.

(17) Local Emergency Planning Committee (LEPC)--A group of individuals representing a designated emergency planning district and whose membership on the committee has been approved by the Texas State Emergency Response Commission as meeting the requirements of federal Emergency Planning and Community Right-to-Know Act, §11001.

(18) Manufacturing facilities--Facilities in North American Industrial Classification System (NAICS) Codes 31 - 33.

(19) Nonmanufacturing facilities--Facilities, other than those facilities operated by the state or political subdivisions of the state, and which are classified in North American Industrial Classification System (NAICS) Codes 11 - 23 or NAICS Codes 42 - 92.

(20) North American Industrial Classification System (NAICS) Code--The six-digit number which describes a facility's primary activity, which is determined by its principal product or group of products produced. The NAICS Codes were developed jointly by the United States (U.S.), Canada, and Mexico to provide comparability in statistics about business activity across North America and has replaced the U.S. Standard Industrial Classification (SIC) system. If a facility does not have a NAICS Code assigned by the Texas Workforce Commission, then the commission must be consulted for assistance in determining the correct code.

(21) Public employer facilities--Facilities operated by:

(A) state and political subdivisions of the state, including state, county, and municipal agencies;

(B) public schools, colleges, and universities;

(C) river authorities and publicly owned utilities;

(D) volunteer emergency service organizations; or

(E) other similar employers who are not covered by the federal Occupational Safety and Health Act of 1970 (Pub. L. No. 91-596).

(22) Research laboratory--A laboratory that engages in only research or quality control operations. Chemical specialty product manufacturing laboratories, full scale pilot plant operation laboratories that produce products for sale, and service laboratories are not research laboratories.

(23) Technically qualified individual--An individual with a professional education and background working in the research or medical fields, such as a physician, a registered nurse, or an individual holding a college bachelor's degree in science.

(24) Tier II Report--Provides specific information on the amounts and locations of hazardous and extremely hazardous substances present at a facility, including:

(A) the data elements required by the federal Emergency Planning and Community Right-to-Know Act and related regulations promulgated by the United States Environmental Protection Agency, in regards to Tier II inventory information; and

(B) the name, mailing address, email address, and phone number of a Billing Contact.

(25) Tier II Initial Report--Provided when one or more hazardous or extremely hazardous substances meet or exceed the current Tier II threshold for the first time, but which were not included on the previously submitted Tier II Annual Report. Includes all reportable hazardous or extremely hazardous substances from the previously submitted Tier II Annual Report.

(26) Tier II Annual Report--Provides the information for all hazardous or extremely hazardous substances present at a facility at any one time during the previous calendar year in quantities that met or exceeded the then current Tier II thresholds.

(27) Tier II Update Report--Provides new information on any required data element which was previously reported.

(28) Local Fire Department--The fire department with jurisdiction over a facility.

§325.3. Reporting Requirements.

(a) Tier II Report.

(1) A facility operator covered by the Manufacturing Facility Community Right-To-Know Act (Texas Health and Safety Code (THSC), Chapter 505 (505 Act)), the Public Employer Community Right-To-Know Act (THSC, Chapter 506 (506 Act)), or the Nonmanufacturing Facilities Community Right-To-Know Act (THSC, Chapter 507 (507 Act)) shall compile, submit, and maintain a Tier II Report in a format acceptable to the commission, the appropriate fire department, and the appropriate Local Emergency Planning Committee (LEPC).

(2) Facility operators shall submit a Tier II Annual Report that provides the information for all hazardous substances and extremely hazardous substances present at a facility at any one time during the previous calendar year, in quantities that met or exceeded the then current Tier II thresholds.

(3) Facility operators shall submit a Tier II Initial Report when the facility:

(A) begins operation and acquires one or more hazardous or extremely hazardous substances which meet or exceed any of the current Tier II thresholds;

(B) first acquires one or more hazardous or extremely hazardous substances which meet or exceed any of the current Tier II thresholds, and which were not reported on the most recently submitted Tier II Annual Report; or

(C) determines that one or more hazardous or extremely hazardous substances which meet or exceed any of the current Tier II thresholds were omitted from the most recently submitted Tier II Report.

(4) Facility operators shall submit a Tier II Update Report when new information about any previously reported data on the most recent Tier II Report is discovered.

(5) Reporting timelines.

(A) A facility operator shall submit a Tier II Annual Report between January 1 and March 1, for the previous calendar year.

(B) A facility operator shall submit a Tier II Initial Report:

(i) within 72 hours if the facility meets the definition of an ammonium nitrate storage facility; or

(ii) within 90 days if the facility does not meet the definition of an ammonium nitrate storage facility.

(C) A facility operator shall submit a Tier II Update Report:

(i) within 72 hours if the facility is an ammonium nitrate storage facility and has a change in the chemical weight range of previously reported ammonium nitrate; or

(ii) within 90 days if the facility is not an ammonium nitrate storage facility, or if the facility is an ammonium nitrate storage facility and the change in chemical weight range is a substance other than ammonium nitrate.

(6) Each time a facility operator is required to submit a Tier II Report, it shall submit within the appropriate timeframe, and in an acceptable format, to:

(A) the commission;

(B) the appropriate fire department; and

(C) the appropriate LEPC.

(7) A facility operator shall maintain at the headquarters facility a copy of the facility's most recently submitted Tier II Report until such time as the facility operator is required to submit another Tier II Report.

(8) A Tier II Report shall include the following appropriate facility identifiers:

(A) for a facility located within an incorporated area, the location description must provide the following information:

(i) the street address, including street name and number;

(ii) the name of the city;

(iii) the zip code;

(iv) the name of the county; and

(v) the latitude and longitude coordinates; and

(B) for a facility located in an unincorporated area, the location description must include:

(i) the street address, including street name and number, or general driving directions with street names if available;

(ii) the name of the city, or the nearest city;

(iii) the zip code, or the nearest zip code;

(iv) the name of the county; and

(v) the latitude and longitude coordinates.

(b) Direct citizen access to Tier II Information. A manufacturing or public employer facility must provide within 10 working days

of the date of receipt of a citizen's request under THSC, §505.007(a), or THSC, §506.007(a), a copy of the modified Tier II Report using a 500-pound threshold for each hazardous chemical at the facility. Except as otherwise provided in this section, such documents shall be furnished or mailed to the citizen requesting the information. The modified Tier II Report must include completed chemical description blocks for each chemical reported.

§325.4. Compliance and Fees.

(a) Complaints and investigations.

(1) The executive director or his designated representatives may enter a facility at reasonable times to conduct compliance inspections. Advance notice is not required. It is a violation of this chapter for a person to interfere with, deny, or delay an inspection or investigation conducted by a commission representative.

(2) The executive director or his designated representative shall investigate in a timely manner a complaint relating to an alleged violation of the Manufacturing Facility Community Right-To-Know Act (Texas Health and Safety Code (THSC), Chapter 505 (505 Act)), the Public Employer Community Right-To-Know Act (THSC, Chapter 506 (506 Act)), the Nonmanufacturing Facilities Community Right-To-Know Act (THSC, Chapter 507 (507 Act)) or this chapter. An inspection based on a complaint is not limited to the specific allegations of the complaint. A facility operator who refuses to allow such an investigation shall be in violation of this chapter.

(3) The commission may find multiple violations by a facility operator based on specific requirements of the 505 Act, the 506 Act, the 507 Act or this chapter.

(4) Upon request from a representative of the executive director, a facility operator shall make or allow photocopies of documents to be made and permit the representative to take photographs to verify the compliance status of the employer. Such requests may be made during a compliance inspection or a follow-up request after an inspection.

(b) Enforcement.

(1) A facility operator may not violate the 505 Act, the 506 Act, the 507 Act, commission rules, or an order issued by the commission.

(2) The commission shall enforce the rules in this chapter under Texas Water Code, Chapter 7, including by issuing an administrative order that assesses a penalty or orders a corrective action.

(c) Fees.

(1) Fees for Tier II Annual Reports and Tier II Initial Reports are based on the number of hazardous or extremely hazardous substances present at each facility.

(A) For a manufacturing facility:

(i) \$100 for each facility having no more than 25 hazardous or extremely hazardous substances;

(ii) \$200 for each facility having no more than 50 hazardous or extremely hazardous substances;

(iii) \$300 for each facility having no more than 75 hazardous or extremely hazardous substances;

(iv) \$400 for each facility having no more than 100 hazardous or extremely hazardous substances; or

(v) \$500 for each facility having more than 100 hazardous or extremely hazardous substances.

(B) For a public employer facility:

(i) \$50 for each facility having no more than 75 hazardous or extremely hazardous substances; or

(ii) \$100 for each facility having more than 75 hazardous or extremely hazardous substances; and

(iii) Tier II Initial Reports for public employers will not be charged a fee.

(C) For a nonmanufacturing facility:

(i) \$50 for each facility having no more than 75 hazardous or extremely hazardous substances; or

(ii) \$100 for each facility having more than 75 hazardous or extremely hazardous substances.

(2) For the purpose of minimizing fees, the department shall provide for consolidated submission fees for Tier II Reports containing multiple facilities if:

(A) each of the consolidated facilities within the Tier II Report contain fewer than 25 hazardous or extremely hazardous substances;

(B) the Tier II Report is submitted by a single facility operator; and

(C) the number of facilities within the Tier II Report to be consolidated are:

(i) for manufacturing facilities, each two facilities;

or

(ii) for nonmanufacturing facilities, each three facilities; or

(iii) for public employer facilities, each seven facilities.

(3) If a facility has multiple North American Industrial Classification System codes that fall within both the manufacturing and nonmanufacturing range, the facility will be considered a manufacturing facility for fee assessing purposes.

(4) Fees will be invoiced by the commission and shall be paid in accordance with Chapter 12 of this title (relating to Payment of 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.

Filed with the Office of the Secretary of State on May 21, 2020.

TRD-202002022

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: July 5, 2020

For further information, please call: (512) 239-2678

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 4. SCHOOL LAND BOARD

CHAPTER 155. LAND RESOURCES

SUBCHAPTER A. COASTAL PUBLIC LANDS

31 TAC §§155.1, 155.2, 155.4, 155.5, 155.15

The School Land Board (Board) proposes amendments to §§155.1, 155.2, 155.4, 155.5, and 155.15 in Title 31, Part 4, Chapter 155, Subchapter A, concerning Coastal Public Lands. The proposed amendments are intended to clarify the rules as well as streamline procedures with respect to renewals of coastal leases for public purposes, transfers of cabin permits, recording associated with structure registrations, and fees for vegetative cover and rip-rap.

Explanation of Proposed Amendments

Section 155.1, concerning General Provisions, includes provisions that address Board policies, the scope of the rules, the timing of Board decisions, definitions, and the Coastal Management Program (CMP). The proposed amendment to 155.1(d) revises the definition for "shoreline stabilization project" to clarify that projects that consist of only shoreline stabilization may be treated as a residential use, Category I projects. As reflected in long-standing Board policy and §155.3(e), the Commissioner of the General Land Office (GLO) may authorize coastal easements without Board authorization for certain categories of projects that have minimal environmental impacts and no commercial or industrial activity. Many such projects, for example single-family residential piers with dimensions that do not qualify for a Structure Registration, are authorized through the issuance of a Category I Coastal Easement (CE-I) processed in the GLO Coastal Field Operations offices. By clarifying that a CE-I may be issued for projects consisting of only vegetative cover and/or rip-rap, this amendment would help expedite the authorization process for such projects and promote the efficient administration of the coastal public land program.

Section 155.2, concerning Leases, includes provisions related to application requirements, lease conditions, and renewal and termination of leases. The proposed amendment adds subsection (e) to allow the Commissioner of the GLO to approve a Coastal Lease renewal request without Board approval provided that all previous lease conditions have been met, and further provided that no modifications have been made or are proposed, other than a modification that reduces the dimensions of the structure on the leased premises. Projects that are authorized under this section typically include structures such as county boat ramps, public fishing piers, and other public purpose projects that do not change over time. This amendment would help expedite the renewal process for such projects and promote the efficient administration of Coastal Lease renewals.

Section 155.4, concerning Permits, includes provisions related to the issuance of permits for the use of previously unauthorized structures (cabins) on coastal public land. The proposed amendment adds a new subsection (g) to clarify that the Board may, at its discretion, approve the transfer of a Cabin Permit upon receipt of a transfer request, provided that all required fees have been paid and further provided that all previous permit conditions have been met. This reflects long-standing Board policy and procedure allowing for the transfer of such permits. This amendment would simply provide greater clarity within the text of the administrative code.

Section 155.5, concerning Registration of Structures, includes provisions related to the registration of structures that may be constructed on coastal public land without prior approval from the Board, in accordance with Texas Natural Resources Code, §33.115. The proposed amendment reorders the provision requiring each person issued a Structure Registration to record a

GLO-provided memorandum in the county records to clarify the sequence of this recordation requirement in the Structure Registration process. This amendment would help provide greater clarity and efficiency in the processing of Structure Registrations.

Section 155.15, concerning Fees, includes provisions related to fees for the use of coastal public land. The proposed amendment to the fee tables in 155.15(b)(1)(C)(i)-(iv) adds a footnote to clarify that projects consisting of only rip-rap and/or vegetative cover do not require any minimum annual rent. Although the current fee tables provide that rip-rap and/or vegetative cover are project components that have no rent, there is an internal inconsistency in that these fee tables also state that a minimum rent is required. This amendment would resolve the inconsistency and clarify current practice and standards.

Fiscal and Employment Impacts

David Green, Senior Deputy Director, Coastal Protection, has determined that for each of the first five years that the proposed amendments are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Mr. Green has determined that the proposed amendments will not have an adverse economic effect on small or large businesses, micro-businesses, rural communities, or individuals since the amendments relate solely to administrative functions of the Board and the GLO and impose no costs on persons required to comply with the rules. Accordingly, an economic impact statement or regulatory flexibility analysis is not required.

Mr. Green has determined that the proposed amendments will not have an adverse impact to local employment or local economies. Therefore, a local employment impact statement is not required.

Public Benefit

Mr. Green has determined that the proposed amendments will benefit the public by promoting greater efficiency in the administration of the coastal public land program, reducing the time and effort required to authorize certain projects on coastal public land, and providing the public with greater clarity regarding the process.

Environmental Regulatory Analysis

The Board has evaluated the proposed amendments in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that this rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. A major environmental rule means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendments are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

Government Growth Impact Statement

The Board has evaluated the proposed amendments in accordance with Government Code, §2001.0221. For each of the first five years that the proposed amendments are in effect, the amendments will not: create or eliminate a government program;

create or eliminate any employee positions; require an increase or decrease in future legislative appropriations; increase or decrease fees paid to the agency; create a new regulation; increase or decrease the number of individuals subject to applicability of the rules; or positively or adversely affect the state's economy. This proposal amends current rules.

Takings Impact Assessment

The Board has evaluated the proposed amendments to determine whether Texas Government Code, Chapter 2007, is applicable and a detailed takings assessment is required. The Board has determined that the proposed amendments do not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Article I, Sections 17 and 19 of the Texas Constitution. Therefore, a detailed takings assessment is not required.

Coastal Management Program Analysis

The Board has reviewed the proposed amendments for consistency with the Texas Coastal Management Program (CMP), in accordance with Texas Natural Resources Code, §33.2051(d), and 31 Texas Administrative Code §505.11(a)(1), relating to Actions and Rules Subject to the Coastal Management Program. The Board determined that since this rulemaking is procedural in nature and would have no substantive effect on agency actions subject to the CMP, the rulemaking is consistent with the applicable CMP goals and policies.

Request for Public Comment

Written comments should be submitted to Walter Talley, Office of General Counsel, Texas General Land Office, 1700 N. Congress Avenue, Austin, Texas 78701, or fax (512) 463-6311 or emailed to walter.talley@glo.texas.gov, no later than 30 days following publication.

Statutory Authority

The amendments are proposed under Texas Natural Resources Code §33.064, providing that the Board may adopt procedural and substantive rules which it considers necessary to administer, implement, and enforce Chapter 33, Texas Natural Resources Code.

Texas Natural Resources Code §§33.101-33.136 are affected by the proposed amendments.

§155.1. General Provisions.

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

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

(1) - (55) (No change.)

(56) Shoreline stabilization project--Vegetative cover or rip-rap consisting of concrete block, concrete rubble, rock, brick, sack crete or similarly stable material approved by the GLO and utilized to control shoreline erosion. Projects that consist of only shoreline stabilization will be treated as a residential use, Category I project.

(57) - (63) (No change.)

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

§155.2. Leases.

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

(e) The commissioner may approve a lease renewal request without board approval if all previous contractual conditions have been met, provided that the lessee has not made or proposed modifications to the leased premises or to the structure(s) on the premises other than a modification that reduces the dimensions of the structure(s) on the premises. If the commissioner approves a renewal request, the appropriate contract forms and related materials shall be forwarded to the lessee for completion. The commissioner may include in his approval any provisions deemed necessary to protect the state's interest in coastal public lands and the public welfare.

§155.4. Permits.

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

(g) Transfer. The board may, at its discretion, approve the transfer of a permit upon receipt of a transfer request, provided that all required fees have been paid and all previous contractual conditions have been met.

(h) ~~[(g)]~~ Major repairs. Any action which alters the square footage of an existing permitted structure shall be considered a major repair and shall require prior approval from the board. The board may approve, deny, or approve with qualifications a request for major repairs to, or for the rebuilding of, a permitted structure. Examples of major repairs include, but are not limited to:

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

(i) ~~[(h)]~~ Minor repairs. Minor repairs may be made to a permitted structure without prior approval of the board. Minor repairs shall include routine repairs to existing docks, piers, and the structure, and other normal maintenance required to maintain a structure in a safe and secure manner but which does not alter the authorized dimensions. Examples of minor repairs include, but are not limited to:

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

(j) ~~[(i)]~~ Abandoned structures. Structures determined by the board to be abandoned may be removed from coastal public lands or permitted to an interested party through a competitive bid process approved by the board. Structures may be considered abandoned if:

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

(k) ~~[(j)]~~ Issuance of permits to new permit holders for structures determined to be abandoned or for which the permit was terminated by the board for cause. Structures determined by the board to be abandoned or for which the interest of the previous permit holder was terminated for cause may be permitted to an interested party through a competitive bid process approved by the board in accordance with this subsection.

(1) - (6) (No change.)

(l) ~~[(k)]~~ General provisions. Each permit issued by the board or commissioner shall be subject to the following general provisions.

(1) - (6) (No change.)

§155.5. Registration of Structures.

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

(c) New construction, reconstruction, or modification of a pier pursuant to Texas Natural Resources Code §33.115 may commence only upon receipt by the GLO of the following:

(1) a completed and executed structure registration form; and

(2) the registration fee.~~.[3]~~

~~[(3)]~~ proof of recordation of a GLO provided memorandum in the County Deed Records in which the littoral property lies.]

(d) - (e) (No change.)

(f) Any person registering a structure or pier pursuant to this section agrees and consents to the following:

(1) to maintain the structure or pier in the proper condition and not allow it to deteriorate to such a degree as to become a hazard or public nuisance;

(2) to notify the GLO upon a change of ownership, or property interest, in the adjacent littoral property within 30 days of such change; ~~and~~

(3) to comply with and be bound by all terms and conditions of the structure registration form provided by the GLO; ~~and~~

(4) to record the GLO provided memorandum in the County Deed Records in which the littoral property lies.

(g) - (h) (No change.)

§155.15. Fees.

(a) (No change.)

(b) Board fees and charges. The board is authorized and required under the Texas Natural Resources Code, Chapter 33, to collect the fees and charges set forth in this subsection where applicable. The board will charge the following coastal lease and coastal easement fees for use of coastal public land, and will charge the following structure registration and permit fees. The board charge will be based on either the fixed fee schedule or the alternate commercial, industrial, residential, and public formulas as delineated in paragraph (1)(C) of this subsection. The greater of the fixed fee or formula rate will be charged except in the calculation of fees for residential use, Category II and residential use, Category III, where only the fixed rate method will be used. The board may adopt an escalation schedule that will allow for escalation of annual fees based on the term of a coastal lease or coastal easement.

(1) Rental and Fees.

(A) Structure registration. Structure registration fee is required for private piers or docks that are 115 ~~[100]~~ feet long or less and 25 feet wide or less and require no dredging or filling, as authorized by the Texas Natural Resources Code §33.115. Though board approval is not required for construction, the applicant must register the location of the structure. The registration is valid for the life of the structure.

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

(B) (No change.)

(C) The following tables list the rental fees for easements and permits on coastal public land.

(i) Residential Use, Category I.

Figure 1: 31 TAC §155.15(b)(1)(C)(i)
~~[Figure 1: 34 TAC §155.15(b)(1)(C)(i)]~~

(ii) Residential Use, Category II.

Figure 2: 31 TAC §155.15(b)(1)(C)(ii)
~~[Figure 2: 34 TAC §155.15(b)(1)(C)(ii)]~~

(iii) Residential Use, Category III.

Figure 3: 31 TAC §155.15(b)(1)(C)(iii)
~~[Figure 3: 34 TAC §155.15(b)(1)(C)(iii)]~~

(iv) Commercial and Industrial Activity.

Figure 4: 31 TAC §155.15(b)(1)(C)(iv)
~~[Figure 4: 34 TAC §155.15(b)(1)(C)(iv)]~~

(v) (No change.)

(2) - (7) (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 May 21, 2020.

TRD-202002053

Mark Havens

Chief Clerk, Deputy Land Commissioner

School Land Board

Earliest possible date of adoption: July 5, 2020

For further information, please call: (512) 475-1850

◆ ◆ ◆
TITLE 34. PUBLIC FINANCE

**PART 6. TEXAS MUNICIPAL
RETIREMENT SYSTEM**

**CHAPTER 121. PRACTICE AND PROCEDURE
REGARDING CLAIMS**

The Board of Trustees ("Board") of the Texas Municipal Retirement System ("TMRS" or the "System") proposes the repeal of current 34 TAC Chapter 121 ("Chapter 121"), relating to practice and procedure regarding claims before TMRS. In a separate proposal, TMRS is also proposing to replace current Chapter 121 with proposed new Chapter 121, also relating to practice and procedure regarding claims before TMRS.

REPEAL OF CURRENT CHAPTER 121

TMRS proposes the repeal of current 34 TAC Chapter 121, which includes the following sections: 34 TAC §121.1, Definitions; 34 TAC §121.2, Scope of Rules; 34 TAC §121.3, Filing of Documents; 34 TAC §121.4, Computation of Time; 34 TAC §121.5, Applications for Benefits or Asserting Other Claims; 34 TAC §121.6, Time for Filing of Retirement Applications; 34 TAC §121.7, Supporting Documents To Be Submitted; 34 TAC §121.8, Service Retirement Benefits May Be Approved by Director Without Hearing; 34 TAC §121.9, Disability Retirement Applications Referred to Medical Board; 34 TAC §121.10, Approval Without Hearing Where Medical Board Certifies Entitlement; 34 TAC §121.11, Summary Disposition of Other Approved Applications; 34 TAC §121.12, Contest of Application: Form and Content; 34 TAC §121.13, Notice of Prehearing Disposition; 34 TAC §121.14, Procedure for Obtaining Hearing of Claim Denied in Whole or in Part by Director; 34 TAC §121.15, Hearing of Conflicting and Protested Claims; 34 TAC §121.16, Conduct of Contested Case Hearings; 34 TAC §121.17, Proposal for Decision; 34 TAC §121.18, Filing of Exceptions to Proposal, Briefs, and Replies; 34 TAC §121.19, Board Consideration and Action; 34 TAC §121.20, Final Decisions and Orders; 34 TAC §121.21, When Decisions Become Final; 34 TAC §121.22, Motions for Rehearing; 34 TAC §121.23, Rendering of Final Decision or Order; 34 TAC §121.24, The Record; 34 TAC §121.25, Proceedings for Review, Suspension, or Revocation of Disability Benefit; 34 TAC §121.26, Applicability to Pending Proceedings; 34 TAC §121.27, Subpoenas; and, 34 TAC §121.28, Depositions.

PROPOSAL OF NEW CHAPTER 121

As proposed, the new Chapter 121 will address: 34 TAC §121.1, Definitions; 34 TAC §121.2, Scope of Rules and Application; 34

TAC §121.3, Filing of Documents; 34 TAC §121.4, Computation of Time; 34 TAC §121.5, Forms and Applications for Benefits, or Asserting Other Claims; 34 TAC §121.6, Time for Filing of Retirement Applications; 34 TAC §121.7, Supporting Documents To Be Submitted; 34 TAC §121.8, Service Retirement Benefits May Be Approved by Director Without Hearing; 34 TAC §121.9, Disability Retirement Applications Referred to Medical Board; 34 TAC §121.10, Approval Without Hearing Where Medical Board Certifies Entitlement; 34 TAC §121.11, Summary Disposition of Other Approved Applications; 34 TAC §121.12, Contest of Application: Form and Content; 34 TAC §121.13, Notice of Prehearing Disposition; 34 TAC §121.14, Procedure for Obtaining Hearing of Claim Denied in Whole or in Part by Director; 34 TAC §121.15, Hearing of Conflicting and Protested Claims; 34 TAC §121.16, Subpoenas; 34 TAC §121.17, Depositions; 34 TAC §121.18, Conduct of Contested Case Hearings; 34 TAC §121.19, Proposal for Decision; 34 TAC §121.20, Filing of Exceptions to Proposal, Briefs, and Replies; 34 TAC §121.21, Closing of Hearing; 34 TAC §121.22, Board Consideration and Action; 34 TAC §121.23, Board Decisions and Orders; 34 TAC §121.24, Motions for Rehearing; 34 TAC §121.25, When Decisions Become Final; 34 TAC §121.26, The Record; and, 34 TAC §121.27, Reaffirmation of Occupational Disability Benefit.

BACKGROUND AND PURPOSE

TMRS proposes to repeal and replace Chapter 121 to update and modernize the benefit claims and administrative appeals processes, and to implement certain provisions of Senate Bill 1337 ("SB 1337"), which was enacted by the 86th Legislature. In addition, the repeal and replacement of Chapter 121 is being proposed as a result of TMRS' rule review, which was conducted pursuant to Texas Government Code §2001.039.

Many provisions of proposed new Chapter 121 rules are substantially similar to the provisions of the existing Chapter 121 which is proposed to be repealed. There are, however, some substantive changes in the proposed new rules, which are described as follows: (i) new definitions added (in §121.1); (ii) delegation of authority to the Executive Director for ease of administration with respect to: granting an exception to the operation of a TMRS rule in certain limited circumstances to avoid undue hardship where it does not prejudice TMRS or another person (in §121.2); receipt of notices, applications, beneficiary designations, elections, petitions, complaints, replies, or other pleadings required to be delivered to TMRS (in §121.3); approval of all forms required for the administration and operations of the System (in §121.5); and approval of an alternative method for the receipt of confidential information required for the administration of benefits that is designed to protect the confidential information (in §121.5); and (iii) substantive clarifications or modernizations to: provide for electronic filing of records and providing forms electronically to members and municipalities (in §§121.3 and 121.5); allow for default in a contested claim if the claimant does not comply with certain rules (in §121.12); provide a thirty day period for a contestant to file a written request for hearing of a denied claim (in §121.14); clarify provisions regarding TMRS witnesses and records at hearings, the official record of hearings, and interpreters for hearings (in §121.18); clarify when a hearing is considered closed (in §121.21); clarify the board of trustees' ability to accept, modify, or refuse to accept proposed findings or proposals for decision received from an administrative law judge in a contested case (in §121.22); and clarify timeframes for the filing of motions for rehearing and responses in a contested case (in §121.24). New Chapter 121 also reorders

and renumbers rules to make them procedurally chronological, and current §121.26 is deleted as no longer relevant.

Additionally, the following rulemaking actions are in response to portions of SB 1337: (i) proposed new rules §121.2 and §121.9 clarify that neither the Chapter 121 rules nor any of the other TMRS rules (found in Part 6 of Title 34, Administrative Code) have the effect of waiving any immunities of TMRS or its trustees, officers, employees, or medical board; (ii) the repeal of current rule §121.25 - Proceedings for Review, Suspension, or Revocation of Disability Benefit, will eliminate an income test that used to be applicable to certain occupational disability retirees before the enactment of SB 1337; and (iii) proposed new §121.27 establishes new rules regarding Occupational Disability Retirements to reflect the SB 1337 changes made to Section 854.409 of the Government Code, such rules providing that: TMRS may determine when to require an occupational disability retiree to undergo a medical examination and provide additional medical or other information to the System to reaffirm the status of the retiree as meeting the requirements of occupational disability retirement; TMRS or its medical board may specify the physician or type of specialized physician that is required to perform the examination; and, if a retiree has had their annuity suspended under Section 854.409 due to failure to comply with TMRS' request for a medical examination or other information and dies without complying, then if the death is within 4 years of the request for examination or information, the retiree's beneficiaries will be entitled to a lump sum payment of suspended annuity payments, but if the death is more than 4 years after the request, then suspended payments are forfeited.

On February 13, 2020, the TMRS Board approved the publication for comment of the proposed repeal of current Chapter 121 and the proposed replacement of current Chapter 121 with the new Chapter 121 rules.

FISCAL NOTE

David Gavia, Executive Director of TMRS, has determined that for the first five-year period the proposed new rules are in effect there will be no foreseeable fiscal implications to state or local governments as a result of enforcing or administering the proposed rules.

PUBLIC COST/BENEFIT

Mr. Gavia also has determined that for each year of the first five years the proposed new rules are in effect, the public benefit of Chapter 121 will be: (i) a clearer and more accurate statement of the administrative rules of TMRS regarding benefits administration and claims for members of the system and other interested parties; and, (ii) to conform administrative processes with new statutory requirements adopted in SB 1377.

LOCAL EMPLOYMENT IMPACT STATEMENT

TMRS has determined that there will be no adverse economic effects on local economies or local employment because of the proposed new rules, which are proposed for clarification of benefits administration and claims for members of the system and other interested parties. Therefore, no local employment impact statement is required under Government Code §2001.022.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

TMRS has determined that there will be no adverse economic effects on small businesses, micro-businesses, or rural communities because the proposed new rules are proposed for clarifi-

cation of benefits administration and claims for members of the system and other interested parties. Therefore, neither an economic impact statement nor a regulatory flexibility analysis is required under Government Code §2006.002.

GOVERNMENT GROWTH IMPACT STATEMENT

TMRS has determined that for each year of the first five years the proposed new rules are in effect, the proposed rules: will not create or eliminate any TMRS programs; will not require either the creation of or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to TMRS (TMRS does not receive any legislative appropriations); will not require an increase or decrease in fees paid to TMRS; will not create a new regulation (because new Chapter 121 updates and replaces existing Chapter 121); does not expand, limit or repeal an existing regulation (because new Chapter 121 updates and replaces existing Chapter 121); does not increase or decrease the number of individuals subject to the rules' applicability; and, does not affect this state's economy.

TAKINGS IMPACT ASSESSMENT

TMRS has determined that there are no private real property interests affected by the proposed new rules, therefore a takings impact assessment is not required under Government Code §2007.043.

COSTS TO REGULATED PERSONS

TMRS has determined that Government Code §2001.0045(b) does not apply to the proposed new rules because they do not impose a cost on regulated persons (including another state agency, a special district, or a local government). Also, some of the proposed new rules are necessary to implement recent legislation (SB 1337).

ENVIRONMENTAL RULE ANALYSIS

The proposed new rules are not a "major environmental rule" as defined by Government Code §2001.0225. The proposed rules are not specifically intended to protect the environment or to reduce risks to human health from environmental exposure. Therefore, a regulatory environmental analysis is not required.

COMMENTS

Comments on the proposed rules may be submitted to Christine Sweeney, General Counsel, TMRS, P.O. Box 149153, Austin, Texas 78714-9153, faxed to (512) 225-3786, or submitted electronically to csweeney@tmrs.com. Written comments must be received by TMRS no later than 30 days after publication of this notice in the *Texas Register*.

34 TAC §§121.1 - 121.28

STATUTORY AUTHORITY

The repeal of existing Chapter 121 is proposed and implements the authority granted under the following provisions of the TMRS Act: (i) Government Code §855.102, which allows the Board to adopt rules it finds necessary or desirable for the efficient administration of the System; (ii) Government Code §854.411, which allows the Board to adopt rules necessary or desirable to implement Chapter 854, Subchapter E, which relates to optional disability retirement benefits; (iii) Government Code §855.116, which allows the Board to adopt rules and procedures relating to the electronic filing of documents with the System and the delivery of information electronically by the System. In addition,

the rule changes are proposed as a result of TMRS' rule review, which was conducted pursuant to Texas Government Code §2001.039.

- §121.1. *Definitions.*
- §121.2. *Scope of Rules.*
- §121.3. *Filing of Documents.*
- §121.4. *Computation of Time.*
- §121.5. *Applications for Benefits or Asserting Other Claims.*
- §121.6. *Time for Filing of Retirement Applications.*
- §121.7. *Supporting Documents To Be Submitted.*
- §121.8. *Service Retirement Benefits May Be Approved by Director Without Hearing.*
- §121.9. *Disability Retirement Applications Referred to Medical Board.*
- §121.10. *Approval Without Hearing Where Medical Board Certifies Entitlement.*
- §121.11. *Summary Disposition of Other Approved Applications.*
- §121.12. *Contest of Application: Form and Content.*
- §121.13. *Notice of Prehearing Disposition.*
- §121.14. *Procedure for Obtaining Hearing of Claim Denied in Whole or in Part by Director.*
- §121.15. *Hearing of Conflicting and Protested Claims.*
- §121.16. *Conduct of Contested Case Hearings.*
- §121.17. *Proposal for Decision.*
- §121.18. *Filing of Exceptions to Proposal, Briefs, and Replies.*
- §121.19. *Board Consideration and Action.*
- §121.20. *Final Decisions and Orders.*
- §121.21. *When Decisions Become Final.*
- §121.22. *Motions for Rehearing.*
- §121.23. *Rendering of Final Decision or Order.*
- §121.24. *The Record.*
- §121.25. *Proceedings for Review, Suspension, or Revocation of Disability Benefit.*
- §121.26. *Applicability to Pending Proceedings.*
- §121.27. *Subpoenas.*
- §121.28. *Depositions.*

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 May 22, 2020.

TRD-202002072

David Gavia

Executive Director

Texas Municipal Retirement System

Earliest possible date of adoption: July 5, 2020

For further information, please call: (512) 225-3710



34 TAC §§121.1 - 121.27

STATUTORY AUTHORITY

The new Chapter 121 rules are proposed and implement the authority granted under the following provisions of the TMRS Act: (i) Government Code §855.102, which allows the Board to adopt rules it finds necessary or desirable for the efficient administration of the System; (ii) Government Code §854.411, which allows the Board to adopt rules necessary or desirable to implement Chapter 854, Subchapter E, which relates to optional disability retirement benefits; (iii) Government Code §855.116, which

allows the Board to adopt rules and procedures relating to the electronic filing of documents with the System and the delivery of information electronically by the System. In addition, the rule changes are proposed as a result of TMRS' rule review, which was conducted pursuant to Texas Government Code §2001.039.

CROSS-REFERENCE TO STATUTES

The proposed rules implement the following sections of the Texas Government Code: §851.001, concerning definitions; §851.004, concerning the powers, privileges, and immunities of the System; §854.101 - §854.105, concerning applications for service retirements and selection of optional service retirement annuities; §854.409, concerning medical examination of occupational disability retirees; §854.411, concerning rules for optional disability retirement annuities; §855.102, concerning rules for the efficient administration of the retirement system; and, §855.116, concerning electronic information.

§121.1. Definitions.

As used in rules and regulations adopted by the Board of Trustees of Texas Municipal Retirement System:

(1) the term "Act" means Subtitle G, Title 8, Texas Government Code, as amended;

(2) the term "board" means the board of trustees of the Texas Municipal Retirement System;

(3) the term "claimant" means any person who asserts any claim to any right or benefit under the Act;

(4) the term "director" means the Executive Director of the Texas Municipal Retirement System;

(5) the term "medical board" means the group of physicians designated by the board of trustees in accordance with §855.203 of the Act;

(6) the term "SOAH" means the State Office of Administrative Hearings;

(7) the term "TMRS" or "system" means the Texas Municipal Retirement System; and

(8) all other words, terms, and phrases as used in such rules and regulations shall have the meaning defined in the Act, unless the context plainly indicates a different meaning.

§121.2. Scope of Rules and Application.

(a) The rules in this chapter shall govern the procedure for the institution, conduct, and determination of all claims, complaint or other proceeding arising under or relating to the Act, and the administration of such other matters as are set forth under this Part 6 of Title 34, Administrative Code. They shall not be construed so as to enlarge, diminish, modify, or alter the jurisdiction, powers, or authority of the system or the substantive rights of any person.

(b) Subject to the limitation described in subsection (a) of this section, the director is authorized to suspend, modify or grant an exception to the operation of a rule under this Part 6 of Title 34 in individual cases as equity and fairness require (in the director's sole discretion) to avoid undue hardship, where to do so will not prejudice the system or cause delay or inconvenience in its management or administration, or cause harm or injury to another party, or cause an impermissible suspension, modification, or exception to a mandatory qualification requirement under §401(a) of the Internal Revenue Code of 1986, as amended or otherwise be prohibited by law. The decision to suspend, modify or grant an exception to the operation of a rule in an individual case is within the sole and exclusive discretion of the director. Any such determination by the director to grant or deny relief is final and

not appealable by any party. A determination by the director to grant relief to any party under this subsection does not create a right or privilege in any other party to an exception, suspension or modification to a rule, or excuse a failure to comply with a rule in all of its particulars.

(c) No rules in this chapter or elsewhere in this Part 6 of Title 34, Administrative Code shall have the effect of waiving the sovereign (governmental) or official immunity of TMRS, or its current, former, or future trustees, officers, and/or employees.

§121.3. Filing of Documents.

(a) All applications, beneficiary designations, administrative elections, petitions, complaints, replies, and other pleadings seeking to institute any claim, complaint, or other proceeding under the Act, or relating to any such proceeding then pending (other than one that has become a "contested case" under Chapter 2001 of the Texas Government Code), or seeking to exercise a right or perform an administrative action under the Act, shall be filed with the director, at the offices of the system in Austin. Such instruments shall be deemed filed only when actually received, accompanied by the filing fee, if any, required by statute or by rules of the board. For purposes of clarity and without limiting the foregoing, if a participant (as that term is defined in §855.114 of the Act) who completes and executes a beneficiary designation, or application for benefits, dies before the system receives such documentation, such application or designation will not be accepted or considered valid.

(b) Subject to subsection (c) of this section, an instrument may be filed electronically in accordance with §855.115(e) of the Act and any instructions provided by the system.

(c) If a proceeding becomes a "contested case," documents shall thereafter be filed in accordance with §§121.12 - 121.25 of this title.

(d) Any notice, application, designation, election, petition, complaint, reply or other pleading delivered to the system in accordance with subsections (a) or (b) of this section is deemed delivered to the board.

§121.4. Computation of Time.

(a) Computing time. In computing any period of time prescribed or allowed by these rules, by order of the board, or by any applicable statute, the period shall begin on the day after the act, event, or default in controversy and conclude on the last day of such computed period, unless it be a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day that is neither a Saturday, nor Sunday, nor legal holiday (as defined by §662.021 of the Texas Government Code, as amended), nor a TMRS holiday as designated on the website for the system (www.tmrs.com).

(b) Extensions. Unless otherwise provided by statute, the time for filing any application or other form may be extended by order of the director, upon written motion duly filed with the director prior to the expiration of the applicable period of time for the filing of the same, showing that there is good cause for such extension of time and that the need is not caused by the neglect, indifference, or lack of diligence of the movant. A copy of any such motion shall be served upon all other parties of record to the proceeding contemporaneously with filing the motion.

§121.5. Forms and Applications for Benefits, or Asserting Other Claims.

(a) General. Any person who asserts any claim to any right or benefit under the Act shall file written application with the director of the system at the office of the system in Austin. Pursuant to §§855.102 and 855.201 of the Act, the board authorizes the director of the system to approve all forms required by the Act or otherwise promulgated by

the director or his designee(s) for use in the administration of benefits or other operations of the system. Any form approved by the director shall satisfy any requirement of the Act that a form be approved or prescribed by the board.

(b) Form, content, and signature of applications.

(1) Official forms for applications for certain benefits. Official forms for use in applying for service retirement benefits, for disability retirement benefits, and for refund of accumulated contributions on terminations prior to retirement are available at and may be obtained without charge from the office of the director of the system, in Austin, upon written request; normally, such forms are also available at, and can be obtained from, the director of personnel of the participating city by which the member is or was employed, or (if no such office is maintained) from the officer in charge of payrolls for such city; and such forms may also be available on the system's website (www.tmr.com) or on electronic portals maintained by the system (e.g., MyTMRS®). All applications which are the subject of any official form shall contain the information, statements, and supporting documents designated in that official form, and shall conform substantially to that official form.

(2) Contents of applications having no official form. All applications for which no official form is prescribed shall be typewritten or printed on white paper, 8-1/2 inches wide by 11 inches long, and shall contain:

(A) The name, the address, and the Social Security number or the system identification number of the party asserting the right or claim;

(B) A concise statement of the facts relied on as giving rise to the right or claim asserted; and

(C) A prayer stating the type of relief, action, or order desired by the applicant.

(3) Applications required to be signed. All applications for retirement, for retirement benefits, or any other application or form must be personally signed by the applicant, unless there is a legal guardian, or other representative authorized by law, for the applicant, in which event the application must be signed by the guardian or other lawfully authorized representative. The director may require satisfactory proof of the authority of a representative to act for the member.

(4) Confidential personal information in support of applications or other forms. Notwithstanding the requirements in any other rule in this Part 6 of Title 34 of the Texas Administrative Code, in the event confidential personal information, including, but not limited to a social security number, a taxpayer identification number, or the name or contact information for a minor, is required by a form or contained in documents filed with the system in support of the administration of benefits, and if such documents or forms must be filed in public records (including, but not limited to, court records) the director or the director's designee may accept the confidential personal information through an alternative method designed to protect the confidential personal information from public disclosure if the director or the director's designee reasonably determines the alternative method to be acceptable and provided that:

(A) the alternative method is authorized by state law or court rules or approved by a court order providing for the protection of the confidential personal information; and

(B) the confidential personal information is filed with
TMRS.

§121.6. Time for Filing of Retirement Applications.

All applications for retirement, whether for service or for disability, must be filed not more than 90 days prior to the date specified by the member as the effective date of his or her retirement; the date specified as the effective date for retirement must be the last day of a calendar month and may not be a date preceding the termination of the member's employment with all participating municipalities. An application is filed when it is actually received at the office of the director of the system in Austin.

§121.7. Supporting Documents To Be Submitted.

(a) The director is authorized to require submission of documents reasonably related to establishment of a claimed right to benefits. These documents include but are not limited to birth certificates; marriage licenses; divorce decrees; letters of guardianship; letters testamentary or letters of administration; death certificates; relevant court orders; sworn statements of witnesses and attending physicians; autopsy reports; and sworn statements of the claimant or of others having personal knowledge of relevant facts.

(b) Except upon good cause being shown, failure to submit all required documents within four months of the date specified by the member as his or her effective retirement date will invalidate the application for retirement (service or disability) for all purposes. Thereafter, a new application must be submitted and a new retirement date chosen in accordance with §121.6 of this title (relating to Time for Filing of Retirement Applications).

§121.8. Service Retirement Benefits May Be Approved by Director Without Hearing.

If the director finds from the records of the system and from the documents supporting the application, that the applicant is entitled to a service retirement benefit, the director may approve the retirement, calculate the amount of the benefit and place it into effect without further hearing, unless a contest has been filed under §121.12 of this title (relating to Contest of Application: Form and Content). All benefits approved shall be reported to the board at its next meeting for confirmation.

§121.9. Disability Retirement Applications Referred to Medical Board.

(a) Applications for occupational disability retirement shall be referred by the director to the medical board. The medical board shall investigate all essential statements and certificates submitted by or on behalf of the member in connection with the application for occupational disability retirement, and shall pass upon, or cause to be conducted, all medical examinations which in its determination are necessary to determine the cause, extent, and permanence of the member's disability. The medical board shall make and file with the director a written report of its conclusions and recommendations.

(b) Pursuant to §851.004, the medical board may not be held liable for any actions or omissions, conclusions, or recommendations made in good faith under the Act.

§121.10. Approval Without Hearing Where Medical Board Certifies Entitlement.

If the findings and conclusions of the medical board, as stated in its report, are such as in the director's opinion entitle the member under the terms of the Act to the disability retirement benefit applied for, the director may approve the retirement, calculate the amount of the benefit, and place it into effect without further hearing. All benefits approved by the director shall be reported to the board at its next meeting for confirmation.

§121.11. Summary Disposition of Other Approved Applications.

Applications for benefits under the Act not specified above, including claims for refund of contributions, may be granted by the director without formal hearing, if not contested by any party, and if the director is

satisfied upon the basis of the application and supporting documents that the applicant is entitled to the action requested.

§121.12. Contest of Application: Form and Content.

(a) Any party, other than the system, desiring to contest any pending application or claim for benefits, shall file with the director a written statement, setting forth:

(1) the name and address of the party filing such statement who shall be designated as "contestant";

(2) the name of the party making the application or claim being contested;

(3) a concise statement of the facts relied on by the contestant as reasons why the contested application or claim should be denied; and

(4) a prayer specifying the action which the contestant desires the system to take.

(b) The statement shall be signed by the contestant, or by the contestant's duly authorized representative; and must contain a certificate showing that a true copy of the same was served upon the applicant, and the date and manner of such service.

(c) Any statement may adopt and incorporate, by specific reference, any part of any document or entry in the official files and records of the board or of the system. Such adoption by reference does not relieve contestant of their burden, under these rules, or other applicable law, to produce admissible evidence to support their claims.

(d) If a contestant does not comply with subsection (a) or (b) of this section, the director may dismiss any such contest for failure to comply.

§121.13. Notice of Prehearing Disposition.

(a) If an application for benefits is approved in whole or in part without hearing, the system, by letter of notification, shall inform the applicant in writing of the action taken.

(b) If the director determines that an application for benefits cannot be approved, the system shall send a letter of notification, informing the applicant that the claim is denied, in whole or in part, and stating the reasons therefor.

§121.14. Procedure for Obtaining Hearing of Claim Denied in Whole or in Part by Director.

(a) A claimant who desires to contest the action of the director in denying, in whole or in part, the claim to any right or benefit under the Act may obtain a hearing of the claim as a "contested case" pursuant to the Administrative Procedure Act (Chapter 2001, Government Code) and the following rules, by filing a written "request for hearing of denied claim" within 30 days after the date of the director's letter of notification.

(b) If no request under subsection (a) of this section is filed by the claimant within the 30-day period provided above, the prehearing disposition made by the director shall become final and unappealable.

§121.15. Hearing of Conflicting and Protested Claims.

(a) Where a party, pursuant to §121.12 of this title (relating to Contest of Application: Form and Content) has filed an statement contesting a pending application, the issues presented shall be heard as a "contested case" in accordance with the provisions of the Administrative Procedure Act (Chapter 2001, Government Code) and the following rules adopted by the Board.

(b) Upon a written request by a party or upon motion by the director or the board of trustees, the director may issue subpoenas addressed to the sheriff or any constable to require the attendance of wit-

nesses and the production of books, records, papers, or other objects that may be appropriate for purposes of a deposition or hearing.

(c) If different persons make claim to any benefit which the system concedes is payable, or if a party challenges the competency or right of a member to dispose of such a benefit in accordance with the latest written designation executed by the member and filed with the system, the director may decline any decision on the issues between the opposing claimants and file an appropriate action (including without limitation an action in interpleader) in Travis County District Court, making the opposing claimants parties and may tender payment of the benefits through the court to the party adjudged entitled to it.

§121.16. Subpoenas.

(a) The issuance of subpoenas in any proceeding shall be governed by §2001.089 of the Administrative Procedure Act (Chapter 2001, Government Code). Following written request by a party or on the system's own motion, the director (or in a contested case the director or administrative law judge) may issue subpoenas addressed to the sheriff or any constable to require the attendance of witnesses and the production of books, records, papers, or other objects as may be necessary and proper for the purposes of a proceeding.

(b) Motions for subpoenas to compel the production of books, records, papers, or other objects shall specify as nearly as may be the books, records, papers, or other objects desired and the material and relevant facts to be proven by them.

(c) Subpoenas shall be issued by the director or administrative law judge only after showing of good cause and the deposit of sums sufficient to insure payment of expense incident to the subpoenas. Service of subpoenas and payment of witness fees shall be made in the manner prescribed in the Administrative Procedure Act.

§121.17. Depositions.

The taking and use of depositions in any proceeding shall be governed by the Administrative Procedure Act (Chapter 2001, Government Code). The director is authorized to issue commissions to take depositions on his/her own motion, or on written motion of a part to the proceeding.

§121.18. Conduct of Contested Case Hearings.

(a) After filing of a request for a contested case hearing pursuant to these rules, or after filing of a third-party answer under §121.12 of this title (relating to Contest of Application: Form and Content), the director shall cause the contested case to be docketed in the State Office of Administrative Hearings (SOAH), by filing with SOAH either a "Request for Setting of Hearing" or a "Request for Assignment of Administrative Law Judge" as the Director deems appropriate.

(b) After the case has been docketed at SOAH and an administrative law judge has been assigned, the director shall notify all parties to the proceeding. Thereafter, any pleading or any motion filed in connection with the contested case, including, but not limited to, motions for continuance, discovery, settings and other relief, shall be filed with SOAH at its office in Austin, Texas, until such time as the proposal for a decision has been presented to the board of trustees as hereinafter provided.

(c) At least ten days prior to the SOAH hearing, the director shall give notice to all parties as required by §2001.051 of the Administrative Procedures Act (Chapter 2001, Government Code), and shall file with SOAH a certified copy of the relevant records in the system's files evidencing the system's determination being appealed and that were reviewed and/or relied upon in making the determination.

(d) A hearing will be conducted by an administrative law judge assigned by SOAH, and shall be conducted in accordance with the Administrative Procedure Act (Chapter 2001, Government Code), these

rules, and the rules adopted by SOAH (including but not limited to Texas Administrative Code, Title 1, Part 7, Chapter 155). Hearings will be conducted in Austin at the site designated by SOAH. In the event of an irreconcilable conflict between these rules and the rules adopted by SOAH, these rules shall control. The administrative law judge shall have authority to administer oaths, examine witnesses, rule on the admissibility of evidence, recess the hearing from day to day or to a specified date, and otherwise regulate and conduct the hearing to the end that the issues may be presented with order and decorum.

(e) All parties to the hearing, including the system, may be represented by counsel. All parties, including the system, may introduce testimony of witnesses, records, documents, and other evidence relevant to the claim or matter, which is the subject of the hearing. At the hearing, the certified records identified in subsection (c) of this section shall be admitted into evidence. No further evidence will be required of the system or its current or former trustees, employees or medical board members absent a showing of good cause.

(f) The provisions of the Administrative Procedures Act (Chapter 2001, Government Code) shall govern the admissibility of evidence, but the system will take notice of any facts established by its records unless a party to the proceedings files a written protest of its validity.

(g) A record of a hearing or prehearing conference shall be made in a manner consistent with the purpose of 1 TAC §155.423 and consistent with this subsection.

(1) It is the policy of the system to rely on an audio or video recording made by the administrative law judge as the record of the proceeding, regardless of the anticipated length of the hearing. Any party may arrange for a court reporter to be present at the hearing at that party's expense and any such reporter shall maintain the confidentiality of information presented at the hearing.

(2) The system may obtain the recording from the administrative law judge in order to prepare a transcript of the hearing. The transcript prepared by TMRS will be considered the official record of the proceeding.

(3) The system may require a party who appeals the board's final decision to pay all or part of the cost of preparation of the original or a certified copy of the official record, and may require that party to make a deposit or full payment of the estimated costs before the official records is prepared.

(h) Unless required by §2001.055 of the Texas Government Code, a party who desires the services of a certified language interpreter for any part of the contested case proceedings is responsible for arranging for the interpreter and paying for the services.

§121.19. Proposal for Decision.

(a) The administrative law judge who conducted the hearing, or one who has read and/or listened to the record, shall prepare a written proposal for decision for action by the board of trustees. The proposal for decision shall contain:

(1) proposed findings of fact and conclusions of law, separately stated; and

(2) if appropriate, a proposed order.

(b) When a proposal for decision is prepared, a copy of the proposal shall be served forthwith by SOAH on each party or the party's attorney, if any. Unless exceptions to the proposal for decision have been filed within the time prescribed in §121.20 of this title (relating to Filing of Exceptions to Proposal, Briefs, and Replies), the proposal for decision may be adopted at any date thereafter by written order of the board.

§121.20. Filing of Exceptions to Proposal, Briefs, and Replies.

(a) Any party to the contested case proceeding may, within 20 days after date of service of a proposal for decision, file with SOAH exceptions to the proposal and may submit briefs in support of such exceptions; replies to exceptions and reply briefs may be filed within 15 days after the filing of such exceptions and briefs. A request for an extension of time within which to file exceptions, briefs, or replies may be filed with SOAH, and SOAH shall promptly notify the parties of its action upon such requests.

(b) Briefs, exceptions, and replies shall be of the size and shall conform as nearly as possible to the form prescribed for applications and other pleadings.

(c) The administrative law judge may amend the proposal for decision pursuant to exceptions, briefs, and replies to exceptions and briefs, without the proposal for decision again being served on the parties.

(d) The administrative law judge shall submit the proposal for decision, including any amendments, to the board of trustees, with a copy to each party.

§121.21. Closing of Hearing.

In a contested case heard by an administrative law judge or judges, the hearing is considered closed on the date the proposal for decision is submitted to the board.

§121.22. Board Consideration and Action.

(a) The final decision in contested cases shall be made by the board of trustees, normally at its next regular meeting after time has expired for filing of exceptions to the proposal for decision, or any extension of time granted for filing such exceptions, or briefs in support of or against exceptions, or as soon thereafter as is practicable.

(b) The board will normally make its final decision on the basis of a proposal for decision, exceptions to the proposal, and briefs supporting and opposing the proposal for decision. However, the board, in exceptional cases, on its own motion, or on request of a party, may allow oral argument, or further written argument by the parties.

(c) Analysis Regarding Board Order.

(1) Acting in its capacity as fiduciary of the trust, the board or its designee may, in their sole discretion, modify, refuse to accept, or delete any adopted finding of fact or conclusion of law, or make alternative findings of fact or conclusions of law, if it is determined by the board or its designee that all or part of the proposal for decision submitted by the administrative law judge, or a proposed finding of fact or conclusion of law contained therein, is:

(A) clearly erroneous or illogical;

(B) against the weight of the evidence;

(C) based on a misapplication of the rules of evidence or an insufficient review of the evidence;

(D) based on a medical opinion that is not supported by objective medical evidence, or is not based on reasonable medical probability;

(E) inconsistent with the terms or intent, as determined by the board or its designee, of an applicable statute or benefit plan provision;

(F) confusing, incomplete or misleading;

(G) immaterial or irrelevant to the issues; or

(H) not sufficient to protect the interests of the plans and programs for which the board is trustee, or the interests, as a group, of

the members, retirees or participants covered by such plans and programs.

(2) The board's order shall contain or reference a written statement of the reason for each change made based on the foregoing policy reasons. Corrections of nonsubstantive errors do not need to be explained.

§121.23. Board Decisions and Orders.

All decisions and orders of the board in contested cases shall be in writing and shall be signed by the director. If the decision or order does not adopt, in whole or in part, the proposal for decision submitted by the administrative law judge, the decision or order shall include findings of fact and conclusions of law, separately stated. The date of rendition shall be stated in the decision or order. Parties shall be notified either personally or by mail of any decision or order. On written request, a copy of the decision or order shall be delivered or mailed to any party and to his or her attorney of record.

§121.24. Motions for Rehearing.

A motion for rehearing is a prerequisite to judicial review. A motion for rehearing must be filed with the director within 20 days after the date of rendition of a final decision or order. Replies to a motion for rehearing must be filed with the system within 20 days after the date of the motion for rehearing, and system action on the motion must be taken within 60 days after the date of rendition of the final decision or order. If system action is not taken within the 60-day period, the motion for rehearing is overruled by operation of law 60 days after the date of rendition of the final decision or order. The director may by written order entered prior to the expiration of the 60-day period extend the period of time for taking system action, except that an extension may not extend the period for system action beyond 90 days after the date of rendition of the final decision or order. In the event of an extension, the motion for rehearing is overruled by operation of law on the date fixed by the order or, in the absence of a fixed date, 90 days after the date of the final decision or order. The parties may by agreement, with the approval of the director, provide for a modification of the time provided in this section.

§121.25. When Decisions Become Final.

A decision of the board is final and nonappealable in the absence of a timely motion for rehearing. If a timely motion for rehearing is filed, a decision of the board is final and appealable on the date of rendition of an order overruling a motion for rehearing, or on the date the motion is overruled by operation of law.

§121.26. The Record.

(a) The record in a contested case shall include:

- (1) all applications, answers, and other pleadings, and intermediate rulings;
- (2) evidence received or considered;
- (3) a statement of matters officially noticed;
- (4) questions and offers of proof, objections, and rulings on them;
- (5) proposed findings and exceptions thereto;
- (6) any proposal for decision, as amended, exceptions to the proposal for decision and replies to the exceptions;
- (7) all non-privileged briefing submitted to the board following the submission of the proposal for decision to the board;
- (8) the board's final determination; and
- (9) any motion for rehearing, replies to the motion for rehearing and action by the system, if any.

(b) Findings of fact will be based exclusively on the evidence presented and matters officially noticed.

§121.27. Reaffirmation of Occupational Disability Benefit.

(a) Under §854.409 of the Act, the system may determine when to require an occupational disability retiree under §854.407 of the Act (a "disability retiree") younger than 60 years of age to undergo a medical examination and provide current medical and other relevant information reaffirming the status of the disability retiree as meeting the requirements for certification of occupational disability under §854.407(b) of the Act.

(b) The medical board or system may designate a physician, or type of specialized physician, required to perform the examination.

(c) Other relevant information that may be requested by the system from the disability retiree may include, but is not limited to, financial and employment information.

(d) Death of Disability Retiree Under Suspension.

(1) In the event that a disability retiree whose occupational disability annuity has been suspended pursuant to §854.409 of the Act, dies without having submitted to a medical examination and provided the requested information:

(A) if the disability retiree dies before the fourth anniversary of the date the system requested the medical examination or information, then the system shall unsuspend the annuity and pay the suspended payments of the occupational disability annuity in a lump sum to the disability retiree's beneficiary(ies); but

(B) if the disability retiree dies after the fourth anniversary of the date the system requested the medical examination or information, then the system shall unsuspend the annuity, but the suspended annuity payments shall be forfeited and shall not be paid to the disability retiree's beneficiary(ies).

(2) The system may request appropriate information from such beneficiary(ies) prior to unsuspending the annuity or paying the lump sum amounts. Whether any further annuity payments are due after the disability retiree's death will be determined by the terms of the occupational disability annuity option selected by the disability retiree at the time of retirement. If any further annuity payments are due, unsuspension of the occupational disability retirement annuity after the death of a disability retiree pursuant to this subsection shall occur the month after month in which the disability retiree dies.

(e) If the retiree desires to contest the system's action in suspending an occupational disability retirement annuity pursuant to §854.409(e), the retiree may obtain a hearing of the issue as a "contested case" pursuant to the Administrative Procedure Act (Chapter 2001, Government Code) and these rules, by filing with the director a written "request for hearing of suspension of benefit" within 30 days after the date of the director's letter of notification of suspension. If the request for a contested case hearing is timely filed, the contested case shall be docketed, heard, and disposed of in accordance with §§121.12 - 121.25 of this title. If no request for contested case hearing is filed within the 30 day period provided in this paragraph, the action of the system in suspending an occupational disability retirement annuity shall be final and unappealable.

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 May 22, 2020.

TRD-202002073



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 5. TEXAS BOARD OF PARDONS AND PAROLES

CHAPTER 150. MEMORANDUM OF UNDERSTANDING AND BOARD POLICY STATEMENTS

SUBCHAPTER A. PUBLISHED POLICIES OF THE BOARD

37 TAC §150.55

The Texas Board of Pardons and Paroles proposes amendments to 37 TAC Chapter 150, §150.55 concerning memorandum of understanding and board policy statements. The amendments are proposed for clarity, uniformity, and consistency and to correct grammatical errors.

David Gutiérrez, Chair of the Board, determined that for each year of the first five-year period the proposed amendments are in effect, no fiscal implications exist for state or local government as a result of enforcing or administering these sections.

Mr. Gutiérrez also has determined that during the first five years that the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments to these sections will be to bring the rule into compliance with current board practice.

Mr. Gutiérrez also has determined that during the first five years that the proposed amendments are in effect, the amendments will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; does not create a new regulation; does not expand, limit or repeal an existing regulation; will not increase or decrease the number of individuals subject to the rules' applicability; and will not positively or adversely affect this state's economy.

An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments will not have an economic effect on micro-businesses, small businesses, or rural communities as defined in Texas Government Code, Section 2006.001.

Comments should be directed to Bettie Wells, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, Texas 78701, or by e-mail to bettie.wells@tdcj.texas.gov. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amended rules are proposed under Subtitle B, Ethics, Chapter 572 and Sections 508.0441 and 508.035, Government

Code. Subtitle B, Ethics, Chapter 572, is the ethics policy of this state for state officers or state employees. Section 508.0441 requires the board to implement a policy which clearly defines under which circumstances a board member or parole commissioner should disqualify himself or herself on parole or mandatory supervision decisions. Section 508.035, Government Code requires the Presiding Officer to establish policies and procedures to further the efficient administration of the business of the Board.

No other statutes, articles, or codes are affected by these amendments.

§150.55 Conflict of Interest Policy

(a) Section 1--Policy.

(1) It is the policy of the Board that no Board Member or Parole Commissioner shall have any interest, financial or otherwise, direct or indirect; or engage in any business transaction or professional activity or incur any obligations of any nature which is in substantial conflict with the proper discharge of his duties in the public interest. In implementing this policy, [there] they are provided the following standards of conduct, disclosure, and disqualification to be observed in the performance of their official duties.

(2) A Board Member or Parole Commissioner shall respect and comply with the law and not allow his family, social, or other relationships to influence his conduct, decisions, or judgment.

(b) Section 2--Disclosure.

(1) A Board Member or Parole Commissioner shall submit generally and on a case by case basis written notice to the Presiding Officer (Chair) of any substantial interest held by the Board Member or Parole Commissioner in a business entity doing business with the Texas Board of Criminal Justice, [of the] TDCJ, [or its component divisions] and the Board.

(2) A Board Member or Parole Commissioner having a personal or private interest in any measure, proposal, or decision pending before the Board (including parole and release decisions) shall immediately notify the Chair in writing of such interest. The Chair shall publicly disclose the Board Member's or Parole Commissioner's interest to the Board in a meeting of the Board. The Board Member or Parole Commissioner shall not vote or otherwise participate in the decision. The disclosure shall be entered into the minutes or official record of the meeting.

(3) A Board Member or Parole Commissioner shall consider the possibility that he is involved in a conflict of interest before making any decision or vote.

(4) If a Board Member or Parole Commissioner is uncertain whether any part of the conflict of interest policy applies to him in a specific matter, he shall request the General Counsel of the Board to determine whether a disqualifying conflict of interest exists.

(c) Section 3--Standards of Conduct.

(1) No Board Member or Parole Commissioner shall accept or solicit any gift, favor, or service that might reasonably tend to influence him in the discharge of his official duties or that he knows or should know is being offered with the intent to influence his official conduct.

(2) No Board Member or Parole Commissioner shall accept employment or engage in any business or professional activity which he might reasonably expect would require or induce him to disclose confidential information acquired by reason of his official duties.

(3) No Board Member or Parole Commissioner shall accept other employment or compensation which would reasonably be expected to impair his independence of judgment in the performance of his official duties.

(4) No Board Member or Parole Commissioner shall make personal investments that could reasonably be expected to create a substantial conflict between his private interest and the public interest.

(5) No Board Member or Parole Commissioner shall intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised his official powers or performed his official duties in favor of another.

(d) Section 4--Disqualification.

(1) Disqualification. A Board Member shall recuse himself or herself from voting on all clemency matters; and a Board Member or Parole Commissioner shall recuse themselves from voting on all release on parole or mandatory supervision decisions, and decisions to continue, modify, or revoke parole or mandatory supervision when:

(A) they know that individually or as a fiduciary, they have an interest in the subject matter before them; or

(B) the Board Member or Parole Commissioner or his/her spouse is related by affinity or consanguinity within the third degree to a person who is the subject of the decision before them.

(2) Recusal. A Board Member shall disqualify himself or herself from voting on all clemency matters; and a Board Member or Parole Commissioner shall disqualify themselves from voting on all release on parole or mandatory supervision decisions, and decisions to continue, modify, or revoke parole or mandatory supervision when:

(A) their impartiality might reasonably be questioned;

(B) they have a personal bias or prejudice concerning the subject matter or person in the decision before them; or

(C) the Board Member or Parole Commissioner was a complainant, a material witness, or has served as counsel for the state or the defense in the prosecution of the subject of the parole decision or revocation decision before them.

(e) Section 5--Documentation.

(1) A Board Member or Parole Commissioner shall notify the Chair and General Counsel in writing when they disqualify or recuse themselves from voting;

(2) A Board Member or Parole Commissioner shall provide the specific reason for disqualification or recusal;

(3) A Board Member or Parole Commissioner shall document the recusal or disqualification on the minute sheet of the offender's file; and

(4) A Board Member or Parole Commissioner shall place the written notification in the offender's file.

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 May 22, 2020.

TRD-202002071

Bettie Wells

General Counsel

Texas Board of Pardons and Paroles

Earliest possible date of adoption: July 5, 2020

For further information, please call: (512) 463-8216



WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER O. STATE AND LOCAL SALES AND USE TAXES

34 TAC §3.366

The Comptroller of Public Accounts withdraws the proposed repeal of §3.366, which appeared in the May 15, 2020, issue of the *Texas Register* (45 TexReg 3257).

Filed with the Office of the Secretary of State on May 21, 2020.

TRD-202002006

William Hamner

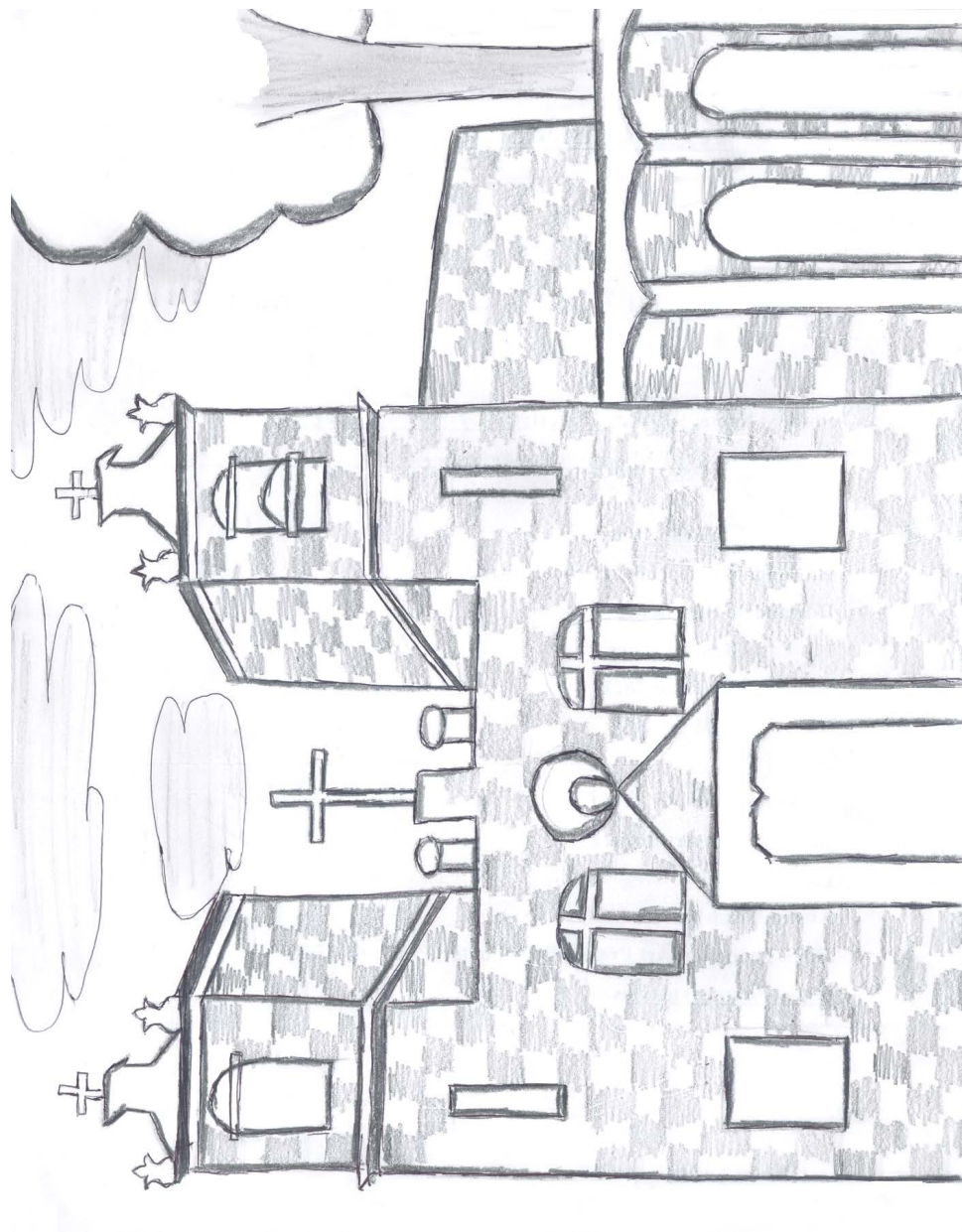
Special Counsel for Tax Administration

Comptroller of Public Accounts

Effective date: May 21, 2020

For further information, please call: (512) 475-0387





ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 8. TEXAS JUDICIAL COUNCIL

CHAPTER 176. METHODS FOR THE IMPROVEMENT OF THE ADMINISTRATION OF JUSTICE

1 TAC §176.1

The Texas Judicial Council (Council) adopts new Chapter 176, regarding Methods for the Improvement of the Administration of Justice, and new §176.1, concerning an admonishment by a court of certain persons ineligible to possess a firearm or ammunition. The purpose of the new rule is to improve community safety in Texas, support firearm safety in Texas, and implement recommendations made by Governor Greg Abbott in his *Texas Safety Action Report* (September 12, 2019) to combat gun violence in Texas. The new chapter and new rule are adopted with changes to the proposed text published in the December 13, 2019, issue of the *Texas Register* (44 TexReg 7575). The rules will be republished.

The public comment period began December 13, 2019, and ended January 31, 2020. The Council received six comments on the proposed new chapter and new rule. Five were from judges and one was from an unidentified individual. Two comments supported the admonishment requirement, two comments posed questions to the Council regarding the admonishment and the consequences for violating the underlying laws that require an admonishment, and two comments provided observations on the admonishment requirement and asked whether it was redundant. One of the questions concerned the requirement that the admonishment be "served" on a person who does not appear in person. No changes to the chapter or rule were made as a result of the comments; however, the provision that was the basis for the question about the proposed requirement that the admonishment be "served" on a person who does not appear in person has been changed by the Council as described below.

The Council made two changes to the proposed rule as published in the December 13, 2019, issue of the *Texas Register* by combining §176.1(b)(2)(A) and §176.1(b)(2)(B) into one subsection, §176.1(b)(2), which now requires the written admonishment be provided "by a method reasonably likely to provide notice to the person" rather than ensuring the written admonishment be "served on the person."

Statutory Authority. New Chapter 176 and new rule §176.1 are adopted under the following sections of the Government Code: §71.019, which authorizes the Council to adopt rules expedient for the administration of its functions; §71.033, which directs the Council to design methods for simplifying judicial procedure, expediting the transaction of judicial business, and correcting faults

in or improving the administration of justice; and §71.031, which directs the Council to study the organization, rules, procedures and practice, work accomplished, results, and uniformity of the discretionary powers of the state courts and methods for their improvement.

No other statutes, articles, or codes are affected by the adopted rule.

§176.1. Admonishment by Court of Certain Persons Ineligible to Possess Firearm or Ammunition.

(a) In this section, "Firearm" has the meaning assigned that term by Penal Code §46.01(3).

(b) When a person, by entry of an order or judgment, becomes by state law ineligible to possess a firearm or ammunition, the trial court must inform that person of the person's ineligibility to possess a firearm or ammunition.

(1) If the person is appearing before the court when the person is or becomes ineligible, the court must:

(A) orally admonish the person, in a manner the person can understand, that the person is ineligible to possess a firearm or ammunition; and

(B) provide the person with a written admonishment informing that person of the person's ineligibility to possess a firearm or ammunition.

(2) If the person is not appearing before the court when the person is or becomes ineligible, the court must provide the person, by a method reasonably likely to provide notice to the person, with a written admonishment informing that person of the person's ineligibility to possess a firearm or ammunition.

(c) The admonishment must clearly inform a person that possession of a firearm or ammunition could lead to additional charges.

(d) The Office of Court Administration shall publish on its website model admonishment language and a written model admonishment form approved by the Texas Judicial Council for use by a court and for distribution by a court to a person informing that person of the person's ineligibility to possess a firearm or ammunition.

(e) The Office of Court Administration must coordinate with the Court of Criminal Appeals and the judicial training entities to ensure that judges are provided adequate training regarding the admonishments required by this rule and by law.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 22, 2020.

TRD-202002054



TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 7. HOMELESSNESS PROGRAMS

SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

10 TAC §§7.1 - 7.11

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 7, Homelessness Programs, Subchapter A, General Policies and Procedures, §§7.1 - 7.11, without changes to the proposed text as published in the March 13, 2020, issue of the *Texas Register* (45 TexReg 1757). The rules will not be republished. The purpose of the repeal is to eliminate outdated rules while adopting new updated rules under separate action.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the adopted repeal would be in effect:

1. The repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to an existing activity, the overarching policies and procedures of the Emergency Solutions Grants, Homeless Housing and Services Program, and Ending Homelessness Fund programs (homeless programs).
2. The repeal does not require a change in work that would require the creation of new employee positions, nor is the adopted repeal significant enough to reduce workload to a degree that any existing employee positions are eliminated.
3. The repeal does not require additional future legislative appropriations.
4. The repeal does not result in an increase in fees paid to the Department or in a decrease in fees paid to the Department.
5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.
6. The action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, the administration of homeless programs.
7. The repeal will not increase or decrease the number of individuals subject to the rule's applicability.
8. The repeal will not negatively or positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated this repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The repeal does not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be more clarity on the administration of homeless programs. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between March 13, 2020, and April 13, 2020. Comments regarding the proposed repeal were accepted in writing and by e-mail. No comments were received.

The Board adopted the final order adopting the repeal on May 21, 2020.

STATUTORY AUTHORITY. The repeal is adopted pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the repealed sections affect no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 22, 2020.

TRD-202002079

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Effective date: June 11, 2020

Proposal publication date: March 13, 2020

For further information, please call: (512) 475-1762



10 TAC §§7.1 - 7.12

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 7, Homelessness Programs, Subchapter A, General Policies and Procedures §§7.1 - 7.12, without changes to the proposed text as published in the March 13, 2020, issue of the *Texas Register* (45 TexReg 1758). The rules will not be republished. The purpose of the new section is to update the rule to remove outdated definitions, clarify existing definitions, and add new definitions; delineate the Contract amendment approval process; and clarify reporting requirements.

Tex. Gov't Code §2001.0045(b) does not apply to the rule for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the new rule would be in effect:

1. The rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to an existing activity, the overarching policies and procedures of the Emergency Solutions Grants, Homeless Housing and Services Program, and Ending Homelessness Fund programs (homeless programs).
2. The new rule does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.
3. The rule does not require additional future legislative appropriations.
4. The rule will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.
6. The rule will not expand, limit, or repeal an existing regulation.
7. The rule will not increase or decrease the number of individuals subject to the rule's applicability.
8. The rule will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting this rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, Ch. 2306.

1. The Department has evaluated this rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.
2. There are unlikely to be any small or micro-businesses subject to the adopted rules because these funds are limited to private nonprofit organizations and units of local governments per 24 CFR §576.202 for Emergency Solutions Grants funds; limited to

counties and municipalities in Tex. Transp. Code §502.415 for the Ending Homeless Fund; and limited to municipalities or designated nonprofits per 10 TAC §7.22 for the Homeless Housing and Services Program.

3. The Department has determined that based on the considerations in item two above, there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The rule does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the new rule has no economic effect on local employment because this rule will channel funds, which may be limited, only to nonprofits, private nonprofits, local governments, and counties and municipalities; it is not anticipated that the amount of funds would be enough to support additional employment opportunities, but would add to the services provided. Alternatively, the rule would also not cause any negative impact on employment. Therefore no local employment impact statement is required to be prepared for the rule.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that no impact is expected, there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be a rule that has greater clarity into the processes and definitions of the administration of homeless programs. There will not be any economic cost to any individuals required to comply with the new section because the processes described by the rule have already been in place through the rule found at this section being repealed.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments because the costs for administering the program included in eligible activities.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between March 13, 2020, and April 13, 2020. Comments regarding the proposed new rule were accepted in writing and by e-mail. No comments were received.

The Board adopted the final order adopting the new rule on May 21, 2020.

STATUTORY AUTHORITY. The new rules are adopted pursuant to Tex. Gov't Code, §2306.053, which authorizes the Department to adopt rules.

Except as described herein the new sections affect no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

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For further information, please call: (512) 475-1762



SUBCHAPTER B. HOMELESS HOUSING AND SERVICES PROGRAM (HHSP)

10 TAC §§7.21 - 7.29

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 7, Homelessness Programs, Subchapter B, Homeless Housing and Services Program, without changes to the proposed text as published in the March 13, 2020, issue of the *Texas Register* (45 TexReg 1766). The rules will not be republished. The purpose of the repeal is to eliminate outdated rules while adopting new updated rules under separate action.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal would be in effect:

1. The repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to an existing activity, the administration of the Homeless Housing and Services Program.
2. The repeal does not require a change in work that would require the creation of new employee positions, nor is the repeal significant enough to reduce work load to a degree that any existing employee positions are eliminated.
3. The repeal does not require additional future legislative appropriations.
4. The repeal does not result in an increase in fees paid to the Department or in a decrease in fees paid to the Department.
5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.
6. The action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, the administration of homeless programs.
7. The repeal will not increase or decrease the number of individuals subject to the rule's applicability.
8. The repeal will not negatively or positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REG-

ULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated this repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The repeal does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be more clarity on the administration of the Homeless Housing and Services Program. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between March 13, 2020 and April 13, 2020. Comments regarding the proposed repeal were accepted in writing and by e-mail. No comments were received.

The Board adopted the final order adopting the repeal on May 21, 2020.

STATUTORY AUTHORITY. The repeal is adopted pursuant to Tex. Gov't Code, §2306.053, which authorizes the Department to adopt rules. Except as described herein the repealed sections affect no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

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For further information, please call: (512) 475-1762



10 TAC §§7.21 - 7.29

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 7, Subchapter B,

Homeless Housing and Services Program, without changes to the proposed text as published in the March 13, 2020, issue of the *Texas Register* (45 TexReg 1767). The rules will not be republished. The purpose of the new section is to update the rules to clarify eligible activities and funding allocation to be consistent with Rider 16, Funding to Address Youth Homelessness of the Appropriations Act (86th Legislative Session); create a mechanism to redistribute funding that is expected to be unspent by Homeless Housing and Services Program Subrecipients; clarify the program income process; and update the Program Participant eligibility and file requirements.

Tex. Gov't Code §2001.0045(b) does not apply to the rule for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the new rule would be in effect:

1. The rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to an existing activity, administration of the Homeless Housing and Services Program.
2. The new rule does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.
3. The rule does not require additional future legislative appropriations.
4. The rule will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.
6. The rule will not expand, limit, or repeal an existing regulation.
7. The rule will not increase or decrease the number of individuals subject to the rule's applicability.
8. The rule will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting this rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, Ch. 2306.

1. The Department has evaluated this rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.
2. There are approximately no small or micro-businesses subject to the rule because these funds are limited to municipalities or designated nonprofits per 10 TAC §7.22 for the Homeless Housing and Services Program.

3. The Department has determined that based on the considerations in item two above, there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The rule does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the rule as to its possible effects on local economies and has determined that for the first five years the rule will be in effect the new rule has no economic effect on local employment because this rule will channel funds, which may be limited, only to municipalities and nonprofits; it is not anticipated that the amount of funds would be enough to support additional employment opportunities, but would add to the services provided. Alternatively, the rule would also not cause any negative impact on employment. Therefore no local employment impact statement is required to be prepared for the rule.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that no impact is expected, there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section will be a rule that has greater clarity into the processes and definitions of the administration of homeless programs. There will not be any economic cost to any individuals required to comply with the new section because the processes described by the rule have already been in place through the rule found at this section being repealed.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new section is in effect, enforcing or administering the new section does not have any foreseeable implications related to costs or revenues of the state or local governments because the costs for administering the program are included in eligible activities.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between March 13, 2020 and April 13, 2020. Comments regarding the proposed new rule were accepted in writing and by e-mail. No comments were received.

The Board adopted the final order adopting the new rule on May 21, 2020.

STATUTORY AUTHORITY. The new rules are adopted pursuant to Tex. Gov't Code, §2306.053, which authorizes the Department to adopt rules. Except as described herein the new sections affect no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Bobby Wilkinson
Executive Director
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SUBCHAPTER C. EMERGENCY SOLUTIONS GRANTS (ESG)

10 TAC §§7.31, 7.34, 7.36, 7.41 - 7.44

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC §7.31, Purpose; 10 TAC §7.34, Local Competition for Funds; 10 TAC §7.36, General Threshold Criteria under a Department NOFA; 10 TAC §7.41, Contract Term, Expenditure Benchmarks, and Return of Funds; 10 TAC §7.42, General Administrative Requirements; 10 TAC §7.43, Program Income; and 10 TAC §7.44, Program Participant Eligibility and Program Participant Files, without changes to the proposed text as published in the March 13, 2020, issue of the *Texas Register* (45 TexReg 1772). The rules will not be republished. The purpose of the repeal is to eliminate outdated rules while adopting new updated rules under separate action.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal would be in effect:

1. The repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to an existing activity, the administration of the Emergency Solutions Grant Program.
2. The repeal does not require a change in work that would require the creation of new employee positions, nor is the repeal significant enough to reduce work load to a degree that any existing employee positions are eliminated.
3. The repeal does not require additional future legislative appropriations.
4. The repeal does not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.
6. The action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, the administration of homeless programs.
7. The repeal will not increase or decrease the number of individuals subject to the rule's applicability.
8. The repeal will not negatively or positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated this repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The repeal does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be more clarity on the administration of the Homeless Housing and Services Program. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between March 13, 2020 and April 13, 2020. Comments regarding the proposed repeal were accepted in writing and by e-mail. No comments were received.

The Board adopted the final order adopting the repeal on May 21, 2020.

STATUTORY AUTHORITY. The repeal is adopted pursuant to Tex. Gov't Code, §2306.053, which authorizes the Department to adopt rules. Except as described herein the repealed sections affect no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

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For further information, please call: (512) 475-1762



10 TAC §§7.31, 7.34, 7.36, 7.41 - 7.44

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC §7.31, Purpose; 10 TAC §7.34, Local Competition for Funds; 10 TAC §7.36, General Threshold Criteria under a Department NOFA; 10 TAC §7.41, Contract Term, Expenditure Benchmark, Return of Funds, and Perfor-

mance Targets; 10 TAC §7.42, General Administrative Requirements; 10 TAC §7.43, Program Income; and 10 TAC §7.44, Program Participant Eligibility and Program Participant Files, without changes to the proposed text as published in the March 13, 2020, issue of the *Texas Register* (45 TexReg 1773). The rules will not be republished. The purpose of the new sections is to update the rules to use the most updated sources of data when calculating the Allocation Formula; ensuring an appeal process is available for Applicants in a Local Competition; update threshold requirements for Applications; clarify the Contract extension process; clarify the voluntary return of funds; clarify the redistribution of returned funds; clarify that deposits should be returned to the Program Participant; rearrange and update reporting and administration requirements; and provide more detail for Program Participant eligibility and files.

