

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 16. ECONOMIC REGULATION

PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 401. ADMINISTRATION OF STATE LOTTERY ACT

The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §401.152 (Application for License), §401.302 (Scratch Ticket Game Rules), §401.362 (Retailer's Financial Responsibility for Lottery Tickets Received and Subsequently Damaged or Rendered Unsaleable, for Winning Lottery Tickets Paid and for Lottery-Related Property), and §401.370 (Retailer's Financial Responsibility for Lottery Tickets Received and Subsequently Stolen or Lost) without changes to the proposed text as published in the September 1, 2023, issue of the *Texas Register* (48 TexReg 4744). The rules will not be republished.

The amendment to §401.152 defines the term "director" throughout the rules to mean the lottery operations director.

The amendment to §401.302 eliminates a redundant word related to the payment of scratch ticket prizes and makes the terms identical to those of draw games.

The amendments to §401.362 provide for an additional documentation option other than a Fire Marshal's report for reporting fire damaged or destroyed lottery tickets and eliminate the \$25 administrative fee for a pack of unactivated tickets that is unsaleable due to damage or destruction.

The amendments to §401.370 eliminate the \$25 administrative fee for each unactivated pack of stolen or lost tickets and update the requirement for reporting lost or stolen tickets to the Commission's enforcement division through the lottery operator hotline.

The Commission received no written comments on the proposed amendments during the public comment period.

SUBCHAPTER B. LICENSING OF SALES AGENTS

16 TAC §401.152

These amendments are adopted under Texas Government Code §466.015(c), which authorizes the Commission to adopt rules governing the operation of the lottery, and §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

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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Bob Biard

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Texas Lottery Commission

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For further information, please call: (512) 344-5392



SUBCHAPTER D. LOTTERY GAME RULES

16 TAC §401.302

These amendments are adopted under Texas Government Code §466.015(c), which authorizes the Commission to adopt rules governing the operation of the lottery, and §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

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SUBCHAPTER E. RETAILER RULES

16 TAC §401.362, §401.370

These amendments are adopted under Texas Government Code §466.015(c), which authorizes the Commission to adopt rules governing the operation of the lottery, and §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 100. CHARTERS

SUBCHAPTER A. OPEN-ENROLLMENT

CHARTER SCHOOLS

19 TAC §100.1

The State Board of Education (SBOE) adopts an amendment to §100.1, concerning the open-enrollment charter school selection process. The amendment is adopted without changes to the proposed text as published in the July 21, 2023 issue of the *Texas Register* (48 TexReg 3968) and will not be republished. The adopted amendment modifies the no-contact period for open-enrollment charter applicants or any person or entity acting on their behalf.

REASONED JUSTIFICATION: Section 100.1 establishes the process for approval of an open-enrollment charter, including a no-contact period for open-enrollment charter applicants or any person or entity acting on their behalf with the commissioner of education, the commissioner's designee, a member of the SBOE, or a member of an external application review panel.

A petition was received from the Texas Public Charter Schools Association requesting that the no-contact period established in §100.1(d) be eliminated. The SBOE considered the petition at its January-February 2023 meeting and directed Texas Education Agency staff to present an amendment to §100.1 that would end the no-contact period for charter school applicants on the date the applicant passes the external review with a passing score.

The adopted amendment to §100.1(d) removes the no-contact period for open-enrollment charter applicants or any person or entity acting on their behalf with the commissioner, the commissioner's designee, or a member of an external application review panel. The no-contact period with a member of the SBOE has been modified to end on the date the applicant passes through an external review with a qualifying score.

The SBOE approved the amendment for first reading and filing authorization at its June 23, 2023 meeting and for second reading and final adoption at its September 1, 2023 meeting.

In accordance with Texas Education Code, §7.102(f), the SBOE approved the amendment for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2024-2025 school year. The earlier effective date will allow the modified no-contact period to begin as soon as possible. The effective date is 20 days after filing as adopted with the Texas Register.

SUMMARY OF COMMENTS AND RESPONSES: The public comment period began July 21, 2023, and ended at 5:00 p.m. on August 25, 2023. The SBOE also provided an opportunity for registered oral and written comments at its August-September 2023 meeting in accordance with the SBOE board operating policies and procedures. Following is a summary of the public comments received and corresponding responses.

Comment: Texas Public Charter Schools Association (TPCSA) stated that existing §100.1 is unnecessary as the charter application process is not analogous to a traditional procurement process because the charter school applicants are not in competition with each other and the SBOE does not directly negotiate or contract with charter school applicants. TPCSA also stated that existing §100.1 is unfair as it does not apply to all interested parties because parties opposed to applicants are able to contact SBOE members. TPCSA also stated that existing §100.1 is unconstitutional because the Texas Constitution, Article 1, Section 27, parallels the federal constitutional right to petition the government. Finally, TPCSA requested the board approve the proposed amendment to §100.1 with an effective date earlier than August 26, 2024, to ensure the modified rule is effective for Generation 29 charter applicants.

Response: The SBOE agrees with the need for an earlier effective date to allow the amendment to be implemented for Generation 29 charter applicants; therefore, the rule was adopted with an effective date of 20 days after filing as adopted with the Texas Register. The SBOE also provides the following clarification. TPCSA's comments related to the current rule do not address the proposed amendment to §100.1, which modifies the no-contact period for open-enrollment charter applicants or any person or entity acting on their behalf. The SBOE determined that the amended rule was appropriate as proposed and adopted the rule without changes since approved for first reading.

Comment: Texas American Federation of Teachers (Texas AFT) stated that the organization does not see a reason to amend the current charter selection process outlined in §100.1, as SBOE members have the opportunity to engage with charter applicants under the current rule. Texas AFT requested the rule be amended to specify that the no-contact period ends on the date of the commissioner's proposal of charter applicants to the SBOE. Texas AFT also questioned the reason for striking the language in subsection (d) regarding communication with the commissioner or the commissioner's designee.

Response: The SBOE disagrees with the commenter's suggested revisions. The SBOE determined that the modified no-contact period was appropriate as proposed and adopted the rule without changes since approved for first reading. In addition, the SBOE provides the following clarification. Rules regarding contact with the commissioner, the commissioner's designee, and other TEA staff are addressed in commissioner rules in 19 TAC Chapter 100, Subchapter AA.

Comment: An individual opposed the proposed amendment and stated support for transparency and accountability in the charter selection process outlined in §100.1. The individual stated that best practice is for the commissioner to engage later in the process for clarity.

Response: The SBOE agrees that the charter selection process should be transparent and accountable. The SBOE has determined that the modified no-contact period and the commissioner's role in the process are appropriate, and the rule was adopted without changes since approved for first reading.

Comment: Texas Association of School Boards stated that 21 organizations oppose the proposed amendment. TASB commented that the current rule reinforces the integrity of the charter application process by ensuring transparency and that the current process allows for opportunity for contact between SBOE members or TEA staff with charter applicants. TASB requested the SBOE maintain the no-contact rule until the date the commissioner announces recommendations to the SBOE and maintain the no-contact rule with the commissioner, the commissioner's designee, and the external review team. TASB also asked for clarification on how the proposed amendment aligns with commissioner rules regarding contact between applicants and the commissioner, the commissioner's designee, and external reviewers.

Response: The SBOE disagrees with the commenter's suggested revisions. The SBOE determined that the modified no-contact period was appropriate as proposed and adopted the rule without changes since approved for first reading. In addition, the SBOE provides the following clarification. Rules regarding contact with the commissioner, the commissioner's designee, and other TEA staff are addressed in commissioner rules in 19 TAC Chapter 100, Subchapter AA, while rules governing the SBOE will be addressed in SBOE rules.

Comment: A parent commented in opposition to the proposed amendment because the current rule (1) reinforces transparency and integrity in the charter selection process and ensures that discussion and deliberation are made in public forums; (2) allows a charter applicant to contact SBOE members and TEA staff before their application is submitted and partake in various interviews throughout the process; and (3) allows SBOE members to initiate contact at any time. The parent requested the SBOE maintain the no-contact rule until the date the commissioner announces recommendations to the SBOE and maintain the no-contact rule with the commissioner, the commissioner's designee, and the external review team.

Response: The SBOE disagrees with the commenter's suggested revisions. The SBOE determined that the modified no-contact period was appropriate as proposed and adopted the rule without changes since approved for first reading.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code, §12.101, which requires the commissioner of education to notify the State Board of Education of each charter the commissioner proposes to grant. It also establishes that unless, before the 90th day after the date on which the board receives the notice from the commissioner, a majority of the members of the board present and voting vote against the grant of that charter, the commissioner's proposal to grant each charter takes effect.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §12.101.

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 October 11, 2023.

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Cristina De La Fuente-Valadez
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Texas Education Agency
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TITLE 22. EXAMINING BOARDS

**PART 16. TEXAS BOARD OF
PHYSICAL THERAPY EXAMINERS**

CHAPTER 329. LICENSING PROCEDURE

22 TAC §329.1

The Texas Board of Physical Therapy Examiners adopts amending 22 TAC §329.1. General Licensure Requirements and Procedures to clarify changes in contact information that need to be reported to the board and requests for name changes. The amendment is adopted without changes to the proposed text as published in the September 08, 2023, issue of the *Texas Register* (48 TexReg 4980). The rule will not be republished.

The amendment eliminates reference to an address of record, changes the wording from residential to home address, and adds phone numbers and email addresses to the change of information that a licensee is required to report to the board. Additionally, the amendment clarifies that name changes must be submitted on a form prescribed by the board with the appropriate fee and a copy of legal documentation enacting the name change, and eliminates the requirement of making a name change with the renewal application.

No public comment was received.

The amended rule is adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

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 October 13, 2023.

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Ralph Harper
Executive Director
Texas Board of Physical Therapy Examiners
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For further information, please call: (512) 305-6900

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22 TAC §329.6, §329.7

The Texas Board of Physical Therapy Examiners adopts amendments to 22 TAC §329.6. Licensure by Endorsement and §329.7. Exemptions from Licensure pertaining to military service member exemption pursuant to SB 422 amendment of Sec. 55.0041. **RECOGNITION OF OUT-OF-STATE LICENSE OF**

MILITARY SERVICE MEMBERS AND MILITARY SPOUSES, of Chapter 55, Occupations Code during the 88th Legislative Session.

The amendments are adopted in order to authorize a military service member to engage in the practice of physical therapy without obtaining a license as a physical therapist or physical therapist assistant if the military service member is currently licensed in good standing by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the licensure in this state and the military service member is stationed at a military installation in this state.

The amendments to §329.6 are adopted without changes to the proposed text as published in the September 08, 2023 issue of the *Texas Register* (48 TexReg 4981) and will not be republished. The amendments to §329.7 are adopted with changes to the proposed text as published in the September 08, 2023 issue of the *Texas Register* (48 TexReg 4981) by adding (C) to §329.7. Exemptions from Licensure. (5) in order to clarify that the adopted amendments do not modify or alter rights that might be provided under federal law. The rule will be republished.

Pursuant to §2001.029 of the Texas Government Code, the Board gave all interested persons a reasonable opportunity to provide written/oral commentary concerning the proposed amendment of this rule. The 30-day comment period ended on October 8, 2023. A summary of correspondence relating to the amendment and the Board's responses follow:

Notification Letter from the U.S. Department of Justice, Civil Rights Division to State Licensing Authorities dated July 13, 2023 regarding a new provision in the Servicemembers Civil Relief Act (SCRA) about the portability of professional licenses for servicemembers and their spouses.

The Board's response is the amendments as proposed align with the new provision in the SCRA.

Directive from Governor Greg Abbott to Heads of State Agencies dated August 30, 2023 regarding review of the new provision of the SCRA, 50 U.S.C. § 4025a, and implementation of any changes needed under that law.

The Board's response is the amendments as proposed align with the new provision in the SCRA.

Email from Sara Hays, Advisor, Office of Governor Greg Abbott Policy & Budget Division dated August 30, 2023 recommending amendments pertaining to changes in Occupation Code, Chapter 55 (Licensing of Military Service Members, Military Veterans, and Military Spouses) add the following or a version of the following to include SCRA: "Subsection (*) establishes requirements and procedures authorized or required by Texas Occupations Code, Chapter 55, and does not modify or alter rights that may be provided under federal law."

The Board's response is to add (C) to §329.7. Exemptions from Licensure. (5) to read: "This exemption establishes requirements and procedures authorized or required by Texas Occupations Code, Chapter 55, and does not modify or alter rights that might be provided under federal law."

The amended rules are adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Rulemaking authority is expressly granted to a state agency in SECTION 5. of SB 422, 88th Legislative Session.

§329.7. *Exemptions from Licensure.*

(a) The following categories of individuals practicing physical therapy in the state are exempt from licensure by the board.

(1) A person practicing physical therapy in the U.S. armed services, U.S. Public Health Service, or Veterans Administration in compliance with federal regulations for licensure of health care providers; and

(2) A person who is licensed in another jurisdiction of the U.S. and who, by contract or employment, is practicing physical therapy in this state for not more than 60 days in a 12 month period for an athletic team or organization or a performing arts company temporarily competing or performing in this state.

(b) The following categories of individuals practicing physical therapy in the state are exempt from licensure by the board and must notify the board of their intent to practice in the state.

(1) A physical therapist who is licensed in good standing in another jurisdiction of the U.S. if the person is engaging, for not more than 90 days in a 12 month period and under the supervision of a physical therapist licensed in this state, in a special project or clinic required for completion of a post-professional degree in physical therapy from an accredited college or university.

(A) The individual must submit written notification stating the following:

(i) the beginning and ending dates of the period of practice;

(ii) the name of the institution or facility in which the individual will be practicing;

(iii) the name of the supervising physical therapist; and

(iv) a list of the jurisdictions in which the individual has held or currently holds a license.

(B) Written notification must be received by the board prior to the start date of the practice.

(2) A physical therapist or a physical therapist assistant who is licensed in good standing in another jurisdiction of the U.S. or authorized to practice physical therapy without restriction in another country if the person is engaging in patient contact and treatment as either an instructor or participant while attending an educational seminar or activity in this state for not more than 60 days in a 12 month period.

(A) The individual must submit written notification stating the following:

(i) the beginning and ending dates of the educational activity;

(ii) the name of the course or activity sponsor;

(iii) the location of the educational activity; and

(iv) a list of the jurisdictions in which the individual has held or currently holds a license.

(B) Written notification must be received by the board prior to the start date of the educational activity.

(3) A physical therapist or physical therapist assistant licensed in good standing in another jurisdiction of the U.S. who is prac-

ting physical therapy for not more than 60 days during a declared local, state, or national disaster or emergency.

(A) The individual must submit written notification stating the following:

(i) the beginning and ending dates of the period of practice;

(ii) the name of the facility in which the individual will be practicing; and

(iii) a list of the jurisdictions in which the individual has held or currently holds a license.

(B) Written notification must be received by the board prior to the start date of the practice.

(4) A physical therapist or physical therapist assistant licensed in good standing in another jurisdiction of the U.S. who is displaced from the person's residence or place of employment due to a declared local, state, or national disaster and is practicing physical therapy in this state for not more than 60 days after the date the disaster is declared.

(A) The individual must submit written notification stating the following:

(i) the beginning and ending dates of the period of practice;

(ii) the name of the facility in which the individual will be practicing; and

(iii) a list of the jurisdictions in which the individual has held or currently holds a license.

(B) Written notification must be received by the board prior to the start date of the practice.

(5) A physical therapist or physical therapist assistant licensed in good standing in another jurisdiction of the U.S. who is a military service member or military spouse for the period during which the military service member to whom the military spouse is married is stationed at a military installation in Texas.

(A) The military service member or military spouse must submit written notification including the following:

(i) proof of the military service member or military spouse's residency in this state including a copy of the permanent change of station order for the military service member to whom the spouse is married;

(ii) a copy of the military service member or military spouse's military identification card; and

(iii) a list of the jurisdictions in which the military service member or military spouse has held or currently holds a license.

(B) The board will issue a written confirmation stating that:

(i) licensure in other jurisdictions has been verified;

(ii) the military service member or military spouse is authorized to practice physical therapy in the state; and

(iii) authorization does not exceed three years from the date the confirmation is received.

(C) This exemption establishes requirements and procedures authorized or required by Texas Occupations Code, Chapter 55, and does not modify or alter rights that might be provided under federal law.