Tex. Gov't Code §2001.0045(b) does not apply to the rule for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the new rule would be in effect:

1. The rules do not create or eliminate a government program, but relates to the readoption of these rules which make changes to an existing activity, administration of the Emergency Solutions Grants Program.
2. The new rules do not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.
3. The rules do not require additional future legislative appropriations.
4. The rules will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The rules are not creating a new regulation, except that they are replacing a rule being repealed simultaneously to provide for revisions.
6. The rules will not expand, limit, or repeal an existing regulation.
7. The rules will not increase or decrease the number of individuals subject to the rule's applicability.
8. The rules will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting this rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, Ch. 2306.

1. The Department has evaluated this rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. There are approximately no small or micro-businesses subject to the rule because these funds are limited to private nonprofits and local governments 24 CFR §576.202.

3. The Department has determined that based on the considerations in item two above, there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The rule does not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the rules as to their possible effects on local economies and has determined that for the first five years the rules will be in effect the new rules have no economic effect on local employment because this rule will channel funds, which may be limited, only to municipalities and nonprofits; it is not anticipated that the amount of funds would be enough to support additional employment opportunities, but would add to the services provided. Alternatively, the rules would also not cause any negative impact on employment. Therefore no local employment impact statement is required to be prepared for the rule.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that no impact is expected, there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new sections will be rules that have greater clarity into the processes and definitions of the administration of homeless programs. There will not be any economic cost to any individuals required to comply with the new sections because the processes described by the rules have already been in place through the rule found at this section being repealed.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new sections are in effect, enforcing or administering the new sections does not have any foreseeable implications related to costs or revenues of the state or local governments because the costs for administering the program is included in eligible activities.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between March 13, 2020 and April 13, 2020. Comments regarding the proposed new rule were accepted in writing and by e-mail. No comments were received.

The Board adopted the final order adopting the new rule on May 21, 2020.

STATUTORY AUTHORITY. The new rules are adopted pursuant to Tex. Gov't Code, §2306.053, which authorizes the Department to adopt rules. Except as described herein the new sections affect no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

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For further information, please call: (512) 475-1762



SUBCHAPTER D. ENDING HOMELESSNESS FUND

10 TAC §7.62, §7.65

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of 10 TAC Chapter 7 Homelessness Programs, Subchapter D, Ending Homelessness Fund, 10 TAC §7.62, EH Fund Subrecipient Application and Selection, and §7.65, Contract Term of Limitations, without changes to the proposed text as published in the March 13, 2020, issue of the *Texas Register* (45 TexReg 1778). The rules will not be republished. The purpose of the repeal is to eliminate outdated rules while adopting new updated rules under separate action.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the repeal would be in effect:

1. The repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to an existing activity, the administration of the Ending Homelessness Fund.
2. The repeal does not require a change in work that would require the creation of new employee positions, nor is the repeal significant enough to reduce work load to a degree that any existing employee positions are eliminated.
3. The repeal does not require additional future legislative appropriations.
4. The repeal does not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.
6. The action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, the administration of homeless programs.
7. The repeal will not increase or decrease the number of individuals subject to the rule's applicability.
8. The repeal will not negatively or positively affect this state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated this repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043.

The repeal does not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5).

Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repealed section would be more clarity on the administration of the Ending Homelessness Fund. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4).

Mr. Wilkinson also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between March 13, 2020 and April 13, 2020. Comments regarding the proposed repeal were accepted in writing and by e-mail. No comments were received.

The Board adopted the final order adopting the repeal on May 21, 2020.

STATUTORY AUTHORITY. The repeal is adopted pursuant to Tex. Gov't Code, §2306.053, which authorizes the Department to adopt rules. Except as described herein the repealed sections affect no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

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10 TAC §7.62, §7.65

The Texas Department of Housing and Community Affairs (the Department) adopts new 10 TAC Chapter 7 Homelessness Programs, Subchapter D, Ending Homelessness Fund, 10 TAC §7.62, EH Fund Subrecipient Application and Selection, and §7.65, Contract Term and Limitations, without changes to the

proposed text as published in the March 13, 2020, issue of the *Texas Register* (45 TexReg 1778). The rules will not be republished. The purpose of the new sections is to update the rule to reflect new definitions, and to clarify the Contract Term and limitations.

Tex. Gov't Code §2001.0045(b) does not apply to the rules for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the new rule would be in effect:

1. The rules do not create or eliminate a government program, but relates to the readoption of these rules which makes changes to an existing activity, administration of the Ending Homelessness Fund.
2. The new rules do not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.
3. The rules do not require additional future legislative appropriations.
4. The rules will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.
5. The rules are not creating a new regulation, except that they are replacing a rule being repealed simultaneously to provide for revisions.
6. The rules will not expand, limit, or repeal an existing regulation.
7. The rules will not increase or decrease the number of individuals subject to the rule's applicability.
8. The rules will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting this rules, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code, Ch. 2306.

1. The Department has evaluated these rules and determined that none of the adverse affect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.
2. There are approximately no small or micro-businesses subject to the rule because these funds are limited to counties and municipalities in Tex. Transportation Code §502.415 for the Ending Homeless Fund.
3. The Department has determined that based on the considerations in item two above, there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The rules do not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the rules as to their possible effects on local economies and has determined that for the first five years the rules will be in effect the new rules have no economic effect on local employment because these rules will channel funds, which may be limited, only to municipalities and non-profits; it is not anticipated that the amount of funds would be enough to support additional employment opportunities, but would add to the services provided. Alternatively, the rules would also not cause any negative impact on employment. Therefore no local employment impact statement is required to be prepared for the rules.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the rule on employment in each geographic region affected by this rule..." Considering that no impact is expected, there are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the new sections will be a rule that has greater clarity into the processes and definitions of the administration of homeless programs. There will not be any economic cost to any individuals required to comply with the new sections because the processes described by the rule have already been in place through the rule found at this section being repealed.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new sections are in effect, enforcing or administering the new sections does not have any foreseeable implications related to costs or revenues of the state or local governments because the costs for administering the program in included in eligible activities.

SUMMARY OF PUBLIC COMMENTS AND STAFF REASONED RESPONSE. The Department accepted public comment between March 13, 2020 and April 13, 2020. Comments regarding the proposed new rule sections were accepted in writing and by e-mail. No comments were received.

The Board adopted the final order adopting the new rule sections on May 21, 2020.

STATUTORY AUTHORITY. The new rules are adopted pursuant to Tex. Gov't Code, §2306.053, which authorizes the Department to adopt rules. Except as described herein the new sections affect no other code, article, or statute.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 22, 2020.

TRD-202002088

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Effective date: June 11, 2020

Proposal publication date: March 13, 2020

For further information, please call: (512) 475-1762



TITLE 16. ECONOMIC REGULATION

PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 31. ADMINISTRATION

16 TAC §31.1

The Texas Alcoholic Beverage Commission adopts amended 16 TAC §31.1, Separation of Duties Between Commission and Executive Director, with changes to the proposed text as published in the April 10, 2020, issue of the *Texas Register* (45 TexReg 2396). The rule will be republished.

In its 2018-2019 review of the Alcoholic Beverage Commission, the Sunset Advisory Commission adopted management action Recommendation 1.7, which directed the agency to update its rule describing the separation of duties between the commission and executive director. Although Recommendation 1.7 was to update the rule by December 31, 2020, to specify the commission's role in protests and enforcement actions, the Sunset Advisory Commission also adopted Recommendation 5.7 to require the commission to take final enforcement and disciplinary action on all contested cases. Recommendation 5.7 is reflected in section 13 of House Bill 1545, 86th Texas Legislature (Regular Session, 2019), which added Alcoholic Beverage Code §5.363, effective September 1, 2019. Alcoholic Beverage Code §5.363 provides that the commission shall make the final decision in any disciplinary action in a contested case that has had an administrative hearing. It further requires the commission to adopt by rule a specific threshold for the types of disciplinary and enforcement actions that are delegated to the administrator.

The amendments to §31.1 specify that the commission retains the duty to render the final decision in a disciplinary action that has had an administrative hearing. The amendments also clarify that the executive director has the authority to render, or delegate to agency staff, only those agency decisions or orders in matters over which the executive director has final decision-making authority.

The rule is further amended to provide as a threshold that the commission delegates to the administrator all disciplinary and enforcement actions with a final penalty of less than ten million dollars, unless the chair or one or more commission members requests a commission vote on an matter recommended by the executive director for commission consideration. Conversely, the commission retains the authority to make final decisions on disciplinary and enforcement actions carrying a penalty of ten million dollars or more, and on any other matter recommended by the executive director upon request of the chair of the commission or at least two commission members. The executive director may recommend any matter to the commission for its consideration and action, regardless of the final penalty amount. This will enable the commission to choose to act upon matters that have policy implications, are novel or may set new settlement precedent, are controversial, or in other circumstances under which the commission wishes to exercise its decision-making authority. Because the commission must make the final decision on disciplinary actions that have had an administrative hearing, these thresholds apply to disciplinary matters that have not had an administrative hearing but have been resolved by settlement agreement instead.

The rule is also amended to provide that the executive director has the power to hire and fire the general counsel, and that the

general counsel will report directly to the executive director. This change to internal agency protocol is reflective of the executive director's responsibility for day-to-day management of agency employees and departments. The rule is amended to specify that the general counsel advises the commissioners as their legal counsel, with all duties to the client, legal privileges, and ethical requirements generally applicable to the attorney-client relationship. This rule language is intended, in part, to confirm that the general counsel's legal advice can be direct or indirect and to individual commissioners, to any combination of them, or to the entire commission as a body, subject to the constraints of the Texas Open Meetings Act (Tex. Gov't Code Ch. 551).

No comments were received.

The rule amendments are authorized by Alcoholic Beverage Code §5.12, which requires the Texas Alcoholic Beverage Commission to adopt rules to clearly separate the policy-making authority of the commissioners from the management responsibilities of the executive director; by §5.34(b) of the Code, which requires the commission to develop and implement policies that clearly define the respective responsibilities of the commission and staff; and by Alcoholic Beverage Code §5.363, which requires the commission to make the final decision in any disciplinary action in a contested case that has had an administrative hearing, and requires the commission to adopt by rule a specific threshold for the types of disciplinary and enforcement actions that are delegated to the administrator.

§31.1. Separation of Duties Between Commission and Executive Director.

(a) This rule implements §5.12 of the Alcoholic Beverage Code (Code), which requires the Texas Alcoholic Beverage Commission (commission) to adopt rules to clearly separate the policy-making authority of the commissioners from the management responsibilities of the executive director, and §5.34(b) of the Code, which requires the commission to develop and implement policies that clearly define the respective responsibilities of the commission and staff.

(b) The commission retains the duty and authority to:

(1) Establish agency policies and goals to carry out the duties and authority granted to the commission under the Code;

(2) Provide leadership and direction to ensure agency laws, rules, policies and goals are implemented in a responsible, effective and cost efficient manner;

(3) Ensure accountability and transparency within the agency and to the Governor, the Legislature, the public, and persons regulated;

(4) Appoint and remove the executive director;

(5) Adopt agency rules to implement statutory duties and agency policies;

(6) Employ or appoint and terminate or remove an internal auditor, adopt an audit plan, approve audit findings and ensure agency compliance with audit requirements;

(7) Exercise any authority and carry out any duty of the commission not delegated to the executive director;

(8) Render the final decision in any contested disciplinary action that has had an administrative hearing;

(9) Approve or decline the settlement of any disciplinary action that carries a civil penalty of ten million dollars (\$10,000,000) or more; and

(10) Approve or decline the settlement of any disciplinary action that the executive director recommends and that is accepted for consideration by:

- (A) the presiding officer of the commission; or
- (B) at least two commission members.

(c) The commission delegates the following duties and authority to the executive director (under Alcoholic Beverage Code §5.11(b), also referred to as the administrator in the Alcoholic Beverage Code and the commission's rules):

(1) Plan and implement an effective and efficient operational and organizational structure;

(2) Act as the agency liaison and resource to the executive and legislative branch;

(3) Prepare and submit the agency budget and appropriations requests;

(4) Employ and terminate the general counsel, who shall report directly to the executive director;

(5) Employ or appoint an executive management team with the skills, knowledge and commitment necessary to achieve the goals and implement the policies adopted by the commission;

(6) Assign and delegate to each member of the executive management team and the general counsel the responsibility and authority necessary to effectively administer all agency operations, duties and functions, implement policy, and manage staff and resources, including the authority to further delegate and assign the essential duties and responsibilities of the agency to ensure the highest and best use of agency staff and resources;

(7) Develop, monitor and report measures or expectations for the administrative, regulatory and enforcement functions of the agency to ensure that the agency goals are accomplished and policies followed;

(8) Develop and implement comprehensive and agency-wide internal policies and procedures necessary to carry out each essential function, duty, policy or goal of the agency;

(9) Ensure that all agency staff has access to, knowledge of and responsibility for consistently following policies adopted by the commission and agency-wide internal policies and procedures;

(10) Administer the oath of office or commission to agency staff and agents;

(11) Render, or delegate to agency staff, the agency decision or order in any matter over which the agency has final decision-making authority unless otherwise retained by the commission in subsection (b) of this section; and

(12) Execute contracts, specifically including but not limited to approving and signing contracts for the purchase of goods or services that have a value exceeding \$1 million. Notwithstanding paragraph (5) of this subsection, the authority to approve and sign contracts for the purchase of goods or services that have a value exceeding \$1 million shall not be delegated by the executive director to staff.

(13) Nothing in this section shall be construed to limit the general counsel's duty to advise the commissioners directly as their legal counsel, with all duties to the client, legal privileges, and ethical requirements generally applicable to the attorney-client relationship.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 20, 2020.

TRD-202001998

Shana Horton

Rules Attorney

Texas Alcoholic Beverage Commission

Effective date: June 9, 2020

Proposal publication date: April 10, 2020

For further information, please call: (512) 206-3451



CHAPTER 41. AUDITING

SUBCHAPTER C. RECORDS AND REPORTS BY LICENSEES AND PERMITTEES

16 TAC §41.54

The Texas Alcoholic Beverage Commission adopts amended 16 TAC §41.54, relating to Destructions, with nonsubstantive changes (addition of numbering under subsection l) to the text as published in the April 10, 2020, issue of the *Texas Register* (45 TexReg 2398). The rule will be republished.

Senate Bill 1210, 86th Texas Legislature (Regular Session, 2019) added Alcoholic Beverage Code §109.09, effective September 1, 2019. Section 109.09 directs the commission to provide rule requirements governing the removal, destruction, and disposal by a retailer of uninsured ale, malt liquor, or beer that is determined to be unfit for public consumption as a result of a natural disaster. The rules must include provisions requiring verification by a retailer from whose inventory a beverage is removed that the beverage has been removed, destroyed, and disposed of in the manner required by the commission.

The amendments to rule §41.54 establish requirements for destruction of damaged, uninsured inventory following an event designated as a disaster by the state, as well as verification by affidavit and related recordkeeping requirements, and make conforming changes.

No comments were received.

The rule amendment is authorized by Alcoholic Beverage Code §109.09, which directs the commission to provide rule requirements governing the removal, destruction, and disposal by a retailer of uninsured ale, malt liquor, or beer that is determined to be unfit for public consumption as a result of a natural disaster, including provisions requiring verification by a retailer from whose inventory a beverage is removed that the beverage has been removed, destroyed, and disposed of in the manner required by the commission.

§41.54. Destructions.

(a) Each permittee subject to the provisions of Alcoholic Beverage Code §§201.03, 201.04, or 201.42, and each licensee subject to the provisions of Alcoholic Beverage Code §203.01, shall be entitled to receive a tax exemption or a tax credit for alcoholic beverages destroyed in accordance with subsections (c) - (g) of this section.

(b) Each permittee or licensee eligible to destroy alcoholic beverages following a natural disaster pursuant to Alcoholic Beverage Code §109.09, shall be entitled to receive a tax exemption or a tax credit for alcoholic beverages destroyed in accordance with subsections (i) - (l) of this section.

(c) To be claimed as a destruction for purposes of receiving a tax exemption or a tax credit, the alcoholic beverages must be destroyed

in such a manner that the product is rendered unrecoverable or unfit for human consumption.

(d) Prior to the destruction of alcoholic beverages for which a tax exemption or tax credit is claimed, the permittee or licensee must comply with the requirements of this subsection.

(1) At least three full working days prior to the destruction, the permittee or licensee must notify the nearest authorized representative of the commission of the intent to destroy the alcoholic beverages. This notification must be made in writing on an Application for Destruction of Alcoholic Beverages and contain a complete listing by brand, quantity, container size, and package size of the alcoholic beverages to be destroyed. This requirement for a complete listing may be satisfied by attaching a computerized listing that provides all the required documentation to the Application for Destruction of Alcoholic Beverages.

(2) The permittee or licensee must receive written approval from the nearest authorized representative of the commission to conduct the destruction.

(e) To support a claim for a tax exemption or tax credit for a destruction, the permittee or licensee must retain the documentation referenced in this subsection and make it available to an authorized representative of the commission upon request.

(1) A signed copy of the Application for Destruction of Alcoholic Beverages indicating that it was approved shall be provided to the permittee or licensee by the nearest authorized representative of the commission when the destruction is approved.

(2) If the alcoholic beverages were destroyed at a location which charges a fee for this service, the permittee or licensee shall retain a copy of the receipt for payment of this fee.

(3) An employee of the permittee or licensee who witnessed the destruction of the alcoholic beverages must execute an affidavit of destruction. The affidavit shall include the date of destruction, the destruction location, and a description of how the alcoholic beverages were destroyed. A separate affidavit must be prepared for distilled spirits and wine, for ale and malt liquor and for beer.

(f) The approved Application for Destruction of Alcoholic Beverages (including any attachments) shall be submitted with the monthly excise tax report filed with the commission upon which the exemption for the destruction is claimed. If the permittee or licensee is unable to claim the destruction as an exemption on a tax report, it may submit a letter to the Commission requesting issuance of an authorized tax credit.

(g) A copy of the approved Application for Destruction of Alcoholic Beverages (including any attachments) should be retained in the permittee's or licensee's files and made available upon request for inspection by an authorized representative of the commission.

(h) The commission may require that the alcoholic beverages designated for destruction be physically inspected and inventoried by a representative of the commission prior to the scheduled destruction and/or that the actual destruction be witnessed by an authorized representative of the commission.

(i) All uninsured malt beverages subject to destruction under §109.09 must be destroyed in such a manner that the product is rendered unrecoverable.

(j) An employee of the permittee or licensee who witnessed the destruction of the malt beverages must execute an affidavit of destruction. The affidavit shall include the date of destruction, the destruction

location, and a description of how the alcoholic beverages were destroyed.

(k) Not later than 30 days following the destruction of malt beverages under this section, the permittee or licensee shall submit to the commission the affidavit required under subsection (i) with a completed and signed commission Notification of Destruction of Uninsured Product after a Natural Disaster form.

(l) The permittee or licensee must retain the following documentation and make it available to the commission upon request:

(1) A copy of the receipt for the cost of destruction, if the malt beverages were destroyed at a location that charged a fee for the service;

(2) A copy of the completed and signed Notification of Destruction of Uninsured Product after a Natural Disaster; and

(3) A copy of all destruction affidavits executed by the person who witnessed the destruction.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 20, 2020.

TRD-202001997

Shana Horton

Rules Attorney

Texas Alcoholic Beverage Commission

Effective date: June 9, 2020

Proposal publication date: April 10, 2020

For further information, please call: (512) 206-3451



CHAPTER 50. ALCOHOLIC BEVERAGE SELLER SERVER AND DELIVERY DRIVER TRAINING

SUBCHAPTER A. GENERAL AND ADMINISTRATIVE PROVISIONS

16 TAC §50.1

The Texas Alcoholic Beverage Commission adopts amended 16 TAC §50.1 without changes to the proposed text as published in the April 10, 2020, issue of the *Texas Register* (45 TexReg 2399). The rule will not be republished.

This is a conforming change to ensure consistency in Chapter 50 with the addition of new provisions related to alcohol delivery drivers.

Senate Bill 1450, 86th Texas Legislature (Regular Session, 2019) added Alcoholic Beverage Code Chapter 57, Consumer Delivery Permit, effective September 1, 2019. Section 57.09(a)(1) directs the commission to adopt by rule and administer an alcohol delivery training program for the purpose of training and certifying delivery drivers contracting with or employed by the holder of mixed beverage permit or a consumer delivery permit. At its January 28, 2020, meeting, the commission voted to propose new rule §50.32, providing that the commission will offer delivery driver training, and that persons who successfully complete the training will be awarded a certificate lasting two years, along with other provisions related to the alcohol delivery driver.

Currently, rule §50.1 states that Chapter 50 implements statutes related to training of sellers and servers of alcohol. In light of new rule §50.32, providing that the commission will offer alcohol delivery driver training, the amendment to rule §50.1 states that Chapter 50 also relates to training for alcohol delivery drivers. Concurrent with this rule amendment, the commission is updating the title of Chapter 50 to "Alcoholic Beverage Seller Server and Delivery Driver Training."

No comments were received.

The amendment is authorized by Alcoholic Beverage Code §5.31, which provides the commission with general authority to adopt rules necessary to carry out the provisions of the Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 20, 2020.

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Shana Horton

Rules Attorney

Texas Alcoholic Beverage Commission

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For further information, please call: (512) 206-3451



PART 8. TEXAS RACING COMMISSION

CHAPTER 309. RACETRACK LICENSES AND OPERATIONS

SUBCHAPTER C. HORSE RACETRACKS DIVISION 1. RACETRACKS

16 TAC §309.206

The Texas Racing Commission ("the Commission") adopts amendments to 16 TAC §309.206, Rails, without changes to the text as proposed in the February 7, 2020, issue of the *Texas Register* (45 TexReg 829), which will not be republished. The amendments change the maximum rail height at horse tracks from 42 inches to 50 inches while leaving the minimum height at 38 inches.

REASONED JUSTIFICATION

The reasoned justification for these amendments is increased safety by allowing horse racetracks to install higher rails.

PUBLIC COMMENTS

No comments were submitted in response to the proposed amendments.

STATUTORY AUTHORITY

The amendments are adopted under Tex. Occ. Code §2023.001, which authorizes the Commission to regulate all aspects of horse racing in the state; §2023.002, which authorizes the commission to regulate each person and thing related to the operation of a race meeting; and §2023.004, which authorizes the Commission to adopt rules to administer the Act.

No other statute, code, or article is affected by the amendments.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 21, 2020.

TRD-202002016

Chuck Trout

Executive Director

Texas Racing Commission

Effective date: June 10, 2020

Proposal publication date: February 7, 2020

For further information, please call: (512) 833-6699



CHAPTER 311. OTHER LICENSES SUBCHAPTER A. LICENSING PROVISIONS DIVISION 1. OCCUPATIONAL LICENSES

16 TAC §311.1

The Texas Racing Commission ("the Commission") adopts amendments to 16 TAC §311.1, Occupational Licenses, without changes to the text as proposed in the February 7, 2020, issue of the *Texas Register* (45 TexReg 830), which will not be republished. This section includes provisions common to all occupational license types. The amendments delete language relating to training facility licenses, which are not occupational licenses. The duration and expiration of a training facility license is properly addressed in 16 TAC §313.501, Training Facility License, which states that a training facility license expires one year after the last day of the month in which it was issued.

REASONED JUSTIFICATION

The reasoned justification for these amendments is clarity and organization of rules relating to training facility licenses.

PUBLIC COMMENTS

No comments were submitted in response to the proposed amendments.

STATUTORY AUTHORITY

The amendments are adopted under Tex. Occ. Code §2023.004, which authorizes the Commission to adopt rules to administer the Act.

No other statute, code, or article is affected by the amendments.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 21, 2020.

TRD-202002017

Chuck Trout

Executive Director

Texas Racing Commission

Effective date: June 10, 2020

Proposal publication date: February 7, 2020

For further information, please call: (512) 833-6699



CHAPTER 313. OFFICIALS AND RULES OF HORSE RACING
SUBCHAPTER D. RUNNING OF THE RACE
DIVISION 1. JOCKEYS

16 TAC §313.409

The Texas Racing Commission ("the Commission") adopts amendments to 16 TAC §313.409, Jockey Mount Fees, without changes to the text as proposed in the February 7, 2020, issue of the *Texas Register* (45 TexReg 831). The rule will not be republished. This section establishes default mount fees for jockeys in the absence of a written agreement between the jockey and the trainer or owner. The amendments increase certain mount fees by \$5-10, as requested by the Jockeys Guild with the agreement of the Texas Horsemen's Partnership, which represents trainers and owners of racehorses in Texas.

REASONED JUSTIFICATION

The reasoned justification for these amendments is an increase in default mount fees for Texas jockeys, for the first time since 2012, from levels that currently lag behind most other racing jurisdictions.

PUBLIC COMMENTS

No comments were submitted in response to the proposed amendments.

STATUTORY AUTHORITY

The amendments are adopted under Tex. Occ. Code § 2023.001, which authorizes the Commission to regulate all aspects of horse racing in Texas.

No other statute, code, or article is affected by the amendments.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 21, 2020.

TRD-202002014

Chuck Trout

Executive Director

Texas Racing Commission

Effective date: June 10, 2020

Proposal publication date: February 7, 2020

For further information, please call: (512) 833-6699



TITLE 22. EXAMINING BOARDS

**PART 8. TEXAS APPRAISER
LICENSING AND CERTIFICATION
BOARD**

**CHAPTER 153. RULES RELATING TO
PROVISIONS OF THE TEXAS APPRAISER
LICENSING AND CERTIFICATION ACT**

22 TAC §153.15

The Texas Appraiser Licensing and Certification Board (TALCB) adopts amendments to §153.15, Experience Required for Licensing, without changes to the proposed text, as published in the March 13, 2020, issue of the *Texas Register* (45 TexReg 1826) and will not be republished.

The amendments clarify the procedures to be followed when an applicant submits experience that is involved in pending litigation as part of the applicant's license application. The proposed amendments also notify applicants that information submitted to TALCB in support of a license application may be subject to disclosure under the Public Information Act, Chapter 552, Texas Government Code, unless an exception to disclosure applies.

No comments were received on the amendments as published.

The amendments are adopted under Occupations Code §1103.151, which allows TALCB to adopt rules for certifying or licensing an appraiser or appraiser trainee in this state that are in accordance with Chapter 1103 and consistent with applicable federal law.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 18, 2020.

TRD-202001966

Kathleen Santos

General Counsel

Texas Appraiser Licensing and Certification Board

Effective date: June 7, 2020

Proposal publication date: March 13, 2020

For further information, please call: (512) 936-3652



**CHAPTER 157. RULES RELATING TO
PRACTICE AND PROCEDURE
SUBCHAPTER E. ALTERNATIVE DISPUTE
RESOLUTION**

22 TAC §157.31

The Texas Appraiser Licensing and Certification Board (TALCB) adopts amendments to §157.31, Investigative Conference, without changes to the proposed text as published in the March 13, 2020, issue of the *Texas Register* (45 TexReg 1828). The amended rule will not be republished.

The amendments clarify the procedures for scheduling an investigative conference with a license applicant or a respondent to a complaint and to establish procedures for recording investigative conferences.

No comments were received on the amendments as published.

The amendments are adopted under Occupations Code §1103.151, which allows TALCB to adopt rules for certifying or licensing an appraiser or appraiser trainee in this state that are in accordance with Chapter 1103 and consistent with applicable federal law.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 18, 2020.

TRD-202001967

Kathleen Santos

General Counsel

Texas Appraiser Licensing and Certification Board

Effective date: June 7, 2020

Proposal publication date: March 13, 2020

For further information, please call: (512) 936-3652

TITLE 25. HEALTH SERVICES

PART 11. CANCER PREVENTION AND RESEARCH INSTITUTE OF TEXAS

CHAPTER 703. GRANTS FOR CANCER PREVENTION AND RESEARCH

25 TAC §703.11, §703.23

The Cancer Prevention and Research Institute of Texas ("CPRIT" or "the Institute") adopts the amendments to 25 Texas Administrative Code §703.11 and §703.23 without changes to the proposed text as published in the March 13, 2020, issue of the *Texas Register* (45 TexReg 1830). The rules will not be republished. The amendments relate to requiring a grant recipient to provide supporting documentation for matching funds and the Institute's payment of advance funds.

Reasoned Justification

In order to assist the Institute in verifying matching funds expended by grantees, the change to §703.11 requires a grant recipient to submit all supporting documentation for matching funds expenditures at the time that it files its matching fund verification form; the Institute will not review or approve the form until the grantee submits all required documentation. The change to §703.23 allows the Institute to hold back the final payment (ten percent (10%) of the grant award) to a grant recipient who receives funds via advance payment until the grant recipient has completed the grant close out process.

Summary of Public Comments and Staff Recommendation

CPRIT received no public comments regarding the proposed amendments to §703.11 and §703.23.

The rule changes are adopted under the authority of the Texas Health and Safety Code Annotated, §102.108, which provides the Institute with broad rule-making authority to administer the chapter, including rules for awarding grants.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 21, 2020.

TRD-202002052

Heidi McConnell

Chief Operating Officer

Cancer Prevention and Research Institute of Texas

Effective date: June 10, 2020

Proposal publication date: March 13, 2020

For further information, please call: (512) 305-8487

TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 305. CONSOLIDATED PERMITS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendment to §305.64 and the repeal of §305.149.

The amendment to §305.64 and the repeal of §305.149 are adopted without changes to the proposed text, as published in the January 10, 2020, issue of the *Texas Register* (45 TexReg 271). The rules will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

The adopted rulemaking is intended to update some of the commission's procedural rules and is not intended to impose any new procedural or substantive requirements. This rulemaking corrects a typographical error in §305.64 (Transfer of Permits); and repeals §305.149 (Time Limitation for Construction of Commercial Hazardous Waste Management Units), because the statutory authority for this rule was repealed.

As part of this rulemaking, the commission adopts revisions to 30 TAC Chapter 335, Industrial Solid Waste and Municipal Hazardous Waste, concurrently in this issue of the *Texas Register*.

Section by Section Discussion

In addition to the adopted revisions associated with this rulemaking, various non-substantive changes are adopted to update references or correct grammar. These changes are non-substantive and are not specifically discussed in the Section by Section Discussion portion of this preamble.

§305.64, Transfer of Permits

The commission adopts amended §305.64(c) to remove a misplaced space between 'transfer' and 'or' in the word "transferor," which made the language unclear.

§305.149, Time Limitation for Construction of Commercial Hazardous Waste Management Units

The commission adopts the repeal of §305.149. The statutory basis for this section, Texas Health and Safety Code (THSC), §361.0232, was repealed.

Final Regulatory Impact Determination

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of the Texas Government Code, §2001.0225, and determined that the adopted rulemaking 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 amendment of §305.64 is procedural in nature; and the repeal of §305.149 is necessary because THSC, §361.0232 was repealed. Neither of these changes is specifically intended to

protect the environment or reduce risks to human health from environmental exposure, nor do they 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. Rather, the adopted rulemaking corrects a typographical error to ensure there is no confusion regarding the rule language and repeal obsolete rule requirements.

Texas Government Code, §2001.0225, 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 adopted rulemaking does not exceed an express requirement of state law or a requirement of a delegation agreement and was not developed solely under the general powers of the agency but is authorized by specific sections of the Texas Water Code and THSC 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 invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. The commission received no comments on the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an analysis of whether Texas Government Code, Chapter 2007, is applicable. The adopted rulemaking does 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, the adopted rulemaking does not meet the definition of a taking under Texas Government Code, §2007.002(5). The adopted rulemaking does not directly prevent a nuisance or prevent an immediate threat to life or property. Therefore, this adopted rulemaking will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found that it is not a rulemaking identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will the adopted rulemaking affect any action or authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the adopted rulemaking is not subject to the Texas Coastal Management Program (CMP).

The commission invited public comment regarding the consistency with the CMP during the public comment period. The commission received no comments regarding consistency with the CMP.

Public Comment

The commission offered a public hearing on February 6, 2020. The comment period closed on February 11, 2020. The commission received no comments on Chapter 305.

SUBCHAPTER D. AMENDMENTS, RENEWALS, TRANSFERS, CORRECTIONS,

REVOCAION, AND SUSPENSION OF PERMITS

30 TAC §305.64

Statutory Authority

The amendment is 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 Texas Health and Safety Code (THSC), §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste.

The adopted amendment implements THSC, Chapter 361.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

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For further information, please call: (512) 239-6087



SUBCHAPTER G. ADDITIONAL CONDITIONS FOR HAZARDOUS AND INDUSTRIAL SOLID WASTE STORAGE, PROCESSING, OR DISPOSAL PERMITS

30 TAC §305.149

Statutory Authority

The repeal is 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; and 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; Texas Health and Safety Code (THSC), §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; and THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste.

The adopted repeal implements THSC, Chapter 361.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER P. EFFLUENT GUIDELINES AND STANDARDS FOR TEXAS POLLUTANT DISCHARGE ELIMINATION SYSTEM (TPDES) PERMITS

30 TAC §305.541

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendment to §305.541.

The amendment to §305.541 is adopted *without change* to the proposed text as published in the January 10, 2020, issue of the *Texas Register* (45 TexReg 275) and, therefore, will not be republished.

Background and Summary of the Factual Basis for the Adopted Rule

House Bill (HB) 2771 (86th Texas Legislature, 2019) requires the TCEQ to submit a delegation request by September 1, 2021, to seek authority from the United States Environmental Protection Agency (EPA) to issue federal permits for discharges of produced water, hydrostatic test water, and gas plant effluent into water in the state resulting from certain oil and gas activities under the National Pollutant Discharge Elimination System (NPDES) program. Additionally, HB 2771 transfers permitting authority for these discharges from the Railroad Commission of Texas (RRC) to the TCEQ upon delegation of authority for these discharges from EPA to the TCEQ.

This rulemaking is one of several steps necessary to implement HB 2771. The adopted rulemaking amends §305.541 to adopt by reference the EPA's effluent limitations guidelines for the oil and gas extraction point source category and the centralized waste treatment category (40 Code of Federal Regulations (CFR) Parts 435 and 437).

Section Discussion

§305.541, Effluent Guidelines and Standards for Texas Pollutant Discharge Elimination System (TPDES) Permits

The commission adopts the amendment to §305.541(a) to improve readability and to adopt by reference the current federal regulations in 40 CFR Parts 435 and 437. The adopted rulemaking will ensure that these federal effluent limitation guidelines are adopted in state regulations, which is necessary prior to seeking NPDES delegation authority from the EPA to issue permits for discharges of produced water, hydrostatic test water, and gas plant effluent from oil and gas facilities.

The commission notes that the term "produced wastewater" will be used in place of the term "produced water" in the federal regulations, in order to distinguish between the federal definition of "produced water" and the commission's definition of "produced water." The commission's definition of "produced water" clarifies the commission's jurisdiction as that term is used in Texas Water Code (TWC), §26.131. For implementing NPDES authority, the commission's term "produced wastewater" will have the same

meaning and effluent limitations as the federal term "produced water." Using the term "produced wastewater" instead of "produced water" does not expand the types of wastewater regulated by 40 CFR Part 435, nor does it change the effluent limitations applicable to that waste stream.

EPA promulgated the Oil and Gas Extraction Effluent Guidelines and Standards (40 CFR Part 435) in 1979, and amended the guidelines and standards in 1993, 1996, 2001, and 2016. EPA's guidelines and standards establish: 1) effluent limitation guidelines using best practicable control technology currently available (BPT), best available technology economically achievable (BAT), and best conventional pollutant control technology (BCT); 2) performance standards for new sources; and 3) pretreatment standards applicable to wastewater discharges from field exploration, drilling, production, well treatment, and well completion activities. Field exploration, drilling, production, well treatment, and well completion activities take place on land, in coastal areas, and offshore. The Oil and Gas regulations apply to conventional and unconventional oil and gas extraction, with the exception of coalbed methane.

EPA promulgated the Centralized Waste Treatment (CWT) Effluent Guidelines and Standards (40 CFR Part 437) in 2000 and amended the rule in 2003. These regulations establish effluent limitation guidelines using BPT, BAT, and BCT; performance standards for new sources; and pretreatment standards applicable to CWT facilities. CWT facilities treat or recover metal-bearing, oily, and organic wastes, wastewater, or used material received from off-site. The CWT industry handles wastewater treatment residuals and industrial process by-products that come from other industries, including the oil and gas exploration and production industry.

The commission adopts §305.541(b) to define "produced water" as that term is used in TWC, §26.131.

Final Regulatory Impact Determination

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking 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. "Major environmental rule" is defined as a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. This rulemaking does not adversely affect, in a material way, the economy, a section of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

This rulemaking adopts by reference the EPA's effluent limitations guidelines for the oil and gas extraction point source category and the centralized waste treatment category (40 CFR Parts 435 and 437). The rulemaking does not meet the definition of "Major environmental rule" because it is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. Therefore, the commission finds that this rulemaking is not a "Major environmental rule."

Furthermore, the rulemaking does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225, only applies to a state agency's adoption of a major environmental

rule that: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds 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) adopts a rule solely under the general powers of the agency instead of under a specific state law. Specifically, the rulemaking does not exceed a standard set by federal law, rather it adopts by reference EPA's effluent limitations guidelines for the oil and gas extraction point source category and the centralized waste treatment category (40 CFR Parts 435 and 437). Also, the rulemaking does not exceed an express requirement of state law nor exceed a requirement of a delegation agreement. Finally, the rulemaking was not developed solely under the general powers of the agency; but is required by HB 2771. Under Texas Government Code, §2001.0225, only a major environmental rule requires a regulatory impact analysis. Because the adopted rulemaking does not constitute a major environmental rule, a regulatory impact analysis is not required.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. The commission received comments on the Draft Regulatory Impact Analysis from the Sierra Club and approximately 1,435 individuals stating that the rule should be considered a major environmental rule because it will fundamentally change how produced wastewater is managed in Texas. These comments are discussed further in the Public Comment portion of this preamble

Takings Impact Assessment

The commission performed an assessment of this rule in accordance with Texas Government Code, §2007.043. This rulemaking adopts by reference the EPA's effluent limitations guidelines for the oil and gas extraction point source category and the centralized waste treatment category (40 CFR Parts 435 and 437). This rule will not constitute either a statutory or a constitutional taking of private real property. This rulemaking will impose no burdens on private real property because the adopted rule neither relates to, nor has any impact on the use or enjoyment of private real property, and there is no reduction in value of the property as a result of this rulemaking.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found that the adoption is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.*, and, therefore, must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the adopted rule in accordance with Coastal Coordination Act implementation rule, 31 TAC §505.22 and found the adopted rulemaking is consistent with the applicable CMP goals and policies.

CMP goals applicable to the adopted rule includes protecting, preserving, restoring, and enhancing the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs); and ensuring sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone. CMP policies applicable to the adopted rule includes policies for discharges of wastewater from oil and gas exploration and production.

The adopted rulemaking is consistent with the CMP goals and policies by requiring wastewater discharges from oil and gas exploration and production facilities to comply with federal effluent limitation guidelines to protect water resources.

Promulgation and enforcement of the rule will not violate or exceed any standards identified in the applicable CMP goals and policies because the adopted rule is consistent with these CMP goals and policies and the rule will not create or have a direct or significant adverse effect on any CNRAs.

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the CMP.

Public Comment

The commission held a public hearing on February 4, 2020. The comment period closed on February 11, 2020. The commission received comments from Big Thicket Biosphere Reserve, Environmental Defense Fund (EDF), Sierra Club - Lone Star Chapter (Sierra Club), Texas Industry Project (TIP), Texas Oil & Gas Association (TXOGA), Water is Alive, and 1,439 individuals.

Comment

The Sierra Club, Big Thicket Biosphere Reserve, Water is Alive, and approximately 1,435 individuals expressed general opposition to the proposed rulemaking. TXOGA, TIP, and three individuals expressed support of the proposed rulemaking.

Response

The commission acknowledges these comments.

Comment

TXOGA recommended that TCEQ revise the preamble to confirm that its substitution of the term "produced wastewater" for "produced water" in 40 CFR Part 435 is not in any way intended to expand the discharges or types of discharges to be covered by 40 CFR Part 435 in Texas beyond those currently covered by the federal regulation.

Response

The commission agrees with this recommendation and revised the preamble language accordingly.

Comment

The Sierra Club and approximately 1,435 individuals stated that the rule should be considered a major environmental rule because it will fundamentally change how produced wastewater is managed in Texas.

Response

The Texas Government Code, §2001.0225 defines a "Major environmental rule" as a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. This rulemaking is one of several steps necessary to implement HB 2771. The specific intent of this rulemaking is to: 1) incorporate the existing EPA effluent limit guidelines for oil and gas extraction point sources found in 40 CFR Part 435 into the commission's rules; and 2) define the term "produced water." These proposed changes are part of the preparation of the delegation request package required by HB 2771. However, this rulemaking does not change the criteria

the agency uses to review TPDES permits or change any existing water quality standards; therefore, this rulemaking is not intended to protect the environment or reduce risks to human health from environmental exposure. This rulemaking does not alter the current regulatory requirements for managing produced water; therefore, it is not expected to have any adverse impact on the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. As a result, the rule is not a major environmental rule.

Comment

The Sierra Club disagrees with the determination that no fiscal implications are anticipated for the agency or for other units of state or local government for the first five-year period the proposed rule is in effect.

Response

The rulemaking adopts by reference certain effluent limitation guidelines in federal regulations. Without delegation authority from the federal government, the TCEQ does not have the ability to regulate or permit the discharges described in HB 2771.

TCEQ recognizes that there will be a fiscal impact upon delegation; however, this rulemaking alone does not have a fiscal implication and does not address the transfer of the program from the RRC to the agency.

Comment

Sierra Club disagrees with the determination that 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 Sierra Club commented that the fiscal note should include a discussion of the resources the agency is receiving from Senate Bill 1 and acknowledge the actual anticipated cost to the agency.

Response

The rulemaking adopts by reference certain effluent limitation guidelines in federal regulations. TCEQ recognizes that future steps, including the delegation of the program from the federal government and a transfer agreement with the RRC, will move a government program from the RRC to TCEQ.

TCEQ recognizes that future steps, including the delegation of the program from the federal government and a transfer agreement with the RRC, will affect the future legislative appropriations to each agency; however, there will be a decrease in costs to the RRC and an increase to TCEQ.

Comment

Water is Alive and approximately 415 individuals commented that the proposed rule is not protective of water quality, aquatic life, wildlife, and human health. Commenters expressed concern regarding drinking water supplies, fish consumption, and recreational use of the water.

Response

The primary purpose of the rulemaking is to adopt certain federal effluent limitation guidelines. These effluent limitation guidelines are developed by EPA based on the degree of pollutant reduction attainable by an industrial category through the application of pollutant control technologies. These effluent limitations are commonly referred to as technology-based effluent limitations (TBELs).

TPDES permits are developed to be protective of human health and the environment. TPDES permits incorporate TBELs using national effluent limitations guidelines and standards established by EPA, and/or using best professional judgement on a case-by-case basis in the absence of national guidelines and standards. Where these TBELs do not protect water quality or the designated uses of receiving waters, additional water quality-based effluent limitations (WQBELs) and conditions are included in the permit. State narrative and numerical water quality standards are used in conjunction with EPA criteria and other toxicity databases to determine the adequacy of technology-based permit limits and the need for additional water quality-based controls.

The Texas Surface Water Quality Standards (TSWQS) at 30 TAC Chapter 307 state that "surface waters will not be toxic to man from ingestion of water, consumption of aquatic organisms, or contact with the skin, or to terrestrial or aquatic life." The methodology outlined in the TCEQ's Procedures to Implement the TSWQS (referred to as the implementation procedures) is designed to ensure compliance with the TSWQS. Specifically, the methodology is designed to ensure that no source will be allowed to discharge any wastewater that: 1) results in instream aquatic toxicity; 2) causes a violation of an applicable narrative or numerical state water quality standard; 3) results in the endangerment of a drinking water supply; or 4) results in aquatic bioaccumulation that threatens human health. As a result, when TCEQ staff review wastewater discharge permit applications, they ensure permits comply with those standards.

The executive director's technical review of a TPDES permit application begins with the Water Quality Assessment (WQA) Section. The WQA Section review includes an analysis of the existing uses of the receiving waters under the TSWQS at 30 TAC §307.5, which aids in establishing the appropriate discharge limitations, which in turn plays a vital part in determining the quality of the water discharged into the receiving water.

In accordance with §307.5 and the implementation procedures, the WQA Section performs an antidegradation review of the receiving waters. New TPDES permits, as well as amendments to TPDES permits, that allow increased pollution loading are subject to review under Tier 1 of the antidegradation policy; all pollution that could cause an impairment of existing uses is included in the evaluation. Designated uses, and the numerical and narrative criteria needed to support those uses, are established in the TSWQS in 30 TAC §307.10, Appendix A. The executive director's Tier I antidegradation review ensures that existing water quality uses are not impaired by increases in pollution loading. Numerical and narrative criteria necessary to protect existing uses will be maintained. New TPDES permits, as well as amendments to TPDES permits, that allow an increase in loading are also subject to review under Tier II of the antidegradation policy. A Tier II antidegradation review generally applies to water bodies that have existing, designated, or presumed uses of intermediate, high, or exceptional aquatic life uses. The executive director's Tier II antidegradation review ensures that where water quality exceeds the normal range of fishable/swimmable quality, the water quality will be maintained, unless lowering it is necessary for important economic or social development.

A biomonitoring review is conducted in accordance with the TSWQS and the implementation procedures. The purpose of Whole Effluent Toxicity (WET) testing (also referred to as biomonitoring) is to directly measure the aggregate toxic effects (such as lethality and sub-lethality) on surrogate sensitive test

species, including vertebrates and invertebrates, to effluent at the critical dilution of the receiving waters. Discharges from a facility which has classification as an EPA major industrial discharger, continuous discharges of process wastewaters, or a discharge with the potential to exert toxicity in the receiving water automatically require WET testing. WET testing may be required based upon best professional judgment if a minor industrial facility applies water treatment chemicals or biocides, the TCEQ determines the effluent has the potential to exert toxicity in the receiving water, or the permit requires effluent limits based on aquatic life water quality criteria because the effluent analysis exceeds the screening criteria.

Additionally, the TCEQ establishes numerical criteria for the protection of aquatic life and for the protection of human health in accordance with 30 TAC §307.6(c)(1). Numerical criteria are established for toxic substances where adequate toxicity information is available, and the substance has the potential for exerting adverse impacts on water in the state. These criteria are based on ambient water quality criteria documents published by the EPA. TCEQ compares reported analytical data from the facility against percentages of the calculated daily average water quality-based effluent limitation. Permit limitations are required when analytical data reported in the application exceeds 85% of the calculated daily average water quality-based effluent limitation. Monitoring and reporting are required when analytical data reported in the application exceeds 70% of the calculated daily average water quality-based effluent limitation. For new facilities where no analytical data is available, TCEQ includes a permit requirement for the permittee to conduct sampling once discharges begin and to provide the analytical data to TCEQ for evaluation. After the analytical data is evaluated, the permit may be reopened and amended to include additional effluent limitations or monitoring requirements (including long-term studies) for any discharged pollutant that could in any way contribute to contamination of the receiving water or degradation of water-quality.

Using TBELS and WQBELS in discharge permits is protective of the environment and public health. No change was made as a result of these comments.

Comment

The Sierra Club, EDF, Water is Alive, and approximately 1,436 individuals expressed concern that current federal standards are outdated and insufficient to protect public health and the environment. The commenters recommended that water quality standards be updated to address pollutants in oil and gas discharges. The Sierra Club requested that TCEQ add additional language to the rule that states that TCEQ can impose additional pretreatment standards and discharge standards to meet Texas-based drinking water standards, water quality standards, and irrigation standards as appropriate.

Response

EPA promulgated the Oil and Gas Extraction Effluent Guidelines and Standards (40 CFR Part 435) in 1979, and amended the regulations in 1993, 1996, 2001, and 2016. These regulations establish effluent limitation guidelines using BPT, BAT, and BCT; performance standards for new sources; and pretreatment standards applicable to wastewater discharges from field exploration, drilling, production, well treatment, and well completion activities. Effluent limitations guidelines and pretreatment standards that are established by EPA are developed based on the degree of pollutant reduction attainable by an industrial category through the application of pollutant control technologies.

TCEQ will implement TBELS contained in 40 CFR Part 435 or 437, as applicable, or implement best professional judgement based effluent limitations for subcategories not subject to limitations in EPA's guidelines and standards. Where TBELS do not protect water quality or the designated uses of receiving waters, TCEQ has the authority to require WQBELS and conditions in permits. The suggested language is not necessary for TCEQ authority to require WQBELS. The TSWQS in Chapter 307 and the Procedures to Implement the Texas Surface Water Quality Standards establish the criteria for development of WQBELS. Revisions to these criteria are outside the scope of this rulemaking. Using TBELS and WQBELS in discharge permits is protective of the environment and public health. No change was made as a result of these comments.

Comment

The Sierra Club and approximately 1,436 individuals recommended that the rule be revised to prohibit wastewater from other states to be discharged in Texas.

Response

The commission disagrees that a prohibition is needed. TCEQ is tasked with ensuring that wastewater discharges are protective of human health and the environment, regardless of the location of the wastewater generator. No change was made in response to this comment.

Comment

The Sierra Club and approximately 1,436 individuals recommended that the rule be revised to require individual permits rather than general permits for discharges of produced water.

Response

The commission acknowledges the comment, and notes that the primary purpose of the rulemaking is to adopt certain federal effluent limitation guidelines. This rule does not address the types of permits that the commission may authorize for discharges of produced water, hydrostatic test water, and gas plant effluent into water in the state resulting from certain oil and gas activities. TCEQ has authority under TWC, §26.040 to regulate certain discharges by general permit. The procedures for development of a general permit, which includes public notice and comment, are established in 30 TAC Chapter 205, General Permits for Waste Discharges. Additionally, EPA currently has two general permits that authorize discharges of produced water in Texas. The commission disagrees that individual permits should be required for produced water discharges. No change was made as a result of this comment.

Comment

Big Thicket Biosphere Reserve and two individuals commented that the new administration's proposal to roll back water quality protections in the new federal Clean Water Act rules will threaten the safety of our drinking water and endanger the wetlands that absorb floodwaters, sustain critical ecosystems, and provide extensive recreation value to our communities.

Response

The commission acknowledges the comment.

Comment

Big Thicket Biosphere Reserve and two individuals requested that TCEQ abandon support for HB 2771.

Response

HB 2771 was passed by the 86th Texas Legislature. HB 2771 requires the TCEQ to submit a delegation request by September 1, 2021, to seek authority from the EPA to issue permits for discharges of produced water, hydrostatic test water, and gas plant effluent into water in the state resulting from certain oil and gas activities under the NPDES program. Additionally, HB 2771 transfers permitting authority for these discharges from the RRC to the TCEQ upon delegation of authority for these discharges from EPA to the TCEQ. TCEQ is required to comply with state statutes and must take all necessary measures to seek delegation authority from EPA, including adopting federal effluent limitations through this rulemaking. No change was made as a result of these comments.

Comment

Approximately 16 individuals expressed concerns that fracking wastewater could contaminate groundwater.

Response

Groundwater in the state is protected from any negative impacts of point source discharges through the application of the TBELS and WQBELS. For oil and gas facilities, TCEQ will implement TBELS contained in 40 CFR Part 435 or implement best professional judgement based effluent limitations. Where TBELS do not protect water quality or the designated uses of receiving waters, TCEQ has the authority to require WQBELS and conditions in permits. The TSWQS in Chapter 307 and the Procedures to Implement the Texas Surface Water Quality Standards establish the criteria for development of WQBELS. Using TBELS and WQBELS in discharge permits is protective of public health and the environment, including groundwater. No change was made as a result of these comments.

Comment

Five individuals recommended that more research be conducted on fracking wastewater.

Response

The primary purpose of the rulemaking is to adopt certain federal effluent limitation guidelines to protect water quality. Using TBELS and WQBELS in discharge permits is protective of public health and the environment. No change was made as a result of these comments.

Comment

Three individuals expressed concern about the impacts to climate change.

Response

The primary purpose of the rulemaking is to adopt certain federal effluent limitation guidelines to protect water quality. Using TBELS and WQBELS in discharge permits is protective of public health and the environment. No change was made as a result of these comments.

Comment

Two individuals commented that the oil and gas industry should recycle or reuse wastewater instead of discharging it.

Response

The primary purpose of the rulemaking is to adopt certain federal effluent limitation guidelines for wastewater discharges into water in the state. 40 CFR Part 435 prohibits discharges of produced water except in limited circumstances. Using TBELS and

WQBELS in discharge permits is protective of public health and the environment. No changes were made in response to these comments.

Comment

Two individuals commented that oil and gas industry activities lower property values.

Response

The commission acknowledges the comments, however the TCEQ does not have authority to regulate property values. No change was made in response to these comments.

Comment

Two individuals commented that TCEQ should regulate air emissions and air quality from the oil and gas industry.

Response

The primary purpose of the rulemaking is to adopt certain federal effluent limitation guidelines to protect water quality. Concerns regarding air emissions and air quality are outside of the scope of this rulemaking. No change was made in response to this comment.

Comment

An individual expressed concern that fracking wastewater is triggering earthquakes.

Response

The primary purpose of the rulemaking is to adopt certain federal effluent limitation guidelines for wastewater discharges into water in the state. No change was made in response to this comment.

Comment

TIP recommended a minor revision to the proposed definition of "produced water" for clarity. They recommended moving "except hydrostatic test water and gas plant effluent" to the end of the definition.

Response

The commission disagrees with this recommendation. As recommended by the commenter, the exception would apply to "waste streams regulated by 40 CFR Part 435." Hydrostatic test water and gas plant effluent are not waste streams regulated by 40 CFR Part 435. The exception, as proposed, applies to "all wastewater associated with oil and gas exploration, development, and production activities." No change was made as a result of this comment.

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.102, which establishes the general authority of the commission necessary to carry out its jurisdiction; TWC, §5.103, which establishes that the commission, by rule, shall establish and approve all general policy of the commission; TWC, §5.105, which establishes the general authority of the commission to adopt rules necessary to carry out its powers and duties under the TWC and other laws of this state; and TWC, §5.120, which requires the commission to administer the law so as to promote the conservation and protection of the quality of the state's environment and natural resources.

The adopted amendment implements House Bill 2771 (86th Texas Legislature, 2019).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 239-1806



CHAPTER 335. INDUSTRIAL SOLID WASTE AND MUNICIPAL HAZARDOUS WASTE

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendments to §§335.1, 335.2, 335.10 - 335.13, 335.24, 335.31, 335.43, 335.63, 335.69, 335.71, 335.76, 335.78, 335.91, 335.112, 335.152, 335.251, 335.261, 335.262, 335.331, 335.501, 335.504, 335.590, and 335.602; and new §335.281.

The amendments to §335.12 and §335.262 are adopted *with changes* to the proposed text as published in the January 10, 2020, issue of the *Texas Register* (45 TexReg 277) and, therefore, will be republished. The amendments to §§335.1, 335.2, 335.10, 335.11, 335.13, 335.24, 335.31, 335.43, 335.63, 335.69, 335.71, 335.76, 335.78, 335.91, 335.112, 335.152, 335.251, 335.261, 335.331, 335.501, 335.504, 335.590, 335.602, and new §335.281 are adopted *without changes* to the proposed text and, therefore, will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

The federal hazardous waste program is authorized under the Resource Conservation and Recovery Act of 1976 (RCRA), §3006. States may obtain authorization from the United States Environmental Protection Agency (EPA) to administer the hazardous waste program. State authorization is a rulemaking process through which EPA delegates the primary responsibility of implementing the RCRA hazardous waste program to individual states in lieu of EPA. This process ensures national consistency and minimum standards while providing flexibility to states in implementing rules. State RCRA programs must always be at least as stringent as the federal requirements.

Since the beginning of the federal hazardous waste program, Texas has continuously participated in the EPA's authorization program. To maintain RCRA authorization, the commission must adopt regulations to meet the minimum standards of federal programs administered by EPA. Because the federal regulations undergo regular revision, the commission must adopt new regulations regularly to meet the changing federal regulations.

Texas received authorization of its hazardous waste "base program" under RCRA on December 26, 1984. Texas received authorization of revisions to its base hazardous waste program on February 17, 1987 (Clusters I and II). Texas submitted further revisions to its hazardous waste program and received final authorization of those revisions on March 15, 1990; July 23, 1990; October 21, 1991; December 4, 1992; June 27, 1994; November 26, 1997; October 18, 1999; September 11, 2000; June 14,

2005 (parts of Clusters III - X); March 5, 2009 (parts of Clusters XI - XV); May 7, 2012 (parts of Clusters IX and XV - XVIII); November 3, 2014 (parts of Clusters XIX - XXI); and December 21, 2015 (parts of Clusters XX - XXIII).

The commission adopts in this rulemaking certain parts of RCRA Rule Clusters XXIV, XXV, and XXVII that implement revisions to the federal hazardous waste program which were made by EPA between April 8, 2015 and November 30, 2018. Both mandatory and optional federal rule changes in these clusters are adopted. Although not necessary to maintain authorization, EPA also recommends that the optional federal rule changes be incorporated into the state rules. Establishing equivalency with federal regulations will enable Texas to operate all delegated aspects of the federal hazardous waste program in lieu of the EPA.

Vacatur of Comparable Fuels and Gasification Rule

In the April 8, 2015, issue of the *Federal Register* (80 FR 18777), the EPA implemented vacatur, ordered by the United States Court of Appeals for the District of Columbia Circuit on June 27, 2014, of regulations associated with the comparable fuels exclusion and the gasification exclusion. The vacatur eliminated the exclusions and reinstated the regulatory status in effect prior to their adoption with respect to the materials subject to this rule.

Coal Combustion Residual Co-Disposal Rule

In the April 17, 2015, issue of the *Federal Register* (80 FR 21302), the EPA codified a list of wastes generated primarily from processes that support the combustion of coal or other fossil fuels that are not subject to hazardous waste regulations when co-disposed with coal combustion residuals.

Imports and Exports of Hazardous Waste Rule

In the November 28, 2016, issue of the *Federal Register* (81 FR 85696), the EPA amended existing regulations regarding the export and import of hazardous wastes from and into the United States. EPA made these changes to provide greater protection to human health and the environment by: 1) making existing export and import related requirements more consistent with the current import-export requirements for shipments between members of the Organization for Economic Cooperation and Development; 2) enabling electronic submittal to EPA of all export and import-related documents (e.g., export notices, export annual reports); and 3) enabling electronic validation of consent in the Automated Export System for export shipments subject to RCRA export consent requirements prior to exit. The import and export regulations were promulgated under the Hazardous Waste and Solid Waste Amendments of 1984 which are administered by the EPA and are not delegable to states.

The Imports and Exports of Hazardous Waste Rule repealed 40 Code of Federal Regulations (CFR) Part 262, Subparts E and F (Exports of Hazardous Waste; and Imports of Hazardous Waste), which contained 40 CFR §§262.50 - 262.58 and §262.60 (Applicability; Definitions; General requirements; Notification of intent to export; Special manifest requirements; Exception reports; Annual reports; Recordkeeping; International agreements; and Imports of hazardous waste). Further information on the removal of sections and integration of all import and export requirements into 40 CFR Part 262, Subpart H (Transboundary Movements of Hazardous Waste for Recovery or Disposal), can be found in the Section by Section Discussion of this preamble for individual sections impacted by these revisions.

Safe Management of Recalled Airbags Rule

In the November 30, 2018, issue of the *Federal Register* (83 FR 61552), the EPA conditionally exempted the collection of airbag waste from hazardous waste requirements. EPA concluded that the conditional exemption would facilitate dealerships, salvage yards, and others' ability to conduct more expedited removal of defective and recalled airbag inflators and would facilitate safer and environmentally sound disposal. The conditions for exemption mirror the requirements for management of recalled airbags established by the United States Department of Transportation for the recalled airbags.

Promulgation of House Bill 1953

Additionally, the commission adopts this rulemaking to partially implement House Bill (HB) 1953, 86th Texas Legislature, 2019. HB 1953 amended Texas Health and Safety Code (THSC), §361.003 (Definitions) and §361.119 (Regulation of Certain Facilities as Solid Waste Facilities), and added THSC, §361.041 (Treatment of Post-Use Polymers and Recoverable Feedstocks as Solid Waste). These statutory enactments created a new conditional exclusion from the definition of solid waste and from regulations for the management of municipal and industrial solid waste for owners and operators of facilities that convert plastics and certain other nonhazardous recyclable material through pyrolysis or gasification. The conditional exclusion is dependent upon two factors: 1) the facility owner or operator demonstrating that the primary function of the facility is to convert materials that have a resale value greater than the cost of converting the materials for beneficial use; and 2) that solid waste generated from converting the materials is disposed at an authorized solid waste management facility. The implementation of HB 1953 in Chapter 335 will only be applicable to material that would be classified as nonhazardous industrial solid waste if discarded because the commission intends to implement the exclusion enacted by HB 1953 applicable to municipal solid waste in a future rulemaking.

As part of this rulemaking the commission adopts revisions to 30 TAC Chapter 305, Consolidated Permits, concurrently in this issue of the *Texas Register*.

Section by Section Discussion

In addition to the adopted amendments associated with this rulemaking, various stylistic, non-substantive changes are adopted to update rule language to current Texas Register style and format requirements. These changes are non-substantive and not specifically discussed in the Section by Section Discussion portion of this preamble.

§335.1, Definitions

The commission adopts §335.1(7) to add the definition of "AES filing compliance date" to conform to federal regulations promulgated in the November 28, 2016, issue of the *Federal Register* (81 FR 85696). Specifically, this amendment adds the definition of "AES filing compliance date" that is consistent with the definition of "AES filing compliance date" in 40 CFR §260.10 (Definitions). EPA established December 31, 2017, as the AES filing compliance date in the August 29, 2017, issue of the *Federal Register* (82 FR 41015).

The commission adopts §335.1(8) to add the definition of "Airbag waste" to conform to the federal regulations promulgated in the November 30, 2018, issue of the *Federal Register* (83 FR 61552). Specifically, this amendment adds the definition of "Airbag waste" that is consistent with the definition of "Airbag waste" in 40 CFR §260.10.

The commission adopts §335.1(9) to add the definition of "Airbag waste collection facility" to conform to federal regulations promulgated in the November 30, 2018, issue of the *Federal Register* (83 FR 61552). Specifically, this amendment adds the definition of "Airbag waste collection facility" that is consistent with the definition of "Airbag waste collection facility" in 40 CFR §260.10.

The commission adopts §335.1(10) to add the definition of "Airbag waste handler" to conform to federal regulations promulgated in the November 30, 2018, issue of the *Federal Register* (83 FR 61552). Specifically, this amendment adds the definition of "Airbag waste handler" that is consistent with the definition of "Airbag waste handler" in 40 CFR §260.10. The commission renumbers the subsequent paragraphs accordingly to account for the additional definitions.

The commission deletes existing §335.1(32) to remove the definition of "Consignee" to conform to federal regulations promulgated in the November 28, 2016, issue of the *Federal Register* (81 FR 85696). Specifically, this amendment removes the definition of "Consignee" consistent with the repeal of 40 CFR §262.51 and the definition of "Consignee."

The commission adopts §335.1(53) to add the definition of "Electronic import-export reporting compliance date" to conform to federal regulations promulgated in the November 28, 2016, issue of the *Federal Register* (81 FR 85696). Specifically, this amendment adds the definition of "Electronic import-export reporting compliance date" that is consistent with the definition of "Electronic import-export reporting compliance date" in 40 CFR §260.10.

The commission deletes existing §335.1(66) to remove the definition of "Gasification" to conform to federal regulations promulgated in the April 8, 2015, issue of the *Federal Register* (80 FR 18777). Specifically, this amendment removes the definition of "Gasification" consistent with the removal of the definition from 40 CFR §260.10.

The commission adopts §335.1(70) to add the definition of "Gasification." This amendment implements HB 1953 by adding the definition of "Gasification" consistent with the definition of "Gasification" under THSC, §361.003 (Definitions).

The commission adopts §335.1(71) to add the definition of "Gasification facility." This amendment implements HB 1953 by adding a new definition of "Gasification facility" consistent with the definition of "Gasification facility" under THSC, §361.003.

The commission adopts amended renumbered §335.1(84) to revise the definition of "Incinerator" to establish in adopted §335.1(84)(B) that incinerators are not a "Gasification facility" or "Pyrolysis facility" managing "Recoverable feedstock" consistent with the "Gasification facility" and "Pyrolysis facility" definitions enacted by HB 1953 under THSC, §361.003.

The commission amends renumbered §335.1(106) to revise the definition of "Manifest" to conform with the title revision for §335.10.

The commission adopts §335.1(130) to add the definition of "Post-use polymers." This amendment implements HB 1953 for the purposes of material that would be classified as non-hazardous industrial solid waste if discarded. The commission accomplishes this by adding a definition of "Post-use polymers" consistent with the conditional exclusion under THSC, §361.041 (Treatment of Post-Use Polymers and Recoverable Feedstocks as Solid Waste), and the definition of "Post-use polymers" under THSC, §361.003.

The commission deletes existing §335.1(128) to remove the definition of "Primary exporter" to conform to federal regulations promulgated in the November 28, 2016, issue of the *Federal Register* (81 FR 85696). Specifically, this amendment removes the definition of "Primary exporter" consistent with the repeal of 40 CFR §262.51 and the definition of "Primary exporter."

The commission adopts §335.1(136) to add the definition of "Pyrolysis." This amendment implements HB 1953 by adding a definition of "Pyrolysis" consistent with the definition of "Pyrolysis" under THSC, §361.003.

The commission adopts §335.1(137) to add the definition of "Pyrolysis facility." This amendment implements HB 1953 by adding a new definition of "Pyrolysis facility" consistent with the definition of "Pyrolysis facility" under THSC, §361.003.

The commission deletes existing §335.1(132) to remove the definition of "Receiving country" to conform to federal regulations promulgated in the November 28, 2016, issue of the *Federal Register* (81 FR 85696). Specifically, this amendment removes the definition of "Receiving country" consistent with the repeal of 40 CFR §262.51 and the definition of "Receiving country."

The commission adopts §335.1(139) to add the definition of "Recognized trader" to conform to federal regulations promulgated in the November 28, 2016, issue of the *Federal Register* (81 FR 85696). Specifically, this amendment adds a definition of "Recognized trader" that is consistent with the definition of "Recognized trader" in 40 CFR §260.10.

The commission adopts §335.1(140) to add the definition of "Recoverable feedstock." This amendment implements HB 1953 by adding a definition of "Recoverable feedstock" consistent with the definition of "Recoverable feedstock" under THSC, §361.003.

The commission amends renumbered §335.1(154)(A)(iv) of the definition of "Solid waste." This amendment adopts by reference revisions promulgated in the April 8, 2015, issue of the *Federal Register* (80 FR 18777) and November 28, 2016, issue of the *Federal Register* (81 FR 85696) to incorporate changes associated with the Vacatur of the Comparable Fuels and Gasification Rule and Imports and Exports of Hazardous Waste Rule, respectively. The commission accomplishes the adoption of these revisions by amending the *Federal Register* citations for 40 CFR §261.4(a) and §261.39 (Exclusions; and Conditional Exclusion for Used, Broken Cathode Ray Tubes (CRTs) and Processed CRT Glass Undergoing Recycling). Additionally, the adoption by reference of §261.4(a)(16) and §261.38 were removed.

The commission further amends renumbered §335.1(154)(A)(iv) to adopt by reference revisions promulgated in the April 8, 2015, issue of the *Federal Register* (80 FR 18777) to incorporate changes associated with the Vacatur of the Comparable Fuels Rule and the Gasification Rule revisions. The commission accomplishes the adoption of these revisions by removing the references for 40 CFR §261.4(a)(16) and §261.38, and subclauses (I) - (VIII), consistent with the removal of these sections and language from federal regulations.

The commission adopts §335.1(154)(A)(v) to implement the new conditional exclusion from the definition of "Solid waste" enacted by HB 1953 under THSC, §§361.003, 361.041, and 361.119. The amendment implements the statutory changes by creating a new exception from the definition of "Solid waste" for post-use polymers and recovered feedstocks processed through pyrolysis or gasification at a "Pyrolysis facility" or "Gasification facility,"

as those terms are defined in adopted §335.1, and are converted into materials that have a resale value greater than the cost of converting the materials for subsequent beneficial reuse and that the solid waste generated from converting the materials is disposed of in a solid waste management facility authorized under THSC, Chapter 361.

The commission amends renumbered §335.1(154)(D) to revise the citations for Table 1 to Figure: 30 TAC §335.1(154)(D)(iv) to be consistent with the renumbering of the paragraphs in §335.1. Furthermore, Table 1 is revised to remove the inappropriate digit after the clause in the abbreviated citations within the column headings.

Additionally, the commission amends §335.1(154)(I) to implement the new conditional exclusion enacted by HB 1953 under THSC, §§361.003, 361.041, and 361.119. The amendment implements the statutory changes by adding facility operators to the persons that are required by §335.1(154)(I) to provide appropriate documentation demonstrating that they meet the terms of an exclusion or exemption from the definition of "Solid waste" or from waste regulations. Specifically, this amendment implements THSC, §361.119 which exempts facility owners and operators, that convert nonhazardous recyclable materials through "Pyrolysis" or "Gasification," as those terms are defined in adopted §335.1, from regulation under THSC, §361.119 upon demonstration that the primary function of the facility is to convert the materials into materials that have a resale value greater than the cost of converting the materials for subsequent beneficial reuse and that the solid waste generated from converting the materials is disposed of in a solid waste management facility authorized under THSC, Chapter 361.

The commission deletes existing §335.1(162) to remove the definition of "Transit country" to conform to federal regulations promulgated in the November 28, 2016, issue of the *Federal Register* (81 FR 85696). Specifically, this amendment removes the definition of "Transit country" consistent with the repeal of 40 CFR §262.51 and the definition of "Transit country."

The commission deletes existing §335.1(171) to remove the definition of "United States Environmental Protection Agency (EPA) acknowledgment of consent" to conform to federal regulations promulgated in the November 28, 2016, issue of the *Federal Register* (81 FR 85696). Specifically, this amendment removes the definition of "United States Environmental Protection Agency (EPA) acknowledgment of consent" consistent with the repeal of 40 CFR §262.51. The definition of "EPA Acknowledgment of Consent (AOC)" in 40 CFR §262.81 (Definitions) is adopted by reference as published in the November 28, 2016, issue of the *Federal Register* (81 FR 85696) in §335.76 (Additional Requirements Applicable to International Shipments).

The commission amends renumbered §335.1(186)(C) to revise the definition of "User of the electronic manifest system" to conform with the adopted title revision for §335.10.

§335.2, *Permit Required*

The commission amends §335.2(g) to adopt by reference revisions promulgated in the November 28, 2016, issue of the *Federal Register* (81 FR 85696) to incorporate changes associated with the Imports and Exports of Hazardous Waste Rule. The commission accomplishes the adoption of these revisions by amending the *Federal Register* citation for 40 CFR §261.4(e) and (f). Specifically, the EPA amended existing regulations to add 40 CFR §261.4(e)(4), which placed a mass limit of 25 kilo-

grams (kg) on imported or exported treatability study samples for eligibility with exemptions from hazardous waste regulations.

§335.10, Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste

The commission adopts amended §335.10 to revise the section title by removing the words "and Primary Exporters of Hazardous Waste." The adopted title reflects the removal of the term "Primary Exporters" from 40 CFR Part 262 (Standards Applicable to Generators of Hazardous Waste).

The commission amends §335.10(a) to adopt by reference revisions promulgated in the November 28, 2016, issue of the *Federal Register* (81 FR 85696) to incorporate changes associated with the Imports and Exports of Hazardous Waste Rule. The commission accomplishes the adoption of these revisions by removing the references to 40 CFR §§262.54, 262.55, and 262.60, which were repealed in this federal rulemaking; adding the reference for 40 CFR Part 262, Subpart H; and amending the *Federal Register* citation for the Appendix to 40 CFR Part 262. Additionally, the commission adopts amended §335.10(a)(1) to remove the reference to "primary exporters."

The commission also adopts amended §335.10(c) to remove the exceptions for 40 CFR §262.54 and §262.55, which is removed from §335.10(a).

§335.11, Shipping Requirements for Transporters of Hazardous Waste or Class 1 Waste

The commission amends §335.11(a) to adopt by reference revisions promulgated in the November 28, 2016, issue of the *Federal Register* (81 FR 85696) to incorporate changes associated with the Imports and Exports of Hazardous Waste Rule. The commission accomplishes the adoption of these revisions by amending the *Federal Register* citations for 40 CFR §263.20 (The manifest system), and the Appendix to 40 CFR Part 262.

The commission further amends §335.11(a) to remove the exceptions for §335.10(d) and (e), which apply solely to shipments of Class 1 waste, and to revise the citation for §335.10 to conform with the adopted title revision for §335.10.

§335.12, Shipping Requirements Applicable to Owners or Operators of Treatment, Storage, or Disposal Facilities

The commission amends §335.12(a) and (b) to adopt by reference revisions promulgated in the November 28, 2016, issue of the *Federal Register* (81 FR 85696) to incorporate changes associated with the Imports and Exports of Hazardous Waste Rule. The commission accomplishes the adoption of these revisions by amending the *Federal Register* citations for 40 CFR §264.71 (Use of manifest system); §265.71 (Use of manifest system); and the Appendix to 40 CFR Part 262. At adoption, the commission corrects a typographical error in §335.12(b). The reference to 40 CFR §264.71 as amended through February 7, 2014 (79 FR 7518) is corrected to read 40 CFR §264.72 as amended through February 7, 2014 (79 FR 7518).

The commission further amends §335.12(a) to revise the citation for §335.10 to conform with the adopted title revision for §335.10.

§335.13, Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste

The commission adopts amended §335.13 to revise the section title by removing "and Primary Exporters of Hazardous Waste."

The adopted title reflects the removal of the term "Primary Exporters" from 40 CFR Part 262.

The commission adopts §335.13(a). Adopted §335.13(a) contains the language in existing §335.13(m), which is deleted. Adopted §335.13(a) clarifies that generators that generate less than 100 kg of hazardous or Class 1 waste, or less than the quantities of acutely hazardous waste listed in §335.78 (Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators) are not subject to the requirements of §335.13. The commission re-letters subsequent subsections accordingly.

The commission amends re-lettered §335.13(b) to remove the document identification "(S1)" for the Waste Shipment Summary, which no longer applies.

The commission deletes existing §335.13(b), to remove the requirement for exporters of hazardous or Class 1 waste to complete a Waste Shipment Summary.

The commission deletes existing §335.13(c). The Foreign Waste Shipment Summary requirement is no longer needed since the changes associated with the Imports and Exports of Hazardous Waste Rule allow for improved tracking of hazardous waste imports and exports.

The commission amends re-lettered §335.13(c) to remove the document identification "(S1)" for the Waste Shipment Summary, which no longer applies; the requirement for the Foreign Waste Shipment Summary, and the document identification "(F1);" the reference to "in-state/out-of-state primary exporter;" and the last sentence, "Conditionally exempt small quantity generators shipping municipal hazardous waste are not subject to the requirements of this subsection."

The commission deletes existing §335.13(e) to remove the graphic representation illustrating generator, waste type, shipment type, and report method because it is no longer needed.

The commission deletes existing §335.13(h) to remove the reference for "primary exporter/importer."

The commission amends re-lettered §335.13(f) to remove the references to "primary exporter," revise the citation for §335.10 to conform with the adopted title revision for §335.10, and to replace the phrase "a minimum of" with "at least."

The commission amends re-lettered §335.13(h) to remove the references to "primary exporter."

The commission deletes existing §335.13(n) to remove the references to "primary exporters;" 40 CFR §262.51; 40 CFR §262.56; and the annual report requirement contained within 40 CFR §262.56.

The commission amends re-lettered §335.13(j) to remove the references to "primary exporters;" 40 CFR Part 262, Subpart A; 40 CFR §262.51; and 40 CFR §262.58(a)(1); and to clarify that any person who exports or imports hazardous waste is subject to requirements in 40 CFR §262.12 and 40 CFR Part 262, Subpart H, which are adopted by reference in §335.76(a).

§335.24, Requirements for Recyclable Materials and Nonhazardous Recyclable Materials

The commission amends §335.24(c)(1) to adopt by reference revisions promulgated in the November 28, 2016, issue of the *Federal Register* (81 FR 85696) to incorporate changes associated with the Imports and Exports of Hazardous Waste Rule. The commission accomplishes the adoption of these revisions

by revising the language in §335.24(c)(1) to be consistent with the language in revised 40 CFR §261.6(a)(3)(i), which clarifies that exports and imports of recyclable industrial ethyl alcohol are subject to the requirements of revised 40 CFR Part 262, Subpart H; and to move the language in existing §335.24(c)(1)(B) to the end of §335.24(c)(1). The commission further deletes current §335.24(c)(1)(A), which contains references to 40 CFR §§262.53, 262.55, 262.56, and 262.57; and 40 CFR Part 262, Subpart E, which have been repealed and reserved in the federal revisions.

The commission amends §335.24(c)(3) to adopt by reference revisions promulgated in the April 8, 2015, issue of the *Federal Register* (80 FR 18777) to incorporate changes associated with the Vacatur of the Comparable Fuels Rule and the Gasification Rule. The commission accomplishes the adoption of these revisions by adding a dated *Federal Register* citation for 40 CFR §261.4(a)(12). Specifically, 40 CFR §261.4(a)(12)(i) was revised.

The commission adopts amended §335.24(g) to revise the citations for §335.10 and §335.13 to conform with the adopted title revisions for §335.10, and §335.13.

The commission amends §335.24(o) to adopt by reference revisions promulgated in the November 28, 2016, issue of the *Federal Register* (81 FR 85696) to incorporate changes associated with the Imports and Exports of Hazardous Waste Rule. The commission accomplishes the adoption of these revisions by revising the language in §335.24(o) to be consistent with the language in revised 40 CFR §261.6(a)(5), which clarifies that hazardous waste that is exported or imported for recovery is subject to 40 CFR Part 262, Subpart H.

§335.31, *Incorporation of References*

The commission amends §335.31 to adopt by reference the revisions promulgated in the November 28, 2016, issue of the *Federal Register* (81 FR 85696) to incorporate changes associated with the Import and Exports of Hazardous Waste Rule. The commission accomplishes the adoption of these revisions by revising the *Federal Register* citation for 40 CFR §260.11 (Incorporation by reference). The change revised the list of guidance materials available for purchase from the Organization for Economic Co-operation and Development.

§335.43, *Permit Required*

The commission adopts amended §335.43(a) and (b) to replace the reference to the predecessor agency, Texas Natural Resource Conservation Commission, with the current agency, Texas Commission on Environmental Quality.

§335.63, *EPA Identification Numbers*

The commission adopts amended §335.63(c) to incorporate the federal revisions published in the November 28, 2016, issue of the *Federal Register* (81 FR 85696) associated with the Imports and Exports of Hazardous Waste Rule. Adopted §335.63(c) requires all "Recognized traders" in Texas, as defined in adopted §335.1(139), to receive an EPA identification number prior to arranging for imports or exports of hazardous wastes. The adopted language is consistent with revised 40 CFR §262.12(d).

§335.69, *Accumulation Time*

The commission adopts amended §335.69(m) to revise the citation for §335.10 to conform with the adopted title revision for §335.10.

§335.71, *Biennial Reporting*

The commission amends §335.71 to adopt by reference the federal revisions published in the November 28, 2016, issue of the *Federal Register* (81 FR 85696) to incorporate changes associated with the Imports and Exports of Hazardous Waste Rule. The commission accomplishes the adoption of these revisions by adding the publication date to the *Federal Register* citation for 40 CFR §262.41.

§335.76, *Additional Requirements Applicable to International Shipments*

The commission amends §335.76(a) to adopt by reference the federal revisions published in the November 28, 2016, issue of the *Federal Register* (81 FR 85696) to incorporate changes associated with the Imports and Exports of Hazardous Waste Rule. The commission accomplishes the adoption of these revisions by clarifying that all transboundary movements of hazardous waste are subject to 40 CFR Part 262, Subpart H and §262.12 (EPA identification numbers).

The commission amends §335.76(b) to clarify that imports of industrial solid waste are subject to Chapter 335. The commission further amends §335.76(b) to delete §335.76(b)(1) - (5), as all transboundary movements of hazardous waste are made subject to the requirements of 40 CFR Part 262, Subpart H adopted by reference in §335.76(a), and §335.76(b)(1) - (5) are no longer needed.

The commission amends §335.76(c) to adopt by reference the federal revisions published in the November 28, 2016, issue of the *Federal Register* (81 FR 85696) to incorporate changes associated with the Imports and Exports of Hazardous Waste Rule. The commission accomplishes the adoption of these revisions by clarifying that hazardous waste exporters are subject to a separate annual report requirement contained in 40 CFR §262.83(g). The adopted language is consistent with revised 40 CFR §262.41(b). The commission further amends §335.76(c) to delete §335.76(c)(1) - (3), as all transboundary movements of hazardous waste are made subject to the requirements of 40 CFR Part 262, Subpart H adopted by reference in adopted §335.76(a), and §335.76(c)(1) - (3) are no longer needed.

The commission deletes §335.76(d) - (h), as all transboundary movements of hazardous waste are made subject to the requirements of 40 CFR Part 262, Subpart H adopted by reference in adopted §335.76(a), and §335.76(d) - (h) are no longer needed.

§335.78, *Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators*

The commission amends §335.78(c)(1) to adopt by reference the federal revisions published in the November 28, 2016, issue of the *Federal Register* (81 FR 85696) associated with the Imports and Exports of Hazardous Waste Rule. The commission accomplishes the adoption of these revisions by adding a publication date to the *Federal Register* citation for 40 CFR §261.4(c) - (f). Specifically, 40 CFR §261.4(d) and (e) were revised.

The commission adopts §335.78(g)(3)(H). Section §335.78(g)(3)(H) adopts the language from 40 CFR §262.14(a)(5)(xi) (Conditions for exemption for a very small quantity generator), which as a condition for exemption requires that hazardous waste airbags generated by a conditionally exempt small quantity generator (less than 100 kg of hazardous wastes generated per calendar month) disposed of offsite, must be sent to an airbag waste collection facility or designated

facility subject to the requirements of 40 CFR §261.4(j), which are contained within adopted new §335.281 (Airbag Waste).

§335.91, *Scope*

The commission amends §335.91(e) to adopt by reference the federal revisions published in the November 28, 2016, issue of the *Federal Register* (81 FR 85696) associated with the Imports and Exports of Hazardous Waste Rule. The commission accomplishes the adoption of these revisions by revising the language in §335.91(e) to be consistent with the language in revised 40 CFR §263.10(d) (Scope), which clarifies that transporters of hazardous waste for export or import are subject to 40 CFR Part 262, Subpart H.

§335.112, *Standards*

The commission amends §335.112(a)(1) and (4) to adopt by reference revisions promulgated in the November 28, 2016, issue of the *Federal Register* (81 FR 85696) to incorporate changes associated with the Imports and Exports of Hazardous Waste Rule. The commission accomplishes the adoption of these revisions by amending the *Federal Register* citations for 40 CFR Part 265, Subparts B and E (General Facility Standards; and Manifest System, Recordkeeping and Reporting). Specifically, 40 CFR §265.12 (Required notices) and §265.71 were revised.

§335.152, *Standards*

The commission amends §335.152(a)(1) and (4) to adopt by reference revisions promulgated in the November 28, 2016, issue of the *Federal Register* (81 FR 85696) to incorporate changes associated with the Imports and Exports of Hazardous Waste Rule. The commission accomplishes the adoption of these revisions by amending the *Federal Register* citations for 40 CFR Part 264, Subparts B and E (General Facility Standards; and Manifest System, Recordkeeping and Reporting). Specifically, 40 CFR §264.12 and §264.71 were revised.

§335.251, *Applicability and Requirements*

The commission amends §335.251(a) to adopt by reference revisions promulgated in the November 28, 2016, issue of the *Federal Register* (81 FR 85696) to incorporate changes associated with the Imports and Exports of Hazardous Waste Rule. The commission accomplishes the adoption of these revisions by amending the *Federal Register* citation for 40 CFR Part 266, Subpart G (Spent Lead-Acid Batteries Being Reclaimed).

The commission deletes existing §335.251(c) and adds §335.251(c) - (g) to adopt revisions promulgated in the November 28, 2016, issue of the *Federal Register* (81 FR 85696) to incorporate changes associated with the Imports and Exports of Hazardous Waste Rule.

§335.261, *Universal Waste Rule*

The commission amends §335.261(a) to adopt by reference revisions promulgated in the November 28, 2016, issue of the *Federal Register* (81 FR 85696) to incorporate changes associated with the Imports and Exports of Hazardous Waste Rule. The commission accomplishes the adoption of these revisions by amending the *Federal Register* citation for 40 CFR Part 273 (Standards for Universal Waste Management). Specifically, 40 CFR §§273.20, 273.39(a) and (b), 273.40, 273.56, 273.62(a), and 273.70 (Exports; Tracking universal waste shipments; Exports; Exports; Tracking universal waste shipments; and Imports) were revised.