(c) For individuals exempt from licensure under subsection (b) of this section, the following applies:

(1) any jurisdiction of the U.S. that licenses physical therapists and physical therapist assistants is deemed to have substantially equivalent requirements for licensure;

(2) verification of licensure in other jurisdictions may be through online primary source verification; and

(3) the individual must comply with all of the laws and regulations applicable to the provision of physical therapy in Texas.

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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Ralph Harper

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Texas Board of Physical Therapy Examiners

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 284. COMPETITIVE AND INTEGRATED EMPLOYMENT INITIATIVE FOR CERTAIN MEDICAID RECIPIENTS

26 TAC §§284.101, 284.103, 284.105, 284.107, 284.109, 284.111

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts new §284.101, concerning Purpose; §284.103, concerning Applicability; §284.105, concerning Uniform Process; §284.107, concerning Strategies to Increase Number of Individuals Receiving Employment Services; §284.109, concerning Referrals to the Texas Workforce Commission; and §284.111, concerning Increasing the Number of Individuals Receiving Employment Services.

Sections 284.105, 284.107, 284.109, and 284.111 are adopted with changes to the proposed text as published in the May 26, 2023, issue of the *Texas Register* (48 TexReg 2659). These rules will be republished. Sections 284.101 and 284.103 are adopted without changes to the proposed text as published in the May 26, 2023, issue of the *Texas Register* (48 TexReg 2659). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

The new sections are necessary to comply with Texas Government Code §531.02448, regarding Competitive and Integrated Employment Initiative for Certain Medicaid Recipients, added by Senate Bill (S.B.) 50, 87th Legislature, Regular Session, 2021.

The Community Living Assistance and Support Services (CLASS), Deaf Blind with Multiple Disabilities (DBMD), Home

and Community-based Services (HCS), Texas Home Living (TxHmL), and STAR+PLUS Home and Community-based Services (STAR+PLUS HCBS) programs each provide employment services. Employment assistance services assist an individual in locating competitive employment in the community. Supported employment assists an individual in sustaining competitive employment.

To implement S.B. 50, HHSC developed a form to use in the CLASS, DBMD, HCS, TxHmL, and STAR+PLUS HCBS programs to determine an individual's employment goals and the employment opportunities and employment services available to the individual in the individual's program. The adopted rules require the entity responsible for developing an individual's person-centered service plan to determine an individual's desire to work. The adopted rules require an individual's response to be documented in the individual's person-centered service plan. When the individual indicates a desire to work, the responsible entity is required to complete the HHSC Employment First Discovery Tool at the time the plan is developed during initial enrollment, and annual renewals, and revisions if the individual's person-centered service plan does not include an employment service.

After completing the HHSC Employment First Discovery Tool, if an individual's person-centered service plan does not include employment services through the waiver program in which the individual is enrolled, the adopted rules require an individual's case manager or service coordinator to refer the individual for employment services available through the Texas Workforce Commission (TWC). The adopted rules specify HHSC's determination that the number of individuals receiving employment services on December 31, 2023, from the TWC or through the waiver programs in which the individuals are enrolled, will be at least five percent greater than the number of individuals receiving employment services on December 31, 2022.

COMMENTS

The 31-day comment period ended June 26, 2023.

During this period, HHSC received comments regarding the proposed rules from five commenters, including the TWC, the Texas Council of Community Centers, the Providers Alliance for Community Services of Texas, and two individuals.

A summary of comments relating to the rules and HHSC's responses follows.

Comment: A commenter questioned whether asking a person if they would like to work will ultimately result in the goal of increasing competitive employment. The commenter further questioned whether this expectation could be framed differently in order to increase employment within the waivers.

Response: HHSC declines to make changes in response to this comment. HHSC thinks the comment is about proposed §284.105(a), which requires an individual's service planning team to determine during the person-centered planning process whether an individual desires to work. HHSC disagrees that this requirement is the same as asking a person if they would like to work. Texas Government Code Section §531.02448(b) directs HHSC to develop a uniform process to assess an individual's employment goals. This requires that each individual who indicates a desire to work is referred to receive employment services from the TWC or through the waiver program in which the individual is enrolled. HHSC may consider including this topic in future training materials.

Comment: A commenter noted that S.B. 50 requires HHSC to develop a uniform process but does not require a uniform assessment tool, and that a uniform process does not require a single, uniform tool. This commenter recommended that HHSC ensure assessors across Medicaid programs ask individuals the same, or substantially similar, required questions related to employment during their respective service planning processes. Additionally, the commenter suggested re-naming the form from "Employment First Uniform Assessment Form" to "Employment First Discovery Tool."

Response: HHSC agrees it is imperative the same questions are asked across programs and designed the "Employment First Uniform Assessment Form" to accomplish this task. HHSC does not agree that developing a uniform process does not require using a uniform assessment tool, but agrees to renaming the assessment form to the "HHSC Employment First Discovery Tool" and revised §§284.105(a)(2), 284.107(1), and 284.109 accordingly. The form will now be referred to as the "Employment First Discovery Tool."

Comment: A commenter asked if the Employment First Discovery Tool assesses the individual's ability to work.

Response: The renamed "Employment First Discovery Tool" is not meant to be a functional assessment. Rather, it is an inquiry of the individual's employment interests and goals. This tool is part of the overall discussion within the person-centered planning process. HHSC did not make changes in response to this comment.

Comment: One commenter requested that HHSC add to handbooks, or other policy material, proven techniques for determining whether someone wants to work.

Response: HHSC did not make changes in response to this comment because amending non-rule policy is outside the scope of this rule project. However, HHSC may consider adding a "discovery process" as part of the provider education process to train case managers and service coordinators on how to lead the person-centered planning process to determine whether an individual wants to work.

Comment: One commenter requested that HHSC add language related to referrals to the TWC in §284.105.

Response: HHSC disagrees and declines to revise §284.105 in response to this comment because this rule describes the uniform process for providing employment services in the waiver program in which the individual is enrolled if the individual expresses the desire to work. Section 284.109 addresses referrals to TWC and requires a case manager or service coordinator to refer an individual to TWC for employment services if the individual's person-centered service plan does not include employment services through the waiver program in which the individual is enrolled.

Comment: One commenter requested that HHSC include in §284.105(c)(2) an individual expressing a desire to advance in their employment as a trigger for a service plan revision.

Response: HHSC disagrees and declines to revise §284.105(c)(2) as suggested. Texas Government Code §531.02448(d)(3) directs HHSC to ensure each individual who indicates a desire to work is referred to receive employment services from the TWC or through the waiver program in which the individual is enrolled. It is outside the scope of the rule project to include requirements for revising an individual's person-centered service plan when an individual is already

receiving employment services through the individual's waiver program and the plan needs to be revised.

Comment: A commenter recommended that HHSC revise the rule to allow use of the form during a service plan revision even if a meeting of the entire service planning team does not convene. The commenter also suggested to revise §284.105(c)(2) to include the phrase "the purpose of the revision is because."

Response: HHSC disagrees with the first recommendation and declines to make changes in response because §284.105(a) requires an individual's service planning team to determine during the person-centered planning process whether an individual desires to work. Section 284.105(c) requires an individual's case manager or service coordinator to ensure the requirements in subsection (a) of the rule are met when the individual's service planning team meets to revise the individual's person-centered service plan if the individual expresses a desire to work and the individual's person-centered service plan does not include an employment service. HHSC agrees with the suggestion to revise §284.105(c)(2) and made changes to add the phrase "the purpose of the revision is because."

Comment: One commenter requested that the Employment First Discovery Tool be completed or revised anytime a desire to work or a desire for advancement in employment is identified.

Response: HHSC did not make changes in response to this comment because §284.105(a)(2) and (c) already requires completion of the Employment First Discovery Tool any time an individual expresses a desire to work. Also, HHSC disagrees with the suggestion to amend the rules to require the tool to be completed when an individual expresses a desire for advancement in employment because it is outside the scope of the rule project to include requirements for revising an individual's person-centered service plan when an individual is already receiving employment services through the individual's waiver program and the plan needs to be revised.

Comment: One commenter requested that HHSC use Texas Workforce Solutions - Vocational Rehabilitation Services (TWS-VRS) when referencing TWC in the proposed rules.

Response: HHSC disagrees and declines to revise §§284.107, 284.109, and 284.111 as suggested. HHSC believes it is not necessary to specify the division/department of TWC responsible for receiving the referrals for employment services.

Comment: A commenter recommended that HHSC clarify in the rule when the HCS/TxHmL provider should take action versus the local intellectual and developmental disability authority (LIDDA) service coordinator.

Response: HHSC agrees that §284.105(a) and (c) and §284.109 need to clearly reflect the person who on behalf of a program provider, a LIDDA, or an MCO must take the action indicated in these rules. Section 284.101(b) requires that the rules in the chapter must be read in conjunction with the rules and policies related to the Medicaid programs listed in §284.103. In the CLASS, DBMD, and STAR+PLUS HCBS programs the person responsible for taking the actions in §284.105(a) and (c) and §284.109 is referred to as the case manager. In the HCS and TxHmL programs the person responsible for taking the actions in §284.105(a) and (c) and §284.109 is referred to as the service coordinator. Therefore, HHSC revised §284.105(a) and (c) and §284.109 by removing "program provider's," "local intellectual and developmental disability authority," and "or managed care organization or MCO" to clarify that the responsible person is the

case manager or service coordinator, depending on the waiver program in which an individual is enrolled.

Comment: A commenter indicated that, based on personal experience, a referral by the service coordinator to TWC is rarely done, and instead the referral comes from the long-term care providers. The commenter further indicated that since the rule does not direct the provider to make the referral to TWC, an enhanced emphasis on the service coordinators following through with the referral rather than placing the responsibility on the provider is preferable.

Response: HHSC disagrees with the comment and declines to make changes because §284.109 explicitly requires the service coordinator or case manager to refer an individual to TWC, if the situation warrants a referral. Whether the requirement applies to a case manager or a service coordinator depends on the waiver program in which the individual is enrolled.

Comment: One commenter recommended HHSC specify that the programs referenced in §284.111 are "waiver" programs.

Response: HHSC agrees and revised §284.111 as suggested by adding "waiver" to this section.

Comment: One commenter recommended that HHSC obtain additional feedback from internal and external stakeholders specifically related to how the tool fits within the existing service planning process.

Response: HHSC met with internal and external stakeholder groups to solicit feedback and ideas. HHSC's intent is for the questions in the Employment First Discovery Tool to be a part of the service planning process. If the response to a question in the Employment First Discovery Tool has already been captured in another service plan form, the case manager or service coordinator may note this in the Employment First Discovery Tool with a clear reference to the corresponding section of the service plan form. HHSC will update the Employment First Discovery Tool instructions to note that questions previously captured in another service planning form may be noted in the Employment First Discovery Tool with a clear reference to the corresponding section of the service plan form. HHSC did not make changes in response to this comment.

Comment: A commenter recommended that HHSC review the Employment First Discovery Tool with stakeholders and revise the questions to assess readiness to work. The commenter also expressed concern that the Employment First Discovery Tool in its current form does not collect the information TWC needs for their assessments.

Response: HHSC disagrees that the questions in the Employment First Discovery Tool need to be revised to assess readiness to work. The Employment First Discovery Tool is not meant to assess an individual's readiness to work. It is meant to guide the conversation regarding the type of work that may suit the individual's interest. Also, the Employment First Discovery Tool is not intended to replace any part of TWC's assessment process. HHSC did not make changes in response to this comment.

Comment: A commenter remarked that the Employment First Discovery Tool instructions do not align with the rule language and recommended that HHSC incorporate implementation activities into current service planning processes.

Response: HHSC's intent is for the questions in the Employment First Discovery Tool to be a part of the service planning process. If a question on the tool has already been captured in another

service plan form, the case manager or service coordinator may note this on the tool with a clear reference to the appropriate section of the service plan form. HHSC will update the Employment First Discovery Tool instructions to note that questions previously captured in another service planning form may be carried over to the Employment First Discovery Tool. HHSC did not make changes in response to this comment.

Comment: A commenter indicated support for the LIDDAs taking a more active role in the referral process to the TWC.

Response: HHSC appreciates the comment.

STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules as necessary to carry out the commission's duties; and Texas Human Resources Code §32.021(c) and Texas Government Code §531.021(a), which authorizes HHSC to administer the federal medical assistance (Medicaid) program.

§284.105. *Uniform Process.*

(a) An individual's service planning team must determine during the person-centered planning process whether an individual desires to work and if so, the individual's case manager or service coordinator must:

(1) document the individual's desire to work on the individual's person-centered service plan; and

(2) complete the HHSC Employment First Discovery Tool available on the HHSC website to determine:

(A) the individual's employment goals; and

(B) the employment opportunities and employment services available to the individual through the program in which the individual is enrolled.

(b) An individual's service planning team must use the individual's employment goals, employment opportunities, and the employment services chosen by the individual to develop the individual's person-centered service plan.

(c) An individual's case manager or service coordinator must ensure that the requirements in subsections (a) and (b) of this section are followed when the individual's service planning team meets to:

(1) develop the individual's person-centered service plan upon:

(A) initial enrollment; and

(B) for annual renewals; and

(2) revise the individual's person-centered service plan if the purpose of the revision is because the individual expresses a desire to work and the individual's person-centered service plan does not include an employment service.

§284.107. *Strategies to Increase Number of Individuals Receiving Employment Services.*

The Texas Health and Human Services Commission (HHSC) utilizes the following strategies to increase the number of individuals receiving employment services from the Texas Workforce Commission (TWC) or through the waiver program in which an individual is enrolled:

(1) use of the HHSC Employment First Discovery Tool identified in §284.105(a)(2) of this chapter (relating to Uniform Process);

(2) maintain a memorandum of understanding between HHSC and TWC to enable data sharing between those agencies in order to measure the number of individuals utilizing employment services;

(3) implement an employment-first policy jointly adopted by HHSC, the Texas Education Agency (TEA), and the TWC in accordance with Texas Government Code §531.02447(b); and

(4) implement additional strategies as outlined in the Promoting Independence Plan, which is HHSC's plan for implementing its obligation to provide people with disabilities opportunities to live, work, and be served in integrated settings.

§284.109. *Referrals to the Texas Workforce Commission.*

After completing the HHSC Employment First Discovery Tool, as described in §284.105(a)(2) of this chapter (relating to Uniform Process), if an individual's person-centered service plan does not include employment services through the waiver program in which the individual is enrolled, the individual's case manager or service coordinator must refer the individual to the Texas Workforce Commission (TWC) for employment services available through the TWC.

§284.111. *Increasing the Number of Individuals Receiving Employment Services.*

The Texas Health and Human Services Commission will ensure that the number of individuals receiving employment services from the Texas Workforce Commission or through the waiver programs in which the individuals are enrolled on December 31, 2023, is at least 5% greater than the number of individuals receiving employment services on December 31, 2022.

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 October 12, 2023.

TRD-202303799

Karen Ray

Chief Counsel

Health and Human Services Commission

Effective date: November 1, 2023

Proposal publication date: May 26, 2023

For further information, please call: (512) 438-4224



TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 361. REGIONAL FLOOD PLANNING

The Texas Water Development Board (TWDB) adopts 31 Texas Administrative Code (TAC) §§361.10 - 361.13, 361.21, 361.30 - 361.35, 361.38 - 361.40, 361.43 - 361.45, 361.50, 361.51, 361.61, 361.70 - 361.72; new §361.36 and §361.37. Sections 361.10, 361.11, 361.13, 361.21, 361.30, 361.31, 361.33,

361.34, 361.36 - 361.40, 361.45, 361.50, 361.51, and 361.72 are adopted with changes as published in the April 21, 2023, issue of the *Texas Register* (48 TexReg 2060). These rules will be republished. Sections 361.12, 361.32, 361.35, 361.43, 361.44, 361.61, 361.70, and 361.71 are adopted without changes as published in the April 21, 2023, issue of the *Texas Register* (48 TexReg 2060). These rules will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED AMENDMENT. Several rule sections that were proposed for removal are restored in these final rules.

SECTION BY SECTION DISCUSSION OF ADOPTED AMENDMENTS.

Subchapter A

In the adopted amendment §361.10, the definitions of Flood Management Evaluation, Flood Management Strategy, Flood Risk, Nature-based Flood Mitigation, Potentially Feasible Flood Mitigation Project or Potentially Feasible Flood Management Strategy were all modified in response to comments.

In the adopted amendments, the definition of Nature-based Flood Mitigation was restored to the original definition.

In the adopted amendments §361.13, the technical memorandums will include a list of ongoing flood studies in addition to previous flood studies considered by the RFPGs to be relevant. The technical memorandums will also include a summary and maps of locations that the RFPG consider the greatest flood risk and flood mitigation needs.

Subchapter B

Adopted amendment §361.21 added a requirement that the RFPGs hold a public meeting in a central location to accept comments on the Regional Flood Plan.

Subchapter C

There are clarifications to the requirements of the Regional Flood Plan content throughout Subchapter C.

Adopted amendment §361.30, allows RFPGs to not include information that is not available. This includes information about key historical flood events. Further clarification of political subdivisions with flood-related authority is provided. Additionally, several descriptors of the FPR that were proposed to be removed from the rule have been restored in this final rule language.

In adopted amendment §361.31, the list of examples of major flood-related infrastructure that is to be included in the flood plan is modified. The description of natural flood mitigation features and the description of major flood infrastructure were also modified.

In adopted amendment §361.33, a change was made to clarify that in the event that data for dams is not available, it is not required as part of the existing condition flood hazard analyses.

Adopted amendment §361.34 changes the requirements for several of the required analyses to ensure meaningful data is collected from each region. This involved providing more flexibility to the RFPGs while TWDB provides greater detail in guidance.

Additionally, minor changes were made in §361.34 to the future condition risk analysis and the future condition flood exposure analyses were made to provide more flexibility to the RFPGs when future condition results are not available. Also, the identification of vulnerabilities of critical facilities was modified to remove some factors that were supposed to be considered. Now

the rule provides much more flexibility for the future condition flood exposure analysis.

The future condition vulnerability analysis was also modified in the adopted amendment to §361.34 to provide more flexibility for conducting the analysis.

Adopted amendments to §361.36 include: flood mitigation and flood plain management goals are no longer required to be included in the flood mitigation need analysis. The flood mitigation need analysis is now going to be completed prior to the mitigation and management goals.

A minor clarification was made to the adopted amendment in §361.37.

In the adopted amendment to §361.38, a comparison of FMSs and FMPs is restored; however, modifications were made to clarify that an equitable comparison and assessment of the FMSs and FMPs are to be made independently for each category. The FMs are to be compared among FMSs and FMPs are to be compared among FMPs.

Additional changes were made to the adopted amendments in §361.38 to better align the requirements with the data available to the RFPGs. For the evaluation of potential FMEs, the estimated flood risk reduction benefits have been removed from the requirements. Further, the order of the evaluations of FMEs and the assessment of potentially feasible FMPs and FMSs is reversed to ensure the FMEs are evaluated prior to the FMPs and FMSs.

In the adopted amendments to §361.39, changes were made to clarify that FMEs and FMSs will be ranked in the state flood plan. Additional clarification was made so the RFPGs may provide a reference to a benefit-cost calculation if it has already been done by another entity rather than the RFPG calculating the number itself.

The adopted amendment to §361.40 makes a modification to include a summary of how the recommended actions will meet the needs and goals identified.

The adopted amendment to §361.50 makes a modification so that each individual FME, FMP, and FMS does not have to be voted on individually, rather the RFPGs may vote on the items in a way that the RFPGs find best.

The adopted amendments to §361.70 simplify the process for the RFPG Sponsor to receive funding.

The adopted amendments to §361.72 provide that the RFPG Sponsors will be allowed reimbursement for time spent at the RFPG meetings. Further, Sponsors will also be reimbursed for time spent on administrative tasks.

REGULATORY IMPACT ANALYSIS DETERMINATION (Texas Government Code §2001.0225)

The TWDB 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 facilitate the regional and state flood planning process.

Even if the proposed 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 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 proposed solely under the general powers of the agency, but rather under Texas Water Code §16.062. Therefore, these rules do not fall under any of the applicability criteria in Texas Government Code §2001.0225.

TAKINGS IMPACT ASSESSMENT (Texas Government Code §2007.043)

The TWDB evaluated these rules and performed an analysis of whether they constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of this rulemaking is to facilitate the regional and state flood planning process while making the process more efficient for the regional flood planning regions. The rules will substantially advance this state purpose by clarifying requirements of the flood plan regions.

The TWDB's analysis indicate that Texas Government Code, Chapter 2007 does not apply to these rules because these are actions that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code §2007.003(b)(4). The TWDB is the agency that is responsible for developing the state flood plan.

Nevertheless, the TWDB further evaluated these rules and performed an assessment of whether they constitute a taking under Texas Government Code Chapter 2007. Promulgation and enforcement of these rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject rules do not affect a landowner's rights in private real property because this rulemaking does not burden, 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 rules do not constitute a taking under Texas Government Code, Chapter 2007.

PUBLIC COMMENTS (Texas Government Code §2001.033(a)(1))

Harris County Engineering Department provided comments related to the Fiscal Note and the Growth Impact Statement of the preamble. Harris County Engineering Department requested clarification related to the Fiscal Note and thought that the Growth Impact Statement asserted that there would be no funding for the Flood Infrastructure Fund.

Response: The Fiscal Note and the Growth Impact Statement pertain to the rules related to the Regional Flood Plan. Funding projects is a separate process with a separate set of rules.

The San Jacinto River Authority requested clarification as to whether HUC10 and HUC8 were intended to be referenced in the rules.

Response: TWDB acknowledges and agrees with the comment. The rules have been modified to remove references HUC10.

Half Associates stated that it supports the proposed reductions in overly burdensome requirements at the planning level analysis. Half explained that it found that some of the requirements for potentially feasible flood mitigation actions, such as benefit-cost analysis, were time consuming for actions that ultimately could not meet the no negative impact requirement and were therefore not recommended as Flood Mitigation Projects (FMPs). Half noted that it supports removing requirements that do not add value to the flood planning process.

Response: The TWDB acknowledges and appreciates the comment. Please find any relevant changes made in subsequent comments and responses. Note that many items that are considered necessary to meet this statutory requirement related to no negative impact and that are needed to evaluate and rank projects, were retained. No changes have been made in the response to this comment.

Section 361.10. Definitions and Acronyms.

Harris County Engineering Department supports the definitions added for Critical Facilities and Emergency Need.

Response: TWDB acknowledges and appreciates the comment. No change has been made in response to this comment.

Half Associates recommend a definition for "Low Water Crossing" be added to this section.

Response: TWDB acknowledges and appreciates the comment. Exhibit C: Technical Guidelines for Regional Flood Planning provides a definition for Low Water Crossing. No change has been made in response to this comment.

Half recommend that a definition of "Major Flood Infrastructure" be added to the list of definitions. Half provided example parameters for consideration.

Response: TWDB acknowledges and appreciates the comment. Since the meaning of "major" differs significantly from flood planning region to flood planning region, flexibility will remain in the rule and each RFPG will determine its meaning. However, guidance documents will be enhanced to offer an optional default definition and include helpful examples. No change has been made in response to this comment.

Half recommended adding examples to the definitions of "Critical Facilities" with "include but not limited to facilities and infrastructure..."

Response: TWDB acknowledges and appreciates the comment. TWDB notes that Exhibit C: Technical Guidelines for Regional Flood Planning does contain examples for Critical Facilities. No change has been made in response to this comment.

Half recommended removing "Emergency Need" entirely from the regional flood plans. In the alternative, Half recommended removing the word "imminent" from the proposed definition related to anticipated failure...Half explained that the planning cycle spans 5 years, which is too long to respond to a true emergency need. Half stated that this has already created confusion as several residents contacted the Region 3 Trinity RFPG requesting help in the August 2022 flood event in North Texas. Half went on to explain that the RFPGs do not provide emer-

gency response services and the TWDB rules prohibit them from evaluating emergency response plans.

Response: TWDB acknowledges and appreciates the comment. TWDB notes that statute Texas Water Code Section 16.062(E)(2)(E)(i) requires an indication of whether a flood mitigation solution "meets an emergency need" and therefore must be addressed in a meaningful manner. A definition has been provided in rule in response to stakeholder input and to improve consistency in how it is considered, statewide. No change has been made to this comment.

Half recommended adding to the definition of "Floodplain Management" that "effective floodplain management includes regulatory and enforcement requirements/standards for development and other activities in pluvial and fluvial flood risk areas by the location jurisdiction."

Response: TWDB acknowledges and appreciates the comment. The recommendation will be considered for addition to the guidance documents. No change has been made in response to this comment.

Freese and Nichols suggested revising the definition for Flood Management Evaluation (FME) to be a proposed study to define or "quantify" (in lieu of "identify" as currently drafted) flood risk or flood risk reduction solutions. Freese and Nichols state that in many cases, flood risk and a potential flood risk reduction solution have already been identified and FMEs have been recommended to further define the solution or satisfy requirements to be considered an FMP.

Response: TWDB acknowledges and agrees with the comment. The rule has been modified to revise the definition.

Half suggested that the definition for FME include specific categories, such as watershed studies, H&H modeling, mapping, etc.

Response: TWDB acknowledges and appreciates the comment. Guidance documents will be enhanced accordingly. No change has been made in response to this comment.

Freese and Nichols suggested revising the definition of Flood Management Strategy (FMA) to better differentiate between FMEs and FMPs as well as clarify the types of actions that are eligible for funding within the FMS category. Freese and Nichols suggested removing the phrase, "ideas that still need to be formulated," in exchange for, "that result in flood risk reduction benefits that cannot be directly quantified through standard practices." Freese and Nichols and Half Associates also suggested that the definition include examples of types of actions that would qualify as an FMS and whose non-recurring, non-capital cost would be eligible for funding under the FMS category, to help to clarify the purpose and use of this category.

Response: TWDB appreciates the comment and agrees. The rule has been modified to revise the definition for Flood Management Strategy (FMS). Guidance documents will also be updated to include additional specificity and examples.

Half recommended that the definition of "Flood Risk" be adjusted to include resilience, such as "...and the vulnerability and resilience of the people...".

Response: TWDB acknowledges and agrees with the comment. The rule has been modified to revise the definition of Flood Risk.

Half Associates suggested that "Nature-based Flood Mitigation" be renamed as "Nature-based Flood Risk Reduction." Half As-

sociates stated that in areas that are already developed, nature-based solutions are difficult to develop as stand-alone solutions, and instead, nature-based solutions tend to be components of a larger solution.

Response: TWDB acknowledges and appreciates the comment. "Mitigation" is a commonly used and accepted term, which is helpful when aiming for clarity with Flood Mitigation Projects. No change has been made in response to this comment.

The National Wildlife Federation recommended that the definition of Nature-based solution not be changed as proposed. The National Wildlife Federation stated that the proposed definition did not accurately capture the goal of nature-based solution projects.

Response: TWDB acknowledges and agrees with the comment. The rule has been modified to restore the original definition of Nature-based Flood Mitigation.

The Great Edwards Aquifer Alliance suggested modifying the definition of Nature-based Flood Mitigation to include "flood mitigation strategies that provide additional environmental and social benefits."

Response: TWDB acknowledges and appreciates the comment. The original definition of Nature-based Flood Mitigation has been restored based on comments received from multiple entities. No further change has been made in response to this comment.

Matthew Berg and Simfero Consultants stated that the proposed definition of nature-based mitigation is unnecessarily narrow and not reflective of the reality in Texas. Freese and Nichols as well as Matthew Berg and Simfero provided several alternative definitions for nature-based mitigation. Freese and Nichols encouraged the TWDB to adopt a definition that specifically represents the primary goal of these nature-based solutions as flood mitigation, relates to the types of flood risks seen in Texas, and assists RFPGs in determining what components of FMPs can be considered nature-based.

Response: TWDB acknowledges and appreciates the comments. Based on comments received from multiple entities, the rule has been modified to restore the original definition of Nature-based Flood Mitigation.

For the definition of Political Subdivision, Half recommended deleting the proposed addition of "water supply corporation." Half Associates explained that many WSCs specifically requested to be removed from the regional flood planning group contact lists because flood planning was irrelevant to their responsibilities.

Response: TWDB acknowledges and appreciates the comment. Please note that some water supply corporations may have flood-related responsibilities. RFPG contact lists may be modified at the discretion of the RFPGs. No change has been made in response to this comment.

The definition of "Potentially Feasible Flood Management Project or Potentially Feasible Flood Mitigation Strategy" includes the determination as to whether or not the action is "permissible." Half Associates recommended a modification of the definition of Potentially Feasible Flood Management Project or Potentially Feasible Flood Mitigation Strategy because the level of analyses for most FMPs is such that one cannot make definitive statements about potential implementation constraints.

Response: TWDB appreciates the comment and agrees. The rule has been modified to change the definition.

Section 361.11. Designations and governance of Flood Planning Regions.

Half Associates suggested rewording "Water Utilities" to read "Water and/or Wastewater Utilities."

Response: TWDB acknowledges and appreciates the comment. Texas Water Code Section 16.062(c) specifically requires water utilities. TWDB notes that the rules will continue to allow flexibility for RFPGs to determine whether wastewater utilities should be included. No change has been made in response to this comment.

Half stated its support of the formal inclusion of a transportation authority in regional flood planning. Specifically, Half recommended that the Texas Department of Transportation (TxDOT) be added as a required non-voting state agency on each of the RFPGs. Half noted that their participation is critical as most of the hurricane evacuation routes use TxDOT roadways and many TxDOT roadways throughout the state are at risk from periodic inundation, closure, and/or damage during and from flood events. Half explained that the regional flood plans would benefit from this additional representation.

Response: TWDB acknowledges and agrees with the comment. The rule was modified at the publication stage to further emphasize that RFPGs must consider including a non-voting position to represent regional or local transportation authorities for example, from the Texas Department of Transportation.

Half encouraged the TWDB to provide funding to the RFPGs during the year that the State Flood Plan is being prepared to allow the RFPGs to perform additional activities that they may not have time or opportunity to perform during the four-year plan development.

Response: TWDB acknowledges and appreciates the comment. Provisions of grant funding to support the development of regional flood plans by RFPGs during each 5-year planning cycle occurs under a separate process from rulemaking. No change has been made in response to this comment.

The San Jacinto River Authority noted that §361.12(c)(4) does not read right.

Response: TWDB appreciates and agrees with the comment. The rule has been modified.

Section 361.13. Regional Flood Planning Group Deliverables.

Freese and Nichols suggested that the TWDB consider adding relevant ongoing studies to the technical memo deliverable, §361.13(e)(2). Freese and Nichols explained that ongoing studies are no FMEs since they are already funded, and they are not previous studies because they are not completed. Freese and Nichols stated that ongoing studies also do not fit well in the Ongoing Projects feature class and table since they are not mitigation projects. Further, Freese and Nichols explained that requiring regions to access where ongoing studies are occurring would add value to the process and would include, for example, identifying FIF Category 1 studies or Base level Engineering mapping which were eventually requested by the TWDB via comments on deliverables.

Response: Response: TWDB appreciates and agrees with the comment. The rule has been modified to include ongoing studies.

The American Flood Coalition suggested that a geodatabase and associated maps of existing hydrologic and hydraulic mod-

els available, continue to be requirement in the technical memo, §361.13(e)(5). The American Flood Coalition stated that the availability of existing hydrologic and hydraulic models should be considered a best practice.

Response: TWDB acknowledges and appreciates the comment. TWDB notes that significant preliminary input was received from stakeholders recommending the removal of this requirement due to models not yet being identified during the Technical Memorandum stage of the planning process. Additionally, TWDB notes that while the requirements will be removed in rule, it will remain as a requirement in Exhibit C: Technical Guidelines for Regional Flood Planning and in the Scope of Work. No change has been made in response to this comment.

Freese and Nichols requested that the TWDB consider revising language in §361.13(e)(5) to specify alignment with RFP task requirements. Freese and Nichols requested clarification whether the list is intended to be a list of models that could be used to evaluate FMPs or generally identify model availability throughout the region.

Response: TWDB acknowledges and appreciates the comment. This recommendation will be considered for elaboration in guidance documents. No change has been made in response to this comment.

Freese and Nichols requested that since the TWDB moved the needs analysis ahead of goal setting in the rules (§361.36 and §361.37), the TWDB consider replacing this technical memorandum deliverable with the results (geodatabase and mapping) of the needs analysis performed. Freese and Nichols also requested that the TWDB clarify how the needs analysis should inform goal setting and whether the TWDB expects for flood planning regions to have completed both the needs analysis and goal setting ahead of submitting the technical memorandum.