The commission amends §335.261(b) to make conformational changes associated with the adoption of revised 40 CFR Part 273. These include adding §§273.20, 273.39(a) and (b), 273.40, 273.56, 273.62(a), and 273.70 to the list of sections to which the changes within §335.261(b) do not apply. These sections are excluded from these changes because they are associated with the federal import and export of hazardous waste regulations. States are not allowed to replace federal or international references or terms with state references or terms. The commission further amends §335.261(b) to remove existing paragraphs (23), (24), (33), and (34), and renumber the remaining paragraphs, accordingly. These paragraphs contain references to 40 CFR §§262.53, 262.56, and 262.57, and 40 CFR Part 262, Subpart E, which were removed and reserved in the federal revisions; and replace federal citations for exports of hazardous waste with state citations, which is prohibited.

§335.262, *Standards for Management of Paint and Paint-Related Wastes*

The commission adopts amended §335.262(b) to revise language to include non-pigmented paint wastes in universal waste regulations. At adoption, the commission removes the term "paint-related material," replaces the term with "paint-related waste," and adds the definition for "paint-related waste" to §335.262(b). The commission adopts this change in order to clarify the applicability of the rule in response to comments.

§335.281, *Airbag Waste*

The commission adds new §335.281 to adopt the exemption promulgated in the November 30, 2018, issue of the *Federal Register* (83 FR 61552) associated with the Safe Management of Recalled Airbags rule. The commission accomplishes the adoption of this rule by including the language of new 40 CFR §261.4(j) in adopted new §335.281.

§335.331, *Failure to Make Payment or Report*

The commission deletes §335.331(c), which subjected operators to a daily civil penalty for submitting late reports, and re-letters the remaining subsection accordingly.

§335.501, *Purpose, Scope, and Applicability*

The commission adopts amended §335.501 to correct a citation to 30 TAC §330.3 (Definitions).

§335.504, *Hazardous Waste Determination*

The commission adopts amended §335.504(1) to incorporate changes associated with the Vacatur of Comparable Fuels and Gasification, Coal Combustion Residual Co-Disposal, and Imports and Exports of Hazardous Waste Rules. The commission accomplishes the adoption of these revisions by amending the *Federal Register* citations for 40 CFR Part 261, Subparts A and E (General; and Exclusions/Exemptions). Specifically, 40 CFR §§261.4, 261.6 (Requirements for recyclable materials), and 261.39 were revised.

§335.590, *Operational and Design Standards*

The commission adopts amended §335.590(24)(A)(ii) to clarify the components of a composite liner by replacing the reference to a flexible membrane component with a reference to a geomembrane layer component. This correction makes the language consistent with municipal solid waste standards in §330.331(e)(1) (Design Criteria).

§335.602, *Standards*

The commission amends §335.602(a)(4) to adopt by reference revisions promulgated in the November 28, 2016, issue of the *Federal Register* (81 FR 85696) to incorporate changes associated with the Imports and Exports of Hazardous Waste Rule. The commission accomplishes the adoption of these revisions by adding the *Federal Register* citation for 40 CFR Part 267, Subpart E (Recordkeeping, Reporting, and Notifying). Specifically, 40 CFR §267.71 (Use of the manifest system) was revised.

Final Regulatory Impact Determination

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of the Texas Government Code, §2001.0225, and determined that the adopted rulemaking 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 adopted rulemaking is not a major environmental rule because it is not anticipated to adversely effect 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 since the adopted rulemaking implements requirements already imposed on the regulated community under 42 United States Code (USC), §6926(g). Likewise, there will be no adverse effect in a material way on the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state from those revisions outside 42 USC, §6926(g), because either the changes are not substantive, or the regulated community will benefit from the greater flexibility and reduced compliance burden.

Texas Government Code, §2001.0225, 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 adopted rulemaking does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225.

First, the rulemaking does not exceed a standard set by federal law because the commission adopts this rulemaking to implement revisions to the federal hazardous waste program. The commission must meet the minimum standards and mandatory requirements of the federal program to maintain authorization of the state hazardous waste program.

Second, although in this rulemaking the commission adopts some requirements that are more stringent than existing state laws, federal law requires the commission to promulgate rules that are as stringent as federal law for the commission to maintain authorization of the state hazardous waste program.

Third, the rulemaking does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government, where the delegation agreement or contract is to implement a state and federal program. On the contrary, the commission adopts rules that are

required to maintain authorization of the state hazardous waste program.

And fourth, this rulemaking does not seek to adopt a rule solely under the general powers of the agency. Rather, this rulemaking is authorized by specific sections of the Texas Water Code and the Texas Health and Safety Code that are cited in the Statutory Authority section of this preamble.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. The commission received no comments on the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed analysis of whether the adopted rulemaking constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of the adopted rulemaking is to maintain the state's authorization to implement RCRA hazardous waste program by adopting state hazardous waste rules that are equivalent to the federal regulations and to implement the requirements of HB 1953. The adopted rulemaking substantially advances these stated purposes by adopting rules that: 1) are equivalent to the federal regulations, 2) incorporate the federal regulations, or 3) implement the requirements of HB 1953.

The commission's analysis indicates that Texas Government Code, Chapter 2007 does not apply to the portions of the rulemaking that adopt rules that meet the minimum standards of the federal hazardous waste program because Texas Government Code, §2007.003(b)(4), exempts an action reasonably taken, by a state agency, to fulfill an obligation mandated by federal law from the requirements of Texas Government Code, Chapter 2007. Under 42 USC, §6926(g), the state must adopt rules that meet the minimum standards of the federal hazardous waste program administered by EPA in order to maintain authorization to administer the program. Therefore, the portions of the rulemaking adopting rules that meet the minimum standards of the federal hazardous waste program are exempt from the requirements of Texas Government Code, Chapter 2007 because the rules are required by federal law.

Finally, to the extent that portions of the adopted rulemaking are not exempt under Texas Government Code, §2007.003(b)(4), or the rulemaking implements state law, promulgation and enforcement of the adopted rules will be neither a statutory nor a constitutional taking of private real property. Specifically, the subject adopted regulations do not affect a landowner's rights in real property because the adopted rulemaking does not burden (constitutionally); nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. In other words, the adopted rules do not constitute a taking under the Texas Government Code, Chapter 2007 because they would either implement requirements already imposed on the regulated community under 42 USC, §6926(g) or that are less stringent than existing rules.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found that the adoption is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.*, and therefore, must be consistent with all applicable CMP goals and policies. The commission conducted a consistency de-

termination for the adopted rules in accordance with Coastal Coordination Act implementation rules, 31 TAC §505.22 and found the adopted rulemaking is consistent with the applicable CMP goals and policies. The CMP goals applicable to the adopted rules include protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs); to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone; and to make agency and subdivision decision-making affecting CNRAs efficient by identifying and addressing duplication and conflicts among local, state, and federal regulatory and other programs for the management of CNRAs. CMP policies applicable to the adopted rules include to construction and operation of solid waste treatment, storage, and disposal facilities, such that new solid waste facilities and areal expansions of existing solid waste facilities shall be sited, designed, constructed, and operated to prevent releases of pollutants that may adversely affect CNRAs and, at a minimum, comply with standards established under the federal Solid Waste Disposal Act, 42 USC, §§6901 *et seq.* Promulgation and enforcement of these rules will not violate or exceed any standards identified in the applicable CMP goals and policies because the adopted rules are consistent with these CMP goals and policies, because these adopted rules do not create or have a direct or significant adverse effect on any CNRAS, and because the adopted rules update and enhance the commission's rules concerning hazardous waste facilities.

The commission invited public comment regarding the consistency with the CMP during the public comment period. The commission received no comments regarding consistency with the CMP.

Effect on Sites Subject to the Federal Operating Permits Program

The adopted rulemaking is not expected to have a significant impact on sites subject to the Federal Operating Permits (FOP) Program under 30 TAC Chapter 122. Facilities which operate under an FOP should evaluate the adopted rules to determine if an update to their FOP is necessary.

Public Comment

The commission offered a public hearing on February 6, 2020. The comment period closed on February 11, 2020. The commission received comments from the American Coatings Association (ACA), the Texas Chemical Council (TCC), and TM Deer Park Services LLC (TMDP). All the comments were in support of proposed rules, and two of the comments suggested changes to the proposed rules.

Response to Comments

Comment

TCC commented that it supports the TCEQ's proposed rulemaking implementing HB 1953. ACA commented that it supports TCEQ's proposal to amend §335.262(b) to include non-pigmented paint waste in the universal waste regulations. TMDP commented that it supports the proposed rulemaking.

Response

The commission acknowledges the comments.

Comment

ACA recommended that the commission adopt definitions of paint-related waste and paint-related material to provide ad-

ditional clarity and guidance on what waste may be managed as a universal waste, to promote better facility management, alleviate regulatory burdens and costs, and encourage more recycling and reuse in Texas.

Response

The commission agrees that defining terms of art used in §335.262(b) will provide the regulated community with more clarity regarding what materials may be managed under the rule. This in turn will promote compliance with the rule, and the protection of human health and the environment. In response to this comment, the commission removes the term "paint-related material," replaces the term with "paint-related waste," and adds the definition of "paint-related waste" to §335.262(b).

Comment

TMDP recommended that the commission clarify the Class 1 waste management standards in §335.10.

Response

The commission has made no changes in response to this comment because the scope of amendments made to §335.10 is limited to implementing revisions to federal hazardous waste program, specifically imports and exports of hazardous waste.

SUBCHAPTER A. INDUSTRIAL SOLID WASTE AND MUNICIPAL HAZARDOUS WASTE IN GENERAL

30 TAC §§335.1, 335.2, 335.10 - 335.13, 335.24, 335.31

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; and 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. The amendments are also adopted under Texas Health and Safety Code (THSC), §361.017, which provides the commission authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.036, which provides the commission authority to adopt rules regarding records and manifests for Class I industrial solid waste or hazardous waste; THSC, §361.041, which requires that the commission consider the treatment of post-use polymers and recoverable feedstocks; THSC, §361.078, which relates to the maintenance of state program authorization under federal law; and THSC, §361.119, which authorizes the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with THSC, Chapter 361.

The adopted amendments implement THSC, Chapter 361.

§335.12. Shipping Requirements Applicable to Owners or Operators of Treatment, Storage, or Disposal Facilities.

(a) Except as provided by §335.10(a)(2) of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste), persons who generate, process, store, or dispose of hazardous waste must comply with 40 Code of Federal Regulations (CFR) §264.72 or §265.72, depending on the status of the person, as these sections are amended through February 7, 2014 (79

FR 7518); and 40 CFR §264.71 or §265.71, depending on the status of the person, as these sections are amended through November 28, 2016 (81 FR 85696), and with the Appendix to 40 CFR Part 262, as amended through November 28, 2016 (81 FR 85696). The references in §335.112(b)(1) and (10) and §335.152(c)(1) and (10) of this title (relating to Standards) do not apply to this provision.

(b) Except as provided by §335.10(d) and (e) of this title, persons who generate, transport, process, store, or dispose of Class I waste must comply with 40 CFR §264.72 and §264.76, as amended through February 7, 2014 (79 FR 7518), and §264.71 and the Appendix to 40 CFR Part 262, as amended through November 28, 2016 (81 FR 85696), and a manifest or copy of e-Manifest must accompany the shipment which designates that facility to receive the waste.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. HAZARDOUS WASTE MANAGEMENT GENERAL PROVISIONS

30 TAC §335.43

Statutory Authority

The amendment is 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; and 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. The amendment is also adopted under Texas Health and Safety Code (THSC), §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; and THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste.

The adopted amendment implements THSC, Chapter 361.

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SUBCHAPTER C. STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

30 TAC §§335.63, 335.69, 335.71, 335.76, 335.78

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; and 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. The amendments are also adopted under Texas Health and Safety Code (THSC), Chapter 361, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.036, which provides the commission authority to adopt rules regarding records and manifests for Class I industrial solid waste or hazardous waste; and THSC, §361.078, which relates to the maintenance of state program authorization under federal law.

The adopted amendments implement THSC, Chapter 361.

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SUBCHAPTER D. STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE

30 TAC §335.91

Statutory Authority

The amendment is 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; and 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. The amendment is also adopted under Texas Health and Safety Code (THSC), §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.036, which provides the commission authority to adopt rules regarding records and manifests for Class I industrial solid waste or hazardous waste; and THSC,

§361.078, which relates to the maintenance of state program authorization under federal law.

The adopted amendment implements THSC, Chapter 361.

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SUBCHAPTER E. INTERIM STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, OR DISPOSAL FACILITIES

30 TAC §335.112

Statutory Authority

The amendment is 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; and 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. The amendment is also adopted under Texas Health and Safety Code (THSC), §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.036, which provides the commission authority to adopt rules regarding records and manifests for Class I industrial solid waste or hazardous waste; and THSC, §361.078, which relates to the maintenance of state program authorization under federal law.

The adopted amendment implements THSC, Chapter 361.

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SUBCHAPTER F. PERMITTING STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, OR DISPOSAL FACILITIES

30 TAC §335.152

Statutory Authority

The amendment is 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; and 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. The amendment is also adopted under Texas Health and Safety Code (THSC), §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.036, which provides the commission authority to adopt rules regarding records and manifests for Class I industrial solid waste or hazardous waste; and THSC, §361.078, which relates to the maintenance of state program authorization under federal law.

The adopted amendment implements THSC, Chapter 361.

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SUBCHAPTER H. STANDARDS FOR THE MANAGEMENT OF SPECIFIC WASTES AND SPECIFIC TYPES OF FACILITIES

DIVISION 4. SPENT LEAD-ACID BATTERIES BEING RECLAIMED

30 TAC §335.251

Statutory Authority

The amendment is 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; and 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. The amendment is also adopted under Texas Health and Safety Code (THSC), §361.017, which provides the commission's authority to manage industrial solid waste and hazardous

municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.036, which provides the commission authority to adopt rules regarding records and manifests for Class I industrial solid waste or hazardous waste; and THSC, §361.078, which relates to the maintenance of state program authorization under federal law.

The adopted amendment implements THSC, Chapter 361.

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DIVISION 5. UNIVERSAL WASTE RULE

30 TAC §335.261, §335.262

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; and 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. The amendment is also adopted under Texas Health and Safety Code (THSC), §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; and THSC, §361.078, which relates to the maintenance of state program authorization under federal law.

The adopted amendments implement THSC, Chapter 361.

§335.262. *Standards for Management of Paint and Paint-Related Waste.*

(a) This section establishes requirements for managing paint and paint-related waste as described in subsection (b) of this section, and provides an alternative set of management standards in lieu of regulation under other portions of this chapter not otherwise referenced under this section.

(b) Paint and paint-related waste is used or unused paint or paint-related waste which is "hazardous waste" as defined under §335.1 of this title (relating to Definitions), as determined under §335.504 of this title (relating to Hazardous Waste Determination). Paint is a pigmented or unpigmented mixture of binder and suitable liquid which forms a closely adherent coating when spread on a surface. Paint-related waste is material contaminated with paint that results from the packaging of paint, wholesale and retail operations, paint manufacturing, and paint application or removal activities, or a material derived from the reclamation of paint-related wastes that is recycled in a manner other than burning for energy recovery or used in a manner constituting disposal.

(c) Except as otherwise provided in this section, the following definitions and requirements apply to persons managing paint and paint-related wastes:

(1) Those requirements which apply to universal wastes in general and the definitions under the following regulations, as adopted by reference under §335.261 of this title (relating to Universal Waste Rule): 40 Code of Federal Regulations (CFR) §§273.5, 273.6, 273.10 - 273.12, 273.15 - 273.20, 273.30 - 273.32, 273.35 - 273.40, 273.50 - 273.56, 273.60 - 273.62, and 273.70;

(2) In addition to the requirements referenced under paragraph (1) of this subsection, small quantity handlers and large quantity handlers of universal waste must manage paint and paint-related waste in accordance with §335.4 of this title (relating to General Prohibitions). The paint and paint-related waste must be contained in one or more of the following:

(A) a container that remains closed, except when necessary to add or remove waste;

(B) a container that is structurally sound, compatible with the waste, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions; or

(C) a container that does not meet the requirements of subparagraphs (A) and (B) of this paragraph, provided that the unacceptable container is overpacked in a container that does meet the requirements of subparagraphs (A) and (B) of this paragraph; or

(D) a tank that meets the requirements of 40 CFR Part 265, Subpart J, except for 40 CFR §§265.197(c), 265.200, and 265.201; or

(E) a transport vehicle or vessel that is closed, structurally sound, compatible with the waste, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions; and

(F) a container, multiple container package unit, tank, transport vehicle or vessel that is labeled or marked clearly with the words "Universal Waste - Paint and Paint-Related Wastes;" and

(3) For paint and paint-related waste that is ignitable, reactive, or incompatible waste, the applicable requirements under 40 CFR §§265.17, 265.176, and 265.177.

(d) Hazardous waste determinations under subsection (b) of this section shall be documented at the time of the determination and maintained for at least three years.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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DIVISION 7. AIRBAG WASTE RULE

30 TAC §335.281

Statutory Authority

The new section is 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; and 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. The new section is also adopted under Texas Health and Safety Code (THSC), §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.036, which provides the commission authority to adopt rules regarding records and manifests for Class I industrial solid waste or hazardous waste; and THSC, §361.078, which relates to the maintenance of state program authorization under federal law.

The adopted new section implements THSC, Chapter 361.

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SUBCHAPTER J. HAZARDOUS WASTE GENERATION, FACILITY AND DISPOSAL FEE SYSTEM

30 TAC §335.331

Statutory Authority

The amendment is 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; and 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. The amendment is also adopted under Texas Health and Safety Code (THSC), §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC §361.136, which provides that the commission establish fee rates for the management of industrial solid waste and hazardous municipal waste; and THSC §361.137, which provides the commission the authority to establish fees for an industrial solid waste or hazardous municipal waste permit application.

The adopted amendment implements THSC, Chapter 361.

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SUBCHAPTER R. WASTE CLASSIFICATION

30 TAC §335.501, §335.504

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; and 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. The amendments are also adopted under Texas Health and Safety Code (THSC), §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.036, which provides the commission authority to adopt rules regarding records and manifests for Class I industrial solid waste or hazardous waste; and THSC, §361.078, which relates to the maintenance of state program authorization under federal law.

The adopted amendments implement THSC, Chapter 361.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

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For further information, please call: (512) 239-6087



SUBCHAPTER T. PERMITTING STANDARDS FOR OWNERS AND OPERATORS OF COMMERCIAL INDUSTRIAL NONHAZARDOUS WASTE LANDFILL FACILITIES

30 TAC §335.590

Statutory Authority

The amendment is 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; and 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. The amendment is also adopted under Texas Health and Safety Code (THSC), §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; and THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste.

The adopted amendment implements THSC, Chapter 361.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER U. STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE FACILITIES OPERATING UNDER A STANDARD PERMIT

30 TAC §335.602

Statutory Authority

The amendment is 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; and 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. The amendment is also adopted under Texas Health and Safety Code (THSC), §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.036, which provides the commission authority to adopt rules regarding records and manifests for Class I industrial solid waste or hazardous waste; and THSC, §361.078, which relates to the maintenance of state program authorization under federal law.

The adopted amendment implements THSC, Chapter 361.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 361. REGIONAL FLOOD PLANNING

The Texas Water Development Board ("TWDB" or "board") adopts new 31 TAC §§361.10 - 361.13; 361.20 - 361.22; 361.30 - 361.45; 361.50, 361.51; 361.60 - 361.62; and 361.70 - 361.72, concerning Regional Flood Planning. The new chapter is adopted with changes as published in the December 20, 2019, issue of the *Texas Register* (44 TexReg 7826) These rules will be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE NEW CHAPTER.

The Texas Water Development Board ("TWDB" or "board") adopts new 31 TAC Chapter 361 concerning regional flood planning. Senate Bill 8 of the 86th Legislature, Regular Session requires that the first regional flood plans be delivered to the Texas Water Development Board by January 10, 2023.

SECTION BY SECTION DISCUSSION OF ADOPTED AMENDMENTS INCLUDING PUBLIC COMMENT RECEIVED AND RESPONSES.

General Comments:

Chairman Charles Perry provided written comment thanking staff for traveling throughout the state to host fourteen public meetings and two webinars to listen to and receive feedback from hard-working Texans. The chairman stated that the rules as presented mirror the intent of SB 8 and the subsequent funding provided in SB 500, and that as with all rules promulgated, implementation requires deliberate oversight to ensure that legislative intent is ultimately met.

Response:

The TWDB acknowledges and appreciates this comment. No changes have been made.

Comment:

Chairman Dade Phelan provided oral comment thanking staff for their work and expressing support the implementation of this monumental legislation. The chairman discussed his district's flood risk and history and asserts that flood mitigation is a statewide issue. He appreciates TWDB's willingness to listen to the public and stakeholders.

Response:

The TWDB acknowledges and appreciates this comment. No changes have been made.

Comment:

State Senator Carol Alvarado applauds the effort of the TWDB and collaborating state agencies in drafting these proposed rules. The senator suggests that, when possible, the TWDB place a focus on utilizing nature-based flood solutions that promote biodiversity and resident well-being, all while mitigating flood risk.

Response:

The TWDB acknowledges and appreciates the comment and notes that the consideration of nature-based features is one of the guidance principles in §362.3(b)(17). A definition of nature-based flood mitigation and a requirement for consideration of nature-based solution are added to the rules in Section 361.10(v) and §361.38(a) respectively.

Comment:

State Senator Carol Alvarado expresses concern over the ambiguity of the phrase "negative impacts." The senator agrees that no community should be negatively impacted by flood mitigation efforts and suggests that the TWDB consider revising this phrasing, further defining its meaning, or adding a threshold of impact or damages to clarify the meaning of negative impact.

Response:

The TWDB acknowledges and appreciates the comment and notes that the term "negative affect" is based on language in Senate Bill 8. TWDB has included a definition for "negative effect" in §361.10 and the term will be further defined through guidance being developed by the EA.

Comment:

Judge Aurelio Guerra, Jr. states that Willacy County is a small rural community that experiences recurring flooding and due to high poverty conditions, the county does not have the financial means to provide improvements on its own. Willacy County requests that TWDB consider giving preference to economically distressed counties and counties impacted by upstream flooding.

Response:

The TWDB acknowledges and appreciates the comment and notes that funding of project implementation will occur via financial programs outside of the Senate Bill 8 planning charges. Note that the new Flood Infrastructure Fund (FIF) program that came out of Senate Bill 7 attempts to address some of the affordability issues raised by the commenter. No changes have been made.

Comment:

Overall, PEW Charitable Trusts strongly supports the new regulations and the framework they create for regional flood planning across the State of Texas and believes the proposed regulations are fully consistent with the requirements of the State's new law, offer a reasonable degree of process flexibility for local communities, and will, over time, reduce the vulnerability of people and property to devastating storms and floods. Further, PEW Charitable Trusts applauds the TWDB for assuring that the regional flood plans, which will be aggregated into a single statewide flood plan, not only focus on current flood risks, but also consider and prepare for future flood risks and found that the TWDB's proposed rules to be sound and thorough.

PEW Charitable Trusts thanks the TWDB for including language which emphasizes the long-standing tenet of Texas law regarding diversion of floodwaters to another property (Texas Water Code 11.086) and the specific direction from the legislature for the TWDB to assure that no neighboring area is negatively affected by a regional flood plan. They consider the requirement that each Regional Flood Planning Groups (RFPG) must consider upstream and downstream impacts (§362.3(b)(10)) as well as provide notice to (§361.21(h)(3)(c)) and work collaboratively with representatives of neighboring areas (§361.11 (f)(8) and (j)) likely to help to assure that the actions or inactions of one planning entity will not exacerbate the flood risk elsewhere; and supports the inclusion of those specific sections (361.60, 361.61, and 361.62) that make it clear that the negative effects consideration is mandatory rather than simply aspirational.

Response:

The TWDB acknowledges and appreciates the comment and no changes have been made.

Comment:

The American Society of Civil Engineers - Texas (ASCE-TX) asserts that the use of the words "feasible" and "infeasible" should not be used anywhere in the planning regulations. They imply that flood risk reduction planning is a binary decision - that projects are either feasible or infeasible. ASCE-TX states that is not an appropriate view of flood risk reduction planning and that it is more appropriate to view flood risk reduction planning as choices along a continuum, rather than as a binary decision.

Response:

TWDB acknowledges that flood risk reduction planning presents multiple choices along a continuum. However, the flood plans will require the identification of projects that are potentially feasible. The term "potentially feasible flood management strategy or potentially feasible flood mitigation project" has been defined in §361.10 and is utilized to identify projects that are permissible, economically viable, constructible and implementable with the constraints of certain project area including the preference of the community, economic feasibility etc.

Comment:

ASCE-TX, consistent with their response to the TWDB's request for stakeholder input, encourages the TWDB to develop public guidance on how to determine benefit cost ratios (BCRs). They believe that BCR calculations should consider the net triple-bottom line (TBL), including (1) net economic costs/benefits, such as construction and operation costs vs. avoided injuries, death, and property damage; (2) net social costs/benefits, such as cost of cultural displacement, cost of lost income vs. benefits of new jobs, new income, new recreational benefits; and (3) net environmental costs/benefits, such as cost of lost ecosystem services, cost of lost habitat vs. benefit of new ecosystem services and new habitats. ASCE-TX states that TWDB should provide guidance on this to help generate more consistent applications. ASCE stated that the TWDB should incorporate Policy Statement 418, a more holistic BCR, into the proposed regulations in identifying candidate evaluations, strategies, and projects; and in selecting which candidate projects to include regional plans.

Response:

The TWDB acknowledges and appreciates the comment. The Executive Administrator is developing related BCR guidance and resources that will become part of the grant contracts that sup-

port the RFPGs and that stakeholders will have an opportunity to review. No changes have been made.

Comment:

The Greater Houston Partnership comment that the Houston region has experienced extreme flood events in recent history. They support the TWDB's regional approach to flood mitigation planning and supported the passage of Senate Bill 8, Senate Bill 7, and Senate Bill 500.

Additionally, the Greater Houston Partnership and the City of Sugar Land articulate that long-term planning requirements will likely require additional funding. They believe that the TWDB should consider and provide recommendations on how to create sustainable funding sources for local entities to meet substantial data-gathering requirements in the proposed rules.

Response:

TWDB acknowledges and appreciates the comment and agrees that long-term funding is necessary. The TWDB recognizes the ongoing need for planning funding and anticipates allocating the available appropriations under a formula-funding method that will consider the relative amount of work required by the regional flood planning groups. Future appropriations for flood planning to the agency which will support the subsequent data-gathering requirements are subject to future legislative action. No changes have been made to the rules in response to this comment.

Comment:

Environment Texas, Lower Rio Grande Valley TPDES Stormwater Task Force, Greater Edwards Aquifer Alliance, Research, Applied Technology, Education and Service, Inc., Save Our Springs Alliance, Bayou City Waterkeeper, Farm & City, and the United States Green Building Council Texas Chapter support the emphasis on nature-based features and multi-use opportunities in the proposed rules and cite various benefits to nature-based solutions including reducing flood risk, protecting drinking water quality, recharging aquifers, and providing green space to communities. They suggest that TWDB conduct a statewide efficacy study to provide data on how nature-based techniques can work in Texas.

Response:

TWDB acknowledges and appreciates the comment. The effectiveness of a nature-based flood risk reduction solution is variable based on the type, location and severity of flood risk, and the rainfall pattern, geology and land cover area of where the risk is located. Existing literature includes investigation of nature base flood mitigation solutions and relevant case studies. No changes have been made.

Comment:

The City of Lake Jackson and the City of Brookshire express appreciation for the efforts of TWDB staff to conduct listening tours in 2019.

Response:

The TWDB acknowledges and appreciates the comment and no changes have been made.

Comment:

The City of Sugar Land requests that the TWDB develop guidance documents to ensure consistency between projects eligible for Senate Bill 7 funding and projects created through the Senate Bill 8 planning effort.

Response:

The TWDB acknowledges and appreciates the comment. The TWDB is aware of this general issue and is considering how the projects eligible under current FIF funding under Texas Water Code Chapter 15 may compare to and/or relate to projects in the first state flood plan. No changes have been made.

Comment:

Matthew Berg asserts that a thorough discussion of the causes of flooding is missing from the proposed rules.

Response:

The TWDB acknowledges and appreciates the comment. No changes have been made.

Comment:

Bexar Regional Watershed Management Partners are pleased with the proposed watershed-based approach for regional flood planning and state that they have employed such an approach successfully in their region.

Response:

The TWDB acknowledges and appreciates the comment. No changes have been made.

Comment:

Bexar Regional Watershed Management Partners are supportive of the general approach to closely mirror regional flood planning after the state's water planning process. They say that this strategy has proven to work across the state.

Response:

The TWDB acknowledges and appreciates the comment. No changes have been made.

Comment:

Bexar Regional Watershed Management Partners strongly recommends that the state should promote minimum standards of floodplain management practices across the state. They offer a suggestion that this could be done by requiring entities that receive state funding to participate in the National Flood Insurance Program or a state equivalent program.

Response:

The TWDB acknowledges and appreciates the comment and considers the identification and recommendation of specific floodplain management practices and standards to be the purview of RFPGs and is one of the considerations for RFPGs in §361.35(a)(4). No changes have been made.

Comment:

The Texas Association of Builders and the Texas Apartment Association commend the TWDB for its work to address regional flood planning. The associations support sensible flood planning and mitigation and assert that cities and counties should smartly enforce their development regulations. They also stress the importance of regulations being balanced with the need to slow rising housing costs and respect private property rights. They state that the need for affordable housing is critical as Texas' population skyrockets. The associations warn that unnecessary and unreasonable requirements can negatively impact home affordability.

Response:

The TWDB acknowledges and appreciate the comment. No changes have been made.

Comment:

The City of Austin comment that having a regional collaboration process is key to achieving flood risk reduction statewide.

Response:

TWDB acknowledges and appreciates the comment and no changes have been made.

Comment:

The Trinity River Authority describes their jurisdiction's flood risk and recent flood history. The authority states that it has commenced a study of basin-wide flood mitigation opportunities, focusing first on the zone-of-influence of Lake Livingston, and that it is prepared to play a central role in regional flood planning.

Response:

TWDB acknowledges and appreciates the comment and no changes have been made.

Comment:

The North Central Texas Council of Governments provides a brief history of the council's comment previously provided to the TWDB. The council expresses support for the TWDB in implementing flood-related legislation passed by the 86th Texas Legislature, and states that this is much needed progress in a state whose statistical results in flood risk warrants changes and improvements in this industry.

Response:

TWDB acknowledges and appreciates the comment and no changes have been made.

Comment:

The North Central Texas Council of Governments seeks clarification on how the \$20.8 million will be divided between the regional flood planning groups, taking into account regional magnitude, number of entities to coordinate with and collect data for, geographically developed areas, and extent of population and population growth.

Response:

The TWDB acknowledges and appreciates the comment. The TWDB anticipates allocating grant funding using a formula approach outside of the rulemaking process based on the amount of effort anticipated to be required to develop regional flood plans. No changes have been made.

Comment:

The North Central Texas Council of Governments asserts that the broad belief that the "floodplain" is the area designated on the Flood Insurance Rate Map (FIRM) must be overcome because FIRMs are an insurance tool and much flooding occurs outside and upstream of FEMA FIRM floodplain areas. The council also asserts that streams need to be identified, preserved, and protected before development and urbanization take place. They suggest that a new term, flood prone areas, should be designated to indicate areas to be studied and protected in the state. They state that the term "flood prone areas" is a more comprehensive federally defined term that better describes those areas at risk from flood waters. The council states that the term flood prone areas is not restricted to that area one mile below the top

of the watershed, which is important in heavily developed areas, nor restricted to flows calculated in the past that are no longer accurate due to development resulting in increased flows.

Response:

TWDB acknowledges and appreciates the comment. §361.10 has been revised to include a definition for "flood-prone".

Comment:

The Farm and Ranch Freedom Alliance supports the comment submitted to the TWDB by the Sierra Club-Lone Star Chapter, National Wildlife Foundation, Galveston Bay Foundation, and Hill Country Alliance. Specifically, the alliance urges the TWDB to place a high priority on non-structural flood mitigation measures, including nature-based solutions, in the state and regional flood plans. The alliance states that open space land can reduce flooding and that specific types of land management (ex: rotational grazing, permaculture, etc.) can increase the ability of open space land to capture and hold water efficiently. The alliance also attached three written testimonies given by their members to the Texas Legislature.

Response:

The TWDB acknowledges and appreciates the comment and notes that the consideration of nature-based features is one of the guidance principles in §362.3(b)(17). A definition of nature-based flood mitigation and a requirement for consideration of nature-based solutions are added to the rules in Section 361.10(v) and §361.38(a) respectively.

Comment:

The Pines and Prairies Land Trust endorses the joint comment submitted by the Texas Living Waters Project on the Texas Water Development Board's proposed rules to implement Senate Bill 8. The Trust is a non-profit working to protect land in South Central Texas, and whole heartedly promotes nonstructural (including nature-based) flood solutions.

Response:

The TWDB acknowledges and appreciates the comment. No changes have been made.

Comment:

Sierra Club - Lone Star Chapter, National Wildlife Federation, Galveston Bay Foundation, and Hill Country Alliance find the proposed rules to be structured in a manner that faithfully reflects the provisions in Senate Bill 8 (86th Texas Legislature), the enabling legislation requiring the establishment of the flood planning process and directing TWDB to be the primary state agency for implementation.

Response:

The TWDB acknowledges and appreciates the comment. No changes have been made.

Comment:

Hidalgo County provided oral comment expressing support and appreciation for the legislation and rules. The county discussed the county's flood risk and history and difficulty in securing funding for mitigation projects.

Response:

The TWDB acknowledges and appreciates the comment. No changes have been made.

Comment:

Hidalgo County Drainage District #1 provided oral and written comment expressing support for staff's hard work.

Response:

The TWDB acknowledges and appreciates the comment. No changes have been made.

Comment:

El Paso County provided oral comment stating appreciation for the TWDB's efforts to engage stakeholders.

Response:

The TWDB acknowledges and appreciates the comment. No changes have been made.

Comment:

The City of San Marcos provided oral comment supporting looking at flooding at a regional approach.

Response:

The TWDB acknowledges and appreciates the comment. No changes have been made.

Comment:

The Texas Floodplain Management Association provided oral comment describing Texas' flood risk and history and expressing support for staff's work in the development of the proposed rules. The association suggests taking time to accurately identify flood risk in Texas communities, develop accurate flood risk models, and objectively work together to mitigate flood risk. The association also supports non-structural flood mitigation methods.

Response:

The TWDB acknowledges and appreciates the comment. No changes have been made.

Comment:

The Lone Star Chapter of the Sierra Club provided oral comment stating appreciation for the work of the TWDB in implementing the flood-related legislation. The Sierra Club supports a comprehensive, innovative approach to water management.

Response:

The TWDB acknowledges and appreciates the comment. No changes have been made.

Comment:

The National Wildlife Federation provided oral comment stating appreciation for the TWDB's open and collaborative process. The federation supports developing the state and regional flood plans in an equitable manner that adequately addresses the needs of socially vulnerable populations. They suggest that each regional flood planning groups should designate subgroups or subcommittees to consider the special flood risks of socially vulnerable populations, to include representatives of these communities. The National Wildlife Federation urges that language be added to the rules to require documentation of any efforts to solicit input from vulnerable communities.

Response:

The TWDB acknowledges and appreciates the comment. RFPGs have the ability under §361.11 to choose to create additional subgroups or subcommittees that they consider necessary to ad-

dress specific flood-related issues of concern in the region. No changes have been made.

Comment:

Galveston Bay Foundation provided oral comment advocating for non-structural solutions to flooding, including land conservation, preservation, wetland restoration, and buyouts. The foundation also summarized written comment provided.

Response:

The TWDB acknowledges and appreciates the comment and notes that the consideration of nature-based features is one of the guidance principles in §362.3(b)(17). A definition of nature-based flood mitigation and a requirement for consideration of nature-based solution are added to the rules in Section 361.10(v) and §361.38(a) respectively.

Comment:

Environment Texas provided oral comment advocating for nature-based solutions to flood mitigation. The organization suggests including nature-based solutions in regional and state flood planning and suggest that the TWDB should support a statewide nature-based infrastructure study.

Response:

The TWDB acknowledges and appreciates the comment and notes that the consideration of nature-based features is one of the guidance principles in §362.3(b)(17). A definition of nature-based flood mitigation and a requirement for consideration of nature-based solution are added to the rules in Section 361.10(v) and §361.38(a) respectively.

Comment:

The City of Austin provided oral comment stating support for the proposed rules.

Response:

The TWDB acknowledges and appreciates the comment. No changes have been made.

Comment:

The Orange County Drainage District provided oral comment discussing the area's flood risk and history. The district also provided general comment of support for the TWDB's efforts.

Response:

The TWDB acknowledges and appreciates the comment. No changes have been made.

Comment:

The Texas Association of Builders provided oral comment stating that Texas has a proclivity for severe weather and flooding and that they appreciate the need for flood mitigation. They also express appreciation for the TWDB's efforts.

Response:

The TWDB acknowledges and appreciates the comment. No changes have been made.

Comment:

The Texas Land Trust Council would like to see additional ways of promoting the integration of flood management with other water policy goals, and other appropriate public purposes, adopted within the final rules. Ideally, they would like the state to more

fully integrate related goals among water resource management, water quality protection, environmental flow management, and flood risk reduction with the hope of achieving more effective flood mitigation and risk reduction strategies for our state. Their recommendations include: broad and diverse representation of interests on the regional flood planning groups and in the regional flood planning process as a whole; better incorporation and incentives for nonstructural flood mitigation measures, including nature-based solutions, in the state and regional flood plans; and, prioritization of flood management strategies that provide multiple public benefits in addition to flood risk reduction and mitigation (such as water quality, water recharge, environmental benefits, public health/recreation benefits, etc.).

Response:

The TWDB acknowledges and appreciates the comment and notes that the representation on the RFPs closely follows the direction in Senate Bill 8 and, under §361.11, allows the RFPs to add members to ensure adequate representation. The consideration of nature-based flood mitigation is one of the guidance principles in §362.3(b)(17). A definition of nature-based flood mitigation and a requirement for consideration of nature-based solution are added to the rules in Section 361.10(v) and §361.38(a) respectively.

Comment:

Sierra Club - Lone Star Chapter, National Wildlife Federation, Galveston Bay Foundation, and Hill Country Alliance seek clarification on what will be the path and the mechanism that TWDB will use to take the recommendations from the regional flood plans and prioritize the recommended flood management evaluations, strategies, and projects for future funding decisions if applications are made for state financial assistance.

Response:

Identifying and recommending FMEs, FMSs, and FMPs in the regional flood plans, ranking recommended FMEs, FMSs, and FMPs in the state flood plan, and providing state financial assistance to implement specific projects are three separate processes that will occur at different times.

The first step will be for regional flood planning groups to identify and recommend FMEs, FMSs, and FMPs and provide relevant data associated with each project as part of the regional flood planning process. That data will be used by the TWDB to objectively apply a set of relevant flood project ranking criteria.

The second step is to rank the recommended regional FMEs, FMSs, and FMPs as incorporated into the state flood plan. The specific criteria and the associated weightings that will be used for ranking recommended FMEs, FMSs, and FMPs in the state flood plan are not yet determined but will be developed by the TWDB through a transparent process and with stakeholder input. That process will result in a ranking of state flood plan FMEs, FMSs, and FMPs with a focus on reduction of flood risk to life and property as required by Senate Bill 8.

The last step in implementing projects, subsequent to development of the state flood plan, requires local sponsors to implement FMEs, FMSs, and FMPs, either with local financing or with state financial assistance. Future state financial assistance to implement projects in the state flood plan is anticipated to occur in accordance with existing program requirements or, if there are dedicated funds, under an associated flood intended use plan (FIUP) that would likely use the ranking in the state flood plan as one of the prioritization criteria for allocating funding.

No changes have been made.

Comment:

Sierra Club - Lone Star Chapter, National Wildlife Federation, Galveston Bay Foundation, and Hill Country Alliance seek clarification on whether the TWDB will use the framework proposed for the Draft Flood Intended Use Plan for FY 2020 to do prioritization after the regional and state flood plans are completed, if the TWDB will use a different approach that will be addressed in guidance to be developed by the agency's Executive Administrator, or if the TWDB is awaiting further direction from the Texas Legislature as to how prioritization will proceed.

Response:

The 2020 Flood Intended Use Plan was developed for the purpose of allocating Flood Infrastructure Fund dollars and will not be the basis for the prioritization of the projects in the state flood plan. The criteria to be used for ranking FMEs, FMSs, and FMPs in the state flood plan has yet to be determined (see previous comment response), and will be developed through a transparent process with public input. No changes have been made.

Comment:

Sierra Club - Lone Star Chapter, National Wildlife Federation, Galveston Bay Foundation, and Hill Country Alliance respectfully request that the agency establish a robust public review and comment process for development of the guidance by the TWDB Executive Administrator that is cited often in the proposed state and regional flooding planning rules and that apparently will be a critical component of the planning process.

Response:

The EA anticipates providing all future draft versions of the guidance document for stakeholder input. Because this is the inaugural cycle of regional and state flood planning, the TWDB anticipates the need for maintaining some flexibility in developing its guidance documents and looks forward to hearing from stakeholders to improve the quality and credibility of this document along the way. No changes have been made.

Comment:

The Gulf Coast Water Authority (GCWA) fully supports the Comments of the Brazos River Authority (BRA) dated both August 30, 2019, and February 3, 2020 which have been submitted. They ask that the TWDB consider those comments to be those of the GCWA as well, without exception.

Response:

The TWDB acknowledges and appreciates the comment. No changes have been made.

Comment:

The Bayou Land Conservancy endorses the comment provided by the partners of Texas Living Waters (Sierra Club-Lone Star Chapter, National Wildlife Federation, and Galveston Bay Foundation) to Implement Senate Bill 8 (86th Texas Legislature), relating to state and regional flood planning.

Response:

The TWDB acknowledges and appreciates the comment. No changes have been made.

Comment:

ASCE-TX shared their Flood Risk Management Policy Statement (ASCE Policy Statement 545).

Response:

The TWDB acknowledges and appreciates the comment. No changes have been made.

Comment:

Ericka Inman urges the TWDB to commit to a 50-year planning horizon to account for the impacts of climate change, and asks the TWDB to prioritize the following strategies in the plans: buy-outs, restoration of riparian corridors, purchase of green space, grants for disadvantaged communities, and low-impact development to reduce flood risk.

Response:

The TWDB acknowledges and appreciates the comment. No changes made.

Chapter 361 Regional Flood Planning.

Subchapter A. General Information.

§361.10 Definitions and Acronyms.

Section 361.10 includes definitions and acronyms that are used throughout the Chapter. The definitions are consistent with statutory definitions and usage. To the extent that the definitions are not statutorily defined terms, the TWDB endeavored to make the terms consistent with other TWDB rules, or where appropriate, consistent with language used by flood mitigation professionals. For example, rather than the term, "100-year floodplain," professionals in the flood mitigation discipline are increasingly using the term "1.0% annual chance flood event." The rule defines 1.0% annual chance flood event as a, "flood event having a 1.0% chance of being equaled or exceeded in any given year, also referred to as the base flood or 100-year flood."

Comment:

PEW Charitable Trusts comment that specific direction to consider the range of types of flood risk, including and underscoring the importance of residual risk is helpful and that, while flood planning and new investments in flood mitigation and floodplain management can offer significant reductions in flood risk, experts in the field know well that flood risk cannot be fully eliminated.

Response:

The TWDB acknowledges and appreciates the comment and acknowledges that residual flood risks will always be a factor. Section 361.10 Definitions has been revised to include "Residual Risk", and the term has been included in several sections of Chapter 361, as applicable.

Comment:

The Woodlands Water Agency suggests that the TWDB define "Negative Affects" (For Example Use: the Association of State Floodplain Managers (ASFPM) definition of "No Adverse Impact", whereby a property owner may not adversely affect the rights of other property owners. Adverse Impacts can be quantified in terms of increased flood peaks, increased flood stages, higher flood velocities, increased erosion and sedimentation or other impacts the community considers important.)

Response:

The TWDB acknowledges and appreciates the comment and notes that the term "negative affects" is taken directly from Senate Bill 8. The TWDB has included a definition for "negative effect" in §361.10 and the term will be further defined through guidance being developed by the EA.

Comment:

The Woodlands Water Agency suggests that "Achievable" in terms of cost, time, and potential for funding via a grant or match be defined (as related to their comment on §361.36).

Response:

The TWDB acknowledges and appreciates the comment. Financial assistance determinations will not be made in the regional or state flood plans. No changes have been made.

Comment:

The Woodlands Water Agency comment that the TWDB should define what may be considered as benefits and costs in order to ensure compliance with federal funding guidelines.

Response:

The EA is developing guidance that will clarify how benefits and costs are to be considered and reported in the regional flood plans. No changes have been made.

Comment:

PEW Charitable Trusts asks the TWDB to consider adding a definition of "nature-based flood mitigation" and to consider the following language largely from a recently released Federal Highway Administration's implementation guide definition: "Mitigation approaches involving the use of natural features, materials, and processes to reduce the detrimental impacts of flooding, including flood heights, duration, or velocities, wave damage, and erosion. Examples of Nature-Based Flood Mitigation may include the conservation or restoration of beaches, dunes, wetlands, or floodplain features used as alternatives to or in conjunction with other flood mitigation projects."

Response:

The TWDB acknowledges and appreciates the comment. A definition for "nature-based flood mitigation" has been added to §361.10.

Comment:

ASCE-TX comment that the definition of "flood mitigation" in §361.10(k) should be changed to: "Activities, both structural and non-structural, intended to reduce the likelihood of the inundation of structures, loss of property, or the loss of life or to reduce the cost and efforts of flood recovery."

Response:

The TWDB acknowledges and appreciates the comment. No changes made.

Comment:

ASCE-TX comment that the definition of "flood management evaluation" in §361.10(l) should be changed to: "An estimate, prepared using appropriate technical analysis and sealed by a registered professional engineer, of the reduction in flood risk in a defined area from the implementation of a flood mitigation project along with the net present value of all economic costs and benefits, social costs and benefits, and environmental costs and benefits associated with the project's full lifecycle."

This definition will encourage more holistic planning and project selection. It will help encourage the selection of projects with increased co-benefits, higher total value to the State of Texas, higher return on investment to the people of Texas, and projects with lower operations and maintenance costs.

Response:

The TWDB acknowledges and appreciates the comment. Changes were made to the definition of "flood management evaluation".

Comment:

ASCE-TX comment that the definition of "flood risk analysis" in §361.10(q) should be changed to read: "An estimate, prepared using appropriate technical analysis sealed by a registered professional engineer, of the flood risk in a defined area with or without the implementation of any flood mitigation projects. The Board will provide guidance outlining how this type of analysis will be consistently accomplished in both regional and state flood plans."

Response:

The definition of flood risk analysis was removed and the term is explained in greater detail in §361.33 and §361.34.

Comment:

ASCE-TX comment that the definition for "flood management project" in §361.10(n) should be changed to match that proposed at §363.402(6) for "Flood Project," with a few suggested ASCE-TX changes as follows: ASCE-TX supports paragraphs (A) through (E) of the proposed definition. ASCE-TX suggests that paragraph (F) be omitted from the definition because deepening an existing ship channel will not reduce the likelihood of the inundation of structures, loss of property, or the loss of life, as outlined in the authorizing legislation. ASCE-TX is concerned that keeping this provision could result in the redirection of scarce state flood risk reduction dollars to projects that should be funded using 100% federal funding from the Harbor Maintenance Trust Fund.

Response:

The TWDB acknowledges and appreciates the comment. The rules allow flexibility for the RFPs to identify and recommend potential FMPs with a focus on reduction of flood risk to life and property as required by Senate Bill 8. No changes have been made.

Comment:

ASCE-TX comment that the definition of "flood risk" in §361.10(p) should be changed to read: "In general, it is a function of the following elements: (1) the likelihood of the hazard occurring; (2) the magnitude of the hazard; (3) the number of people and properties exposed to the hazard; and (4) the vulnerability of the people and properties exposed to the hazard. The Board will provide guidance outlining how this will be consistently calculated in regional and state flood plans." (See ASCE Policy 545.)

Response:

The TWDB acknowledges and appreciates the comment. A portion of the language provided above is incorporated in the definition of "flood risk" in §361.10.

Comment:

ASCE-TX suggests adding a new definition of "residual risk": "The flood risk that still remains in an area after completion of a particular flood management project or set of flood management projects that reduces risk in that same area."

Response:

The TWDB acknowledges and appreciates the comment and a definition for "residual risk" has been added to §361.10.

Comment:

ASCE-TX suggests adding a new definition of "flood-prone": "Areas with an annual likelihood of inundation of more than 1%."

Response:

The TWDB acknowledges and appreciates the comment. §361.10 has been revised to include a definition for "flood-prone".

Comment:

ASCE-TX suggests adding a new definition of "no negative affect": "No negative affect means no increase the likelihood of inundation of any properties not owned by the project sponsor both upstream and downstream of the project, and no reduction in the availability of water for any water rights holder."

Response:

The TWDB acknowledges and appreciates the comment and a definition for "negative effect" has been added to §361.10. Additional clarification and quantification of "negative effect" will be identified in the guidance document to be provided by the EA.

Comment:

The City of Sugar Land suggests that the definition of "flood risk analysis" should be modified to only address risk, not economic efficiency of proposed strategies. The City also suggests adding a definition for "flood risk map" that incorporates FEMA's tiered ranking (0-4) for level of map detail.

Response:

The TWDB acknowledges and appreciates the comment. The definition of "flood risk analysis" was removed, and the term is explained in greater detail in §§361.33 and 361.34. 361.10 has been revised to include a definition for "flood risk map".

Comment:

The Trinity River Authority suggests adding language to the definition of 1% and 0.2% annual chance flood event to reinforce that rules' general requirement that planning activities utilize the best available data, including the use of Atlas 14-based modeling. The Authority clarifies that this proposed change would not require production of Atlas-14 based inundation modeling, but that such modeling should be used where already in existence.

Response:

The TWDB acknowledges and appreciates the comment. Subchapter C, REGIONAL FLOOD PLAN REQUIREMENTS, contains multiple references to requiring RFPs to utilize best available information. Additionally, the guidance principle in §362.3(b)(2) states that regional and state flood plans, "shall be based on the best available science, data, models, and flood mapping." No changes have been made.

Comment:

The Trinity River Authority proposes modifying the definition of flood risk analysis to eliminate economic considerations, which the authority states should instead be subsumed under cost-benefit analyses.

Response:

The TWDB acknowledges and appreciates the comment. The definition for flood risk analysis is removed and the term is described in greater detail in §361.33 and §361.34.

Comment:

North Central Texas Council of Governments states that the definitions for 1.0% annual chance flood event, 0.2% annual chance flood event, flood, and floodplain are redundant to FEMA terms and that this creates a potential for conflict should federal terms change in the future.

Response:

The TWDB acknowledges and appreciates the comment and no changes have been made.

Comment:

Sierra Club - Lone Star Chapter, National Wildlife Federation, Galveston Bay Foundation, and Hill Country Alliance believe that the description of acronyms is straight-forward, and generally agree with the proposed definitions. They assert that the term "flood hazard exposure" is used in certain critical parts of the proposed rules, and while the intended meaning of the term can be inferred from other text in the proposed rules, they believe that the TWDB should explicitly define "flood hazard exposure" as used here in relation to state and regional flood planning.

Response:

The TWDB acknowledges and appreciates the comment. Flood exposure analyses is described in §361.33 and §361.34.

Comment:

Harris County Flood Control District (HCFCD) recommends that a definition for "negative impact" or "negatively affect" be included and defined as "An increase in flood risks or flood hazards or an action that causes significant damage to a public or private facility"

Response:

The TWDB acknowledges and appreciates the comment and a definition for "negative effect" has been added to §361.10. Additional clarification and quantification of "negative effect" will be identified in the guidance document to be provided by the EA.

Comment:

Texas Water Conservation Association (TWCA) recommends changes to 361.10(a) and (b) that are intended to reinforce the rules' general requirement that planning activities utilize the "best available data," and provide the example of use of Atlas 14-based modeling for the determination of the 1.0% and 0.2% annual chances of inundation, where available. This proposal is not intended to require the production of Atlas 14-based inundation modeling, but that such modeling should be used where already in existence.

Response:

The TWDB acknowledges and appreciates the comment. Subchapter C, REGIONAL FLOOD PLAN REQUIREMENTS, contains multiple references to requiring RFPGs to utilize best

available information. Additionally, the guidance principle in §362.3(b)(2) states that regional and state flood plans, "shall be based on the best available science, data, models, and flood mapping." No changes have been made.

Comment:

With regard to §361.10(q), defining "Flood Risk Analysis," Texas Water Conservation Association (TWCA) proposes that such analyses should not include economic considerations, which should instead be subsumed under benefit-cost analyses. Accordingly, the reference in that subsection to economic efficiency should be omitted.

Response:

The TWDB acknowledges and appreciates the comment. The definition for flood risk analysis is removed and the term is described in greater detail in §361.33 and §361.34.

Comment:

Texas Water Conservation Association (TWCA) recommends including a definition for the term "flood risk map." That term or variations of it are used throughout the rules, and thus the rules would benefit as a whole from its explicit definition. TWCA suggests "flood risk map" be defined as: A map that shows flood risk for Texas communities at some level of detail using best available data and generally can be classified according to FEMA's tiered ranking as:

- (1) Tier 0- Unmapped River or Coastal Miles
- (2) Tier 1- Not Digital
- (3) Tier 2- Digital but not based on LiDAR and/or not model backed
- (4) Tier 3- Digital, LiDAR and model backed
- (5) Tier 4- Considers future conditions

TWCA also notes that their suggested revisions to this section would require conforming changes to be made to §§361.33(a), 361.34(4), and 361.37(3).

Response:

The TWDB acknowledges and appreciates the comment. Section 361.10 has been revised to include a definition for "flood risk map".

Comment:

Texas Water Conservation Association (TWCA) proposes the following definition of the term "hydrologic and hydraulic model" to provide guidance to both RFPGs and laypeople regarding the meaning of that term: a computer-based mathematical model that aids in the understanding and predicting of the movement of water on the surface of the earth, including inundation as a result of precipitation.

Response:

The TWDB acknowledges and appreciates the comment and has added a definition of "hydrologic and hydraulic model" to §361.10.

The rule affords the flood planning groups the flexibility to form subcommittees or subgroups.

The rule states that in considering potential future boundary revisions, the board will consider factors such as river basin and sub-watershed delineations, hydrologic features of the river

basins, coastal basins and features, development patterns, existing flood planning regions, public comment, and other factors that the board finds relevant.

This section of the rule also includes the designation of initial members for each of the regional flood planning groups, which the board will name based on a member solicitation process to be initiated once the region boundaries are established by the Board.

This section also includes the requirements for each of the regional flood planning groups to adopt bylaws, including minimum elements of the regional flood planning groups' bylaws.

The statute permits the initial regional flood planning groups to designate additional representatives and categories to serve on the regional flood planning group and, requires as much to ensure adequate representation from the interests in its region. The interests are included in statute and an additional interest of "flood districts" was included in the rule. The minimum required voting interests include: the public, counties, municipalities, industries, agricultural interests, environmental interests, small businesses, electric generating utilities, river authorities, flood districts, water districts, and water utilities.

Non-voting or ex officio members of each flood planning group are also designated by statute and incorporated into the rule in §361.11. Those members include one member from the Texas Water Development Board, the Texas Commission on Environmental Quality, Texas General Land Office, Texas Parks and Wildlife Department, Texas Department of Agriculture, Texas State Soil and Water Conservation Board, and the Texas Division of Emergency Management.

The rule allows RFPGs to add additional voting and non-voting interest categories and positions to serve on the RFPG at any time to ensure adequate representation in the FPR. At their inception, the RFPGs will have a minimum of 12 voting plus at least 7 non-voting members for a total of 19 members and will need to carefully consider and manage their own membership size and makeup in order to ensure efficient and successful RFPG operation and development of their plans by the statutory deadline.

The rule provides the RFPGs discretion to designate sub-regional committees to address geographical issues within the regions when necessary and as directed by the full RFPG. This section requires the RFPGs to include in its bylaws, the method of formation and governance of any committee or subgroup. Further, the rule provides discretion to the RFPGs that include contact with the Gulf Coast to appoint nonvoting-member liaisons to coordinate with the neighboring RFPGs along the coast.

Section 361.11, also provides authority to the RFPGs to enter into agreements with other RFPGs to coordinate, avoid affecting neighboring areas, share information, or for any other purpose that the RFPGs find will benefit the planning process.

Comment:

State Senator Carol Alvarado recommends that regional flood planning groups include members of diverse ethnic and cultural backgrounds. The senator states that historically, ethnic minority groups have been pushed into housing in high-risk flood zones and that it is essential that regional flood planning groups represent a fair cross-section of all members of each community to ensure regional flood plans benefit all Texans.

Response:

The TWDB acknowledges and appreciates the comment. Section 361.11(e)(1) requires a member of "Public, defined as those persons or entities having no economic or other direct interest in the interests represented by the remaining membership categories" to be a voting member on each regional flood planning group, which was a statutory requirement of SB8. Section 361.11 allows flood planning groups to designate additional voting or non-voting representatives to serve on the flood planning group, if necessary, to ensure adequate representation from the interests in its region. Note that §362.3 includes a guiding principle, (35), that specifically states that RFPGs shall consider protection of vulnerable populations. No changes have been made.

Comment:

The Woodlands Water Agency requests that the potential for development patterns to affect urban flooding be included in the consideration for potential future boundary revisions.

Response:

The TWDB agrees and has revised §361.11(b) to include "development patterns" as one of the factors for consideration.

Comment:

The Woodlands Water Agency requests clarification regarding the qualifications considered for the RFPG initial members.

Response:

The TWDB acknowledges and appreciates the comment. The TWDB will be soliciting for membership following adoption of the final rules. No changes have been made.

Comment:

The Woodlands Water Agency questions if the TWDB Board will accept nominations.

Response:

The TWDB acknowledges and appreciates the comment. The TWDB will be soliciting for membership following adoption of the final rules. No changes have been made.

Comment:

The Woodlands Water Agency requests clarification for how initial RFPG members will be selected.

Response:

The TWDB acknowledges and appreciates the comment. The TWDB will be soliciting for membership following adoption of the final rules. No changes have been made.

Comment:

The Woodlands Water Agency requests clarification on how the TWDB will handle communities that overlap two or more RFPGs? (For example: Liberty County is in 3 areas - San Jacinto, Trinity, and Neches)

Response:

The TWDB acknowledges and appreciates the comment. Communities are welcome and encouraged to participate in the flood planning process with multiple groups. The TWDB acknowledges that unfortunately, political boundaries do not align with the natural boundaries of major river basins and watershed boundaries may present some challenges. No changes have been made.

Comment:

The Woodlands Water Agency asks what the process is for replacing RFPG members if a member is no longer available to serve.

Response:

The TWDB acknowledges and appreciates the comment. Each RFPG will be required to establish its own bylaws after their initial formation in accordance with §361.11(d). Their bylaws will describe such processes for the replacement and selection of new RFPG members. The TWDB anticipates providing a standard set of model bylaws to each RFPG for consideration. No changes have been made.

Comment:

Houston Stronger suggests expanding the definition of Water Utilities by adding the words "involved in providing" prior to "water supplies" to expand the definition.

Response:

The TWDB acknowledges and appreciates the comment. It is anticipated that every region will have entities that meet the definition as originally drafted. No changes have been made.

Comment:

Houston Stronger suggests removing drainage districts and levee improvement districts from the Water District membership category and making those a new membership category to also include districts with regional flood management responsibilities.

Response:

The TWDB agrees with and acknowledges and appreciates the comment. Section 361.11(e) has been revised to include a separate category for "Flood Districts" including flood control districts, drainage districts, and levee improvement districts.

Comment:

Houston Stronger suggests adding a [single] new membership category for subsidence districts and groundwater conservation districts.

Response:

The TWDB acknowledges and appreciates the comment. Section 361.11(e) and (i) have been revised to clarify that each RFPG, at its discretion, may add additional voting and non-voting interest categories and positions to serve on the RFPG at any time to ensure adequate representation in the FPR.

Comment:

PEW Charitable Trusts comment that the flexibility to make possible realignments in flood planning region (FPR) boundaries or to create sub-watershed groups is helpful. While PEW strongly endorses the approach of "following the water" and assessing risk and mitigation options across an entire basin, they agree that the large size of some Texas river basins may present challenges and that flexibility is warranted.

Response:

The TWDB acknowledges and appreciates the comment. No changes have been made.

Comment:

PEW Charitable Trusts comment that authorizing the RFPGs to expand representation beyond the specific interests noted in the statute is helpful. For example, they state that it may be useful in

certain instances to assure that plan strategies and projects appropriately account for tourism or historic preservation, focus on the special needs of seniors or disabled individuals, or consider the requirements of major medical, education, or other non-profit institutions. In those cases, they believe that additional representation may be merited.

Response:

The TWDB acknowledges and appreciates the comment. Section 361.11(e) and (i) have been revised to clarify that each RFPG, at its discretion, may add additional voting and non-voting interest categories and positions to serve on the RFPG at any time to ensure adequate representation in the FPR.

Comment:

PEW Charitable Trusts comment that creating opportunities for coordination and consultation across the RFPGs to assure an adequately aligned "coastal" flooding plan is helpful.

Response:

The TWDB acknowledges and appreciates the comment. No changes have been made.

Comment:

El Paso County suggests including language in this section to address the roles and responsibilities of designated alternates for each entity in the absence of the primary designee (voting member).

Response:

The TWDB acknowledges and appreciates the comment. Each RFPG will be required to establish its own bylaws after their initial formation in accordance with §361.11(d). Their bylaws shall describe whether or not the RFPG will allow designated alternates to represent voting members. The TWDB anticipates providing a standard set of model bylaws to each RFPG for consideration. No changes have been made.

Comment:

Greater Houston Partnership notes that the water districts membership category incorporates varied entity types. They suggest removing drainage and levee improvement districts from this category and creating a new required membership category for districts with regional flood management responsibility, such as drainage and levee improvement districts. They also suggest adding regional water authorities to the list of entities considered as water districts.

Response:

The TWDB agrees with and acknowledges and appreciates the comment. Section 361.11(e) has been revised to include a separate category for "Flood Districts" including flood control districts, drainage districts, and levee improvement districts. The TWDB interprets "Water Districts" under §361.11(e) to include regional water authorities, as they are authorized under Section 59, Article 16 of the Constitution, and has added clarifying language to §361.11(e)(11).

Comment:

The City of Sugar Land states that the procedure for establishment of subregions, while bulky, appears workable. They state that it looks like existing groups may want to just liaison with the subgroup so as to not have to deal with all of the other members

of the subgroup or regional group when developing what they feel is needed and what they want to participate in.

Response:

The TWDB acknowledges and appreciates the comment. No changes have been made.

Comment:

The City of Sugar Land suggests that the TWDB make clear rules on how regional flood planning group members will be selected. They also seek clarification as to whether there will be time/term limits for members and how many members will be included in each regional flood planning group.

Response:

The TWDB acknowledges and appreciates the comment. The TWDB will be soliciting for membership following adoption of the final rules.

Comment:

Each RFPG will be required to establish its own bylaws after their initial formation in accordance with §361.11(d). The TWDB anticipates providing a standard set of model bylaws to each RFPG for consideration. Their bylaws are expected to address term limits and the processes for the replacement of new RFPG members. Additional language has been added to §361.11 to address the specific case of addition of any new voting position that would increase the total number of RFPG voting member positions as requiring a two-thirds vote.

Comment:

The City of Sugar Land notes that it may be difficult to find representatives of certain interest categories (public, small business, etc.) who are knowledgeable in flood management and planning. The city also suggests that districts with flood management responsibilities, including drainage districts, should be a separate category of required representation. They also recommend broadening the definition of water utilities to include entities involved in providing water supplies.

Response:

The TWDB agrees with and acknowledges and appreciates the comment. Section 361.11(e) has been revised to include a separate category for "Flood Districts" including flood control districts, drainage districts, and levee improvement districts. No changes have been made regarding broadening the definition of water utilities. It is anticipated that every region will have entities that meet the definition as originally drafted.

Comment:

The City of Lake Jackson and the City of Brookshire express concern that a single mandatory county representative will be inadequate and that upstream, downstream, and coastal interests are not given special consideration. Specifically, the cities suggest that each county within the flood planning region be designated as a mandatory, voting member of that regional flood planning group and that each RFPG be required to include as mandatory, voting members representatives of coastal, upstream, and downstream municipal interests.

Response:

The TWDB acknowledges and appreciates the comment. Section 361.11(e) and (i) have been revised to clarify that each RFPG, at its discretion, may add additional voting and non-vot-

ing interest categories and positions to serve on the RFPG at any time to ensure adequate representation in the FPR.

Comment:

The City of Fort Worth suggests adding Councils of Governments (COGs) as voting or non-voting members of regional flood planning groups. The city discusses North Central Texas Council of Governments' involvement in flood planning efforts.

Response:

The TWDB acknowledges and appreciates the comment. Section 361.11(e) and (i) have been revised to clarify that each RFPG, at its discretion, may add additional voting and non-voting interest categories and positions to serve on the RFPG at any time to ensure adequate representation in the FPR.

Comment:

Matthew Berg believes that there should be multiple representatives for certain interest categories (municipalities, counties, public, water districts, water utilities) or that TWDB could encourage rotational membership among representatives to ensure adequate representation and collaboration.

Response:

The TWDB acknowledges and appreciates the comment. Section 361.11(e) and (i) have been revised to clarify that each RFPG, at its discretion, may add additional voting and non-voting interest categories and positions to serve on the RFPG at any time to ensure adequate representation in the FPR.

Comment:

Matthew Berg requests clarification on the role of non-voting liaisons between major river basins that have been split into more than one flood planning region and for neighboring flood planning regions along the gulf coast. He asks whether such non-voting liaisons will be required to provide positive confirming statements on regional flood plans or aspects of the regional flood plan.

Response:

The TWDB acknowledges and appreciates the comment. The type and level of involvement from non-voting members, other than them specifically not having a vote, shall be determined by the RFPGs. No changes have been made.

Comment:

Matthew Berg asks if the process for adding voting and non-voting members, as set forth in §361.11(h), will be documented in the model bylaws to be developed by the TWDB. He states that political motives may yield undesirable membership outcomes within regional flood planning groups.

Response:

The TWDB acknowledges and appreciates the comment. Each RFPG will be required to establish its own bylaws after their initial formation in accordance with §361.11(d). The TWDB anticipates providing a standard set of model bylaws to each RFPG for consideration. Additional language has been added to §361.11 to address the specific case of addition of any new voting position that would increase the total number of RFPG voting member positions as requiring a two-thirds vote. Additional language has been added to §361.11 that states that the addition of non-voting members must be in accordance with the adopted RFPG bylaws.

Comment:

Bexar Regional Watershed Management Partners note that the San Antonio River Authority is not currently captured in the current definition of river authorities in the proposed rules. The partners strongly recommend amending the definition for river authorities to the definition found in §30.003 of the Texas Water Code: "River Authority" means any district or authority created by the legislature which contains an area within its boundaries of one or more counties and which is governed by a board of directors appointed or designated in whole or part by the governor, or by the Texas Water Development Board, including without limitation the San Antonio River Authority."

Response:

The TWDB agrees with this modification and §361.11(e)(9) has been modified to include San Antonio River Authority.

Comment:

The Texas Association of Builders provided oral and written comments suggesting addition of residential developers/builders as voting members of regional flood planning groups to provide groups with homebuilding expertise for effective flood planning.

Response:

The TWDB acknowledges and appreciates the comment. Section 361.11 allows flood planning groups to designate additional voting representatives for required interest categories, and/or non-voting representatives to serve on the flood planning group, if necessary, to ensure adequate representation from the interests in its region. No changes have been made.

Comment:

The City of Austin suggests requiring a liaison from each water supply planning group that overlaps with the flood planning groups to facilitate coordination between groups.

Response:

The TWDB acknowledges and appreciates the comment. RFPGs may coordinate with regional water planning groups, if and when necessary without the need to add another member to their group. At their inception, the RFPGs will already have a minimum of 12 voting plus at least 7 non-voting members for a total of 19 members and will need to carefully consider and manage their own membership size and makeup in order to ensure successful RFPG operation and development of their plans by the statutory deadline. No changes have been made.

Comment:

The City of Sugar Land questions how a dispute will be resolved if one of several political subdivisions is opposed to a project within a regional planning area.

Response:

The TWDB acknowledges and appreciates the comment. The intent of Senate Bill 8 and these associated administrative rules is to encourage bottom-up regional flood planning wherein regional issues are worked out within each region and with the regional flood plans developed by the RFPGs and associated recommendations for projects made by the RFPGs. No changes have been made.

Comment:

The North Central Texas Council of Governments stated that at the August 8, 2019 TWDB Flood Plan Outreach Meeting in Arlington, their local governments and industry requested that Tx-

DOT, USACE, NCTCOG (or COG), USGS, TFMA, and universities be included in the list of required non-voting members of regional flood planning groups. The council acknowledges that §361.11(h) allows regional flood planning groups to add additional members but asserts that those entities should be added to the list of minimum representatives for all regional flood planning groups.

Response:

The TWDB acknowledges and appreciates the comment. At their inception, the RFPGs will already have a minimum of 12 voting plus at least 7 non-voting members for a total of 19 members and will need to carefully consider and manage their own membership size and makeup in order to ensure successful RFPG operation and development of their plans by the statutory deadline. As the commenter states, §361.11 allows flood planning groups to designate additional voting or non-voting representatives to serve on the flood planning group, if necessary, to ensure adequate representation from the interests in its region. No changes have been made.

Comment:

Sierra Club - Lone Star Chapter, National Wildlife Federation, Galveston Bay Foundation, and Hill Country Alliance recommend that the following categories be added to the required voting member interest categories: Land trusts, fisheries managers, academic flood experts, water trusts, parks and recreation interests, and low-income housing advocates. The organizations agree that representation of these interests on the regional flood planning groups will enhance the breadth and diversity of those groups and increase the prospects for a more comprehensive approach to flood mitigation for a flood planning region.

Response:

The TWDB acknowledges and appreciates the comment. At their inception, the RFPGs will already have a minimum of 12 voting plus at least 7 non-voting members for a total of 19 members and will need to carefully consider and manage their own membership size and makeup in order to ensure successful RFPG operation and development of their plans by the statutory deadline. Section 361.11 allows flood planning groups to designate additional voting or non-voting representatives to serve on the flood planning group, if necessary, to ensure adequate representation from the interests in its region. No changes have been made.

Comment:

Sierra Club - Lone Star Chapter, National Wildlife Federation, Galveston Bay Foundation, and Hill Country Alliance recommend that the regional flood planning groups require a non-voting member liaison or liaisons from regional water planning groups whose respective planning region or regions include a substantial geographic portion of the flood planning region. The organizations believe that having such a liaison on the regional flood planning groups should enhance coordination flood planning and water supply planning within different areas of the state.

Response:

The TWDB acknowledges and appreciates the comment. RFPGs may coordinate with regional water planning groups, if and when necessary without the need to add another member to their group. At their inception, the RFPGs will already have a mini-

mum of 12 voting plus at least 7 non-voting members for a total of 19 members and will need to carefully consider and manage their own membership size and makeup in order to ensure successful RFPG operation and development of their plans by the statutory deadline. No changes have been made.

Comment:

Sierra Club - Lone Star Chapter, National Wildlife Federation, Galveston Bay Foundation, and Hill Country Alliance recommend that the voting members of a RFPG as a group, reflect, to the extent possible, the ethnic and cultural diversity of its flood planning region. Through their experiences with the regional water supply planning process, they believe that a number of regional water planning groups do not have a membership that reflects the diversity of the population of their region. That limits the outreach to different population groups and makes less likely their interest in and support for implementation of the regional plans prepared through such a process.

Response:

The TWDB acknowledges and appreciates the comment. RFPG members are expected to be capable of adequately representing their assigned interest category in the region for which they serve. The TWDB will be soliciting for RFPG membership following adoption of the final rules. Section 361.11 allows flood planning groups to designate additional voting or non-voting representatives to serve on the flood planning group, if necessary, to ensure adequate representation from the interests in its region. No changes have been made.

Comment:

The Texas Land Trust Council recommend that the following categories be added to the required voting member interest categories: Land trusts, fisheries managers, academic flood experts, water trusts, and parks and recreation interests. They believe that representation of these interests on the regional flood planning groups would provide for a more comprehensive approach to flood mitigation for a flood planning region, and would ensure a more balanced consideration of nonstructural and structural flood solutions and more attention to solutions that provide multiple benefits, in addition to flood risk reduction and mitigation.

Response:

The TWDB acknowledges and appreciates the comment. At their inception, the RFPGs will already have a minimum of 12 voting plus at least 7 non-voting members for a total of 19 members and will need to carefully consider and manage their own membership size and makeup in order to ensure successful RFPG operation and development of their plans by the statutory deadline. Section 361.11 allows flood planning groups to designate additional voting or non-voting representatives to serve on the flood planning group, if necessary, to ensure adequate representation from the interests in its region. No changes have been made.

Comment:

The Orange County Drainage District provided oral comment suggesting that regional flood planning groups should include drainage districts as an additional required membership category, instead of drainage districts being included under the larger category of water districts.

Response:

The TWDB agrees with and acknowledges and appreciates the comment. Section 361.11(e) has been revised to include a separate category for "Flood Districts" including flood control districts, drainage districts, and levee improvement districts.

Comment:

ASCE-TX Comment that there is a typo in §361.11(b) And that the acronym should be FPR instead of RFP.

Response:

The TWDB acknowledges and appreciates the comment, but believes the acronyms are correct. No changes have been made.

Comment:

ASCE-TX suggests that the members of the RFPGs, per §361.11(c), should be designated from a list of nominated candidates based on qualification and demonstrated commitment to public service.

Response:

The TWDB acknowledges and appreciates the comment. RFPG members are expected to be capable of adequately representing their assigned interest category in the region for which they serve. The TWDB will be soliciting for RFPG membership following adoption of the final rules. No changes have been made.

Comment:

ASCE-TX suggest that the rules include the requirement for each RFPG to designate a Chair to be responsible for the implementation of the plan and to be a liaison between the TWDB and the RFPGs.

Response:

The TWDB acknowledges and appreciates the comment. Each RFPG will be required to establish its own bylaws after their initial formation including regarding governance of the group in accordance with §361.11(d)(1). The TWDB anticipates providing a standard set of model bylaws to each RFPG for consideration that will include a governance structure to include a chairperson and executive committee. Per §361.12, the RFPG shall also designate a political subdivision to act on behalf of the RFPG. The TWDB anticipates that the Chairs of the RFPGs and sponsoring political subdivision will liaison as much as necessary with TWDB to ensure the successful completion and submission of a regional flood plan. Also, per §361.11(f)(1), each RFPG will have a designated non-voting TWDB staff representative who will proactively support and act as a liaison to the group and manage the grant contract with the sponsoring political subdivision. Eventual implementation of adopted regional flood plans will rely on a variety of participants including specific sponsors of recommended projects. No changes have been made.

Comment:

ASCE-TX suggest that the RFPGs include a member from the Transportation Sector.

Response:

The TWDB acknowledges and appreciates the comment and has added a requirement that RFPGs shall consider including a non-voting member to represent regional or local transportation authorities.

Comment:

The Woodlands Water Agency notes that, at least in their watershed, flooding is taking place in the more urban area of the basin and suggests that urban areas should be able to have more voting members in the RFPG in order to better address possible population bias between upper watershed rural area versus flood-impacted urban areas.

Response:

The TWDB acknowledges and appreciates the comment. At their inception, the RFPGs will already have a minimum of 12 voting plus at least 7 non-voting members and will need to carefully consider and manage their own membership size and makeup in order to ensure successful operation and development of their plans by the deadline. Section 361.11 allows flood planning groups to designate additional voting or non-voting representatives to serve on the flood planning group, if necessary, to ensure adequate representation from the interests in its region. No changes have been made.

Comment:

With regard to the minimum interests to be represented, TWCA respectfully recommends that drainage districts and levee improvement districts each be named independently as minimum interests to be represented. Such entities are charged primarily with flood mitigation activities, and accordingly a representative of each should be included where such entities exist within a flood planning region.

Response:

The TWDB agrees with and acknowledges and appreciates the comment. Section 361.11(e) has been revised to include a separate category for "Flood Districts" including flood control districts, drainage districts, and levee improvement districts.

Comment:

TWCA additionally proposes that "regional water authorities" be specifically named in §361.11(e)(10), and that "Water Utilities" be redefined to broaden the ability of entities more generally "involved in providing water" to be represented on RFPGs. TWCA requests an additional change to §361.11(e)(11) to prevent the exclusion of the San Antonio River Authority from the river authority category, owing to its elected board.

Response:

The TWDB acknowledges and appreciates the comment. The TWDB interprets "Water Districts" under §361.11(e) to include regional water authorities, as they are authorized under Section 59, Article 16 of the Constitution, and has added clarifying language to §361.11(e)(10). No changes have been made regarding broadening the definition of water utilities. It is anticipated that every region will have entities that meet the definition as originally drafted. However, a change to §361.11(e)(9) regarding River Authorities has been made to include San Antonio River Authority.

Comment:

TWCA suggests that the members of regional water planning groups should be permitted to serve as non-voting members of overlapping RFPGs, at the will and desire of a regional water planning group.

Response:

The TWDB acknowledges and appreciates the comment. RFPGs may coordinate with regional water planning groups, if and

when necessary without the need to add another member to their group. At their inception, the RFPGs will already have a minimum of 12 voting plus at least 7 non-voting members for a total of 19 members and will need to carefully consider and manage their own membership size and makeup in order to ensure successful RFPG operation and development of their plans by the statutory deadline. No changes have been made.

Comment:

Ericka Inman asks the TWDB to include representatives of land trusts and conservation land managers on the RFPGs.

Response:

The TWDB acknowledges and appreciates the comment. At their inception, the RFPGs will already have a minimum of 12 voting plus at least 7 non-voting members for a total of 19 members and will need to carefully consider and manage their own membership size and makeup in order to ensure successful RFPG operation and development of their plans by the statutory deadline. Section 361.11 allows flood planning groups to designate additional voting or non-voting representatives to serve on the flood planning group, if necessary, to ensure adequate representation from the interests in its region. No changes have been made.

Section 361.12 General Regional Flood Planning Group Responsibilities and Procedures.

Section 361.12 contains general RFPG responsibilities and procedures. In particular, this section requires that the RFPGs each designate a political subdivision to be a Planning Group Sponsor that will be responsible for submitting an application for planning funds on behalf of the RFPG. The Planning Group Sponsor will also be responsible for managing the contracts with the Board and with the consultants supporting the RFPGs, however the Planning Group Sponsor must have RFPG approval before entering into or amending any contract.

This section includes the statutory requirement for the RFPGs to hold public meetings to gather from interested persons, including members of the public and other political subdivisions located in that county, suggestions and recommendations as to issues, provisions, projects, and strategies that should be considered for inclusion in a regional flood plan. The rule further requires the RFPGs to meet annually, at a minimum, and to hold at least one public meeting to establish additional public notice requirements, if any, that the RFPG determines are necessary to ensure adequate public notice and participation within their own regional flood planning area.

Additionally, this section provides the RFPGs discretion to designate subcommittees or subgroups within its region. The rule requires any subcommittee or subgroup that is related to a specific geographical area within the flood planning region (FPR), to define the geographic area based on boundaries that are coterminous with full Hydrologic Unit Code level 8 watersheds within the FPR, and further that those subcommittees include at least one voting member that represents each of the 12 interests outlined in §361.11(e).

The rule requires that any subcommittees bring any information or recommendations to the full RFPG for consideration and it explicitly limits the subcommittees from taking certain actions.

Comment:

Houston Stronger supports Harris County Flood Control District to act in an administrative agent on behalf of a regional flood planning group.

Response:

The TWDB acknowledges and appreciates the comment. Once formed, each Regional Flood Planning Group will independently select the planning group sponsor that will act on their behalf. No changes have been made.

Comment:

El Paso County seeks clarification on whether the designated political subdivision has the authority to request additional funding from other participants for the purposes of future planning efforts.

Response:

The TWDB acknowledges and appreciates the comment. These administrative rules do not limit or otherwise modify any of the existing authorities of any political subdivisions. No changes have been made.

Comment:

The City of Sugar Land expresses concern regarding the efficiency of the requirement that sub-regional committees and sub-groups must include one voting member from each of the eleven required interest categories. The city also suggested non-substantive formatting changes to §361.12(10).

Response:

The requirement to include representatives from the 12 voting categories in any geographically based subgroup adheres to the intent of legislative direction given to the TWDB to ensure adequate representation for any subgroup that is based on geography. The final flood planning regions designated by the Board on April 9, 2020, intentionally split several major river basins to reduce the geographic extent of flood planning regions which should significantly reduce the perceived need and/or inclination of RFPGs to designate geographic-based subcommittees.

The TWDB acknowledges and appreciates the comment and has made no change aside from the suggested modification to the text format.

Comment:

The City of Fort Worth seeks clarification on whether regional flood planning groups can change the designated political subdivision in the future.

Response:

The TWDB acknowledges and appreciates the comment and added language to §361.12(a)(1) to clarify that the RFPG may change the political subdivision supporting the group as follows: "*The RFPG may, at its own discretion, designate a different Planning Group Sponsor at any time.*"

Comment:

Matthew Berg suggests that TWDB could encourage rotation of the political subdivision designated as the representative of the regional flood planning group to ensure adequate representation and collaboration.

Response:

The TWDB acknowledges and appreciates the comment and added language to §361.12(a)(1) to clarify that the RFPG may

change the political subdivision supporting the group as follows: "*The RFPG may, at its own discretion, designate a different Planning Group Sponsor at any time.*"

Comment:

The City of Lake Jackson and the City of Brookshire expressed concern that §361.12(2) requires a political subdivision to contract with a technical consultant whose work will extend beyond the jurisdiction of the political subdivision and that this could create potential conflicts related to the scope of work. In addition, the City believes this section may be inconsistent with §361.72(c). The City requests a change to §361.12(2) authorizing a political subdivision to procure a consultant either in accordance with its own procurement requirements or in accordance with the Professional Services Procurement Act (Government Code, Chapter 2254 (A)).

Response:

The TWDB acknowledges and appreciates the comment. The Professional Services Procurement Act, Government Code Chapter 2254, will apply to most of the Planning Group members and therefore, not require different procurement standards for the Planning Group Sponsor. However, language has been added to Sections 361.72 and 361.12 for consistency.

Comment:

The City of Lake Jackson and the City of Brookshire requests that §361.12(4) be amended to require RFPGs to take public comment on flood management *evaluations* in addition to flood management strategies and projects as part of the public meetings process.

Response:

The TWDB agrees and the term "evaluations" was added to the scope of §361.12(4).

Comment:

The City of Lake Jackson and the City of Brookshire requested clarification as to the intent of §361.12(9). If the intention is to require that the members of a sub-regional committee, subcommittee, or subgroup represent interests from within the geographic area covered by said committee or group, the City requests the following change: "It shall include at least one voting member from within the sub-regional geographic area representing each of the interests under §361.11(e)(1-11)."

Response:

The requirement to include representatives from the 12 voting categories in any geographically based subgroup adheres to the intent of legislative direction given to the TWDB to ensure adequate representation for any subgroup that is based on geography. The final flood planning regions designated by the Board on April 9, 2020, intentionally split several major river basins to reduce the geographic extent of flood planning regions which should significantly reduce the perceived need and/or inclination of RFPGs to designate geographic-based subcommittees. The TWDB acknowledges and appreciates the comment and has made no change aside from the suggested modification to the text format.

The methods by which any sub-regional groups operate at the direction of and on behalf of a RFPG are not defined in the rules and would therefore be subject to the RFPG's own bylaws. The TWDB acknowledges and appreciates the comment and no changes have been made.

Comment:

The Trinity River Authority expresses concern regarding the requirement that sub-regional committees and subgroups must include one voting member from each of the eleven interest categories. The authority believe that this requirement would deprive large-area regional flood planning groups of the ability to effectively and efficiently plan. They suggest striking this requirement. The authority also suggests a non-substantive formatting change to §361.12(10).