Response: TWDB acknowledges and agrees with the comment. The rule has been modified to add new technical memorandum deliverable requiring a summary and associated maps of locations within the FPR that the RFPG considers to have the greatest flood risk study and flood mitigation needs.

American Flood Coalition suggested §361.13(e)(10) not be deleted. The Coalition stated that by maintaining a record of infeasible FMSs and FMPs, TWDB might be better positioned to make future adjustments to FMS and FMP criteria and understand opportunities for technical assistance.

Response: TWDB acknowledges and appreciates the comment. TWDB received significant preliminary input from stakeholders recommending the removal of this requirement. Note that removal of this requirement does not prevent RFPGs from maintaining related records that they consider beneficial. No change has been made in response to this comment.

Half stated its support for the removal of the lists of flood management strategies and plans that were identified and found to be infeasible as these lists do not add value to the overall flood plan.

Response: TWDB acknowledges and appreciates the comment. No change has been made to §361.13 in response to this comment.

SUBCHAPTER B. GUIDANCE PRINCIPLES, NOTICE REQUIREMENTS, AND GENERAL CONSIDERATIONS

Section 361.21. General Notice Requirements.

Half expressed its support for the proposed removal of the 14-day notice for some RFPG actions. Half stated that the requirement was often complicated to meet for regional Flood Planning Groups that met on a monthly basis. Half commended TWDB for developing the public notification summary spreadsheet for the first cycle of regional flood planning. Half found it to be very useful in planning and preparing for RFPG meetings.

Response: TWDB acknowledges and appreciates the comment. No change has been made in response to this comment.

Half requested that the TWDB consider reducing the number of hard copies of the draft plan that are required to be printed and made available for public review. Half stated that the number of hard copies of the draft and final plans required to be submitted to the TWDB, including the appendices, should be clarified.

Response: TWDB acknowledges and appreciates the comment. The number of required hard copies of the draft Regional Flood Plan was reduced from three to one. No further change has been made in response to this comment.

SUBCHAPTER C. REGIONAL FLOOD PLAN REQUIREMENTS

Section 361.30. Description of the Flood Planning Region.

The American Flood Coalition suggested that the TWDB consider maintaining several specific descriptors in future regional flood plans that were proposed to be deleted from §361.30. The American Flood Coalition stated that the factors may change over the years, and having a strong understanding of these regional factors could significantly alter regional and state decision making.

Response: TWDB appreciates and partially agrees with the comment. The original descriptions, in general, aside from the "economic sectors most at risk of flood impacts," have been restored in the rule.

Half supported the reduction in required information describing the region in §361.30. Half recommended that the region description requirements be made more consistent with those used in the regional water plan.

Half suggested removal of the requirement for a description of the areas in the region that are flood-prone and the types of major flood risks to life and property in the region. Alternatively, Half requested that the TWDB consider combining that with the requirements to describe the types of historical flood risks and key historical flood events within the region.

Response: TWDB acknowledges and appreciates the comment. The requirement of this section is intended to be much more general in comparison to that of the flood risk analyses in Scope of Work Task 2. No change has been made in response to this comment.

Freese and Nichols requested that the TWDB consider incorporating a definition for, "flood-related authority," or add clarification in guidance. Freese and Nichols stated that this was a subject of debate for many regions and caused confusion regarding what was required. Further, Freese and Nichols requested that the TWDB consider whether the term, "flood-related authority," could be replaced with something that incorporated more explanation.

Response: TWDB appreciates and agrees with the comment. The rule has been modified to read: "...flood-related regulatory authority..."

Harris County Engineering Department recommended keeping the language in §361.30 in order to capture a comprehensive understanding of each region's needs for regulations as to not cause upstream or downstream impacts.

Response: TWDB acknowledges and agrees with the comment. The rule has been restored to its original wording.

Harris County Engineering Department recommended keeping the language in §361.30 related to agricultural and natural resources most impacted by flooding to capture a comprehensive understanding of each region's natural and agricultural resources.

Response: TWDB acknowledges and agrees with the comment. The rule has been restored to its original wording.

Section 361.31. Description of the Existing Natural Flood Mitigation Features and Constructed Major Flood Infrastructure in the Region.

The San Jacinto River Authority questioned the removal of infrastructure examples in §361.31.

Response: TWDB acknowledges and agrees with the comment. The rule has been modified to restore a longer list of examples and guidance documents will be enhanced.

Greater Edwards Aquifer Alliance proposed a definition for "functioning floodplain" in §361.31(a)(1)(A).

Response: TWDB acknowledges and appreciates the comment. The rule has been modified to remove the overly broad and undefined term "functioning floodplains." The change does not prevent RFPGs from describing them or proposing restoration projects or strategies to address more specific features to improve the functionality of the floodplains within their regions.

The National Wildlife Federation and the Great Edwards Aquifer Alliance recommended against removing wetlands from items that need to be described in the "Description of the Existing Natural Flood Mitigation Features and Constructed Major flood Infrastructure in the Region" in §361.31.

Response: TWDB acknowledges and agrees with the comment. The rule has been modified to restore wetlands to the list of identified natural flood mitigation features.

Half Associates noted that the phrase "stormwater management systems" is vague in §361.31(a)(2)(E) and requested clarification.

Response: TWDB acknowledges and appreciates the comment. The rule has been modified to include the following: stormwater management systems including storm drains, inlets, tunnels, and pump stations.

Freese and Nichols stated that in §361.31(b), a feature-by-feature analysis and description in the plan is not aligned with the goal of this process to be planning-level. Freese and Nichols suggested removing this requirement or revising to require the plan to include a general description by feature type in the regional infrastructure by feature type within a certain boundary such as political jurisdiction (city, county) or within a watershed (HUC-8, HUC-12) to simplify this task, but provide geospatial value. Freese and Nichols went on to propose that if feature-by-feature information is mandatory, only including that data in the GDB should be required and not in the regional flood plan text. Freese and Nichols suggested that the TWDB consider change to data requirements recommended by Freese and Nichols as part of the Infrastructure Assessment Methodologies and Toolkit

for Assessment of Community Flood Infrastructure to Support Statewide and Regional Flood Planning project.

Response: TWDB acknowledges and agrees with the comment. The rule has been modified to require analysis by feature type rather than individual feature and to allow for descriptions based on geographic groupings.

Section 361.32. Description of the Major Infrastructure and Flood Mitigation projects Currently Under Development.

The American Flood Coalition suggested "when available" not be added to §361.32(3). The American Flood Coalition stat that projects with already dedicated funding should have an available expected year of completion and by adding "when available" the due diligence required of the RFPGs would be limited.

Response: TWDB acknowledges and appreciates the comment. TWDB received significant preliminary input from regional planning stakeholders indicating the lack of availability of data reflecting the difficulty of obtaining this data for existing projects. No change has been made in response to this comment.

Section 361.33 Existing Condition Flood Risk Analyses in the Region.

The San Jacinto River authority noted that §361.33(b)(6) regarding FEMA accreditation reads oddly.

Response: TWDB acknowledges and agrees with the comment. The rule has been modified to improve the language. Other minor changes have been made including the removal of 'dams', in accordance with a different comment.

Half Associates noted that dams should be removed from §361.33(b)(6) because they are not accredited by FEMA. Half Associated explained that dam hazards classification and condition assessment reports are protected information that are not publicly available and should not be included or required in the regional flood plans.

Half Associates also explained that the concept of adding levee accreditations is more complex than it may appear. Half Associates stated that levee accreditation information is publicly available and FEMA typically requires maps with areas protected by levees to show the potential flood-prone area if the levee was not in place. Half Associates stated that while the information may be valuable, it will require significant effort to develop with limited data and will likely receive significant political pushback.

Response: TWDB acknowledges and agrees with the comment. The rule has been modified to remove the requirement regarding dams not meeting FEMA accreditation. However, TWDB maintains the importance of levee accreditation information and thus, it remains a requirement in the rule.

Freese and Nichols suggested that §361.33(a)(7) be revised to change the terminology of inundation.

Response: TWDB appreciates and agrees with the comment. TWDB notes that §361.33(a)(7) does not exist and believes Freese and Nichols intended this comment to apply to §361.33(b)(7). Section 361.33(b)(7) language has been modified in accordance with the comment.

The American Flood Coalition requested an explanation of why high-level region-wide and floodplain level, largely GIS-based analyses would no longer be required in §361.33(c) and (c)(2).

Response: TWDB acknowledges and appreciates the comment. The regions are required to perform detailed exposure analy-

sis to identify who might be harmed in the region and within the floodplain. The in-depth exposure analysis already achieves the underlying aim thereby making a high-level GIS analysis unnecessary. No change has been made in response to this comment.

Freese and Nichols suggested removing requirement of §361.33(c)(2) due to impracticality of implementing this at a regional scale. Freese and Nichols stated that if there are existing maps available that show these areas as inundated, this can be included but the generation of new maps should not be required of the RFPGs. Additionally, Freese and Nichols suggested moving this to the hazard analysis section, as these changes would be made in the hazard layer, not the exposure layer.

Response: TWDB acknowledges and appreciates the comment. The rule has been modified to add the suggested language to the hazard analysis section. In the exposure section it simply implies that exposure analyses are done by intersecting the buildings and other layers with hazard layer that was generated by considering the location f existing levees that do not meet FEMA accreditation as inundated by flooding without those structures in place.

San Jacinto River Authority requested clarification related to the removal of HUC from §361.33(e)(4).

Response: TWDB acknowledges and appreciates the comment. TWDB notes that although certain HUC references in rules have been removed, certain HUC data remains required in the geodatabase submission. It was determined that the data produced as part of the existing condition flood exposure analysis and vulnerability analysis in Section §361.33(e)(4) does not need to be summarized by HUC. TWDB plans to elaborate on HUC requirements in guidance materials, which stakeholders will have an opportunity to review. No change has been made in response to this comment.

Section 361.34. Future Condition Flood Risk Analyses in the Region.

The American Flood Coalition asked TWDB to explain why there would be inconsistencies between the requirements in analyzing existing conditions for §361.33 with future conditions for §361.34.

Response: TWDB acknowledges and appreciates the comment. TWDB notes that the future condition flood risk analysis and the existing condition flood risk analysis were not intended to be identical. Available level of information and details for future condition is fairly limited compared to currently available existing condition flood hazard information. While their underlying frameworks in requiring analyses of hazard, exposure, and vulnerability are fundamentally the same, variances in data availability, and differences in assumptions, including related to future changes in factors such as future sea level, require there to be differences. No change has been made in response to this comment.

Half Associates agree with the proposed removal of the future 0.2% future flood condition from §361.34. Half Associates explained that to comply with this requirement RFPGs had to make assumptions on top of the assumptions to estimate the future 0.2% flood event and the associated risk and exposure. Half Associates noted the uncertainty associated with such analysis provides an outcome with little value that resulted in concern among planning group members.

San Jacinto River Authority questioned why the rules would not require analyses for 0.2% for future conditions to get the most comprehensive analysis possible.

Similarly, the National Wildlife Federation, Harris County Engineering Department and the American Flood Coalition requested that the future conditions analysis for 0.2% annual chance of flooding remain a requirement in §361.34.

Response: TWDB acknowledges and appreciates the comment. The requirement to analyze the 0.2% annual chance flood event in the future condition flood hazard analysis has been restored based on public comments. TWDB notes the removal of the future 0.2% future flood condition risk analysis was proposed due to preliminary input from RFPG stakeholders indicating the difficulty and uncertainty in its estimation. To address stakeholder concerns, the TWDB is developing an application cursory floodplain dataset providing consistent statewide future condition flood hazard information that is expected to be available to RFPGs during the second planning cycle. To further address the concerns about implementing this requirement, TWDB guidance documents will be enhanced to simplify the requirement. No change has been made in response to this comment.

San Jacinto River Authority wondered if "major" project should be defined in §361.34(b)(1)(F).

Response: TWDB acknowledges and appreciates the comment. Since the relative significant of certain projects or infrastructure sizes may differ between flood planning regions, the rule defers to each RFPG to determine what it considers "major." However, in accordance with the comment, guidance documents will be enhanced to offer examples. No change has been made in response to this comment.

Freese and Nichols suggested removal of §361.34(b)(4). Freese and Nichols stated that simplified desktop analysis in GIS is feasible for performing this analysis, however, obtaining, running, and producing new future condition model results is not feasible with the scope and budget of this regional-scale, planning-level analysis.

Response: TWDB acknowledges and agrees with the comment. The rule has been modified to provide flexibility in accordance with the comment. Note that, to address stakeholder concerns, the TWDB is developing an applicable cursory floodplain dataset providing consistent statewide future condition flood hazard information that is expected to be available to RFPGs during the second planning cycle. To further address the concerns about implementing this requirement, TWDB guidance documents will be enhanced to simplify the requirement.

San Jacinto River Authority suggested that "potential" be added at the beginning of §361.34(c) to match §361.34(a).

Response: TWDB acknowledges and agrees with the comment. The rule has been modified to include "potential" in response to the comment.

San Jacinto River Authority questioned whether §361.34(c) and §361.33(c) should match and both include the term, largely GIS-based.

Response: TWDB acknowledges and appreciates the comment. The rule has been modified so that the language is consistent in both places.

San Jacinto River Authority stated that §361.34(c) reads oddly.

Response: TWDB appreciates and agrees with the comment. The rule has been modified to read better in response to the comment.

Freese and Nichols suggested only including general language regarding the vulnerability analysis and removing specific details.

National Wildlife Federation requested that the requirement to summarize HUC 8 data from the existing and future condition flood risk analysis in §361.34(e)(4) not be removed. National Wildlife Federation stated that the HUC datasets provide a comprehensive aggregated collection of hydrological changes that can help RFPGs to be consistent in their flood mitigation mapping. National Wildlife Federation explained that removing the HUC 8 data can also impede the need for standardized flood risk datasets across the state. Instead, National Wildlife Federation suggested that if a region does not have complete data, they can request a waiver from this requirement but if the region has complete HUC 8 data, it should be required to be used by the region.

Response: TWDB acknowledges and appreciates the comment. However, the rules refer to what is presented in the plan, not the data collected. HUC-level data is still required to be submitted in the regional datasets. TWDB determined that while HUC-level data in this section may not be the most useful information for members of the public who are reading the text of the plan, it remains useful as part of the data submission. Since HUC8 level information is part of data submission and TWDB intends to make all state flood plan data available for public dissemination, NWF will be able to download and summarize the data set on HUC-8 as needed once the state flood plan is published. No change has been made in response to this comment.

Section 361.35. Evaluation of Previous and Current Floodplain Management and Recommendations for Changes to Floodplain Management.

Half Associates stated that the RFPGs have the authority to recommend and/or require specific floodplain management policies for a flood mitigation action to be recommended in regional flood plans, and that RFPGs may also identify gaps in current policies and suggest improvements for consideration by local entities. Half Associates asserted that RFPGs can also develop and provide model ordinances as a guide for local implementation of floodplain regulations and standards. Half Associates explained that the RFPGs do not have the authority or capability to implement or enforce compliance with such recommendations.

Response: TWDB acknowledges and appreciates the comment. TWDB notes that it is indeed an important distinction to highlight that RFPGs do not have the authority to enforce floodplain management policies or regulations. No change has been made in response to this comment.

Section 361.36. Flood Mitigation Need Analysis.

Half Associates stated its support for the proposed additions to §361.36.

Response: The TWDB acknowledges and appreciates the comment. No change has been made in response to this comment.

Section 361.37. Flood Mitigation and Floodplain Management Goals.

San Jacinto River Authority asked if §361.37 should be changed from "input from the public" to "public comments" to be consistent with previous changes?

Response: TWDB acknowledges and appreciates the comment. TWDB notes that "public comment" should be reversed for formal public comment periods. No change has been made in response to this comment.

Freese and Nichols suggested referencing the needs analysis (§361.36) in this paragraph to indicate how the needs analysis informs goals.

Response: TWDB appreciates and agrees with the comment. The rule has been modified in response to this comment.

Freese and Nichols suggested adding clarity regarding how progress towards achieving goals will be evaluated in future cycles.

Response: TWDB appreciates and agrees with the comment. TWDB will consider how measurement of progress towards goals should be captured in flood planning cycles and include measurement methods for RRFPs to consider in guidance documents. No change was made in response to this comment.

Section 361.38. Identification and Assessment of Potential Flood Management Evaluations and Potentially Feasible Flood Management Strategies and Flood Mitigation Projects.