Response:

The requirement to include representatives from the 12 voting categories in any geographically based subgroup adheres to the intent of legislative direction given to the TWDB to ensure adequate representation for any subgroup that is based on geography. The final flood planning regions designated by the Board on April 9, 2020, intentionally split several major river basins to reduce the geographic extent of flood planning regions which should significantly reduce the perceived need and/or inclination of RFPGs to designate geographic-based subcommittees. The TWDB acknowledges and appreciates the comment and has made no change aside from the suggested modification to the text format.

The TWDB acknowledges and appreciates the comment and has made no change aside from the suggested modification to the text format.

Comment:

The North Central Texas Council of Governments states that in their large metropolitan area (which is absent a flood control district) cities, counties, and special districts have requested that the council take a lead role in the coordination, administration, and regional application processes and that the Trinity River Authority serve to represent the balance of the Trinity River basin downstream of their large metropolitan area. The council states that they are in the best position to provide the vast quantities of data associated with regional flood planning group requirements and elements of the regional flood plan. Their current understanding, based on discussions with TWDB, is that they are eligible to apply for and perform the role of regional coordinator to the flood planning process in their region if selected by the regional flood planning group.

Response:

The TWDB acknowledges and appreciates the comment. Once formed, each Regional Flood Planning Group will independently select the entity that will act on their behalf. No changes have been made.

Comment:

The North Central Texas Council of Governments expresses concern regarding the feasibility of the requirement that sub-regional committees and subgroups must include one voting member from each of the eleven required interest categories. The council also seeks clarification regarding if a vote from all eleven interest categories would be required for a subgroup recommendation to be presented to the full group.

Response:

The requirement to include representatives from the 12 voting categories in any geographically based subgroup adheres to the intent of legislative direction given to the TWDB to ensure adequate representation for any subgroup that is based on geogra-

phy. The final flood planning regions designated by the Board on April 9, 2020, intentionally split several major river basins to reduce the geographic extent of flood planning regions which should significantly reduce the perceived need and/or inclination of RFPGs to designate geographic-based subcommittees.

The methods by which any sub-regional groups operate at the direction of and on behalf of a RFPG are not defined in the rules and would therefore be subject to the RFPG's own bylaws.

The TWDB acknowledges and appreciates the comment and makes no change.

Comment:

Sierra Club - Lone Star Chapter, National Wildlife Federation, Galveston Bay Foundation, and Hill Country Alliance support in general the provisions in this section of the proposed rules, and especially support those provisions that are intended to promote public input to the regional flood planning process and those that provide authorization for the creation of committees, subcommittees, or subgroups within a flood planning region to address topics across the entire region or issues related to specific geographical areas within the flood planning region or coordination of shared issues across neighboring flood planning regions.

However, the joint Comment recommend that this section be enhanced by requiring each RFPG to designate a committee, subcommittee, or subgroup to consider the special flood risk issues impacting socially vulnerable populations within the flood planning region. They believe that the designation and work of such an entity by an RFPG would enhance the prospects that the flood risk reduction needs of socially vulnerable populations would get due consideration in the regional flood planning process.

Response:

The TWDB acknowledges and appreciates the comment. The administrative rules allow RFPGs to designate any type of subcommittees that they consider needed to develop their regional flood plans. No changes have been made.

Comment:

ASCE-TX suggests that the requirement in §361.12(6) for annual meetings may not be frequent enough. They suggest, at minimum, quarterly meetings.

Response:

The annual meeting requirement is only a minimum. Most groups will likely choose to meet much more frequently during periods of time requiring their attention. No changes have been made.

Comment:

ASCE-TX suggests that if a RFPG creates a sub-regional committee or subcommittee or subgroup to address issues related to a specific geographical area smaller than the full FPR, the subcommittees not be required to include all of the required voting members. The requirement to include all of the required voting members would likely be overly cumbersome in practice and would not allow smaller, more agile committees to be formed. This requirement is duplicative because committees formed within a regional planning group will be acting on behalf of the regional planning group, which is composed by the full suite of required stakeholders.

Response:

The requirement to include representatives from the 12 voting categories in any geographically based subgroup adheres to the intent of legislative direction given to the TWDB to ensure adequate representation for any subgroup that is based on geography. The final flood planning regions designated by the Board on April 9, 2020, intentionally split several major river basins to reduce the geographic extent of flood planning regions which should significantly reduce the perceived need and/or inclination of RFPGs to designate geographic-based subcommittees.

The TWDB acknowledges and appreciates the comment and has made no change.

Comment:

The Brazos River Authority has concerns that the concept of developing subgroups or subcommittees to address issues associated with a geographic area smaller than the full flood planning region appears to be redundant in that those areas and "subcommittees" have to go through the same rigor/process, and yet any coordination coming out of the subcommittees must go back before the main flood planning region for final acceptance.

Response:

The requirement to include representatives from the 12 voting categories in any geographically based subgroup adheres to the intent of legislative direction given to the TWDB to ensure adequate representation for any subgroup that is based on geography. Accordingly, the final flood planning regions designated by the Board on April 9, 2020, have since split several major river basins to reduce the geographic extent of flood planning regions that does not eliminate the option of a geographic-based subcommittee should significantly reduce the perceived need and/or inclination of RFPGs to designate geographic-based subcommittees. The TWDB acknowledges and appreciates the comment and has made no change.

Comment:

TWCA has significant concern regarding §361.12(9). In the event an RFPG creates a geographically-defined subcommittee, that committee's membership should not be required to include "one voting member representing" each of the mandatory interests to be represented on the RFPG. This requirement, while well intentioned, would deprive large-area RFPGs of the ability to effectively plan.

First, the rules as proposed identify 12 interests that must be represented (assuming all of those interests exist within an RFPG), which would then require that sub-regional workgroups would have a minimum membership of 12 persons. In a large basin divided into three sub-regional workgroups, those groups would require the participation of effectively all voting members of the RFPG, defeating the purpose of division of labor. Such an arrangement would be, at best, cumbersome and unwieldy. Moreover, it would effectively increase the number of de facto RFPG meetings in such a fashion that the process would become unmanageable.

Second, as provided by §361.12(10), the work of any subcommittee may only be used "for the purpose of providing information or recommendations as specifically directed by the full RFPG and for potential consideration by the full RFPG." Accordingly, the absence of representation from a mandatory interest would not prejudice that interest, which must be represented on the full RFPG and pass judgment upon any subcommittee recommendations. It is simply unrealistic to require that all interests be represented on geographically-defined RFPG subcommittee,

and TWCA accordingly strongly recommends the removal of the final sentence of §361.12(9).

Response:

The requirement to include representatives from the 12 voting categories in any geographically based subgroup adheres to the intent of legislative direction given to the TWDB to ensure adequate representation for any subgroup that is based on geography. The final flood planning regions designated by the Board on April 9, 2020, intentionally split several major river basins to reduce the geographic extent of flood planning regions which should significantly reduce the perceived need and/or inclination of RFPGs to designate geographic-based subcommittees.

The TWDB acknowledges and appreciates the comment and has made no change.

Comment:

TWCA recommends one non-substantive formatting modification to §361.12(10), for purposes of clarification. This modification involves moving the phrase "RFPGs may not authorize committees or subcommittees "to take any action regarding:" from §361.12(10)(A) to the body of §361.12(10). §361.12(10)(B) - (D) would be renamed §361.12(10)(A) - (C).

Response:

The TWDB acknowledges and appreciates the comment and has corrected the formatting of §361.12(10).

Comment:

TWCA comment that the difficulty encountered with planning in large basins is compounded by the requirement of §361.12(9), which mandates that sub-regional subcommittees or workgroups be populated by "at least one voting member representing each of the interests under §361.11(e)(1) - (11)." TWCA proposes that such a requirement is both unnecessary and unduly burdensome.

Response:

The TWDB acknowledges and appreciates the comment. The requirement to include representatives from the 12 voting categories in any geographically based subgroup adheres to the intent of legislative direction given to the TWDB to ensure adequate representation for any subgroup that is based on geography. The final flood planning regions designated by the Board on April 9, 2020, intentionally split several major river basins to reduce the geographic extent of flood planning regions which should significantly reduce the perceived need and/or inclination of RFPGs to designate geographic-based subcommittees. No changes have been made.

Section 361.13 Regional Flood Planning Group Deliverables.

Section 361.13 includes the required deliverables for the RFPG to submit to the Board. These include a draft and final regional flood plan (RFP) and technical memoranda. This section includes administrative guidelines for the RFPs, as well as requirements that the RFPs include geographic information system database deliverables and other information such as documentation of the public process and public comment received.

Section 361.13 requires the RFPGs to submit technical memoranda to the board prior to the submission of the draft RFPs. The technical memoranda must include a list of any political subdivisions or other governmental entities that have oversight or impact on development or political subdivisions that have flood

related responsibilities or authority. The technical memoranda should also include a list of prior flood studies considered relevant by the RFPG to development of their plan, a geodatabase and maps that the RFPG considers the best representation of the region-wide floodplains for use in its flood hazard exposure analysis, a list of the flood-related models that the RFPG considers most valuable in developing its plan, a map of the areas that the RFPG finds most prone to flooding in the region, the goals adopted by the RFPG, the process used by the RFPG to identify potentially feasible flood management strategies and flood mitigation projects, and any potential flood management evaluations that could identify potentially feasible strategies and projects.

Comment:

PEW Charitable Trusts comments that within the requirements for deliverables (§361.13) there is an emphasis on geographic information system (GIS) databases (Items (a)(3) and (e)(3), for example). They state that while moving away from simple static maps may present challenges for some regions, the end result should be a floodplain management approach that can be adjusted and improved overtime as conditions change. By creating and continuing to build out GIS databases, they believe that the TWDB and the regional decision-makers will enhance their capacity to understand and manage flood risk over time. PEW Charitable Trusts believes that they will also be able to better analyze the effectiveness of selected policies and projects over time, building the capacity to inform the public of paybacks achieved and losses avoided from past investments.

Response:

The TWDB acknowledges and appreciates the comment. No changes have been made.

Comment:

PEW Charitable Trusts and Matthew Berg comment that, in the deliverables section, the requirement for a listing of strategies and projects that were identified but deemed infeasible is helpful and recommended that a minor adjustment be made to assure that the reasoning behind those decisions is also discussed.

Response:

The TWDB acknowledges and appreciates the comment. Section 361.13(e)(10) was changed by adding "including the primary reason for it being infeasible."

Comment:

The City of Sugar Land requests clarification regarding whether inundation boundaries will be based on new data (Atlas 14 precipitation) or will use outdated FEMA maps. The city suggests regional flood planning groups should use best available information.

Response:

The TWDB acknowledges and appreciates the comment. The specific methodology and data requirements will be described in technical guidance that will be provided to the RFPGs and that is being developed by the EA and should be consistent with the guidance principles in §362.3(b)(2) including consideration of best available data. No changes have been made.

Comment:

The City of Fort Worth asserts that regional flood planning groups, when identifying areas most prone to flooding, should

consider areas of urban flood risk outside of mapped FEMA floodplain areas.

Response:

The TWDB agrees with and acknowledges and appreciates the comment and believes that urban flooding already falls within the scope of the planning process rules and is specifically mentioned as a guidance principle in §362.3(b)(8). No changes have been made.

Comment:

Matthew Berg states that the rules do not provide guidance for regional flood planning groups on how to determine which previous studies are relevant to development of the regional flood plan, as required in §361.13(e)(2). He suggests that regional flood planning groups be required to examine any existing academic research on flood dynamics in the river basin or watershed.

Response:

The TWDB acknowledges and appreciates the comment. The rules leave the determination of relevance to the RFPGs and their consultant to make. No changes have been made.

Comment:

Matthew Berg seeks clarification on how geospatial flood risk data required in §361.13(e)(3) will be reconciled if significant discontinuities exist across jurisdictional boundaries. He asks if simply stating such discontinuities will be sufficient.

Response:

The TWDB acknowledges and appreciates the comment. The RFPGs are expected to make certain decisions regarding what is best available information in their region and the best way of addressing such matters. To the extent warranted, the EA may develop additional technical guidance to assist RFPGs in making such decisions. No changes have been made.

Comment:

The City of Sugar Land asks if every RFPG is going to have their separate Regional Flood Plan.

Response:

Yes, each RFPG shall deliver a draft and final, adopted Regional Flood Plan in accordance with §361.50 and EA guidance. No changes have been made.

Comment:

Sierra Club - Lone Star Chapter, National Wildlife Federation, Galveston Bay Foundation, and Hill Country Alliance generally support the provisions in this section of the proposed rules but recommend additional language to require that the RFPGs submit documentation of efforts to solicit and consider input from socially vulnerable populations within the FPR.

Response:

The TWDB acknowledges and appreciates the comment. The TWDB encourages the RFPGs to solicit and consider input from all of the potentially impacted population in any given region, including the socially vulnerable populations as mentioned in a guidance principle in §362.3(b)(35). However, it is the responsibility of the RFPGs to consider the interests of the entire region. The RFPGs may solicit information from a wide variety of interests through various means including through the RWPG or

other public meetings, outreach, written comment, and or hearings, that must be considered. No changes have been made.

Comment:

Sierra Club - Lone Star Chapter, National Wildlife Federation, Galveston Bay Foundation, and Hill Country Alliance express concern that details about some of the deliverables to be required of each RFP will be specified in guidance to be provided later by the Executive Administrator, rather than be explained in the rules. Their specific concern focuses on the required table that shall "include a list of all recommended FMS and FMPs, and certain key information associated with each FMP, in accordance with guidance and template to be provided by the EA.

The proposed rules state that "[t]his table will be the basis for prioritizing recommended flood management projects in the state flood plan."

The joint comment further express a desire for the Executive Administrator provide an opportunity for public review and comment on that guidance before it is made final. However, their preference would be for these requirements to be in the rules rather than in guidance. They also recommend that this table include information about the Social Vulnerability Index of neighborhoods or communities for which the FMS and FMPs are proposed and about any ancillary benefits of a FMS or FMP in the RFP.

Response:

The TWDB acknowledges and appreciates the comment. It is the intent of the EA to solicit and consider stakeholder input on the draft technical guidance, once developed, including the specific content referred to by the commenter. Due to the compressed timeline in which to Senate Bill 8 statutory deadlines, the TWDB did not consider there to be sufficient time to develop a robust set of administrative rules for this purpose without unduly delaying the formation of the RFPs and risking being overly restrictive or permissive. The TWDB's responsibility for ranking the strategies, projects, and evaluations in Texas' first state flood plan, which will occur after the submission of the final regional flood plans, deserves a well-considered examination of potential approaches as well as a need to retain some degree of flexibility that rules would not have afforded. Term "prioritize" was changed to "rank" in accordance with SB8 language.

Comment:

ASCE-TX suggests that subsection on deliverables, §361.13, Regional Flood Planning Group Deliverables, is misplaced. They believe that the deliverables requirement should be moved to the end of Subchapter C, Regional Flood Plan Requirements, as long as it does not duplicate the requirements of Subchapter C, which outlines the content of a regional flood plan itself. ASCE-TX states that it may be possible to omit the "deliverables" subpart entirely, since each subpart of Subchapter C outlines specific requirements anyway.

Response:

The TWDB acknowledges and appreciates the comment. No changes have been made.

Comment:

ASCE-TX states that item (e)(5), Map of Areas Most Prone to Flooding, should be revised to read: "A map showing areas identified by the RFPG as having an annual likelihood of inundation of

more than 1%, the areal extent of these areas, and the sources of flooding for each area."

Response:

The TWDB acknowledges and appreciates the comment. Section 361.13 has been modified to clarify that deliverables shall include: "(e)(3) a geodatabase and associated map in accordance with EA guidance that the RFPG considers to be best representation of the region-wide 1.0% annual chance flood event and 0.2% annual chance flood event inundation boundaries, and the source of flooding for each area, for use in its flood risk analysis, including indications of locations where such boundaries remain undefined;" and "(4) a geodatabase and associated maps in accordance with EA guidance that identifies additional flood prone areas not described in (3) based on location of hydrologic features, historic flooding, and/or local knowledge."

Comment:

Matthew Berg states that §361.13 (e)(9) prescribes a list of FMSs and FMPs deemed infeasible for each RFPG. He suggests that each FMS and FMP should have an explanation of why each was determined to be infeasible.

Response:

The TWDB agrees with and acknowledges and appreciates the comment. §361.13(e)(10) was changed by adding "including the primary reason for it being infeasible."

Subchapter B. Guidance Principles, Notice Requirements, and General Considerations.

Section 361.20 Guidance Principles for State and Regional Flood Planning.

Section 361.20 implements the requirement included in Texas Water Code §16.061(c) and §16.062(a)(3) that the board adopt guidance principles for the state and regional flood plans. The board developed the guidance principles in coordination with the Texas Commission on Environmental Quality, the Texas Department of Agriculture, the Texas General Land Office, the Texas Parks and Wildlife Department, the Texas Division of Emergency Management, and the Texas State Soil and Water Conservation Board. The board met with the agencies on two occasions to coordinate the development of the guidance principles included in the adopted rule and the agencies have been kept apprised of all modifications. As adopted, §361.20 refers participants to the guidance principles in the state flood plan section of the rules at §362.3, which are the same as the regional flood plan guidance principles. The rule includes 39 guidance principles that the RFPGs must use to inform their RFPs.

Additionally, §361.20 requires the RFPGs to include a statement in their RFPs related to the groups' conformance with the guidance principles and to explain how the RFP satisfies the requirements of each of the guidance principles. The RFPGs must also include a statement that the plan does not include strategies that will negatively affect neighboring areas. As required by Texas Water Code section 16.062(h) the board shall make a determination whether a regional flood plan affects a neighboring area, and the board may only approve a regional flood plan when it does not negatively affect a neighboring area.

Comment:

Texas Water Conservation Association (TWCA) believes that while the language in proposed §361.20(b) is a straightforward implementation of Senate Bill 8, it presents the hazard that even

trivial and insubstantial effects could create the basis for an intra- or interregional claim of negative effects.

TWCA accordingly recommends that the TWDB consider modifying §361.20(b), and all other provisions of Chapter 361 concerning negative effects upon a neighboring area, to incorporate an exception for de minimis negative effects. Many upstream flood mitigation projects could, debatably, result in more water moving downstream more quickly, but only those projects that result in a material amount of additional downstream inundation should be permitted to give rise to a claim of negative effects associated with a strategy or project. Thus, TWCA recommends that §361.20(b) be modified to provide as follows:

Each RFPG shall include a statement in their draft and final regional flood plans regarding the RFPG's conformance with §362.3 of this title, including how the RFP satisfies the requirements of each of the guidance principles including that the plan will not have more than a de minimis negatively effect upon a neighboring area.

As stated, the purpose of this change is to reduce the likelihood that insubstantial negative effects frustrate the planning process. TWCA recommends like changes to §§361.38(g)(5); 361.39(d); 361.40(2), 361.50(e)(4); 361.51(c)(3)(B); 361.60; and, 361.61(a), (f).

Response:

The TWDB acknowledges and appreciates the comment. Section 361.10 has been revised to include a definition for "negative effect".

Section 361.21 General Notice Requirements.

Section 361.21 includes the notice and public participation requirements for the RFPGs. As required in Texas Water Code §16.062(l), each FPG and committee or subcommittee of a RFPG is subject to Chapters 551 and 552 of the Government Code. The rule further requires each RFPG to create and maintain a website to be used for posting public notices of all its meetings, providing meeting materials, and accepting electronic comment. This section of the rule further requires the RFPGs post notice of their meetings on their websites either thirty, fourteen, or seven days prior to the meetings, depending on the scope of the meeting. Additionally, the RFPGs must notify the voting and non-voting members of the RFPG through email.

Comment:

El Paso County suggests clarifying whether notice requirements are in business or calendar days.

Response:

Section 361.21(i) states that all notice requirements are given based on calendar days. No changes have been made.

Comment:

The City of Sugar Land suggests that information required to be disclosed under this section be provided on the TWDB website for greater consistency and access.

Response:

The TWDB envisions giving regional flood planning groups the opportunity to post notices, such as meeting notices, on the TWDB website. However, such disclosures will not be required in rule. No changes have been made.

Comment:

Matthew Berg appreciates the public notice requirements in the proposed rules but believes that they are too narrow in scope. He suggests that the EA should provide guidance to regional flood planning groups on developing a proactive strategy for public communications (including social media) to be deployed after significant flooding events.

Response:

The TWDB acknowledges and appreciates this comment; however, established as primarily pre-event planning regional planning groups, the TWDB does not consider RFPGs to be an appropriate entity for establishing immediate flood response and information. Entities currently charged with responding to flood events in real time (municipalities, counties, TDEM, etc.) remain the primary entities to respond. The TWDB is also updating the TexasFlood.org website to incorporate the state flood planning process and the agency's communications department is implementing proactive strategies for public communications. The RFPGs can also serve as partners in their efforts to disseminate information. No changes have been made.

Comment:

The City of Lake Jackson and the City of Brookshire express concern that subsections (b) and (d) within §361.21 create confusion regarding materials required to be made public in the manner in which the materials are to be made public. Examples include different requirements for "relevant meeting materials," "confidential materials," and "all materials presented or discussed" as well as whether materials are to be made available as "copies" or "online". The cities request the deletion of subsections (b) and (d), plus the following edits to (c) along with associated renumbering: "Each RFPG and any committee, subcommittee, or subgroup of an RFPG shall provide a means by which it will accept written public comment prior to and after meetings. The RFPGs and any committee, subcommittee, or subgroup of an RFPG must also allow oral public comment during meetings.

Response:

The TWDB agrees with much of the comment. Subsection (d) was shortened to acknowledge Homeland Security Exemption, and Subsection (b) was expanded to include the notice time references previously in (d), and the language simplified regarding requirement of making RFPG, subgroup and subcommittee meeting agendas and related meeting materials available to the public through a website. TWDB believes that accepting written and oral public comments at RFPG meetings is sufficient since all subcommittee or subgroup decisions are subject to full RFPG approval. No changes made in Subsection (c).

Comment:

The City of Lake Jackson and the City of Brookshire express concern that §361.21(h)(1) does not provide an opportunity for comment on approval of changes to RFPG membership or any other approvals required by TWDB or EA guidance not specifically addressed in rules. The cities request that a public comment period, allowing for written and oral comments, be specified for all actions taken under §361.21(h)(1). In order to facilitate the provision of materials subject to public comment, the cities also request that under 361.21(h)(1) and (h)(2), meeting materials subject to any action of the RFPG and/or public comment be made available at least as long as the notice of the meeting, 7 and 14 days respectively.

Response:

The TWDB acknowledges and appreciates the comment and agrees that RFPG membership actions should require more explicit solicitation and consideration of public comment prior to RFPG action. Former subsection (h)(1)(E) was moved to a new subsection (h)(2)(F) thereby also requiring 14-day notice and prior written comment for RFPG action on membership and was further clarified as follows: "approval of all changes to RFPG members or membership including filling vacancies, the addition of new voting or non-voting interest categories or additional voting or non-voting positions for existing interest categories. The TWDB considers it important that the remaining actions under §361.21(h)(1) remain under the shorter notice requirement in order to not overburden RFPGs ability to take numerous, often administrative-related, actions in a timely manner. No changes were made to the notice document posting period requirements under either section in recognition of the priority of getting meeting notices posted early enough for the public to plan while also recognizing the practical need for some amount of time that may be required to prepare and post the final documents.

Comment:

The City of Lake Jackson and the City of Brookshire express concern with §361.21(h)(3) regarding how written and oral comments and responses to those comments will be incorporated into the draft regional flood plan if the comment period remains open after the RFPG acts on the draft RFP per §361.50(d)(1)(D). As such, the cities request that this section be revised to provide a 60-day comment period prior to a meeting.

Response:

The TWDB acknowledges and appreciates the comment and added language in §361.21(h)(3)(G) to clarify that written comment submitted after the adoption of the draft plan must be considered prior to adoption of the final plan under §361.50(c)(1).

Section 361.22 General Considerations for Development of Regional Flood Plans.

Section 361.22 includes a list of information and tools that the RFPGs are expected to consider when developing their RFPs.

comment:

The Woodlands Water Agency suggests adding following data types/sources: Individual Assistance/Small Business Administration loan data to obtain a more complete understanding of Federal Emergency Management Agency (FEMA) claims and flood damages, U.S. Geological Survey (USGS), National Oceanic and Atmospheric Administration (NOAA) Coast gauges, U.S. Army Corps of Engineers (USACE) gauges, gauges owned/maintained by other entities including river authorities, drainage and flood control districts, USGS inundation data. They state that obtaining these data may require interagency agreements.

Response:

The TWDB acknowledges and appreciates the comment. The rule does not limit the scope of information that may be considered by the RFPGs. No changes have been made.

Comment:

The Woodlands Water Agency asks if the TWDB will provide a template outline for a Regional Flood Plan (RFP), similar to FEMA flood damage prevention ordinances.

Response:

The TWDB is currently developing guidance documents for use by the RFPGs which anticipates including a template outline for a Regional Flood Plan. No changes have been made.

Comment:

PEW Charitable Trusts comment that the list of items does not directly mention existing natural features that currently help to mitigate against flood damage or which might be restored to provide better flood protection. PEW also comment that none of 20 items that the RFPGs are to consider directly mention existing natural features that currently help to mitigate against flood damage or which might be restored to provide better flood protections and recommends amending the rule to more specifically and fully integrate the consideration of nature-based approaches into the procedural framework of the regulations.

Response:

The TWDB acknowledges and appreciates the comment. The rules have been modified to include several references to "natural" features with regard to identifying flood infrastructure and recommending potential FMSs and FMPs. The TWDB believes the inclusion of these references throughout Chapter 361 allow for and encourage the consideration of natural features and no changes have been made to this section.

Comment:

Matthew Berg asserts that regional flood planning groups should be required to consider water quality issues, such as TMDL efforts and stream segments identified in the state impaired water bodies list, and, should explore academic research on water quality topics.

Response:

Regional flood planning groups will focus their limited resources primarily on flood mitigation. However, impacts to and/or benefits to water quality will be considered and incorporated as appropriate and as planning group resources allow. No changes have been made.

Comment:

Sierra Club - Lone Star Chapter, National Wildlife Federation, Galveston Bay Foundation, and Hill Country Alliance support the requirement in proposed §361.22 that RFPGs "consider a wide variety of available, relevant information and tools when developing regional flood plans and agree with the enumeration of information sources and tools specified. However, they believe that the list of relevant information for RFPGs to consider include at least two additional items related to: Social vulnerability indices for each county partially or completely within the FPR and for each census tract within the FPR that is generally prone to flood; and, Projected impacts of climate change on the FPR that might affect propensity for flooding within the FPR. The organizations believe that the inclusion of this information is important for reasons of equity in the development of the RFP and is consistent with the guidance principle in §362.3.

Response:

The TWDB acknowledges and appreciates the comment. The list in §361.22 is neither exclusive nor exhaustive and affords the RFPGs the flexibility to consider other data and tools. The flood risks to all populations are expected to be considered by RFPGs, including vulnerable populations as specifically referred to in §362.3(b)(35).

RFPs will have the flexibility to consider, balance, and address a variety of potential risks and uncertainties including related to climate. Relative sea level change is already listed in §361.22 and Atlas 14, also listed, includes latest estimates on rainfall changes. TxDOT's Hydraulic Design Manual recently added a section on Coastal Hydraulic Design and includes statewide guidance on relative sea levels, building off earlier work performed in the Coastal Resiliency Master Plan, also listed in §361.22. The TWDB will continue to collect information and consider potential ways to improve the science associated with regional flood planning. No changes have been made.

Comment:

ASCE-TX supports the consideration of relative sea level change in §361.22(5) by regional flood planning groups and the state.

Response:

The TWDB acknowledges and appreciates the comment. No changes have been made.

Comment:

ASCE-TX comment that in §361.22(11), the term "flood hazard exposure analysis" is not defined in the proposed regulations and duplicates the term "flood risk analysis" (as defined above). ASCE-TX suggests omitting Item 11 (flood hazard exposure analysis) from the list of deliverables because that is already addressed by Item 12.

Response:

The TWDB acknowledges and appreciates the comment. Section 361.22(12) has been modified to provide additional clarity, and §361.22(11) has been removed.

Comment:

ASCE-TX comment that the provisions in §361.22(19) should be expanded to require consideration of both existing corridors and future corridors, because future corridors will stimulate additional land development.

Response:

The TWDB acknowledges and appreciates the comment. Section 361.22(20) has been modified to clarify that the consideration critical transportation corridors include both existing corridors and future corridors.

Comment:

ASCE-TX comment that the provisions in §361.22(21) should be changed to require consideration of planned and anticipated future development, not just large-scale development.

Response:

The TWDB acknowledges and appreciates the comment. §361.22(22) has been modified to require consideration of planned and anticipated future development, not just large-scale development.

Comment:

Harris County Flood Control District (HCFCD) recommends that the rules "require" RFPs to use Atlas 14 data instead of "expecting" the RFPs to use it.

Response:

The TWDB acknowledges and appreciates the comment. RFPs will determine the best available data to use for communi-

ties throughout the Flood Planning Region. This determination shall be consistent with the guidance principle in §362.3(b)(2) and may include Atlas 14 data where available. Some communities may have existing, recent studies that rely on pre-Atlas 14 data, or more detailed, location specific studies that rely on other data sources. Technical guidance being developed by the EA will provide additional direction to the RFPs regarding requirements. No changes have been made.

Subchapter C Regional Flood Plan Requirements.

Subchapter C includes the various requirements and elements of an RFP. This subchapter incorporates the requirements included in Texas Water Code §16.062(e)(2). In particular, Texas Water Code §16.062(e)(2) requires each RFP to include a general description of the condition and functionality of flood control infrastructure in the flood planning region; flood control projects under construction or in the planning stage; information on land use changes and population growth in the flood planning region; an identification of the areas in the flood planning region that are prone to flood and flood control solutions for those areas; and an indication of whether a particular flood control solution meets an emergency need, uses federal money as a funding component, and may also serve as a water supply source. The sections are intended to generally align with chapters in each of the regional flood plans.

Section 361.30 Description of the Flood Planning Region.

Section 361.30 requires the RFPs to include a description of the region in general including social, economic, and geographic information. This should include a brief description of the types of historical flooding in the region, resources most at risk from flooding, the entities with a role in flood activities, and the extent of regulatory activities addressing flood risk.

Comment:

Matthew Berg states that natural resources and ecosystems are often dependent on flooding and asks how the required description of agricultural and natural resources most impacted by flooding, as required in §361.30(6), will be framed.

Response:

The TWDB acknowledges and appreciates the comment and acknowledges that flooding can positively impact agricultural and natural resources in some cases. The RFP's required description of agricultural and natural resources most impacted by flooding may include both positive and negative impacts. No changes have been made.

Comment:

The City of Lake Jackson and the City of Brookshire express concern that the rule as written may unintentionally exclude political subdivisions with flood-related authority that should be engaged in flood planning activities but are not doing so and note that such political subdivisions should be included. The cities request the following change to §361.30(4): "political subdivisions with flood-related authority and that are currently actively engaged in flood planning and flood management activities."

Response:

The TWDB acknowledges and appreciates the comment. Section 361.30(4) has been changed to read: "political subdivisions with flood-related authority and whether they are currently actively engaged in flood planning, floodplain management, and flood mitigation activities;"

Section 361.31 Description of the Existing Major Flood Infrastructure in the Region.

Section 361.31 requires the RFPs to include a description of existing major flood infrastructure in the FPR. This should include a general description of the location, condition, and functionality of the major flood infrastructure in the region. The RFPs should also include a summary of major non-functional flood infrastructure in the FPR.

Comment:

PEW Charitable Trusts comment that §361.31, which covers the Description of the Existing Major Flood Infrastructure in the Region, does reference natural hydrologic and hydraulic features but lists those as distinct from existing "functional flood infrastructure." and recommends amending this section to add "natural features, such as wetlands, vegetated dunes, and functioning floodplains," as an additional item under (2), helping to emphasize the beneficial use of nature as flood mitigation infrastructure.

Response:

The TWDB agrees with the comment in general and also points out that the list is not meant to be exhaustive. Section 361.31 name has been modified to "Description of Existing Natural Flood Mitigation Features and Constructed Flood Mitigation Infrastructure in the Region". The subsection body has been modified to read: "Regional flood plans shall include a general description of the location, condition, and functionality of:" followed by a single list that also specifically includes "vegetated dunes". Also, "Surrounding floodplains" has been changed to "functioning floodplains". The assessment of condition and functionality already required by the subsection also applies to natural flood mitigation features.

Comment:

PEW Charitable Trusts comment that the requirement to include, along with the description of any existing major flood infrastructure, information on the condition and adequacy of the structure is helpful and encourages the TWDB to require similar information on any flood infrastructure that is deemed deficient, even if it has not been rendered totally non-functional. They believe that this additional information can aid the selection of appropriate strategies and build support for diligent operation and maintenance of flood mitigation infrastructure.

Response:

The TWDB acknowledges and agrees with the comment. The scope of §361.31 description has been modified to read: "non-functional or deficient".

Comment:

PEW Charitable Trusts recommends that the TWDB make it clear that the descriptions of major flood projects under development (§361.31) and the descriptions of plan recommended Flood Management Projects (FMPs) (§361.38) incorporate:

- (1) an explanation of any short- or long-term operations and maintenance necessary for the continued functioning of the project, and
- (2) a description of any informational or regulatory framework that is planned as a component of the project's operation.

They provide the following example: if the construction of a levee requires setbacks or vegetation restrictions, the project description should cover the form that such restrictions would take and

specify which entity would assume responsibility for informing the public and/or enforcing selected restrictions. Likewise, if the construction of a new dry dam is envisioned and an area above that dam must remain undeveloped to prevent future flood damages, the plan should specify how such restrictions will be maintained over time.

Response:

The TWDB acknowledges and appreciates the comment. No changes have been made. There are limited resources available for the development of the regional flood plans which are high-level plans to be incorporated into a state flood plan. The TWDB believes that requiring details about operations and maintenance and the enforcement of any regulations associated with specific existing flood infrastructure will necessarily remain at a high level. With regard to potential recommended projects under §361.38, the rules already require that all costs, included O&M, of new projects and associated regulatory costs such as associated with land acquisition for setbacks, will be considered and that any new regulatory recommendations, whether stand-alone or in conjunction with a constructed project, should be specifically included in the regional flood plans for examples, as FMSs. Technical guidance being developed by the EA will provide further direction with regard to how project costs, including annual costs, shall be presented in the plans including for the purpose of comparing project alternatives.

Comment:

Matthew Berg appreciates the primary consideration given to natural hydrological and hydraulic features and seeks clarification on how condition and functionality will be assessed for such features. He also notes that the preamble states that the regional flood plans must include a description of the "adequacy" of major flood infrastructure and the proposed rules use the word "functionality."

Response:

The TWDB acknowledges and appreciates the comment. RFPs will determine how condition and functionality will be assessed. The preamble was updated to align with the rule "functionality" term.

Comment:

The City of Lake Jackson and the City of Brookshire believe that because municipal separate storm sewer systems are integral to all flood control efforts, they should be included in the list of major flood control infrastructure FPRs must describe.

Response:

The TWDB acknowledges and appreciates the comment. Section 361.31 has been modified to include storm sewer systems in the non-exclusive list of functional flood infrastructure to be described.

Comment:

Sierra Club - Lone Star Chapter, National Wildlife Federation, Galveston Bay Foundation, and Hill Country Alliance strongly agree with the inclusion of natural flood infrastructure features under §361.31. However, they recommend that additional natural features that provide major flood mitigation capabilities and should be added to the list. Such features include the following: prairies and prairie potholes; substantial undeveloped land areas; barrier islands, oyster reefs, mangroves, and dune systems; and, upland forests.

The organizations believe the addition of these natural features would recognize the ability of some of those features to absorb water and slow urban runoff and the ability of others to dissipate storm surge and wave energy, and that this holistic approach would address not only riverine flooding but also pluvial flooding and flood damage due to storm surge.

Response:

The TWDB agrees with the comment in general and also points out that the list is not meant to be exhaustive. Section 361.31 name has been modified to "Description of Existing Natural Flood Mitigation Features and Constructed Flood Mitigation Infrastructure in the Region". The subsection body has been modified to read: "Regional flood plans shall include a general description of the location, condition, and functionality of:" followed by a single list that also specifically includes "vegetated dunes". Also, "Surrounding floodplains" has been changed to "functioning floodplains". The assessment of condition and functionality already required by the subsection also applies to natural flood mitigation features.

Comment:

The Texas Land Trust Council agrees with the inclusion of natural flood infrastructure features and would like to see additional natural features that provide major flood mitigation benefits added to the list, such as: prairies and prairie potholes; substantial undeveloped land areas; barrier islands, oyster reefs, mangroves, and dune systems; and, upland forests or scrub woodlands. They state that, these natural features have the ability to absorb water and slow urban runoff, as well as to dissipate storm surge and wave energy and that this holistic approach would address not only riverine flooding, but also pluvial flooding, and flood damage due to coastal storm surge.

Response:

The TWDB agrees with the comment in general and also points out that the list is not meant to be exhaustive. Section 361.31 name has been modified to "Description of Existing Natural Flood Mitigation Features and Constructed Flood Mitigation Infrastructure in the Region". The subsection body has been modified to read: "Regional flood plans shall include a general description of the location, condition, and functionality of:" followed by a single list that also specifically includes "vegetated dunes". Also, "Surrounding floodplains" has been changed to "functioning floodplains". The assessment of condition and functionality already required by the subsection also applies to natural flood mitigation features.

Comment:

ASCE-TX comment that the provisions in §361.31 should be changed to clarify that Items (G), (H), and (I) should only be included if they are publicly owned and serve drainage areas of at least 50 acres.

Response:

The TWDB acknowledges and appreciates the comment. The technical guidance being developed by the EA is intended to provide more detailed information on the scope and approach to these types of requirements described in rule. No changes have been made.

Section 361.32 Description of the Major Flood Projects Currently Under Development.

Section 361.32 requires the RFPs to include a description of major flood projects that are currently under development in the region.

Comment:

The City of Sugar Land notes inconsistencies in references to major flood infrastructure and projects in the title and text of the section.

Response:

The TWDB acknowledges and appreciates the comment and has made modifications to include references to both flood infrastructure and projects in the title and text of the section.

Comment:

The Trinity River Authority recommends replacing the word "infrastructure" with "projects" in the phrase "new structural flood management infrastructure currently under construction" for the purposes of consistency in this section.

Response:

The TWDB acknowledges and appreciates the comment and agrees. Change made to §361.32.

Comment:

TWCA recommends two non-substantive changes to §361.32, for purposes of the internal consistency of that section. These include changing "adequacy of major flood infrastructure" to "anticipated benefits of proposed or ongoing flood-related projects" and changing "infrastructure" to "projects" in §361.32(1).

Response:

The TWDB acknowledges and appreciates the comment and agrees. Changes made to §361.32.

Section 361.33 Regional Flood Hazard Exposure Analysis: Current and Future Floodplain Conditions.

Section 361.33 requires the RFPs to include a flood hazard exposure analysis. This analysis should be a region-wide and largely GIS-based, flood exposure analyses to identify who and what might be harmed within the region for, at a minimum, both 1.0% annual chance and the 0.2% annual chance of flood events. The analysis is to be performed for a minimum of two scenarios including once for existing conditions and another for projected conditions in 30 years based on "'no-action' and existing floodplain policies and anticipated development patterns.

Based on comment received from the public, §361.33 was revised from the proposed rule. Section 361.33 requires that the RFPs include an existing condition flood risk analyses for the region comprising (1) flood hazard analyses that determines location, magnitude and frequency of flooding; (2) flood exposure analyses to identify who and what might be harmed within the region; and (3) vulnerability analyses to identify vulnerabilities of communities and critical facilities.

Comment:

PEW Charitable Trusts comment that information on functioning floodplains and the potential for natural features to mitigate risks or, conversely, to be lost over time, is not directly addressed in the listing but should be.

Response:

The TWDB agrees with the comment. §361.33 list has been moved to §361.34 and modified to include "anticipated changes to the functionality of the existing floodplain."

Comment:

PEW Charitable Trusts supports the language which requires an analysis of flood risk exposure in a 30-year time frame based on anticipated development patterns, and agrees that such an analysis should be considered the minimum to be undertaken by each Regional Flood Planning Group (RFPG) and hopes that the TWDB provides additional guidance and technical assistance to regional planning groups to allow them to create and compare multiple scenarios, not only for different and potentially longer timelines, but also for differing combinations or suites of assumptions regarding flood risk conditions and floodplain management approaches.

Response:

The TWDB acknowledges and appreciates the comment and the EA will be providing technical guidance to support the planning groups development of plans. While the RFPGs will not be restricted from performing additional analyses that they may consider relevant, the limited financial and other resources available for regional flood planning will set practical limits on the scope of scenario analyses. No changes have been made.

Comment:

The City of Sugar Land notes a typo in the draft rules and request correction to reflect that this is §361.33, not §391.33.

Response:

The TWDB acknowledges and appreciates the comment and has corrected the typo. Subchapter C has been corrected to reference §361.33.

Comment:

The City of Sugar Land asks whether there will be state mandated timelines for updating maps or data.

Response:

The TWDB acknowledges and appreciates the comment. The rules will not include any state mandated timelines for updating maps or data, but RFPGs will be tasked with identifying and determining best available data and will be able to identify and recommend Flood Management Evaluations in the RFP. No changes have been made.

Comment:

The City of Sugar Land expresses concern regarding possible inconsistencies with regions using different underlying flood risk data. The city suggests adding language to specify that the underlying maps developed and the identified best available information should be flood-risk related and suggests clarifying that analysis under this section may, but is not required to, rely primarily on existing data and GIS tools.

Response:

The TWDB acknowledges and appreciates the comment. Section 361.33 is being modified to improve clarity in regard to the requirements for an existing condition' flood risk analysis.

Comment:

The City of Sugar Land requests that the TWDB provide guidance related to performing analyses that incorporate the impact

of sea level rise, subsidence, geomorphic changes, and climate change to ensure consistency across regions.

Response:

TWDB acknowledges and appreciates the comment and has added clarifying language to §361.34(b)(1)(C) and (E) to indicate that such analyses will be required where existing information is available. It is anticipated that technical guidance documents will be provided by the EA to support the planning groups and technical consultants in performing analyses that incorporate the impact of sea level rise, subsidence, geomorphic changes, and climate change, where data is available, to ensure consistency across regions.

Comment:

Matthew Berg notes a typo in the draft rules and request correction to reflect that this is §361.33, not §391.33.

Response:

The TWDB acknowledges and appreciates the comment and has corrected the typo. Subchapter C has been corrected to reference §361.33.

Comment:

Matthew Berg states that it will be difficult for regional flood planning groups to forecast major geomorphic changes in riverine, playa, or coastal systems, as required by §361.33(a)(2)(D), given that these changes are episodic in nature and no good predictive event-based model currently exists.

Response:

The TWDB acknowledges and appreciates the comment and has added clarifying language to §361.34(b)(1)(C) and (E) to indicate that such analyses will be required where existing information is available. It is anticipated that technical guidance documents will be provided by the EA to support the planning groups and technical consultants in performing analyses that incorporate the impact of sea level rise, subsidence, geomorphic changes, and climate change, where data is available, to ensure consistency across regions.

Comment:

Matthew Berg suggests that this section of the rules should incorporate a mechanism to integrate appropriate rainfall analyses.

Response:

The TWDB acknowledges and appreciates the comment. The rules allow RFPGs to determine the best available data, including rainfall, to be used throughout the regional flood planning process. The EA is also developing technical guidance to be provided to the RFPGs that will address a variety of specific technical issues, including potentially related to rainfall and other data types to be considered. No changes have been made.

Comment:

Matthew Berg finds the non-monetary quantification of flood hazard exposure in §361.33(d) helpful. He suggests that other key resources such as recreation, environmental, water quality, and navigation should be included in this section, with the ultimate goal of including such factors in cost-benefit analyses.

Response:

The TWDB acknowledges and appreciates the comment. Section 361.33 is being modified to improve clarity in regard to the

requirements for an existing condition flood risk analysis. It is anticipated that technical guidance documents will be provided by the EA to support the planning groups and technical consultants in performing these required analyses.

Comment:

The City of Lake Jackson and City of Brookshire note the typo in the draft Rules and request correction to reflect that this is §361.33, not 391.33.

Response:

The TWDB acknowledges and appreciates the comment and has corrected the typo. Subchapter C has been corrected to reference §361.33.

Comment:

The North Central Texas Council of Governments states that the required flood hazard exposure analysis for existing conditions and future conditions will require hydraulic models that include hydrology. They state that for most of the state, this information does not exist. The council asks if funding will be included for this task and seeks clarification on the level of granularity expected in these models.

Response:

The TWDB acknowledges and appreciates the comment. Section 361.33 is being modified to improve clarity in regard to the requirements for an existing condition flood risk analysis. RFPGs may utilize existing hydrologic and hydraulic (H&H) studies and models as available, but this analysis will not involve any new H&H studies or models. Areas identified as having a need for further study may be recommended as FMEs per the processes outlined in Sections 361.37 through 361.39.

Comment:

Sierra Club - Lone Star Chapter, National Wildlife Federation, Galveston Bay Foundation, and Hill Country Alliance support the thrust of this section, especially the requirement that RFPGs develop an "analysis of potential future development and associated flood hazard exposure within the watershed based on a "no-action" scenario of approximately 30 years of continued development and population growth under current development trends and patterns, and existing flood regulations and policies" The joint commenters also agree with the considerations listed for developing that analysis, including, for example, "anticipated relative sea level change and subsidence." However, they believe that "projected impacts of climate change" needs to be added to that list of considerations since sea level change may be only one of the impacts of climate change to coastal areas, but there are other climate change impacts that will affect coastal regions and other FPRs.

Response:

The TWDB acknowledges and appreciates the comment. The revised §361.34(b)(1)(G) allows for consideration of other factors deemed relevant by the RFPG, and projected impacts of climate change could be considered under this future condition flood risk analysis. No changes have been made as a result of this comment.

Comment:

Sierra Club - Lone Star Chapter, National Wildlife Federation, Galveston Bay Foundation, and Hill Country Alliance support the parts of proposed §361.33 that delineate required datasets to be

considered in estimating potential flood hazard exposure. However, they suggest that "Social Vulnerability Indices for counties and census tracts" be added to the datasets listed in §361.33(d).

Response:

The TWDB acknowledges and appreciates the comment. Section 361.33 is being modified to improve clarity in regards to the requirements for an existing condition flood risk analysis, and now includes Social Vulnerability Indices for counties and census tracts in §361.33(e)(7) as data that is required to be summarized in the existing condition flood risk analysis to be included in RFPs.

Comment:

Harris County Flood Control District (HCFCD) recommends that in §361.33(a)(1), the TWDB should replace "analyses" with statistics to include the number and value of structures of existing development within the current floodplain.

Response:

The TWDB acknowledges and appreciates the comment. Section 361.33 has been modified to improve clarity in regard to the requirements for an existing condition flood risk analysis. It is anticipated that technical guidance documents will be provided by the EA to support the planning groups and technical consultants in performing these analyses.

Comment:

HCFCD comment that in (a)(1)(A), the rules should allow the use of historical flood data to illustrate flood risk outside a FEMA mapped floodplain.

Response:

The TWDB acknowledges and appreciates the comment and notes that §361.33(b)(5) and §361.34(b)(6) require regional flood planning groups to identify known flood-prone areas based on locations of hydrologic features, historic flooding, and/or local knowledge. No changes have been made.

Comment:

HCFCD requests that in (a)(2)(C), with regard to sea level rise, the TWDB provide guidance on what values to use in this evaluation to promote consistency between the adjacent coastal bound RFPGs.

Response:

The TWDB acknowledges and appreciates the comment and has added clarifying language to §361.34(b)(1)(C) and (E) to indicate that such analyses will be required where existing information is available. It is anticipated that technical guidance documents will be provided by the EA to support the planning groups and technical consultants in performing analyses that incorporate the impact of sea level rise, subsidence, geomorphic changes, and climate change, where data is available, to ensure consistency across regions.

Comment:

HCFCD states that for evaluations of flood risks associated with levees that do not meet FEMA accreditation in (b), they expect this number to increase as the RFPGs update risks based upon Atlas 14. They provide an example from Harris County in which the average increase in rainfall rates for the 1.0 % and 0.2% chance storms increased approximately 30%. They expect the

associated rise in base flood elevations will put multiple levees outside of accreditation limits.

Response:

The TWDB acknowledges and appreciates the comment. Section 361.33 has been revised to improve clarity in regard to the requirements for existing condition flood risk analysis. RFPGs will determine the best available data to use for communities throughout the Flood Planning Region. This determination shall be consistent with the guidance principle in §362.3(b)(2) and may include Atlas 14 data where available. This determination of best available data will apply to the evaluation of flood risks associated with levees. No changes have been made.

Comment:

HCFCFCD requests that RFPGs be allowed to use best available data on existing populations, in (j), if these local datasets are more up to date than the census tract data.

Response:

The TWDB acknowledges and appreciates the comment. Section 361.33 is being revised to improve clarity in regard to the requirements for existing condition flood risk analysis. The RFPGs will determine the best available data to use throughout the planning area. This determination of best available data will apply to the evaluation of population data and additional information regarding acceptable sources of population data will be specified by the EA in guidance documents.

Comment:

HCFCFCD comment that data and information developed under §361.33 by the RFPGs should also go toward updating regulations to require mitigation of impacts from new development, as necessary, by the jurisdictions within the RFPGs.

Response:

The TWDB acknowledges and appreciates the comment. Neither Senate Bill 8 or these rules grant the RFPGs or political subdivisions any additional regulatory powers or authorities although information developed through the regional flood planning process may be considered by those entities. Section 361.43(2) requires Regional Flood Plans to include regulatory or administrative recommendations that RFPGs consider necessary to facilitate floodplain management and flood mitigation planning and implementation, and any results of the planning process could be used to inform these recommendations. No changes made.

Comment:

ASCE-TX comment that in §361.33, for consistency and clarity, the title of this section should be edited to read: "Existing Flood Risk." They request that the provisions within this section be revised to more closely align with their recommended definition of "flood risk analysis". In general, they believe the subpart should be revised to require regional planning groups to do the following:

a. Existing Conditions. Collect data and conduct analyses sufficient to characterize the existing conditions for the planning area. Include information about existing development, existing structures, properties, number of residential dwelling units (rental, multi-family, single-family, etc.), people, social vulnerability index, transportation facilities, past flooding, existing flood risk reduction facilities (levees, culverts, dams, channels, detention basin, etc.) rivers, wetlands, coastal areas, past rainfall ob-

servations, existing sea levels, soil conditions, geology, and similar information.

b. Existing Flood Risk. Estimate and map existing flood risks for the region using the methods outlined in pending TWDB guidance and with proper consideration of (1) the likelihood of the hazard occurring; (2) the magnitude of the hazard; (3) the number of people and properties exposed to the hazard; and (4) the vulnerability of the people and properties exposed to the hazard. Prepare a map showing areas identified by the RFPG as having an annual likelihood of inundation of more than 1%, the areal extent of this inundation, and the sources of flooding for each area.

Response:

The TWDB acknowledges and appreciates the comment. Section 361.33 has been modified to improve clarity in regards to the requirements for an existing condition flood risk analysis.

Comment:

In addition to the changes driven by TWCA's proposed modifications to §361.10, TWCA respectfully suggests that TWDB consider changes to §361.33(h). TWCA states that section currently provides that flood hazard exposure analysis should "rely primarily on existing data and GIS tools and not rely on detailed hydrologic or hydraulic modeling efforts." They believe that where sophisticated hydrologic and hydraulic (H&H) modeling does exist, it should be considered by RFPGs as they execute their hazard exposure analyses and that those H&H models, where present, provide the "best available data" that is to be relied upon in many other sections of draft Chapter 361. TWCA recommends that §361.33(h) be modified to provide that "This analysis will rely primarily on existing data and GIS tools, but where available, and does not rely on should consider detailed hydrologic or hydraulic modeling efforts."

Response:

The TWDB acknowledges and appreciates the comment. Section 361.33 has been modified to improve clarity in regard to the requirements for an existing condition flood risk analysis. RFPGs may use hydrologic or hydraulic models, as stated in §361.33(b)(3).

Section 361.34 Existing Flood Risk Analyses in the Region.

Section 361.34 requires the RFPs to identify areas where flood risk analyses already exist in the FPR and summarize the information. This analysis should rely on existing hydrologic and hydraulic models. The information will be used by RFPGs to identify areas that need flood management evaluations and to efficiently deploy its planning resources.

Based on comment received from public, §361.34 was revised from the proposed rule. Section 361.34 now requires that the RFPs include a future condition flood risk analyses for the region comprising (1) flood hazard analyses that determines location, magnitude and frequency of flooding; (2) flood exposure analyses to identify who and what might be harmed within the region; and (3) vulnerability analyses to identify vulnerabilities of communities and critical facilities.

Comment:

El Paso County expressed concern that the proposed rules do not offer qualifications to verify the validity and best use of existing data. The county suggests offering examples of which type of analyses are acceptable, or unacceptable, for planning purposes.

Response:

The TWDB acknowledges and appreciates the comment. Guidance will be provided to assist RFPGs in identifying and determining best available data. No changes made related to this comment, however, §361.34 is revised to cover "Future Condition Flood Risk Analysis in the Region".

Comment:

Matthew Berg asserts that regional flood planning groups should be required to examine any existing academic research and models.

Response:

The TWDB acknowledges and appreciates the comment. Guidance will be provided to assist RFPGs in identifying and determining best available data. No changes made related to this comment, however, §361.34 is revised to cover "Future Condition Flood Risk Analysis in the Region".

Comment:

The City of Lake Jackson and the City of Brookshire expressed concern about the discrepancy between use of the 1.0% versus the 0.2% annual chance flood events. Specifically, the cities are concerned that although the RFPG will identify risks associated with the 0.2% annual chance of flooding, the RFPG will not set priorities, set goals, or recommend projects to address the risks associated with the 0.2% annual chance of flooding. As such, they request that §361.34(1) be changed as follows: "collect and summarize information from existing flood risk analyses associated, at a minimum, with 1.0% annual chance flood events and 0.2% annual chance flood events including the date of existing analyses."

Response:

The TWDB acknowledges and appreciates the comment. RFPGs will be allowed, but not required, to recommend projects that address the risks associated with other annual chance flood events. The revised section includes requires the RFPGs to "perform existing condition flood hazard analysis to determine the location and magnitude of both 1.0% annual chance and 0.2% annual chance flood events."

Comment:

HCFCFCD requests that in (2), RFPGs should be allowed to provide this information based upon the watershed or sub-watershed approach and in a GIS based format versus lengthy reports.

Response:

The TWDB acknowledges and appreciates the comment. Section 361.34 is revised to cover "Future Condition Flood Risk Analysis in the Region", and to provide further clarification on the preparation and delivery of information, including in the form of maps. It is anticipated that technical guidance documents will be provided by the EA to support the planning groups and technical consultants in preparing the required information.

Comment:

HCFCFCD requests that the TWDB clarify that in addition to hydrology and hydraulic flood risks, if the TWDB expects the RFPGs to identify coastal flood risks as well.

Response:

The TWDB acknowledges and appreciates the comment. RFPGs should consider coastal flood risks to be included in the

identification of hydrologic and hydraulic flood risks. Section 361.34 is revised to cover "Future Condition Flood Risk Analysis in the Region" and provides additional clarity for identification of flood risk.

Comment:

ASCE-TX comment that in §361.34, for consistency and clarity, the title of this section be edited to read: "Future Flood Risk." They request that the provisions within this section be revised to more closely align with their recommended definition of "flood risk analysis". In general, they believe that the subpart should be revised to require regional planning groups to do the following:

a. Future Conditions. Estimate changes to population, land use, land development, transportation infrastructure, economic conditions, anticipated future precipitation, anticipated future sea levels, sedimentation in flood mitigation facilities, planned completion of budgeted and scheduled flood risk reduction facilities, and similar information. The planning period considered should be defined by each regional planning group based on their knowledge of anticipated population growth and development but should in no case be less than 20 years.

b. Future "No-Action" Flood Risk. Estimate and map future flood risks for the region using the methods outlined in pending TWDB guidance and with proper consideration of (1) the likelihood of the hazard occurring; (2) the magnitude of the hazard; (3) the number of people comments.

Response:

The TWDB acknowledges and appreciates the comment. Section 361.34 is revised to cover "Future Condition Flood Risk Analysis in the Region".

Section 361.35 Evaluation of Previous and Current Floodplain Management Approaches and Recommendations for Changes to Floodplain Management.

Section 361.35 requires that the RFPs include an evaluation of previous and current floodplain management approaches in the region and take into consideration future potential changes to the 100-year floodplain and to make recommendations for changes to forward-looking floodplain management.

Comment:

Matthew Berg describes that regional flood planning groups are comprised of a diverse set of jurisdictions and that evaluations for sufficiency of floodplain management practices will be politically sensitive. He seeks clarification on if there will be mediation or approval process for such sufficiency determinations.

Response:

The TWDB acknowledges and appreciates the comment. RFPGs will responsible for adopting their own bylaws and determining their processes related to their decision-making, voting, and selection of specific recommendations to include in their RFP. No changes have been made.

Comment:

The Texas Association of Builders and the Texas Apartment Association express concern that through §361.35(a)(4), which allows regional flood planning groups to adopt land-use or other standards and require each entity in the region to adopt and enforce those standards, powers and standards that have either been preempted by the state or statutorily prohibited for local entities to exercise could be adopted and enforced by the vari-

ous local entities. The associations suggests amending the language to read as follows: "RFPGs may also choose to *require* region-specific, minimum floodplain management or land use or other standards that impact flood-risk *and are neither preempted by state law nor statutorily prohibited to the specific entity*, that may vary geographically across the region, that each entity in the FPR must adopt and begin enforcing prior to the RFPG including in the RFP any FMEs, FMSs, or FMPs that are sponsored by or that will otherwise be implemented by that entity." Texas Association of Builders also provided oral comment regarding this issue.

Response:

The TWDB acknowledges and appreciates the comment and recognizes the fact that the authority of specific entities may be limited regardless of what a flood planning group recommends. Neither Senate Bill 8 or these rules grant the RFPGs or political subdivisions any additional regulatory powers or authorities. No changes have been made.

Comment:

The City of Lake Jackson and the City of Brookshire expressed concern that the Rules do not authorize or require an RFPG to consider negative effects on neighboring areas when making recommendations for changes to floodplain management. Specifically, they request the following change to §361.35(a): "Recognizing the extent that previous and current practices may have increase [*sic*] flood risks, including residual risks, and considering broad floodplain management approaches that will avoid increasing flood risks, *and avoid negatively affecting neighboring areas*, the RFPG shall ..."

Response:

The TWDB acknowledges and appreciates the comment. Section 361.35(a) has been modified to include considering broad floodplain management approaches that, as is required of all regional flood plans, will avoid negatively affecting neighboring areas.

Comment:

The City of Lake Jackson and the City of Brookshire note that rules require the RFPG to consider the extent to which the 1.0% annual change flood event may change over time after considering the analysis performed under §361.33, but do not require an analysis of how the 0.2% annual change flood event will change over time. Specifically, they request that text be added to §361.35(a)(2) as follows: "take into consideration the future flood hazard exposure analysis performed under §361.33, consider the extent to which the 1.0% *annual chance flood event* [annual chance floodplain] *and 0.2% annual chance flood event*, along with associated flood risks ..."

Response:

The TWDB acknowledges and appreciates the comment. Section 361.35 requires RFPGs to only consider the extent to which the 1.0% annual chance flood event may change over time, however, §361.38 and §361.39 have been revised to require RFPGs to at least consider 1.0% annual chance flood events but also allows for and encourages RFPGs to consider FMSs and FMPs that address flood events of other frequencies to be included in the identification and assessment process. No changes have been made due to this comment.

Comment:

The City of Lake Jackson and the City of Brookshire interpret §361.35(a)(4) as exceeding the scope of authority granted to the TWDB and RFPGs by authorizing RFPGs to adopt region-specific minimum floodplain management or land use or other standards that impact flood risk which each entity in the FPR must adopt and begin enforcing before the RFPG will include in the RFP any FMEs, FMSs, or FMPs sponsored by or implemented by that entity. The cities also noted that RFPGs are not regulatory agencies, that because Texas Water Code 16.062 focuses RFPGs on areas prone to flooding it would be improper to adopt region-wide standards unless the entire region is prone to flooding, and that it is improper to condition the listing of a flood control solution on the actions of other entities.

The cities request either the omission of §361.35(a)(4) or, alternatively, the following language changes: "(4) RFPGs may also choose to adopt [region specific,] minimum floodplain management or land use or other standards that impact flood-risk *for a flood-prone entity*, that may vary geographically[, across the region, that each entity in the FPR must adopt and begin enforcing prior to the RFPG including in the RFP any FMEs, FMSs, or FMPs that are sponsored by of that will otherwise be implemented by that entity]. *RFPGs may identify adoption of the minimum floodplain management or land use or other standards as flood mitigation and floodplain management goals under §361.36, as a potential FMS for any flood-prone entity under §361.38, or as a recommended FMS under §361.39.*

Response:

The TWDB acknowledges and appreciates the comment. Neither Senate Bill 8 or these rules grant the RFPGs or political subdivisions any additional regulatory powers or authorities. Section 361.35(a)(4) allows Regional Flood Plans to include minimum standards that RFPGs consider necessary to facilitate floodplain management and flood mitigation planning and implementation. No changes have been made.

Comment:

The North Central Texas Council of Governments states that floodplain management goals and recommendations by the regional flood planning groups would be more equitable across the state if a position was taken by TWDB on recognized best practices or guidelines that have already been outlined by the TFMA Higher Standards document or any other listing that could be endorsed. The council states that there is a large discrepancy between these higher standards and national minimums. They also suggest that the State Flood Plan may need to consider providing state recommended or endorsed strategies to create needed consistency.

Response:

The TWDB acknowledges and appreciates the comment and may consider providing guidance to regional flood planning groups on this topic. No changes have been made.

Comment:

Sierra Club - Lone Star Chapter, National Wildlife Federation, Galveston Bay Foundation, and Hill Country Alliance strongly support this section of the proposed rules and believes that infrastructure projects (structural or nonstructural) alone will not address current flood risks or prevent increased flood risks in the absence of effective floodplain management and regulation. They believe that RFPGs must address this critical issue in order to develop effective RFPs to meet the flood mitigation and risk reduction needs of their residents.

Response:

The TWDB agrees, acknowledges, and appreciates the comment. No changes have been made.

Comment:

The Woodlands Water Agency recommends that at a minimum, the RFPG should adopt the requirements in the current Texas flood damage prevention ordinance templates and that if flood maps have not been updated in some, but not all of the communities within a region, the higher standards should prevail.

Response:

The TWDB acknowledges and appreciates the comment and may consider providing guidance to regional flood planning groups on this topic. No changes have been made.

Comment:

The Woodlands Water Agency recommends that once a decision/plan is agreed upon within the region, it should be considered, final and enforceable to prevent possible backtracking.

Response:

The TWDB acknowledges and appreciates the comment. RFPGs will be responsible for adopting their own bylaws and determining their processes related to their decision-making, voting, and selection of specific recommendations to include in their RFP. Neither Senate Bill 8 or these rules grant the RFPGs or political subdivisions any additional regulatory powers or authorities although information developed through the regional flood planning process may be considered by those entities. No changes have been made.

Comment:

The Woodlands Water Agency recommends that RFPGs consider including language for Drainage Criteria Manuals that oversee development strategies for X Zone areas.

Response:

The TWDB acknowledges and appreciates the comment and agrees with the need to assess development standards both within and outside of floodplain areas. The TWDB has broadened the language §361.35 to refer to both floodplain management and *land use* approaches to provide additional flexibility for consideration. The TWDB believes that the term *land use* includes standards such as drainage criteria manuals for areas outside of the floodplain.

Comment:

The Woodlands Water Agency suggests that RFPGs consider recommending that communities adopt Atlas 14 for their Drainage Criteria Manuals for stormwater and detention design.

Response:

The TWDB acknowledges, appreciates the comment. RFPGs will determine the best available data to use for communities throughout the Flood Planning Region. This determination shall be consistent with the guidance principle in §362.3(b)(2) and may include Atlas 14 data where available. Section 361.35(a)(4) allows Regional Flood Plans to include minimum standards that RFPGs consider necessary to facilitate floodplain management and flood mitigation planning and implementation. Any decision about adoption of such flood management related standards will be made by each RFPG. No changes have been made.

Section 361.36 Flood Mitigation and Floodplain Management Goals.

Section 361.36 requires that the RFPs identify short-term and long-term flood mitigation and flood management goals of the RFPG for, at a minimum, addressing risks to life and property. The goals should be set after considering the resulting information from the flood hazard exposure analyses, available flood risk analyses, and input from the public.

Comment:

The City of Lake Jackson and the City of Brookshire request clarification within this section by adding reference to the 1.0% and 0.2% annual chance flood events and suggest the following additional language: "Considering the Guidance Principles under §362.3, the flood hazard exposure analyses performed under §361.33, existing flood risk analyses identified under §361.34, and past and the consideration of current floodplain management practices under §361.35, input from the public, and other relevant information and considerations, RFPGs shall *for both the 1.0% annual chance flood events and 0.2% annual chance flood events...*"

Response:

The TWDB acknowledges and appreciates the comment. RFPGs will have flexibility in determining the floodplain management goals that are the relevant and feasible for their Flood Planning Region. No changes made.

Comment:

Hudson DeYoe, suggests that goals should be set after considering the resulting information from the flood hazard exposure analyses, available flood risk analyses, and input from the public.

Response:

The TWDB acknowledges and appreciates the comment. No changes made.

Comment:

Sierra Club - Lone Star Chapter, National Wildlife Federation, Galveston Bay Foundation, and Hill Country Alliance strongly support this section of the proposed rules. They believe that setting flood mitigation and floodplain management goals with input from the public is essential to developing a RFP, and that this input needs to include the perspective of as many population sectors as possible with goals that reflect the flood risks to socially vulnerable populations as well as others.

Therefore, they recommend that the proposed section in part be modified to require consideration of input from socially vulnerable populations in developing flood mitigation and floodplain management goals, for these goals to specifically address risks to socially vulnerable populations.

Response:

The TWDB acknowledges and appreciates the comment. As listed in §362.3(b)(35), regional and state flood plans shall consider protection of vulnerable populations throughout the flood planning process. No changes have been made.

Section 361.37 Flood Mitigation Need Analysis.

Section 361.37 requires that the RFPs include a flood mitigation need analysis. This should be based on the analyses and goals developed by the RFPGs.

Comment:

El Paso County suggests adding consideration of areas at high flood risk due to scarcity of resources, to be determined by metrics such as economically disadvantaged designations, in order to identify locations with the greatest flood mitigation and flood risk study needs.

Response:

The TWDB acknowledges and appreciates the comment. RF-PGs will have flexibility in determining the locations within the Flood Planning Region that the RFPG considers to have the greatest flood mitigation and flood risk study needs. Further details on identifying locations with flood mitigation and/or flood risk study needs is anticipated to be included in technical guidance to be developed by the EA. No changes have been made.

Comment:

The City of Lake Jackson and the City of Brookshire expressed concern that this section does not specify whether the locations identified is limited to the 1.0% annual chance flood event and request the following language be added to §361.37(a): "Based on the analyses and goals developed by the RFPG under §§361.33 - 361.36 and any additional analyses or information developed using available screening-level models or methods, the RFPG shall identify locations within the FPR that the RFPG considers to have the greatest flood mitigation and flood risk study needs for both the 1.0% annual chance flood events and 0.2% annual chance flood events by considering ..."

Response:

The TWDB acknowledges and appreciates the comment. RF-PGs will have flexibility in determining the locations within the Flood Planning Region that the RFPG considers to have the greatest flood mitigation and flood risk study needs. Further details on identifying locations with flood mitigation and/or flood risk study needs is anticipated to be included in technical guidance to be developed by the EA. No changes have been made.

Comment:

The City of Lake Jackson and the City of Brookshire expressed concern that the Rules do not authorize or require an RFPG to consider negative effects on neighboring areas when conducting a needs analysis. Specifically, they request additional language be inserted above §361.37(a)(10) as follows: "(10) potential negative effects on neighboring areas; and (11) potential FMEs and potentially feasible ..."

Response:

The TWDB acknowledges and appreciates the comment. This section corresponds to determining locations within the Flood Planning Region that the RFPG considers to have the greatest flood mitigation and flood risk study needs. Potential negative effects of the plans is determined when evaluating proposed Flood Management Strategies and/or Flood Mitigation Projects, and is not anticipated to be a direct factor in determining flood mitigation and flood risk study needs. No changes have been made.

Comment:

The Woodlands Water Agency suggests that this section should require that only updated, currently accepted hydraulic and hydrologic models be used for the analyses. (For example: FEMA recommends upgrading to HEC-RAS.)

Response:

The TWDB acknowledges and appreciates the comment. RF-PGs will have flexibility in selecting the best available information used to determine locations within the Flood Planning Region that the RFPG considers to have the greatest flood mitigation and flood risk study needs. No changes have been made.

Comment:

ASCE-TX comment that in §361.37(a)(3), rather than identifying areas as "prone to flooding" without maps, this provision should require regional planning groups to identify all flood-prone areas (as previously defined in these comments) without inundation maps.

Response:

The TWDB acknowledges and appreciates the comment. The purpose of §361.37(a)(3) is to identify areas that currently lack adequate inundation mapping. No changes have been made.

Comment:

ASCE-TX comment that §361.37. Flood Mitigation Needs Analysis. (a)(4) Models, rather than identifying areas "prone to flooding" that do not have adequate inundation maps, this provision should require regional planning groups to identify all flood-prone areas (as previously defined in these comments) without adequate inundation maps.

Response:

The TWDB acknowledges and appreciates the comment. The purpose of §361.37(a)(4) is to identify areas that currently lack hydrologic and hydraulic models. No changes have been made.

Section 361.38 Identification and Assessment of Potential Flood Management Evaluations and Potentially Feasible Flood Management Strategies and Flood Mitigation Projects.

Section 361.38 requires that the RFPs include an evaluation and assessment of potential flood management evaluations, potentially feasible flood management strategies, and potentially feasible flood mitigation projects. Each evaluation of strategies and projects will require reporting information on benefits, costs, and impacts including whether it would negatively affect a neighboring area. Flood management evaluations will be identified for flood prone areas where there are not yet sufficient models and associated analyses to identify and recommend specific strategies and projects. Flood management evaluations will not require evaluations of effects on neighboring areas because these evaluations will, themselves, include such assessment of potential projects.

Comment:

Matthew Berg asserts that regional flood planning groups should be required to consider the impacts of flood mitigation projects on increasing erosion and sedimentation. He states that most flood hazard models do not consider this dynamic and he is concerned about the potential for serious damage to water supply infrastructure.

Response:

The TWDB acknowledges and appreciates the comment and §361.38(h) has been revised to require that, "evaluations of potentially feasible FMS and FMPs shall include the following information and be based on the following analyses: ... (10) A description of potential impacts and benefits from the FMS or FMP to the environment, agriculture, recreational resources, naviga-

tion, water quality, *erosion*, *sedimentation* and impacts to any other resources deemed relevant by the RFPG."

Comment:

The Hill Country Alliance provided oral comment suggesting that regional flood planning groups should require quantified reporting of the co-benefits of non-structural solutions. The alliance also suggests that the TWDB should require regional flood planning groups to include description of any anticipated contributions to groundwater recharge from flood management projects.

Response:

The TWDB acknowledges and appreciates the comment. The quantified benefits of recommended FMS and FMPs are addressed under §361.38 which includes (h)(6)(J) wherein RFPGs may include additional quantified benefits. Section 361.38(h)(10) was changed to include "and benefits" to make clear that benefits to environmental and natural resources should also be described.

Comment:

Houston Stronger suggests adding "significantly and" before "negatively impact neighboring areas" to avoid spurious disagreements and challenges to plans.

Response:

The TWDB acknowledges and appreciates the comment. Section 361.10 has been revised to include a definition for "negative effect". The definition refers to additional guidance to be provided by the TWDB in the technical guidance document.

Comment:

PEW Charitable Trusts recommends that the TWDB insert specific mention of nature-based alternatives and offered an option for doing so by inserting an additional item under subsection (g)(5) requiring a description of nature-based mitigation options assessed by the RFPG.

Response:

The TWDB agrees in general. Section 361.38(a) has been expanded with "including nature-based solutions" as among the potentially feasible FMSs and FMPs to be identified and a definition of "nature-based flood mitigation" has been added to the definitions.

Comment:

PEW Charitable Trusts recommends additional clarity and detail on items related to quantitative analyses and benefit-cost ratios. In addition to reporting on the estimated capital cost of projects (Item (g)(7)), they believe the regulations should require estimates of the annual costs associated with any necessary ongoing operations and future maintenance of selected Flood Mitigation Projects (FMP). They understand that the implications of lack of maintenance are mentioned in Item 11, but believe that consideration of the actual O&M numbers over the expected design life of an FMP should be included. They state that this fuller view of total costs over time will allow for a more reasoned comparison of alternative projects and strategies and help drive funding to projects that will endure.

Response:

The TWDB acknowledges and appreciates the comment and no changes have been made. The TWDB anticipates that the technical guidance to be provided by the EA will require including

key relevant costs of projects including those related to design, development, financing, and permitting of projects as well as operation and maintenance.

Comment:

PEW Charitable Trusts recommends in Item 8, which speaks directly to benefit-cost ratios, deleting the language that references "current, observed conditions." They state that elsewhere, the TWDB has been careful to call for consideration of future risks and evaluation of projected growth and development over a 30-year period, so they are puzzled as to why this item reverts to current conditions only. They state that since Item 8 clearly anticipates additional guidance from the Board's Executive Administrator, they believe the TWDB could defer decisions on how benefit-cost evaluations should deal with current versus future conditions. They understand that the TWDB may find it useful to set priorities and consider the gravity of current risk in making its initial funding decisions, but are hopeful that it will also work with the RFPGs to create a statewide plan that maintains that longer view.

Response:

The TWDB acknowledges and appreciates the comment. No changes have been made. The TWDB believes that it is important to limit such analyses to current, observed conditions, including development, when evaluating the potential benefits of expenditures of state funds to avoid speculation about future beneficiaries or the creation of perverse incentives, for example, that might allow or otherwise encourage the continuance of development that would increase flood risks, and as a result, increase the apparent total benefits of a flood mitigation project. However, certain projects that by their nature have a future impact (such as changing development regulations), may need to consider future effects as part of the BCR analysis. Further information on this topic will be provided in technical guidance. The future 30-year period analysis required in the rule is not to evaluate or justify projects in the plan. The 30-year forward look is for the sole purpose of illustrating the potential increase in flood risk that *could occur* in the absence of better floodplain management policies and to thereby encourage regions to make recommendations and for entities to take actions that will avoid further increases to the flood risks.

Comment:

The City of Sugar Land believes that in some areas of the state, including the Houston area and other coastal regions, it may not be feasible to propose strategies that provide mitigation of the 1% annual chance flood event. The city believes that regional flood planning groups should be allowed to determine appropriate flood management goals for their region.

Response:

The TWDB acknowledges and appreciates the comment. Section 361.38 has been revised to require RFPGs to at least consider 1.0% annual chance flood events but allows for FMSs and FMPs that address flood events of other frequencies to be included in the identification and assessment process. The TWDB anticipates further direction to be provided in technical guidance being developed by the EA.

Comment:

Matthew Berg asserts that cost-benefit analyses under §361.38(g) should entail a full and accurate representation of costs and benefits beyond hydrologic and hydraulic information

and structural benefits. Specifically, he believes that environmental, agricultural, recreational, navigation, socioeconomic, and water quality benefits should be quantified instead of described to ensure an appropriate cost-benefit analysis. He also states that the catastrophic failure described in §361.38(g)(11) is a real threat and that the sense of security and safety induced by build infrastructure has resulted in increased damages. He also asserts that a great deal of the cost-benefit guidance remains undetermined, and thus unavailable for public comment. He asserts that clarifying cost-benefit analysis guidance, with public input, should be a top priority.

Response:

The TWDB acknowledges and appreciates the comment. The quantified benefits of recommended FMS and FMPs are addressed under §361.38 which includes (h)(6)(J) wherein RFPGs may include additional quantified benefits. Section 361.38(h)(6)(J) has been revised to read "Other benefits as deemed relevant by the RFPG, including environmental benefits and other public benefits" to make clear that benefits to environmental and natural resources should also be described. The TWDB also anticipates further direction to be provided in technical guidance being developed by the EA. No changes have been made.

Comment:

Bexar Regional Watershed Management Partners recommend that non-structural and nature-based systems be promoted when evaluating FMSs and FMPs. They state that nature-based solutions provide multiple benefits to communities including flood protection, water quality improvements, reduction in heat island effect, and improved quality of life for the community.

Response:

The TWDB acknowledges and appreciates the comment and notes that the consideration of nature-based features is one of the guidance principles in §362.3(b)(17). A definition of nature-based flood mitigation and a requirement for consideration of nature-based solution are added to the rules in Sections 361.10(v) and §361.38(a) respectively.

Comment:

Bexar Regional Watershed Management Partners recommend applying a triple bottom line approach, which includes consideration of environmental, social, and economic impacts, to the analysis of FMPs as opposed to a strict cost-benefit analysis approach. They assert that a triple bottom line approach will result in a more accurate and transparent accounting of the total impact of a project.

Response:

The rules require regional flood planning groups to describe potential impacts from FMSs or FMPs to environmental, agricultural, recreational resources, navigation, and impacts to any other resources deemed relevant by the group. The TWDB also anticipates further direction to be provided in technical guidance being developed by the EA. No changes have been made.

Comment:

Bexar Regional Watershed Management Partners concurs with the need to calculate cost-benefit ratios. They recommend that regional flood planning groups should also consider transportation impacts, safety and loss of life, and suggests that allowances be made for communities with low property values.

Response:

The rules require regional flood planning groups to analyze and provide quantitative reporting on a variety of estimated benefits. RFPGs are required to report on reduction in transportation impacts, such as road closure occurrences. RFPGs are also required to report on metrics for improved safety and reduced loss of life, such as estimated reduction in fatalities and injuries. The TWDB agrees that the treatment of property values must be carefully addressed and accordingly, the rules include a requirement that RFPGs report on the reduction in habitable, equivalent living units, which is a metric that is irrespective of property value. The TWDB also anticipates further direction to be provided in technical guidance being developed by the EA. No changes have been made.

Comment:

The Trinity River Authority expresses concern regarding the feasibility of the requirement that FMSs and FMPs must, at a minimum, provide flood mitigation association with a 1% annual chance flood event. The authority suggests striking this minimum requirement and adding the language, "to the extent feasible."

Response:

The TWDB acknowledges and appreciates the comment. Section 361.38 has been revised to require RFPGs to at least consider 1.0% annual chance flood events, but allows for and encourages RFPGs to consider FMSs and FMPs that address flood events of other frequencies to be included in the identification and assessment process.

Comment:

The City of Lake Jackson and the City of Brookshire recommend additional language requiring RFPGs to focus on both the 1.0% and 0.2% annual chance flood events. The cities suggested the following changes to §361.38: "(a) Based on analyses and decisions under §361.33 - 361.37 the RFPG shall identify and evaluate potential FMEs and potentially feasible FMSs and FMPs, some of which may have already been identified by previous evaluations and analyses by others, and that focus[, at a minimum,] on providing flood mitigation associated a with a 1.0% annual chance flood event and a 0.2% annual chance flood event. An FME is a proposed flood study..." and "(g)(6)(A) Associated flood events that must[, at a minimum,] include the 1.0% annual chance flood event and 0.2% annual chance flood event;"

Response:

The TWDB acknowledges and appreciates the comment. Section 361.38 has been revised to require RFPGs to at least consider 1.0% annual chance flood events but allows for and encourages RFPGs to consider FMSs and FMPs that address flood events of other frequencies, greater or lesser, to be included in the identification and assessment process.

Comment:

The Texas Land Trust Council would like to see additional provisions to help demonstrate and evaluate the benefits of non-structural, including nature-based, FMSs and FMPs. They recommend requiring a quantitative reporting of the estimated benefits of nonstructural, including nature-based, FMSs and FMPs including: Increase in public access to greenspace; Increase in public recreation opportunities; Maintenance or enhancement of fish or wildlife habitat; Value of groundwater recharge; Enhancement of water quality protection, such as avoided wastewater

treatment costs; Improvement in air quality; Amount of carbon sequestered; Ecosystem maintenance or restoration; Other benefits deemed relevant by the RFPG.

Response:

The TWDB acknowledges and appreciates the comment and has added to §361.38(h)(6)(J) reporting other benefits as deemed relevant by the RFPG including environmental benefits and other public benefits. RFPGs may, at their discretion, quantify additional benefits of nature-based approaches.

Comment:

The Texas Land Trust Council recommends that an identification of actions to be taken to eliminate, reduce, or mitigate any negative impacts to those resources be included with the requirement of §361.38(g).

The council notes that sponsors of certain structural flood infrastructure projects may be required by various permitting processes to evaluate potential negative environmental or other impacts and be required to take steps to avoid or mitigate for those impacts. Therefore, they believe that it is logical to require this information to be included to some extent for FMS or FMP in the regional flood plan.

Response:

The TWDB acknowledges and appreciates the comment and notes that §361.38(h)(5) requires "A demonstration that the FMS or FMP will not negatively affect a neighboring area". No changes have been made.

Comment:

Sierra Club - Lone Star Chapter, National Wildlife Federation, Galveston Bay Foundation, and Hill Country Alliance generally support most of the provisions in this proposed section but have some suggestions for enhancements or modifications. They recommend that the information and analyses required for evaluation of potentially feasible FMS and FMPs additionally include a projection of the estimated lifespan of the FMS or FMP and the projected effectiveness of the FMS or FMP in reducing flood risk throughout its estimated lifespan.

Response:

The TWDB acknowledges and appreciates the comment. No changes have been made.

Comment:

Sierra Club - Lone Star Chapter, National Wildlife Federation, Galveston Bay Foundation, and Hill Country Alliance believe that additional provisions are needed to help demonstrate and evaluate the benefits of nonstructural, including nature-based, FMS and FMPs. Therefore, they recommend the following additional text in proposed §361.38(g), to be numbered accordingly:

For nonstructural, including nature-based, FMSs or FMPs, a quantified reporting of the estimated benefits, including, where appropriate, but not limited to:

- (A) Increase in public access to greenspace;
- (B) Increase in public recreation opportunities;
- (C) Maintenance or enhancement of fish or wildlife habitat;
- (D) Value of groundwater recharge;
- (E) Enhancement of water quality protection, such as avoided wastewater treatment costs;

(F) Improvement in air quality;

(G) Amount of carbon sequestered;

(H) Ecosystem maintenance or restoration;

(I) Other benefits deemed relevant by the RFPG.

Response:

The TWDB acknowledges and appreciates the comment and has added to §361.38(h)(6)(J) reporting other benefits as deemed relevant by the RFPG including environmental benefits and other public benefits.

Comment:

Sierra Club - Lone Star Chapter, National Wildlife Federation, Galveston Bay Foundation, and Hill Country Alliance are generally concerned that the requirement in §361.38(g)(7) only requires a quantitative reporting of the estimated capital cost of projects in accordance with guidance provided by the EA. As proposed, the rules recognize this fact only in an indirect way by requiring the RFPG to provide "[a] description of potential impacts from the FMS or FMP to the environmental, agricultural, recreational resources, navigation, and impacts to any other resources deemed relevant by the RFPG." A narrative description in this regard would be important, but we believe that a quantitative reporting of these impacts, which are likely to be negative in the case of at least some structural projects, would also be important for proper evaluation of a FMS or FMP.

Based their view with regards to the potential negative costs of some structural infrastructure projects, they propose that §361.38(g) be revised to require a quantitative reporting of the estimated costs of any negative impacts from the FMS or FMP to environmental, archeological, agricultural, recreational, navigation, or other resources in the FPR deemed relevant by the RFPG.

In addition, they recommend that the currently proposed §361.38(g)(10) be revised to strike the word "resources" and to require an identification of actions to be taken to eliminate, reduce, or mitigate any negative impacts to those resources.

Response:

The TWDB acknowledges and appreciates the comment. The requirement for a quantification of capital cost is necessary to estimate funding requirements for proposed FMPs in the State and Regional Flood Plans. There are limited resources for developing the first regional flood plans and the RFPGs will have some flexibility to develop their own approach to evaluating impacts and costs within the limits allowed by rule and guidance. The benefit cost evaluations may take into account quantified associated costs related to environmental, agricultural, recreational resources, navigation, and other impacts, as required in §361.38(h)(8). These benefit-cost ratios shall be calculated in accordance with technical guidance to be provided by the EA and based on current, observed conditions. However, TWDB also acknowledges that the estimated costs of negative impacts on items like environmental resources are difficult to quantify. Further, each project will need to obtain appropriate permits from federal, state, and local agencies, so those potential impacts will be mitigated to the extent required by law. No changes have been made.

Comment:

Sierra Club - Lone Star Chapter, National Wildlife Federation, Galveston Bay Foundation, and Hill Country Alliance express

concern about leaving an important topic such as calculating a benefit-cost ratio to be explained later in guidance. They note that benefit-cost ratio calculations of federally-funded projects have been criticized for decades due to the potential for manipulation and the inequalities often incorporated into traditional benefit-cost calculations, and they believe that these inequalities that tend to disadvantage socially vulnerable populations when property values are used in the calculation of benefits from a flood control project. They recommend that TWDB will provide a robust public review and comment opportunity for the upcoming guidance on regional flood planning to allow adequate scrutiny and input to decisions about such topics as benefit-cost calculations for FMS and FMP.

Response:

The TWDB acknowledges and appreciates the comment. The TWDB recognizes that there are numerous methodologies to calculate a project specific benefit-cost ratio, each with advantages and disadvantages, and some more applicable to certain project types than others. Section 361.38 is intended to allow for broad consideration of all anticipated benefits and costs that are associated with each FMP. The TWDB anticipates seeking stakeholder input during the development of guidance to be provided by the EA. No changes have been made.

Comment:

Sierra Club - Lone Star Chapter, National Wildlife Federation, Galveston Bay Foundation, and Hill Country Alliance recommend revising §361.38 to require an estimate of vulnerable populations of census tracts within the area proposed for an FME, based on their Social Vulnerability Indices.

Response:

The TWDB acknowledges and appreciates the comment. As listed in Section 362.3(b)(35), regional and state flood plans shall consider protection of vulnerable populations throughout the flood planning process. No changes have been made.

Comment:

The Woodlands Water Agency recommends providing a currently accepted formula, such as that used by FEMA or US-ACE, to calculate the benefit-cost ratio, to ensure that proposed projects will also meet federal funding guidelines.

Response:

The TWDB acknowledges and appreciates the comment. Guidance on calculating benefit-cost ratios will be provided by the EA at a future date. No changes have been made.

Comment:

ASCE-TX comment that in §361.38, the title of this section should be changed to read: "Identification and Assessment of Candidate Flood Management Evaluations (FME's), Flood Management Strategies (FMS's), or Flood Projects (FP's)." All subsections should refer to "candidate" FME's, FMS's, or FP's rather than "feasible" FME's, FMS's, or FP's.

Response:

The TWDB acknowledges and appreciates the comment. The term "potentially feasible flood management strategy or potentially feasible flood mitigation project" has been defined in §361.10, however, no change was made due to this comment.

Comment:

ASCE-TX comment that in §361.38(e), regional planning groups should be required to estimate the benefit to cost ratios (BCR's) of all candidate FME's, FMS's, or FMP's identified from the process defined under §361.38(b) using methods described in TWDB issued guidance. They believe that regional planning groups should be required to rank all candidate FME's, FMS's, and FP's in order of BCR and determine which of the most beneficial evaluations, strategies, or projects should be retained and which should be excluded from the regional plan (or placed at the bottom of the regional planning group's list of candidate projects), with full consideration of public input, member perspectives, and funding availability. They believe that subsequent changes to would need to be applied to related Section 361.38(g) and §361.38(h) if these recommended changes to §361.38(e) are made.

Consistent with their response to the TWDB's request for stakeholder input (see letter dated, August 30, 2019), ASCE-TX encourages the TWDB to develop guidance on how to determine BCR's. BCR calculations should consider the net triple-bottom line (TBL) in calculating the BCR. They assert that this should include (1) net economic costs/benefits, such as construction and operation costs vs. avoided damages; (2) net social costs/benefits, such as cost of cultural displacement, cost of lost income vs. benefits of new jobs, new income, new recreational benefits; and (3) net environmental costs/benefits, such as cost of lost ecosystem services, cost of lost habitat vs. benefit of new ecosystem services and new habitats. They believe the TWDB should provide guidance on this to help generate more consistent applications, per ASCE Policy Statement 418 enclosed with their comment.

ASCE-TX states that the detailed provisions of §361.38(g) through (l) might be better placed in guidance rather than in the regulation and that the required minimum content of the regional plan could be specified in the regulations in the proposed "deliverables" section.

Response:

The EA is developing technical guidance that will include a significant focus on the approach to be used by RFPGs in the evaluation of BCR. The TWDB anticipates stakeholder input on the draft guidance. The TWDB must strike a balance between including key requirements directly in the planning rules while retaining some flexibility to refine the requirements through guidance. Deliverables of the plans is included in the rules §361.13 and will be further described in the technical guidance and grant contracts. No change was made in response to this comment.

Comment:

ASCE-TX comment that in §361.38(f), the current language stating that all FMP's will be in the State Flood Plan seems out of place in Subchapter C about Regional Planning. They suggest that the existing provision might be better situated in Chapter 362 State Flood Planning Guidelines. They believe that the proposed provision, in its current location, should be revised to require some ranking and selection by the regional groups, and should require a ranking process based on the regional planning group's BCR calculations, using TWDB guidance. ASCE-TX comment that each regional group should determine which of the most beneficial evaluations or studies should be retained and which should be excluded from the regional plan (or placed at the bottom of the regional planning group's list of candidate projects), with full consideration of public input, member perspectives, and funding availability.

Response:

The TWDB acknowledges and appreciates the comment and no changes have been made.

Comment:

Identifying and recommending FMEs, FMSs, and FMPs in the regional flood plans, ranking recommended FMEs, FMSs, and FMPs in the state flood plan, and providing state financial assistance to implement specific projects are three separate processes that will occur at different times.

The first step will be for regional flood planning groups to identify and recommend FMEs, FMSs, and FMPs and provide relevant data associated with each project as part of the regional flood planning process. That data will be used by TWDB to objectively apply a set of relevant flood project ranking criteria.

The second step is to rank the recommended regional FMEs, FMSs, and FMPs as incorporated into the state flood plan. The specific criteria and the associated weightings that will be used for ranking recommended FMEs, FMSs, and FMPs in the state flood plan are not yet determined but will be developed by TWDB through a transparent process and with stakeholder input. That process will result in a ranking of relevant state flood plan FMEs, FMSs, and FMPs with a focus on reduction of flood risk to life and property as required by Senate Bill 8.

The last step in implementing projects, subsequent to development of the state flood plan, requires local sponsors to implement FMEs, FMSs, and FMPs, either with local financing or with state financial assistance. Future state financial assistance to implement projects in the state flood plan is anticipated to occur in accordance with existing program requirements or, if there are dedicated funds, under an associated flood intended use plan (FIUP) that would likely use the ranking in the state flood plan as one of the prioritization criteria for allocating funding.

ASCE-TX notes that the proposed provisions that limit eligibility to FMP's that are discrete and independent and that may rely on other projects appear to be contradictory and should be revised. They also state that all provisions that define eligibility for a FMP to appear in a regional plan should be moved to a common location in the regulations, perhaps §362.3 Guidance Principles.

Response:

The TWDB acknowledges and appreciates the comment. The TWDB has deleted the word "independent" from §361.38(g)(1) in response to comment.

Comment:

While HCFCD understands the desire in §361.38(f) for a 1 % level of protection, they find that this is not always feasible or supported by the local communities so they recommend affording the RFPGs some flexibility on the suggested level of protection that is provided by the projects identified and recommended by the RFPGs.

Response:

The TWDB acknowledges and appreciates the comment. Section 361.38 has been revised to require RFPGs to at least consider 1.0% annual chance flood events but allows for and encourages RFPGs to consider FMSs and FMPs that address flood events of other frequencies to be included in the identification and assessment process.

Comment:

HCFCD comment that a way to introduce the suggested level of flexibility in §361.38(b) is to allow scalability within the projects. i.e. offer options for various levels of protection and the associated costs and benefits for each so that grant awards could be selective for a given project or phased in as funding allows or is available.

Response:

The TWDB acknowledges and appreciates the comment. The projects recommended in the regional flood plans will be included and ranked in the state flood plan and shall be the projects the regional planning group consider appropriate based on their region's flood risk reduction goals. Changes were made in §361.38(b) to allow for lesser level or protection if the minimum required level of protection for an 1% annual chance storm event is not attainable.

Future state financial assistance to implement projects in the state flood plan is anticipated to occur in accordance with existing program requirements or, if there are dedicated funds, under an associated flood intended use plan (FIUP) that would likely use the ranking in the state flood plan as one of the prioritization criteria for allocating funding.

No changes have been made.

Comment:

HCFCD comment that in §361.38(e), "or supported as feasible with but at a level of protection less than 1 %" should be added to the end of the sentence.

Response:

The TWDB acknowledges and appreciates the comment. Section 361.38 has been revised to require RFPGs to at least consider 1.0% annual chance flood events but allows for and encourages RFPGs to consider FMSs and FMPs that address flood events of other frequencies to be included in the identification and assessment process.

Comment:

HCFCD comment that in §361.38(g)(3), the rules should allow the RFPGs to include potential public-private-partnership funding opportunities associated with the proposed projects.

Response:

The TWDB acknowledges and appreciates the comment and §361.38(h)(3) has been modified to require information regarding the potential use of federal funds, or other sources of funding. The TWDB considers various types of public-private partnerships are included in "other sources of funding."

Comment:

HCFCD comment that in §361.38(g)(8), The TWDB should define how the Benefit-Cost ratio is to be calculated and notes that there are wide variations and various formulas. They believe that this needs to be standardized in order to facilitate consistency in project evaluations across the state. They encourage the TWDB to consider using an approach to BCR which includes provisions that do not put areas with low property values at a disadvantage.

Response:

The TWDB acknowledges and appreciates the comment. Guidance regarding the application of benefit-cost analyses will be provided in technical guidance documents that are currently under development by the EA. The TWDB anticipates seeking

stakeholder input on the draft technical guidance. No changes have been made.

Comment:

HCFCDC comment that in §361.38(g)(12), the rules should include implementation issues associated with relocations. I.e. residential, commercial, as well.

Response:

The TWDB acknowledges and appreciates the comment. Although §361.38(h)(12) is not intended to be exhaustive, it has been revised to include "acquisitions" and "relocations" among the implementation issues.

Comment:

HCFCDC comment that in §361.38(h)(6)(A) - (E), the rules should allow the RFPs to include data from first responders regarding rescues during past events, risks to their staff when performing these rescues, and past accidents when making these rescues.

Response:

The TWDB acknowledges and appreciates the comment and acknowledges that regional flood planning groups may include, among other data, that collected from first responders when reporting on items required under this section. The rule does not currently limit the data sources for such information. No changes have been made.

Texas Water Conservation Association (TWCA) comment that Chapter 361 calls for regional flood plans to provide the details of potential flood mitigation activities to alleviate conditions associated with a 1.0% annual chance flood event. TWCA believes that while unquestionably desirable, this standard may be impossible to achieve in certain parts of the state, based on existing development and conditions. In recognition of that fact, TWCA recommends that several references to that goal be revised to reflect that evaluations, strategies and projects should achieve that goal "to the extent feasible." To address the fact that such a goal may not be universally achievable, TWCA recommends that §361.38(a) be revised as follows:

"Based on analyses and decisions under §§361.33 - 361.37 of this title, the RFPG shall identify and evaluate potential FMEs and potentially feasible FMSs and FMPs, some of which may have already been identified by previous evaluations and analyses by others, and that focus, [at a minimum] to the extent feasible, on providing flood mitigation associated [a] with a 1.0% annual chance flood event."

They state that should TWDB consider this change appropriate, a similar change would be warranted in §361.39(c).

Response:

The TWDB acknowledges and appreciates the comment. Section 361.38 has been revised to require RFPGs to at least consider 1.0% annual chance flood events but allows for and encourages RFPGs to consider FMSs and FMPs that address flood events of other frequencies to be included in the identification and assessment process.

Comment:

TWCA seeks clarification that basin-wide sediment removal and de-snagging or similar projects would qualify under §361.38(f).

Response:

Basin-wide sediment removal and de-snagging or similar could potentially qualify as FMSs or FMPs if they provide measurable flood risk reduction. However, these sorts of strategies or projects have recurring impacts and costs that would need to be considered. TWDB would expect the strategy or project to explain where the source of sediment or snagging comes from and how this issue will be addressed in the longer term rather than a single clearing effort. It is anticipated that technical guidance documents will be provided by the EA to support the planning groups and technical consultants in preparing the required information. No changes have been made.

Section 361.39 Recommended Flood Management Evaluations, Flood Management Strategies, and Flood Mitigation Projects.

Section 361.39 requires that the RFPs include specific flood management evaluations, flood management strategies, and flood mitigation projects. Recommended strategies and projects will require a reporting that they will not negatively affect a neighboring area. Recommended flood management evaluations are studies that, once implemented, may lead to identification and recommendation of specific strategies and projects for inclusion in regional flood plans.

Comment:

The City of Sugar Land states that many drainage and flood control projects will not have water supply functions and should not be required to have water supply functions.

Response:

The TWDB acknowledges and appreciates the comment. There is no requirement in the rules that projects must have a water supply benefit. No changes have been made.

Comment:

The City of Sugar Land requests clarification as to if priority in the State and Regional Flood Plans will be given to projects that have preliminary engineering or designs ready.

Response:

Projects will be ranked in the state flood plan based on a set of criteria that are not yet determined but with a focus on flood risk reduction benefits and ability to be implemented. No changes have been made.

Comment:

The Trinity River Authority expresses concern regarding the feasibility of the requirement that regional flood planning groups must recommend FMEs that are most likely to result in FMSs and FMPs that would, at a minimum, provide flood mitigation association with a 1% annual chance flood event. The authority suggests striking the language "at a minimum" and adding the language "to the extent feasible."

Response:

The TWDB acknowledges and appreciates the comment. Section 361.39 has been revised to require RFPGs to at least consider 1.0% annual chance flood events but allows for and encourages RFPGs to consider FMSs and FMPs that address flood events of other frequencies to be included in the identification and assessment process.

Comment:

The City of Lake Jackson and the City of Brookshire recommend granting RFPGs the discretion to make recommendations re-

lated to the 0.2% annual chance flood event and suggest the following language be added to §361.39: "(a) RFPGs shall recommend FMSs and FMPs to reduce the potential impacts of flood based on the evaluations under §361.38 of this title and RFPG goals and that must, at a minimum, mitigate for flood events associated with at 1.0 percent annual chance (100-yr flood) and may mitigate for flood events up to the 0.2% annual chance flood event in the discretion of the RFPG. Recommendations shall be based upon the identification ..."

Response:

The TWDB acknowledges and appreciates the comment. Section 361.38 and §361.39 have been revised to require RFPGs to at least consider 1.0% annual chance flood events but also allows for and encourages RFPGs to consider FMSs and FMPs that address flood events of other frequencies to be included in the identification and assessment process. No changes have been made due to this comment.

Comment:

Sierra Club - Lone Star Chapter, National Wildlife Federation, Galveston Bay Foundation, and Hill Country Alliance recommend that FMSs and/or FMPs should, where possible, minimize the negative water quality impacts of a flood event or provide positive water quality impacts.

Response:

The TWDB acknowledges and appreciates the comment and notes that the guidance principles require that regional and state flood plans shall not cause long-term impairment to water quality in §362.3(b)(28) and that the plans shall consider benefits to water quality, as stated in §362.3(b)(36). No changes have been made.

Comment:

ASCE-TX agrees with the name and placement of subpart §361.39.

Response:

The TWDB acknowledges and appreciates the comment. No changes have been made.

Comment:

ASCE-TX comment that the provisions in §361.39(a) should be changed to require regional planning groups to recommend FME's, FMS's, or FMP's that provide BCR's greater than 1.0. They assert that it is not helpful to restrict recommended projects to those that "mitigate for floods associated with at [sic] 1.0 percent annual chance (100-yr flood)." ASCE-TX states that there will be high BCR projects that will significantly reduce flood risks, but they may not reduce the likelihood of inundation to less than 1.0 percent per year. For example, they state that areas currently subject to a 30% annual chance of inundation would benefit from a project that reduced that annual chance to only 5%.

Response:

The TWDB acknowledges and appreciates the comment. The rules require that RFPGs must evaluate at least one solution that would mitigate for flood events associated with at 1.0% annual chance (100-yr flood). Section 361.38(b) and §361.39(a) have been revised to allow for lesser level or protection if the minimum required level of protection for an 1% annual chance storm event is not attainable. The rule does not restrict an RFPG's emphasis

on or consideration of BCR in the development of its regional flood plan.

Comment:

ASCE-TX comment that the provisions in §361.39(c) should be changed to use the "negatively affect" language from the statute. If their suggested definition is used for "negatively affect" in §361.10, which includes a water supply provision, then they state that §361.39(d) need not mention water supply.

Response:

The TWDB acknowledges and appreciates the comment. Section 361.39(d) has been modified to use the term "negatively affect".

Comment:

HCFCDC comment that generally, the flood risk reduction recommendations do not always meet the set protection goals, i.e. 1 % annual exceedance storm, if the community in which the project is located have different values. They suggest that while a 1 % level of protection is a goal, individual projects may have a different level of protection based upon said community input and direction.

Response:

The TWDB acknowledges and appreciates the comment. Section 361.39 has been revised to require RFPGs to at least consider 1.0% annual chance flood events but allows for and encourages RFPGs to consider FMSs and FMPs that address flood events of other frequencies to be included in the identification and assessment process.

Section 361.40 Impacts of Regional Flood Plan.

Section 361.40 requires that the RFPs include a region-wide summary of reduction in flood risk that implementation of the RFP would achieve and a description of the type of socioeconomic or recreational impacts the flood management strategies and flood mitigation projects would have. It also requires a description of the impacts that implementation of the RFP would have on the environment, water quality, and navigation. The RFPs must also include a statement that the flood mitigation projects will not negatively affect neighboring areas located within or outside of the FPR.

Comment:

The City of Sugar Land requests clarification on how socioeconomic, environmental, ecosystem services, and recreational impacts will be quantified.

Response:

The TWDB acknowledges and appreciates the comment. Technical guidance documents being developed by the EA may provide the planning groups and technical consultants additional information about developing these summaries. No changes have been made to rules in response to this comment.

Comment:

Matthew Berg appreciates the consideration of socioeconomic, recreational, environmental, water quality, and navigation impacts.

Response:

The TWDB acknowledges and appreciates this comment. No changes have been made.

Comment:

Hudson DeYoe imagines that one goal of RFPs will be to move more water faster to the coast. Having seen the impact of tropical storms on coastal waters particularly the Laguna Madre, he is concerned about the impact of regional flood planning without the consideration of downstream (coastal) effects. He does not believe that the document includes consideration of the impact of regional flood planning on coastal ecosystems.

Response:

The TWDB acknowledges and appreciates the comment and concern and notes that the guidance principles require that regional and state flood plans shall consider the potential upstream and downstream effects, including environmental, of potential flood management strategies (and associated projects) on neighboring areas. In recommending strategies, RFPs shall ensure that no neighboring area is negatively affected by the regional flood plan, as stated in §362.3(b)(10). No changes have been made.

Comment:

Sierra Club - Lone Star Chapter, National Wildlife Federation, Galveston Bay Foundation, and Hill Country Alliance recommend that §361.40(4) be revised to include a general description of the overall impacts of the recommended FMPs and FMSs in the RFP on recreation and an identification of any actions to be taken to eliminate, reduce, or mitigate any negative impacts to those resources.

Response:

The TWDB acknowledges and appreciates the comment. Section 361.40(4) has been revised to include agriculture and recreational resources in the required general description of the overall impacts of the recommended FMPs and FMSs in the RFP. The TWDB anticipates that any actions to be taken to eliminate, reduce, or mitigate any negative impacts to those resources shall be included as part of individual projects.

Comment:

ASCE-TX comment that provisions in §361.40 should be modified to require each regional plan to include a narrative description of all the benefits and costs identified in the BCR calculation for each recommended FME, FMS, or FP. They assert that if this description is complete, it will include a discussion of the economic, social, and environmental costs and benefits of each project.

Response:

The TWDB acknowledges and appreciates the comment. The description of impacts required by §361.40 is intended to be a holistic summary of both the positive and negative impacts of all FMSs and FMPs contained in the Regional Flood Plan. Additional guidance will be provided by the EA within technical guidance. No changes have been made.

Section 361.41 Contributions to and Impacts on Water Supply Development and the State Water Plan.

Section 361.41 requires that the RFPs include a summary and description of the contributions to and impacts on water supply development that implementation of the RFP would have.

Comment:

The Texas Land Trust Council recommends requiring a description of any anticipated contributions to groundwater recharge

from the FMSs and FMPs in the regional flood plans. They specifically believe that the direct or indirect groundwater recharge benefits resulting from nonstructural, including nature-based, solutions should be quantified in the regional flood plans.

Response:

The TWDB acknowledges and appreciates the comment. Contributions to groundwater recharge would fall under impacts to "water availability" which is included in the considerations within §361.41(2). No changes have been made.

Comment:

Sierra Club - Lone Star Chapter, National Wildlife Federation, Galveston Bay Foundation, and Hill Country Alliance recommend an additional requirement to include a description of any anticipated contributions to groundwater recharge from FMSs and FMPs included in the RFP.

Response:

The TWDB acknowledges and appreciates the comment. Contributions to groundwater recharge would fall under impacts to "water availability" which is included in the considerations within §361.41(2). No changes have been made.

Section 361.42 Flood Response Information and Activities.

Section 361.42 requires that the RFPs include a summary of flood response preparations in the region. This section limits the RFPs from performing additional analysis or other activities related to planning for disaster response and recovery.

Comment:

The City of Sugar Land requests clarification on whether flood response preparations by each county and municipality will be reported on or if regional flood groups will create a general flood response plan. The city notes that flood characteristics of the upper, middle, and lower Brazos river basin vary widely.

Response:

Regional flood planning groups will be responsible for summarizing the nature and types of flood response preparations within the flood planning region (including summarizing county and municipality efforts) and will not be tasked with creating a new general flood response plan. No changes have been made in response to this comment.

Section 361.43 Administrative, Regulatory, and Legislative Recommendations.

Section 361.43 requires the RFPs to develop and include any legislative or regulatory recommendations that they find necessary to facilitate floodplain management and flood mitigation planning and implementation. The section also requires the RFPs to make recommendations regarding revenue-raising opportunities to fund flood management activities in the region.

Comment:

Matthew Berg is concerned that development of administrative, regulatory, and legislative recommendations could result in tension among regional flood planning group members. He seeks clarification on how these recommendations will be approved and if recommendations need to be agreed upon by all members.

Response:

The TWDB acknowledges and appreciates the comment. RFPs will be responsible for adopting their own bylaws and determining their processes related to their decision-making, voting, and selection of specific recommendations to include in their RFP. No changes have been made.

Section 361.44 Flood Infrastructure Financing Analysis.

Section 361.44 requires that the RFPs include information related to financing the proposed flood management strategies and projects that are included in their plans.

Comment:

Matthew Berg seeks clarification on how financing recommendations will be approved and if recommendations need to be agreed upon by all regional flood planning group members. He also seeks clarification on whether each FMS, FMP, and FME will need to have a proposed financing mechanism.

Response:

The TWDB acknowledges and appreciates the comment. RFPs will be responsible for adopting their own bylaws and determining their processes related to their decision-making, voting, and selection of specific recommendations to include in their RFP. No changes have been made.

Section 361.45 Implementation and Comparison to Previous Regional Flood Plan.

Section 361.45 requires that the RFPs include a section that compares the current RFP to the previous RFP including the status of previously recommended flood mitigation strategies.

Comment:

Matthew Berg seeks clarification on whether the description of how the new regional flood plan differs from the previous plan will be a quantitative or qualitative comparison.

Response:

The TWDB acknowledges and appreciates the comment. The description comparing the new regional flood plan to the previous plan should be both quantitative and qualitative as appropriate and in accordance with any guidance documents developed by the EA. No changes have been made.

Subchapter D Adoption, Submittal, and Amendments to Regional Flood Plans.

Section 361.50 Adoption, Submittal, Notifications, and Approval of Regional Flood Plans.

Section 361.50 includes procedural requirements for the adoption, submittal, and approval of the RFPs. To align with the statutory requirement that state flood plans be developed every five years, the RFPs must submit an RFP every five years. Draft RFPs are also required every five years. Statute requires the first regional flood plans to be submitted to the Board by January 10, 2023.

Comment:

The City of Sugar Land and Matthew Berg request clarification on whether a majority is required for plan approval or what other benchmark will be used.

Response:

The TWDB acknowledges and appreciates the comment. RFPs will be responsible for adopting their own bylaws and determining their processes related to their decision-making, voting, and

selection of specific recommendations to include in their RFP. No changes made.

Comment:

The City of Lake Jackson and the City of Brookshire recommend revisions to clarify that only the final RFP submitted to the EA is required to summarize comments received and the RFP's responses to those comments. Specifically, the cities request the following changes to §361.50(d)(1)(D): "in the adopted RFP, summaries of all written and oral comment received pursuant to subsection (c) of this section, with a response by the RFP explaining how the plan was revised or why changes were not warranted in response to written comment received under subsection (c) of this section."

Response:

The TWDB acknowledges and appreciates the comment. Section 361.50(d)(1)(D) has been revised to clarify the requirements for inclusion of any written or oral comment received from the public on the draft RFP under §361.50(c). Section 361.21(h) has also been revised to clarify the public comment requirements related to adoption of the final RFP under §361.50.

Comment:

The City of Lake Jackson and the City of Brookshire request a specific change within §361.50 to provide clarity and avoid potential conflicts with the Public Information Act requirements incorporated into Rules §361.21(a): "(d)(2)(C) The RFP shall make publicly available and transfer copies of all data, models, and reports generated by the planning process and used in developing the RFP to the EA. To the maximum extent possible, data..."

Response:

The TWDB acknowledges and appreciates the comment. The TWDB does not consider the language to conflict. No changes have been made.

Comment:

ASCE-TX comment that in §361.50(d)(1)(B), capital costs should be required only for Flood Projects. They state that there is not a capital cost associated with FMEs and FMSs.

Response:

The TWDB acknowledges and appreciates the comment. The associated definitions have been modified to more accurately reflect the types of costs associated with these elements of plans.

Comment:

HCFCDC agrees that the RFPs shall vote on the projects for inclusion in their FME, FMS, and FMP but does the TWDB expect this vote to be a simple majority, super majority or unanimous vote?

Response:

The TWDB acknowledges and appreciates the comment. RFPs will be responsible for adopting their own bylaws and determining their processes related to their decision-making, voting, and selection of specific recommendations to include in their RFP. No changes have been made.

Section 361.51 Amendments to Regional Flood Plans.

Section 361.51 includes the procedural requirements for amending regional flood plans. In addition to the RFPG approving an amendment, the Board must approve amendments to the RFPs.

Comment:

The City of Lake Jackson and the City Brookshire expressed support for the proposed process outlined in this section but noted the absence of specifics related to how long a political subdivision has to petition the EA and how long the EA has to act on said petition. As such, the cities request the following modifications: "(b) If the Political Subdivision is not satisfied with the RFPG's decision on the issue, it may file a petition with the EA to request review of the RFPG's decision and consider the amendment to the approved RFP. The Political Subdivision shall send the petition to the EA and the chair of the affected RFPG *within 30 days after the RFPG's decision...*" and "(2) *The EA shall issue a decision on any petition submitted under subsection (b)(1) within 180 days after receipt of a completed petition. The political subdivision may petition the Board for review of the EA's decision within 30 days after the receipt of the decision.* If the EA determines that the changed condition or new information warrants a change in the approved RFP, the EA's decision shall request the RFPG to consider making the appropriate change. If the RFPG does not..."

In addition, the cities request these minor revisions to subsection numbering:

"(c) (b) Amendments to RFPs and State Flood Plan. An RFPG may amend an adopted RFP at a regular RFPG meeting, after giving notice for an amendment and providing notice in accordance with §361.21 (relating to Notice). An RFPG must obtain Board approval of all amendments to RFPs under the standards and procedures of this section.

The RFPG may initiate an amendment or an entity may request an RFPG to amend its adopted

[(1)]RFP.

(1) An RFPG's consideration for action to initiate an amendment may occur at a regular RFPG meeting...

(d)[(c)] All amendments to an RFP must meet all the requirements related to development of an RFP.

(e)[(d)] Following amendments of RFPs, the Board shall make any necessary amendments to the State Flood Plan as outlined in §362.4(b) of this title.

Response:

The TWDB acknowledges and appreciates the comment. The TWDB does not consider it necessary to include detailed timeframes within the rules to implement the requirement. No changes have been made.

Subchapter E Negative Effects on Neighboring Areas and Failure to Meet Requirements.

Section 361.60 Addressing Negative Effects on Neighboring Areas Within Flood Planning Regions.

Section 361.60 provides that the board will support the RFPGs in facilitating resolution related to projects that will negatively affect neighboring areas within the same FPR. As required by Texas Water Code §16.062(h) if the board does determine that an element of a regional flood plan negatively affects a neighboring area, the board must coordinate with the affected area to ad-

just the plan to ensure that not neighboring area is negatively affected by the plan.

Comment:

Matthew Berg seeks clarification on the definition of negative impacts. He believes that all FMSs and FMPs will have some negative impact. He states it is unclear who will have standing to contest a determination of no negative impact to a neighboring area.

Response:

The TWDB has included a definition for "negative effect" in §361.10 and the term will be further defined through guidance being developed by the EA.

Comment:

The City of Lake Jackson and the City of Brookshire expressed concern with the assumption that RFPGs will be able to resolve all conflicts that arise within the region and request the following minor edit and additional language for §361.60: "Addressing Negative Effects on Neighboring Areas Within Flood Planning Regions

RFPGs shall resolve issues related to projects in their plan that will negatively affect neighboring areas within the FPR. The EA will provide technical assistance within available resources to the RFPGs requesting such assistance and may assist in facilitating resolution of issues within FPRs. *In the event RFPGs are unable to resolve an issue related to projects in a plan that will negatively affect a neighboring area within the FRP, the RFPG may use the process set forth in §361.61 to resolve the issue(s).*"

Response:

The TWDB acknowledges and appreciates the comment. In accordance with Senate Bill 8, the TWDB expects the regional flood planning groups to make decisions required resolve issues within its region. Further, as stated in the rule, the EA is available to provide technical assistance within available resources.

Comment:

The Woodlands Water Agency noted a perceived type-o in last sentence, and suggests changing "not" to "no".

Response:

The TWDB acknowledges and appreciates the comment but was unable to locate this typo. No changes have been made.

Section 361.61 Addressing Negative Effects on Neighboring Areas Between Flood Planning Regions.

Section 361.61 addresses negatively affected neighboring areas that are not in the same flood planning region as the project. The rule provides the Executive Administrator with the option to make a recommendation to the Board for resolving a negatively affected neighboring area issue or allows the Executive Administrator to hold a public meeting prior to making a recommendation for the board to approve. The section allows the board, at its discretion, to approve all portions of a regional flood plan with the exception of the specific element that causes the negative effect on neighboring areas.

Comment:

The cities of Lake Jackson and Brookshire expressed concern that use of the term "in good faith" may implicate certain legal obligations that are not intended by the Rule. As such, the cities request the following minor edit and suggested deletion: "Ad-

dressing Negative Effects on Neighboring Areas Between Flood Planning Regions" and "(a) In the event an RFPG has asserted or the Board finds that there is an element of a draft RFP that will negatively affect a neighboring area in a different FPR, the involved regions shall [make a good faith effort to voluntarily] work together to resolve the issue."

Response:

The TWDB acknowledges and appreciates the comment. The TWDB considers the language appropriate and reasonable for the purpose of these rules. No changes have been made.

Section 361.62 Failure of a Regional Flood Plan to Meet Regional Flood Planning Requirements.

Section 361.62 provides the board the ability to direct a RFPG to make changes to its RFP necessary to meet the requirements of this rule and Texas Water Code 16.062.

No comment received for this section.

Subchapter F Regional Flood Planning Grants.

Subchapter F provides the framework and requirements for the TWDB to provide grant funding to RFPGs and ensure efficient use of those funds.

Section 361.70 Notice of Funds and Submission and Review of Regional Flood Planning Applications.

Section 361.70 provides for grant application notice requirements and the process by which the board will provide funding to the regional flood planning groups for carrying out their duties.

Comment:

Houston Stronger comment that all regional flood planning groups must receive enough funding to develop regional flood plans and that the TWDB should make recommendations on how to create sustainable funding sources so local entities so local entities are able to meet requirements in Chapter 361 and notes potential funding sources including at GLO and TDEM.

Response:

The TWDB recognizes the ongoing need for planning funding and anticipates allocating the available appropriations under a formula-funding method that will consider the relative amount of work required by the regional flood planning groups. The TWDB also recognizes the ongoing need to develop information and notes that the plans will be based on the best available information at the time they are developed. The TWDB appreciates the comment and is already coordinating with other state agencies with regard to funding opportunities and related flood planning initiatives. No changes have been made.

Comment:

Houston Stronger requests that the "TWDB provide guidance to local applicants on using alternative finance and alternative delivery."

Response:

The TWDB acknowledges and appreciates the comment. Note that the §361.70 is referring to grant funds for supporting planning activities of the planning groups, not project implementation. Sponsors of recommended projects in the flood plans make decisions about implementation of their projects. The TWDB has developed guidance for the use of alternative delivery methods across all the TWDB financing programs which would be avail-

able to sponsors seeking financial assistance for flood-related projects. No changes have been made.

Section 361.71 Board Consideration of Applications, Applicant's Responsibilities, and Contract.

Section 361.71 provides the process for the board to take action on and contract for funding assistance applications that have been submitted.

No comment received for this section.

Section 361.72 Use of Funds.

Section 361.72 includes specific elements of regional flood planning that are eligible for reimbursement and those that are unallowed. In particular, the TWDB funding shall not be used for activities for which the Board determines existing information, data, or analyses are sufficient for the planning effort. It is proposed that funding not be used for analysis of activities related to disaster response or disaster recovery. This decision was made primarily because funding and planning for disaster response or recovery efforts exists from other state and federal resources. Additionally, the rules, as modified in response to public comment, allow for a limited share of TWDB funding to be used for reimbursement of direct staff hours that may be required for providing certain administration activities on behalf of the RFPGs. This allowance for limited reimbursement of some direct staff costs of planning group sponsors is intended to encourage participation of entities in supporting the RFPGs. Allowable administrative expenses are outlined in the rule.

Comment:

El Paso County states that the proposed rules limit the use of funds for gathering data or performing analyses where such data or analyses are already available, noting that there may be circumstances where existing data is outdated and requires revision. They suggest clarifying that funds are available for appropriate updates to outdated data or analyses.

Response:

The TWDB agrees that some existing data and analyses may require updates for RFPG planning purposes in some cases. The rules assign authority to the TWDB to limit funds for activities for which the TWDB determines existing information, data, or analyses are sufficient for the planning effort. The TWDB shall make that determination. No changes have been made in response to this comment.

Comment:

The City of Sugar Land seeks clarification as to how much of the administrative costs is reimbursable.

Response:

The TWDB acknowledges and appreciates the comment. Changes were made to Sections 361.72(a) and (b) to make eligible for reimbursement personnel costs, of the planning group sponsor, for the staff hours that are directly spent providing preparing for, and posting public notice for RFPG meetings, including time and direct expenses for their support of and attendance at such RFPG meetings in accordance with, and as specifically limited by, the flood planning grant contract with the TWDB.

Comment:

The City of Lake Jackson expressed concern that §361.12(2) appears to be in conflict with §361.72(c). The City requests that

§361.72(c) incorporate reference to the designated political subdivision's own procurement requirements as an alternative to the Professional Services Procurement Act provided in Subchapter A, Chapter 2254 of the Government Code.

Response:

The TWDB acknowledges and appreciates the comment. The Professional Services Procurement Act, Government Code Chapter 2254, will apply to most of the Planning Group members and therefore, not require different procurement standards for the Planning Group Sponsor. However, language has been added to Sections 361.72 and 361.12 for consistency.

Comment:

The North Central Texas Council of Governments seeks clarification on how the planning group sponsor is to be compensated for the time involved in the extensive work associated with developing the regional flood plan if costs associated with the administration of the plan's development are not reimbursable.

Response:

The TWDB acknowledges and appreciates the comment. Changes were made to Sections 361.72(a) and (b) to make eligible for reimbursement personnel costs, of the planning group sponsor, for the staff hours that are directly spent providing preparing for, and posting public notice for RFPG meetings, including time and direct expenses for their support of and attendance at such RFPG meetings in accordance with, and as specifically limited by, the flood planning grant contract with the TWDB.

Comment:

The City of Lake Jackson and the City of Brookshire expressed concern that, as written, the Rule and Fiscal Note fail to recognize or fund significant costs to political subdivisions, especially in the first planning cycle. The cities note four significant limitations related to funding, including authorizing the Board to determine that anything less than "the best available" information is "sufficient"; prohibiting funding for "preparation of engineering plans and specifications" regardless of the nature of those plans and specifications; prohibiting payment of actual costs to political subdivisions involved in the planning process; and a lack of authority related to subcontracting and procurement concerns. The cities request specific changes to the language in this section as follows: "(a) Limitations of funding. The Board has sole discretion in determining which activities are necessary for the development or revision of RFPs. However, no funds provided by the Board in accordance with §361.70 and §361.71 may be expended by RFPGs for the following:

(1) activities for which the Board determines existing information, data, or analyses are *the best available science, data, models, and flood mapping* [sufficient] for the planning effort including but not limited to:"

"(2) activities directly related to the preparation of applications for state or federal permits or other approvals, activities associated with administrative or legal proceedings by regulatory agencies, and preparation of engineering plans and specifications *for state or federal permits, administrative or legal proceedings, or other approvals ...*";

"(3)[(B) costs of administering the RFPGs;]

(B)[(C)] staff or overhead costs for time spent providing public notice and meetings, including time and expenses for attendance at such meetings;

[(D) costs for training;]

[(E) costs of developing an application for funding or reviewing materials developed due to this grant;] and

(C)[(F)] direct costs, excluding personnel-related costs of the political subdivision sponsor, for placing costs of administering the regional flood planning grant and associated contracts..."; and

"(b)(3) public notices for the legally required public meetings and of providing copies of information for the public and for members of the RFPGs as needed for the efficient performance of planning work; and

(4) the cost of public notice postings including a website and for postage for mailing notices of public meetings; and

(5) *professional services procured pursuant to subsection (c).*

(c) Subcontracting. A RFPG through the eligible applicant's contractor or subcontractor may obtain professional services, including the services of a planner, land surveyor, licensed engineer, or attorney, for development or revision of a regional flood plan only if such services are procured on the basis of demonstrated competence and qualifications through a request for qualifications process in accordance with Texas Government Code Chapter 2254 or in accordance with the procurement requirements that apply to that political subdivision.

Response:

The TWDB acknowledges and appreciates the comment. Changes were made to Sections 361.72(a) and (b) to make eligible for reimbursement personnel costs, of the planning group sponsor, for the staff hours that are directly spent providing preparing for, and posting public notice for RFPG meetings, including time and direct expenses for their support of and attendance at such RFPG meetings in accordance with, and as specifically limited by, the flood planning grant contract with the TWDB. No other changes made in response to this comment.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The board reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the rulemaking is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to implement a regional and state flood planning processes and develop a state and regional flood plans.

Even if the rule were a major environmental rule, Texas Government Code, §2001.0225 still would not apply to this rulemaking because Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract be-

tween the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed a standard set by federal law; (2) does not exceed an express requirement of state law; (3) does not 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; and (4) is not adopted solely under the general powers of the agency, but rather under Texas Water Code §§16.061 and 16.062. Therefore, this adopted rule does not fall under any of the applicability criteria in Texas Government Code, §2001.0225.

No Comment received for this section.

TAKINGS IMPACT ASSESSMENT

The board evaluated this rule and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rule is to implement a regional and state flood planning processes and develop state and regional flood plans. The rule will substantially advance this stated purpose by establishing the regional flood planning groups and providing the framework for regional and state flood plans.

The board's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this rule because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code, §2007.003(b)(4).

Nevertheless, the board further evaluated this rule and performed an assessment of whether it constitutes a taking under Texas Government Code, Chapter 2007. Promulgation and enforcement of this rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject adopted regulation does not affect a landowner's rights in private real property because this rulemaking does not burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. Therefore, the rule does not constitute a taking under Texas Government Code, Chapter 2007.

No comment received for this section.

SUBCHAPTER A. GENERAL INFORMATION

31 TAC §§361.10 - 361.13

STATUTORY AUTHORITY

This rulemaking is adopted under the authority of Texas Water Code §16.453(Floodplain Management Account for funding planning grants), §16.061 State Flood Planning, and §16.062 Regional Flood Planning.

§361.10. Definitions and Acronyms.

(a) 1.0% annual chance flood event - Flood event having a 1.0% chance of being equaled or exceeded in any given year, also referred to as the base flood or 100-year flood.

(b) 0.2% annual chance flood event - Flood event having a 0.2% chance of being equaled or exceeded in any given year, also referred to as the 500-year flood.

(c) Board - the governing body of the Texas Water Development Board.

(d) Executive Administrator (EA) - The Executive Administrator of the TWDB or a designated representative.

(e) FEMA - Federal Emergency Management Agency

(f) FIRM - Flood Insurance Rate Map

(g) Flood - A general and temporary condition of partial or complete inundation of normally dry land area from overflow of inland or tidal waters or from the unusual and rapid accumulation or runoff of surface waters from any source.

(h) Flood-prone - Areas with known risk of flooding primarily during storm events either from existing inundation maps, studies, and/or historic knowledge of flood events. Flood-prone areas may include, but are not limited to, the floodplain, the floodway, the flood fringe, wetlands, riparian buffers, or other areas adjacent to the main channel.

(i) Floodplain - That area of land subject to periodic inundation by floodwaters.

(j) Floodplain management - The operation of an overall program of corrective and preventative measures for reducing flood damage.

(k) Flood Mitigation - The implementation of actions, including both structural and non-structural solutions, to reduce flood risk to protect against the loss of life and property.

(l) Flood Management Evaluation (FME) - A proposed flood study of a specific, flood-prone area that is needed in order to assess flood risk and/or determine whether there are potentially feasible FMSs or FMPs.

(m) Flood Management Strategy (FMS) - A proposed plan to reduce flood risk or mitigate flood hazards to life or property. A flood management strategy may or may not require associated Flood Mitigation Projects to be implemented.

(n) Flood Mitigation Project (FMP) - A proposed project, both structural and non-structural, that has a non-zero capital costs or other non-recurring cost and that when implemented will reduce flood risk, mitigate flood hazards to life or property.

(o) Flood Planning Region (FPR) - A geographic area designated by the Board pursuant to Texas Water Code §16.062.

(p) Flood Risk - Generally describes the hazard from flood events to life and property, including the likelihood of a hazard occurring; the magnitude of the hazard; the number of people and properties exposed to the hazard; and the vulnerability of the people and properties exposed to the hazard.

(q) Flood Risk Map - A map that shows flood risk for Texas communities at some level of detail using best available data.

(r) GIS - Geographic Information System

(s) GLO - General Land Office

(t) HUC - Hydrologic Unit Code level (e.g., HUC8) as delineated by the United States Geological Survey.

(u) Hydrologic and Hydraulic Model - Mathematical model created utilizing computer software that simulates rainfall runoff flow to estimate the extent of water levels and flooding and to test potential ways to reduce flood risk.

(v) Nature-based flood mitigation - Mitigation approaches involving the use of natural features, materials, and processes to reduce the risk and impacts of flooding.

(w) Neighboring area - means any area, including but not limited to upstream and downstream areas, potentially affected by the proposed FMP.

(x) Negative Effect - An increase in flood-related risks to life and property, either upstream or downstream of the proposed project. The RFPG may adopt a standard that is more restrictive than the standard provided in TWDB guidance.

(y) Planning Group Sponsor - A political subdivision designated by the Regional Flood Planning Group as authorized to receive funds for developing or revising regional flood plans.

(z) Political Subdivision - County, city, or other body politic or corporate of the state, including any district or authority created under Art. 3 § 52 or Art. 16 § 59 of the constitution and including any interstate compact commission to which the state is a party and any nonprofit Water Supply Corporation created and operating under Ch. 67.

(aa) Potentially feasible flood management strategy or potentially feasible flood mitigation project - a FMS or FMP that is permissible, constructible, economically viable, and implementable.

(bb) Regional Flood Plan (RFP) - The plan adopted or amended by a Regional Flood Planning Group pursuant to Texas Water Code §16.062 (relating to Regional Flood Plans) and this chapter.

(cc) Regional Flood Planning Group (RFPG) - A group designated by the Board that develops a Regional Flood Plan, pursuant to Texas Water Code §16.062.

(dd) Residual Risk - The remaining flood risk in an area after the completion of a FMS or FMP or set of FMSs or FMPs that reduce flood risk in that same area.

(ee) State Flood Plan (SFP) - The most recent State Flood Plan adopted or amended by the Board under Texas Water Code §16.061 (relating to State Flood Plan).

(ff) State Flood Planning Database - A database to be developed and maintained by the TWDB that stores data related to Flood Planning. It is used to collect, analyze, and disseminate regional and statewide Flood Planning data.

(gg) State Population Projections - Population projections contained in the most recently adopted State Water Plan as further assembled geographically based on HUC 8 watersheds or other appropriate flood-related geographic features determined by the TWDB.

(hh) TWC - Texas Water Code

(ii) TWDB - Texas Water Development Board

§361.11. *Designations and Governance of Flood Planning Regions.*

(a) Once initially designated, the Board may review and update the boundary designations of FPRs as necessary, on its own initiative or upon recommendation of the EA.

(b) If upon FPR boundary designation review the Board determines that revisions to the boundaries are necessary, the Board shall designate areas for which RFPs shall be developed, taking into consideration factors such as:

- (1) River basin and sub-watershed delineations;
- (2) Hydrologic features of river basins;
- (3) Coastal basins and features;
- (4) Existing FPRs;
- (5) Development patterns;

(6) Public comment; and

(7) Other factors the Board deems relevant.

(c) The Board shall designate an individual member for each of the twelve positions, required in subsection (e), for the initial RFPGs.

(d) After the Board names members of the initial RFPG, the EA will provide to each member of the initial RFPG a set of model bylaws. The initial RFPGs shall consider and adopt, by two-thirds vote, bylaws that are consistent with provisions of this chapter, Texas Water Code Section 16.062, and Government Code Chapter 551 and 552. The RFPG shall provide copies of its bylaws and any revisions thereto to the EA. The bylaws adopted by the RFPG shall at a minimum address the following elements:

- (1) methods of formation and governance of executive committee, or subcommittees or subgroups;
- (2) definition of a quorum necessary to conduct business;
- (3) methods to approve items of business including adoption of RFPs or amendments thereto;
- (4) methods to name additional voting and non-voting members;
- (5) terms, conditions, and limits of membership including the terms of member removal;
- (6) any additional notice provisions that the RFPG chooses to include;
- (7) methods to record and preserve minutes;
- (8) methods to resolve disputes between RFPG members on matters coming before the RFPG;
- (9) procedures for handling confidential information; and
- (10) other procedures deemed relevant by the RFPG.

(e) RFPGs shall at all times, maintain each of the required positions listed below. However, if a FPR does not have an interest in the category below, then the RFPG shall so advise the Executive Administrator and an individual member designation may not be required.

(1) Public, defined as those persons or entities having no economic or other direct interest in the interests represented by the remaining membership categories;

(2) Counties, defined as the county governments for the 254 counties in Texas;

(3) Municipalities, defined as governments of cities created or organized under the general, home-rule, or special laws of the state;

(4) Industries, such as corporations, partnerships, sole proprietorships, or other legal entities that are formed for the purpose of making a profit and that are not small businesses;

(5) Agricultural interests, defined as those persons or entities associated with the production or processing of plant or animal products;

(6) Environmental interests, defined as those persons or groups advocating for the protection or conservation of the state's natural resources, including but not limited to soil, water, air, and living resources;

(7) Small businesses, defined as corporations, partnerships, sole proprietorships, or other legal entities that are formed for the purpose of making a profit, are independently owned and operated, and have either fewer than 500 employees and or less than \$10 million in gross annual receipts;

(8) Electric generating utilities, defined as any persons, corporations, cooperative corporations, or any combination thereof, meeting each of the following three criteria: own or operate for compensation equipment or facilities which produce or generate electricity; produce or generate electricity for either wholesale or retail sale to others; and are neither a municipal corporation nor a river authority; this category may include a transmission and distribution utility;

(9) River authorities, defined as any districts or authorities created by the legislature that contain areas within their boundaries of one or more counties and that are governed by boards of directors appointed or designated in whole or part by the governor, including without limitation the San Antonio River Authority and the Palo Duro River Authority;

(10) Flood Districts, defined as any districts or authorities, created under authority of either Texas Constitution, Article III, §52(b)(1) and (2), or Article XVI, §59 including all Chapter 49 districts, particularly districts with flood management responsibilities, including drainage districts, levee improvement districts, but does not include river authorities;

(11) Water Districts, defined as any districts or authorities, created under authority of either Texas Constitution, Article III, §52(b)(1) and (2), or Article XVI, §59 including all Chapter 49 districts, particularly districts with flood management responsibilities, including municipal utility districts, freshwater supply districts, and regional water authorities, but does not include drainage districts, levee improvement districts, river authorities;

(12) Water Utilities, defined as any persons, corporations, cooperative corporations, or any combination thereof that provide water supplies for compensation except for municipalities, river authorities, or water districts; and

(13) At their the discretion, of the RFPGs may include, additional voting positions upon a two-thirds vote of all of the existing voting positions to ensure adequate representation from the interests in the FPR.

(f) The RFPG shall include the following non-voting members, as designated by the head of their agency for paragraphs (1) - (7) of this subsection, who shall receive meeting notifications and information in the same manner as voting members:

- (1) Staff member of the TWDB;
- (2) Staff member of the Texas Commission on Environmental Quality;
- (3) Staff member of the General Land Office;
- (4) Staff member of the Texas Parks and Wildlife Department;
- (5) Staff member of the Texas Department of Agriculture;
- (6) Staff member of the State Soil and Water Conservation Board;
- (7) Staff member of the Texas Division of Emergency Management;
- (8) Non-voting member liaisons designated by each RFPG, as necessary, to represent portions of major river basins that have been split into more than one FPR to coordinate between the upstream and downstream FPRs located within that same river basin. This non-voting member liaison may, at the discretion of the RFPG, be met by a voting member that also meets another position requirement under subsection (e) of this section; and

(9) For FPRs that touch the Gulf Coast, member liaisons designated by each RFPG representing coastal portions of FPRs to coordinate with neighboring FPRs along the Gulf Coast. This non-voting position member liaison may, at the discretion of the RFPG, be met by a voting member that also meets another position requirement under subsection (e) of this section.

(g) Each RFPG may consider including a non-voting position designated by each RFPG to represent regional or local transportation authorities.

(h) Each RFPG shall provide a current list of its voting and non-voting positions to the EA; the list shall identify each position required under subsection (e) as well as any other positions added by the RFPG and the individual member name that fills each position.

(i) Each RFPG, at its discretion, may at any time add additional voting and non-voting positions to serve on the RFPG including any new interest category in accordance with subsection (e)(13) of this section, including any additional state or federal agencies, and additional representatives of those interests already listed in, and as limited by, subsection (e) of this section that the RFPG considers appropriate for development of its RFP. Adding any new voting position that increases the total number of voting positions may only occur upon a two-thirds vote of all voting positions.

(j) Each RFPG, at its discretion, may remove individual voting or non-voting positions, other than those listed under subsection (f)(1) - (7) of this section, or eliminate positions in accordance with the RFPG bylaws as long as minimum requirements of RFPG membership are maintained in accordance with subsections (e) and (f) of this section.

(k) RFPGs may enter into formal and informal agreements to coordinate, avoid affecting neighboring areas, and share information with other RFPGs or any other interests within any FPR for any purpose the RFPGs consider appropriate including expediting or making more efficient planning efforts.

§361.12. General Regional Flood Planning Group Responsibilities and Procedures.

(a) The following activities are required of each RFPG every planning cycle:

(1) Designate a political subdivision as a Planning Group Sponsor of the RFPG eligible to apply for financial assistance to be used by the RFPG for planning activities. The Planning Group Sponsor will prepare and submit funding applications on behalf of the RFPG pursuant to Chapter 361, Subchapter F of this title (related to Regional Flood Planning Grants). The RFPG may, at its discretion, designate a different Planning Group Sponsor at any time. The Planning Group Sponsor will be responsible for the following:

(A) General management of the contract between the Planning Group Sponsor and the TWDB;

(B) The general management of the contract between the Planning Group Sponsor and the consultant(s); and

(C) In accordance with the RFPG's bylaws and notice provisions, the preparation of a scope(s) of work for regional flood planning grant funding that identifies responsible parties for task execution, including a task schedule, task and expense budgets, and describes interim draft reports or deliverables, and final reports for the planning process.

(2) Select a technical consultant(s) to be procured by the Planning Group Sponsor in accordance with the procurement requirements that apply to that political subdivision and Texas Government Code Chapter 2254.

(3) Hold at least one public meeting, that may also be a regular RFPG meeting, and in accordance with the notice requirements in §361.21 of this title (relating to General Notice Requirements), to determine what, if any, additional public notice the RFPG determines is necessary to ensure adequate public notice in its own FPR, including in print form if desirable.

(4) Hold public meetings at central locations readily accessible to the public within the FPR to gather general suggestions and recommendations from the public as to issues, provisions, and types of FMSs, FMPs, and FMEs that should be considered or addressed or provisions that should be considered and potentially included during that regional flood planning cycle in accordance with the public notice requirements in §361.21 of this title.

(5) Approve the contract(s) and any subsequent amendments thereto between the Planning Group Sponsor and the technical consultant or TWDB Scope(s) of Work or budgets in open meetings as necessary and in accordance with §361.21 of this title.

(6) Hold regular RFPG meetings, at a minimum, annually.

(b) The RFPG must follow its bylaws to reconcile any work and consider recommendations of any subcommittee or subgroups, including any strategies or projects identified for the RFPG's consideration.

(c) Each RFPG may, at its discretion, designate committees or subcommittees or subgroups within its FPR to meet separately to work on certain assigned issues that the RFPG considers relevant to its plan such as topics relevant across the entire region or issues related to specific geographical areas within the FPR or coordination of shared issues across neighboring FPRs.

(1) If a RFPG creates a sub-regional committee or subcommittee or subgroup to address issues related to a specific geographical area smaller than the full FPR, it shall, to the extent practical, define such sub-regional geographic areas based on boundaries that are coterminous with full HUC8 watersheds located within the FPR.

(2) Any sub-regional committee or subcommittee or subgroup must include at least one voting member representing each of the interests under §361.11(e)(1) - (12) of this title (relating to Designations and Governance of Flood Planning Regions).

(3) Any outcomes from the activities of such committees or subcommittees or subgroups shall be strictly for the purpose of providing information or recommendations as specifically directed by the full RFPG and for potential consideration by the full RFPG.

(4) RFPGs may not authorize committees or subcommittees or subgroups groups or committees to take any actions regarding:

(A) Modifying the budget or scope of the RFPG planning contract(s);

(B) Directing the RFPG consultant's work or associated expenditure of funds; and

(C) Other activities that are the responsibility of the full RFPG as determined by the flood planning contract with the TWDB and any associated guidance provided by the EA.

(5) Each RFPG or committee or subcommittee or subgroup of a RFPG is subject to Chapters 551 (relating to Open Meetings) and 552 (relating to Public Information), Government Code.

§361.13. Regional Flood Planning Group Deliverables.

(a) Each RFPG shall deliver a draft and final, adopted RFP in accordance with EA guidance. The RFPs must include the following:

(1) written report content including various presentations of data, tables, charts, maps, and written summaries of certain results related to §§361.30 - 361.45 of this title (relating to Regional Flood Plan Requirements) in accordance with EA guidance and the TWDB grant contract;

(2) a single, standardized table that will include a list of all recommended FMSs and FMPs, and certain key information associated with each FMP, in accordance with guidance and template to be provided by the EA. This table will be the basis for prioritizing recommended FMPs in the state flood plan;

(3) Geographic Information System (GIS) database deliverables and other information in accordance with the contract and guidance provided by and in a manner determined by the EA; and

(4) associated data organized in a format and manner determined by the EA.

(b) Documentation of the public process in the plan development, including public Comment received and responses to public comments on the draft RFP.

(c) The order and chapter content of the published RFPs shall generally follow a standard outline as determined by the EA and based on the scope of the regional flood planning contracts.

(d) The content and format of all associated data deliverables, including the data on which the RFPs are based, shall be in conformance with requirements in guidance documents and data templates to be developed and provided by the EA.

(e) The RFPGs shall, in accordance with their regional flood planning contracts and schedule and TWDB guidance, deliver technical memorandums to the EA prior to the draft RFP and throughout the planning process to demonstrate progress in developing its RFP and to support the concurrent development of the state flood plan. The RFPGs shall approve technical memorandums in accordance with a schedule to be provided by the EA and after notice pursuant to §361.21 of this title (relating to General Notice Requirements). At the discretion of the EA, the technical memorandums shall include:

(1) A list of existing political subdivisions within the FPR that have flood-related authorities or responsibilities;

(2) A list of previous flood studies considered by the RFPG to be relevant to development of the RFP;

(3) A geodatabase and associated maps in accordance with EA guidance that the RFPG considers to be best representation of the region-wide 1.0% annual chance flood event and 0.2% annual chance flood event inundation boundaries, and the source of flooding for each area, for use in its risk analysis, including indications of locations where such boundaries remain undefined;

(4) A geodatabase and associated maps in accordance with EA guidance that identifies additional flood-prone areas not described in paragraph (3) of this subsection) based on location of hydrologic features, historic flooding, and/or local knowledge;

(5) A geodatabase and associated maps in accordance with EA guidance that identifies areas where existing hydrologic and hydraulic models needed to evaluate FMSs and FMPs are available;

(6) A list of available flood-related models that the RFPG considers of most value in developing its plan;

(7) The flood mitigation and floodplain management goals adopted by the RFPG per §361.36 of this title (relating to Flood Mitigation and Floodplain Management Goals);

(8) The documented process used by the RFPG to identify potentially feasible FMSs and FMPs;

(9) A list of potential FMEs and potentially feasible FMSs and FMPs identified by the RFPG, if any; and

(10) A list of FMSs and FMPs that were identified but determined by the RFPG to be infeasible, including the primary reason for it being infeasible.

(f) The information provided by the RFPG will provide the basis for much of the development and content of the state flood plan.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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General Counsel

Texas Water Development Board

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For further information, please call: (512) 463-7686



SUBCHAPTER B. GUIDANCE PRINCIPLES, NOTICE REQUIREMENTS, AND GENERAL CONSIDERATIONS

31 TAC §§361.20 - 361.22

STATUTORY AUTHORITY

This rulemaking is adopted under the authority of Texas Water Code §16.453 (Floodplain Management Account for funding planning grants), §16.061 State Flood Planning, and §16.062 Regional Flood Planning.

§361.20. *Guidance Principles for State and Regional Flood Planning.*

(a) Development of RFPs and the State Flood Plan shall be guided by the principles stated in §362.3 of this title (relating to Guidance Principles).

(b) Each RFPG shall include a statement in their draft and final regional flood plans related to the RFPG's conformance with §362.3. The statement must include an explanation of how the RFP satisfies the requirements of each of the guidance principles including that the plan will not negatively affect a neighboring area.

§361.21. *General Notice Requirements.*

(a) Each RFPG and any committee, subcommittee, or subgroup of an RFPG are subject to Chapters 551 and 552, Government Code.

(b) Each RFPG shall create and maintain a website that they will use to post public notices of all its full RFPG, subgroup, and subcommittee meetings and make available meeting agendas and related meeting materials for the public, in accordance with the items listed below in subsection (h)(1) - (3) of this section.

(c) Each RFPG shall provide a means by which it will accept written public Comment prior to and after meetings. The RFPGs must also allow oral public Comment during RFPG meetings.

(d) Confidential materials that fall under protection in accordance with the Homeland Security Act, may not be made available to the general public.

(e) Each RFPG shall solicit interested parties from the public and maintain a list of emails of persons or entities who request to be notified electronically of RFPG activities.

(f) At a minimum, notices of all meetings, meeting materials, and meeting agendas shall be sent electronically, in accordance with the timelines provided in subsection (h)(1) - (3) of this section to all voting and non-voting RFPG members; and any person or entity who has requested notice of RFPG activities.

(g) At a minimum, all notices must be posted to the RFPG website and on the secretary of state website and must include:

(1) the date, time, and location of the meeting;

(2) a summary of the proposed action(s) to be taken;

(3) the name, telephone number, email address, and physical address of a contact person to whom questions or requests for additional information may be submitted; and

(4) a statement of how and when Comment will be received from the members and public.

(h) In addition to subsections (a) - (g) of this section, and the notice requirements of Chapter 551, Government Code, the following requirements apply:

(1) at a minimum, notice must be provided at least seven days prior to the meeting, and meeting materials must be made available online at least three days prior to and seven days following the meeting when the planning group will take the following actions:

(A) regular RFPG meetings and any RFPG committee, subcommittee, or subgroup meetings;

(B) approval of requests for funds from the Board;

(C) amendments to the regional flood planning scope of work or budget;

(D) approval to submit established deliverables to the Board or EA including technical memorandums;

(E) approval of replacement RFPG members to fill voting and non-voting position vacancies; and

(F) any other RFPG approvals required by TWDB contract or EA guidance not specifically addressed under paragraph (2) or (3) of this subsection.

(2) at a minimum, notice must be provided at least 14 days prior to the meeting, written Comment must be accepted for 14 days prior to the meeting and considered by the RFPG members prior to taking the associated action, and meeting materials must be made available online for a minimum of 7 days prior to and 14 days following the meeting, when the planning group will take the following actions:

(A) holding pre-planning public meetings to obtain input on development of the next RFP per TWC 16.062(d);

(B) determining flood mitigation and floodplain management goals per §361.36 of this title;

(C) approving process for identifying potential FMEs and potentially feasible FMSs and FMPs per §361.38 of this title (relating to Identification and Assessment of Potential Flood Management Evaluations and Potentially Feasible Flood Management Strategies and Flood Mitigation Projects);

(D) adoption of the final RFP per TWC 16.062(h);
(E) approval of amendments to RFPs per §361.51 of this title (relating to Identification and Assessment of Potential Flood Management Evaluations and Potentially Feasible Flood Management Strategies and Projects); and

(F) approval of any changes to the number of and representation make-up of the RFPG membership. This includes the addition or removal of any voting or non-voting interest category or position, any changes to the representation categories of existing voting and non-voting positions, or the removal of any voting or non-voting positions, including for existing interest categories that may have more than one representative position.

(3) for meetings at which the planning group will take public input related to the RFPG's draft RFP per TWC 16.062(f) - (g), the following additional public notice provisions must be met:

(A) The draft RFP must be made available for public inspection online for 30 days prior to the first meeting, if more than one meeting is held, and 30 days following the first meeting;

(B) At a minimum, notice must be provided at least 30 days prior to the first meeting;

(C) Notice must be provided to all adjacent RFPGs;

(D) Notice of the meeting must include a summary of the regional flood plan;

(E) Notice must include information on how the public may submit Comment;

(F) A hard copy of the draft RFP must be made available for public inspection in at least three publicly accessible locations within the FPR for at least 30 days prior to the first meeting and 30 days following the first meeting; and

(G) Written Comment must be accepted for consideration for at least 30 days prior to the first meeting and at least 30 days following the first meeting for consideration and response prior to adoption of the final plan under §361.50 of this title (relating to Adoption, Submittal, Notifications, and Approval of Regional Flood Plans) and oral Comment must be accepted during the meeting.

(i) All notice periods given are based on calendar days.

(j) RFPGs shall also provide additional public notice, if any, in accordance with their decision under §361.11(d)(6) of this title (relating to Designations and Governance of Flood Planning Regions), including provision of print notices, if applicable.

(k) Each RFPG shall include a statement in their draft and final adopted regional flood plans regarding the RFPG's conformance with this section.

§361.22. *General Considerations for Development of Regional Flood Plans.*

RFPGs are expected to consider a wide variety of available, relevant information and tools when developing regional flood plans including:

- (1) Historic flood data including stream flows, and storm surge;
- (2) Historic rainfall, including Atlas 14 or subsequent data;
- (3) NFIP claims, repetitive loss properties, and severe repetitive loss properties;
- (4) Topographic data including subsidence trends;
- (5) Bathymetric data, including relative sea level change;

- (6) Existing and projected population;
- (7) Land use planning and regulation as it may affect flood risk;
- (8) Flood-related infrastructure;
- (9) Non-flood related infrastructure, critical facility, and property data;
- (10) Models including hydrologic, hydraulic, or any available screening-level models;
- (11) Flood risk maps;
- (12) Existing flood risk analyses, including location, likelihood and magnitude of the hazard, exposure analysis and vulnerability analyses;
- (13) Future flood risk analyses including location, likelihood and magnitude of the hazard, exposure analysis and vulnerability analyses;
- (14) Historic losses due to floods;
- (15) Flood disaster reports;
- (16) Other regional and local flood planning studies;
- (17) Other regional and local flood hazard mitigation plans;
- (18) State of Texas hazard mitigation plan;
- (19) Coastal resiliency master plan;
- (20) Critical transportation corridors, including consideration of both existing corridors and future corridors;
- (21) Floodplain management practices;
- (22) Planned and anticipated future development and its potential impacts on the plan;
- (23) Flood management and mitigation best management practices;
- (24) Watershed protection plans;
- (25) Flood risk screening tools;
- (26) Flood-related federal agency information; and
- (27) Any other information deemed relevant by the RFPG.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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General Counsel

Texas Water Development Board

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For further information, please call: (512) 463-7686



SUBCHAPTER C. REGIONAL FLOOD PLAN REQUIREMENTS

31 TAC §§361.30 - 361.45

STATUTORY AUTHORITY

This rulemaking is adopted under the authority of Texas Water Code §16.453 (Floodplain Management Account for funding planning grants), §16.061 State Flood Planning, and §16.062 Regional Flood Planning.

Regional flood plans shall be based on the best available science, data, models, and flood mapping and the RFPGs shall perform various analyses related to flood risks to make recommendations regarding flood mitigation and floodplain management goals and flood mitigation solutions in developing its RFP.

§361.30. *Description of the Flood Planning Region.*

Regional flood plans shall include brief, general descriptions of the following:

- (1) social and economic character of the region such as information on development, population, economic activity and economic sectors most at risk of flood impacts;
- (2) the areas in the FPR that are flood-prone and the types of major flood risks to life and property in the region;
- (3) key historical flood events within the region including associated fatalities and loss of property;
- (4) political subdivisions with flood-related authority and whether they are currently actively engaged in flood planning, floodplain management, and flood mitigation activities;
- (5) the general extent of local regulation and development codes relevant to existing and future flood risk;
- (6) agricultural and natural resources most impacted by flooding; and
- (7) existing local and regional flood plans within the FPR.

§361.31. *Description of the Existing Natural Flood Mitigation Features and Constructed Major Flood Infrastructure in the Region.*

(a) Regional flood plans shall include a general description of the location, condition, and functionality of natural features and constructed major infrastructure within the FPR including, but not limited to:

- (1) rivers, tributaries, and functioning floodplains;
- (2) wetlands;
- (3) playa lakes;
- (4) sinkholes;
- (5) alluvial fans;
- (6) vegetated dunes;
- (7) levees;
- (8) sea barriers, walls, and revetments;
- (9) tidal barriers and gates;
- (10) stormwater tunnels;
- (11) stormwater canals;
- (12) dams that provide flood protection;
- (13) detention and retention ponds;
- (14) weirs;
- (15) storm drain systems; and
- (16) any other flood-related infrastructure.

(b) for non-functional or deficient natural flood mitigation features or major flood infrastructure, explain, in general, the reasons for

the features or infrastructure being non-functional or deficient, provide a description of the condition and functionality of the feature or infrastructure and whether and when the natural flood feature or major flood infrastructure may become fully functional, and provide the name of the owner and operator of the major flood infrastructure.

§361.32. *Description of the Major Infrastructure and Flood Mitigation Projects Currently Under Development.*

Regional flood plans shall include a general description of the location, source of funding, and anticipated benefits of proposed or ongoing flood mitigation projects in the FPR including:

- (1) new structural flood mitigation projects currently under construction;
- (2) non-structural flood mitigation projects currently being implemented; and
- (3) structural and non-structural flood mitigation projects with dedicated funding to construct and the expected year of completion.

§361.33. *Existing Condition Flood Risk Analyses in the Region.*

(a) The RFPGs shall perform existing condition flood risk analyses for the region comprising:

- (1) flood hazard analyses that determines location, magnitude and frequency of flooding;
- (2) flood exposure analyses to identify who and what might be harmed within the region; and
- (3) vulnerability analyses to identify vulnerabilities of communities and critical facilities.

(b) RFPGs shall perform existing condition flood hazard analysis to determine the location and magnitude of both 1.0% annual chance and 0.2% annual chance flood events as follows:

- (1) collect data and conduct analyses sufficient to characterize the existing conditions for the planning area;
- (2) identify areas within each FPR where hydrologic and hydraulic model results are already available and summarize the information;
- (3) utilize best available data, hydrologic and hydraulic models for each area;
- (4) prepare a map showing areas identified by the RFPG as having an annual likelihood of inundation of more than 1.0% and 0.2%, the areal extent of this inundation, and the sources of flooding for each area; and
- (5) prepare a map showing gaps in inundation boundary mapping and identify known flood-prone areas based on location of hydrologic features, historic flooding and/ or local knowledge.

(c) The RFPGs shall develop high-level, region-wide and largely GIS-based, existing condition flood exposure analyses, using the information identified in the flood hazard analysis to identify who and what might be harmed within the region for, at a minimum, both 1.0% annual chance and 0.2% annual chance flood events as follows:

- (1) analyses of existing development within the existing condition floodplain and the associated flood hazard exposure;
- (2) for the floodplain as defined by FEMA or as defined by an alternative analysis if the FEMA-defined floodplain is not considered best available; and

(3) may include only those flood mitigation projects with dedicated construction funding and scheduled for completion prior to adoption of the next state flood plan.

(4) all existing condition flood exposure analyses shall consider the population and property located in areas where existing levees or dams do not meet FEMA accreditation as inundated by flooding without those structures in place. Provisionally accredited structures may be allowed to provide flood protection, unless best available information demonstrates otherwise.

(5) In accordance with guidance to be provided by the EA, the existing condition flood exposure analyses shall consider available datasets to estimate the potential flood hazard exposure including, but not limited to:

- (A) number of residential properties and associated population;
- (B) number of non-residential properties;
- (C) other public infrastructure;
- (D) major industrial and power generation facilities;
- (E) number and types of critical facilities;
- (F) number of roadway crossings;
- (G) length of roadway segments; and
- (H) agricultural area and value of crops exposed.

(6) The existing condition flood exposure analyses shall include a qualitative description of expected loss of function, which is the effect that a flood event could have on the function of inundated structures (residential, commercial, industrial, public, or others) and infrastructure, such as transportation, health and human services, water supply, wastewater treatment, utilities, energy generation, and emergency services.

(d) Existing condition vulnerability analysis

(1) RFPGs shall identify resilience of communities located in flood-prone areas identified as part of the existing condition flood exposure analyses, utilizing relevant data and tools.

(2) RFPGs shall identify vulnerabilities of critical facilities to flooding by looking at factors such as proximity to a floodplain or other bodies of water, past flooding issues, emergency management plans, and location of critical systems like primary and back-up power.

(e) All data produced as part of the existing condition flood exposure analysis and the existing condition vulnerability analysis shall be summarized in the RFP in accordance with guidance provided by the EA and shall include:

- (1) underlying flood event return frequency;
- (2) type of flood risk;
- (3) county;
- (4) HUC8;
- (5) existing flood authority boundaries;
- (6) Social Vulnerability Indices for counties and census tracts; and
- (7) other categories as determined by RFPGs or to be designated by the EA.

(f) The information developed by the RFPG under this section shall be used to assist the RFPG establish priorities in subsequent planning tasks, to identify areas that need FMEs, and to efficiently deploy its resources.

§361.34. *Future Condition Flood Risk Analyses in the Region*

(a) RFPGs shall perform future condition flood risk analyses for the region comprising:

- (1) flood hazard analyses that determines location, magnitude and frequency of flooding;
- (2) flood exposure analyses to identify who and what might be harmed within the region; and
- (3) vulnerability analyses to identify vulnerabilities of communities and critical facilities.

(b) RFPGs shall perform a future condition flood hazard analysis to determine the location of both 1.0% annual chance and 0.2% annual chance flood events as follows:

(1) collect data and conduct analyses sufficient to characterize the future conditions for the planning area based on a "no-action" scenario of approximately 30 years of continued development and population growth under current development trends and patterns, and existing flood regulations and policies based on:

(A) current land use and development trends and practices and associated projected population based on the most recently adopted state water plan decade and population nearest the next RFP adoption date plus approximately 30 years or as provided for in guidance;

(B) reasonable assumptions regarding locations of residential development and associated population growth;

(C) anticipated relative sea level change and subsidence based on existing information;

(D) anticipated changes to the functionality of the existing floodplain;

(E) anticipated sedimentation in flood control structures and major geomorphic changes in riverine, playa, or coastal systems based on existing information;

(F) assumed completion of flood mitigation projects currently under construction or that already have dedicated construction funding; and

(G) other factors deemed relevant by the RFPG.

(2) identify areas within each FPR where future condition hydrologic and hydraulic model results are already available and summarize the information;

(3) utilize best available data, hydrologic and hydraulic models for each area;

(4) where future condition results are not available, but existing condition hydrologic and hydraulic model results are already available, the RFPGs shall modify hydraulic models to identify future conditions flood risk for 1.0% and 0.2% annual chance storms based on simplified assumptions utilizing the information identified in paragraph (1)(A) of this subsection.

(5) prepare a map showing areas of 1% and 0.2% annual chance of inundation for future conditions, the areal extent of this inundation, and the sources of flooding for each area.

(6) prepare a map showing gaps in inundation boundary mapping and identify known flood-prone areas based on location of hydrologic features, historic flooding, and/ or local knowledge.

(c) future condition flood exposure analysis. The RFPGs shall use the information identified in the future condition flood hazard analysis to develop and perform high-level, region-wide and largely GIS-based, future condition flood exposure analyses to identify who and what might be harmed within the region for, at a minimum, both future condition 1.0% annual chance and future condition 0.2% annual chance flood events as follows:

(1) analyses of existing and future developments within the future condition floodplain and the associated flood hazard exposure; and

(2) to include only those flood mitigation projects with dedicated construction funding scheduled for completion prior to the next RFP adoption date plus 30 years or as provided for in guidance.

(3) Identification of flood prone areas associated with the hazard exposure analyses shall be based on analyses that rely primarily on the use and incorporation of existing and available:

(A) FIRMs or other flood inundation maps and GIS related data and analyses;

(B) available hydraulic flood modeling results;

(C) model-based or other types of geographic screening tools for identifying flood prone areas; and

(D) other best available data or relevant technical analyses that the RFPG determines to be the most updated or reliable.

(d) Future condition vulnerability analysis.

(1) RFPGs shall identify resilience of communities located in flood-prone areas identified in the future condition flood exposure analysis utilizing relevant data and tools.

(2) RFPGs shall identify vulnerabilities of critical facilities to flooding by looking at factors such as proximity to a floodplain, proximity to other bodies of water, past flooding issues, emergency management plans, and location of critical systems like primary and back-up power.

(e) All data produced as part of the future condition flood hazard analysis and future condition flood exposure analysis shall be summarized in the RFP in accordance with guidance provided by the EA and shall include:

(1) underlying flood event return frequency;

(2) type of flood risk;

(3) county;

(4) HUC8;

(5) existing flood authority boundaries;

(6) Social Vulnerability Indices for counties and census tracts; and

(7) other categories to be designated by the EA.

(f) The information developed by the RFPG under this section shall be used to assist the RFPG establish priorities in subsequent planning tasks, to identify areas that need FMEs, and to efficiently deploy its resources.

§361.35. *Evaluation of Previous and Current Floodplain Management and Recommendations for Changes to Floodplain Management.*

Recognizing the extent that previous and current practices may have increased flood risks, including residual risks, and considering broad floodplain management and land use approaches that will avoid increasing flood risks, and avoid negatively affecting neighboring areas, the RFPG shall:

(1) consider the extent to which a lack of, insufficient, or ineffective current floodplain management and land use practices, regulations, policies, and trends related to land use, economic development, and population growth, allow, cause, or otherwise encourage increases to flood risks to both:

(A) existing population and property, and

(B) future population and property.

(2) take into consideration the future flood hazard exposure analysis performed under §361.34 of this title (relating to Future Condition Flood Risk Analyses in the Region), consider the extent to which the 1.0% annual chance floodplain, along with associated flood risks, may change over time in response to anticipated development and associated population growth and other relevant man-made causes, and assess how to best address these potential changes.

(3) based on the analyses in paragraphs (1) - (2) of this subsection, make recommendations regarding forward-looking floodplain management and land use recommendations, and economic development practices and strategies, that should be implemented by entities within the FPR. These region-specific recommendations may include minimum floodplain management and land use standards and should focus on how to best address the changes in paragraph (2) of this subsection for entities within the region. These recommendations shall inform recommended strategies for inclusion in the RFP.

(4) RFPGs may also choose to adopt region-specific, minimum floodplain management or land use or other standards that impact flood-risk, that may vary geographically across the region, that each entity in the FPR must adopt prior to the RFPG including in the RFP any FMEs, FMSs, or FMPs that are sponsored by or that will otherwise be implemented by that entity.

§361.36. *Flood Mitigation and Floodplain Management Goals.*

Considering the Guidance Principles under §362.3 of this title (related to Guidance Principles), the existing condition flood risk analyses performed under §361.33 of this title (relating to Regional Flood Hazard Exposure Analysis: Current and Future Floodplain Conditions), future condition flood risk analyses identified under §361.34 of this title (relating to Future Condition Flood Risk Analyses in the Region), and past and the consideration of current floodplain management and land use approaches under §361.35 of this title (relating to Evaluation of Previous and Current Floodplain Management Approaches and Recommendations for Changes to Floodplain Management), input from the public, and other relevant information and considerations, RFPGs shall:

(1) identify specific and achievable flood mitigation and floodplain management goals along with target years by which to meet those goals for the FPR to include, at a minimum, goals specifically addressing risks to life and property.

(2) recognize and clearly state the levels of residual risk that will remain in the FPR even after the stated flood mitigation goals in paragraph (1) of this section are fully met.

(3) structure and present the goals and the residual risks in an easily understandable format for the public including in conformance with guidance to be provided by the EA.

(4) use these goals to guide the RFPG in carrying out the tasks required under §§361.37 - 361.39 of this title.

(5) when appropriate, choose goals that apply to full single HUC8 watershed boundaries or coterminous groups of HUC8 boundaries within the FPR.

(6) Identify both short-term goals (10 years) and long-term goals (30 years).

§361.37. Flood Mitigation Need Analysis.

(a) Based on the analyses and goals developed by the RFPG under §§361.33 - 361.36 of this title and any additional analyses or information developed using available screening-level models or methods, the RFPG shall identify locations within the FPR that the RFPG considers to have the greatest flood mitigation and flood risk study needs by considering:

(1) the areas in the FPR that the RFPG identified as the most prone to flooding that threatens life and property;

(2) the relative locations, extent, and performance of current floodplain management and land use policies and infrastructure located within the FPR, particularly within the locations described in paragraph (1) of this subsection;

(3) areas identified by the RFPG as prone to flooding that don't have adequate inundation maps;

(4) areas identified by the RFPG as prone to flooding that don't have hydrologic and hydraulic models;

(5) areas with an emergency need;

(6) existing modeling analyses and flood risk mitigation plans within the FPR;

(7) flood mitigation projects already identified and evaluated by other flood mitigation plans and studies;

(8) documentation of historic flooding events;

(9) flood mitigation projects already being implemented; and

(10) any other factors that the RFPG deems relevant to identifying the geographic locations where potential FMEs and potentially feasible FMSs and FMPs shall be identified and evaluated under §361.38 of this title (relating to Identification and Assessment of Potential Flood Management Evaluations and Potentially Feasible Flood Management Strategies and Flood Mitigation Projects).

(b) The RFPG shall conduct the analysis in subsection (a) of this section in a manner that will ensure the most effective and efficient use of the resources available to the RFPG.

§361.38. Identification and Assessment of Potential Flood Management Evaluations and Potentially Feasible Flood Management Strategies and Flood Mitigation Projects.

(a) Based on analyses and decisions under §§361.33 - 361.37 of this title the RFPG shall identify and evaluate potential FMEs and potentially feasible FMSs and FMPs, including nature-based solutions, some of which may have already been identified by previous evaluations and analyses by others. An FME is a proposed flood study of a specific, flood-prone area, that may include a flood risk analysis, that is needed in order to determine whether there are potentially feasible FMSs or FMPs. An FME may eventually result in detailed hydrologic and hydraulic analyses and identification of projects or strategies that could be amended into a RFP as FMSs or FMPs.

(b) When evaluating FMSs and FMPs the RFPG will, at a minimum, identify one solution that provides flood mitigation associated with 1.0% annual chance flood event. In instances where mitigating for

1.0% annual chance events is not feasible, the RFPG shall document the reasons for its infeasibility, and at the discretion of the RFPG, other FMS and FMPs to mitigate more frequent events may also be identified and evaluated based on guidance to be provided by the EA.

(c) A summary of the RFPG process for identifying potential FMEs and potentially feasible FMSs and FMPs in subsection (a) of this section shall be established and included in the draft and final adopted RFP.

(d) The RFPG shall then identify potentially feasible FMSs and FMPs in accordance with the RFPG process established under subsection (c) of this section.

(e) For areas within the FPR that the RFPG does not yet have sufficient information or resources to identify potentially feasible FMSs and FMPs, the RFPG shall identify areas for potential FMEs that may eventually result in FMPs.

(f) The RFPG shall evaluate potentially feasible FMSs and FMPs understanding that, upon evaluation and further inspection, some FMSs or FMPs initially identified as potentially feasible may, after further inspection, be reclassified as infeasible.

(g) FMPs will be ranked in the state flood plan and

(1) shall represent discrete, projects;

(2) shall not entail an entire capital program or drainage masterplan; and

(3) may rely on other flood-related projects.

(h) Evaluations of potentially feasible FMSs and FMPs will require associated, detailed hydrologic and hydraulic modeling results that quantify the reduced impacts from flood and the associated benefits and costs. Information may be based on previously performed evaluations of projects and related information. Evaluations of potentially feasible FMS and FMPs shall include the following information and be based on the following analyses:

(1) A reference to the specific flood mitigation or floodplain management goal addressed by the feasible FMS or FMP;

(2) A determination of whether FMS or FMP meets an emergency need;

(3) An indication regarding the potential use of federal funds, or other sources of funding, as a component of the total funding mechanism;

(4) An equitable comparison between and consistent assessment of all FMSs and FMPs that the RFPGs determine to be potentially feasible;

(5) A demonstration that the FMS or FMP will not negatively affect a neighboring area;

(6) A quantitative reporting of the estimated benefits of the FMS or FMP, including reductions of flood impacts of the 1.0% annual chance flood event and other storm events identified and evaluated if the project mitigates to more frequent event, to include, but not limited to:

(A) Associated flood events that must, at a minimum, include the 1.0% annual chance flood event and other storm events identified and evaluated;

(B) Reduction in habitable, equivalent living units flood risk;

(C) Reduction in residential population flood risk;

- (D) Reduction in critical facilities flood risk;
- (E) Reduction in road closure occurrences;
- (F) Reduction in acres of active farmland and ranchland flood risk;
- (G) Estimated reduction in fatalities, when available;
- (H) Estimated reduction in injuries, when available;
- (I) Reduction in expected annual damages from residential, commercial, and public property; and
- (J) Other benefits as deemed relevant by the RFPG including environmental benefits and other public benefits.