Half Associates requested clarification as to which entities can serve as an FME, FMP or FMS sponsor. Half Associates stated that RFPs received many requests for potentially feasible solutions to be included in the plan but were not provided insight as to whether or not the proposed sponsor would be eligible to pursue future TWDB funding. Half Associates requested clarification whether or not a RFP can serve as a sponsor for a recommended FME, FMP or FMS as the RFP does not appear to have the authority to implement a recommended FMP without a local jurisdiction's approval and participation.

Response: TWDB acknowledges and appreciates the comment. TWDB notes that flexibility in rules regarding who might support or fund a flood mitigation solution is being preserved so that eligibility for funding from a variety of sources is not restricted. TWDB is not the only source of funding for flood mitigation solutions. However, detailed, additional guidance was provided to RFPs throughout the first planning cycle on this matter and additional guidance will be incorporated into guidance documents. No change has been made in response to this comment.

Harris County Engineering Department noted that the proposed changes to §361.38 disadvantages local drainage and small-scale projects because often the level of service for storm sewer systems are much smaller than the 1% annual chance flood event. Additionally, Harris County Engineering Department explained that Region 6 is data rich meaning best available data results in more stringent criteria than other neighboring regions and with the adoption of MAAPNext, the future 1% will take tremendous effort and skyrocket project costs.

Response: TWDB acknowledges and appreciates the comment. No change has been made in response to this comment.

San Jacinto River Authority pointed out a drafting error in the deletion of "FMS and" from §361.38(b).

Response: TWDB acknowledges and agrees with the comment. The rule has been revised to restore the inclusion of FMSs.

San Jacinto River Authority and Freese and Nichols requested clarification whether FMSs and FMEs should also be ranked in §361.38(g).

Response: TWDB acknowledges and appreciates the comment. TWDB notes that FMEs, FMPs, and FMSs will all be ranked in the State Flood Plan. However, this section in rule is intended to establish specific requirements that FMPs must meet, including in order to be ranked. It is not intended to list or restrict what will be ranked. No change has been made in response to this comment.

Freese and Nichols suggested separating out FMSs and FMPs in §361.38(h) considering the new guidance given to RFPs regarding what qualified as an FMS. Freese and Nichols noted that FMSs such as education campaigns or regulatory enhancements will not be evaluated with models, BCRs, etc., as is required for FMPs.

Response: TWDB acknowledges and appreciates the comment. A minor modification was made to the rules.

Half Associates stated that the RFPs currently consider potential water supply impacts and benefits in the flood planning process and their focus should remain on flood control as water supply is tangential and is addressed by the regional water planning groups.

Response: TWDB acknowledges and appreciates the comment and notes that indication of whether flood control solutions serve as water supply sources is statutorily required by Texas Water Code Section 16.062(e)(2)(E)(iii) and is therefore included in the rules. No change has been made in response to this comment.

Great Edwards Aquifer Alliance recommended modifying §361.36(4) to add groundwater recharge to types of water supply source benefits.

Response: TWDB acknowledges and appreciates the comment, which will be considered as a potential enhancement to guidance documents. No change has been made in response to this comment.

The American Flood Coalition suggested maintaining the equitable comparison requirements in §361.38(h)(4) and (i)(4) in order for the RFPs to be able to equitably make recommendations on FMSs, FMPs, and FMEs to be included, evaluated, and considered within the State Flood Plan.

Response: TWDB acknowledges and generally agrees with the comment. Sections 361.38(h)(4) and 361.38(i)(4) have been restored.

Harris County Engineering Department recommended providing a baseline for FMEs and FMPs comparison for Flood Infrastructure Funding. Harris County Engineering Department stated that equity is a goal that Harris County upholds and it would like to understand what the comparison baseline will be to maintain fairness and equitable distribution of grant funds.

Response: TWDB acknowledges the comment. Sections 361.38(h)(4) and 361.38(i)(4) have been restored and modified for clarity. It is important to note, however, that funding opportunities are separate from the regional flood planning process. TWDB also notes that the intent of the rule is not for the FME, FMP, and FMS categories to be compared amongst each other. Instead, FMEs, FMPs, and FMSs should be compared within each category and only when comparable (e.g., by location). For example, a comparison of all FMPs addressing a common flood risk within a certain area is required to understand which may be the best solution.

Half Associates stated its support for providing the RFPs with more flexibility in the identification of potential flood mitigation ac-

tions. Halff agreed that the equitable comparison of potentially feasible actions was overly burdensome without readily available and consistent data throughout a region. Halff noted the RFPGs struggled with providing equitable comparisons of potentially feasible actions.

Response: TWDB acknowledges and appreciates the comment. TWDB notes that §361.38(h)(4) and (i)(4), which had been removed in the draft proposed changes, have been restored and modified for clarity based on public comments received. TWDB notes that the intent of the rule is not for the FME, FMP, and FMS categories to be compared amongst each other. Instead, FMEs, FMPs, and FMSs should be compared within each category and only when comparable (e.g., by location). For example, a comparison of all FMPs addressing a common flood risk within a certain area is required to understand which may be the best solution. No change has been made in response to this comment.

Freese and Nichols suggested removing specifics from §361.38(h)(6) and allowing flexibility to determine specific benefits to be reported.

Response: TWDB acknowledges and appreciates the comment. TWDB considers the listed items to be important enough to include in rule. However, conditional language had already been included in the proposed rule "where applicable" to provide some flexibility and will remain in the final rule. No change has been made in response to this comment.

In reference to §361.38(b), Great Edwards Aquifer Alliance recommended using "avoidance" data for FMPs such as land conservation for justification and to document such impact to the 1% annual chance flood event.

Response: TWDB appreciates and agrees with the comment. The rule has been modified to include quantitative reporting of avoidance of future flood risk and preventing the creation of future flood risk.

Based on the updated definition of emergency need provided in §361.10, Freese and Nichols requested the removal of the requirement that FMEs be evaluated for emergency need as required in §361.38(i)(2).

Response: TWDB acknowledges and appreciates the comment. TWDB notes that consideration of emergency need is statutorily required by Texas Water Code Section 16.062(e)(2)(E)(i) and TWDB considers it relevant to all recommended flood mitigation solutions. No change has been made in response to this comment.

Freese and Nichols suggested revising language in §361.38(i)(5) to remove reference to estimated benefits of an FME and change to, "quantitative reporting of estimated flood risk within the FME area." Freese and Nichols stated that reporting known flood risk within an FME area is reasonable, however, that flood risk does not equate to estimated benefits. Further, Freese and Nichols stated that many types of FMEs, such as mapping efforts, may not result in a reduction in known flood risk as they do not directly develop flood risk reduction solutions.

Response: TWDB appreciates and agrees with the comment. The rule has been modified.

Section 361.39. Recommended Flood Management Evaluations, Flood Mitigation Projects, and Flood Management Strategies.

San Jacinto River Authority made the observation that there is not much discussion of FMEs in §361.39.

Response: TWDB acknowledges and appreciates the comment. FMEs generally require less information compared to FMPs and FMSs. Enhanced discussion of FMEs will be considered for guidance documents, as appropriate. No change has been made in response to this comment.

Harris County Engineering Department noted that the language in §361.39(a) disadvantages local drainage and small-scale projects because often the level of service for storm sewer systems are much smaller than the 1% annual chance flood event. Harris County Engineering Department added that Region 6 is data rich meaning best available data results in more stringent criteria than other neighboring regions. Harris County Engineering Department further explained that with the adoption of MAAPNext, the future 1% will take tremendous effort and skyrocket project costs.

Response: TWDB acknowledges and appreciates the comment. TWDB notes that the existing "where feasible" rule language remains in the rules. Smaller storm events will be considered for inclusion in guidance documents. For statewide level, there are many communities who may not have information on the smaller storm events. However, RFPGs can always choose to include more information than minimum requirement. No change has been made in response to this comment.

Freese and Nichols requested clarification in §361.39(b) as to whether FMEs and FMSs are intended to be ranked in the state flood plan.

Response: TWDB appreciates and agrees with the comment. The rule has been modified to provide clarity.

Section 361.40. Impacts of Regional Flood Plan

In relation to the requirement added in §361.40(3), San Jacinto River Authority stated the Regional Flood Plan should not require duplicate work of developing water supply sources, if this is done in the Regional Water Plan. San Jacinto River Authority further stated that fundamentally water planning and flood planning are very different, and as such would place a burden on regional flood planning groups when trying to incorporate flood resiliency projects. San Jacinto River Authority also stated that proving water supply benefits would impose additional financial expenses on project sponsors.

Response: TWDB acknowledges and appreciates the comment. Consideration of potential contributions to water supply from flood projects is statutorily required as part of Texas' regional flood planning process. It is required that the Board find that regional flood plans have adequately provided for the development of water supply sources where applicable per Texas Water Code Section 16.062(h)(2) and therefore this requirement has been included in rule. No change has been made in response to this comment.

Freese and Nichols suggested that §361.40 include a requirement for RFPGs to summarize how recommended actions meet the needs identified during the needs analysis task as well as adopted goals.

Response: TWDB appreciates and agrees with the comment. The rule has been modified to include this requirement.

Section 361.42. Flood Response Information and Activities.

Freese and Nichols stated that the language in §361.42 was somewhat confusing and did not seem to support or tie into the other elements of the plan.

Response: TWDB acknowledges and appreciates the comment. This comment will be considered for guidance enhancement and future rulemaking. No change has been made in response to this comment.

Section 361.50. Adoption, Submittal, Notifications, and Approval of Regional Flood Plans.

Freese and Nichols suggested removing "separate vote" which required additional clarification by the TWDB during the first cycle because some interpreted to mean that groups needed to vote on each action individually.

Similarly, Harris County Engineering Department noted that the RFPGs should vote on groups of FMEs, FMPs, and FMSs rather than individually.

Response: TWDB acknowledges and agrees with the comments. The rule has been revised.

Section 361.51. Amendments to Regional Flood Plans.

Harris County Engineering Department noted that the 90-day requirement in §361.51(b)(2) is a very aggressive turnaround time to amend a full regional flood plan. HCED recommended re-evaluating this turnaround time, especially if the amendment is requested during a very active planning period.

Response: TWDB acknowledges and appreciates the comment. The 90-day requirement in §361.51(b)(2) applies when a political subdivision files a petition with the EA to request review of an RFPG decision and the EA agrees, requesting the RFPG to consider making the change. TWDB notes that in addition to this being a very specific scenario, the current rules allow significant flexibility and opportunity for communication by only requiring a written explanation if the RFP has not yet been amended within 90 days. This timeframe is also in line with a similar requirement in the TWDB water planning process. No change has been made in response to this comment.

Section 361.70. Planning Group Sponsor Request for Funding.

Freese and Nichols noted its appreciation for the TWDB's efforts to simplify §361.70 and §361.71 to reduce the administrative burden on TWDB and Sponsors as much as possible, given that recipients of the grant funds (Sponsors) are pre-determined by the RFPG.

Response: TWDB acknowledges and appreciates the comment. No change has been made in response to this comment.

Section 361.72. Use of Funds.

Freese and Nichols suggested the addition of language that clarifies that not only should there be considerations for spatial overlap and timing in obtaining existing model data, but also whether the level of detail or model methodologies are appropriate to be utilized to address the RFPG's Needs in §361.72(a)(1)(A).

Response: TWDB appreciates and agrees with the comment. The rule has been modified in accordance with the comment. TWDB notes that the intention of this language is to avoid duplication of work.

San Jacinto River Authority requested clarification of §361.72(a)(3)(C) related to reimbursement for Planning Group Sponsor staff time. Additionally, Freese and Nichols suggested the removal of §361.72(a)(3)(C) and stated the subsection

prohibits Sponsors from obtaining reimbursement for time and expenses attending RFPG meetings which is in conflict with allowances in §361.72(b)(5).

Response: TWDB appreciates and agrees with the comment. Section 361.72(a)(3)(C) has been removed.

Freese and Nichols stated that 361.72(a)(3)(F) prohibits Sponsors from obtaining reimbursement for time spent administering the grant and associated contracts. Freese and Nichols explained that in the first cycle of planning, some Sponsors observed that these activities, such as efforts to amend contracts, execute budget memorandums, prepare invoices, etc., ended up being a considerable time commitment and were critical components of the work required for Sponsors.

Response: TWDB appreciates and agrees with the comment. Section 361.72(a)(3)(F) has been removed in accordance with the comment.

Freese and Nichols suggested removing the certification requirement in §361.72(b). Freese and Nichols stated that it is inconsistent to require RFPG approval of Sponsor expenses but not for consultant invoices. Freese and Nichols suggested that if removing certification is not possible, the TWDB should consider removing the requirement that certification be during a public meeting and allow Chair to certify expenses in writing outside of a public meeting.

Response: TWDB acknowledges and appreciates the comment. TWDB notes that the published proposed changes had already replaced the certification requirement with an approval requirement by the RFPG or chairperson. No change has been made in response to this comment.

SUBCHAPTER A. GENERAL INFORMATION

31 TAC §§361.10 - 361.13

STATUTORY AUTHORITY (Texas Government Code §2001.033(a)(2))

The amendment is adopted under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Water Code §16.453 (Floodplain Management Account for funding planning grants), §16.061 State Flood Planning, and §16.062 Regional Flood Planning.

Texas Water Code §16.061 State Flood Planning, §16.062 Regional Flood Planning, and §16.453 (Floodplain Management Account for funding planning grants) are affected by this rulemaking.

§361.10. Definitions and Acronyms.

(a) 1% Annual Chance Flood Event--Flood event having a 1% 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) Critical Facilities--Facilities and infrastructure that are critical to the health and welfare of the population and that are especially important following flood hazard events.

- (e) Emergency Need--The need for projects and actions to address a flood hazard that is expected to cause the loss of function of critical facilities or to alleviate immediate threat to life and property from flooding such as imminent anticipated failure of infrastructure.
- (f) Executive Administrator (EA)--The Executive Administrator of the TWDB or a designated representative.
- (g) FEMA--Federal Emergency Management Agency
- (h) FIRM--Flood Insurance Rate Map
- (i) 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.
- (j) 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.
- (k) Floodplain--That area of land subject to periodic inundation by floodwaters.
- (l) Floodplain Management--The operation of an overall program of corrective and preventative measures for reducing risk and impact of flooding.
- (m) 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.
- (n) Flood Management Evaluation (FME)--A proposed study to identify and assess and quantify flood risk or identify, evaluate, and recommend flood risk reduction solutions.
- (o) Flood Management Strategy (FMS)--Flood risk reduction solution ideas and strategies that do not belong in FME or FMP categories. Examples may include regulatory enhancements, development of entity-wide buyout programs, and public outreach and education.
- (p) 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.
- (q) Flood Planning Region (FPR)--A geographic area designated by the Board pursuant to Texas Water Code §16.062.
- (r) 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 and resilience of the people and properties exposed to the hazard.
- (s) Flood Risk Map--A map that shows flood risk for Texas communities at some level of detail using best available data.
- (t) GIS--Geographic Information System
- (u) GLO--General Land Office
- (v) HUC--Hydrologic Unit Code level (e.g., HUC10) as delineated by the United States Geological Survey.
- (w) 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.
- (x) Nature-based Flood Mitigation--Mitigation approaches involving the use of natural features, materials, and processes to reduce the risk and impacts of flooding.
- (y) Neighboring Area--Any area, including but not limited to upstream and downstream areas, potentially affected by the proposed FMP.
- (z) 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.
- (aa) 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. A Planning Group Sponsor must have legal authority to conduct procurement of professional services and enter into the contracts necessary for regional flood planning.
- (bb) Political Subdivision--County, city, or other body politic or corporate of the state, including any district or authority created under Article III, Section 52 or Article XVI, Section 59 of the Texas Constitution and including any interstate compact commission to which the state is a party and any nonprofit water supply corporation created and operating under Chapter 67 of the Texas Water Code.
- (cc) Potentially Feasible Flood Mitigation Project or Potentially Feasible Flood Management Strategy--An FMP or FMS that is assessed or considered to be permissible, constructible, economically viable, and implementable.
- (dd) 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.
- (ee) Regional Flood Planning Group (RFPG)--A group designated by the Board that develops a Regional Flood Plan, pursuant to Texas Water Code §16.062.
- (ff) Residual Risk--The remaining flood risk in an area after the completion of an FMP or FMS or set of FMPs or FMSs that reduce flood risk in that same area.
- (gg) 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).
- (hh) 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.
- (ii) State Population Projections--Population projections contained in the most recently adopted State Water Plan as further assembled geographically based on HUC watershed or other appropriate flood-related geographic features determined by the TWDB.
- (jj) TWC--Texas Water Code
- (kk) 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) hydraulic 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) RFPGs shall consider and adopt, by two-thirds vote, bylaws that are consistent with provisions of this chapter, Texas Water Code §16.062, and Government Code Chapters 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.