(7) A quantitative reporting of the estimated capital cost of projects in accordance with guidance provided by the EA;

(8) Calculated benefit-cost ratio for FMPs in accordance with guidance to be provided by the EA and based on current, observed conditions;

(9) For projects that will contribute to water supply, all relevant evaluations required under §357.34(e) of this title (relating to Identification and Evaluation of Potentially Feasible Water Management Strategies and Water Management Strategy Projects), as determined by the EA based on the type of contribution, and a description of its consistency with the currently adopted State Water Plan;

(10) A description of potential impacts and benefits from the FMS or FMP to the environment, agriculture, recreational resources, navigation, water quality, erosion, sedimentation, and impacts to any other resources deemed relevant by the RFPG;

(11) A description of residual, post-project, and future risks associated with FMPs including the risk of potential catastrophic failure and the potential for future increases to these risks due to lack of maintenance;

(12) Implementation issues including those related to right-of-ways, permitting, acquisitions, relocations, utilities and transportation; and

(13) Funding sources and options that exist or will be developed to pay for development, operation, and maintenance of the FMS or FMP.

(i) Evaluations of potential FMEs will be at a reconnaissance or screening-level, unsupported by associated detailed hydrologic and hydraulic analyses. These will be identified for areas that the RFPG considers a priority for flood risk evaluation but that do not yet have the required detailed hydrologic and hydraulic modeling or associated project evaluations available to evaluate specific FMSs or FMPs for recommendation in the RFP. These FMEs shall be based on recognition of the need to develop detailed hydrologic models or to perform associated hydraulic analyses and associated project evaluations in certain areas identified by the RFPG. Evaluations of potential FMEs shall include the following analyses:

- (1) A reference to the specific flood mitigation or floodplain management goal to be addressed by the potential FME.
- (2) A determination of whether FME may meet an emergency need.
- (3) An indication regarding the potential use of federal funds, or other sources of funding as a component of the total funding mechanism.
- (4) An equitable comparison between and consistent assessment of all FMEs.

(5) An indication of whether hydrologic and or hydraulic models are already being developed or are anticipated in the near future and that could be used in the FME.

(6) A quantitative reporting of the estimated benefits, including reductions of flood risks, to include:

- (A) Estimated habitable, living unit equivalent and associated population in FME area;
- (B) Estimated critical facilities in FME area;
- (C) Estimated number of roads closures occurrences in FME area;
- (D) Estimated acres of active farmland and ranchland in FME area; and
- (E) A quantitative reporting of the estimated study cost of the FME and whether the cost includes use of existing or development of new hydrologic or hydraulic models.

(7) For FMEs, RFPGs do not need to demonstrate that an FME will not negatively affect a neighboring area.

(j) RFPGs shall evaluate and present potential FMEs and potentially feasible FMSs and FMPs with sufficient specificity to allow state agencies to make financial or regulatory decisions to determine consistency of the proposed action before the state agency with an approved RFP.

(k) Analyses under this section shall be performed in accordance with guidance requirements to be provided by the EA.

(l) All data produced as part of the analyses under §361.38 of this title (related to Identification and Assessment of Potential Flood Management Evaluations and Potentially Feasible Flood Management Strategies and Projects) shall be organized and summarized in the RFP in accordance with guidance provided by the EA and shall be provided in a format determined by the EA.

(m) Analyses shall clearly designate a representative location of the FME and beneficiaries including a map and designation of HUC8 and county location.

§361.39. Recommended Flood Management Evaluations, Flood Management Strategies, and Flood Mitigation Projects.

(a) RFPGs shall recommend FMSs and FMPs to reduce the potential impacts of flood based on the evaluations under §361.38 of this title (related to Identification and Assessment of Potential Flood Management Evaluations and Potentially Feasible Flood Management Strategies and Projects) and RFPG goals and that must, at a minimum, mitigate for flood events associated with at 1.0 percent annual chance (100-yr flood) where feasible. In instances where mitigating for 100-year events is not feasible, FMS and FMPs to mitigate more frequent events may be recommended based on guidance to be provided by the EA. Recommendations shall be based upon the identification, analysis, and comparison of alternatives that the RFPG determines will provide measurable reductions in flood impacts in support of the RFPG's specific flood mitigation and/or floodplain management goals.

(b) RFPGs shall provide additional information in conformance with guidance to be provided by the EA which will be used to rank recommended FMPs in the state flood plan.

(c) RFPGs shall recommend FMEs that the RFPG determines are most likely to result in identification of potentially feasible FMSs and FMPs that would, at a minimum, identify and investigate one solution to mitigate for flood events associated with a 1.0% annual chance flood event and that support specific RFPG flood mitigation and/or floodplain management goals.

(d) Recommended FMSs or FMPs may not negatively affect a neighboring area or an entity's water supply.

(e) Recommended FMSs or FMPs that will contribute to water supply may not result in an overallocation of a water source based on the water availability allocations in the most recently adopted State Water Plan.

(f) Specific types of FMEs, FMSs, or FMPs that should be included and that should not be included in RFPs must be in accordance with guidance to be provided by the EA.

§361.40. Impacts of Regional Flood Plan.

Regional flood plans shall include:

(1) a region-wide summary of the relative reduction in flood risk that implementation of the regional flood plan would achieve within the region including with regard to life, injuries, and property;

(2) a statement that the FMPs in the plan, when implemented, will not negatively affect neighboring areas located within or outside of the FPR;

(3) a general description of the types of potential positive and negative socioeconomic or recreational impacts of the recommended FMSs and FMPs within the FPR; and

(4) a general description of the overall impacts of the recommended FMPs and FMSs in the RFP on the environment, agriculture, recreational resources, water quality, erosion, sedimentation, and navigation.

§361.41. Contributions to and Impacts on Water Supply Development and the State Water Plan.

(a) Regional flood plans shall include a region-wide summary and description of the contribution that the regional flood plan would have to water supply development including a list of the specific flood management strategies and/or flood mitigation projects that would contribute to water supply; and

(b) a description of any anticipated impacts, including to water supply or water availability or projects in the State Water Plan, that the regional flood plan FMSs and FMPs may have.

§361.42. Flood Response Information and Activities.

RFPGs are to summarize the nature and types of flood response preparations within the FPR including providing where more detailed information is available regarding recovery. RFPGs shall not perform analyses or other activities related to planning for disaster response or recovery activities.

§361.43. Administrative, Regulatory, and Legislative Recommendations.

RFPGs shall develop and include in their flood plans:

(1) legislative recommendations that they consider necessary to facilitate floodplain management and flood mitigation planning and implementation;

(2) other regulatory or administrative recommendations that they consider necessary to facilitate floodplain management and flood mitigation planning and implementation;

(3) any other recommendations that the RFPG believes are needed and desirable to achieve its regional flood mitigation and floodplain management goals; and

(4) recommendations regarding potential, new revenue-raising opportunities, including potential new municipal drainage utilities or regional flood authorities, that could fund the development,

operation, and maintenance of floodplain management or flood mitigation activities in the region.

§361.44. Flood Infrastructure Financing Analysis.

RFPGs shall indicate how individual local governments, regional authorities, and other political subdivisions in their region propose to finance the region's recommended FMSs, FMPs, and FMEs included in their flood plan. The assessment shall also describe what role the RFPG proposes for the state in financing recommended FMSs, FMPs, and FMEs. As projects are implemented, those improvements and associated benefits shall be incorporated into and reflected in the subsequent RFPs.

§361.45. Implementation and Comparison to Previous Regional Flood Plan.

Each RFPG shall, in accordance with guidance from the EA:

(1) collect information from local sponsors of FMPs on implementation of previously recommended FMPs and provide to the EA; and

(2) include a general description of how the new RFP differs from the previous plan including with regard to the status of existing flood infrastructure, flood mitigation achieved, goals, and recommended projects.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER D. ADOPTION, SUBMITTAL, AND AMENDMENTS TO REGIONAL FLOOD PLANS

31 TAC §361.50, §361.51

STATUTORY AUTHORITY

This rulemaking is adopted under the authority of Texas Water Code §16.453(Floodplain Management Account for funding planning grants), §16.061 State Flood Planning, and §16.062 Regional Flood Planning.

§361.50. Adoption, Submittal, Notifications, and Approval of Regional Flood Plans.

(a) The RFPGs shall approve each recommended FME, FMS, and FMP by a separate vote and shall adopt their draft and final RFPs by a vote and submit their final adopted RFPs to the Board every five years on a date to be determined by the EA, as modified by subsection (d)(2)(D) of this section, for approval and inclusion in the State Flood Plan.

(b) The draft RFP submitted to the EA must be in the electronic and paper format specified by the EA. Each draft RFP must certify that the draft RFP is complete and adopted by the RFPG.

(c) Prior to adopting a final RFP, the RFPGs shall consider the following Comment in accordance with §361.21 of this title (relating to General Notice Requirements) to include:

(1) any written or oral Comment received from the public on the draft RFP; and

(2) the EA's written Comment on the draft RFP.

(d) RFPGs shall submit the draft RFP and the adopted RFPs and any subsequent amendments to approved RFPs to the EA in conformance with this section.

(1) RFPs shall include:

(A) The technical report and data prepared in accordance with this chapter and the EA's specifications;

(B) A list of recommended FMPs, FMEs, and FMSs, with accompanying data to be used by the EA to rank each associated non-zero capital costs or other non-recurring costs in accordance with specifications and guidance to be provided by the EA;

(C) An executive summary that documents key RFP findings and recommendations; and

(D) In the adopted RFP, summaries of all written and oral Comment received pursuant to subsection (c) of this section, with a response by the RFPG explaining how the plan was revised or why changes were not warranted in response to written Comment received under subsection (c) of this section.

(2) RFPGs shall submit RFPs to the EA according to the following schedule:

(A) Draft RFPs are due every five years on a date disseminated by the EA unless an extension is approved, in writing, by the EA.

(B) Prior to submission of the draft RFP, the RFPGs shall provide and or upload data, metadata, and all other relevant digital information supporting the plan to the Board, including to the Board's State Flood Plan Database, when available. All changes and corrections to this information must be entered into or otherwise updated in RFPG's dataset including into the Board's State Flood Plan Database, when available, prior to submittal of a final adopted RFP.

(C) The RFPG shall make publicly available and transfer copies of all data, models, and reports generated by the planning process and used in developing the RFP to the EA. To the maximum extent possible, data shall be transferred in digital form according to specifications provided by the EA. One copy of all reports prepared by the RFPG shall be provided in digital format according to specifications provided by the EA. All digital mapping shall use a geographic information system according to specifications provided by the EA. The EA shall seek the input from the State Geographic Information Officer regarding specifications mentioned in this section.

(D) Adopted RFPs are due to the EA every five years on a date disseminated by the EA unless, at the discretion of the EA, a time extension is granted by the EA.

(E) Once approved by the Board, RFPs shall be made available on the Board website.

(e) Upon receipt of an RFP adopted by the RFPG, the Board shall consider approval of such plan based on the following criteria:

(1) verified adoption of the RFP by the RFPG;

(2) whether the RFP satisfies the requirements for regional flood plans adopted in the guidance principles at §361.20 of this title

(relating to Guidance Principles for State and Regional Flood Planning);

(3) whether the RFP adequately provides for the preservation of life and property and the development of water supply sources, where applicable; and

(4) the RFP does not negatively affect a neighboring area.

(f) The Board may approve an RFP only after it has determined that the RFP complies with statute and rules.

(g) RFPs approved by the Board pursuant to this chapter shall be incorporated into the State Flood Plan as outlined in §362.4 of this title (relating to State Flood Plan Guidelines).

(h) The initial RFP shall be delivered to the EA on or before January 10, 2023.

§361.51. Amendments to Regional Flood Plans.

(a) Local Flood Planning Amendment Requests. A Political Subdivision in the FPR may request an RFPG to consider an amendment to an adopted RFP based on changed conditions or new information. An RFPG must formally consider such request within 180 days after its receipt and shall amend its adopted RFP if it determines an amendment is warranted.

(b) If the Political Subdivision is not satisfied with the RFPG's decision on the issue, it may file a petition with the EA to request review of the RFPG's decision and consider the amendment to the approved RFP. The Political Subdivision shall send the petition to the EA and the chair of the affected RFPG.

(1) The petition must include:

(A) the changed condition or new information that affects the approved RFP;

(B) the specific sections and provisions of the approved RFP that may be affected by the changed condition or new information;

(C) the efforts made by the Political Subdivision to work with the RFPG to obtain an amendment; and

(D) any other information that may be useful to the EA in determining whether an amendment is necessary.

(2) If the EA determines that the changed condition or new information warrants a change in the approved RFP, the EA shall request the RFPG to consider making the appropriate change. If the RFPG does not amend its plan consistent with the request within 90 days, it shall provide a written explanation to the EA explaining the reason for not amending the RFP, after which the EA may present the issue to the Board for consideration at a public meeting. The Board may then direct the RFPG to amend its RFP.

(c) Amendments to RFPs and State Flood Plan. An RFPG may amend an adopted RFP at a regular RFPG meeting, after giving notice for an amendment and providing notice in accordance with §361.21 of this title (relating to General Notice Requirements). An RFPG must obtain Board approval of all amendments to RFPs under the standards and procedures of this section. The RFPG may initiate an amendment or an entity may request an RFPG to amend its adopted RFP.

(1) An RFPG's consideration for action to initiate an amendment may occur at a regular RFPG meeting.

(2) The RFPG shall hold a public meeting at which the RFPG may choose to take action on the amendment. The amendment shall be available for EA and public comment in accordance with §361.21 of this title.

(3) The RFPG may adopt the amendment at a regularly scheduled RFPG meeting held in accordance with §361.21 of this title. The amendment materials shall be submitted to the EA and shall:

(A) include the RFPG responses to all Comment received on the amendment in associated with notice in §361.21 of this title; and

(B) demonstrate that the amended RFP complies with statute and rules including that it satisfies the requirements in the guidance principles §362.3 of this title (relating to Guidance Principles) and does not negatively affect a neighboring area.

(4) After adoption of the amendment, the RFPG shall submit the amendment and its response to Comment to the Board which shall consider approval of the amendment following EA review of the amendment.

(d) All amendments to an RFP must meet all the requirements related to development of an RFP.

(e) Following amendments of RFPs, the Board shall make any necessary amendments to the State Flood Plan as outlined in §362.4(b) of this title (relating to State Flood Plan Guidelines).

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SUBCHAPTER E. NEGATIVE EFFECTS ON NEIGHBORING AREAS AND FAILURE TO MEET REQUIREMENTS

31 TAC §§361.60 - 361.62

STATUTORY AUTHORITY

This rulemaking is adopted under the authority of Texas Water Code §16.453 (Floodplain Management Account for funding planning grants), §16.061 State Flood Planning, and §16.062 Regional Flood Planning.

§361.60. Addressing Negative Effects on Neighboring Areas Within Flood Planning Regions.

RFPGs shall resolve issues related to projects in their plan that will negatively affect neighboring areas within the FPR. The EA will provide technical assistance, within available resources, to the RFPGs requesting such assistance and may assist in facilitating resolution of issues within FPRs.

§361.61. Addressing Negative Effects on Neighboring Areas Between Flood Planning Regions.

(a) In the event an RFPG has asserted or the Board finds that there is an element of a draft RFP that will negatively affect a neighboring area in a different FPR, the involved regions shall make a good faith effort to voluntarily work together to resolve the issue.

(b) The EA may use the following process to address the issue:

(1) notify the affected RFPGs of the nature of the potential negative effect;

(2) request affected RFPGs appoint a representative or representatives authorized to negotiate on behalf of the RFPG and notify the EA in writing of the appointment; and

(3) assist in negotiating resolutions of the issue with RFPGs.

(c) In the event the negotiations are unsuccessful, the EA may:

(1) propose a recommendation for resolution of the issue to the Board; or

(2) hold a public meeting on the proposed recommendation for resolution of the issue at a time and place determined by the EA. At the meeting, the EA may take Comment from the RFPGs, Political Subdivisions, and members of the public on the issues identified by the Board as unresolved issues; and

(3) after the public meeting, the EA may make a recommendation to the Board for resolution of the issue.

(d) The Board shall consider the EA's recommendation and any written statements by a representative for each affected RFPG and determine the resolution of the issue.

(e) The EA shall notify affected RFPGs of Board's decision and shall direct changes to the affected RFPs, to be incorporated in accordance with Texas Water Code §16.062(i).

(f) The Board may also, at its discretion, consider approving a regional flood plan with the exception of the specific element that will negatively affect a neighboring area.

§361.62. Failure of a Regional Flood Plan to Meet Regional Flood Planning Requirements.

(a) In the event the Board finds that the RFP does not meet the requirements of the Texas Water Code §16.062, this chapter, and Chapter 362 of this title (relating to State Flood Planning Guidelines), the Board shall direct the RFPG to make changes necessary for compliance with legal requirements.

(b) In the event the Board directs the RFPG to make changes to its RFP, the RFPG may request a reasonable amount of time, within any statutory deadlines, to complete the required changes.

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SUBCHAPTER F. REGIONAL FLOOD PLANNING GRANTS

31 TAC §§361.70 - 361.72

STATUTORY AUTHORITY

This rulemaking is adopted under the authority of Texas Water Code §16.453 (Floodplain Management Account for funding planning grants), §16.061 State Flood Planning, and §16.062 Regional Flood Planning.

§361.70. Notice of Funds and Submission and Review of Regional Flood Planning Applications.

(a) The EA will notify the RFPGs that funds are available and that applications will be accepted from Planning Group Sponsors for grants to develop or negotiate a scope of work or to develop or revise regional flood plans. A RFPG may not receive grant funds unless the RFPG has provided the EA with a copy of the RFPG's adopted by-laws.

(b) The RFPG shall provide a written designation to the EA naming the Planning Group Sponsor that is authorized to apply for grant funds on behalf of the RFPG. The RFPG shall ensure that the Planning Group Sponsor has the legal authority to conduct the procurement of professional services and enter into the contracts necessary for regional flood planning.

(c) The RFPG meeting to consider its additional, region-specific, public notice requirements in accordance with §361.12(3) of this title (relating to General Regional Flood Planning Group Responsibilities and Procedures) must occur prior to taking action regarding its request for funding under this subchapter and must be documented in its application for funding.

(d) The designated Planning Group Sponsor shall provide notice that an application for funding is being submitted in accordance with §361.21 of this title (relating to General Notice Requirements).

(e) The EA may request clarification from the Planning Group Sponsor, if necessary, to evaluate the application. Incomplete applications may be rejected and returned to the applicant.

(f) The applications will be evaluated on the following criteria:

- (1) degree to which proposed flood planning does not duplicate previous or ongoing flood or water planning;
- (2) application organization, responsiveness, and reasonableness of budget;
- (3) scope of work;
- (4) eligibility of tasks for funding under this subchapter;
- (5) the relative need of the Planning Group Sponsor for the funding based upon an assessment of the necessary scope of work, amount of work, and cost to develop the regional flood plan as compared to statewide needs for development of all regional flood plans;
- (6) the degree to which the scope of work associated with the funding and to be performed by the RFPG will address the flood risks in the FPR; and
- (7) Conformance with the requirements in the Board request for applications including other information as may be required in the application.

§361.71. Board Consideration of Applications, Applicant's Responsibilities, and Contract.

(a) The EA will provide a summary of regional flood planning funding applications with recommendations for approval to the Board for consideration at a regularly scheduled public meeting of the Board. The EA shall notify the applicants and other persons who have provided Comment of the time and place of such meeting.

(b) The Board may approve, deny, amend, or continue consideration of an application. If the Board approves an application for funding, the Planning Group Sponsor will be notified of the amount of funds available and the deadline for executing a contract with the

Board. If the applicant does not enter into a contract by the specified deadline, then the Board's approval expires and no funds will be provided. The Planning Group Sponsor may request an extension of time for good cause shown prior to the contract execution deadline.

(c) The Planning Group Sponsor must demonstrate the availability of matching funds when applicable. However, the Board may in its discretion award up to 100% of the necessary and direct costs of the development or revision of a plan.

(d) the contracts and sub-contracts for regional flood planning funds shall include:

- (1) a detailed statement of the purpose for which the money is to be used;
- (2) a scope of work;
- (3) the total amount of money to be paid under the contract and, as determined by the EA, subdivided into budget tasks;
- (4) the time for completion; and
- (5) any other terms and conditions required by the EA or agreed to by the contracting parties.

§361.72. Use of Funds.

(a) Limitations of funding. The Board has sole discretion in determining which activities are necessary for the development or revision of RFPs. However, no funds provided by the Board may be expended by RFPGs for the following:

(1) activities for which the Board determines existing information, data, or analyses are sufficient for the planning effort including but not limited to:

(A) model development, modeling, or collection of data describing flood hazard exposure or flood risks where information for evaluation of flood hazard exposure or flood risks is currently available from other sources or that will be made available by TWDB or others in sufficient time to be utilized by the RFPG in development of their RFP;

(B) detailed technical evaluations of FMEs or FMSs or FMPs, including regarding feasibility, cost, or impacts, where recent, sufficient information for planning is available, including from the Board or other entity, to evaluate the FMEs or FMSs or FMPs;

(C) evaluations of topics not directly related to the regional flood planning contract scope of work or related flood planning rules for development of regional flood plans; and

(D) revision of the Board-adopted state population projections.

(2) activities directly related to the preparation of applications for state or federal permits or other approvals, activities associated with administrative or legal proceedings by regulatory agencies, and preparation of engineering plans and specifications;

(3) costs associated with administration of the plan's development by the Planning Group Sponsor or RFPG members, including but not limited to:

(A) compensation for the time or expenses of RFPGs members' service on or for the RFPG;

(B) costs of administering the RFPGs, other than those explicitly allowed under subsection (b) of this section;

(C) staff or overhead costs for time spent providing public notice and meetings, including time and expenses for attendance at such meetings;

- (D) costs for training;
- (E) costs of developing an application for funding or reviewing materials developed due to this grant; and
- (F) costs of administering the regional flood planning grant and associated contracts;

(4) analysis or other activities related to planning for disaster response or recovery activities; and

(5) analyses of benefits and costs of FMSs beyond the scope of such analyses that is specifically allowed or required by regional flood planning guidance to be provided by the EA unless the RFPG demonstrates to the satisfaction of the EA that these analyses are needed to determine the selection of the FMS or FMP.

(b) The following administrative costs are eligible for funding if the RFPG or its chairperson certifies, during a public meeting, that the expenses are eligible for reimbursement and are correct and necessary:

(1) travel expenses, as authorized by the General Appropriations Act are available only for attendance at a posted meeting of the RFPG unless the travel is specifically authorized by the RFPG and EA;

(2) costs associated with providing translators and accommodations for persons with disabilities for public meetings when required by law or deemed necessary by the RFPGs and certified by the chairperson;

(3) direct costs, excluding personnel-related costs of the Planning Group Sponsor, for placing public notices for the legally required public meetings and of providing copies of information for the public and for members of the RFPGs as needed for the efficient performance of planning work;

(4) the cost of public notice postings including a website and for postage for mailing notices of public meetings; and

(5) the Planning Group Sponsor's personnel costs, for the staff hours that are directly spent providing, preparing for, and posting public notice for RFPG meetings, including time and direct expenses for their support of and attendance at such RFPG meetings in accordance with, and as specifically limited by, the flood planning grant contract with the Board.

(c) Subcontracting. A RFPG through the Planning Group Sponsor's contractor or subcontractor may obtain professional services, including the services of a planner, land surveyor, licensed engineer, or attorney, for development or revision of a regional flood plan only if such services are procured on the basis of demonstrated competence and qualifications through a request for qualifications process in accordance with Texas Government Code Chapter 2254.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 21, 2020.

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Ashley Harden

General Counsel

Texas Water Development Board

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Proposal publication date: December 20, 2019

For further information, please call: (512) 463-7686



CHAPTER 362. STATE FLOOD PLANNING GUIDELINES

SUBCHAPTER A. STATE FLOOD PLAN DEVELOPMENT

31 TAC §§362.1 - 362.4

The Texas Water Development Board ("TWDB" or "board") adopts new 31 TAC §§362.1 - 362.4, concerning The State Flood Plan. Sections 362.1 and 362.4 are adopted without changes to the proposed text as published in the December 20, 2019, issue of the *Texas Register* (44 TexReg 7845) and will not be republished. Sections 362.2 and 362.3 are adopted with changes to the proposed text as published in the same issue of the *Texas Register* and will be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE NEW CHAPTER.

The Texas Water Development Board ("TWDB" or "board") adopts new 31 TAC Chapter 362 concerning state flood planning. Senate Bill 8 of the 86th Legislature, Regular Session requires that the first regional flood plans be delivered to the Texas Water Development Board by January 10, 2023.

SECTION BY SECTION DISCUSSION OF ADOPTED AMENDMENTS INCLUDING PUBLIC COMMENTS RECEIVED AND RESPONSES.

General Comments

Chairman Charles Perry provided written comments thanking staff for traveling throughout the state to host fourteen public meetings and two webinars to listen to and receive feedback from hard-working Texans. The chairman stated that the rules as presented mirror the intent of SB 8 and the subsequent funding provided in SB 500, and that as with all rules promulgated, implementation requires deliberate oversight to ensure that legislative intent is ultimately met.

Response:

The TWDB acknowledges and appreciates this comment. No changes have been made.

Comment:

Chairman Dade Phelan provided oral comments thanking staff for their work and expressing support the implementation of this monumental legislation. The chairman discussed his district's flood risk and history and asserts that flood mitigation is a statewide issue. He appreciates TWDB's willingness to listen to the public and stakeholders.

Response:

The TWDB acknowledges and appreciates this comment. No changes have been made.

Comment:

State Senator Carol Alvarado applauds the effort of the TWDB and collaborating state agencies in drafting these proposed rules. The senator suggests that, when possible, the TWDB place a focus on utilizing nature-based flood solutions that promote biodiversity and resident well-being, all while mitigating flood risk.

Response:

The TWDB acknowledges and appreciates the comment and notes that the consideration of nature-based features is one of the guidance principles in Section 362.3(b)(17). A definition of nature-based flood mitigation and a requirement for consideration of nature-based solution are added to the rules in Sections 361.10(v) and 361.38(a) respectively.

Comment:

State Senator Carol Alvarado expresses concern over the ambiguity of the phrase "negative impacts." The senator agrees that no community should be negatively impacted by flood mitigation efforts and suggests that the TWDB consider revising this phrasing, further defining its meaning, or adding a threshold of impact or damages to clarify the meaning of negative impact.

Response:

The TWDB acknowledges and appreciates the comment and notes that the term "negative affect" is based on language in Senate Bill 8. TWDB has included a definition for "negative effect" in Section 361.10 and the term will be further defined through guidance being developed by the EA.

Comment:

Judge Aurelio Guerra, Jr. states that Willacy County is a small rural community that experiences recurring flooding and due to high poverty conditions, the county does not have the financial means to provide improvements on its own. Willacy County requests that TWDB consider giving preference to economically distressed counties and counties impacted by upstream flooding.

Response:

The TWDB acknowledges and appreciates the comment and notes that funding of project implementation will occur via financial programs outside of the Senate Bill 8 planning charges. Note that the new Flood Infrastructure Fund (FIF) program that came out of Senate Bill 7 attempts to address some of the affordability issues raised by the commenter. No changes have been made.

Comment:

Overall, PEW Charitable Trusts strongly supports the new regulations and the framework they create for regional flood planning across the State of Texas and believes the proposed regulations are fully consistent with the requirements of the State's new law, offer a reasonable degree of process flexibility for local communities, and will, over time, reduce the vulnerability of people and property to devastating storms and floods. Further, PEW Charitable Trusts applauds the TWDB for assuring that the regional flood plans, which will be aggregated into a single statewide flood plan, not only focus on current flood risks, but also consider and prepare for future flood risks and found that the TWDB's proposed rules to be sound and thorough.

PEW Charitable Trusts thanks the TWDB for including language which emphasizes the long-standing tenet of Texas law regarding diversion of floodwaters to another property (Texas Water Code 11.086) and the specific direction from the legislature for the TWDB to assure that no neighboring area is negatively affected by a regional flood plan. They consider the requirement that each Regional Flood Planning Groups (RFPG) must consider upstream and downstream impacts (Section 362.3(b)(10)) as well as provide notice to (Section 361.21(h)(3)(c)) and work collaboratively with representatives of neighboring areas (Section 361.11 (f)(8) and (j)) likely to help to assure that the actions or inactions of one planning entity will not exacerbate the flood

risk elsewhere; and supports the inclusion of those specific sections (361.60, 361.61, and 361.62) that make it clear that the negative effects consideration is mandatory rather than simply aspirational.

Response:

The TWDB acknowledges and appreciates the comment and no changes have been made.

Comment:

The American Society of Civil Engineers - Texas Section (ASCE-TX) asserts that the use of the words "feasible" and "infeasible" should not be used anywhere in the planning regulations. They imply that flood risk reduction planning is a binary decision - that projects are either feasible or infeasible. ASCE-TX states that is not an appropriate view of flood risk reduction planning and that it is more appropriate to view flood risk reduction planning as choices along a continuum, rather than as a binary decision.

Response:

TWDB acknowledges that flood risk reduction planning presents multiple choices along a continuum. However, the flood plans will require the identification of projects that are potentially feasible. The term "potentially feasible flood management strategy or potentially feasible flood mitigation project" has been defined in Section 361.10 and is utilized to identify projects that are permitable, economically viable, constructible and implementable with the constraints of certain project area including the preference of the community, economic feasibility etc.

Comment:

ASCE-TX, consistent with their response to the TWDB's request for stakeholder input, encourages the TWDB to develop public guidance on how to determine benefit cost ratios (BCRs). They believe that BCR calculations should consider the net triple-bottom line (TBL), including (1) net economic costs/benefits, such as construction and operation costs vs. avoided injuries, death, and property damage; (2) net social costs/benefits, such as cost of cultural displacement, cost of lost income vs. benefits of new jobs, new income, new recreational benefits; and (3) net environmental costs/benefits, such as cost of lost ecosystem services, cost of lost habitat vs. benefit of new ecosystem services and new habitats. ASCE-TX states that TWDB should provide guidance on this to help generate more consistent applications. ASCE stated that the TWDB should incorporate Policy Statement 418, a more holistic BCR, into the proposed regulations in identifying candidate evaluations, strategies, and projects; and in selecting which candidate projects to include regional plans.

Response:

The TWDB acknowledges and appreciates the comment. The Executive Administrator is developing related BCR guidance and resources that will become part of the grant contracts that support the RFPGs and that stakeholders will have an opportunity to review. No changes have been made.

Comment:

The Greater Houston Partnership comments that the Houston region has experienced extreme flood events in recent history. They support the TWDB's regional approach to flood mitigation planning and supported the passage of Senate Bill 8, Senate Bill 7, and Senate Bill 500.

Additionally, the Greater Houston Partnership and the City of Sugar Land articulate that long-term planning requirements will

likely require additional funding. They believe that the TWDB should consider and provide recommendations on how to create sustainable funding sources for local entities to meet substantial data-gathering requirements in the proposed rules.

Response:

TWDB acknowledges and appreciates the comment and agrees that long-term funding is necessary. The TWDB recognizes the ongoing need for planning funding and anticipates allocating the available appropriations under a formula-funding method that will consider the relative amount of work required by the regional flood planning groups. Future appropriations for flood planning to the agency which will support the subsequent data-gathering requirements are subject to future legislative action. No changes have been made to the rules in response to this comment.

Comment:

Environment Texas, Lower Rio Grande Valley TPDES Stormwater Task Force, Greater Edwards Aquifer Alliance, Research, Applied Technology, Education and Service, Inc., Save Our Springs Alliance, Bayou City Waterkeeper, Farm & City, and the United States Green Building Council Texas Chapter support the emphasis on nature-based features and multi-use opportunities in the proposed rules and cite various benefits to nature-based solutions including reducing flood risk, protecting drinking water quality, recharging aquifers, and providing green space to communities. They suggest that TWDB conduct a statewide efficacy study to provide data on how nature-based techniques can work in Texas.

Response:

TWDB acknowledges and appreciates the comment. The effectiveness of a nature-based flood risk reduction solution is variable based on the type, location and severity of flood risk, and the rainfall pattern, geology and land cover area of where the risk is located. Existing literature includes investigation of nature base flood mitigation solutions and relevant case studies. No changes have been made.

Comment:

The City of Lake Jackson and the City of Brookshire express appreciation for the efforts of TWDB staff to conduct listening tours in 2019.

Response:

The TWDB acknowledges and appreciates the comment and no changes have been made.

Comment:

The City of Sugar Land requests that the TWDB develop guidance documents to ensure consistency between projects eligible for Senate Bill 7 funding and projects created through the Senate Bill 8 planning effort.

Response:

The TWDB acknowledges and appreciates the comment. The TWDB is aware of this general issue and is considering how the projects eligible under current FIF funding under Texas Water Code Chapter 15 may compare to and/or relate to projects in the first state flood plan. No changes have been made.

Comment:

Matthew Berg asserts that a thorough discussion of the causes of flooding is missing from the proposed rules.

Response:

The TWDB acknowledges and appreciates the comment. No changes have been made.

Comment:

Bexar Regional Watershed Management Partners are pleased with the proposed watershed-based approach for regional flood planning and state that they have employed such an approach successfully in their region.

Response:

The TWDB acknowledges and appreciates the comment. No changes have been made.

Comment:

Bexar Regional Watershed Management Partners are supportive of the general approach to closely mirror regional flood planning after the state's water planning process. They say that this strategy has proven to work across the state.

Response:

The TWDB acknowledges and appreciates the comment. No changes have been made.

Comment:

Bexar Regional Watershed Management Partners strongly recommends that the state should promote minimum standards of floodplain management practices across the state. They offer a suggestion that this could be done by requiring entities that receive state funding to participate in the National Flood Insurance Program or a state equivalent program.

Response:

The TWDB acknowledges and appreciates the comment and considers the identification and recommendation of specific floodplain management practices and standards to be the purview of RFPGs and is one of the considerations for RFPGs in Section 361.35(a)(4). No changes have been made.

Comment:

The Texas Association of Builders and the Texas Apartment Association commend the TWDB for its work to address regional flood planning. The Associations support sensible flood planning and mitigation and assert that cities and counties should smartly enforce their development regulations. They also stress the importance of regulations being balanced with the need to slow rising housing costs and respect private property rights. They state that the need for affordable housing is critical as Texas' population skyrockets. The Associations warn that unnecessary and unreasonable requirements can negatively impact home affordability.

Response:

The TWDB acknowledges and appreciate the comment. No changes have been made.

Comment:

The City of Austin comments that having a regional collaboration process is key to achieving flood risk reduction statewide.

Response:

TWDB acknowledges and appreciates the comment and no changes have been made.

Comment:

The Trinity River Authority describes their jurisdiction's flood risk and recent flood history. The authority states that it has commenced a study of basin-wide flood mitigation opportunities, focusing first on the zone-of-influence of Lake Livingston, and that it is prepared to play a central role in regional flood planning.

Response:

TWDB acknowledges and appreciates the comment and no changes have been made.

Comment:

The North Central Texas Council of Governments provides a brief history of the council's comments previously provided to the TWDB. The council expresses support for the TWDB in implementing flood-related legislation passed by the 86th Texas Legislature, and states that this is much needed progress in a state whose statistical results in flood risk warrants changes and improvements in this industry.

Response:

TWDB acknowledges and appreciates the comment and no changes have been made.

Comment:

The Farm and Ranch Freedom Alliance supports the comments submitted to the TWDB by the Sierra Club - Lone Star Chapter, National Wildlife Foundation, Galveston Bay Foundation, and Hill Country Alliance. Specifically, the alliance urges the TWDB to place a high priority on non-structural flood mitigation measures, including nature-based solutions, in the state and regional flood plans. The alliance states that open space land can reduce flooding and that specific types of land management (ex: rotational grazing, permaculture, etc.) can increase the ability of open space land to capture and hold water efficiently. The alliance also attached three written testimonies given by their members to the Texas legislature.

Response:

The TWDB acknowledges and appreciates the comment and notes that the consideration of nature-based features is one of the guidance principles in Section 362.3(b)(17). A definition of nature-based flood mitigation and a requirement for consideration of nature-based solutions are added to the rules in Sections 361.10(v) and 361.38(a) respectively.

Comment:

The Pines and Prairies Land Trust endorses the joint comments submitted by the Texas Living Waters Project on the Texas Water Development Board's proposed rules to implement Senate Bill 8. The Trust is a non-profit working to protect land in South Central Texas, and whole heartedly promotes nonstructural (including nature-based) flood solutions.

Response:

The TWDB acknowledges and appreciates the comment. No changes have been made.

Comment:

Sierra Club - Lone Star Chapter, National Wildlife Federation, Galveston Bay Foundation, and Hill Country Alliance find the proposed rules to be structured in a manner that faithfully reflects the provisions in Senate Bill 8 (86th Texas Legislature), the enabling legislation requiring the establishment of the flood

planning process and directing TWDB to be the primary state agency for implementation.

Response:

The TWDB acknowledges and appreciates the comment. No changes have been made.

Comment:

Hidalgo County provided oral comments expressing support and appreciation for the legislation and rules. The county discussed the county's flood risk and history and difficulty in securing funding for mitigation projects.

Response:

The TWDB acknowledges and appreciates the comment. No changes have been made.

Comment:

Hidalgo County Drainage District #1 provided oral and written comments expressing support for staff's hard work.

Response:

The TWDB acknowledges and appreciates the comment. No changes have been made.

Comment:

El Paso County provided oral comments stating appreciation for the TWDB's efforts to engage stakeholders.

Response:

The TWDB acknowledges and appreciates the comment. No changes have been made.

Comment:

The City of San Marcos provided oral comments supporting looking at flooding at a regional approach.

Response:

The TWDB acknowledges and appreciates the comment. No changes have been made.

Comment:

The Texas Floodplain Management Association provided oral comments describing Texas' flood risk and history and expressing support for staff's work in the development of the proposed rules. The association suggests taking time to accurately identify flood risk in Texas communities, develop accurate flood risk models, and objectively work together to mitigate flood risk. The association also supports non-structural flood mitigation methods.

Response:

The TWDB acknowledges and appreciates the comment. No changes have been made.

Comment:

The Lone Star Chapter of the Sierra Club provided oral comments stating appreciation for the work of the TWDB in implementing the flood-related legislation. The Sierra Club supports a comprehensive, innovative approach to water management.

Response:

The TWDB acknowledges and appreciates the comment. No changes have been made.

Comment:

The National Wildlife Federation provided oral comments stating appreciation for the TWDB's open and collaborative process. The federation supports developing the state and regional flood plans in an equitable manner that adequately addresses the needs of socially vulnerable populations. They suggest that each regional flood planning groups should designate subgroups or subcommittees to consider the special flood risks of socially vulnerable populations, to include representatives of these communities. The National Wildlife Federation urges that language be added to the rules to require documentation of any efforts to solicit input from vulnerable communities.

Response:

The TWDB acknowledges and appreciates the comment. RFPGs have the ability under Section 361.11 to choose to create additional subgroups or subcommittees that they consider necessary to address specific flood-related issues of concern in the region. No changes have been made.

Comment:

Galveston Bay Foundation provided oral comments advocating for non-structural solutions to flooding, including land conservation, preservation, wetland restoration, and buyouts. The foundation also summarized written comments provided.

Response:

The TWDB acknowledges and appreciates the comment and notes that the consideration of nature-based features is one of the guidance principles in Section 362.3(b)(17). A definition of nature-based flood mitigation and a requirement for consideration of nature-based solution are added to the rules in Sections 361.10(v) and 361.38(a) respectively.

Comment:

Environment Texas provided oral comments advocating for nature-based solutions to flood mitigation. The organization suggests including nature-based solutions in regional and state flood planning and suggest that the TWDB should support a statewide nature-based infrastructure study.

Response:

The TWDB acknowledges and appreciates the comment and notes that the consideration of nature-based features is one of the guidance principles in Section 362.3(b)(17). A definition of nature-based flood mitigation and a requirement for consideration of nature-based solution are added to the rules in Sections 361.10(v) and 361.38(a) respectively.

Comment:

The City of Austin provided oral comments stating support for the proposed rules.

Response:

The TWDB acknowledges and appreciates the comment. No changes have been made.

Comment:

The Orange County Drainage District provided oral comments discussing the area's flood risk and history. The district also provided general comments of support for the TWDB's efforts.

Response:

The TWDB acknowledges and appreciates the comment. No changes have been made.

Comment:

The Texas Association of Builders provided oral comments stating that Texas has a proclivity for severe weather and flooding and that they appreciate the need for flood mitigation. They also express appreciation for the TWDB's efforts.

Response:

The TWDB acknowledges and appreciates the comment. No changes have been made.

Comment:

The Texas Land Trust Council would like to see additional ways of promoting the integration of flood management with other water policy goals, and other appropriate public purposes, adopted within the final rules. Ideally, they would like the state to more fully integrate related goals among water resource management, water quality protection, environmental flow management, and flood risk reduction with the hope of achieving more effective flood mitigation and risk reduction strategies for our state. Their recommendations include: broad and diverse representation of interests on the regional flood planning groups and in the regional flood planning process as a whole; better incorporation and incentives for nonstructural flood mitigation measures, including nature-based solutions, in the state and regional flood plans; and, prioritization of flood management strategies that provide multiple public benefits in addition to flood risk reduction and mitigation (such as water quality, water recharge, environmental benefits, public health/recreation benefits, etc.).

Response:

The TWDB acknowledges and appreciates the comment and notes that the representation on the RFPGs closely follows the direction in Senate Bill 8 and, under Section 361.11, allows the RFPGs to add members to ensure adequate representation. The consideration of nature-based flood mitigation is one of the guidance principles in Section 362.3(b)(17). A definition of nature-based flood mitigation and a requirement for consideration of nature-based solution are added to the rules in Sections 361.10(v) and 361.38(a) respectively.

Comment:

Sierra Club - Lone Star Chapter, National Wildlife Federation, Galveston Bay Foundation, and Hill Country Alliance seek clarification on what will be the path and the mechanism that TWDB will use to take the recommendations from the regional flood plans and prioritize the recommended flood management evaluations, strategies, and projects for future funding decisions if applications are made for state financial assistance.

Response:

Identifying and recommending FMEs, FMSs, and FMPs in the regional flood plans, ranking recommended FMEs, FMSs, and FMPs in the state flood plan, and providing state financial assistance to implement specific projects are three separate processes that will occur at different times.

The first step will be for regional flood planning groups to identify and recommend FMEs, FMSs, and FMPs and provide relevant data associated with each project as part of the regional flood planning process. That data will be used by the TWDB to objectively apply a set of relevant flood project ranking criteria.

The second step is to rank the recommended regional FMEs, FMSs, and FMPs as incorporated into the state flood plan. The specific criteria and the associated weightings that will be used for ranking recommended FMEs, FMSs, and FMPs in the state flood plan are not yet determined but will be developed by the TWDB through a transparent process and with stakeholder input. That process will result in a ranking of state flood plan FMEs, FMSs, and FMPs with a focus on reduction of flood risk to life and property as required by Senate Bill 8.

The last step in implementing projects, subsequent to development of the state flood plan, requires local sponsors to implement FMEs, FMSs, and FMPs, either with local financing or with state financial assistance. Future state financial assistance to implement projects in the state flood plan is anticipated to occur in accordance with existing program requirements or, if there are dedicated funds, under an associated flood intended use plan (FIUP) that would likely use the ranking in the state flood plan as one of the prioritization criteria for allocating funding.

No changes have been made.

Comment:

Sierra Club - Lone Star Chapter, National Wildlife Federation, Galveston Bay Foundation, and Hill Country Alliance seek clarification on whether the TWDB will use the framework proposed for the Draft Flood Intended Use Plan for FY 2020 to do prioritization after the regional and state flood plans are completed, if the TWDB will use a different approach that will be addressed in guidance to be developed by the agency's Executive Administrator, or if the TWDB is awaiting further direction from the Texas Legislature as to how prioritization will proceed.

Response:

The 2020 Flood Intended Use Plan was developed for the purpose of allocating Flood Infrastructure Fund dollars and will not be the basis for the prioritization of the projects in the state flood plan. The criteria to be used for ranking FMEs, FMSs, and FMPs in the state flood plan has yet to be determined (see previous comment response) and will be developed through a transparent process with public input. No changes have been made.

Comment:

Sierra Club - Lone Star Chapter, National Wildlife Federation, Galveston Bay Foundation, and Hill Country Alliance respectfully request that the agency establish a robust public review and comment process for development of the guidance by the TWDB Executive Administrator that is cited often in the proposed state and regional flooding planning rules and that apparently will be a critical component of the planning process.

Response:

The EA anticipates providing all future draft versions of the guidance document for stakeholder input. Because this is the inaugural cycle of regional and state flood planning, the TWDB anticipates the need for maintaining some flexibility in developing its guidance documents and looks forward to hearing from stakeholders to improve the quality and credibility of this document along the way. No changes have been made.

Comment:

The Bayou Land Conservancy endorses the comments provided by the partners of Texas Living Waters (Sierra Club - Lone Star Chapter, National Wildlife Federation, and Galveston Bay Foun-

ation) to Implement Senate Bill 8 (86th Texas Legislature), relating to state and regional flood planning.

Response:

The TWDB acknowledges and appreciates the comment. No changes have been made.

Comment:

Ericka Inman urges the TWDB to commit to a 50-year planning horizon to account for the impacts of climate change, and asks the TWDB to prioritize the following strategies in the plans: buy-outs, restoration of riparian corridors, purchase of green space, grants for disadvantaged communities, and low-impact development to reduce flood risk.

Response:

The TWDB acknowledges and appreciates the comment. No changes made.

Chapter 362 State Flood Planning Guidelines.

Subchapter A State Flood Plan Development.

Section 362.1 Applicability.

Section 362.1 clarifies that the subchapter provides guidelines for the TWDB's preparation, development, formulation, and the Board's adoption of the state flood plan.

No comments received for this section.

Section 362.2 Definitions and Acronyms.

Section 362.2 includes definitions that apply to the Chapter.

Comment:

ASCE-TX comments that to the extent applicable, the definitions appearing in Section 362.2 should match those presented in Section 361.10, as modified by their comments.

Response:

The TWDB acknowledges and appreciates the comment. Modifications have been made to match Sections 362.2 and 361.10.

Section 362.3 Guidance Principles.

Section 362.3 contains the guidance principles that are to be used in the development of the regional flood plans and the state flood plan. As noted above, Texas Water Code §§16.061(c) and 16.062(a)(3) requires the TWDB to adopt guidance principles for the regional flood plans and the state flood plan. The rule includes 39 principles that must be used to guide the development of the RFPs and state flood plan.

Comment:

PEW Charitable Trusts strongly supports the specific direction to consider nature-based flood solutions, including the requirement within the Guidance Principles (Section 362.3) for RFPs to consider natural systems and beneficial functions of floodplains (Item 24) and to encourage mitigation approaches that work with natural patterns and conditions of floodplains (Item 27). They assert that these principles are important not only because they have the potential to maximize co-benefits such as improvements in water quality, fish and wildlife enhancement, recreational opportunities, and ecosystem function (Item 36), but also because they can help to control the long-term costs involved with keeping flood mitigation projects functioning.

Response:

The TWDB acknowledges and appreciates the comment. No changes have been made.

Comment:

Matthew Berg encourages the relocation of the guidance principles to the beginning of Chapter 361 in order to highlight their importance as a foundational piece of the regional flood planning process.

Response:

The TWDB acknowledges and appreciates the comment. No changes have been made.

Comment:

Matthew Berg comments that the one square mile minimum threshold in Section 362.3(b)(9) will limit regional flood planning groups from considering important issues of localized urban flooding and ponding. He states that if these areas will not be formally addressed by FMPs or RFPs, issues such as localized urban flooding and ponding will be left to the primary jurisdictions that have so far failed to provide any resolution.

Response:

The TWDB acknowledges and appreciates the comment. The guidance principle in Section 362.3(b)(9) requires regional and state flood plans to focus primarily on flood management strategies and projects with a contributing drainage area greater than or equal to 1.0 (one) square miles but provides various exceptions to this requirement. The TWDB believes there is significant flexibility in the rules as drafted. No changes have been made.

Comment:

Matthew Berg asserts that every FMS and FMP will have some upstream and downstream impacts and believes that the approach of considering these effects, as laid out in Section 362.3(b)(10), is the correct approach.

Response:

The TWDB acknowledges and appreciates the comment and no changes have been made.

Comment:

Matthew Berg requests that "when applicable" be struck from Section 362.3(b)(12) because he believes that comparing costs and benefits is always applicable.

Response:

The TWDB acknowledges and appreciates the comment. References to a comparison of benefits and costs are included in several sections throughout Chapters 361 and 362, and the guidance principle in Section 362.3(b)(12) requires regional and state flood plans to perform these comparisons as applicable to each section of the rule. No changes have been made.

Comment:

Matthew Berg agrees that regional flood plans should include a balance of structural and nonstructural measures as described in Section 362.3(b)(17); however, he suggests that specific means to assess this balance are necessary.

Response:

The TWDB acknowledges and appreciates the comment and no changes have been made.

Comment:

Matthew Berg supports the guidance principle that requires regional flood plans to consider natural systems and beneficial functions of floodplains, including flood peak attenuation and ecosystem services; however, he suggests that specific means to assess this are necessary.

Response:

The TWDB acknowledges and appreciates the comment and no changes have been made.

Comment:

Bexar Regional Watershed Management Partners recommend including a guiding principle that states regional flood planning groups should take into consideration the impacts of future weather and climate conditions when preparing flood management strategies and flood management projects.

Response:

The TWDB acknowledges and appreciates the comment. TWDB acknowledges at least two good sources are currently available to account for latest estimates of risk. For rainfall, Atlas 14 was updated in Texas in 2018 by National Oceanic and Atmospheric Administration (NOAA) and widely considered as best available extreme rainfall data for Texas based on observed rainfall data in the past. For relative sea level change, NOAA, Federal Highway Administration (FHWA), and General Land Office (GLO) have provided guidance and TxDOT's Hydraulic Design manual has consolidated that guidance for planning and design projects into easy to use tables, as well as flexibility to perform more detailed modeling, if needed.

No changes have been made.

Comment:

The City of Lake Jackson and the City of Brookshire request that "major flood infrastructure" be used consistently throughout the rules in lieu of "major flood mitigation infrastructure" which appears in Section 362.3(b)(11) but is not defined.

Response:

The TWDB acknowledges this comment. No changes have been made.

Comment:

The North Central Texas Council of Governments states that the guidance principles in Sections 362.3(b)(4), (5), and (9) reference FEMA FIRM map 100-year and 500-year flood areas. The council asserts that the term flood prone is a more comprehensive federally defined term that better describes those areas at risk from flood waters. The council states that the term flood prone is not restricted to that area 1 mile below the top of the watershed, which is important in heavily developed areas, nor restricted to flows calculated in the past that are no longer accurate due to development resulting in increased flows.

Response:

The TWDB acknowledges and appreciates the comment. A definition for the term "flood-prone" has been added to 31 TAC 361.10(h). Neither the principles nor the defined term refer to any distance from the top of the watershed.

Comment:

Sierra Club - Lone Star Chapter, National Wildlife Federation, Galveston Bay Foundation, and Hill Country Alliance generally support the proposed Guidance Principles--with some sug-

gested tweaks--and they applaud TWDB and the other state agencies with whom TWDB consulted in the drafting of these Principles. They also agree that the Guidance Principles for the state flood plan should be the same for the regional flood planning process and should be revisited every five years to assure that they continue to be appropriate or need to be revised to reflect lessons learned during any one planning cycle.

Response:

The TWDB acknowledges and appreciates the comment and no changes have been made. Section 361.43(2) requires RFPGs to develop and include in their flood plans any regulatory or administrative recommendations that they consider necessary to facilitate floodplain management and flood mitigation planning and implementation. Suggestions for revisions to Section 362.3 Guidance Principles would be included in this requirement.

Comment:

Sierra Club - Lone Star Chapter, National Wildlife Federation, Galveston Bay Foundation, and Hill Country Alliance recommend in Section 362.3(b)(12), that the term "when applicable" be dropped and the phrase "except in a circumstance where only one feasible option is identified" be substituted in its place. They state that environmental benefits and costs affect industry, recreation, tourism, and people in general and should be considered in all decisions about feasible options for flood mitigation.

Response:

The TWDB acknowledges and appreciates the comment and agrees. No changes have been made.

Comment:

Sierra Club - Lone Star Chapter, National Wildlife Federation, Galveston Bay Foundation, and Hill Country Alliance recommend that the text in Section 362.3(b)(18), be modified to say "shall contribute to water supply development, *which may include enhancement of groundwater recharge, where possible.*" They believe that it is important to recognize that there is more than one way that a flood mitigation project might have a water supply benefit and more than one type of flood mitigation project that may provide such a benefit.

Response:

The TWDB acknowledges and appreciates the comment and acknowledges that there are multiple flood project types that may contribute to water supply development. Contributions to groundwater recharge would fall under impacts to "water availability" which is included in the considerations within Section 361.41(2). No changes have been made.

Comment:

Sierra Club - Lone Star Chapter, National Wildlife Federation, Galveston Bay Foundation, and Hill Country Alliance encourage TWDB to modify the text in Section 362.3(b)(26), as follows: "shall emphasize the fundamental importance of floodplain management policies that reduce flood risk, *including encouragement of low impact development and restrictions on building in floodplains.*" Commenters indicate that numerous floodplain management policies may contribute to the reduction of flood risk, but low impact development practices--which increasingly are being promoted in major Texas cities--and floodplain building restrictions are some of the most effective and logical approaches to reduce flood risk.

Response:

The TWDB acknowledges and appreciates the comment. Section 361.35(a)(4) allows RFPGs to choose to adopt region-specific, minimum floodplain management or land use or other standards that impact flood-risk, that may vary geographically across the region. No changes have been made.

Comment:

Sierra Club - Lone Star Chapter, National Wildlife Federation, Galveston Bay Foundation, and Hill Country Alliance believe that in Section 362.3(b)(35), which reads "shall consider protection of vulnerable populations," a more forceful Guidance Principle than "consider" is needed to assure that all Texans have a stake in the successful implementation of regional and state flood planning. They recommend a modified version of this Guidance Principle to read as follows (modifications in italics): "*shall promote flood management strategies and flood management projects to reduce flood risk for vulnerable populations.*"

Response:

The TWDB acknowledges and appreciates the comment. The RFPGs will be expected to consider FMSs and FMSPs to reduce flood risk to all populations. No changes have been made.

Comment:

Sierra Club - Lone Star Chapter, National Wildlife Federation, Galveston Bay Foundation, and Hill Country Alliance urge a more proactive evaluation of the potential benefits in Section 362.3(b)(36), which currently calls for consideration of benefits "to water quality, fish and wildlife, ecosystem function, and recreation, as appropriate". Such an evaluation will always be appropriate, even if it turns out benefits are not achievable. The organizations recommend this Guidance Principle be revised to read as follows (proposed new language shown in italics): "*shall include an evaluation of the potential for flood management strategies to benefit water quality, fish and wildlife, ecosystem function, and recreation.*"

Response:

The TWDB acknowledges and appreciates the comment. The primary focus of the new planning of regional flood planning is to mitigate risk to life and property. RFPGs are required to consider the benefits of flood management strategies to water quality, fish and wildlife, ecosystem function, and recreation in Section 362.3(b)(36), and communities may propose strategies that focus on potential benefits to these resources. No changes have been made.

Comment:

Sierra Club - Lone Star Chapter, National Wildlife Federation, Galveston Bay Foundation, and Hill Country Alliance assert that with respect to Section 362.3(b)(37), the reference to simple compliance with adopted environmental flow standards appears to be largely redundant of Section 362.3(b)(34) because the flow standards are part of the TCEQ rules for water rights. However, they believe that minimizing any reduction in frequency of meeting flow levels identified for protection in environmental flow standards, including strategy targets where they are included, is an appropriate guidance principle that should be included. They recommend this Guidance Principle be revised to read as follows (proposed new language shown in italics): "*shall minimize adverse environmental impacts including, in addition to complying with permitting requirements of adopted environmental flow standards, by minimizing the extent of any reductions in fre-*

quency of meeting flow levels identified in the flow standards, including any strategy targets."

Response:

The TWDB acknowledges and appreciates the comment. Additional information on ways to address this guidance principle may be provided in the technical guidance to be provided by the EA. No changes have been made.

Comment:

The Woodlands Water Agency recommends the TWDB consider using other quantification methods for determining 'flood-related human suffering' in Section 362.3(b)(13). They believe that economic impacts may not be adequately determined by the standards of Cost-Benefit analysis when a business owner loses income while waiting the flood damage to be repaired so he can reopen for business.

Response:

The TWDB acknowledges and appreciates the comment. Guidance regarding the application of benefit-cost analyses, including flood-related human suffering, will be provided in technical guidance documents that are currently under development by the EA. The TWDB anticipates seeking stakeholder input on the draft technical guidance. No changes have been made.

Comment:

The Woodlands Water Agency recommends that the guidance principle in Section 362.3(b)(18) include improvement of water quality.

Response:

The TWDB acknowledges and appreciates the comment. Section 362.3(b)(36) requires the regional and state flood plans to consider benefits of flood management strategies to water quality, fish and wildlife, ecosystem function, and recreation, as appropriate. No changes have been made.

Comment:

ASCE-TX comments that language in Section 362.3(b)(3) should be revised to more clearly match the terminology they suggested in Section 361.10. For example: "shall identify existing flood risks, future 'no-action' flood risks, candidate projects to reduce risks, and anticipated residual risks."

Response:

The TWDB acknowledges and appreciates the comment. Section 362.3(b)(3) has been revised to more closely match the terminology used throughout Chapters 361 and 362.

Comment:

ASCE-TX suggests revising text in Section 362.3(b)(12) to more clearly require regional flood planning groups to include residents with language barriers, lower incomes, limited access to transportation, limited access to information technology, limited or no property ownership, childcare needs, and disabilities in the flood planning process.

Response:

The TWDB acknowledges and appreciates the comment. As listed in Section 362.3(b)(35), regional and state flood plans shall consider protection of vulnerable populations throughout the flood planning process. No changes have been made.

Comment:

ASCE-TX comments that Section 362.3(b)(21) should be revised to more clearly match the concepts they suggested for Section 363.38(e). They suggest omitting "feasible" and "infeasible" options and, instead, use high BCR candidates and low BCR candidates. They also suggest including social costs and benefits.

Response:

The TWDB acknowledges and appreciates the comment. The term "potentially feasible flood management strategy or potentially feasible flood mitigation project" has been defined in Section 361.10 definitions as permissible, constructible, economically viable, and implementable. Technical guidance documents to be provided by the EA will address BCR requirements. Section 362.3(b)(12) has been revised to include a comparison of social benefits and costs between feasible options. No changes have been made to Section 362.3(b)(21).

Comment:

ASCE-TX comments that Section 362.3(b)(22) should be revised to address their General Comment.

Response:

The TWDB acknowledges and appreciates the comment. No changes have been made.

Comment:

The City of Sugar Land requests the addition of "risk" between "flood" and "mapping" in Section 362.3(b)(2).

Response:

The TWDB acknowledges and appreciates the comment and has made the requested change.

Comment:

The Brazos River Authority believes that the level of detail for planning is not well defined in the proposed Chapter 362 state flood planning guidelines. They have specific concerns about Section 362.3(b)(9) of the proposed rules related to the guidance principle whereby regional and state flood plans shall focus on flood management strategies and projects with a contributing drainage area greater than or equal to one square mile. They believe that planning on that scale with a number of structures, proposed projects, etc. will be very difficult for one planning region as large as the Brazos River basin. The Gulf Coast Water Authority (GCWA) fully supports the comments of the Brazos River Authority (BRA) dated both August 30, 2019 and February 3, 2020. The GCWA asks that the TWDB consider those comments to be those of the GCWA as well, without exception.

Response:

This guidance principle is provided as a lower-end limit aimed at guiding RFPs toward consideration of larger projects. RFPs may choose to focus on strategies and projects with larger or smaller contributing drainage areas based on regional needs and available planning resources. No changes have been made.

Comment:

The Harris County Flood Control District (HCFCD) comments that in 362.3 (b)(5), the rules should allow RFPs to consider projects that provide less than a 1.0% level of protection based upon community input and support.

Response:

The TWDB acknowledges and appreciates the comment. The rule requires RFPs to, at a minimum, consider projects and strategies that address flood events associated with a 1.0 percent annual chance flood event where feasible and allows RFPs to also consider projects that address flood events of other frequencies. No changes have been made to Section 362.3(b)(5).

Comment:

HCFCDC comments that in (b)(6), the rules should allow the TWDB to withhold approval of project applications from within the RFPs that are found to not have sufficient regulations or floodplain management best practices in place until they and/or their membership do so.

Response:

The TWDB acknowledges and appreciates the comment. Requirements for TWDB funding flood related projects is covered under Chapter 363 and is not covered under Chapters 361 and 362. No changes have been made.

Comment:

HCFCDC comments that in (b)(12), the rules should include the evaluation of social impacts between feasible options as well.

Response:

The TWDB acknowledges and appreciates the comment. Section 362.3(b)(12) has been revised to also include a comparison of social benefits and costs between feasible options.

Comment:

HCFCDC comments that in (b)(39), the rules should be revised to read "Shall include consideration for multi-use opportunities ... "

Response:

The TWDB acknowledges and appreciates the comment. Section 362.3(b)(39) has been revised to read "Shall consider multi-use opportunities ... "

Comment:

Texas Water Conservation Association (TWCA) suggests revising the sentence in (b)(2) to read "shall be based on the best available science, data, models, and flood risk mapping".

Response:

The TWDB acknowledges and appreciates the comment. Section 362.3(b)(2) was revised to read "shall be based on the best available science, data, models, and flood risk mapping".

Comment:

TWCA suggests revising the sentence in (b)(10) to read "shall consider the potential upstream and downstream effects, including environmental, of potential flood management strategies (and associated projects) on neighboring areas. In recommending strategies, RFPs shall ensure that no neighboring area is subject to more than a de minimis negative effect by the regional flood plan."

Response:

The TWDB acknowledges and appreciates the comment. A definition for "negative effect" has been added to clarify this issue and the term will be further defined through guidance being developed by the EA. No changes have been made.

Section 362.4 State Flood Plan Guidelines.

Section 362.4 provides the framework for the Executive Administrator to develop the state flood plan and make a recommendation to the Board. This section also includes information that should be derived from the regional flood plans and incorporated into the state flood plan.

Comment:

Matthew Berg suggests striking the word "control" from "flood control infrastructure" in Section 362.4(c)(2).

Response:

The TWDB drafted this language based on the authorizing statute and believes that statutory language should be retained. No changes have been made.

Comment:

Matthew Berg states that no information is provided regarding how ranking of FMEs, FMSs, and FMPs will be performed and suggests that the TWDB solicit public input on that process.

Response:

The TWDB acknowledges and appreciates the comment. The TWDB anticipates soliciting stakeholder input on the criteria and weightings. No changes have been made.

Comment:

PEW Charitable Trusts commented that they don't see any principles that they would fundamentally disagree with and offered some possible alternative wording out of concern that the sheer length of the list could appear to some to be onerous or overwhelming. They recommended that the TWDB consider either using the full summary version of the guidance principles that they provided or grouping the existing items into categories, such as public participation, analyses, goal and objectives, etc. They also suggested eliminating items (4) (5), (9), and (31) as being less principles and more as procedural direction adequately covered in other portions of the rules.

Response:

The TWDB acknowledges and appreciates the comment and the commenter's effort to restate the principles more succinctly. In accordance with statute, the development of the guidance principles and their specific wording required participation and agreement among numerous individuals from multiple state agencies, including through in-person meetings. No changes have been made.

Comment:

In general, Sierra Club - Lone Star Chapter, National Wildlife Federation, Galveston Bay Foundation, and Hill Country Alliance support the provisions on "State Flood Plan Guidelines" in the proposed rules, but they also recommend certain modifications and enhancements to those Guidelines to make the State Flood Plan more comprehensive, forward-looking, and potentially effective in addressing the state's flooding challenges. Their recommendations include the following modifications (in bold and italics) to existing provisions as well as additional provisions, appropriately numbered:

(7) A discussion of how the recommended FMEs, FMSs, and FMPs will reduce flood risk and mitigate flood hazards, *including reduction of risk and mitigation of flood hazards to vulnerable populations, and a discussion of the multiple ancillary benefits of the recommended FMEs, FMSs, and FMPs.*

() A discussion of the extent to which nonstructural flood measures, including nature-based solutions, were incorporated into the state flood plan.

() A discussion of the breadth and diversity of participation in and input to the development of the regional and state flood plans.

Response:

The TWDB acknowledges and appreciates the comment. No changes have been made.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The board reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the rulemaking is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to implement a regional and state flood planning processes and develop a state and regional flood plans.

Even if the rule were a major environmental rule, Texas Government Code, §2001.0225 still would not apply to this rulemaking because Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed a standard set by federal law; (2) does not exceed an express requirement of state law; (3) does not 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; and (4) is not adopted solely under the general powers of the agency, but rather under Texas Water Code §§16.061 and 16.062. Therefore, this adopted rule does not fall under any of the applicability criteria in Texas Government Code, §2001.0225.

No comments received for this section.

TAKINGS IMPACT ASSESSMENT

The board evaluated this rule and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rule is to implement a regional and state flood planning processes and develop state and regional flood plans. The rule will substantially advance this stated purpose by establishing the regional flood planning groups and provide the framework for regional and state flood plans.

The board's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this rule because this is an action that is reasonably taken to fulfill an obligation mandated

by state law, which is exempt under Texas Government Code, §2007.003(b)(4).

Nevertheless, the board further evaluated this rule and performed an assessment of whether it constitutes a taking under Texas Government Code, Chapter 2007. Promulgation and enforcement of this adopted rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject regulation does not affect a landowner's rights in private real property because this rulemaking does not burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. Therefore, the adopted rule does not constitute a taking under Texas Government Code, Chapter 2007.

No comments received for this section.

STATUTORY AUTHORITY

This rulemaking is proposed under the authority of Texas Water Code §16.453(Floodplain Management Account for funding planning grants), §16.061 State Flood Planning, and §16.062 Regional Flood Planning.

§362.2. Definitions and Acronyms.

(a) 1.0% annual chance flood event--Flood event having a 1.0% chance of being equaled or exceeded in any given year, also referred to as the base flood or 100-year flood.

(b) 0.2% annual chance flood event--Flood event having a 0.2% chance of being equaled or exceeded in any given year, also referred to as the 500-year flood.

(c) Board--The governing body of the Texas Water Development Board.

(d) Executive Administrator (EA)--The Executive Administrator of the TWDB or a designated representative.

(e) Flood Mitigation--The implementation of actions, including both structural and non-structural solutions, to reduce flood risk to protect against the loss of life and property.

(f) Flood Management Evaluation (FME)--A proposed flood study of a specific, flood-prone area that is needed in order to assess flood risk and/or determine whether there are potentially feasible FMSs or FMPs.

(g) Flood Management Strategy (FMS)--A proposed plan to reduce flood risk or mitigate flood hazards to life or property. A flood management strategy may or may not require associated Flood Mitigation Projects to be implemented.

(h) Flood Mitigation Project (FMP)--A proposed flood project, both structural and non-structural, that has a non-zero capital costs or other non-recurring cost and that when implemented will reduce flood risk or mitigate flood hazards to life or property.

(i) Neighboring area--Any area, including but not limited to upstream and downstream areas, potentially affected by the proposed flood mitigation project.

(j) Political Subdivision--County, city, or other body politic or corporate of the state, including any district or authority created under Art. 3 §52 or Art. 16 §59 of the constitution and including any interstate compact commission to which the state is a party and any nonprofit WSC created and operating under Ch. 67.

(k) Regional Flood Plan (RFP)--The plan adopted or amended by a Regional Flood Planning Group pursuant to Texas Water Code §16.062 (relating to Regional Flood Plans) and this chapter.

(l) State Flood Plan (SFP)--The most recent State Flood Plan adopted or amended by the Board under Texas Water Code §16.061 (relating to State Flood Plan).

(m) TWDB--Texas Water Development Board.

§362.3. *Guidance Principles.*

(a) Regional flood planning guidance principles shall be the same as the state flood planning guidance principles and will be revisited every five years.

(b) Development of the regional and state flood plans shall be guided by the following principles. The regional and state flood plans:

(1) shall be a guide to state, regional, and local flood risk management policy;

(2) shall be based on the best available science, data, models, and flood risk mapping;

(3) shall focus on identifying both current and future flood risks, including hazard, exposure, vulnerability and residual risks; selecting achievable flood mitigation goals, as determined by each RFPG for their region; and incorporating strategies and projects to reduce the identified risks accordingly;

(4) shall, at a minimum, evaluate flood hazard exposure to life and property associated with 0.2 percent annual chance flood event (the 500-year flood) and, in these efforts, shall not be limited to consideration of historic flood events;

(5) shall, when possible and at a minimum, evaluate flood risk to life and property associated with 1.0 percent annual chance flood event (the 100-year flood) and address, through recommended strategies and projects, the flood mitigation goals of the RFPG (per item 2 above) to address flood events associated with a 1.0 percent annual chance flood event (the 100-year flood); and, in these efforts, shall not be limited to consideration of historic flood events;

(6) shall consider the extent to which current floodplain management, land use regulations, and economic development practices increase future flood risks to life and property and consider recommending adoption of floodplain management, land use regulations, and economic development practices to reduce future flood risk;

(7) shall consider future development within the planning region and its potential to impact the benefits of flood management strategies (and associated projects) recommended in the plan;

(8) shall consider various types of flooding risks that pose a threat to life and property, including, but not limited to, riverine flooding, urban flooding, engineered structure failures, slow rise flooding, ponding, flash flooding, and coastal flooding, including relative sea level change and storm surge;

(9) shall focus primarily on flood management strategies and projects with a contributing drainage area greater than or equal to 1.0 (one) square miles except in instances of flooding of critical facilities or transportation routes or for other reasons, including levels of risk or project size, determined by the RFPG;

(10) shall consider the potential upstream and downstream effects, including environmental, of potential flood management strategies (and associated projects) on neighboring areas. In recommending strategies, RFPGs shall ensure that no neighboring area is negatively affected by the regional flood plan;

(11) shall include an assessment of existing, major flood mitigation infrastructure and will recommend both new strategies and projects that will further reduce risk, beyond what existing flood strategies and projects were designed to provide, and make recommenda-

tions regarding required expenditures to address deferred maintenance on or repairs to existing flood infrastructure;

(12) shall include the estimate of costs and benefits at a level of detail sufficient for RFPGs and sponsors of flood mitigation projects to understand project benefits and, when applicable, compare the relative benefits and costs, including environmental and social benefits and costs, between feasible options;

(13) shall provide for the orderly preparation for and response to flood conditions to protect against the loss of life and property and reduce injuries and other flood-related human suffering;

(14) shall provide for an achievable reduction in flood risk at a reasonable cost to protect against the loss of life and property from flooding;

(15) shall be supported by state agencies, including the TWDB, General Land Office, Texas Commission on Environmental Quality, Texas State Soil and Water Conservation Board, Texas Parks and Wildlife Department, and the Texas Department of Agriculture, working cooperatively to avoid duplication of effort and to make the best and most efficient use of state and federal resources;

(16) shall include recommended strategies and projects that minimize residual flood risk and provide effective and economical management of flood risk to people, properties, and communities, and associated environmental benefits;

(17) shall include strategies and projects that provide for a balance of structural and nonstructural flood mitigation measures, including projects that use nature-based features, that lead to long-term mitigation of flood risk;

(18) shall contribute to water supply development where possible;

(19) shall also follow all regional and state water planning guidance principles (31 TAC 358.3) in instances where recommended flood projects also include a water supply component;

(20) shall be based on decision-making that is open to, understandable for, and accountable to the public with full dissemination of planning results except for those matters made confidential by law;

(21) shall be based on established terms of participation that shall be equitable and shall not unduly hinder participation;

(22) shall include flood management strategies and projects recommended by the RFPGs that are based upon identification, analysis, and comparison of all flood management strategies the RFPGs determine to be potentially feasible to meet flood mitigation and floodplain management goals;

(23) shall consider land-use and floodplain management policies and approaches that support short- and long-term flood mitigation and floodplain management goals;

(24) shall consider natural systems and beneficial functions of floodplains, including flood peak attenuation and ecosystem services;

(25) shall be consistent with the National Flood Insurance Program (NFIP) and shall not undermine participation in nor the incentives or benefits associated with the NFIP;

(26) shall emphasize the fundamental importance of floodplain management policies that reduce flood risk;

(27) shall encourage flood mitigation design approaches that work with, rather than against, natural patterns and conditions of floodplains;

(28) shall not cause long-term impairment to the designated water quality as shown in the state water quality management plan as a result of a recommended flood management strategy or project;

(29) shall be based on identifying common needs, issues, and challenges; achieving efficiencies; fostering cooperative planning with local, state, and federal partners; and resolving conflicts in a fair, equitable, and efficient manner;

(30) shall include recommended strategies and projects that are described in sufficient detail to allow a state agency making a financial or regulatory decision to determine if a proposed action before the state agency is consistent with an approved regional flood plan;

(31) shall include ongoing flood projects that are in the planning stage, have been permitted, or are under construction;

(32) shall include legislative recommendations that are considered necessary and desirable to facilitate flood management planning and implementation to protect life and property;

(33) shall be based on coordination of flood management planning, strategies, and mitigation projects with local, regional, state, and federal agencies projects and goals;

(34) shall be in accordance with all existing water rights laws, including but not limited to, Texas statutes and rules, federal statutes and rules, interstate compacts, and international treaties;

(35) shall consider protection of vulnerable populations;

(36) shall consider benefits of flood management strategies to water quality, fish and wildlife, ecosystem function, and recreation, as appropriate;

(37) shall minimize adverse environmental impacts and be in accordance with adopted environmental flow standards;

(38) shall consider how long-term maintenance and operation of flood strategies will be conducted and funded; and

(39) shall consider multi-use opportunities such as green space, parks, water quality, or recreation, portions of which could be funded, constructed, and or maintained by additional, third-party project participants.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 21, 2020.

TRD-202002028

Ashley Harden

General Counsel

Texas Water Development Board

Effective date: June 10, 2020

Proposal publication date: December 20, 2019

For further information, please call: (512) 463-7686



CHAPTER 371. DRINKING WATER STATE REVOLVING FUND

The Texas Water Development Board ("TWDB") adopts new 31 Texas Administrative Code (TAC) §§371.60 - 371.63, 371.70 - 371.75, 371.80 - 371.91, and amendments to existing 31 TAC §§371.1, 371.4, 371.14 - 371.17, 371.31, 371.34, 371.36, and

371.41, relating to the Drinking Water State Revolving Fund. The proposal is adopted without changes to the text as published in the February 28, 2020, issue of the *Texas Register* (45 TexReg 1330).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED ADDITIONS AND AMENDMENTS.

The TWDB adopts the additions and amendments to implement legislative changes from House Bill 3339, 86th (R) Legislative Session and from America's Water Infrastructure Act of 2018 (AWIA), and to implement changes in program management, including addition of remedies for non-compliance. The specific provisions amended or added and the reasons for the amendments are addressed in more detail below.

SECTION BY SECTION DISCUSSION OF THE ADOPTED ADDITIONS AND AMENDMENTS.

31 TAC §371.1. Definitions

Section 371.1 is amended to define the term "water conservation plan" as a plan in compliance with Texas Water Code §16.4021, as required by H.B. 3339, 86th (R) Legislative Session, and to include definitions for equivalency projects and non-equivalency projects.

31 TAC §371.4 Federal Requirements

Section 371.4 is amended to comport with revised statutory references in AWIA.

31 TAC §371.14 Lending Rates

Section 371.14 is amended to make the procedure for setting fixed interest rates consistent with the Intended Use Plan (IUP).

31 TAC §371.15 Fees of Financial Assistance

Section 371.15 is amended to clarify the origination fee.

31 TAC §371.16 Terms of Financial Assistance

Section 371.16 is amended to remove mention of specific loan time periods and to provide the terms in the IUP. The AWIA amended the Federal Safe Drinking Water Act to allow loans of up to 30 years for planning, acquisition, design, and/or construction, and up to 40 years for a disadvantaged community.

31 TAC §371.17 Principal Forgiveness

Section 371.17 is amended to clarify that total principal forgiveness may not exceed the percentages established by federal law, appropriations acts, or the terms of the capitalization grant.

31 TAC §371.31 Timeliness of Application and Required Application Information

Section 371.31 is amended to add the requirement that a preliminary engineering feasibility report signed and sealed by a professional engineer be submitted as part of an application, and detailing the information to be included in the report.

31 TAC §371.34 Required Water Conservation Plan and Water Loss Audit

Section 371.34 is amended to require that the water conservation plan comply with Texas Water Code §16.4021, as enacted by H.B. 3339, 86th (R) Legislative Session, and to make other language in the rule consistent with the Clean Water State Revolving Fund statute and rules.

31 TAC §371.36 Multi-Year Commitments

Section 371.36 is amended to tie the terms to the IUP, increasing flexibility for financial assistance recipients and for the agency.

31 TAC §371.41 Environmental Review Process

Section 371.41 is amended to add language stating that for equivalency projects, the Board will inform the Environmental Protection Agency (EPA) when it is necessary for EPA to coordinate with other federal agencies regarding compliance with applicable federal authority.

31 TAC §371.60 Applicability

Section 371.60 is added to outline applicability of the subchapter on engineering review and approval. The existing §371.60 is repealed elsewhere in this issue of the *Texas Register*.

31 TAC §371.61 Engineering Feasibility Report

Section 371.61 is added to replace the rule previously numbered as 371.60. The existing §371.61 is repealed elsewhere in this issue of the *Texas Register*.

31 TAC §371.62 Contract Documents: Review and Approval

Section 371.62 is added to replace the rule previously numbered as 371.61, and amended to include a requirement that Applicants submit an electronic copy of applications and reduce the number of paper copies required unless the Applicant is directed otherwise. The existing §371.62 is repealed elsewhere in this issue of the *Texas Register*.

31 TAC §371.63 Advertising and Awarding Construction Contracts

Section 371.63 is added to replace the rule previously numbered as 371.62. The existing §371.63 is repealed elsewhere in this issue of the *Texas Register*.

31 TAC §371.70 Applicability

Section 371.70 is added to outline applicability of the subchapter on loan closings and availability of funds. The existing §371.70 is repealed elsewhere in this issue of the *Texas Register*.

31 TAC §371.71 Financial Assistance Secured by Bonds or Other Authorized Securities

Section 371.71 is added to replace the rule previously numbered as 371.70. The existing §371.71 is repealed elsewhere in this issue of the *Texas Register*.

31 TAC §371.72 Financial Assistance Secured by Promissory Notes and Deeds of Trust

Section 371.72 is added to replace the rule previously numbered as 371.71. The existing §371.72 is repealed elsewhere in this issue of the *Texas Register*.

31 TAC §371.73 Disbursement of Funds

Section 371.73 is added to replace the rule previously numbered as 371.72. The existing §371.73 is repealed elsewhere in this issue of the *Texas Register*.

31 TAC §371.74 Remaining Unused Funds

Section 371.74 is added to replace the rule previously numbered as 371.73 and to clarify the disposition of remaining project funds. The existing §371.74 is repealed elsewhere in this issue of the *Texas Register*.

31 TAC §371.75 Surcharge

Section 371.75 is added to replace the rule previously numbered as 371.74. The existing §371.75 is repealed elsewhere in this issue of the *Texas Register*.

31 TAC §371.80 Applicability

Section 371.80 is added to outline applicability of the subchapter on construction and post-construction requirements. The existing §371.80 is repealed elsewhere in this issue of the *Texas Register*.

31 TAC §371.81 Inspection During Construction

Section 371.81 is added to replace the rule previously numbered as 371.80, to change the term "inspection" to "site visits", and to review compliance with EPA's American Iron and Steel requirements. The existing §371.81 is repealed elsewhere in this issue of the *Texas Register*.

31 TAC §371.82 Alterations During Construction

Section 371.82 is added to replace the rule previously numbered as 371.81. The existing §371.82 is repealed elsewhere in this issue of the *Texas Register*.

31 TAC §371.83 Force Account

Section 371.83 is added to replace the rule previously numbered as 371.82. The existing §371.83 is repealed elsewhere in this issue of the *Texas Register*.

31 TAC §371.84 As Built Plans

Section 371.84 is added to replace the rule previously numbered as 371.83. The existing §371.84 is repealed elsewhere in this issue of the *Texas Register*.

31 TAC §371.85 Certificate of Approval and Project Completion

Section 371.85 is added to replace the rule previously numbered as 371.84. The existing §371.85 is repealed elsewhere in this issue of the *Texas Register*.

31 TAC §371.86 Final Accounting

Section 371.86 is added to replace the rule previously numbered as 371.85. The existing §371.86 is repealed elsewhere in this issue of the *Texas Register*.

31 TAC §371.87 Records Retention

Section 371.87 is added to replace the rule previously numbered as 371.86. The existing §371.87 is repealed elsewhere in this issue of the *Texas Register*.

31 TAC §371.88 Release of Retainage

Section 371.88 is added to replace the rule previously numbered as 371.87. The existing §371.88 is repealed elsewhere in this issue of the *Texas Register*.

31 TAC §371.89 Responsibilities of Applicant

Section 371.89 is added to replace the rule previously numbered as 371.88 and changes the term "water conservation program" to "water conservation plan," the term used in Texas Water Code §16.4021. The existing §371.89 is repealed elsewhere in this issue of the *Texas Register*.

31 TAC §371.90 Authority of the Executive Administrator

Section 371.90 is added to replace the rule previously numbered as 371.89. The existing §371.90 is repealed elsewhere in this issue of the *Texas Register*.

31 TAC §371.91 Disallowance of Project Costs and Remedies for Noncompliance

Section 371.91 is added to provide remedies for noncompliance with project rules and financial assistance documents.

REGULATORY IMPACT ANALYSIS DETERMINATION

The board reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the rulemaking is not subject to Texas Government Code §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, or a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to implement new requirements in state and federal law and changes in program management within the current framework of the drinking water state revolving fund.

Even if the adopted amendments and rules were major environmental rules, Texas Government Code §2001.0225 still would not apply to this rulemaking because Texas Government Code §2001.0225 only applies to a major environmental rule the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed any federal law; (2) does not exceed an express requirement of state law; (3) does not 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; and (4) is not adopted solely under the general powers of the agency, but rather is adopted under the authority of Texas Water Code §§15.604, 15.605, and 16.093. Therefore, the adopted amendments do not fall under any of the applicability criteria in Texas Government Code §2001.0225.

TAKINGS IMPACT ASSESSMENT

The board evaluated the adopted rules and amendments and performed an analysis of whether they constitute a taking under Texas Government Code Chapter 2007. The specific purpose of the rules is to implement new requirements in state and federal law and changes in program management within the current framework of the drinking water state revolving fund.

The board's analysis indicates that Texas Government Code Chapter 2007 does not apply to the adopted rules because this is an action that is reasonably taken to fulfill an obligation mandated by state and federal law, which is exempt under Texas Government Code, §2007.003(b)(4). The board is the agency that provides financial assistance for the construction of water, wastewater, flood control, and other related projects.

Nevertheless, the board further evaluated the adopted rules and performed an assessment of whether they constitute a taking under Texas Government Code Chapter 2007. Promulgation and

enforcement of the adopted rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the adopted rulemaking does not affect a landowner's rights in private real property because this rulemaking does not burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. In other words, these rules require compliance with state and federal laws regarding financial assistance under the state revolving funds without burdening or restricting or limiting an owner's right to property and reducing its value by 25% or more. Therefore, the adopted rulemaking does not constitute a taking under Texas Government Code Chapter 2007.

PUBLIC COMMENT

No comments were received.

SUBCHAPTER A. GENERAL PROGRAM REQUIREMENTS

31 TAC §371.1, §371.4

STATUTORY AUTHORITY

This rulemaking is adopted under the authority of Texas Water Code §6.101, which gives the TWDB the authority to adopt rules, and under the authority of Texas Water Code §§15.604, 15.605, and 16.093.

Cross-reference to statute: Texas Water Code Chapters 15 and 16.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Ashley Harden

General Counsel

Texas Water Development Board

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SUBCHAPTER B. FINANCIAL ASSISTANCE

31 TAC §§371.14 - 371.17

STATUTORY AUTHORITY

This rulemaking is adopted under the authority of Texas Water Code §6.101, which gives the TWDB the authority to adopt rules, and under the authority of Texas Water Code §§15.604, 15.605, and 16.093.

Cross-reference to statute: Texas Water Code Chapters 15 and 16.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER D. APPLICATION FOR ASSISTANCE

31 TAC §§371.31, 371.34, 371.36

STATUTORY AUTHORITY

This rulemaking is adopted under the authority of Texas Water Code §6.101, which gives the TWDB the authority to adopt rules, and under the authority of Texas Water Code §§15.604, 15.605, and 16.093.

Cross-reference to statute: Texas Water Code Chapters 15 and 16.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER E. ENVIRONMENTAL REVIEWS AND DETERMINATIONS

31 TAC §371.41

STATUTORY AUTHORITY

This rulemaking is adopted under the authority of Texas Water Code §6.101, which gives the TWDB the authority to adopt rules, and under the authority of Texas Water Code §§15.604, 15.605, and 16.093.

Cross-reference to statute: Texas Water Code Chapters 15 and 16.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER F. ENGINEERING REVIEW AND APPROVAL

31 TAC §§371.60 - 371.63

STATUTORY AUTHORITY

This rulemaking is adopted under the authority of Texas Water Code §6.101, which gives the TWDB the authority to adopt rules, and under the authority of Texas Water Code §§15.604, 15.605, and 16.093.

Cross-reference to statute: Texas Water Code Chapters 15 and 16.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER G. LOAN CLOSINGS AND AVAILABILITY OF FUNDS

31 TAC §§371.70 - 371.75

STATUTORY AUTHORITY

This rulemaking is adopted under the authority of Texas Water Code §6.101, which gives the TWDB the authority to adopt rules, and under the authority of Texas Water Code §§15.604, 15.605, and 16.093.

Cross-reference to statute: Texas Water Code Chapters 15 and 16.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER H. CONSTRUCTION AND POST-CONSTRUCTION REQUIREMENTS

31 TAC §§371.80 - 371.91

STATUTORY AUTHORITY

This rulemaking is adopted under the authority of Texas Water Code §6.101, which gives the TWDB the authority to adopt rules, and under the authority of Texas Water Code §§15.604, 15.605, and 16.093.

Cross-reference to statute: Texas Water Code Chapters 15 and 16.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 371. DRINKING WATER STATE REVOLVING FUND

The Texas Water Development Board (TWDB) adopts the repeal of 31 Texas Administrative Code (TAC) §§371.60 - 371.62, 371.70 - 371.74, and 371.80 - 371.89. The proposal is adopted without changes as published in the February 28, 2020, issue of the *Texas Register* (45 TexReg 1345). The rules will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL ISSUES FOR THE ADOPTED REPEALS.

The TWDB adopts the repeal of these sections of the rules because new rules 31 TAC §§371.60 - 371.63, 371.70 - 371.75, and 371.80 - 371.89 are being adopted elsewhere in this issue of the *Texas Register*.

SECTION BY SECTION DISCUSSION OF THE ADOPTED REPEALS

31 TAC §371.60 Engineering Feasibility Report

Section 371.60 is repealed due to addition of a new §371.60 outlining applicability of the subchapter on engineering review and approval. The new §371.60 is adopted elsewhere in this issue of the *Texas Register*.

31 TAC §371.61 Contract Documents: Review and Approval

Section 371.61 is repealed to replace it with the Engineering Feasibility Report rule previously numbered as 371.60. The new §371.61 is adopted elsewhere in this issue of the *Texas Register*.

31 TAC §371.62 Advertising and Awarding Construction Contracts

Section 371.62 is repealed to replace it with the Contract Documents: Review and Approval rule previously numbered as 371.61. The new §371.62 is adopted elsewhere in this issue of the *Texas Register*.

31 TAC §371.70 Financial Assistance Secured by Bonds or Other Authorized Securities

Section 371.70 is repealed due to addition of a new §371.70 outlining applicability of the subchapter on loan closing and availability of funds. The new §371.70 is adopted elsewhere in this issue of the *Texas Register*.

31 TAC §371.71 Financial Assistance Secured by Promissory Notes and Deeds of Trust

Section 371.71 is repealed to replace it with the Financial Assistance Secured by Bonds and Other Authorized Securities rule previously numbered as 371.70. The new §371.71 is adopted elsewhere in this issue of the *Texas Register*.

31 TAC §371.72 Disbursement of Funds

Section 371.72 is repealed to replace it with the Financial Assistance Secured by Promissory Notes and Deeds of Trust rule previously numbered as 371.71. The new §371.72 is adopted elsewhere in this issue of the *Texas Register*.

31 TAC §371.73 Remaining Unused Funds

Section 371.73 is repealed to replace it with the Disbursement of Funds rule previously numbered as 371.72. The new §371.73 is adopted elsewhere in this issue of the *Texas Register*.

31 TAC §371.74 Surcharge

Section 371.74 is repealed to replace it with the Remaining Unused Funds rule previously numbered as 371.73. The new §371.74 is adopted elsewhere in this issue of the *Texas Register*.

31 TAC §371.80 Inspection During Construction

Section 371.80 is repealed due to addition of a new §371.78 outlining applicability of the subchapter on construction and post-construction requirements. The new §371.70 is adopted elsewhere in this issue of the *Texas Register*.

31 TAC §371.81 Alteration During Construction

Section 371.81 is repealed to replace it with the Inspection During Construction rule previously numbered as 371.80. The new §371.81 is adopted elsewhere in this issue of the *Texas Register*.

31 TAC §371.82 Force Account

Section 371.82 is repealed to replace it with the Alterations During Construction rule previously numbered as 371.81. The new §371.82 is adopted elsewhere in this issue of the *Texas Register*.

31 TAC §371.83 As Built Plans

Section 371.83 is repealed to replace it with the Force Account rule previously numbered as 371.82. The new §371.83 is adopted elsewhere in this issue of the *Texas Register*.

31 TAC §371.84 Certificate of Approval and Project Completion

Section 371.84 is repealed to replace it with the As Built Plans rule previously numbered as 371.83. The new §371.84 is adopted elsewhere in this issue of the *Texas Register*.

31 TAC §371.85 Final Accounting

Section 371.85 is repealed to replace it with the Certificate of Approval and Project Completion rule previously numbered as 371.84. The new §371.85 is adopted elsewhere in this issue of the *Texas Register*.

31 TAC §371.86 Records Retention

Section 371.86 is repealed to replace it with the Final Accounting rule previously numbered as 371.85. The new §371.86 is adopted elsewhere in this issue of the *Texas Register*.

31 TAC §371.87 Release of Retainage

Section 371.87 is repealed to replace it with the Records Retention rule previously numbered as 371.86. The new §371.87 is adopted elsewhere in this issue of the *Texas Register*.

31 TAC §371.88 Responsibilities of Applicant

Section 371.88 is repealed to replace it with the Release of Retainage rule previously numbered as 371.87. The new §371.88 is adopted elsewhere in this issue of the *Texas Register*.

31 TAC §371.89 Authority of the Executive Administrator

Section 371.89 is repealed to replace it with the Responsibilities of Applicant rule previously numbered as 371.88. The new §371.89 is adopted elsewhere in this issue of the *Texas Register*.

REGULATORY IMPACT ANALYSIS DETERMINATION

The board reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the rulemaking is not subject to Texas Government Code §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, or a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of these repeals is to reorganize the rules based on the addition of sections that implement new requirements in state and federal law within the current framework of the drinking water state revolving fund.

Even if the adopted repeals were major environmental rules, Texas Government Code §2001.0225 still would not apply to this rulemaking because Texas Government Code §2001.0225 only applies to a major environmental rule the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed any federal law; (2) does not exceed an express requirement of state law; (3) does not 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; and (4) is not adopted solely under the general powers of the agency, but rather is adopted under the authority of Texas Water Code §§15.604, 15.605, and 16.093. Therefore, the adopted repeals do not fall under any of the applicability criteria in Texas Government Code §2001.0225.

TAKINGS IMPACT ASSESSMENT

The board evaluated the adopted repeals and performed an analysis of whether they constitute a taking under Texas Government Code Chapter 2007. The specific purpose of the repeals is to reorganize the rules based on the addition of sections that

implement new requirements in state and federal law within the current framework of the drinking water state revolving fund.

The board's analysis indicates that Texas Government Code Chapter 2007 does not apply to the adopted repeals because this is an action that is reasonably taken to fulfill an obligation mandated by state and federal law, which is exempt under Texas Government Code, §2007.003(b)(4). The board is the agency that provides financial assistance for the construction of water, wastewater, flood control, and other related projects.

Nevertheless, the board further evaluated the adopted repeals and performed an assessment of whether they constitute a taking under Texas Government Code Chapter 2007. Promulgation and enforcement of the adopted repeals would be neither a statutory nor a constitutional taking of private real property. Specifically, the adopted rulemaking does not affect a landowner's rights in private real property because this rulemaking does not burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the repeal. Therefore, the adopted rulemaking does not constitute a taking under Texas Government Code Chapter 2007.

PUBLIC COMMENT

No comments were received.

SUBCHAPTER F. ENGINEERING REVIEW AND APPROVAL

31 TAC §§371.60 - 371.62

STATUTORY AUTHORITY

These repeals are adopted under the authority of Texas Water Code §6.101, which gives the TWDB the authority to adopt rules, and under the authority of Texas Water Code §§15.604, 15.605, and 16.093.

Cross-reference to statute: Texas Water Code Chapters 15 and 16.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Ashley Harden

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Texas Water Development Board

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SUBCHAPTER G. LOAN CLOSINGS AND AVAILABILITY OF FUNDS

31 TAC §§371.70 - 371.74

STATUTORY AUTHORITY

These repeals are adopted under the authority of Texas Water Code §6.101, which gives the TWDB the authority to adopt rules, and under the authority of Texas Water Code §§15.604, 15.605, and 16.093.

Cross-reference to statute: Texas Water Code Chapters 15 and 16.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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SUBCHAPTER H. CONSTRUCTION AND POST-CONSTRUCTION REQUIREMENTS

31 TAC §§371.80 - 371.89

STATUTORY AUTHORITY

These repeals are adopted under the authority of Texas Water Code §6.101, which gives the TWDB the authority to adopt rules, and under the authority of Texas Water Code §§15.604, 15.605, and 16.093.

Cross-reference to statute: Texas Water Code Chapters 15 and 16.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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CHAPTER 375. CLEAN WATER STATE REVOLVING FUND

The Texas Water Development Board ("TWDB") adopts new 31 Texas Administrative Code (TAC) §§375.72 and 375.111 and amendments to existing 31 TAC §§375.1, 375.16, 375.17, 375.31, 375.41, 375.43, 375.45, 375.60, 375.82, 375.91, 375.92, 375.94, 375.101 and 375.109, relating to the Clean Water State Revolving Fund. Section 375.31 is adopted with changes, this rule will be republished. Sections 375.1, 375.16, 375.17, 375.41, 375.43, 375.45, 375.60, 375.82, 375.91, 375.92, 375.94, 375.101 and 375.109 are adopted without changes as published in the February 28, 2020, issue of the *Texas Register* (45 TexReg 1348). These rules will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED ADDITIONS AND AMENDMENTS.

The TWDB adopts the additions and amendments is to implement legislative changes from House Bill 3339, 86th (R) Legislative Session and from America's Water Infrastructure Act of 2018 (AWIA), and to implement changes in program management, including addition of remedies for non-compliance. The specific provisions being amended or added and the reasons for the amendments are addressed in more detail below.

SECTION BY SECTION DISCUSSION OF THE ADOPTED ADDITIONS AND AMENDMENTS

31 TAC §375.1 Definitions

Section 375.1 is amended to define the term "water conservation plan" as a plan in compliance with Texas Water Code §16.4021, as required by H.B. 3339, 86th (R) Legislative Session.

31 TAC §375.16 Fees for Financial Assistance

Section 375.16 is amended to clarify the origination fee.

31 TAC §375.17 Term of Financial Assistance

Section 375.17 is amended to remove mention of specific loan time periods and to provide the terms in the IUP.

31 TAC §375.31 Rating Process

Section 375.31 is amended to make emergency relief applicable to all disasters, not just natural disasters.

31 TAC §375.41 Timeliness of Application and Required Application Information

Section 375.41 is amended to add the requirement that a preliminary engineering feasibility report signed and sealed by a professional engineer be submitted as part of an application, and detailing the information to be included in the report.

31 TAC §375.43 Required Water Conservation Plan and Water Loss Audit

Section 375.43 is amended to require that the water conservation plan comply with Texas Water Code §16.4021, as enacted by H.B. 3339, 86th (R) Legislative Session, and to clarify that a requirement that a portion of assistance be used for water loss mitigation applies only to Applicants providing potable water.

31 TAC §375.45 Multi-Year Commitment

Section 375.45 is amended to tie the terms to the IUP, increasing flexibility for financial assistance recipients.

31 TAC §375.60 Definitions

Section 375.60 is amended to define the term "emergency relief project".

31 TAC §375.72 Emergency Relief Project Procedures

Section 375.72 is added to outline emergency relief project procedures identical to those already contained in rules for the Drinking Water State Revolving Fund.

31 TAC §375.82 Contract Documents: Review and Approval

Section 375.82 is amended to include a requirement that Applicants submit an electronic copy of applications and reduces the number of paper copies required unless the Applicant is directed otherwise.

31 TAC §375.91 Financial Assistance Secured by Bonds or Other Authorized Securities

Section 375.91 is amended to add requirements for closing financial assistance projects consisting of 100 percent principal forgiveness.

31 TAC §375.92 Financial Assistance Secured by Promissory Notes and Deeds of Trust

Section 375.92 is amended to clarify language and conform with rules for the Drinking Water State Revolving Fund.

31 TAC §375.94 Remaining Unused Funds

Section 375.94 is amended to clarify the disposition of remaining project funds.

31 TAC §375.101 Inspection During Construction

Section 375.101 is amended to change the term "inspection" to "site visits" and to add the requirement to review compliance with EPA's American Iron and Steel requirements.

31 TAC §375.109 Responsibilities of Applicant

Section 375.109 is amended to change the term "water conservation program" to "water conservation plan," the term used in Texas Water Code §16.4021.

31 TAC §375.111 Disallowance of Project Costs and Remedies for Noncompliance

Section 375.111 is added to provide remedies for noncompliance with project rules and financial assistance documents.

REGULATORY IMPACT ANALYSIS DETERMINATION

The board reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the rulemaking is not subject to Texas Government Code §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, or a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to implement new requirements in state and federal law and changes in program management within the current framework of the clean water state revolving fund.

Even if the adopted amendments and rules were major environmental rules, Texas Government Code §2001.0225 still would not apply to this rulemaking because Texas Government Code §2001.0225 only applies to a major environmental rule the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed any federal law; (2) does not exceed an express requirement of state law; (3) does not 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; and (4) is not adopted solely under the general powers of the agency, but rather is adopted under the authority of Texas Water Code

§§15.604, 15.605, and 16.093. Therefore, the adopted amendments do not fall under any of the applicability criteria in Texas Government Code §2001.0225.

TAKINGS IMPACT ASSESSMENT

The board evaluated the adopted rules and amendments and performed an analysis of whether they constitute a taking under Texas Government Code Chapter 2007. The specific purpose of the rules is to implement new requirements in state and federal law and changes in program management within the current framework of the clean water state revolving fund.

The board's analysis indicates that Texas Government Code Chapter 2007 does not apply to the adopted rules because this is an action that is reasonably taken to fulfill an obligation mandated by state and federal law, which is exempt under Texas Government Code, §2007.003(b)(4). The board is the agency that provides financial assistance for the construction of water, wastewater, flood control, and other related projects.

Nevertheless, the board further evaluated the adopted rules and performed an assessment of whether they constitute a taking under Texas Government Code Chapter 2007. Promulgation and enforcement of the adopted rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the adopted rulemaking does not affect a landowner's rights in private real property because this rulemaking does not burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. In other words, these rules require compliance with state and federal laws regarding financial assistance under the state revolving funds without burdening or restricting or limiting an owner's right to property and reducing its value by 25% or more. Therefore, the adopted rulemaking does not constitute a taking under Texas Government Code Chapter 2007.

PUBLIC COMMENT

No comments were received.

SUBCHAPTER A. GENERAL PROGRAM REQUIREMENTS

31 TAC §375.1

STATUTORY AUTHORITY

This rulemaking is adopted under the authority of Texas Water Code §6.101, which gives the TWDB the authority to adopt rules, and Texas Water Code §§15.604, 15.605, and 16.093.

Cross-reference to statute: Texas Water Code Chapters 15 and 16.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Ashley Harden

General Counsel

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SUBCHAPTER B. FINANCIAL ASSISTANCE

31 TAC §375.16, §375.17

STATUTORY AUTHORITY

This rulemaking is adopted under the authority of Texas Water Code §6.101, which gives the TWDB the authority to adopt rules, and Texas Water Code §§15.604, 15.605, and 16.093.

Cross-reference to statute: Texas Water Code Chapters 15 and 16.

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SUBCHAPTER C. INTENDED USE PLAN

31 TAC §375.31

STATUTORY AUTHORITY

This rulemaking is adopted under the authority of Texas Water Code §6.101, which gives the TWDB the authority to adopt rules, and Texas Water Code §§15.604, 15.605, and 16.093.

Cross-reference to statute: Texas Water Code Chapters 15 and 16.

§375.31. *Rating Process.*

(a) Projects in an IUP will be rated based upon the information, and any supporting documentation, submitted by the Applicant on the project information form.

(b) Rating criteria. For projects authorized under 33 U.S.C. §1383(c)(1) (§212 projects) involving the construction or improvements to publicly owned treatment works the following factors will be considered:

(1) Impacts to water quality--Projects that protect stream segments and groundwater from pollution.

(2) Unserved areas--Projects that will bring individual systems into a centralized system or projects that address on-site systems.

(3) Regionalization of treatment works--Projects that will consolidate and eliminate systems.

(4) Reduction or prevention--Projects that will reduce or prevent sewer system overflows and inflow and infiltration.

(5) Eligibility as a Disadvantaged Community--Projects located in disadvantaged communities, as defined in Subchapter A of this chapter.

(6) Enforcement action--Corrective actions imposed by judicial authority or the Commission.

(7) Innovative or alternative technology or approaches--Projects that involve innovative or alternative technology or approaches, such as providing for the reclaiming and reuse of water, otherwise eliminate the discharge of pollutants, and utilize recycling techniques, land treatment, new or improved methods of waste treatment management for municipal and industrial waste (discharged into municipal systems) and the confined disposal of pollutants, so that pollutants will not migrate to cause water or other environmental pollution.

(8) Effective Management--Whether an entity has adopted or plans to prepare an Asset Management Plan and provide training to the Applicant's governing body and employees, whether the project addresses water conservation and energy efficiency, and whether the project implements a state or regional water plan.

(9) Reduction in Demand--Whether a majority of the funds being requested from the CWSRF for the project will be used to implement measures to reduce the demand for publicly owned treatment works capacity through water conservation, efficiency, or reuse.

(10) Non-profits--If the Applicant is a qualified nonprofit entity that has federal tax-exempt status, whether a majority of the funds being requested from the CWSRF for the project will be used to implement assistance to owners and operators of small and medium publicly owned treatment works to either:

(A) plan, develop, and obtain financing for eligible CWSRF projects, including planning, design, and associated preconstruction activities; or

(B) assist such treatment works in achieving compliance with the Act.

(11) Additional factors as designated within the applicable IUP.

(c) Previously funded projects. Planning, acquisition, or design projects, completed within three years from the closing of the financial assistance will receive a priority for construction phase funding if there are no significant changes that affect the original project rating and the project is ready to proceed.

(d) For projects authorized under 33 U.S.C. §1383(c)(2) (§319 projects) involving nonpoint source and projects authorized under 33 U.S.C. §1383(c)(3) (§320 projects) involving estuary management, the following factors will be considered:

(1) Public health--Ability to improve conditions that a public health official has determined are a nuisance and are dangerous to public health and safety and that may result from water supply and sanitation problems in the area to be served by the proposed project.

(2) Groundwater--Minimization of impact of pollutants to an aquifer or groundwater.

(3) Impaired water body--Ability to improve conditions in any water body that does not meet applicable water quality standards or is threatened for one or more designated uses by one or more pollutants.

(4) Eligibility as a Disadvantaged Community--Projects located in disadvantaged communities, as defined in Subchapter A of this chapter.

(5) Additional factors as designated within the applicable IUP.

(e) For all projects authorized under 33 U.S.C. §1383(c) that are made eligible in the Intended Use Plan:

(1) Whether a majority of the funds being requested from the CWSRF for the project will be used to implement innovative ap-

proaches to manage, reduce, treat, or recapture stormwater or subsurface drainage water.

(2) Whether a majority of the funds being requested from the CWSRF for the project will be used to implement reuse or recycling wastewater, stormwater, or subsurface drainage water.

(f) Emergency relief. Projects that are affected by disasters and according to the following requirements:

(1) The Applicant must demonstrate that a need for emergency relief from an imminent threat to public health, safety, environment, or welfare exists. The Applicant must describe the nature of the threat and provide a complete description of the proposed emergency relief project.

(2) The Board may authorize funding for the emergency relief project that meets the requirements of this title or as described in an IUP

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 21, 2020.

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Ashley Harden

General Counsel

Texas Water Development Board

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For further information, please call: (512) 463-7686



SUBCHAPTER D. APPLICATION FOR ASSISTANCE

31 TAC §§375.41, 375.43, 375.45

STATUTORY AUTHORITY

This rulemaking is adopted under the authority of Texas Water Code §6.101, which gives the TWDB the authority to adopt rules, and Texas Water Code §§15.604, 15.605, and 16.093.

Cross-reference to statute: Texas Water Code Chapters 15 and 16.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Ashley Harden

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Texas Water Development Board

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SUBCHAPTER E. ENVIRONMENTAL REVIEWS AND DETERMINATIONS

31 TAC §375.60, §375.72

STATUTORY AUTHORITY

This rulemaking is adopted under the authority of Texas Water Code §6.101, which gives the TWDB the authority to adopt rules, and Texas Water Code §§15.604, 15.605, and 16.093.

Cross-reference to statute: Texas Water Code Chapters 15 and 16.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Ashley Harden

General Counsel

Texas Water Development Board

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SUBCHAPTER F. ENGINEERING REVIEW AND APPROVAL

31 TAC §375.82

STATUTORY AUTHORITY

This rulemaking is adopted under the authority of Texas Water Code §6.101, which gives the TWDB the authority to adopt rules, and Texas Water Code §§15.604, 15.605, and 16.093.

Cross-reference to statute: Texas Water Code Chapters 15 and 16.

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Ashley Harden

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SUBCHAPTER G. LOAN CLOSINGS AND AVAILABILITY OF FUNDS

31 TAC §§375.91, 375.92, 375.94

STATUTORY AUTHORITY

This rulemaking is adopted under the authority of Texas Water Code §6.101, which gives the TWDB the authority to adopt rules, and Texas Water Code §§15.604, 15.605, and 16.093.

Cross-reference to statute: Texas Water Code Chapters 15 and 16.

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SUBCHAPTER H. CONSTRUCTION AND POST CONSTRUCTION REQUIREMENTS

31 TAC §§375.101, 375.109, 375.111

STATUTORY AUTHORITY

This rulemaking is adopted under the authority of Texas Water Code §6.101, which gives the TWDB the authority to adopt rules, and Texas Water Code §§15.604, 15.605, and 16.093.

Cross-reference to statute: Texas Water Code Chapters 15 and 16.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Ashley Harden

General Counsel

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For further information, please call: (512) 463-7686





REVIEW OF AGENCY RULES

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039. Included here are proposed rule review notices, which

invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

Adopted Rule Reviews

Texas Board of Chiropractic Examiners

Title 22, Part 3

The Texas Board of Chiropractic Examiners (Board) adopts the review of Chapter 82, concerning Internal Board Procedures, in accordance with Texas Government Code §2001.039. The proposed notice of intent to review rules was published in the March 27, 2020, issue of the *Texas Register* (45 TexReg 2211). No comments were received on the proposed rule review.

The Board has assessed whether the reasons for adopting or readopting the rules continue to exist. The Board finds that the rules in Chapter 82, with the exception of §82.4 (Private Donors), are needed, reflect current legal and policy considerations, and reflect current procedures of the Board. The reasons for initially adopting the rules, aside from §82.4, continue to exist.

The Board, therefore, readopts §§82.1 (Dual Office Holding), 82.2 (Merit Selection Principles), 82.3 (Sick Leave Pool), 82.5 (Contracting Monitoring), and 82.6 (Tuition Reimbursement Payments) of Chapter 82. The Board will propose the repeal of §82.4 (Private Donors) in a separate rulemaking action.

TRD-202002092

Christopher Burnett

General Counsel

Texas Board of Chiropractic Examiners

Filed: May 22, 2020



Texas Department of Insurance, Division of Workers' Compensation

Title 28, Part 2

The Texas Department of Insurance, Division of Workers' Compensation (DWC) completed its rule review of 28 Texas Administrative Code

Chapters 120, 122, and 124 in their entirety. DWC conducted the rule review under Texas Government Code Section 2001.039.

Notice of the review was published in the January 31, 2020, issue of the *Texas Register* (45 TexReg 776). There was no request for a public meeting.

The comment period ended March 3, 2020. DWC received two comments.

--The first comment was from the Office of Injured Employee Counsel (OIEC), which supported readopting the chapters. OIEC suggested a general update to website addresses and adjusting administrative penalties for inflation. During DWC's rulemaking process, rules are updated in accordance with any new legislation. Websites and administrative penalties are also revised if necessary.

--The second comment was from American Property Casualty Insurance Association (APCIA), which supported readopting Chapters 120, 122, and 124 with amendments. APCIA suggested modernizing Chapter 124 to permit payment through electronic platforms. 28 TAC §124.5 allows for payment of medical benefits through Electronic Funds Transfer (EFT). An assessment would be required to determine if there would be any additional costs to parties involved for payments made through electronic platforms other than EFT. 28 TAC §124.6, the access card rule, allows for payment by electronic platforms, such as Venmo and PayPal, if all the requirements in the rule are met.

As a result of the rule review, DWC finds that the reasons for initially adopting the rules in 28 TAC Chapters 120, 122, and 124 continue to exist and readopts these rules in accordance with the requirements of Texas Government Code Section 2001.039.

TRD-202002051

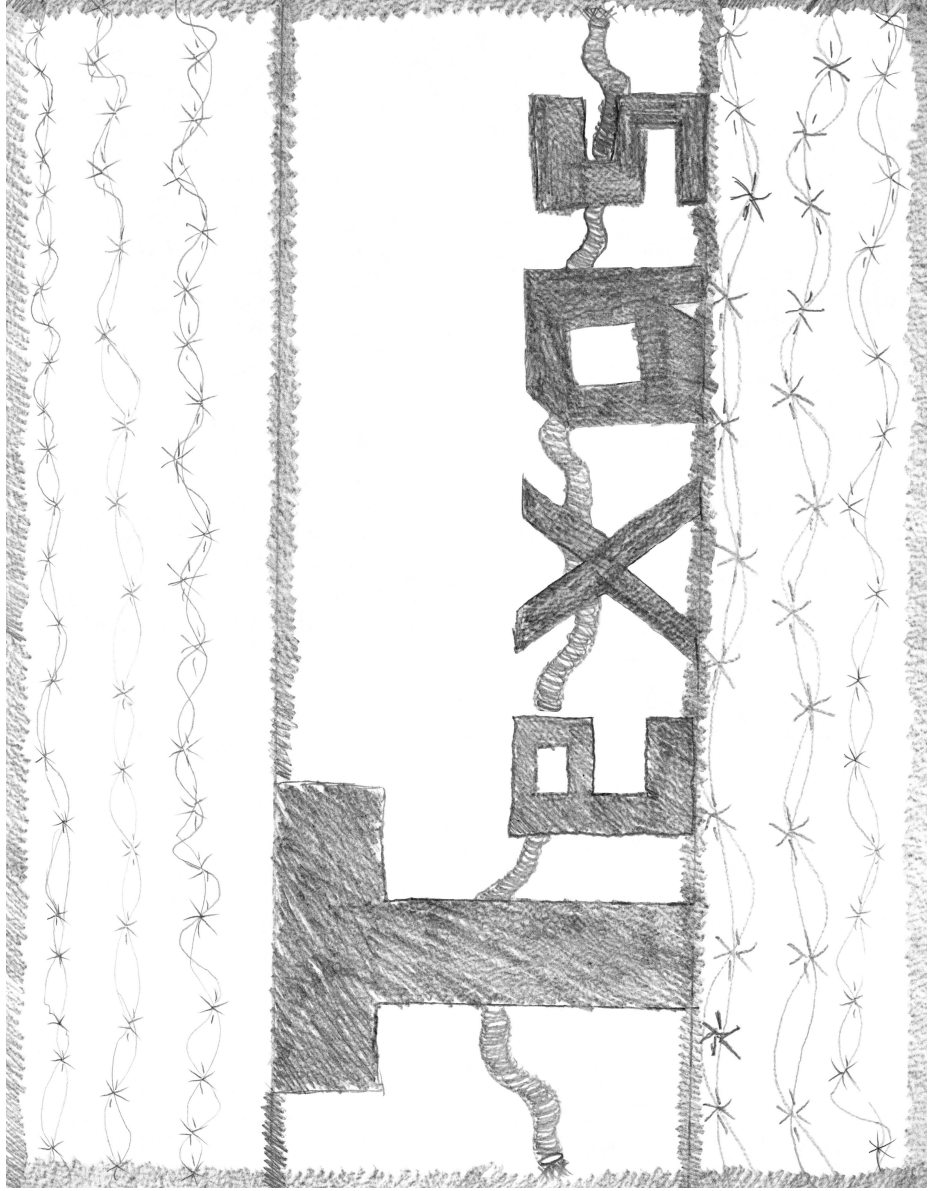
Kara Mace

Deputy Commissioner of Legal Services

Texas Department of Insurance, Division of Workers' Compensation

Filed: May 21, 2020





TABLES &

GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Table 1

REQUIRED QUALITY CONTROL ANALYSES

Parameter	Method Blank	Laboratory Control Samples	Duplicate Analyses	Matrix Spike
Bacteria	A		C	
Alkalinity		B	C	
Ammonia Nitrogen	A	B	C	C
Biochemical Oxygen Demand (BOD)	A	B	C	
BOD-carbonaceous	A	B	C	
Chemical Oxygen Demand	A	B	C	C
Chloride	A	B	C	C
Chlorine-Total or Free		E		
Cyanide-Total or Amenable to Chlorination	A	B	C	C
Fluoride	A	B	C	C
pH		D		
Kjeldahl Nitrogen	A	B	C	C
Metals (all)	A	B	C	C
Nitrate Nitrogen	A	B	C	C
Nitrite Nitrogen	A	B	C	C
Oil & Grease	A	E		
Orthophosphate	A	B	C	C
Oxygen (dissolved)		B	C	
Phenols	A	B	C	
Phosphorus-Total	A	B	C	C
Specific Conductance	A	B		
Sulfate	A	B	C	C
Sulfide	A	B	C	
Sulfite	A	B	C	
Total Organic Carbon	A	B	C	C
Total Suspended Solids	A		C	
Total Dissolved Solids	A	B	C	
Organics	A	B	F	F

Where:

A - At least one method blank shall be analyzed each day that samples are analyzed.

B - At least one laboratory control sample shall be analyzed each day that samples are analyzed.

C - Duplicate analyses and matrix spike analyses shall be performed on a 10% basis each day that samples are analyzed. If one to 10 samples are analyzed on a particular day, then one duplicate and one spike analysis shall be performed.

D - The pH meter shall be calibrated each day that samples are analyzed using a minimum of two buffer solutions which bracket the pH value(s) of the sample(s).

E - Standard analyses shall be performed on a 10% basis. If one to 10 samples are analyzed on a particular day, then one laboratory control sample shall be analyzed. Duplicate analyses may be performed in lieu of standard analyses.

F - Analyses shall be by gas chromatography (GC), gas chromatography/mass spectrometer (GC/MS), or other approved methods. Duplicate analyses and matrix spike analyses shall be performed on a 5% basis. If one to 20 samples are analyzed in a month, then one duplicate and one spike analysis per month shall be performed.

Table 1

MEASUREMENT FREQUENCY FOR TREATED DOMESTIC SEWAGE EFFLUENT

(Based on Permitted Daily Average Flow)

Parameter	0 to less than 0.50 MGD	0.50 to less than 1.00 MGD	1.00 to less than 5.00 MGD	5.00 to less than 10.00	10.00 MGD or greater
Flow	One instantaneous measurement each working day but not less than five measurements per week. (b) (c)	The daily flow measured by a totalizing meter.	The daily flow measured by a totalizing meter.	The daily flow measured by a totalizing meter.	The daily flow measured by a totalizing meter.
Five-Day Biochemical Oxygen Demand	One each week	One each week	Two each week	One each weekday (a)	One each day of the week
Total Suspended Solids	One each week	One each week	Two each week	One each weekday (a)	One each day of the week
Chlorine Residual	One each working day but not less than five measurements per week (c)	One each day of the week	One each day of the week	One each day of the week	One each day of the week
pH	One each month	Two each month	One each week	One each weekday (a)	One each day of the week
Sample Collection	grab sample collected at peak loading periods flow measurements shall be taken concurrently with such grab samples. (d)	pH and chlorine residual test are grab samples or <i>in situ</i> all others are composite sample proportioned according to flow, made up of three portions collected no closer	The laboratory tests, except the pH and chlorine residual test which are performed on grab sample or <i>in situ</i> , shall be made on a composite sample proportioned according to flow, made up of six	The laboratory tests, except the pH and chlorine residual test which are performed on grab samples or <i>in situ</i> , shall be made on 24-hour composite samples proportioned according to flow	The laboratory tests, except the pH and the chlorine residual test which are performed on grab samples or <i>in situ</i> , shall be made on 24-hour composite samples proportioned according to flow

Parameter	0 to less than 0.50 MGD	0.50 to less than 1.00 MGD	1.00 to less than 5.00 MGD	5.00 to less than 10.00	10.00 MGD or greater
		together than 2 hours and with the first sample collected no earlier than 10:00 a.m.	portions collected no closer together than 2 hours and with the first sample collected no earlier than 10:00 a.m.	collected no closer together than 2 hours in 12 individual portions.	collected no closer together than 2 hours in 12 individual portions.

(a) Weekday is Monday through Friday.

(b) Where a totalizing meter is provided, the actual volume of water which has been processed each day should be determined and reported.

(c) Working Day is a day when the plant is visited for routine work.

(d) Peak loading period - that time during the calendar day when the maximum flow rate is experienced within the facility.

[Figure: 30 TAC §319.9(a)]

Design Capacity MGD	Flow	BOD5	Total Suspended Solids	Chlorine Residual	pH	Collecting of Samples and Taking Measurements
0 to less than 0.10	One instantaneous measurement each working day but not less than five measurements per week (b) (c)	One each week	One each week	One each working day but not less than five measurements per week (c)	One each month	The laboratory tests shall be made on a grab sample collected at peak loading periods, and flow measurements shall be taken concurrently with such grab samples. (d)
0.10 to less than 0.50	One instantaneous measurement each working day but not less than five	One each week	One each week	One each working day but not less than five measurements per week (c)	One each month	The laboratory tests shall be made on a grab sample collected at

	measurements per week (b) (c)					peak loading periods, and flow measurements shall be taken concurrently with such grab samples. (d)
0.50 to less than 1.00	The daily flow measured by a totalizing meter	One each week	One each week	One each day of the week	Two each month	The laboratory test excepting the pH and chlorine residual test which are performed on grab samples or insitu shall be made on a composite sample proportioned according to flow, made up of three portions collected no closer together than 2 hours and with the first sample collected no earlier than 10:00 a.m.
1.00 to less than 5.00	The daily flow measured by a totalizing meter	Two each week	Two each week	One each day of the week	One each week	The laboratory test excepting the pH and chlorine residual test which are performed on grab sample or

						insitu shall be made on a composite sample proportioned according to flow, made up of six portions collected no closer together than 2 hours and with the first sample collected no earlier than 10:00 a.m.
5.00 to less than 10.00	The daily flow measured by a totalizing meter	One each weekday (a)	One each weekday (a)	One each day of the week	One each week-day	The laboratory test excepting the pH and chlorine residual test which are performed on grab samples or insitu shall be made on (a) 24-hour composite samples proportioned according to flow collected no closer together than 2 hours in 12 individual portions.
10.00 or greater	The daily flow measured by a totalizing meter	One each day of the week	One each day of the week	One each day of the week	One each day of the week	The laboratory test excepting the pH and the chlorine residual test which are

						performed on grab samples or insitu shall be made on 24-hour composite samples proportioned according to flow collected no closer together than 2 hours in 12 individual portions.
--	--	--	--	--	--	--

[(a) Weekday - Monday thru Friday.]

[(b) Where a totalizing meter is provided, the actual volume of water which has been processed each day should be determined and reported.]

[(c) Working Day - A day when the plant is visited for routine work.]

[(d) Peak loading period - That time during the calendar day when the maximum flow rate is experienced within the facility.]

[(e) Flow - Determined by actual measurement of effluent flow or determined by calculation based upon influent measurement unless effluent flow is specified in the permit.]

[NOTE: See 30 TAC §319.5(e) concerning additional measurements and documentation.]

Figure: 30 TAC §319.9(b)

[Figure: 30 TAC §319.9(b)]

Table 2
MEASUREMENT FREQUENCY FOR [OF] BACTERIA [MEASUREMENT]

[Minimum Required Frequency^{1, 2, 3, 4]}			
<u>Permitted Daily Average Flow (mgd)</u>	Chlorine Systems	Ultraviolet Systems	Natural Systems
>10	5/week	Daily	Daily
>5-10	3/week	Daily	5/week
>1-5	1/week	Daily	3/week
>0.5-1.0	2/month	Daily	1/week
0.1-0.5	1/month	5/week	2/month
<0.1	1/quarter	5/week	1/month

[(1) Sampling must be spaced across the time period at approximately equal intervals, with the exceptions of the five times per week sampling schedule. Five samples per week must be taken one on each of five days during a seven day period.]

[(2) A permittee that has at least twelve months of uninterrupted compliance with its bacteria limit may notify the commission of its compliance and request a less frequent measurement schedule.]

[(a) If the commission finds that a less frequent measurement schedule is protective of human health and the environment, the permittee will be given a less frequent measurement schedule. Daily will drop to 5/week, 5/week to 3/week, 3/week to 1/week, 1/week to 2/month, 2/month to 1/month, 1/month to 1/quarter, 1/quarter to 1/6 months.]

[(b) A violation of the bacteria limit by a facility that has been granted a less frequent measurement schedule will require the permittee to return to the standard frequency schedule.]

[(c) A permittee that has had a violation while on a less frequent measurement schedule may not apply for another reduction in measurement frequency for at least 24 months from the last violation.]

[(3) A chemical system other than chlorine will be required to comply with the ultraviolet frequency schedule.]

[(4) The executive director may establish a more frequent measurement schedule if necessary to protect human health or the environment.]

(1) Sampling must be spaced across the time period at approximately equal intervals, with the exception of the five times per week sampling schedule. Five samples per week must be taken one on each of five days during a seven-day period.

(2) A permittee that has at least 12 months of uninterrupted compliance with its bacteria limit may notify the commission of its compliance and request a less frequent measurement schedule.

(A) If the commission finds that a less frequent measurement schedule is protective of human health and the environment, the permittee will be given a less frequent measurement schedule. Daily will drop to five/week, five/week to three/week, three/week to one/week, one/week to two/month, two/month to one/month, one/month to one/quarter, and one/quarter to one/six months.

(B) A violation of the bacteria limit by a facility that has been granted a less frequent measurement schedule will require the permittee to return to the standard frequency schedule.

(C) A permittee that has had a violation while on a less frequent measurement schedule may not apply for another reduction in measurement frequency for at least 24 months from the last violation.

(3) A chemical system other than chlorine will be required to comply with the ultraviolet frequency schedule.

(4) The executive director may establish a more frequent measurement schedule if necessary to protect human health or the environment.

Figure: 30 TAC §319.9(c)

[Figure: 30 TAC §319.9(c)]

Table 3

MEASUREMENT FREQUENCY FOR NONDOMESTIC WASTEWATER EFFLUENT

(Based on Permitted Daily Average Flow)

[Table 3 FREQUENCY OF MEASUREMENT VOLUME OF MGD]					
Parameter	0 to less than 0.05 <u>MGD</u>	0.05 to less than 0.50 <u>MGD</u>	0.50 to less than 2.00 <u>MGD</u>	2.00 to less than 10.00 <u>MGD</u>	10.00 <u>MGD</u> or greater
Flow	One instantaneous measurement per operating day except on sample days when 3 instantaneous measurements made concurrently with the collection of sample portions are required.	One instantaneous measurement per operating shift - on sample days concurrent with the collection of a sample portion.	One instantaneous measurement per operating shift - on sample days concurrent with the collection of a sample portion or the reading from a totalizing flow meter.	Six instantaneous measurements per day spaced at equal intervals during the operating period or the reading from a totalizing flow meter.	Instantaneous measurements made each operating hour or the reading from a totalizing flow meter.
pH (a)	1 per day	1 per day	1 per day	1 per day	1 per day
Temperature (b)	1 per day	3 per day	3 per day	6 per day	12 per day
BOD ₅ [BOD]	1 per week	2 per week	2 per week	3 per week	1 per day
COD	1 per week	2 per week	2 per week	3 per week	1 per day
TOC	1 per week	2 per week	2 per week	3 per week	1 per day
Oil & Grease (c)	1 per week	2 per week	2 per week	3 per week	1 per day
Ammonia Nitrogen	1 per week	2 per week	2 per week	3 per week	1 per day
Arsenic	1 per week	2 per week	2 per week	3 per week	1 per day
Barium	1 per week	2 per week	2 per week	3 per week	1 per day
Boron	1 per week	2 per week	2 per week	3 per week	1 per day
Cadmium	1 per week	2 per week	2 per week	3 per week	1 per day
Chromium	1 per week	2 per week	2 per week	3 per week	1 per day
Copper	1 per week	2 per week	2 per week	3 per week	1 per day
Lead	1 per week	2 per week	2 per week	3 per week	1 per day
Manganese	1 per week	2 per week	2 per week	3 per week	1 per day
Mercury	1 per week	2 per week	2 per week	3 per week	1 per day
Nickel	1 per week	2 per week	2 per week	3 per week	1 per day
Selenium	1 per week	2 per week	2 per week	3 per week	1 per day
Silver	1 per week	2 per week	2 per week	3 per week	1 per day
Zinc	1 per week	2 per week	2 per week	3 per week	1 per day
TSS	1 per week	2 per week	2 per week	3 per week	1 per day
TDS	1 per week	2 per week	2 per week	3 per week	1 per day
Chloride	1 per week	2 per week	2 per week	3 per week	1 per day

Sulphate	1 per week	2 per week	2 per week	3 per week	1 per day
Nitrate Nitrogen	1 per week	2 per week	2 per week	3 per week	1 per day
Sulfide (c)	1 per week	2 per week	2 per week	3 per week	1 per day
Phenol (c)	1 per week	2 per week	2 per week	3 per week	1 per day
Collection of Samples	Samples shall be composite samples made up of three portions, sized proportional to flow, collected to no closer together than one hour and over a span of time not exceeding 24 hours.	Samples shall be composite samples made up of three portions, sized proportional to flow, one portion being collected during each operating shift or otherwise suitably distributed throughout the operating day.	Samples shall be composite samples made up of three portions, sized proportional to flow, one portion being collected during each operating shift or otherwise suitably distributed throughout the operating day.	Samples shall be composite samples made up of six portions, sized proportional to flow, collected concurrently with the instantaneous flow measurements made during a 24-hour time span.	Samples shall be 24-hour composite samples collected in 12 or more individual portions, sized proportional to flow, equally spaced throughout the operating day.

Where:

- (a) The required laboratory tests shall be made on grab samples and analyzed immediately after collection or analyzed *in situ* at the permit sampling point.
- (b) The temperature shall be measured *in situ* on the water at the permit sampling point.
- (c) The required laboratory tests shall be made on grab samples.

Figure: 30 TAC §319.22

[Figure: 30 TAC §319.22]

Table 1

MAXIMUM METAL CONCENTRATIONS FOR INLAND WATERS

(in milligrams per liter)

[Not to Exceed]

Metal	Average	Daily Composite	Grab Sample
Arsenic	0.1	0.2	0.3
Barium	1.0	2.0	4.0
Cadmium	0.05	0.1	0.2
Chromium	0.5	1.0	5.0
Copper	0.5	1.0	2.0
Lead	0.5	1.0	1.5
Manganese	1.0	2.0	3.0
Mercury	0.005	0.005	0.01
Nickel	1.0	2.0	3.0
Selenium	0.05	0.1	0.2
Silver	0.05	0.1	0.2
Zinc	1.0	2.0	6.0

Figure: 30 TAC §319.23

[Figure: 30 TAC §319.23]

Table 1

MAXIMUM METAL CONCENTRATIONS FOR TIDAL WATERS

(in milligrams per liter)

[Not to Exceed]

Metal	Average	Daily Composite	Grab Sample
Arsenic	0.1	0.2	0.3
Barium	1.0	2.0	4.0
Cadmium	0.1	0.2	0.3
Chromium	0.5	1.0	5.0
Copper	0.5	1.0	2.0
Lead	0.5	1.0	1.5
Manganese	1.0	2.0	3.0
Mercury	0.005	0.005	0.01
Nickel	1.0	2.0	3.0
Selenium	0.1	0.2	0.3
Silver	0.05	0.1	0.2
Zinc	1.0	2.0	6.0

Residential Use, Category I

Coastal Easement Rent and Fees

Notable Definitions

Residential use, Category I--One single-family residential dwelling and accessory building(s) on one defined lot or parcel of land; both land and improvements are typically under the same ownership. (Definition from 31 TAC §155.1(d)(47))

Fill formula--Encumbered state land multiplied by the appraised market value of adjacent littoral property multiplied by the return on investment. (Definition from 31 TAC §155.1(d)(28))

Fees

Application Fee: \$25.00 (per occurrence on new, amendment, and assignment applications)

Rent

Rental consideration is determined by taking the greater of:

- i) Minimum Rent (\$25.00 annually per project component)
- ii) Project Component Rent (listed below)

Project Component	Annual Rent
Piers, Docks, and Watercraft Storage	\$0.03 per square foot
Multiple Boatlift, Boathouse, Covered Boat Slip, Oversized Personal and Watercraft Slip	\$250.00 for each additional
Covered Second Level (Partially or Fully)	\$75.00 per structure
Breakwater, Jetty, Groin	\$0.20 per square foot
Dredge	
New Dredge	\$0.50 per cubic yard ¹
Existing Dredge	\$0.01 per square foot
Fill	
Proposed Fill	\$0.10 per square foot -OR- Fill Formula
Existing Fill	Variable ²
Concrete Stairs and Slabs	\$0.03 per square foot
Rip Rap and/or Vegetative Shoreline Stabilization	No rent ³

¹ New Dredge is a one-time rent assessed at the initial dredging, subject to §155.15(b)(4)

² (-a-) existing fill (excluding bulkheads) not permitted as of August 15, 1995: \$0.02 per square foot

(-b-) existing fill permitted after August 15, 1995: \$0.10 per square foot -OR- fill formula

(-c-) existing fill at renewal: 110% of the previous contract fill rate for each five year period

³ Projects that consist only of rip rap or vegetative shoreline stabilization have no minimum rent

Figure: 31 TAC §155.15(b)(1)(C)(ii)

Residential Use, Category II

Coastal Easement Rent and Fees

Notable Definitions

Residential use, Category II--Multi-family residential units per defined lot or parcel of land; land and individual units may be separately owned; includes uses by condominium developments and homeowners associations acting for and on behalf of owners of a multi-family residential development, but does not include time-share developments or any use that includes commercial activities. (Definition from 31 TAC §155.1(d)(48))

Fill formula--Encumbered state land multiplied by the appraised market value of adjacent littoral property multiplied by the return on investment. (Definition from 31 TAC §155.1(d)(28))

Fees

Application Fee: \$50.00 (per occurrence on new, amendment, and assignment applications)

Rent

Rental consideration is determined by taking the greater of:

- i) Minimum Rent (\$100.00 per year)
- ii) Project Component Rent (listed below)

Project Component	Annual Rent
Piers, Docks, and Watercraft Storage	\$0.15 per square foot
Breakwater, Jetty, Groin	\$0.20 per square foot
Dredge	
New Dredge	\$0.50 per cubic yard ¹
Existing Dredge	\$0.01 per square foot
Open Encumbered Area	\$0.02 per square foot
Fill	
Proposed Fill	\$0.10 per square foot -OR- Fill Formula
Existing Fill	Variable ²
Concrete Stairs and Slabs	\$0.15 per square foot
Rip Rap and/or Vegetative Shoreline Stabilization	No rent ³

¹ New Dredge is a one-time rent assessed at the initial dredging, subject to §155.15(b)(4)

² (-a-) existing fill (excluding bulkheads) not permitted as of August 15, 1995: \$0.02 per square foot

 (-b-) existing fill permitted after August 15, 1995: \$0.10 per square foot -OR- fill formula

 (-c-) existing fill at renewal: 110% of the previous contract fill rate for each five year period

³ Projects that consist only of rip rap or vegetative shoreline stabilization have no minimum rent

Figure: 31 TAC §155.15(b)(1)(C)(iii)

Residential Use, Category III

Coastal Easement Rent and Fees

Notable Definitions

Residential use, Category III--One single family residential dwelling and accessory building(s) on one defined lot or parcel of land that is being used for (in part or whole) short-term residential rental--i.e. daily, weekly, monthly, seasonal; both land and improvements are typically under the same ownership. (Definition from 31 TAC §155.1(d)(49))

Fill formula--Encumbered state land multiplied by the appraised market value of adjacent littoral property multiplied by the return on investment. (Definition from 31 TAC §155.1(d)(28))

Fees

Application Fee: \$50.00 (per occurrence on new, amendment, and assignment applications)

Rent

Rental consideration is determined by taking the greater of:

- i) Minimum Rent (\$100.00 per year)
- ii) Project Component Rent (listed below)

Project Component	Annual Rent
Piers, Docks, and Watercraft Storage	\$0.15 per square foot
Multiple Boatlift, Boathouse, Covered Boat Slip, Oversized Personal and Watercraft Slip	\$250.00 for each additional
Covered Second Level (Partially or Fully)	\$75.00 per structure
Breakwater, Jetty, Groin	\$0.20 per square foot
Dredge	
New Dredge	\$0.50 per cubic yard ¹
Existing Dredge	\$0.01 per square foot
Open Encumbered Area	\$0.02 per square foot
Fill	
Proposed Fill	\$0.10 per square foot -OR- Fill Formula
Existing Fill	Variable ²
Concrete Stairs and Slabs	\$0.15 per square foot
Rip Rap and/or Vegetative Shoreline Stabilization	No rent ³

¹ New Dredge is a one-time rent assessed at the initial dredging, subject to §155.15(b)(4)

² (-a-) existing fill (excluding bulkheads) not permitted as of August 15, 1995: \$0.02 per square foot

(-b-) existing fill permitted after August 15, 1995: \$0.10 per square foot -OR- fill formula

(-c-) existing fill at renewal: 110% of the previous contract fill rate for each five year period

³ Projects that consist only of rip rap or vegetative shoreline stabilization have no minimum rent

Commercial and Industrial Activity

Commercial Coastal Easement Rent and Fees

Notable Definitions

Commercial activity--Activity undertaken by a lessee or any other person with or without consent, which is designed to enhance or accommodate a venture associated with a revenue generating activity. This definition excludes industrial activity, but includes residential uses other than those included in the definition of residential use, Category III if there is revenue generating activity conducted on the premises. (Definition from TAC §155.1(d)(17))

Basin formula--The amount of encumbered state land multiplied by the appraised market value of the adjacent littoral property multiplied by the submerged land discount multiplied by the return on investment. (Definition from 31 TAC §155.1(d)(5))

Submerged land discount--60% discount used in formulas when the easement is commercial, 70% discount used in formulas when the easement is industrial. (Definition from 31 TAC §155.1(d)(59))

Fill formula--Encumbered state land multiplied by the appraised market value of adjacent littoral property multiplied by the return on investment. (Definition from 31 TAC §155.1(d)(28))

Fees

Application Fee: \$100.00 (per occurrence on new, amendment, and assignment applications)

Rent

Rental consideration is determined by taking the greater of:

- i) Minimum Rent (\$100.00 per year)
- ii) Basin Formula
- iii) Project Component Rent (listed below)
- iv) Marina Rent (listed below, and applied if applicable)

Project Component	Annual Rent
Piers, Docks, and Watercraft Storage	\$0.20 per square foot
Wharf (industrial only)	\$0.30 per square foot
Breakwater, Jetty, Groin	\$0.20 per square foot
Dredge	
New Dredge	\$0.50 per cubic yard ¹
Existing Dredge	\$0.01 per squarefoot
Open Encumbered Area	\$0.03 per square foot
Fill	
Proposed Fill	\$0.20 per square foot -OR- Fill Formula
Existing Fill	Variable ²
Concrete Stairs and Slabs	\$0.20 per square foot
Rip Rap and/or Vegetative Shoreline Stabilization	No rent ³
Marina	Annual Rent
Marina in Clear Lake	\$4.00 per linear foot of boatslip
Marina outside of Clear Lake	\$3.00 per linear foot of boatslip

¹ New Dredge is a one-time rent assessed at the initial dredging, subject to §155.15(b)(4)

² (-a) existing fill (excluding bulkheads) not permitted as of August 15, 1995: \$0.02 per square foot

(-b) existing fill permitted after August 15, 1995: \$0.20 per square foot -OR- fill formula

(-c) existing fill at renewal: 12.0% of the previous contract fill rate for each five year period

³ Projects that consist only of rip rap or vegetative shoreline stabilization have no minimum rent



IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 06/01/20 - 06/07/20 is 18% for Consumer¹/Agricultural/Commercial² credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 06/01/20 - 06/07/20 is 18% for Commercial over \$250,000.

¹ Credit for personal, family or household use.

² Credit for business, commercial, investment or other similar purpose.

TRD-202002152

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: May 26, 2020

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **July 6, 2020**. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on **July 6, 2020**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission's enforcement coordinators are available to discuss the AOs and/or the comment pro-

cedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: Arkema Incorporated; DOCKET NUMBER: 2020-0235-AIR-E; IDENTIFIER: RN100209444; LOCATION: Houston, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §122.143(4) and §122.146(2), Federal Operating Permit Number O1551, General Terms and Conditions and Special Terms and Conditions Number 13, and Texas Health and Safety Code, §382.085(b), by failing to submit a permit compliance certification within 30 days of any certification period; PENALTY: \$5,137; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: Blue Bell Manor Utility Co., Incorporated; DOCKET NUMBER: 2020-0195-PWS-E; IDENTIFIER: RN101177707; LOCATION: Houston, Harris County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(f)(2) and (3), (3)(A)(i)(III) and (ii), by failing to maintain water works operation and maintenance records and make them readily available for review by the executive director upon request; PENALTY: \$50; ENFORCEMENT COORDINATOR: Jée Willis, (512) 239-1115; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: Charles Johnson; DOCKET NUMBER: 2020-0251-WQ-E; IDENTIFIER: RN108755828; LOCATION: Livingston, Polk County; TYPE OF FACILITY: aggregate production operation; RULE VIOLATED: 30 TAC §342.25(b), by failing to register the site as an aggregate production operation no later than the tenth business day before the beginning date of regulated activities; PENALTY: \$5,000; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(4) COMPANY: City of Lone Star; DOCKET NUMBER: 2020-0180-MWD-E; IDENTIFIER: RN101920056; LOCATION: Lone Star, Morris County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0014365001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$1,563; ENFORCEMENT COORDINATOR: Had Darling, (512) 239-2520; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(5) COMPANY: DG RV Properties, LLC; DOCKET NUMBER: 2020-0226-PWS-E; IDENTIFIER: RN108378654; LOCATION: Cleveland, San Jacinto County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(e)(1) and (h)(1) and Texas Health and Safety Code, §341.035(a), and TCEQ Agreed Order Docket Number 2015-0970-PWS-E, Ordering Provision Number 2.e, by failing to submit plans and specifications to the executive director for review and approval prior to the establishment of a new public water supply; PENALTY: \$60; ENFORCEMENT COORDINATOR:

Aaron Vincent, (512) 239-0855; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(6) COMPANY: Erling Johnson, LLC; DOCKET NUMBER: 2020-0207-PWS-E; IDENTIFIER: RN101194496; LOCATION: Buchanan Dam, Llano County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(e), by failing to provide the results of beryllium sampling to the executive director (ED) for the January 1, 2019 - March 31, 2019, and April 1, 2019 - June 30, 2019, monitoring periods; 30 TAC §290.106(f)(3)(C) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.004 milligram per liter for beryllium based on a running annual average; 30 TAC §290.117(c)(2), (h), and (i)(3), by failing to conduct water quality parameter sampling at each of the facility's entry points and the required distribution sample sites, have the samples analyzed, and report the results to the ED for the July 1, 2018 - December 31, 2018, and January 1, 2019 - June 30, 2019, monitoring periods; and 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1st for each year, and failing to submit to the TCEQ by July 1st for each year a copy of the annual CCR and certification that the CCR is correct and consistent with compliance monitoring data for calendar year 2018; PENALTY: \$1,735; ENFORCEMENT COORDINATOR: Julianne Dewar, (817) 588-5861; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

(7) COMPANY: Galveston County; DOCKET NUMBER: 2020-0200-PST-E; IDENTIFIER: RN101737179; LOCATION: League City, Galveston County; TYPE OF FACILITY: emergency generator; RULES VIOLATED: 30 TAC §334.10(b)(2), by failing to assure that all underground storage tank (UST) recordkeeping requirements are met; 30 TAC §334.42(i) and TWC, §26.3475(c)(2), by failing to inspect all sumps, manways, overspill containers or catchment basins associated with an UST system at least once every 60 days to assure that their sides, bottoms, and any penetration points are maintained liquid tight; and 30 TAC §334.50(b)(1)(A) and (2)(B)(i) and TWC, §26.3475(b) and (c)(1), by failing to monitor the USTs in a manner which will detect a release at a frequency of at least once every 30 days and failing to provide release detection for the suction piping associated with the UST system; PENALTY: \$5,512; ENFORCEMENT COORDINATOR: Hailey Johnson, (512) 239-1756; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(8) COMPANY: JACKSON WATER SUPPLY CORPORATION; DOCKET NUMBER: 2020-0098-PWS-E; IDENTIFIER: RN101177194; LOCATION: Tyler, Smith County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and §290.122(b)(2)(A) and (f) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level (MCL) of 0.080 milligrams per liter (mg/L) for total trihalomethanes (TTHM), based on the locational running annual average, and failing to provide public notification and submit a copy of the public notification, accompanied with a signed Certificate of Delivery, to the executive director (ED) regarding the failure to comply with the MCL of 0.080 mg/L for TTHM for Stage 2 Disinfection Byproducts (DBP2) at Site 2 for the third quarter of 2019; 30 TAC §290.122(b)(3)(A) and (f), by failing to provide public notification and submit a copy of the public notification, accompanied with a signed Certificate of Delivery, to the ED regarding the failure to comply with the MCL of 0.080 mg/L for TTHM for DBP2 at Site 1 for the third quarter of 2017; 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of each public notification, accompanied with a signed Certificate of Delivery, to the ED regarding the failure to submit a Disinfection Level Quarterly Operating Report

to the ED by the tenth day of the month following each quarter for the second quarter of 2018 and regarding the failure to collect, within 24 hours of notification of the routine distribution total coliform-positive samples on March 14, 2018, at least one raw groundwater source *Escherichia coli* (or other approved fecal indicator) sample from each active groundwater source in use at the time of the distribution coliform-positive samples were collected; and 30 TAC §290.272 and §290.274(a), by failing to meet the adequacy, availability, and/or content requirements for the Consumer Confidence Report for the year 2018; PENALTY: \$3,267; ENFORCEMENT COORDINATOR: Samantha Duncan, (512) 239-2511; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(9) COMPANY: MarkWest Oklahoma Gas Company, L.L.C.; DOCKET NUMBER: 2020-0211-AIR-E; IDENTIFIER: RN105609333; LOCATION: Wheeler, Wheeler County; TYPE OF FACILITY: natural gas compression station; RULES VIOLATED: 30 TAC §122.143(4) and §122.145(2)(B) and (C), Federal Operating Permit Number O3124/General Operating Permit Number 514, Site-wide Requirements Number (b)(5), and Texas Health and Safety Code, §382.085(b), by failing to submit a deviation report for at least each six-month period after permit issuance and failing to submit the deviation report no later than 30 days after the end of each reporting period; PENALTY: \$2,438; ENFORCEMENT COORDINATOR: Toni Red, (512) 239-1704; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(10) COMPANY: MAXEY ENERGY COMPANY dba Uvalde Bulk Plant; DOCKET NUMBER: 2020-0035-PST-E; IDENTIFIER: RN101469567; LOCATION: Uvalde, Uvalde County; TYPE OF FACILITY: fleet refueling facility; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: \$7,500; ENFORCEMENT COORDINATOR: Karolyn Kent, (512) 239-2536; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(11) COMPANY: Monarch Utilities I L.P.; DOCKET NUMBER: 2020-0221-PWS-E; IDENTIFIER: RN101380848; LOCATION: Granbury, Hood County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the locational running annual average; PENALTY: \$3,510; ENFORCEMENT COORDINATOR: Amanda Conner, (512) 239-2521; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: Monarch Utilities I L.P.; DOCKET NUMBER: 2020-0246-PWS-E; IDENTIFIER: RN101281004; LOCATION: Flint, Smith County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to comply with the maximum contaminant level (MCL) of 0.080 milligrams per liter (mg/L) for total trihalomethanes, based on the locational running annual average; and 30 TAC §290.115(f)(1) and THSC, §341.0315(c), by failing to comply with the MCL of 0.060 mg/L for haloacetic acids based on the locational running annual average; PENALTY: \$3,450; ENFORCEMENT COORDINATOR: Jée Willis, (512) 239-1115; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(13) COMPANY: Oxy Vinyls, LP; DOCKET NUMBER: 2020-0120-AIR-E; IDENTIFIER: RN102518065; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: polyvinyl chloride plant; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), New Source Review

Permit Numbers 18384 and N002, Special Conditions Number 1, Federal Operating Permit Number O1362, General Terms and Conditions and Special Terms and Conditions Number 18, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$3,038; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$1,215; ENFORCEMENT COORDINATOR: Richard Garza, (512) 239-2697; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(14) COMPANY: Phillips 66 Company; DOCKET NUMBER: 2019-1729-AIR-E; IDENTIFIER: RN102495884; LOCATION: Borger, Hutchinson County; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: 30 TAC §§101.20(3), 111.111(a)(4)(A), 116.115(c), 116.715(a), and 122.143(4), Flexible Permit Numbers 9868A and PSDTX102M7, Special Conditions Numbers (SC) 1 and 24, New Source Review Permit Number 80799, SC Number 1, Federal Operating Permit Number O1440, General Terms and Conditions and Special Terms and Conditions Number 17, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$19,689; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$7,876; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(15) COMPANY: Rescar Companies; DOCKET NUMBER: 2020-0237-AIR-E; IDENTIFIER: RN100234681; LOCATION: Orange, Orange County; TYPE OF FACILITY: railcar painting and blast cleaning facility; RULES VIOLATED: 30 TAC §122.143(4) and §122.145(2)(C), Federal Operating Permit (FOP) Number O1532, General Terms and Conditions (GTC), and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit a deviation report no later than 30 days after the end of each reporting period; and 30 TAC §122.143(4) and §122.146(2), FOP Number O1532, GTC and Special Terms and Conditions Number 10, and THSC, §382.085(b), by failing to submit a permit compliance certification within 30 days of any certification period; PENALTY: \$7,125; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(16) COMPANY: SOUTHWESTERN PUBLIC SERVICE COMPANY; DOCKET NUMBER: 2020-0248-WDW-E; IDENTIFIER: RN100224641; LOCATION: Amarillo, Potter County; TYPE OF FACILITY: power plant; RULES VIOLATED: 30 TAC §331.64(d), 40 Code of Federal Regulations §146.67(f), and Waste Disposal Well (WDW) Permit Number 342 Provision Number VII.(E) Operating Parameters, by failing to use and maintain continuous recording devices in proper operating condition at all times at WDW Permit Number 342; PENALTY: \$6,000; ENFORCEMENT COORDINATOR: Carlos Molina, (512) 239-2557; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(17) COMPANY: Tic Toc Food Store Incorporated; DOCKET NUMBER: 2020-0229-PST-E; IDENTIFIER: RN101432219; LOCATION: Grand Prairie, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: \$3,694; ENFORCEMENT COORDINATOR: Karolyn Kent, (512) 239-2536; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(18) COMPANY: Town of Lakewood Village; DOCKET NUMBER: 2020-0201-PWS-E; IDENTIFIER: RN102682309; LOCATION: Little Elm, Denton County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(j) and Texas Health and Safety Code, §341.0351, by failing to notify the executive director and re-

ceive approval prior to making any significant change or addition to the systems production, treatment, storage, pressure maintenance, or distribution facilities; and 30 TAC §290.42(e)(3)(D), by failing to provide facilities for determining the amount of disinfectant used daily and the amount of disinfectant remaining for use; PENALTY: \$105; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(19) COMPANY: Valero Partners Lucas, LLC; DOCKET NUMBER: 2020-0232-AIR-E; IDENTIFIER: RN100210426; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: petroleum storage; RULES VIOLATED: 30 TAC §116.115(c), New Source Review Permit Number 7585, Special Conditions Number 1, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$1,000; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(20) COMPANY: Wal-Mart Stores Texas, LLC; DOCKET NUMBER: 2020-0171-EAQ-E; IDENTIFIERS: RN104234679, RN102618154, RN100716190, RN102653946, RN101690451; LOCATIONS: Georgetown and Round Rock, Williamson County; Austin, Travis County; and San Antonio, Bexar County; TYPE OF FACILITY: commercial development; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of an Edwards Aquifer Protection Plan prior to commencing a regulated activity over the Edwards Aquifer Recharge Zone and the Edwards Aquifer Transition Zone; PENALTY: \$9,563; ENFORCEMENT COORDINATOR: Alejandro Laje, (512) 239-2547; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 339-2929.

TRD-202002139

Charmaine Backens

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: May 26, 2020



Amended Notice of Application and Public Hearing for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls: Proposed Air Quality Registration Number 160169

APPLICATION. D&K Stocker Investments, LLC, 5116 Sun Valley Drive, Fort Worth, Texas 76119-6410 has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Registration Number 160169 to authorize the operation of a concrete batch plant. The facility is proposed to be located at 989 Kennedy Lane, Saginaw, Tarrant County, Texas 76131. This application is being processed in an expedited manner, as allowed by the commission's rules in 30 Texas Administrative Code, Chapter 101, Subchapter J. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. <http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=32.856613&lng=-97.346649&zoom=13&type=r>. This application was submitted to the TCEQ on February 18, 2020. The primary function of this plant is to manufacture concrete by mixing materials including (but not limited to) sand, aggregate, cement and water. The executive director has determined the application was technically complete on March 5, 2020.

PUBLIC COMMENT / PUBLIC HEARING. Public written comments about this application may be submitted at any time during the

public comment period. The public comment period begins on the first date notice is published and extends to the close of the public hearing. Public comments may be submitted either in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087, or electronically at www14.tceq.texas.gov/epic/eComment/. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record.

A public hearing has been scheduled, that will consist of two parts, an informal discussion period and a formal comment period. During the informal discussion period, the public is encouraged to ask questions of the applicant and TCEQ staff concerning the application, but comments made during the informal period will not be considered by the executive director before reaching a decision on the permit, and no formal response will be made to the informal comments. During the formal comment period, members of the public may state their comments into the official record. **Written comments about this application may also be submitted at any time during the hearing.** The purpose of a public hearing is to provide the opportunity to submit written comments or an oral statement about the application. **The public hearing is not an evidentiary proceeding.**

The Public Hearing is to be held:

Thursday, June 18, 2020, at 6:00 p.m.

Members of the public may listen to the hearing by calling, toll free, (562) 247-8321 and entering access code 994-640-090. Members of the public who would like to ask questions or provide comments during the hearing may access the meeting via webcast by following this link: <https://www.gotomeeting.com/webinar/join-webinar> and entering Webinar ID 989-423-971. Those without internet access may call (512) 239-1201 before the hearing begins for assistance in accessing the hearing and participating telephonically.

Additional information will be available on the agency calendar of events at the following link: <https://www.tceq.texas.gov/agency/decisions/hearings/calendar.html>.

RESPONSE TO COMMENTS. A written response to all formal comments will be prepared by the executive director after the comment period closes. The response, along with the executive director's decision on the application, will be mailed to everyone who submitted public comments and the response to comments will be posted in the permit file for viewing.

The executive director shall approve or deny the application not later than 35 days after the date of the public hearing, considering all comments received within the comment period, and base this decision on whether the application meets the requirements of the standard permit.

CENTRAL/REGIONAL OFFICE. The application will be available for viewing and copying at the TCEQ Central Office and the TCEQ Dallas/Fort Worth Regional Office, located at 2309 Gravel Dr, Fort Worth, Texas 76118-6951, during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, beginning the first day of publication of this notice.

INFORMATION. If you need more information about this permit application or the permitting process, please call the Public Education Program toll free at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from D&K Stocker Investments, LLC, 5116 Sun Valley Drive, Fort Worth, Texas 76119-6410, or by calling Ms. Monique Wells, Environmental Consultant, CIC Environmental LLC at (512) 292-4314.

Amended Notice Issuance Date: May 7, 2020

TRD-202002168
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: May 27, 2020



Notice of Correction - Notice of Opportunity to Comment on Settlement of Environmental Claims under the Texas Health and Safety Code

In the May 22, 2020, issue of the *Texas Register* (45 TexReg 3536), the Texas Commission on Environmental Quality published notice of an Administrative Settlement Agreement and Order on Consent for Certain Response Action Activities by Bona Fide Prospective Purchaser. The error is as submitted by the commission.

The name of the Purchaser was incorrectly identified as Trammell Crow Company. The reference to the Purchaser should be corrected to: "Conroe Logistics Center, LLC."

TRD-202002140
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: May 26, 2020



Notice of Hearing Lone Star Ports, LLC: SOAH Docket No. 582-20-3438; TCEQ Docket No. 2020-0511-AIR; Proposed Permit No. 157150

APPLICATION.

Lone Star Ports, LLC, 14 Birchwood Park Place, The Woodlands, Texas 77382-2026, has applied to the Texas Commission on Environmental Quality (TCEQ) for issuance of Proposed Air Quality Permit Number 157150, which would authorize construction of the Harbor Island Marine Terminal located adjacent to Highway 361 & northeast of ferry landing, Port Aransas, Nueces County, Texas 78336. This application was processed in an expedited manner, as allowed by the commission's rules in 30 Texas Administrative Code (TAC), Chapter 101, Subchapter J. This application was submitted to the TCEQ on May 31, 2019. The proposed facility will emit the following contaminants: carbon monoxide, hazardous air pollutants, hydrogen sulfide, nitrogen oxides, organic compounds, particulate matter including particulate matter with diameters of 10 microns or less and 2.5 microns or less and sulfur dioxide. As a public courtesy, we have provided the following Web page to an online map of the site or the facility's general location. The online map is not part of the application or the notice: <https://tceq.maps.arcgis.com/apps/webappviewer/index.html?id=db5bac44afbc468bbddd360f8168250f&marker=-97.071666%2C27.851111&level=12>. For the exact location, refer to the application.

The TCEQ Executive Director has prepared a draft permit which, if approved, would establish the conditions under which the facility must operate. The permit application, executive director's preliminary decision, and draft permit are available for viewing and copying at the TCEQ central office, the TCEQ Corpus Christi Regional Office, and at the Anita and W.T. Neyland Public Library, 1230 Carmel Parkway, Corpus Christi, Nueces County. These documents may also be viewed online at <https://disorboconsult.box.com/s/u6jha9m5d1kvugzl5e9qdujeb4wpi2t>. The facility's

compliance file, if any exists, is available for public review at the TCEQ Corpus Christi Regional Office, NRC Building Suite 1200, 6300 Ocean Dr, Unit 5839, Corpus Christi, Texas.

DIRECT REFERRAL.

The Notice of Application and Preliminary Decision was published on November 28, 2019. On April 1, 2020, the Applicant filed a request for direct referral to the State Office of Administrative Hearings (SOAH). Therefore, the chief clerk has referred this application directly to SOAH for a hearing on whether the application complies with all applicable statutory and regulatory requirements.

CONTESTED CASE HEARING.

Considering directives to protect public health, the State Office of Administrative Hearings (SOAH) will conduct a preliminary hearing via Zoom videoconference on the date listed below. A Zoom meeting is a secure, free meeting held over the internet that allows video, audio, or audio/video conferencing.

10:00 a.m. - June 30, 2020

To join the Zoom meeting via computer:

www.zoom.us/join

Meeting ID: 956-2043-3280

Password: 3QCi0N

or

To join the Zoom meeting via telephone:

(346) 248-7799

Meeting ID: 956-2043-3280

Password: 580189

or

To join the Zoom meeting via Smart Device:

Download the free app

Meeting ID: 956-2043-3280

Password: 3QCi0N

Additional details and methods for joining the Zoom meeting are available online at: [https://www.tceq.texas.gov/assets/public/comm_exec/agendas/comm/backup/SOAH/Lone Star Ports LLC/LSPZoomInfo.pdf](https://www.tceq.texas.gov/assets/public/comm_exec/agendas/comm/backup/SOAH/Lone_Star_Ports_LLC/LSPZoomInfo.pdf)

Visit the SOAH website for registration at: <http://www.soah.texas.gov/>

or call SOAH at (512) 475-4993.

The purpose of a preliminary hearing is to establish jurisdiction, name the parties, establish a procedural schedule for the remainder of the proceeding, and to address other matters as determined by the judge. The evidentiary hearing phase of the proceeding, which will occur at a later date, will be similar to a civil trial in state district court. The hearing will be conducted in accordance with Chapter 2001, Texas Government Code; Chapter 382, Texas Health and Safety Code; TCEQ rules including 30 TAC Chapter 116, Subchapters A and B; and the procedural rules of the TCEQ and SOAH, including 30 TAC Chapter 80 and 1 TAC Chapter 155.

To request to be a party, you must attend the hearing and show you would be affected by the application in a way not common to the general public. Any person may attend the hearing and request to be a

party. Only persons named as parties may participate in the contested case proceeding.

MAILING LIST.

You may ask to be placed on a mailing list to obtain additional information on this application by sending a request to the Office of the Chief Clerk at the address below.

AGENCY CONTACTS AND INFORMATION.

Public comments and requests must be submitted either electronically at www.tceq.texas.gov/agency/decisions/cc/comments.html, or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. If you communicate with the TCEQ electronically, please be aware that your email address, like your physical mailing address, will become part of the agency's public record. For more information about this permit application, the permitting process, or the contested case hearing process, please call the Public Education Program toll free at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040. General information regarding the TCEQ may be obtained electronically at www.tceq.texas.gov.

In accordance with 1 Texas Administrative Code §155.401(a), Notice of Hearing, "Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH."

INFORMATION.

If you need more information about the hearing process for this application, please call the Public Education Program, toll free, at (800) 687-4040. General information regarding the TCEQ can be found at www.tceq.texas.gov.

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-4993, at least one week prior to the hearing.

Further information may also be obtained from Lone Star Ports, LLC at the address stated above or by calling Mr. Neal A. Nygaard, Chief Operating Officer Principal, DiSorbo Consulting, LLC at (713) 955-1221.

Issued: May 26, 2020

TRD-202002167

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 27, 2020



Notice of Opportunity to Comment on a Default Order of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Order (DO). The commission staff proposes a DO when the staff has sent the Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity

to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **July 6, 2020**. The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of the proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on July 6, 2020**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorney is available to discuss the DO and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the DO shall be submitted to the commission in **writing**.

(1) COMPANY: Khaled Hassan dba Corner Store; DOCKET NUMBER: 2019-0744-PST-E; TCEQ ID NUMBER: RN101843407; LOCATION: 1808 West Gentry Parkway, Tyler, Smith County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the pressurized piping associated with the UST system; TWC, §26.3475(c)(1) and 30 TAC §334.50(d)(1)(B)(ii), by failing to conduct reconciliation of detailed inventory control records at least once every 30 days in a manner sufficiently accurate to detect a release as small as the sum of 1.0% of the total substance flow-through for the 30-day period plus 130 gallons; and 30 TAC §334.10(b)(2), by failing to assure that all UST recordkeeping requirements are met; PENALTY: \$4,921; STAFF ATTORNEY: Taylor Pearson, Litigation Division, MC 175, (512) 239-5937; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

TRD-202002146

Charmaine Backens

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: May 26, 2020



Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **July 6, 2020**. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper,

inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on July 6, 2020**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: Allen Watts dba Lago Vista Water System; DOCKET NUMBER: 2019-1165-PWS-E; TCEQ ID NUMBER: RN102676350; LOCATION: 1918 South State Highway 80, Luling, Guadalupe County; TYPE OF FACILITY: public water system (PWS); RULES VIOLATED: 30 TAC §290.46(v), by failing to ensure that all electrical wiring is securely installed in compliance with a local or national electrical code. Specifically, the electrical wiring for the well and pump house was not in conduit; 30 TAC §290.43(c)(4), by failing to ensure that all clearwells and water storage tanks have a liquid level indicator located at the tank site; 30 TAC §290.121(a) and (b), by failing to develop and maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; 30 TAC §290.46(n)(1), by failing to maintain accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tanks at the PWS until the facility is decommissioned; 30 TAC §290.46(f)(2) and (3)(A)(i)(III), by failing to maintain water works operation and maintenance records and make them readily available for review by the executive director upon request. Specifically, the records of the amount of each chemical used each week were not available; 30 TAC §290.42(l), by failing to maintain a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.46(t), by failing to post a legible sign at the facility's production, treatment, and storage facilities in plain view that contains the name of the facility and an emergency telephone number where a responsible official can be contacted. Specifically, the ownership sign posted on the pump house was faded and the contact information was not legible; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment. Specifically, the facility was overgrown with trees and shrubs, the well meter was inoperable, and the barbed wire was not angled outward at a 45-degree angle; 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary control easement for all land within 150 feet of the facility's well; 30 TAC §290.46(m)(1)(A), by failing to conduct an annual inspection of the facility's ground storage tank; 30 TAC §290.46(n)(2), by failing to provide an accurate and up-to-date map of the distribution system so that valves and mains can be easily located during emergencies; 30 TAC §290.46(i), by failing to adopt an adequate plumbing ordinance, regulations, or service agreement with provisions for proper enforcement to ensure that neither cross-connections nor other unacceptable plumbing practices are permitted; 30 TAC §290.43(c)(3), by failing to cover the overflow's discharge opening with a gravity-hinged and

weighted cover, an elastomeric duckbill valve, or other approved device to prevent the entrance of insects and other nuisances, which closes automatically and fits tightly with no gap over 1/16 inch. Specifically, the overflow did not have a gravity-hinged and weighted cover; 30 TAC §290.110(c)(4)(A), by failing to monitor the disinfectant residual at representative locations in the distribution system at least once every seven days; and Texas Health and Safety Code, §341.033(a) and 30 TAC §290.46(e)(4)(A), by failing to use a water works operator who holds a Class "D" or higher license; PENALTY: \$3,286; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: Carol Mahan, Tanner Mahan, Holly P. Wright, and Tyler O. Wright; DOCKET NUMBER: 2018-1447-WR-E; TCEQ ID NUMBER: RN104076856; LOCATION: San Saba River, Menard County; TYPE OF FACILITY: real property; RULES VIOLATED: 30 TAC §297.51 and Certificate of Adjudication Number 14-1841A, Time Limitation Number 4 and Special Condition Number 5.A., by failing to commence or complete construction within the time specified in the permit. Specifically, respondents failed to complete construction of a gate within the dam within six months of issuance of Certification of Adjudication Number 14-1841A, or by June 13, 2017; PENALTY: \$4,000; STAFF ATTORNEY: Clayton Smith, Litigation Division, MC 175, (512) 239-6224; REGIONAL OFFICE: San Angelo Regional Office, 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(3) COMPANY: City of Rosebud; DOCKET NUMBER: 2019-0353-PWS-E; TCEQ ID NUMBER: RN101392322; LOCATION: 716 North Stallworth Street, Rosebud, Falls County; TYPE OF FACILITY: public water system (PWS); RULES VIOLATED: 30 TAC §290.44(h)(4), by failing to have all backflow prevention assembly devices tested upon installation and on an annual basis by a recognized backflow assembly tester and certify that they are operating within specifications. Specifically, the backflow prevention assembly devices at the wastewater treatment plant and the health clinic were not tested annually; 30 TAC §290.110(c)(5)(B)(iii), by failing to monitor nitrite and nitrate (as nitrogen) quarterly at the first customer for systems that have chloramines present; Texas Health and Safety Code, §341.0315(c) and 30 TAC §290.45(f)(4), by failing to provide water purchase contract that authorizes a maximum daily purchase rate, or a uniform purchase rate in the absence of a specified daily purchase rate, plus an actual production capacity at the system, of at least 0.56 gallon per minute (gpm) per connection, as the approved alternative capacity requirement. Specifically, with 742 connections and no production capacity at the system, the facility is required to provide 415.5 gpm in contracted production capacity to meet the approved alternative capacity requirement. But the facility's purchase water contract only provided 400 gpm, indicating a 3.7% deficiency; and 30 TAC §290.46(f)(2) and (3)(E)(iv), by failing to maintain water works operation and maintenance records and make them readily available for review by the executive director upon request. Specifically, copies of Customer Service Inspection reports were not available; PENALTY: \$525; STAFF ATTORNEY: John S. Mercurief II, Litigation Division, MC 175, (512) 239-6944; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(4) COMPANY: Martha Guidry; DOCKET NUMBER: 2019-0869-MSW-E; TCEQ ID NUMBER: RN109748004; LOCATION: east side of County Road 170, approximately 2000 feet south of the intersection of County Road 170 and County Road 178, San Augustine, San Augustine County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) site; RULE VIOLATED: 30 TAC §330.15 (a) and (c), by causing, suffering, allowing, or permitting the unauthorized disposal

of MSW. Specifically, approximately 49 cubic yards of MSW consisting of household goods, including miscellaneous metal items, aerosol cans, furniture, paint cans, shingles, tiles, dry wall, plastic five-gallon buckets, plastic bottles, plastic toys, a rocking horse, and a cabinet were disposed of at the site; PENALTY: \$1,188; STAFF ATTORNEY: Vas Manthos, Litigation Division, MC 175, (512) 239-0181; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-202002145
Charmaine Backens
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: May 26, 2020

◆ ◆ ◆
Notice of Public Comment on Proposed Revisions to 30 TAC Chapter 319

The Texas Commission on Environmental Quality (commission) is accepting written comment on the proposed revisions to §§319.1, 319.2, 319.4 - 319.9, 319.11, 319.12, 319.22, 319.23, 319.25, 319.28, and 319.29; and the repeal of §319.3 of 30 Texas Administrative Code Chapter 319, General Regulations Incorporated Into Permits.

The proposed rulemaking would clarify the procedures for approval of alternate test procedures, remove inconsistencies, improve rule structure, and improve readability.

Written comments may be submitted to Andreea Vasile, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <https://www6.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the *eComments* system. All comments should reference Rule Project Number 2019-115-319-OW. The comment period closes July 6, 2020. 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 Sarah A. Johnson, Water Quality Division, (512) 239-4649.

TRD-202002013
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: May 21, 2020

◆ ◆ ◆
Notice of Public Comment on Proposed Revisions to 30 TAC Chapter 325

The Texas Commission on Environmental Quality (commission) is accepting written comments regarding the proposed revisions to 30 Texas Administrative Code (TAC) Chapter 325, Hazardous Substances Inventory, proposed repeal of §§325.1 - 325.3 and simultaneous proposal of new §§325.1 - 325.4.

This proposed rulemaking would repeal and replace the existing rules, remove obsolete references, provide consistency with federal rules, provide clarity to definitions, and add requirements stemming from the new online reporting system. In addition, the proposed rulemaking would include changes to reduce the number of consolidated filings of multiple Tier II reports.

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 (512) 239-4808. Electronic comments may be submitted at: <https://www6.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2020-015-325-CE. **The comment period closes July 6, 2020.** 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 Melinda Johnston, Critical Infrastructure Division, (512) 239-5832.

TRD-202002018

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: May 21, 2020



Notice of Public Meeting for Municipal Solid Waste Permit Amendment: Proposed Permit No. 1590B

Application. City of Denton, 1527 S. Mayhill Road, Denton, Texas 76208, owner/operator of a Type I Municipal Solid Waste Disposal Facility, has applied to the Texas Commission on Environmental Quality (TCEQ) for a major permit amendment to authorize the vertical and lateral expansion of the waste limits, a lateral expansion of the permit boundary of the City of Denton Landfill, incorporate all previously authorized processing operations and activities, add a Class 1 nonhazardous industrial waste disposal cell, and change the name of the facility to City of Denton ECO-Waste to Energy, Recycling, Composting, and Solar (ECO-W. E. R. C. S.) Complex. The facility is located at 1527 S. Mayhill Road, Denton, Texas 76208 in Denton County. The TCEQ received this application on February 10, 2017. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: <https://arcg.is/DSnPC>. For exact location, refer to application.