(d) RFPGs shall at all times maintain each of the required positions listed below. However, if an 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 pur-

pose 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 the 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 the 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) The RFPGs, at their discretion, 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.

(e) The RFPG shall include the following non-voting members, as designated by the head of their agencies for paragraphs (1) - (7) of this subsection and 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; and
- (7) Staff member of the Texas Division of Emergency Management.

(f) The RFPG shall include the following non-voting members who shall receive meeting notifications and information in the same manner as voting members:

(1) 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 (d) of this section; and

(2) 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 shall consider including a non-voting position to represent regional or local transportation authorities for example, from the Texas Department of Transportation, who shall receive meeting notifications and information in the same manner as voting members.

(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 (d)(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 (e)(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 (d) 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.

§361.13. Regional Flood Planning Group Deliverables.

(a) Each RFPG is expected to consider a wide variety of available, relevant, best available information and tools when developing the regional flood plan.

(b) 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) standardized tables that include lists of all recommended FMEs, FMPs, and FMSs and certain key information associated with each FMP, in accordance with guidance and template 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;

(4) associated data organized in a format and manner determined by the EA; and

(5) documentation of the public process in the plan development, including public comments 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 and ongoing 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% annual chance flood event and 0.2% annual chance flood event inundation boundaries, and the type of flooding for each area as applicable, 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 list of available flood-related models that the RFPG considers of most value in developing its plan;

(6) A summary and associated maps of locations within the FPR that the RFPG considers to have the greatest flood risk and flood risk reduction needs;

(7) The flood mitigation and floodplain management goals adopted by the RFPG per §361.37 of this title (relating to Flood Mitigation and Floodplain Management Goals);

(8) The documented process used by the RFPG to identify potentially feasible FMEs, FMPs, and FMSs; and

(9) A list of potential FMEs and potentially feasible FMPs and FMSs identified by the RFPG, if any.

(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) 463-9683

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SUBCHAPTER B. GUIDANCE PRINCIPLES, NOTICE REQUIREMENTS, AND GENERAL CONSIDERATIONS

31 TAC §361.21

STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

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.

Cross Reference: Texas Water Code §16.061 State Flood Planning, §16.062 Regional Flood Planning, and §16.453 (Floodplain Management Account for funding planning grants) are affected by this rulemaking.

§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 comments prior to and after meetings. The RFPGs must also allow oral public comments 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 in the *Texas Register* 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 comments 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 to any RFPG meetings and any RFPG committee, subcommittee, or subgroup meetings:

(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;

(F) any other RFPG approvals required by TWDB contract or EA guidance not specifically addressed under paragraph (2) or (3) of this subsection;

(G) holding pre-planning public meetings to obtain input on development of the next RFP per TWC 16.062(d);

(H) determining flood mitigation and floodplain management goals per §361.36 of this title; and

(I) 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).

(2) at a minimum, notice must be provided at least seven days prior to the meeting, written comments must be accepted for seven 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 three days prior to and 14 days following the meeting, when the planning group will take the following actions:

(A) adoption of the final RFP per TWC 16.062(h);

(B) approval of amendments to RFPs per §361.51 of this title (relating to Amendments to Regional Flood Plans); and

(C) 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 comment 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 comments;

(F) a hard copy of the draft RFP must be made available for public inspection in at least one publicly accessible location 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 comments must be accepted during the meeting; and

(H) after the RFPG has prepared a draft RFP, the RFPG shall hold at least one public meeting in a central location in the FPR to accept comments on the draft RFP.

(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.

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 C. REGIONAL FLOOD PLAN REQUIREMENTS

31 TAC §§361.30 - 361.40, 361.43 - 361.45

STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

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.

Cross Reference: Texas Water Code §16.061 State Flood Planning, §16.062 Regional Flood Planning, and §16.453 (Floodplain Management Account for funding planning grants) are affected by this rulemaking.

§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, and economic activity;

(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, when the information is available;

(4) key political subdivisions with flood-related regulatory authority or political subdivisions that perform flood planning, floodplain management, or 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, adequacy, and functionality of major flood related infrastructure within the FPR including, but not limited to:

(1) natural features, including:

(A) rivers and tributaries;

(B) wetlands;

(C) playa lakes;

(D) parks and preserves; and

(E) natural coastal features.

(2) constructed flood infrastructure, including:

(A) dams and reservoirs that provide flood protection;

(B) levees;

(C) low water crossings;

(D) bridges;

(E) stormwater management systems including storm drains, inlets, tunnels, and pump stations;

(F) detention and retention ponds;

(G) constructed coastal infrastructure; and

(H) any other flood-related infrastructure.

(b) Please provide a general description by general geographic location (e.g., within political subdivisions) of the condition and functionality of key natural flood mitigation features or major flood infrastructure by feature type and provide the name of the owner and operator of the flood infrastructure. 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 by feature type.

§361.33. *Existing Condition Flood Risk Analyses in the Region.*

(a) The RFPGs shall perform existing condition flood risk analyses for the region comprised of:

(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 analyses to determine the location and magnitude of both 1% 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) identification of known flood-prone areas based on location of hydrologic features, historic flooding, and local knowledge obtained from outreach activities and public meetings;

(5) existing condition flood hazard analyses may consider and include only those flood mitigation projects with dedicated construction funding and scheduled for completion prior to adoption of the next state flood plan;

(6) all analyses shall consider the location of existing levees that 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;

(7) the analyses shall consider existing dams when data is available;

(8) a map showing areas as having an annual likelihood of inundation greater than or equal to 1% and 0.2%, the areal extent of this inundation, and the types of flooding for each area; and

(9) 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 existing condition flood exposure analyses, using the information identified in the flood hazard analyses to identify who and what might be harmed within the region for, at a minimum, both 1% annual chance and 0.2% annual chance flood events. The analyses must include:

(1) analyses of existing development within the existing condition floodplain and the associated flood hazard exposure;

(2) all existing condition flood exposure analyses shall consider the population and property located in areas where existing levees do not meet FEMA accreditation as inundated by flooding without the levees in place. Provisionally accredited levees may be allowed to provide flood protection, unless best available information demonstrates otherwise;

(3) in accordance with guidance 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) the number of residential properties and associated population;

(B) the 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.

(4) 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) The RFPGs shall perform existing condition vulnerability analyses to identify vulnerabilities of the communities and critical facilities identified in subparagraphs (b) and (c) above, as follows:

(1) use relevant data and tools to identify the resilience of communities located in flood-prone areas.

(2) consider and identify factors such as proximity to a floodplain to identify vulnerability of critical facilities, in accordance with EA guidance.

(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. The data shall include:

(1) underlying flood event return frequency;

(2) type of flood risk;

(3) county;

(4) existing flood authority boundaries;

(5) social vulnerability indices for counties and census tracts; and

(6) 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 potential future condition flood risk analyses for the region comprised of:

(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, at a minimum, the location of 1% both annual chance and 0.2% annual chance flood events as follows:

(1) collect best available 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. RFPGs shall consider the following as available and pertinent in the FPR:

(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 major 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 may modify hydraulic models or existing condition flood hazard boundary to identify future conditions flood risk for 1% and 0.2% annual chance storms based on simplified assumptions in accordance with EA guidance.

(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 types 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) The RFPGs shall use the information identified in the potential future condition flood hazard analysis to develop and perform future condition flood exposure analyses to identify who and what might be harmed within the region for the potential future condition 1% annual chance and future condition 0.2% annual chance flood event. At the RFPGs' discretion, the future condition flood exposure analysis may include an analysis of existing and future developments within the future condition floodplain and the associated flood hazard exposure.

(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 and other factors as included in the EA guidance.

(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) existing flood authority boundaries;

(5) social vulnerability indices for counties and census tracts; and

(6) 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.

§361.36. Flood Mitigation Need Analysis.

(a) Based on the analyses developed by the RFPG under §§361.33 - 361.35 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 FMPs and FMSs 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.

§361.37. 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 Existing Condition Flood Risk Analyses in the Region), future condition flood risk analyses identified under §361.34 of this title (relating to Future Condition Flood Risk Analyses in the Region), 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), and needs identified under 361.35 of this title (relating to Flood Mitigation Need Analysis), 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).

§361.38. *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 FMPs and FMSs, including nature-based solutions, some of which may have already been identified by previous evaluations and analyses by others. An FME may eventually result in detailed hydrologic and hydraulic analyses and identification of projects or strategies that could be amended into an RFP as FMPs or FMSs.

(b) When evaluating FMPs and FMSs, the RFPG will, at a minimum, attempt to identify one solution that provides flood mitigation associated with 1% annual chance flood event. In instances where mitigating for 1% annual chance events is not feasible, the RFPG shall document the reasons for its infeasibility, and at the discretion of the RFPG, other FMPs and FMSs to mitigate more frequent events may also be identified and evaluated based on guidance provided by the EA.

(c) A summary of the RFPG process for identifying potential FMEs and potentially feasible FMPs and FMSs 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 FMPs and FMSs 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 FMPs and FMSs, the RFPG shall identify areas for potential FMEs that may eventually result in FMPs.

(f) The RFPG shall evaluate potentially feasible FMPs and FMSs understanding that, upon evaluation and further inspection, some FMPs or FMSs initially identified as potentially feasible may, after further inspection, be reclassified as infeasible.

(g) Recommended 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 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 FMPs or FMSs 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) an indication of whether the 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 and assessment among all FMEs;

(5) an indication of whether hydrologic 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 flood risk within the FME area, to include, as applicable:

(A) estimated habitable, living unit equivalent and associated population in FME area;

(B) estimated critical facilities in FME area;

(C) estimated number of road closure occurrences in FME area, when available;

(D) estimated acres of active farmland and rangeland 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.

(i) Evaluations of potentially feasible FMPs and FMSs, as applicable, 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 FMPs and FMSs 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 FMP or FMS;

(2) a determination of whether FMP or FMS 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 indication of any water supply source benefits;

(5) an equitable comparison and assessment among all FMSs and an equitable comparison and assessment among all FMPs that the RFPGs determine to be potentially feasible;

(6) a demonstration that the FMP or FMS will not negatively affect a neighboring area;

(7) a quantitative reporting of the estimated benefits of the FMP or FMS, as applicable. This includes reductions of flood impacts of the 1% annual chance flood event and other storm events identified and evaluated if the project mitigates to more frequent event to include, where applicable, but not limited to:

(A) associated flood events that must, at a minimum, include the 1% 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;

(J) other benefits as deemed relevant by the RFPG including environmental benefits and other public benefits;

(K) avoidance of future flood risk; and

(L) prevention of creation of future flood risk.

(8) a quantitative reporting of the estimated capital cost of projects in accordance with guidance provided by the EA;

(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 FMP or FMS 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 FMP or FMS.

(j) RFPGs shall evaluate and present potential FMEs and potentially feasible FMPs and FMSs 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 HUC level as determined by the EA and county location.

§361.39. Recommended Flood Management Evaluations, Flood Mitigation Projects, and Flood Management Strategies.

(a) RFPGs shall recommend FMPs and FMSs 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 a 1% annual chance (100-yr flood), where feasible. In instances where mitigating for 100-year events are not feasible, FMPs and FMSs 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 provided by the EA which may be used to rank recommended FMEs, FMPs, and FMSs with non-recurring, non-capital costs in the state flood plan.

(c) RFPGs shall provide the benefit-cost ratio for recommended FMPs in accordance with guidance provided by the EA.

(d) RFPGs shall recommend FMEs that the RFPG determines are most likely to result in identification of potentially feasible FMPs and FMSs that would, at a minimum, identify and investigate one solution to mitigate for flood events associated with a 1% annual chance flood event and that support specific RFPG flood mitigation and/or floodplain management goals.

(e) Recommended FMSs or FMPs may not negatively affect a neighboring area or an entity's water supply.

(f) 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.

(g) Specific types of FMEs, FMPs, or FMSs that should be included and that should not be included in RFPs must be in accordance with guidance 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 RFP would achieve with regard to life, injuries, property, and other factors such as environment and agriculture;

(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 statement that the plan adequately provides for the preservation of life and property and the development of water supply sources, where applicable;

(4) a general description of the types of potential positive and negative socioeconomic or recreational impacts of the recommended FMPs and FMSs within the FPR;

(5) 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; and

(6) a summary describing how RFPG recommendations in the RFP meet the needs identified during the needs analysis task as well as adopted goals.

§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 FMEs, FMPs and FMSs on implementation of previously recommended FMPs and provide to the EA;

(2) as projects are implemented, incorporate those improvements and associated flood-risk reduction benefits into the plan and reflect in the subsequent RFPs; and

(3) 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 (Texas Government Code §2001.024(a)(3))

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.

Cross Reference: Texas Water Code §16.061 State Flood Planning, §16.062 Regional Flood Planning, and §16.453 (Floodplain Management Account for funding planning grants) are affected by this rulemaking.

§361.50. *Adoption, Submittal, Notifications, and Approval of Regional Flood Plans.*

(a) The RFPGs shall approve each recommended FME, FMP, and FMS by a 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 comments in accordance with §361.21 of this title (relating to General Notice Requirements) to include:

(1) any written or oral comments received from the public on the draft RFP; and

(2) the EA's written comments 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 FMEs, FMPs, 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 comments 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 comments 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 RFPGs must submit their adopted RFPs to the Board every five years on a date determined by the EA for approval and inclusion in the State Flood Plan.

§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, Board-approved RFP at a regular RFPG meeting. 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, Board-approved RFP.

(1) 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.

(2) The RFPG amendment materials shall be submitted to the EA and shall:

(A) include the RFPG responses to all comments 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.

(3) 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).

(f) RFPGs may adopt errata to the final RFP to correct minor, non-substantive errors identified after adoption of the final RFP but prior to adoption of the corresponding State Flood Plan. Before adopting errata to a final RFP, the RFPG must provide public notice and receive comments in accordance with §361.21 of this title. Upon adoption of the errata, the RFPG shall submit to the EA an errata package containing revised pages of the RFP and public comments received. The EA will notify the RFPG within 60 days whether the errata are acceptable as errata or will need to be made through the amendment process.

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. NEGATIVE EFFECTS ON NEIGHBORING AREAS AND FAILURE TO MEET REQUIREMENTS

31 TAC §361.61

STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

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.

Cross Reference: Texas Water Code §16.061 State Flood Planning, §16.062 Regional Flood Planning, and §16.453 (Floodplain Management Account for funding planning grants) are affected by this rulemaking.

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SUBCHAPTER F. REGIONAL FLOOD PLANNING GRANTS

31 TAC §§361.70 - 361.72

STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

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.

Cross Reference: Texas Water Code §16.061 State Flood Planning, §16.062 Regional Flood Planning, and §16.453 (Floodplain Management Account for funding planning grants) are affected by this rulemaking.

§361.72. *Use of Funds.*

(a) Limitations of funding. The Board has sole discretion in determining which activities are necessary for the development or re-

vision of RFPs. However, no funds provided by the Board may be expended by RFPs for the following:

(1) activities for which the EA 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, with appropriate methodologies and details 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 FMPs or FMSs;

(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 RFPG 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) costs for training;

(D) costs of developing an application for funding or reviewing materials developed due to this grant; and

(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 approves 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, 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;

(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;

(6) the reasonable cost of purchase or rental of audio-visual equipment that is necessary to comply with Texas Government Code Chapter 551 related to Open Meetings; and

(7) the cost of rental space to hold RFPG meetings.

(c) Subcontracting. An 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.

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CHAPTER 361. REGIONAL FLOOD PLANNING

The Texas Water Development Board (TWDB or "board") adopts the repeal of 31 Texas Administrative Code (TAC) §§361.22, 361.36, and 361.37. The repeals are adopted without changes as published in the April 21, 2023, issue of the *Texas Register* (48 TexReg 2078). The repeals will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL ISSUES FOR THE ADOPTED REPEALS.

The TWDB adopts the repeal to these sections of the rules. New rules 31 TAC §361.36 and §361.37 are being adopted elsewhere in this issue of the *Texas Register*.

EFFECTIVE DATE.

These repeals will become effective on November 1, 2023.