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements.

Public Comment/Public Meeting. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application and no formal response will be made. Response will be provided orally during the Informal Discussion Period. During the Formal Discussion Period on the permit application, members of the public may state their formal comments orally into the official record. A written response to all formal comments will be prepared by the Executive Director. All formal comments will be considered before a decision is reached on the permit application. A copy of the written response will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

Thursday, June 25, 2020 at 7:00 p.m.

Members of the public who would like to ask questions or provide comments during the meeting may access the meeting via webcast by following this link: <https://www.gotomeeting.com/webinar/join-webinar> and entering Webinar ID 392-880-443. Those without internet access may call (512) 239-1201 before the meeting begins for assistance in accessing the meeting and participating telephonically. Members of the public who wish to only listen to the meeting may call, toll free, (631) 992-3221 and enter access code 796-132-832.

Las personas que deseen escuchar o participar en la reunión en español pueden llamar al (844) 368-7161 e ingresar el código de acceso 904535#. Para obtener más información o asistencia, comuníquese con Jaime Fernández al (512) 239-2566.

Additional information will be available on the agency calendar of events at the following link: <https://www.tceq.texas.gov/agency/decisions/hearings/calendar.html>.

Information. Citizens are encouraged to submit written comments anytime during the meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at <https://www14.tceq.texas.gov/epic/eComment/>. Please note that the end of the public comment period is at the close of the public meeting. If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, toll free, at (800) 687-4040. General information can be found at our Web site at www.tceq.texas.gov. *Si desea información en español, puede llamar al (800) 687-4040.*

The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at 1527 S. Mayhill Road, Denton, Texas 76208. The permit application, Executive Director's preliminary decision, and draft permit may also be viewed online at <http://www.team-psc.com/engineering-sector/solid-waste/tceq-permits/>. Further information may also be obtained from the City of Denton at the address stated above or by calling Mr. Brian Boerner at (940) 349-8001.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least one week prior to the meeting.

Issued Date: May 22, 2020

TRD-202002169

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 27, 2020



Notice of Water Quality Application

The following notices were issued on May 20, 2020, and May 22, 2020.

The following does not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin Texas 78711-3087 WITHIN 30 DAYS OF THE ISSUED DATE OF THE NOTICE.

City of Pottsboro has applied for a minor amendment to the Texas Pollutant Discharge Elimination System Permit No. WQ0010591001 to authorize the addition of Interim II phase with a maximum daily flow not to exceed 0.65 million gallon per day. The facility is located at 219 Reeves Road, in Pottsboro, Grayson County, Texas 75076.

The following does not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin Texas 78711-3087 WITHIN 30 DAYS OF THIS NOTICE PUBLISHED IN THE *TEXAS REGISTER*.

INFORMATION SECTION

Porter Municipal Utility District has applied for a minor amendment to Texas Pollutant Discharge Elimination System Permit No. WQ0012242001 to authorize adding an interim phase of 1.9 million gallons per day (MGD). The facility is located at 24816 Cunningham Drive, in Montgomery County, Texas 77365.

If you need more information about these permit applications or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040. General information about the TCEQ can be found at our web site at www.TCEQ.texas.gov. Si desea información en español, puede llamar al (800) 687-4040.

TRD-202002170

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 27, 2020



Department of State Health Services

Order Amending the Schedules of Controlled Substances

The Acting Administrator of the Drug Enforcement Administration (DEA) issued a temporary scheduling order to extend the temporary schedule I status of *N*-(1-phenethylpiperidin-4-yl)-*N*-phenylpentanamide (Other name: valeryl fentanyl); *N*-(4-Methoxyphenyl)-*N*-(1-phenethylpiperidin-4-yl)butyramide (Other name: *p*-methoxybutyryl fentanyl); *N*-(4-chlorophenyl)-*N*-(1-phenethylpiperidin-4-yl)isobutyramide (Other name: *p*-chloroisobutyryl fentanyl); *N*-(1-phenethylpiperidin-4-yl)-*N*-phenylisobutyramide (Other name: isobutyryl fentanyl); and, *N*-(1-phenethylpiperidin-4-yl)-*N*-phenylcyclopentanecarboxamide (Other name: cyclopentyl fentanyl).

This rule was published in the *Federal Register*, Volume 85, Number 20, pages 5321-5361. The effective date of the temporary rule was February 1, 2020. This action was taken for the following reason:

Valeryl fentanyl; *p*-methoxybutyryl fentanyl; *p*-chloroisobutyryl fentanyl; isobutyryl fentanyl; cyclopentyl fentanyl are being considered for permanent placement into Schedule I of the CSA. An extension of the temporary scheduling action is necessary until the permanent scheduling proceeding is completed.

The DEA adopts without changes an interim final rule published in the *Federal Register* on June 17, 2019, placing solriamfetol ((*R*)-2-amino-3-phenylpropyl carbamate) (Other names: benzenepropanol; β -aminocarbamate (ester)) including its salts, isomers, and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible in Schedule IV of the CSA. The DEA maintains solriamfetol in schedule IV of the CSA. The rule was published in the *Federal Register*, Volume 85, Number 4, pages 643-645. The effective date of the rule was January 7, 2020. This action was taken for the following reason:

The DEA concurs with the Department of Health and Human Services recommendation that solriamfetol has abuse potential comparable to other schedule IV stimulants and therefore supports placement of solriamfetol in schedule IV under the CSA.

The DEA placed methyl 2-(1-(5-fluoropentyl)-1*H*-indazole-3-carboxamido)-3,3-dimethylbutanoate (Other names: 5F-ADB;5F-MDMB-PINACA);

methyl 2-(1-(5-fluoropentyl)-1*H*-indazole-3-carboxamido)-3-methylbutanoate (Other name: 5F-AMB); *N*-(adamantan-1-yl)-1-(5-fluoropentyl)-1*H*-indazole-3-carboxamide (Other names: 5F-AP-INACA; 5F-AKB48);

N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1*H*-indazole-3-carboxamide (Other name: ADB-FUBINACA); methyl 2-(1-(cyclohexylmethyl)-1*H*-indole-3-carboxamido)-3,3-dimethylbutanoate (Other names: MDMB-CHMICA; MMB-CHMINACA); methyl 2-(1-(4-fluorobenzyl)-1*H*-indazole-3-carboxamido)-3,3-dimethylbutanoate (Other name: MDMB-FUBINACA), including their salts, isomers and salts of isomers whenever the existence of such salts, isomers, and salts of isomers, is possible, in schedule I of the CSA. The rule was published in the *Federal Register*, Volume 85, Number 16, pages 4211-4215. The effective date was January 24, 2020. This action was based on the following:

1. 5F-ADB; 5F-AMB; 5F-APINACA ADB-FUBINACA; MDMB-CHMICA; and MDMB-FUBINACA have a high potential for abuse that is comparable to other schedule I substances.
2. 5F-ADB; 5F-AMB; 5F-APINACA ADB-FUBINACA; MDMB-CHMICA; and MDMB-FUBINACA have no currently accepted medical use in treatment in the United States (U.S.).
3. There is a lack of accepted safety for use of 5F-ADB; 5F-AMB; 5F-APINACA ADB-FUBINACA; MDMB-CHMICA; and MDMB-FUBINACA under medical supervision.

The Acting Administrator of the DEA issued a final rule removing 6 β -naltrexol and its salts from schedule II of the CSA. The rule was published in the *Federal Register*, Volume 85, Number 16, pages 4215-4217. The rule was effective January 24, 2020. The action was based upon a review by DEA that determined 6 β -naltrexol does not meet the requirements for inclusion in any schedule.

The DEA adopted without change an interim final rule published in the *Federal Register*, on June 17, 2019, placing brexanolone (3 α -hydroxy-5 α -pregnan-20-one), including its salts, isomers and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible, in schedule IV. The DEA maintains brexanolone in schedule IV of the CSA. This rule was published in the *Federal Register*, Volume 85, Number 16, pages 4217-4219. The effective date of the rule was January 24, 2020. This action was taken for the following reason:

The DEA concurs with the HHS recommendation that brexanolone has abuse potential comparable to other schedule IV benzodiazepines and therefore supports placement of brexanolone in schedule IV under the CSA.

The DEA issued an interim final rule placing lasmiditan [2,4,6-trifluoro-*N*-(6-(1-methylpiperidine-4-carbonyl)pyridine-2-yl)-benzamide], including its salts, isomers and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible in schedule V of the CSA. This interim final rule was published in the *Federal Register*, Volume 85, Number 21, pages 5557-5562. The effective date of the interim final rule was January 31, 2020. This action was taken for the following reasons:

1. Lasmiditan has a low potential for abuse relative to the drugs or substances in schedule IV.
2. Lasmiditan has a currently accepted medical use in the U.S.

3. Abuse of lasmiditan may lead to limited physical dependence of psychological dependence relative to the drugs or other substances in schedule IV.

The DEA issued an interim final rule placing cenobamate [(1R-1-(2-chlorophenyl)-2-(tetrazol-2-yl)ethyl] carbamate in schedule V. This interim final rule was published in the *Federal Register*, Volume 85, Number 47, pages 13741-13746. The effective date of the interim final rule was March 10, 2020. This action was taken for the following reasons:

1. Cenobamate has a low potential for abuse relative to the drugs or other substances in schedule IV.
2. Cenobamate has a currently accepted medical use in the U.S.
3. Abuse of cenobamate may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in schedule IV.

Pursuant to Section 481.034(g), as amended by the 75th legislature, of the Texas Controlled Substances Act, Health and Safety Code, Chapter 481, at least thirty-one days have expired since notice of the above referenced actions were published in the *Federal Register*. In the capacity as Commissioner of the Texas Department of State Health Services, John Hellerstedt, M.D., does hereby order that substances referenced above be placed into the schedules of controlled substances.

-Schedule I hallucinogenic substances

Unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following hallucinogenic substances or that contains any of the substance's salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation (for the purposes of this Schedule I hallucinogenic substances section only, the term "isomer" includes optical, position, and geometric isomers):

- (1) α -Ethyltryptamine (Other names: etryptamine; Monase; α -ethyl-1*H*-indole-3-ethanamine; 3-(2-aminobutyl) indole; α -ET; AET);
- (2) 4-Bromo-2,5-dimethoxyamphetamine (Other names: 4-bromo-2,5-dimethoxy- α -methylphenethylamine; 4-bromo-2,5-DMA);
- (3) 4-Bromo-2,5-dimethoxyphenethylamine (Other names: Nexus; 2C-B; 2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane; α -desmethyl DOB);
- (4) 2,5-Dimethoxyamphetamine (Other names: 2,5-dimethoxy- α -methylphenethylamine; 2,5-DMA);
- (5) 2,5-Dimethoxy-4-ethylamphetamine (Other name: DOET);
- (6) 2,5-Dimethoxy-4-(n)-propylthiophenethylamine, its optical isomers, salts and salts of isomers (Other name: 2C-T-7);
- (7) 4-Methoxyamphetamine (Other names: 4-methoxy- α -methylphenethylamine; paramethoxyamphetamine; PMA);
- (8) 5-Methoxy-3,4-methylenedioxy-amphetamine;
- (9) 4-Methyl-2,5-dimethoxyamphetamine (Other names: 4-methyl-2,5-dimethoxy- α -methyl-phenethylamine; "DOM"; "STP");
- (10) 3,4-Methylenedioxy-amphetamine;
- (11) 3,4-Methylenedioxy-methamphetamine (Other names: MDMA; MDM);
- (12) 3,4-Methylenedioxy-*N*-ethylamphetamine (Other names: *N*-ethyl- α -methyl-3,4(methylenedioxy)phenethylamine; *N*-ethyl MDA; MDE; MDEA);

(13) *N*-Hydroxy-3,4-methylenedioxyamphetamine (Other name: *N*-hydroxy MDA);

(14) 3,4,5-Trimethoxy amphetamine;

(15) 5-Methoxy-*N,N*-dimethyltryptamine (Other names: 5-methoxy-3-[2-(dimethylamino)ethyl]indole, 5-MeO-DMT);

(16) α -Methyltryptamine (AMT), its isomers, salts, and salts of isomers;

(17) Bufotenine (Other names: 3- β -Dimethylaminoethyl)-5- hydroxy-indole; 3-(2-dimethylaminoethyl)-5-indolol; *N,N*-dimethylserotonin; 5-hydroxy-*N,N*-dimethyltryptamine; mappine);

(18) Diethyltryptamine (Other names: *N,N*-Diethyltryptamine; DET);

(19) Dimethyltryptamine (Other name: DMT);

(20) 5-Methoxy-*N,N*-diisopropyltryptamine, its isomers, salts, and salts of isomers (Other name: 5-MeO-DIPT);

(21) Ibogaine (Other names: 7-Ethyl-6,6- β -7,8,9,10,12,13-octhydro-2-methoxy-6,9-methano-5*H*-pyrido[1',2':1,2] azepino [5,4-b] indole; Tabernanthe iboga);

(22) Lysergic acid diethylamide;

(23) Marihuana. The term marihuana does not include hemp, as defined Title 5, Agriculture Code, Chapter 121.

(24) Mescaline;

(25) Parahexyl (Other names: 3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6*H*-dibenzo[b,d]pyran; Synhexyl);

(26) Peyote, unless unharvested and growing in its natural state, meaning all parts of the plant classified botanically as *Lophophora williamsii* *Lemaire*, whether growing or not, the seeds of the plant, an extract from a part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or extracts;

(27) *N*-ethyl-3-piperidyl benzilate;

(28) *N*-methyl-3-piperidyl benzilate;

(29) Psilocybin;

(30) Psilocyn;

(31) Tetrahydrocannabinols,

meaning tetrahydrocannabinols naturally contained in a plant of the genus *Cannabis* (*cannabis* plant), except for tetrahydrocannabinols in hemp (as defined under Section 297A(1) of the Agricultural Marketing Act of 1946), as well as synthetic equivalents of the substances contained in the *cannabis* plant, or in the resinous extractives of such plant, and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity to those substances contained in the plant, such as the following:

1 *cis* or *trans* tetrahydrocannabinol, and their optical isomers;

6 *cis* or *trans* tetrahydrocannabinol, and their optical isomers;

3,4 *cis* or *trans* tetrahydrocannabinol, and its optical isomers;

(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions are covered.);

(32) Ethylamine analog of phencyclidine (Other names: *N*-ethyl-1-phenylcyclohexylamine; (1-phenylcyclohexyl)ethylamine; *N*-(1-phenylcyclohexyl)ethylamine; cyclohexamine; PCE);

(33) Pyrrolidine analog of phencyclidine (Other names: 1-(1 phenylcyclohexyl)-pyrrolidine; PCPy; PHP; rolicyclidine);

- (34) Thiophene analog of phencyclidine (Other names: 1-[1-(2-thienyl)-cyclohexyl]-piperidine; 2-thienyl analog of phencyclidine; TCP; TCP);
- (35) 1-[1-(2-Thienyl)cyclohexyl]pyrrolidine (Other name: TCPy);
- (36) 4-Methylmethcathinone (Other names: 4-methyl-*N*-methylcathinone; mephedrone);
- (37) 3,4-methylenedioxypropylvalerone (MDPV);
- (38) 2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine (Other name: 2C-E);
- (39) 2-(2,5-Dimethoxy-4-methylphenyl)ethanamine (Other name: 2C-D);
- (40) 2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine (Other name: 2C-C);
- (41) 2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine (Other name: 2C-I);
- (42) 2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine (Other name: 2C-T-2);
- (43) 2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine (Other name: 2C-T-4);
- (44) 2-(2,5-Dimethoxyphenyl)ethanamine (Other name: 2C-H);
- (45) 2-(2,5-Dimethoxy-4-nitro-phenyl)ethanamine (Other name: 2C-N);
- (46) 2-(2,5-Dimethoxy-4-(*n*-propylphenyl)ethanamine (Other name: 2C-P);
- (47) 3,4-Methylenedioxy-*N*-methylcathinone (Other name: Methylone);
- (48) (1-Pentyl-1*H*-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone (Other names: UR-144, 1-pentyl-3-(2,2,3,3-tetramethylcyclopropyl)indole);
- (49) [1-(5-Fluoro-pentyl)-1*H*-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone (Other names: 5-fluoro-UR-144, 5-F-UR-144, XLR11, (5-fluoro-pentyl)-3-(2,2,3,3-tetramethylcyclopropyl)indole);
- (50) *N*-(1-Adamantyl)-1-pentyl-1*H*-indazole-3-carboxamide (Other names: APINACA, AKB48);
- (51) Quinolin-8-yl 1-pentyl-1*H*-indole-3-carboxylate, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: PB-22; QUPIC);
- (52) Quinolin-8-yl 1-(5-fluoropentyl)-1*H*-indole-3-carboxylate, its optical, positional, and geometric isomers, salts and salts of isomers (Other names: 5-fluoro-PB-22; 5F-PB-22);
- (53) *N*-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1*H*-indazole-3-carboxamide, its optical, positional, and geometric isomers, salts and salts of isomers (Other name: AB-FUBINACA);
- (54) *N*-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1*H*-indazole-3-carboxamide (Other name: ADB-PINACA);
- (55) 2-(4-Iodo-2,5-dimethoxyphenyl)-*N*-(2-methoxybenzyl)ethanamine (Other names: 25I-NBOMe; 2CI-NBOMe; 25I; Cimbi-5);
- (56) 2-(4-Chloro-2,5-dimethoxyphenyl)-*N*-(2-methoxybenzyl)ethanamine (Other names: 25C-NBOMe; 2C-C-NBOMe; 25C; Cimbi-82);
- (57) 2-(4-Bromo-2,5-dimethoxyphenyl)-*N*-(2-methoxybenzyl)ethanamine (Other names: 25B-NBOMe; 2C-B-NBOMe; 25B; Cimbi-36);
- (58) Marihuana extract, meaning an extract containing one or more cannabinoids that has been derived from any plant of the genus *Cannabis*, other than the separated resin (whether crude or purified) obtained from the plant;
- (59) 4-Methyl-*N*-ethylcathinone (4-MEC);
- (60) 4-Methyl- α -pyrrolidinopropiophenone (4-MePPP);
- (61) α -Pyrrolidinopentiophenone ($[\alpha]$ -PVP);
- (62) 1-(1,3-Benzodioxol-5-yl)-2-(methylamino)butan-1-one (Other names: butylone; bk-MBDB);
- (63) 2-(Methylamino)-1-phenylpentan-1-one (Other name: pentadrone);
- (64) 1-(1,3-Benzodioxol-5-yl)-2-(methylamino)pentan-1-one (Other names: pentylone; bk-MBDP);
- (65) 4-Fluoro-*N*-methylcathinone (Other names: 4-FMC; flephedrone);
- (66) 3-Fluoro-*N*-methylcathinone (Other name: 3-FMC);
- (67) 1-(Naphthalen-2-yl)-2-(pyrrolidin-1-yl)pentan-1-one (Other name: naphyrone);
- (68) α -Pyrrolidinobutiophenone (Other name: $[\alpha]$ -PBP);
- (69) *N*-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1*H*-indazole-3-carboxamide (Other name: AB-CHMINACA);
- (70) *N*-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1*H*-indazole-3-carboxamide (Other name: AB-PINACA);
- (71) [1-(5-Fluoropentyl)-1*H*-indazol-3-yl](naphthalen-1-yl)methanone (Other name: THJ-2201);
- (72) 1-Methyl-4-phenyl-1,2,5,6-tetrahydro-pyridine (MPTP);
- (73) *N*-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1*H*-indazole-3-carboxamide (Other names: MAB-CHMINACA, ABD-CHMINACA);
- * (74) Methyl 2-(1-(5-fluoropentyl)-1*H*-indazole-3-carboxamido)-3,3-dimethylbutanoate (Other names: 5F-ADB, 5F-MDMB-PINACA);
- * (75) Methyl 2-(1-(5-fluoropentyl)-1*H*-indazole-3-carboxamido)-3-methylbutanoate (Other name: 5F-AMB);
- * (76) *N*-(Adamantan-1-yl)-1-(5-fluoropentyl)-1*H*-indazole-3-carboxamide (Other names: 5F-APINACA; 5F-AKB48);
- * (77) *N*-(1-Amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1*H*-indazole-3-carboxamide (Other name: ADB-FUBINACA);
- * (78) Methyl 2-(1-(cyclohexylmethyl)-1*H*-indole-3-carboxamido)-3,3-dimethylbutanoate (Other names: MDMB-CHMICA; MMB-CHMINACA);
- * (79) Methyl 2-(1-(4-fluorobenzyl)-1*H*-indazole-3-carboxamido)-3,3-dimethylbutanoate (Other name: MDMB-FUBINACA).

-Schedule I temporarily listed substances subject to emergency scheduling by the U.S. Drug Enforcement Administration.

Unless specifically excepted or unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances or that contains any of the substance's salts, isomers, and salts of isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Methyl 2-(1-(4-fluorobenzyl)-1*H*-indazole-3-carboxamido)-3-methylbutanoate (Other names: FUB-AMB; MMB-FUBINACA; AMB-FUBINACA);
- * (2) *N*-(1-Phenethylpiperidin-4-yl)-*N*-phenylpentanamide (Other name: valeryl fentanyl);
- * (3) *N*-(4-Methoxyphenyl)-*N*-(1-phenethylpiperidin-4-yl)butyramide (Other name: *p*-methoxybutyryl fentanyl);
- * (4) *N*-(4-Chlorophenyl)-*N*-(1-phenethylpiperidin-4-yl)isobutyramide (Other name: *p*-chloroisobutyryl fentanyl);
- * (5) *N*-(1-Phenethylpiperidin-4-yl)-*N*-phenylisobutyramide (Other name: isobutyryl fentanyl);
- * (6) *N*-(1-phenethylpiperidin-4-yl)-*N*-phenylcyclopentanecarboxamide (Other name: cyclopentyl fentanyl);
- (7) Fentanyl-related substances.
- (7-1) Fentanyl-related substance means any substance not otherwise listed under another Administration Controlled Substance Code Number, and for which no exemption or approval is in effect under Section 505 of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 355], that is structurally related to fentanyl by one or more of the following modifications:
- (7-1-1) Replacement of the phenyl portion of the phenethyl group by any monocycle, whether or not further substituted in or on the monocycle;
- (7-1-2) Substitution in or on the phenethyl group with alkyl, alkenyl, alkoxy, hydroxyl, halo, haloalkyl, amino or nitro groups;
- (7-1-3) Substitution in or on the piperidine ring with alkyl, alkenyl, alkoxy, ester, ether, hydroxyl, halo, haloalkyl, amino or nitro groups;
- (7-1-4) Replacement of the aniline ring with any aromatic monocycle whether or not further substituted in or on the aromatic monocycle; and/or
- (7-1-5) Replacement of the *N*-propionyl group by another acyl group;
- (7-2) This definition includes, but is not limited to, the following substances:
- (7-2-1) *N*-(1-(2-Fluorophenethyl)piperidin-4-yl)-*N*-(2-fluorophenyl)propionamide (Other name: 2'-fluoro-*o*-fluoro-fentanyl);
- (7-2-2) *N*-(2-Methylphenyl)-*N*-(1-phenethylpiperidin-4-yl)acetamide (Other name: *o*-methyl acetylfentanyl);
- (7-2-3) *N*-(1-Phenethylpiperidin-4-yl)-*N*,3-diphenylpropanamide (Other names: β'-phenyl fentanyl; hydrocinnamoyl fentanyl);
- (7-2-4) *N*-(1-Phenethylpiperidin-4-yl)-*N*-phenylthiophene-2-carboxamide (Other name: thiofuranyl fentanyl);
- (7-2-5) (E)-*N*-(1-Phenethylpiperidin-4-yl)-*N*-phenylbut-2-enamide (Other name: crotonyl fentanyl);
- (8) Naphthalen-1-yl-1-(5-fluoropentyl)-1*H*-indole-3-carboxylate (Other names: NM2201; CBL2201);
- (9) *N*-(1-Amino-3-methyl-1-oxobutan-2-yl)-1-(5-fluoropentyl)-1*H*-indazole-3-carboxamide (Other name: 5F-AB-PINACA);
- (10) 1-(4-Cyanobutyl)-*N*-(2-phenylpropan-2-yl)-1*H*-indazole-3-carboxamide (Other names: 4-CN-CUMYL-BUTINACA; 4-cyano-CUMYL-BUTINACA; 4-CN-CUMYL-BINACA; CUMYL-4CN-BINACA; SGT-78);

- (11) Methyl 2-(1-(cyclohexylmethyl)-1*H*-indole-3-carboxamido)-3-methylbutanoate (Other names: MMB-CHMICA; AMB-CHMICA);
- (12) 1-(5-Fluoropentyl)-*N*-(2-phenylpropan-2-yl)-1*H*-pyrrolo[2,3-*b*]pyridine-3-carboxamide (Other name: 5F-CUMYL-P7AICA);
- (13) *N*-ethylpentylone (Other names: ephylone, 1-(1,3-benzodioxil-5-yl)-2-(ethylamino)-pentan-1-one);
- (14) Ethyl 2-(1-(5-fluoropentyl)-1*H*-indazole-3-carboxamido)-3,3-dimethylbutanoate (Other name: 5F-EDMB-PINACA);
- (15) Methyl 2-(1-(5-fluoropentyl)-1*H*-indole-3-carboxamido)-3,3-dimethylbutanoate (Other name: 5F-MDMB-PICA);
- (16) *N*-(Adamantan-1-yl)-1-(4-fluorobenzyl)-1*H*-indazole-3-carboxamide (Other names: FUB-AKB48; FUB-APINACA; AKB48 *N*-(4-FLUOROBENZYL));
- (17) 1-(5-Fluoropentyl)-*N*-(2-phenylpropan-2-yl)-1*H*-indazole-3-carboxamide (Other names: 5F-CUMYL-PINACA; SGT-25);
- (18) (1-(4-Fluorobenzyl)-1*H*-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone (Other name: FUB-144);
- (19) *N*-Ethylhexedrone (Other name: 2-(ethylamino)-1-phenylhexan-1-one);
- (20) α-pyrrolidinohexanophenone (Other names: α-PHP; α-pyrrolidinohexiophenone; 1-phenyl-2-(pyrrolidin-1-yl)hexan-1-one);
- (21) 4-Methyl-α-ethylaminopentiophenone (Other names: 4-MEAP; 2-(ethylamino)-1-(4-methylphenyl)pentan-1-one);
- (22) 4-Methyl-α-pyrrolidinohexiophenone (Other names: MPHP, 4'-methyl-α-pyrrolidinohexanophenone; 1-(4-methylphenyl)-2-(pyrrolidin-1-yl)hexan-1-one);
- (23) α-pyrrolidinoheptaphenone (Other names: PV8; 1-phenyl-2-(pyrrolidin-1-yl)heptan-1-one); and
- (24) 4-Chloro-α-pyrrolidinovalerophenone (Other names: 4-chloro-α-PVP; 4-chloro-α-pyrrolidinopentiophenone; 1-(4-chlorophenyl)-2-(pyrrolidin-1-yl)pentan-1-one).

-Schedule II substances, vegetable origin or chemical synthesis

The following substances, however produced, except those narcotic drugs listed in other schedules:

- (1) Opium and opiate, and a salt, compound, derivative, or preparation of opium or opiate, other than thebaine-derived butorphanol, naldemedine, naloxegol, naloxone and its salts, *6β-naltrexol, naltrexone and its salts, and nalmefene and its salts, but including:
- (1-1) Codeine;
- (1-2) Dihydroetorphine;
- (1-3) Ethylmorphine;
- (1-4) Etorphine hydrochloride;
- (1-5) Granulated opium;
- (1-6) Hydrocodone;
- (1-7) Hydromorphone;
- (1-8) Metopon;
- (1-9) Morphine;
- (1-10) Noroxymorphone;
- (1-11) Opium extracts;
- (1-12) Opium fluid extracts;

- (1-13) Oripavine;
- (1-14) Oxycodone;
- (1-15) Oxymorphone;
- (1-16) Powdered opium;
- (1-17) Raw opium;
- (1-18) Thebaine; and
- (1-19) Tincture of opium.

(2) A salt, compound, isomer, derivative, or preparation of a substance that is chemically equivalent or identical to a substance described by paragraph (1) of Schedule II substances, vegetable origin or chemical synthesis, other than the isoquinoline alkaloids of opium;

(3) Opium poppy and poppy straw;

(4) Cocaine, including:

(4-1) its salts, its optical, position, and geometric isomers, and the salts of those isomers;

(4-2) Coca leaves and any salt, compound, derivative, or preparation of coca leaves and ecgonine and their salts, isomers, derivatives and salts of isomers and derivatives and any salt, compound derivative or preparation thereof which is chemically equivalent or identical to a substance described by this paragraph, except that the substances shall not include:

(4-2-1) Decocainized coca leaves or extractions of coca leaves which extractions do not that do not contain cocaine or ecgonine; or

(4-2-2) Ioflupane.

(5) Concentrate of poppy straw, meaning the crude extract of poppy straw in liquid, solid, or powder form that contains the phenanthrene alkaloids of the opium poppy.

-Schedule IV depressants

Except as provided by the Texas Controlled Substances Act, Health and Safety Code, Section 481.033, a material, compound, mixture, or preparation that contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

(1) Alfaxalone (5 α -pregnan-3 α -ol-11,20-dione);

(2) Alprazolam;

(3) Barbital;

*(4) Brexanolone (Other names: 3 α -hydroxy-5 α -pregnan-20-one; allopregnanolone);

(5) Bromazepam;

(6) Camazepam;

(7) Chloral betaine;

(8) Chloral hydrate;

(9) Chlordiazepoxide;

(10) Clobazam;

(11) Clonazepam;

(12) Clorazepate;

(13) Clotiazepam;

(14) Cloxazolam;

(15) Delorazepam;

(16) Diazepam;

(17) Dichloralphenazone;

(18) Estazolam;

(19) Ethchlorvynol;

(20) Ethinamate;

(21) Ethyl loflazepate;

(22) Fludiazepam;

(23) Flunitrazepam;

(24) Flurazepam;

(25) Fospropofol;

(26) Halazepam;

(27) Haloxazolam;

(28) Ketazolam;

(29) Loprazolam;

(30) Lorazepam;

(31) Lormetazepam;

(32) Mebutamate;

(33) Medazepam;

(34) Meprobamate;

(35) Methohexital;

(36) Methylphenobarbital (mephobarbital);

(37) Midazolam;

(38) Nimetazepam;

(39) Nitrazepam;

(40) Nordiazepam;

(41) Oxazepam;

(42) Oxazolam;

(43) Paraldehyde;

(44) Petrichloral;

(45) Phenobarbital;

(46) Pinazepam;

(47) Prazepam;

(48) Quazepam;

(49) Suvorexant;

(50) Temazepam;

(51) Tetrazepam;

(52) Triazolam;

(53) Zaleplon;

(54) Zolpidem; and

(55) Zopiclone, its salts, isomers, and salts of isomers.

-Schedule IV stimulants

Unless listed in another schedule, a material, compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including the sub-

stance's salts, optical, position, or geometric isomers, and salts of those isomers if the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Cathine [(+)-norpseudoephedrine];
- (2) Diethylpropion;
- (3) Fencamfamin;
- (4) Fenfluramine;
- (5) Fenproporex;
- (6) Mazindol;
- (7) Mefenorex;
- (8) Modafinil;
- (9) Pemoline (including organometallic complexes and their chelates);
- (10) Phentermine;
- (11) Pipradrol;
- * (12) Solriamfetol ((*R*)-2-amino-3-phenylpropyl carbamate) (Other names: benzenepropanol; β -amino-carbamate (ester));
- (13) Sibutramine; and
- (14) SPA [1-dimethylamino-1,2-diphenylethane].

-Schedule V depressants

Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation, which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts:

- (1) Brivaracetam ((*2S*)-2-[(*4R*)-2-oxo-4-propylpyrrolidin-1-yl]butanamide) (Other names; BRV; UCB-34714; and Briviact);
- * (2) Cenobamate [(*1R*)-1-(2-chlorophenyl)-2-(tetrazol-2-yl)ethyl] carbamate;
- (3) Ezogabine including its salts, isomers and salts of isomers, whenever the existence of such salts, isomers and salts of isomers is possible;
- (4) Lacosamide [(*R*)-2-acetoamido-*N*-benzyl-3-methoxy-propionamide];
- * (5) Lasmiditan [2,4,6-trifluoro-*N*-(6-(1-methylpiperidine-4-carbonyl)pyridine-2-yl)-benzamide];
- (6) Pregabalin [(*S*)-3-(aminomethyl)-5-methylhexanoic acid]; and
- (7) Approved cannabidiol drugs. A drug product in finished dosage formulation that has been approved by the U.S. Food and Drug Administration that contains cannabidiol (2-[1*R*-3-methyl-6*R*-(1-methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-1,3-benzenediol) derived from cannabis and no more than 0.1 percent (w/w) residual tetrahydrocannabinols.

Changes indicated by an *

TRD-202002178
Barbara L. Klein
General Counsel
Department of State Health Services
Filed: May 27, 2020



Order Extending the License and Registration Term for
Asbestos Licensees Due to COVID-19

The Department of State Health Services Asbestos Program administers the renewal of licenses and registrations for the following license and registration types: Asbestos Abatement Workers, Asbestos Abatement Contractors, Asbestos Abatement Supervisors, Asbestos Abatement Consultants, Asbestos Abatement Project Managers, Asbestos Abatement Inspectors, Air Monitoring Technicians, and Asbestos Abatement Management Planners ("Asbestos Licensees").

Asbestos Licensees must renew their license and registration every two-years pursuant to Texas Occupations Code Section 1954.201(a) and 25 Texas Administrative Code Section 295.35(c). In order to renew, Asbestos Licensees are required to submit a current annual refresher training certificate and a current physician's written statement.

On March 13, 2020, Governor Abbott issued a disaster proclamation, certifying under Section 418.014 of the Texas Government Code that the novel coronavirus (COVID-19) poses an imminent threat of disaster for all counties in the State of Texas.

On May 15, 2020, I, John W. Hellerstedt, M.D., Commissioner of the Department of State Health Services, declared a state of public health disaster continues for the entire State of Texas due to the introduction and spread of the communicable disease known as COVID-19 in the State of Texas.

Due to the COVID-19 outbreak, many of the annual refresher courses were cancelled and many physicians are not providing in-person physical examination of Asbestos Licensees. As a result, Asbestos Licensees have been unable to obtain the documentation required to timely renew their licenses and registrations.

Pursuant to the authority granted under Texas Occupations Code Section 1954.111(a) and 25 Texas Administrative Code Section 295.35(d), I hereby order that licenses and registrations of Asbestos Licensees due to expire during the Governor's declared disaster proclamation will now expire 6-months after the expiration date on the license or registration.

Given under my hand this the 20th day of May, 2020.

TRD-202002175
John W. Hellerstedt, M.D.
Commissioner
Department of State Health Services
Filed: May 27, 2020



Texas Higher Education Coordinating Board

AWARD of Request for Proposals 781-0-22731 -
Implementation Evaluation of House Bill (HB) 2223

The Texas Higher Education Coordinating Board solicited proposals from qualified respondents to enter into a contract to conduct an external evaluation of the implementation by Texas public institutions of higher education of House Bill (HB) 2223, 85th Legislative Session.

The selected contractor is EduPolicy Research, LLC., 3736 Biltmore Avenue, Tallahassee, FL 32311. The value of the contract is estimated to be \$164,936.00. The contract was awarded on May 21, 2020, period beginning upon execution and ending August 31, 2020. Contract may be extended for one renewal period from 9/1/20 to 8/31/21.

Deliverables shall be based on the Required Services in Contractor's response to THECB RFP #781-0-22731 and is accepted by THECB and incorporated herein by reference in contract #23075.

TRD-202002182

William Franz
General Counsel
Texas Higher Education Coordinating Board
Filed: May 27, 2020

◆ ◆ ◆
Texas Department of Housing and Community Affairs

2020 Emergency Solutions Grant Notice of Funding Availability

The ESG Program is funded by HUD to assist people to regain stability in permanent housing quickly after experiencing a housing crisis and/or homelessness. ESG funds can be used for the administration of the ESG grant, including utilization of a Homeless Management Information System, rehabilitation or conversion of buildings for use as emergency shelter for persons experiencing homelessness; the payment of certain expenses related to operating emergency shelters; essential services related to emergency shelters and street outreach for persons experiencing homelessness; and homelessness prevention and rapid re-housing assistance.

The Texas Department of Housing and Community Affairs received notice of an allocation of \$9,643,857 from HUD for 2020. From the allocation, \$9,209,884 will be made available for awards to subrecipients through the 2020 ESG NOFA, which is available online at <https://www.tdhca.state.tx.us/nofa.htm>.

Some of the awards made through the NOFA may be as a result of the recommendations of ESG Coordinators, which are contractors procured to administer a Local Competition on behalf of the Department. Two ESG Coordinators for Local Competitions were procured: the Coalition for the Homeless of Houston/Harris County for CoC Region TX-700, and South Alamo Regional Alliance for the Homeless for CoC Region TX-500. Applicants in these two areas will apply directly to the ESG Coordinator for funds. Contact information for the ESG Annual Local Competition is in the NOFA. In all other areas of the state, applicants will respond to TDHCA through as outlined in the NOFA.

Federal program rules require the Department to commit all funds within 60 days of receipt of an award letter from HUD; the Department anticipates receipt of each letter during the late summer or fall of 2020. The contract period is subject to receipt of funds from the annual ESG allocation. The Department's anticipated Contract Term for Program Year (PY) 2019 ESG will be November 1, 2020, through October 31, 2021, subject to receipt of adequate funding and any additional terms and conditions from HUD.

Applicants may request up to \$345,000 in ESG funds, per 10 TAC §7.33(d). Applicants must meet the minimum threshold requirements established in 10 TAC §7.36 to be considered for award.

The availability and use of these funds are subject to the Department's rules governing under Title 10, Part 1, Chapter 1, Administration; Chapter 2, Enforcement; and Chapter 7, Homelessness Programs, Subchapter A, General Policies and Procedures, and Subchapter C, Emergency Solutions Grants (ESG) of the Texas Administrative Code. For Units of Local Government, the Uniform Grant Management Standards (UGMS) as outlined in Chapter 783 in the Texas Local Government Code also govern the availability and use of these funds. Federal laws and regulations that apply to these funds include the Homeless Emergency Assistance and Rapid Transition to Housing Act (42 U.S.C. §11302 et. seq.), as amended; the HUD regulations codified in 24 Code of Federal Regulations (CFR) Part 576; 24 CFR Part 58, for environmental requirements; 2 CFR Part 200 for

Uniform Administrative Requirements; 24 CFR §135.38 for Section 3 requirements; and 24 CFR Part 5, Subpart A for fair housing.

Details on the award selection process, handling of administrative deficiencies, funding limitations, eligible and ineligible applicants and activities, threshold requirements, award selection criteria, and application submission requirements are included in the NOFA and will be posted to the Department's website with notification of the NOFA posting in the *Texas Register*.

Applications for areas without Local Competitions will be accepted statewide beginning June 12, 2020, at 8:00 a.m., Austin local time, until Friday, June 26, 2020, at 5:00 p.m., Austin local time. Questions can be directed to Naomi Cantu, Coordinator for Homelessness Programs and Policy, at esg@tdhca.state.tx.us or (512) 475-3975.

TRD-202002180
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Filed: May 27, 2020

◆ ◆ ◆
Notice of Public Hearing and Public Comment Period on the Draft 2021 Regional Allocation Formula Methodology

The Texas Department of Housing and Community Affairs (the Department) will hold a public hearing to accept public comment on the Draft 2021 Regional Allocation Formula (RAF) Methodology.

The public hearing will take place as follows:

Tuesday, June 16, 2020

2:00 p.m. Austin local time

Via GoToWebinar

<https://attendee.gotowebinar.com/register/2017602044697807376>

Dial-in number: +1 (213) 929-4212, access code 560-128-364 (persons who use the dial-in number and access code without registering online will only be able to hear the public hearing and will not be able to ask questions or provide comments)

The RAF may be accessed from TDHCA's Public Comment Center at: <https://www.tdhca.state.tx.us/public-comment.htm>.

The RAF utilizes appropriate statistical data to measure the affordable housing need and available resources in the 13 State Service Regions that are used for planning purposes. The RAF also allocates funding to rural and urban subregions within each region. The Department has flexibility in determining variables to be used in the RAF, per §2306.1115(a)(3) of the Tex. Gov't Code, "the department shall develop a formula that...includes other factors determined by the department to be relevant to the equitable distribution of housing funds..." The RAF is revised annually to reflect current data, respond to public comment, and better assess regional housing needs and available resources.

The RAF methodology explains the use of factors, in keeping with the statutory requirements, which include the need for housing assistance, the availability of housing resources, and other factors relevant to the equitable distribution of housing funds in urban and rural areas of the state.

The Single Family HOME Investment Partnerships Program (HOME), Multifamily HOME, Housing Tax Credit (HTC), and Housing Trust Fund (HTF) program RAFs each use slightly different formulas because the programs have different eligible activities, households, and geographical service areas. For example, §2306.111(c) of the Tex.

Gov't Code requires that 95% of HOME funding be set aside for non-participating jurisdictions (non-PJs). Therefore, the Single Family and Multifamily HOME RAFs only use need and available resource data for non-PJs.

The public comment period for the Draft 2021 RAF methodology will be open from Friday, June 5, 2020, through Friday June 26, 2020, at 5:00 p.m., Austin local time. Anyone may submit comments on the Draft 2021 RAF Methodology in written form or oral testimony at the June 16, 2020, public hearing.

Written comments concerning the Draft 2021 RAF Methodology may be submitted by mail to the Texas Department of Housing and Community Affairs, Housing Resource Center, P.O. Box 13941, Austin, TX 78711-3941, by email to info@tdhca.state.tx.us, or by fax to (512) 475-0070. Comments must be received no later than Friday June 26, 2020, at 5:00 p.m. Austin local time.

Individuals who require auxiliary aids or services for the public hearing on June 16, 2020, should contact Nancy Dennis, at (512) 475-3959 or Relay Texas at (800) 735-2989, at least three days before the meeting so that appropriate arrangements can be made.

Non-English speaking individuals who require interpreters for the public hearing should contact Elena Peinado by phone at (512) 475-3814 or by email at elena.peinado@tdhca.state.tx.us at least three days before the meeting so that appropriate arrangements can be made.

Personas que hablan español y requieren un interprete, favor de llamar a Elena Peinado al siguiente número (512) 475-3814 o enviarle un correo electrónico a elena.peinado@tdhca.state.tx.us por lo menos tres días antes de la junta para hacer los preparativos apropiados.

TRD-202002181

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Filed: May 27, 2020



Third Amendment to 2020-1 Multifamily Direct Loan Annual Notice of Funding Availability

I. Sources of Multifamily Direct Loan Funds.

Multifamily Direct Loan funds are made available in this Annual Notice of Funding Availability through program income generated from prior year HOME allocations, de-obligated funds from prior year HOME allocations, the 2019 Grant Year HOME allocation, and the 2018 and 2019 Grant Year National Housing Trust Fund (NHTF) allocations. The Department may amend this NOFA or the Department may release a new NOFA upon receiving additional de-obligated funds from HOME allocations, or upon receiving new funds from the 2020 HOME or NHTF allocations from HUD or additional TCAP RF funds. These funds have been programmed for multifamily activities including acquisition, refinance, and preservation of affordable housing involving new construction, reconstruction and/or rehabilitation.

II. Notice of Funding Availability (NOFA).

The Texas Department of Housing and Community Affairs (the Department) announces the availability of up to \$26,356,025.20 in Multifamily Direct Loan funding for the development of affordable multifamily rental housing for low-income Texans.

Of that amount, at least \$4,733,439.00 will be available for eligible Community Housing Development Organizations (CHDO) meeting the requirements of the definition of Community Housing Development Organization found in 24 CFR §92.2 and the requirements of this

NOFA; up to \$12,509,857.20 will be available for applications proposing Supportive Housing in accordance with 10 TAC §11.1(d)(122) and §11.302(g)(4) of the 2020 Qualified Allocation Plan (QAP) or applications that commit to setting aside units for extremely low-income households as required by 10 TAC §13.4(a)(1)(A)(ii). The remaining funds will be available under the General set-aside for applications proposing eligible activities in non-Participating Jurisdictions.

At the Board meeting on May 21, 2020, the Department approved the Third Amendment to 2020-1 Multifamily Direct Loan Annual NOFA, whereby \$3,000,000.00 in additional NHTF became available in the Soft Repayment set-aside on a statewide basis through August 31, 2020, (if sufficient funds remain), resulting in \$26,365,025.20 in total funding, \$12,509,857.20 of which is available in the Soft Repayment set-aside. At the same Board meeting, the Department also increased the maximum per Application request under the Soft Repayment set-aside to \$3,000,000.00.

The Multifamily Direct Loan program provides loans to for-profit and nonprofit entities to develop affordable housing for low-income Texans qualified earning 80 percent or less of the applicable Area Median Family Income. All funding is currently available on a statewide basis within each set-aside until August, 31, 2020, (if sufficient funds remain).

III. Application Deadline and Availability.

Based on the availability of funds, Applications may be accepted until 5 p.m. Austin local time on August 31, 2020. The "Amended 2020-1 Multifamily Direct Loan Annual NOFA" is posted on the Department's website: <http://www.tdhca.state.tx.us/multifamily/no-fas-rules.htm>. Subscribers to the Department's LISTSERV will receive notification that the Third Amendment to the NOFA is posted. Subscription to the Department's LISTSERV is available at <http://mail-list.tdhca.state.tx.us/list/subscribe.html?lui=f9mu0g2g&mContainer=2&mOwner=G382s2w2r2p>.

Questions regarding the 2020-1 Multifamily Direct Loan Annual NOFA may be addressed to Andrew Sinnott at (512) 475-0538 or andrew.sinnott@tdhca.state.tx.us.

TRD-202002179

Bobby Wilkinson

Executive Director

Texas Department of Housing and Community Affairs

Filed: May 27, 2020



Texas Department of Insurance

Company Licensing

Application to do business in the state of Texas for Water Quality Insurance Syndicate, a foreign Joint Underwriting Association (JUA). The home office is in New York, New York.

Application for Equitable Life & Casualty Insurance Company, a foreign life, accident and/or health company, to change its name to SILAC Insurance Company. The home office is in Salt Lake City, Utah.

Application for The Capitol Life Insurance Company, a domestic life, accident and/or health company, to change its name to Capitol Life Insurance Company. The home office is in Dallas, Texas.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Robert Rudnai, 333 Guadalupe Street, MC 103-CL, Austin, Texas 78701.

TRD-202002174

James Person
General Counsel
Texas Department of Insurance
Filed: May 27, 2020



Texas Windstorm Insurance Association--Endorsement Filings
Reference Numbers: P-0520-03

SERFF State Tracking No. S679309

Pursuant to 28 TAC §5.4911, the Texas Windstorm Insurance Association (TWIA) has filed two commercial policy endorsement forms with the Texas Department of Insurance for approval:

--revised Endorsement No. 164 - Replacement Cost Coverage - Coverage A (Building) and Coverage B (Business Personal Property); and

--revised Endorsement No. 165 - Replacement Cost Coverage - Actual Cash Value Roofs.

The revisions reinsert language which was omitted when TWIA updated the forms on September 19, 2019.

You can get a copy of the filings from the Office of the Chief Clerk, Mail Code 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 or online at www.tdi.texas.gov/submissions/indextwia.html#form.

Public Comment: Send comments on the filings to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, Mail Code 112-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 by 5:00 p.m., Central time, on July 6, 2020.

Hearing Requests: To request a public hearing, you must submit a request separately by 5:00 p.m., Central time, on June 25, 2020. Send the request for a hearing by email to ChiefClerk@tdi.texas.gov, or by mail to the Texas Department of Insurance, Office of the Chief Clerk, Mail Code 112-2A, P.O. Box 149104, Austin, Texas 78714-9104.

TRD-202002078

James Person
General Counsel

Texas Department of Insurance
Filed: May 22, 2020



Texas Lottery Commission

Scratch Ticket Game Number 2203 "\$1,000,000 EXTREME CASH"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2203 is "\$1,000,000 EXTREME CASH". The play style is "multiple games".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2203 shall be \$20.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2203.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 05, 06, 07, 08, 09, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, COIN SYMBOL, 10X SYMBOL, 20X SYMBOL, \$20.00, \$25.00, \$50.00, \$75.00, \$100, \$200, \$500, \$1,000, \$20,000 and \$1,000,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2203 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY

41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV
48	FRET
49	FRNI
50	FFTY
COIN SYMBOL	WIN\$
10X SYMBOL	WINX10
20X SYMBOL	WINX20
\$20.00	TWY\$
\$25.00	TWFV\$
\$50.00	FFTY\$
\$75.00	SVFV\$
\$100	ONHN
\$200	TOHN
\$500	FVHN
\$1,000	ONTH
\$20,000	20TH
\$1,000,000	TPPZ

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2203), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 025 within each Pack. The format will be: 2203-0000001-001.

H. Pack - A Pack of the "\$1,000,000 EXTREME CASH" Scratch Ticket Game contains 025 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The front of Ticket 001 will be shown on the front of the Pack; the back of Ticket 025 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack. Every other Pack will reverse i.e., reverse order will be: the back of Ticket 001 will be shown on the front of the Pack and the front of Ticket 025 will be shown on the back of the Pack.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "\$1,000,000 EXTREME CASH" Scratch Ticket Game No. 2203.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "\$1,000,000 EXTREME CASH" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose seventy-two (72) Play Symbols. MYSTERY BONUS: If a player reveals 2 matching prize amounts in the same MYSTERY BONUS, the player wins that amount. MAIN PLAY AREA INSTRUCTIONS: If a player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If the player reveals a "COIN" Play Symbol, the player wins the prize for that symbol instantly. If the player reveals a "10X" Play Symbol, the player wins 10 TIMES the prize for that symbol. If the player reveals a "20X" Play Symbol, the player wins 20 TIMES the prize for

that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly seventy-two (72) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;
6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Scratch Ticket must not be counterfeit in whole or in part;
10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;
13. The Scratch Ticket must be complete and not miscut, and have exactly seventy-two (72) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;
14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;
15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the seventy-two (72) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the seventy-two (72) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

B. GENERAL: A Ticket can win as indicated by the prize structure.

C. GENERAL: A Ticket can win up to thirty-three (33) times.

D. GENERAL: The "COIN" (WIN\$), "10X" (WINX10) and "20X" (WINX20) Play Symbols will never appear in a MYSTERY BONUS play area.

E. MYSTERY BONUS: A Ticket can win up to one (1) time in each of the three (3) MYSTERY BONUS play areas.

F. MYSTERY BONUS: A non-winning MYSTERY BONUS play area will have two (2) different Prize Symbols.

G. MYSTERY BONUS: Non-winning Prize Symbols in a MYSTERY BONUS play area will not be the same as winning Prize Symbols from another MYSTERY BONUS play area.

H. MAIN PLAY AREA: A Ticket can win up to thirty (30) times in the main play area.

I. MAIN PLAY AREA: On winning and Non-Winning Tickets, the top cash prizes of \$1,000, \$20,000 and \$1,000,000 will each appear at least once, except on Tickets winning thirty-three (33) times, with respect to other parameters, play action or prize structure.

J. MAIN PLAY AREA: No matching non-winning YOUR NUMBERS Play Symbols will appear on a Ticket.

K. MAIN PLAY AREA: Tickets winning more than one (1) time will use as many WINNING NUMBERS Play Symbols as possible to create matches, unless restricted by other parameters, play action or prize structure.

L. MAIN PLAY AREA: No matching WINNING NUMBERS Play Symbols will appear on a Ticket.

M. MAIN PLAY AREA: YOUR NUMBERS Play Symbols will never equal the corresponding Prize Symbols (i.e., 25 and \$25 and 50 and \$50).

N. MAIN PLAY AREA: On all Tickets, a Prize Symbol will not appear more than four (4) times, except as required by the prize structure to create multiple wins.

O. MAIN PLAY AREA: On Non-Winning Tickets, a WINNING NUMBERS Play Symbol will never match a YOUR NUMBERS Play Symbol.

P. MAIN PLAY AREA: The "COIN" (WIN\$) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

Q. MAIN PLAY AREA: The "COIN" (WIN\$) Play Symbol will never appear on a Non-Winning Ticket.

R. MAIN PLAY AREA: The "COIN" (WIN\$) Play Symbol will win the prize for that Play Symbol.

S. MAIN PLAY AREA: The "COIN" (WIN\$) Play Symbol will never appear more than once on a Ticket.

T. MAIN PLAY AREA: The "10X" (WINX10) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

U. MAIN PLAY AREA: The "10X" (WINX10) Play Symbol will never appear on a Non-Winning Ticket.

V. MAIN PLAY AREA: The "10X" (WINX10) Play Symbol will win 10 TIMES the prize for that Play Symbol and will win as per the prize structure.

W. MAIN PLAY AREA: The "10X" (WINX10) Play Symbol will never appear more than once on a Ticket.

X. MAIN PLAY AREA: The "20X" (WINX20) Play Symbol will never appear as a WINNING NUMBERS Play Symbol.

Y. MAIN PLAY AREA: The "20X" (WINX20) Play Symbol will never appear on a Non-Winning Ticket.

Z. MAIN PLAY AREA: The "20X" (WINX20) Play Symbol will win 20 TIMES the prize for that Play Symbol and will win as per the prize structure.

AA. MAIN PLAY AREA: The "20X" (WINX20) Play Symbol will never appear more than once on a Ticket.

BB. MAIN PLAY AREA: The "COIN" (WIN\$) and "10X" (WINX10) Play Symbols will never appear on the same Ticket.

CC. MAIN PLAY AREA: The "COIN" (WIN\$) and "20X" (WINX20) Play Symbols will never appear on the same Ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "\$1,000,000 EXTREME CASH" Scratch Ticket Game prize of \$20.00, \$25.00, \$50.00, \$75.00, \$100, \$200 or \$500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$25.00, \$50.00, \$75.00, \$100, \$200 or \$500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "\$1,000,000 EXTREME CASH" Scratch Ticket Game prize of \$1,000, \$20,000 or \$1,000,000, the claimant must sign the winning Scratch Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income

reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "\$1,000,000 EXTREME CASH" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;
2. in default on a loan made under Chapter 52, Education Code;
3. in default on a loan guaranteed under Chapter 57, Education Code; or
4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "\$1,000,000 EXTREME CASH" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "\$1,000,000 EXTREME CASH" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto.

Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 8,400,000 Scratch Tickets in Scratch Ticket Game No. 2203. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2203 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$20.00	806,400	10.42
\$25.00	268,800	31.25
\$50.00	672,000	12.50
\$75.00	268,800	31.25
\$100	302,400	27.78
\$200	58,450	143.71
\$500	5,600	1,500.00
\$1,000	280	30,000.00
\$20,000	20	420,000.00
\$1,000,000	4	2,100,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.53. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2203 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2203, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202002151
 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: May 26, 2020



Scratch Ticket Game Number 2228 "PRIZE PIGGY"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2228 is "PRIZE PIGGY". The play style is "row/column/diagonal".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2228 shall be \$1.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2228.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: WISHBONE SYMBOL, GOLD BAR SYMBOL, MONEYBAG

SYMBOL, COWBOY HAT SYMBOL, BELL SYMBOL, COIN SYMBOL, STAR SYMBOL, SEVEN SYMBOL, HEART SYMBOL, PIG SYMBOL, \$1.00, \$2.00, \$3.00, \$5.00, \$9.00, \$10.00, \$15.00, \$30.00, \$90.00 and \$1,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2228 - 1.2D

PLAY SYMBOL	CAPTION
WISHBONE SYMBOL	BONE
GOLD BAR SYMBOL	GLDBAR
MONEYBAG SYMBOL	MBAG
COWBOY HAT SYMBOL	HAT
BELL SYMBOL	BELL
COIN SYMBOL	COIN
STAR SYMBOL	STAR
SEVEN SYMBOL	SEVN
HEART SYMBOL	HEART
PIG SYMBOL	TRP
\$1.00	ONE\$
\$2.00	TWO\$
\$3.00	THR\$
\$5.00	FIV\$
\$9.00	NIN\$
\$10.00	TEN\$
\$15.00	FFN\$
\$30.00	TRTY\$
\$90.00	NITY\$
\$1,000	ONTH

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2228), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start

with 001 and end with 150 within each Pack. The format will be: 2228-0000001-001.

H. Pack - A Pack of the "Prize Piggy" Scratch Ticket Game contains 150 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; Tickets 006 to 010 on the next page; etc.; and Tickets 146 to 150 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of Ticket 001 and 010 will be exposed.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable

rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "PRIZE PIGGY" Scratch Ticket Game No. 2228.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "PRIZE PIGGY" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose ten (10) Play Symbols. If a player reveals 3 matching Play Symbols in any one row, column or diagonal line, the player wins the PRIZE. If the player reveals 3 "PIG" Play Symbols in any one row, column or diagonal line, the player wins TRIPLE the PRIZE. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly ten (10) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;
6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Scratch Ticket must not be counterfeit in whole or in part;
10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;
13. The Scratch Ticket must be complete and not miscut, and have exactly ten (10) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;
14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;
15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the ten (10) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the ten (10) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets within a Pack will not have matching patterns of Play Symbols in the same order. Consecutive Non-Winning Tickets within a Pack may have matching Prize Symbols because only one (1) Prize Symbol appears on the Ticket.

B. Non-Winning Tickets will have at least one (1) row, column or diagonal line that contains two (2) matching Play Symbols (including the "PIG" (TRP) Play Symbol) plus one (1) different Play Symbol.

C. There will be only one (1) occurrence of three (3) matching Play Symbols in a vertical, horizontal or diagonal line on intended winning Tickets, as dictated by the prize structure.

D. There will only be one (1) occurrence of three (3) "PIG" (TRP) Play Symbols in a vertical, horizontal or diagonal line on intended winning Tickets, as dictated by the prize structure.

E. There will be no more than three (3) "PIG" (TRP) Play Symbols appearing on intended winning Tickets, as dictated by the prize structure.

F. All Tickets will contain at least two (2) "PIG" (TRP) Play Symbols, unless otherwise restricted by other parameters, play action or prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "PRIZE PIGGY" Scratch Ticket Game prize of \$1.00, \$2.00, \$3.00, \$5.00, \$9.00, \$15.00, \$30.00 or \$90.00, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$30.00 or \$90.00 Scratch Ticket Game. In the event

the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "PRIZE PIGGY" Scratch Ticket Game prize of \$1,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "PRIZE PIGGY" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is \$1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;
2. in default on a loan made under Chapter 52, Education Code;
3. in default on a loan guaranteed under Chapter 57, Education Code; or
4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "PRIZE PIGGY" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "PRIZE PIGGY" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 9,120,000 Scratch Tickets in Scratch Ticket Game No. 2228. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2228 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$1.00	1,033,600	8.82
\$2.00	364,800	25.00
\$3.00	182,400	50.00
\$5.00	121,600	75.00
\$9.00	91,200	100.00
\$15.00	60,800	150.00
\$30.00	15,200	600.00
\$90.00	3,306	2,758.62
\$1,000	76	120,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.87. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2228 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2228, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202002142
 Bob Biard
 General Counsel
 Texas Lottery Commission
 Filed: May 26, 2020

◆ ◆ ◆
Texas Racing Commission

Notice of Application Period for Class 2 Racetrack License in Jefferson County, Texas

The Texas Racing Commission hereby designates an application period for a Class 2 racetrack license in Jefferson County, Texas. The application period begins July 6, 2020, and ends September 3, 2020. Applications may be submitted to the Texas Racing Commission at 8505 Cross Park Drive #110, Austin, Texas 78754 no later than 5:00 p.m. on September 3, 2020.

TRD-202002011
 Chuck Trout
 Executive Director
 Texas Racing Commission
 Filed: May 21, 2020

◆ ◆ ◆
Supreme Court of Texas

Final Approval of the Rules Governing the Supervised Practice of Law by Qualified Law Students and Qualified Unlicensed Law School Graduates in Texas

IN THE SUPREME COURT OF TEXAS

=====
Misc. Docket No. 20-9069
=====

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**FINAL APPROVAL OF THE RULES GOVERNING THE SUPERVISED PRACTICE
OF LAW BY QUALIFIED LAW STUDENTS AND QUALIFIED UNLICENSED LAW
SCHOOL GRADUATES IN TEXAS**
=====

ORDERED that:

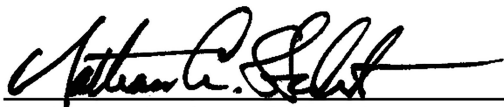
1. On April 29, 2020, in Miscellaneous Docket No. 20-9060, the Court preliminarily adopted the *Rules Governing the Supervised Practice of Law by Qualified Law Students and Qualified Unlicensed Law School Graduates in Texas* pursuant to Section 81.102(b) of the Texas Government Code, and invited public comment.
2. The Court has reviewed all comments received and gives final approval to the Rules in this Order.
3. The Rules are effective immediately.
4. The Rules apply to qualified law students and qualified unlicensed law school graduates who have already obtained a supervised practice card under the repealed *Rules and Regulations Governing the Participation of Qualified Law Students and Qualified Unlicensed Law School Graduates in the Trial of Cases in Texas*. Such students and graduates need not reapply for a supervised practice card but must supplement their files by August 1, 2020, on a form prescribed by the Board, with an updated certification under Rule III(A)(1). Graduates must also supplement their files to show that they meet the new eligibility requirement in Rule II(C)(3). The State Bar of Texas must not charge any fees for such students and graduates to supplement their files.
5. On a temporary basis, Rule IV(B)(1) is relaxed for 2019 law graduates, as well as for graduates in prior years who have been serving as judicial law clerks, to the extent it prohibits those graduates from obtaining or maintaining a supervised practice card because they are approaching or have passed the 14-month anniversary of their graduation. Those graduates are permitted, on a temporary basis, to engage in the activities permitted under the Rules—provided

that they meet all other requirements and obtain a supervised practice card—until the earlier of July 1, 2021, or the occurrence of another terminating event in Rule IV(B).

6. The Clerk of the Supreme Court is directed to:
 - a. file a copy of this Order with the Secretary of State;
 - b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
 - c. send a copy of this Order to each member of the Legislature; and
 - d. submit a copy of this Order for publication in the *Texas Register*.

7. The Texas law school deans are requested to take all reasonable steps to notify their affected students of this Order.

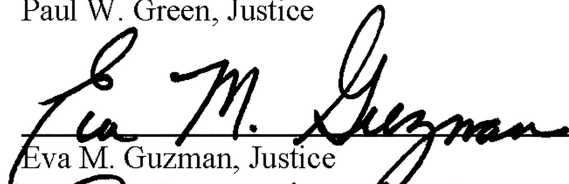
Dated: May 20, 2020.



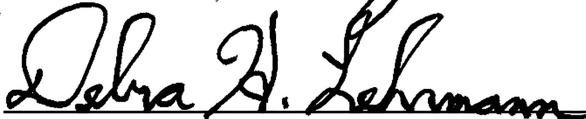
Nathan L. Hecht, Chief Justice



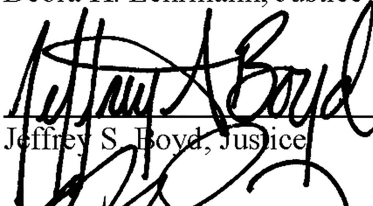
Paul W. Green, Justice



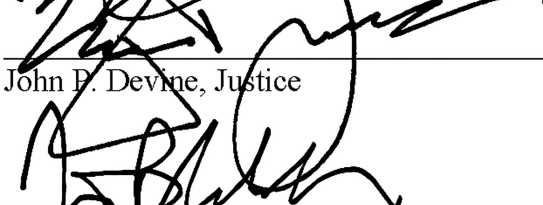
Eva M. Guzman, Justice



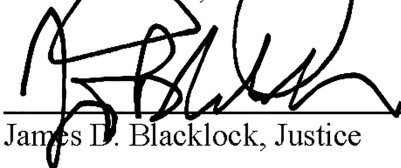
Debra H. Lehrmann, Justice



Jeffrey S. Boyd, Justice



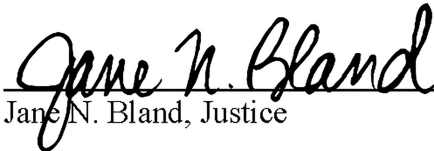
John P. Devine, Justice



James D. Blacklock, Justice



J. Brett Busby, Justice



Jane N. Bland, Justice

Rules Governing the Supervised Practice of Law by Qualified Law Students and Qualified Unlicensed Law School Graduates in Texas

Rule I. Purpose

These rules are promulgated pursuant to Section 81.102(b) of the Texas Government Code for the purpose of governing the participation of qualified law students and qualified unlicensed law school graduates in the limited practice of law in Texas. These rules are promulgated to provide competent legal services for all persons and to furnish practical training to qualified law students and to qualified unlicensed law school graduates.

Rule II. Eligibility; Qualified Law Student and Qualified Unlicensed Law School Graduate Defined

A. To be eligible to obtain a supervised practice card and perform the activities in Rule VI, a person must be:

- (1) a qualified law student; or
- (2) a qualified unlicensed law school graduate.

B. A qualified law student is a student who:

(1) is enrolled at a law school accredited or provisionally accredited by the American Bar Association, except that the law student need not be enrolled during a summer term or when school is not in session, in one of the following programs:

- (a) a juris doctorate program; or
- (b) an LL.M. program that satisfies the requirements of Rule 13 of the *Rules Governing Admission to the Bar of Texas*; and

(2) is certified by the dean of his or her law school or by the dean's designee to:

- (a) have satisfactorily completed:
 - (i) at least two-thirds of the required juris doctorate curriculum for graduation as computed on an hourly basis;

(ii) at least one-third of the required juris doctorate curriculum for graduation computed on an hourly basis if the student is enrolled in a clinical legal education program; or

(iii) at least one-half of the required LL.M. curriculum for graduation computed on an hourly basis if the student is enrolled in a clinical legal education program; and

(b) not be on academic probation; and

(c) possess the present good moral character and fitness required to practice law.

C. A qualified unlicensed law school graduate is a graduate:

(1) of one of the following programs at a law school accredited or provisionally accredited by the American Bar Association:

(a) a juris doctorate program; or

(b) an LL.M. program that satisfies the requirements of Rule 13 of the *Rules Governing Admission to the Bar of Texas*; and

(2) who has:

(a) not yet taken a bar examination;

(b) taken only one bar examination and is awaiting results of the examination; or

(c) taken only one bar examination and not achieved a passing score;

(3) who has applied for admission to the Texas Bar, whether based on a Texas Bar Examination score or a transferred Uniform Bar Examination score, and paid all relevant fees under the *Rules Governing Admission to the Bar of Texas*; and

(4) who is certified by the dean of his or her law school or by the dean's designee to:

(a) have met the graduation requirement in Rule II(C)(1); and

(b) possess the present good moral character and fitness required to practice law.

**Rule III. Application; Issuance of Supervised Practice Card;
Duty to Update Contact Information**

A. A qualified law student or a qualified unlicensed law school graduate must submit to the State Bar of Texas an application for supervised practice on forms prescribed by the State Bar of Texas and a fee in an amount set by the State Bar of Texas. The application must include:

(1) a certification in writing by the qualified law student or the qualified unlicensed law school graduate that he or she:

(a) has read and is familiar with these rules, the Texas Disciplinary Rules of Professional Conduct, the Texas Rules of Disciplinary Procedure, and the Texas Lawyer's Creed; and

(b) agrees to be subject to and abide by these rules, the Texas Disciplinary Rules of Professional Conduct, the Texas Rules of Disciplinary Procedure, and the Texas Lawyer's Creed;

(2) a certification by a dean of the applicant's law school attesting to the requirements in Rules II(B)(2) or II(C)(4); and

(3) a certification from the supervising attorney attesting that the supervising attorney meets all requirements in Rule VII and will directly supervise the applicant.

B. If the State Bar of Texas determines that a qualified law student or a qualified unlicensed law school graduate has satisfied the requirements of Rules II and III(A), the State Bar of Texas must issue a supervised practice card to the qualified law student or the qualified unlicensed law school graduate.

C. A qualified law student or a qualified unlicensed law school graduate must notify the State Bar of Texas Membership Department of any change in contact information on a form prescribed by the State Bar of Texas within 30 days of such change.

Rule IV. Termination of Supervised Practice Card; Notice; Reinstatement

A. A supervised practice card issued to a qualified law student terminates and the qualified law student must cease any activities permitted under Rule VI upon the earlier of:

- (1) 18 months from issuance;
- (2) graduation;
- (3) termination of the dean's certificate under Rule V;
- (4) termination of the supervising attorney's supervision; or
- (5) the imposition of a disciplinary sanction.

B. A supervised practice card issued to a qualified unlicensed law school graduate terminates and the qualified unlicensed law school graduate must cease any activities permitted under Rule VI upon the earlier of:

- (1) 14 months from graduation;
- (2) 30 days after the release of results from a bar examination on which the graduate achieves a passing score;
- (3) 30 days after the release of results from a bar examination on which the graduate fails for a second time to achieve a passing score;
- (4) termination of the dean's certificate under Rule V;
- (5) termination of the supervising attorney's supervision; or
- (6) the imposition of a disciplinary sanction.

C. A qualified law student or qualified unlicensed law school graduate must immediately notify the State Bar of Texas Membership Department and the supervising attorney of the terminating events in Rules IV(A)(2)-(5) and (B)(2)-(6), respectively. A qualified law student or a qualified unlicensed law graduate also must immediately notify the Board of Law Examiners of the imposition of a disciplinary sanction.

D. A qualified law student whose supervised practice card terminates under Rule IV(A)(2) may reinstate the card as a qualified unlicensed law school graduate without submitting a new application and fee if, within 30 days of graduation, the qualified unlicensed law school graduate submits certifications under Rules III(A)(2) and (3) and any other forms required by the State Bar of Texas.

E. A qualified law student or qualified unlicensed law school graduate whose supervised practice card terminates under Rule IV(A)(4) or (B)(5), respectively, may reinstate the card without submitting a new application and fee if, within 30 days of termination of the supervising attorney's supervision, the qualified law student or qualified unlicensed law school graduate submits a certification under Rule III(A)(3) from a new supervising attorney and any other forms required by the State Bar of Texas.

Rule V. Dean's Certification

The certifying dean must maintain a record of the certification of each participating qualified law student and qualified unlicensed law school graduate. The dean must terminate certification when conditions of Rules II(B)(2) or II(C)(4) are not maintained. In addition, the dean may terminate certification at any time without prior notice or hearing and without any showing of cause. The dean must notify the qualified law student or the qualified unlicensed law school graduate and the State Bar of Texas Membership Department in writing of any such termination of certification.

Rule VI. Permitted Activities

A. Subject to all applicable rules and statutes, a qualified law student or a qualified unlicensed law school graduate who has a currently effective supervised practice card may:

(1) subject to the approval of the presiding judge, administrative officer, arbitrator, or other hearing officer, appear in any trial, hearing, arbitration, or other proceeding on behalf of a client provided that the qualified law student or qualified unlicensed law school graduate:

(a) has obtained the client's consent;

(b) notifies or has previously notified the court, administrative officer, arbitrator, or other hearing officer of the client's consent; and

(c) is accompanied, whether in person or by remote means, by the supervising attorney; and

(2) appear on behalf of a client in depositions provided that the qualified law student or qualified unlicensed law school graduate:

(a) has obtained the client's consent; and

(b) is accompanied, whether in person or by remote means, by the supervising attorney; and

(3) negotiate or prepare a legal instrument, such as a contract or will, on behalf of a client provided that:

(a) the qualified law student or qualified unlicensed law school graduate has obtained the client's consent; and

(b) the negotiation or legal instrument is subject to final approval by the supervising attorney; and

(4) file papers on behalf of a client with a court, administrative officer, arbitrator, or other hearing officer provided that the supervising attorney also signs the papers; and

(5) provide legal advice to a client provided that the qualified law student or qualified unlicensed law school graduate has obtained the approval of the supervising attorney regarding the legal advice.

B. Nothing herein will be construed as regulating or attempting to regulate the use of law clerks by attorneys in any and all matters generally considered to be the office practice of law.

Rule VII. Supervising Attorney

A. Except as otherwise provided in Rule VII(B), an attorney who is supervising a qualified law student or qualified unlicensed law school graduate must:

(1) be an active member of the State Bar of Texas in good standing who has practiced law in Texas for at least three years;

(2) assume professional responsibility for the direct supervision of and for any activity performed by the qualified law student or qualified unlicensed law school graduate under these rules;

(3) maintain professional malpractice and errors and omissions insurance covering the supervised qualified law student or qualified unlicensed law school graduate, unless the attorney is supervising the student or the graduate in the attorney's official capacity as a public prosecutor or assistant public prosecutor or is an attorney otherwise protected by governmental immunity;

(4) supervise not more than four qualified law students and qualified unlicensed law school graduates simultaneously; and

(5) immediately notify the State Bar of Texas Membership Department if the lawyer no longer meets the requirements of these rules or if the lawyer's supervision is ending for any reason.

B. An attorney supervising a qualified law student in connection with a clinical legal education program or a qualified unlicensed law school graduate in connection with matters commenced while the graduate was enrolled in a clinical legal education program must:

(1) be:

(a) an active member of the State Bar of Texas in good standing who has practiced in Texas at least three years; or

(b) an active member of the bar of another state in good standing who has practiced at least three years, and who teaches in a Texas law school;

(2) assume professional responsibility for the direct supervision of and for any activity performed by the qualified law student or qualified unlicensed law school graduate under these rules;

(3) maintain professional malpractice and errors and omissions insurance covering the supervised qualified law student or qualified unlicensed law school graduate, unless the attorney is supervising the student or the graduate in the attorney's official capacity as a public prosecutor or is an attorney otherwise protected by governmental immunity;

(4) be approved in writing by the dean of the law school sponsoring the clinical program as a clinical supervisor; and

(5) immediately notify the State Bar of Texas Membership Department if the lawyer no longer meets the requirements of these rules or if the lawyer's supervision is ending for any reason.

C. The supervising attorney must terminate supervision and immediately notify the qualified law student or qualified unlicensed law school graduate when the supervising attorney has received a

public disciplinary sanction or been referred to the grievance diversion program, or the supervising attorney has ceased to meet the requirements of Rule VII.

D. The supervising attorney must immediately notify the State Bar of Texas Chief Disciplinary Counsel if the attorney has knowledge that the qualified law student or qualified unlicensed law school graduate has committed a violation of applicable rules of professional conduct that raises a substantial question as to the student's or graduate's honesty, trustworthiness, or fitness to practice law in other respects. The supervising attorney must also immediately notify the Board of Law Examiners if the attorney has knowledge the qualified law student or qualified unlicensed law school graduate does not possess the present good moral character and fitness required to practice law.

Rule VIII. Discipline

A. A qualified law student or a qualified unlicensed law school graduate practicing under these rules:

(1) is subject to:

(a) the Texas Disciplinary Rules of Professional Conduct, including the rules requiring truthful and non-misleading advertising or other public statements concerning his or her limited authority to practice;

(b) the Texas Rules of Disciplinary Procedures; and

(c) any other Texas laws or rules governing the conduct or discipline of attorneys; and

(2) may be sanctioned or disciplined by a court or the State Bar of Texas in the same manner as an active member of the State Bar of Texas.

B. In the event a qualified law student or a qualified unlicensed law school graduate practicing under these rules has received a public disciplinary sanction or been referred to the grievance diversion program, the Chief Disciplinary Counsel must immediately report the same to the dean of the student's or graduate's law school, the supervising attorney, and the Board of Law Examiners.

Rule IX. Compensation

A qualified law student or a qualified unlicensed law school graduate must not directly charge a client for his services or claim or receive a percentage fee, contingency fee, or origination fee;

however, nothing in these rules is intended to prevent the qualified law student or qualified unlicensed law school graduate from being paid for his services by his supervising attorney, or to prevent a supervising attorney from charging a fee for the services rendered under his supervision.

Rule X. Miscellaneous

A. Nothing contained in these rules affects the right of any person who is not admitted to practice law to do anything that he might lawfully do prior to the adoption of these rules.

B. The rules of law and evidence relating to privileged communications between attorney and client shall govern communications made or received by qualified law students or by qualified unlicensed law school graduates certified under the provisions of these rules.

TRD-202002015
Jaclyn Daumerie
Rules Attorney
Supreme Court of Texas
Filed: May 21, 2020



Texas Department of Transportation

Public Hearing Notice - Statewide Transportation Improvement Program

The Texas Department of Transportation (department) will hold a public hearing on Wednesday, June 24, 2020, at 10:00 a.m. Central Standard Time (CST) to receive public comments on the May 2020 Quarterly Revisions to the Statewide Transportation Improvement Program (STIP) for FY 2019-2022. The hearing will be conducted via electronic means due to the public health precautions surrounding COVID-19. Instructions for accessing the hearing will be published on the department's website at: <https://www.txdot.gov/inside-txdot/get-involved/about/hearings-meetings.html>

The STIP reflects the federally funded transportation projects in the FY 2019-2022 Transportation Improvement Programs (TIPs) for each Metropolitan Planning Organization (MPO) in the state. The STIP includes both state and federally funded projects for the nonattainment areas of Dallas-Fort Worth, El Paso, Houston and San Antonio. The STIP also contains information on federally funded projects in rural areas that are not included in any MPO area, and other statewide programs as listed.

Title 23, United States Code, §134 and §135 require each designated MPO and the state, respectively, to develop a TIP and STIP as a condition to securing federal funds for transportation projects under Title 23 or the Federal Transit Act (49 USC §5301, et seq.). Section 134 requires an MPO to develop its TIP in cooperation with the state and affected public transit operators and to provide an opportunity for interested parties to participate in the development of the program. Section 135 requires the state to develop a STIP for all areas of the state in cooperation with the designated MPOs and, with respect to non-metropolitan areas, in consultation with affected local officials, and further requires an opportunity for participation by interested parties as well as approval by the Governor or the Governor's designee.

A copy of the proposed May 2020 Quarterly Revisions to the FY 2019-2022 STIP will be available for review, at the time the notice of hearing

is published, on the department's website at: <https://www.txdot.gov/inside-txdot/division/transportation-planning/stips.html>

Persons wishing to speak at the hearing may register in advance by notifying Angela Erwin, Transportation Planning and Programming Division, at (512) 416-2187 no later than 12:00 p.m. CST on Tuesday, June 23, 2020. Speakers will be taken in the order registered and will be limited to three minutes. Speakers who do not register in advance will be taken at the end of the hearing. Any interested person may offer comments or testimony; however, questioning of witnesses will be reserved exclusively to the presiding authority as may be necessary to ensure a complete record. While any persons with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the presiding authority reserves the right to restrict testimony in terms of time or repetitive content. Groups, organizations, or associations should be represented by only one speaker. Speakers are requested to refrain from repeating previously presented testimony.

The public hearing will be conducted in English. Persons who have special communication or accommodation needs and who plan to participate in the hearing are encouraged to contact the Transportation Planning and Programming Division, at (512) 486-5003. Requests should be made at least three working days prior to the public hearing. Every reasonable effort will be made to accommodate the needs.

Interested parties who are unable to participate in the hearing may submit comments regarding the proposed May 2020 Quarterly Revisions to the FY 2019-2022 STIP to Peter Smith, P.E., Director of the Transportation Planning and Programming Division, P.O. Box 149217, Austin, Texas 78714-9217. In order to be considered, all written comments must be received at the Transportation Planning and Programming office by 4:00 p.m. CST on Monday, July 6, 2020.

TRD-202002171
Becky Blewett
Deputy General Counsel
Texas Department of Transportation
Filed: May 27, 2020



Texas Water Development Board

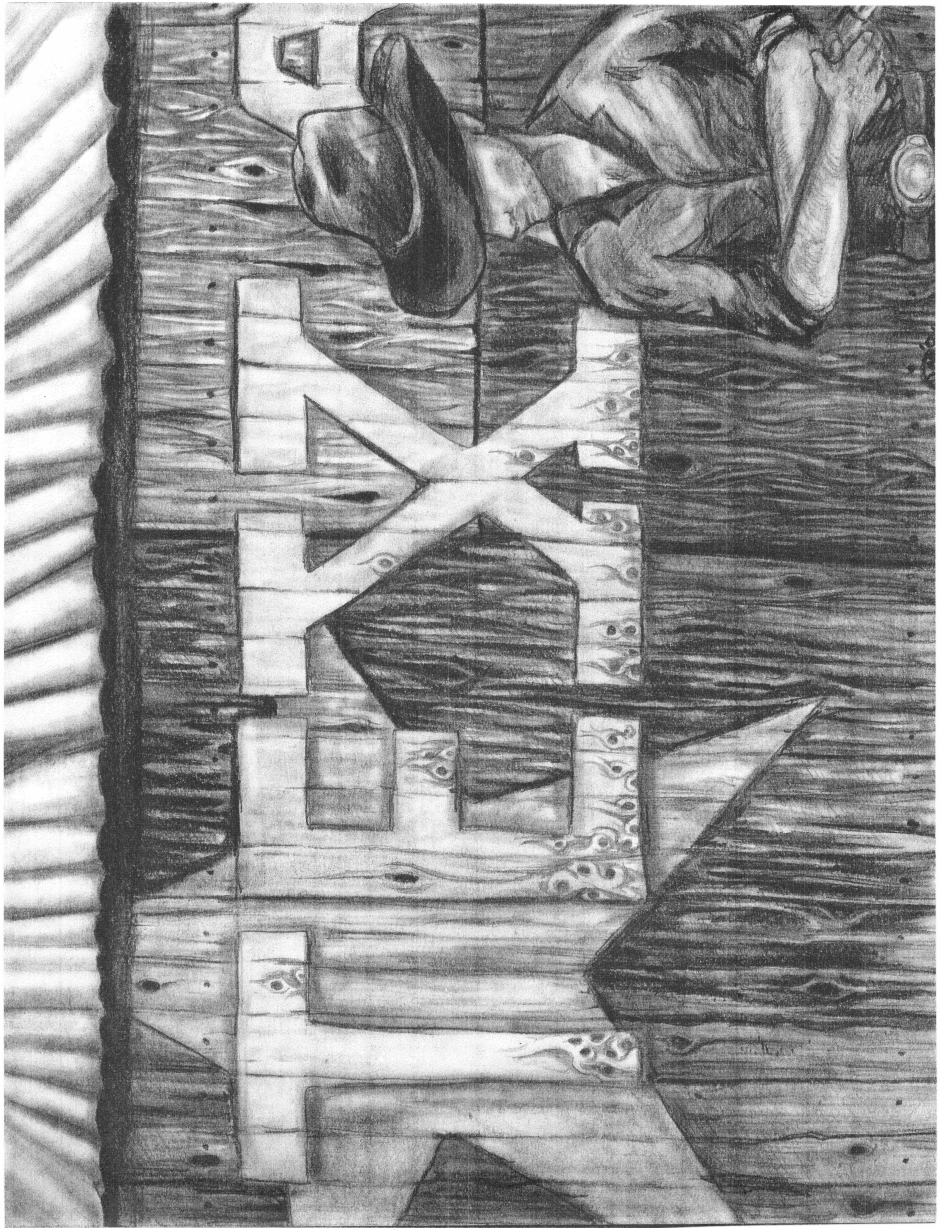
Request for Applications for Flood Protection Planning

The Texas Water Development Board (TWDB) requests applications for the possible award of financial assistance under Category 1 of the 2020 Flood Intended Use Plan. The financial assistance will be used to

conduct planning of entire watersheds no smaller than Hydrologic Unit Code 10-digit (HUC-10) to better inform the development of strategies using structural and nonstructural measures before a flood event, such as determining and describing problems from or related to flooding, identifying and planning solutions to flooding problems, and estimating the benefits and costs of these solutions. The TWDB will accept applications from political subdivisions in Texas that have the authority to plan for and implement projects related to flood protection. For more information, including instructions on how to apply, please visit the TWDB website at: <http://www.twdb.texas.gov/financial/programs/FIF/index.asp>

TRD-202002157
Ashley Harden
General Counsel
Texas Water Development Board
Filed: May 26, 2020





How to Use the Texas Register

Information Available: The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Review of Agency Rules - notices of state agency rules review.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 43 (2018) is cited as follows: 43 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "43 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 43 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <http://www.sos.state.tx.us>. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
26. Health and Human Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to Update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION Part 4. Office of the Secretary of State Chapter 91. Texas Register

1 TAC §91.1.....950 (P)

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