REGULATORY IMPACT ANALYSIS DETERMINATION (Texas Government Code §2001.0225)

The TWDB reviewed the repeal in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the repeal 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 repeal is to facilitate the regional and state flood planning process.

Even if the repeal 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 repeal 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 proposed solely under the general powers of the agency, but rather under Texas Water Code §16.062. Therefore, this repeal does not fall under any of the applicability criteria in Texas Government Code §2001.0225.

TAKINGS IMPACT ASSESSMENT (Texas Government Code §2007.043)

The TWDB evaluated this repeal and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this repeal is to facilitate the regional and state flood planning process while making the process more efficient for the regional flood planning regions. The repeal will substantially advance this stated purpose by clarifying requirements of the flood plan regions.

The TWDB's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this repeal 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). The TWDB is the agency that is responsible for developing the state flood plan.

Nevertheless, the TWDB 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 repeal would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject repeal does not affect a landowner's rights in private real property because this repeal does not burden, 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 repeal does not constitute a taking under Texas Government Code, Chapter 2007.

PUBLIC COMMENTS (Texas Government Code §2001.024(a)(7))

No comments were received on the repeal.

SUBCHAPTER B. GUIDANCE PRINCIPLES,
NOTICE REQUIREMENTS, AND GENERAL
CONSIDERATIONS

31 TAC §361.22

STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

This rulemaking is adopted under the authority of Texas Water Code §16.061 State Flood Planning, §16.062 Regional Flood Planning, §16.452 Texas Infrastructure Resiliency Fund, and §16.453 (Floodplain Management Account for funding planning grants).

Cross Reference: Texas Water Code §16.061 State Flood Planning, §16.062 Regional Flood Planning, §16.452 Texas Infrastructure Resiliency Fund and §16.453 (Floodplain Management Account for funding planning grants) are affected by this rulemaking.

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SUBCHAPTER C. REGIONAL FLOOD PLAN
REQUIREMENTS

31 TAC §361.36, §361.37

STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

This rulemaking is adopted under the authority of Texas Water Code §16.061 State Flood Planning, §16.062 Regional Flood Planning, §16.452 Texas Infrastructure Resiliency Fund, and §16.453 (Floodplain Management Account for funding planning grants).

Cross Reference: Texas Water Code §16.061 State Flood Planning, §16.062 Regional Flood Planning, §16.452 Texas Infrastructure Resiliency Fund and §16.453 (Floodplain Management Account for funding planning grants) are affected by this rulemaking.

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 October 12, 2023.

TRD-202303791

Ashley Harden

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Texas Water Development Board

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

**PART 6. TEXAS DEPARTMENT OF
CRIMINAL JUSTICE**

CHAPTER 151. GENERAL PROVISIONS

37 TAC §151.54

The Texas Board of Criminal Justice (board) adopts new rule §151.54, Employee Training and Education - Tuition Reimbursement without changes to the proposed text as published in the September 8, 2023, issue of the *Texas Register* (48 TexReg 5012). The rule will not be republished.

The purpose of the new rule is to authorize reimbursement of training and education expenses consistent with Subchapters C and D, Chapter 656, Texas Government Code.

No comments were received regarding the new rule.

The new rule is adopted under Texas Government Code §492.013, which authorizes the board to adopt rules; and Subchapters C and D, Chapter 656, Texas Government Code, which authorize the board to adopt rules for the training and education of TDCJ administrators and employees.

Cross Reference to Statutes: None.

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 October 16, 2023.

TRD-202303844

Kristen Worman

General Counsel

Texas Department of Criminal Justice

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For further information, please call: (936) 437-6700



**CHAPTER 152. CORRECTIONAL
INSTITUTIONS DIVISION**

**SUBCHAPTER A. MISSION AND
ADMISSIONS**

37 TAC §152.3

The Texas Board of Criminal Justice adopts amendments to §152.3, concerning Admissions, with changes to the proposed

text as published in the September 8, 2023, issue of the *Texas Register* (48 TexReg 5013). The rule will be republished.

The adopted amendments conform to legislation from the 88th legislative session, HB 2620, relating to the confinement in a county jail of a person pending transfer to the Texas Department of Criminal Justice (TDCJ) and to compensation to a county for certain costs of confinement.

The Board received joint comments on the proposed amendments from the Texas Conference of Urban Counties (CUC) and the Texas County Judges and Commissioners Association (CJ-CAT). The Board also received comments from Tarrant County.

General Comments

CUC and CJCAT agreed with the public benefit of the proposed rule. Tarrant County agreed with much of the proposed language and appreciated the opportunity to work with TDCJ to implement the rule.

Section 152.3(b)

Proposed §152.3(b) mirrors the statutory language requiring TDCJ to accept inmates sentenced to prison within 45 days after the TDCJ Classification and Records Office (CRO) certifies the inmate's commitment papers received from the county.

CUC and CJCAT argue that the proposed language does not address TDCJ's obligation to reimburse a county after the 45-day period of holding a state-ready inmate. CUC and CJCAT propose adding language regarding TDCJ's obligation to reimburse the counties and the rate of reimbursement. Tarrant County also commented that the proposed language does not address TDCJ's requirement to reimburse counties who hold inmates beyond 45 days.

TBCJ Response

TBCJ declines to modify the proposed rule as requested by CUC and CJCAT or Tarrant County because the proposed rule language mirrors the statutory language. However, TBCJ agrees that additional language is needed to clarify the obligation to reimburse counties for each day over 45 days that an inmate is held in a county facility and to identify the correct rate of reimbursement. TBCJ modifies the proposed rule accordingly.

Section 152.3(c)(2)

Proposed §152.3(c)(2) describes the action that must be taken by the CRO when the commitment papers submitted by a county require correction.

CUC and CJCAT commented that the proposed language should be clarified to require the CRO to identify the specific corrective actions required by the county. Tarrant County also requested that similar clarifying language be added to the proposed rule.

TBCJ Response

TBCJ modifies the language to clarify that CRO will identify the errors requiring correction as suggested by Tarrant County, CUC and CJCAT.

Timeline and Description of Reimbursement Process

CUC and CJCAT assert that the proposed rule does not contain a timeline or a description of the process to be followed by a county when seeking reimbursement from TDCJ. Tarrant County also claims that the proposed language does not include a process for counties to request reimbursement from TDCJ.

TBCJ Response

TBCJ declines to modify the proposed rule as requested by CUC and CJCAT or Tarrant County because such language is included in the TDCJ policy for reimbursements to counties. However, TBCJ agrees that some additional language is needed to clarify the process to be used when a county seeks reimbursement from TDCJ and the timeline for obtaining such reimbursement and modifies the proposed rule accordingly.

All comments, including any not specifically referenced herein, were fully considered by TBCJ.

The amendments are adopted under Texas Government Code § 492.013, which authorizes the board to adopt rules; § 499.071, which requires the board to adopt a scheduled admissions policy, and § 507.024, which requires the board to adopt rules to provide for the safe transfer of defendants from counties to state jail felony facilities.

Cross Reference to Statutes: None.

§152.3. Admissions.

(a) Counties will send commitment papers on inmates sentenced to the Texas Department of Criminal Justice (TDCJ) to the TDCJ Classification and Records Office (CRO) immediately following completion of the commitment papers. Those counties equipped to do so may send paperwork electronically.

(b) The TDCJ shall accept inmates sentenced to prison within 45 days of the date the commitment papers are certified by the CRO. If TDCJ does not take custody of an inmate within 45 days after the commitment papers are certified, TDCJ shall reimburse the county for each day of confinement within the county over 45 days at the most recent systemwide cost per day published by the Legislative Budget Board on the date the CRO receives the county's request for reimbursement.

(c) No later than the fifth business day after the date the CRO receives commitment papers from the county, the CRO shall:

(1) review and certify the commitment papers if the CRO determines there are no errors or deficiencies requiring corrective action by the county; or

(2) notify the county that the CRO has determined the commitment papers require corrective action by the county and identify the errors needing correction.

(d) Inmates shall be scheduled for admission based on:

(1) their length of confinement in relation to the 45 days from the date the commitment papers are certified; and

(2) transportation routes.

(e) Counties will inform the TDCJ State Ready Office when inmates for whom commitment papers have been sent are transferred to another facility by bench warrants.

(f) The TDCJ shall notify counties via electronic transmission, such as facsimile or email when applicable, of inmates scheduled for intake, the date of intake, the respective reception unit, and transportation arrangements. Inmates shall be sorted by name and State Identification (SID) number, as identified by the court judgment.

(g) Counties will notify the TDCJ admissions coordinator of any inmates who are not available for transfer and the reason they are not available for transfer.

(h) Counties may identify inmates with medical or security issues that may be scheduled for intake out of sequence on a case-by-case basis by contacting the TDCJ admissions coordinator.

(i) After the receipt of an order by a judge for admission of an inmate to a state jail, the placement determination shall be made by the TDCJ Admissions Office. Placement shall be made in the state jail designated as serving the county in which the inmate resides unless:

(1) the inmate has no residence or was a resident of another state at the time of committing an offense;

(2) alternative placement would protect the life or safety of any person;

(3) alternative placement would increase the likelihood of the inmate's successful completion of confinement or supervision;

(4) alternative placement is necessary to efficiently use available state jail capacity, including alternative placement because of gender; or

(5) alternative placement is necessary to provide medical or psychiatric care to the inmate.

(j) If the inmate is described by subsection (h)(1) of this rule, placement shall be made in the state jail designated as serving the county in which the offense was committed, unless a circumstance in subsection (i)(2) - (5) of this rule applies.

(k) The TDCJ Admissions Office shall attempt to have placement determinations made at a regional level that may include one or more regions as designated in 37 Texas Administrative Code § 152.5 relating to the designation of state jail regions.

(l) If a county believes reimbursement is due, the county shall complete and submit the authorized form to the CRO. Upon receipt of the authorized form, TDCJ shall:

(1) review each request for reimbursement received from a county;

(2) verify:

(A) the certification date for all documents required to be submitted under Article 42.09, Code of Criminal Procedure; and

(B) the date the inmate was received into TDCJ custody; and

(3) process all required payments for reimbursement in accordance with the Prompt Payment Act or notify the county and explain why no reimbursement is required.

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 October 16, 2023.

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Kristen Worman

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Texas Department of Criminal Justice

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For further information, please call: (936) 437-2140



TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 206. MANAGEMENT

SUBCHAPTER E. ADVISORY COMMITTEES

43 TAC §§206.92, 206.93, 206.98

INTRODUCTION. The Texas Department of Motor Vehicles (department) adopts amendments to 43 Texas Administrative Code (TAC) §206.92 and §206.93 and adopts new §206.98 concerning advisory committees. The department adopts §§206.92, 206.93, and 206.98 without changes to the proposed text as published in the September 1, 2023, issue of the *Texas Register* (48 TexReg 4799). The rules will not be republished.

REASONED JUSTIFICATION. The amendments and new section are necessary to implement the Sunset Advisory Commission's adopted recommendation 1.7 in the Staff Report with Final Results, revised June 2019. The Sunset Advisory Commission recommended that the department establish advisory committees to provide expertise for rulemaking and other issues, and to adopt rules regarding standard committee structure and operating criteria.

An amendment to §206.92 is necessary to expand the definition of "advisory committee" by adding Transportation Code, §643.155 as a statute under which an advisory committee may be created, to include the enabling statute for a separate advisory committee for rules involving motor carriers transporting household goods.

Amendments to §206.93 are necessary to allow the advisory committees to report to the department by providing recommendations either to the board or to the executive director. This would create more flexibility in how the committees report and would make the language consistent with the definition of "advisory committee" in §206.92(1) and with Transportation Code, §1001.031(a).

Another amendment to §206.93(a) corrects a grammatical error. Advisory committees are required to meet and carry out their functions upon a request from the department or the board for advice and recommendations on any issues. The request can be on a single issue or multiple issues.

An amendment to §206.93(d) removes the requirement that advisory committee members have an interest or expertise in the subject area of the advisory committee. This language is redundant with the statutory language that is already contained in Transportation Code, §1001.031 and is therefore unnecessary.

An amendment to §206.93(i) removes an unnecessary hyphen to correct a grammatical error.

The new §206.98 is necessary to implement Transportation Code, §643.155, which requires the department to appoint a rules advisory committee pertaining to motor carriers transporting household goods. Section 643.155 requires a department representative to serve on the advisory committee. In contrast, Transportation Code, §1001.031 does not require department representatives to serve on the advisory committee that considers other consumer protection and customer service issues. Therefore, dividing the advisory committees so that the committee on which department employees serve considers only rules involving motor carriers transporting household goods allows the most efficient use of department employees' time. It also avoids diluting the influence of perspectives from outside the department on other consumer protection and customer service issues, for which statute does not require the perspective of department representatives on the advisory committee. New

§206.98 sets in rule the purpose, tasks, reporting requirements, and expiration of the HGRAC, as is required for advisory committees under Government Code, §2110.005. New §206.98 has an expiration date for the HGRAC of July 7, 2027, to match the expiration date of the other department advisory committees.

SUMMARY OF COMMENTS.

No comments on the proposed amendments or new section were received.

STATUTORY AUTHORITY. The department adopts amendments to §206.92 and §206.93 and adopts new §206.98 under Transportation Code, §643.155, which authorizes the department to adopt rules to create a rules advisory committee consisting of the public, the department, and representatives of motor carriers transporting household goods using small, medium, and large equipment; Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code and other laws of this state; Government Code, §2110.005, which requires state agencies establishing advisory committees to make rules stating the purpose and tasks of the committee and describing the manner in which the committee will report to the agency; and Government Code, §2110.008, which allows state agencies establishing advisory committees make rules designating the date an advisory committee will be abolished.

CROSS REFERENCE TO STATUTE. Transportation Code, Chapters 643 and 1001; Government Code, Chapter 2110.

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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Laura Moriaty

General Counsel

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For further information, please call: (512) 465-4160



CHAPTER 211. CRIMINAL HISTORY OFFENSE AND ACTION ON LICENSE SUBCHAPTER A. CRIMINAL OFFENSE AND ACTION ON LICENSE

43 TAC §211.6

INTRODUCTION. The Texas Department of Motor Vehicles (department) adopts amendments to 43 Texas Administrative Code (TAC) §211.6 concerning fingerprint requirements for license applicants and holders. The department adopts §211.6 without changes to the proposed text as published in the September 1, 2023, issue of the *Texas Register* (48 TexReg 4801). The rule will not be republished.

REASONED JUSTIFICATION. The amendments to §211.6 are necessary to prevent application fraud in two important ways--by verifying identify and by allowing the department to

obtain a complete and comprehensive criminal background check from both the Texas Department of Public Safety (DPS) and the Federal Bureau of Investigation (FBI) prior to issuing a license. The current rule references only General Distinguishing Numbers issued under Transportation Code Chapter 503, so this rule amends §211.6 to make it possible for the department to require fingerprinting for all license types in the future, if the department chooses to subsequently propose amendments to Chapter 215 or 221 of this title to add fingerprint requirements for a specific license type.

The amended title of §211.6 reflects that the fingerprint requirements of this section will apply to all license types designated in Chapters 215 and 221 of this title as requiring fingerprinting for licensure. This may include licenses other than general distinguishing numbers if the department amends Chapters 215 or 221 of this title in the future. This amendment is necessary to describe more accurately the department's authority under Texas Government Code, §411.122 and §411.12511 to implement fingerprint requirements.

The amendments to subsections (a) and (b) delete references to a General Distinguishing Number under Transportation Code, Chapter 503. These amendments are necessary to reflect more accurately the department's authority to implement fingerprint requirements for additional license types through rulemaking.

The other amendments in subsection (a) specify that the rule will apply to license types designated in Chapter 215 or Chapter 221 of this title as requiring fingerprints for licensure. These amendments are necessary to reflect more accurately the department's authority to implement fingerprint requirements for additional license types through rulemaking and clarify for ease of reference which chapters may contain fingerprint requirements for specific license types.

The amendments to subsection (b) combine language currently in subsections (b) and (c) into amended (b), make clarifying changes to remove unnecessary language, and identify the persons that may be subject to a fingerprint requirement. These amendments are necessary to add clarity and for ease of understanding.

The amendments to subsection (c) replace the existing language consolidated into subsection (b) with new language clarifying that the department will review each license application, determine which persons need to be fingerprinted, and notify the applicant or license holder. This amendment is necessary to inform the public, including applicants and license holders, that the department must first review the application and department licensing records to determine which persons are required to be fingerprinted, before notifying the applicant regarding which individuals must submit fingerprints.

SUMMARY OF COMMENTS.

No comments on the proposed amendments were received.

STATUTORY AUTHORITY. The department adopts the amendments to §211.6 under Government Code, §411.122(d), which authorizes department access to criminal history record information maintained by DPS; Government Code, §411.12511, which authorizes the department to obtain criminal history record information from DPS and the FBI for license applicants, license holders, and representatives whose act or omission would be cause for denying, revoking, or suspending a general distinguishing number or license issued under Transportation Code, Chapter 503, or Occupations Code, Chapters 2301 or 2302;

Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise that authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license holders, ensure that the distribution, sale and lease of motor vehicles is conducted as required by statute and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles, and to enforce and administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651, which gives the board authority to deny an application for a license, revoke or suspend a license, place on probation a person whose license has been suspended, or reprimand a licensee if the applicant or license holder is unfit, makes a material misrepresentation, violates any law relating to the sale, distribution, financing, or insuring of motor vehicles, willfully defrauds a purchaser, or fails to fulfill a written agreement with a retail purchaser of a motor vehicle; Occupations Code, §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code, Chapter 2302; Transportation Code, §503.002, which authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department under the Transportation Code and other laws of this state.

CROSS REFERENCE TO STATUTE. Government Code, Chapter 411; Occupations Code, Chapters 2301 and 2302; and Transportation Code, Chapters 503 and 1002.

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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Laura Moriarty
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Texas Department of Motor Vehicles

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For further information, please call: (512) 465-4160



CHAPTER 217. VEHICLE TITLES AND REGISTRATION

SUBCHAPTER B. MOTOR VEHICLE REGISTRATION

43 TAC §217.52

INTRODUCTION. The Texas Department of Motor Vehicles (department) adopts amendments to 43 Texas Administrative Code (TAC) §217.52 concerning the marketing of specialty license plates through a private vendor. The department adopts amendments to §217.52 with a change to correct a point of grammar that was in the proposed text as published in the

September 1, 2023, issue of the *Texas Register* (48 TexReg 4803). The amendments will be republished.

The amendments are necessary to implement Senate Bill (SB) 702 enacted during the 88th Texas Legislature, Regular Session (2023). SB 702 amended Transportation Code, §504.851, to require a contract entered into by the department and a private vendor for the marketing and sale of specialty license plates to allow the private vendor to establish a range of premium embossed specialty license plates to be sourced, marketed, and sold by the private vendor. The department amends the following subsections of §217.52: §217.52(h)(5), to establish fees required for embossed background-only license plates; §217.52(h)(7), to clarify that the fees for an auction pattern apply to an embossed license plate design and that the owner of an auction pattern may move the auction pattern to an embossed license plate design under subsection (n); §217.52(h)(8), to establish embossed personalized specialty license plates and the corresponding fees required; renumbered §217.52(h)(9), to expressly retain the grandfathered fees if the board approves a crossover plate under Transportation Code, §504.6011 as an embossed plate design; and §217.52(n), to define "restyled license plate," to include embossed specialty license plates, and to set fees for restyling a plate from non-embossed to embossed.

REASONED JUSTIFICATION.

The amendments to §217.52 are necessary to implement SB 702.

The amendments allow vehicle owners the option to purchase embossed specialty license plates if they choose to do so. No person would be required to purchase an embossed license plate and the standard default option would still be a printed plate.

The amendments also allow classic car collectors to fully restore cars with historically accurate embossed license plates.

Amendments to §217.52(h) clarify the rule by using the term "vendor specialty license plates" that is defined in §217.52(a) to provide consistent meaning throughout §217.52.

An amendment to §217.52(h)(5) implements SB 702 by adding an embossed option for background-only, non-personalized license plates. The amendment clarifies that background-only, non-personalized license plates are available as either embossed or non-embossed.

An amendment to §217.52(h)(5) creates fees for issuance of embossed, background-only license plates; however, the amendment would expressly retain the grandfathered fees under re-numbered subsection (h)(9)(C) if the board approves a crossover plate under Transportation Code, §504.6011 as an embossed plate design. These fees are sufficient to cover the department's direct, indirect, and administrative costs associated with the department's contract with its specialty license plates vendor and were determined through discussions with the vendor.

Amendments to §217.52(h)(5) add subparagraphs (A) and (B) to separate the fees for non-embossed, background-only specialty license plates from the fees for embossed, background-only specialty license plates.

In addition, amendments to §217.52(h)(5) add a hyphen between the words "background" and "only" because they are compound modifiers for the term "license plates."

Amendments to §217.52(h)(7) clarify that the fees for an auction pattern apply to an embossed license plate design and that the owner of an auction pattern may move the auction pattern to an embossed license plate design under subsection (n) regarding a restyled vendor specialty plate design.

New §217.52(h)(8) implements SB 702 by creating personalized, embossed specialty license plates. New §217.52(h)(8) allows the department's vendor to source, market, and sell a range of embossed, personalized specialty license plates with board-approved background and color combinations. New §217.52(h)(8) also sets fees for issuance of embossed, personalized specialty license plates. New §217.52(h)(8) clarifies that the fees under subsection (h)(7), regarding auction plate patterns, are grandfathered for embossed plate designs. New §217.52(h)(8) also clarifies that the personalization and specialty plate fees under renumbered subsection (h)(9) do not apply to an embossed, personalized specialty plate because the fees under §217.52(h)(8) already include the personalization fees; however, there is an exception under re-numbered subsection (h)(9)(C) if the board approves a crossover plate under Transportation Code, §504.6011 as an embossed plate design. These fees are sufficient to cover the department's direct, indirect, and administrative costs associated with the department's contract with its specialty license plates vendor and were determined through discussions with the vendor.

Amendments also renumber current §217.52(h)(8) to §217.52(h)(9). Amendments to renumbered §217.52(h)(9) expressly retain the grandfathered fees if the board approves a crossover plate under Transportation Code, §504.6011 as an embossed plate design.

Amendments to §217.52(n) implement SB 702 by adding embossed specialty license plate styles to the provision on restyled vendor specialty license plates to allow people who currently have non-embossed specialty license plates to restyle their plates into an embossed specialty license plate.

New §217.52(n)(2)(B) sets a fee of \$75 for restyling a non-embossed specialty license plate into an embossed specialty license plate. This fee is sufficient to cover the department's direct, indirect, and administrative costs associated with the department's contract with its specialty license plates vendor and were determined through discussions with the vendor. The amendments also re-letter subparagraphs within §217.52(n) for clarity and ease of reference.

SUMMARY OF COMMENTS.

Comment: Sean Kennedy, Vice President of MyPlates, supported the Board's adoption of amendments to 43 TAC §217.52. Mr. Kennedy stated that MyPlates had conducted a poll and found that the public was interested in having embossed plates as an option for specialty plates. Mr. Kennedy noted that the amendment would make the rule consistent with SB 702. Mr. Kennedy stated that the rule amendments will allow citizens of Texas a license plate that was previously available to the public and would increase public interest in the specialty plate program generally.

Response: The department agrees with the comment.

STATUTORY AUTHORITY.

The department adopts amendments to §217.52 under Transportation Code, §504.0011, which grants the board authority to adopt rules to implement Transportation Code, Chapter 504; Transportation Code, §504.0051, which gives the department

authority to issue personalized license plates and forbids the department from issuing replacement personalized license plates unless the vehicle owner pays the statutory fee required under Transportation Code, §504.007; Transportation Code, §504.007, which states that replacement license plates can only be issued if the vehicle owner pays the statutory fee; Transportation Code, §504.6011, which authorizes the sponsor of a specialty license plate to reestablish its specialty license plate under Subchapter J of Transportation Code, Chapter 504, and for the board to establish the fees under Transportation Code, §504.851; Transportation Code, §504.851(a), which allows the department to contract with a private vendor to provide specialty and personalized license plates; Transportation Code, §504.851(b) - (d), which authorize the board to establish fees by rule for the issuance or renewal of personalized license plates that are marketed and sold by the vendor as long as the fees are reasonable and not less than the amounts necessary to allow the department to recover all reasonable costs associated with the procurement, implementation, and enforcement of the vendor's contract; Transportation Code, §504.851(i), as amended by SB 702, 88th Legislature, Regular Session (2023), which requires a contract entered into by the department and a private vendor for the marketing and sale of specialty license plates to allow the vendor to establish a range of premium embossed specialty license plates to be sourced, marketed, and sold by the private vendor; and Transportation Code, §1002.001 which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department under the Transportation Code and other laws of this state.

CROSS REFERENCE TO STATUTE. Transportation Code, Chapters 504 and 1002.

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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Laura Moriaty

General Counsel

Texas Department of Motor Vehicles

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For further information, please call: (512) 465-4160



43 TAC §217.54

INTRODUCTION. The Texas Department of Motor Vehicles (department) adopts amendments to 43 Texas Administrative Code (TAC) §217.54 concerning registration of fleet vehicles. The department adopts §217.54 with changes to the proposed text to correct punctuation as published in the September 1, 2023, issue of the *Texas Register* (48 TexReg 4807). The rule will be republished. The amendments are necessary to implement House Bill (HB) 433 enacted during the 88th Legislature, Regular Session (2023). HB 433 amended the definition of "commercial fleet" in Transportation Code, §502.001(6) by reducing from 25 to 12 the minimum number of non-apportioned motor vehicles, semitrailers, or trailers owned, operated, or leased by a business entity necessary to constitute a commercial fleet.

REASONED JUSTIFICATION. The amendments to §217.54 are necessary to implement HB 433 by changing the eligibility requirements for fleet registration and fleet composition. Amendments to §217.54(b)(1) replace the number "25" with "12" for fleet eligibility requirements. Amendments to §217.54(f)(3) replace the number "25" with "12" for fleet composition as it relates to the status of an account holder's registration when the account falls below the minimum number of vehicles for a commercial fleet.

SUMMARY OF COMMENTS.

No comments on the proposed amendments were received.

STATUTORY AUTHORITY. The department adopts amendments to §217.54 under Transportation Code, §502.001(6), as amended by HB 433, which defines "commercial fleet" for purposes of Transportation Code, Chapter 502; Transportation Code, §502.0021, which authorizes the department to adopt rules to administer Transportation Code, Chapter 502; Transportation Code, §502.0023, which sets out the requirements for extended vehicle registration of commercial fleets and requires the department to adopt rules to implement those requirements; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department as provided in the Texas Transportation Code and other laws of this state.

CROSS REFERENCE TO STATUTE. Transportation Code, Chapters 502 and 1002.

§217.54. *Registration of Fleet Vehicles.*

(a) Scope. A registrant may consolidate the registration of multiple motor vehicles in a fleet instead of registering each vehicle separately. A fleet may include trailers and semitrailers. Except as provided by §217.55 of this title (relating to Exempt and Alias Vehicle Registration), to consolidate registration, a registration must meet the requirements of this section.

(b) Eligibility. A fleet must meet the following requirements to be eligible for fleet registration.

- (1) No fewer than 12 vehicles will be registered as a fleet;
- (2) Vehicles may be registered in annual increments for up to eight years;
- (3) All vehicles in a fleet must be owned by or leased to the same business entity;
- (4) All vehicles must be vehicles that are not registered under the International Registration Plan; and
- (5) Each vehicle must currently be titled in Texas or be issued a registration receipt, or the registrant must submit an application for a title or registration for each vehicle.

(c) Application.

(1) Application for fleet registration must be in a form prescribed by the department. At a minimum the form will require:

- (A) the full name and complete address of the registrant;
- (B) a description of each vehicle in the fleet, which may include the vehicle's model year, make, model, vehicle identification number, document number, body style, gross weight, empty weight, and for a commercial vehicle, manufacturer's rated carrying capacity in tons;

(C) the existing license plate number, if any, assigned to each vehicle; and

(D) any other information that the department may require.

(2) The application must be accompanied by the following items:

(A) in the case of a leased vehicle, a certification that the vehicle is currently leased to the person to whom the fleet registration will be issued;

(B) registration fees prescribed by law for the entire registration period selected by the registrant;

(C) local fees or other fees prescribed by law and collected in conjunction with registering a vehicle for the entire registration period selected by the registrant;

(D) evidence of financial responsibility for each vehicle as required by Transportation Code, §502.046, unless otherwise exempted by law;

(E) annual proof of payment of Heavy Vehicle Use Tax;

(F) the state's portion of the vehicle inspection fee; and

(G) any other documents or fees required by law.

(d) Registration period.

(1) The fleet owner will designate a single registration period for a fleet so the registration period for each vehicle will expire on the same date.

(2) The fleet registration period will begin on the first day of a calendar month and end on the last day of a calendar month.

(e) Registration receipt and fleet license plates.

(1) As evidence of registration, the department will issue a registration receipt and one or two metal fleet license plates for each vehicle in a fleet.

(2) The registration receipt for each vehicle shall at all times be carried in that vehicle and be available to law enforcement personnel upon request.

(3) A registration receipt or fleet license plate may not be transferred between vehicles, owners, or registrants.

(f) Fleet composition.

(1) A registrant may add a vehicle to a fleet at any time during the registration period. An added vehicle will be given the same registration period as the fleet and will be issued one or two metal fleet license plates and a registration receipt.

(2) A registrant may remove a vehicle from a fleet at any time during the registration period. After a vehicle is removed from the fleet, the fleet registrant shall either return the metal fleet license plates for that vehicle to the department or provide the department with acceptable proof that the metal fleet license plates for that vehicle have been destroyed. Credit for any vehicle removed from the fleet for the remaining full year increments can be applied to any vehicle added to the fleet or at the time of renewal. No refunds will be given if credit is not used or the account is closed.

(3) If the number of vehicles in an account falls below 12 during the registration period, fleet registration will remain in effect. If the number of vehicles in an account is below 12 at the end of the registration period, fleet registration will be canceled. In the event of cancellation, each vehicle shall be registered separately. The registrant

shall immediately either return all metal fleet license plates to the department or provide the department with acceptable proof that the metal fleet license plates have been destroyed.

(g) Fees.

(1) When a fleet is first established, the department will charge a registration fee for each vehicle for the entire registration period selected. A currently registered vehicle, however, will be given credit for any remaining time on its separate registration.

(2) When a vehicle is added to an existing fleet, the department will charge a registration fee that is prorated based on the number of months of fleet registration remaining. If the vehicle is currently registered, this fee will be adjusted to provide credit for the number of months of separate registration remaining.

(3) When a vehicle is removed from fleet registration, it will be considered to be registered separately. The vehicle's separate registration will expire on the date that the fleet registration would have expired. The registrant must pay the statutory replacement fee to obtain regular registration insignia before the vehicle may be operated on a public highway.

(4) In addition to the registration fees prescribed by Transportation Code, Chapter 502, an owner registering a fleet under this section must pay a one-time fee of \$10 per motor vehicle, semitrailer, or trailer in the fleet. This fee is also due as follows:

(A) for each vehicle added to the owner's existing fleet; and

(B) for each vehicle that a buyer registers as a fleet, even though the seller previously registered some or all of the vehicles as a fleet under this section.

(h) Payment. Payment will be made in the manner prescribed by the department.

(i) Cancellation.

(1) The department will cancel registration for non-payment and lack of proof of annual payment of the Heavy Vehicle Use Tax.

(2) The department may cancel registration on any fleet vehicle on the anniversary date of the registration if the fleet vehicle is not in compliance with the inspection requirements under Transportation Code, Chapter 548 or the inspection requirements in the rules of the Texas Department of Public Safety.

(3) A vehicle with a canceled registration may not be operated on a public highway.

(4) If the department cancels the registration of a vehicle under this subsection, the registrant can request the department to reinstate the registration by doing the following:

(A) complying with the requirements for which the department canceled the registration;

(B) providing the department with notice of compliance on a form prescribed by the department; and

(C) for a registration canceled under paragraph (2) of this subsection, paying an administrative fee in the amount of \$10.

(5) A registrant is eligible for reinstatement of the registration only within 90 calendar days of the department's notice of cancellation.

(6) If a registrant fails to timely reinstate the registration of a canceled vehicle registration under this section, the registrant:

(A) is not entitled to a credit or refund of any registration fees for the vehicle; and

(B) must immediately either return the metal fleet license plates to the department or provide the department with acceptable proof that the metal fleet license plates have been destroyed.

(j) Inspection fee. The registrant must pay the department by the deadline listed in the department's invoice for the state's portion of the vehicle inspection fee.

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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