

The Texas Natural Resource Conservation Commission (TNRCC or commission) adopts new Subchapter A, §§261.1 - 261.6, concerning Environmental, Social, and Economic Impacts Statements; and Subchapter B, §§261.21 - 261.23, concerning Guidelines for Preparation of Environmental, Social, and Economic Impacts Statements; and adopts the repeal of §§261.21 - 261.26 and §§261.41 - 261.43, General Provisions, without changes to the text published in the November 12, 1999 issue of the *Texas Register* (24 *TexReg* 9947-9951). The purpose of the repeal and the new sections is to rename the chapter and one subchapter, reformat both subchapters, and amend two sections.

The commission also adopts the review of the rules in Chapter 261 as required by the Texas Government Code, §2001.039, and the General Appropriations Act, Article IX, §9 - 10.13, 76th Legislature, 1999. The adopted notice of review can be found in the Review of Agency Rules section of this issue of the *Texas Register*.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

Chapter 261 is a recodification of a rule first adopted by the former Texas Water Rights Commission (TWRC). The TWRC rule (formerly §129.03.25.008) allowed environmental impact evidence created for proposed projects to be introduced into evidence in commission proceedings where statutory criteria for the review of an application included public welfare. The rule later was readopted with four subchapters under Chapter 261, General Provisions, by the Texas Department of Water Resources. In 1996, Subchapters A and C were removed from Chapter 261 and incorporated into Chapters 1 and 10. Subchapter B, concerning Environmental, Social, and Economic Impacts Statements; and Subchapter

D, concerning Guidelines for Preparation of Environmental Impact Studies, were left intact and now comprise Subchapters A and B, respectively, of Chapter 261.

#### FINAL REGULATORY IMPACT ANALYSIS

The commission has reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a “major environmental rule” as defined in that statute. “Major environmental rule” means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted amendments to Chapter 261 are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because the amendments are administrative in nature and are intended to reformat the chapter, correct or update references, and make the rules easier to read and understand. The amendments do not add any additional regulatory requirements. In addition, the amendments do not meet the applicability requirements of a “major environmental rule.” The amendments do not exceed a standard set by federal law, exceed an express requirement of state law, nor exceed a requirement of a delegation agreement. In addition, the amendments are consistent with the TWC.

#### TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for this rulemaking under the Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rulemaking is to repeal Chapter 261 and adopt it in a new format. This action does not affect private real property which is the subject of the rules because this rulemaking action does not restrict or limit the owner's right to the property that otherwise would exist in the absence of the rulemaking. Further, this rulemaking is not the producing cause of the reduction in the market value of private real property. Therefore, this action, which involves no change in requirements, does not create a burden on private real property and will not constitute a takings under the Texas Government Code, §2007.

#### COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has determined that this rulemaking relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et seq.), and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with Texas Coastal Management Program. The commission has reviewed this proposal for consistency with the CMP goals and policies listed in the rules of the Coastal Coordination Council, §§501.12 - 501.15, and has determined that the rulemaking is consistent with the applicable CMP goals and policies. The rulemaking involves only renaming, reformatting, and three minor amendments. No changes are adopted in the requirements of this chapter.

The applicable CMP goals under §501.12, concerning Goals, are Nos. 1, 2, 3, 5, and 8. The applicable CMP policy under §501.13(a), concerning Administrative Policies, is number (1), and the

applicable CMP policies under §501.14, concerning Policies for Specific Activities and Coastal Natural Resource Areas, are (b), (c), (d), (f), (h), (i), (j), and (r). No comments were submitted on the consistency of the proposed rules with the CMP during the public comment period.

#### HEARING AND COMMENTERS

No hearing was held on the proposal and no comments were received during the public comment period.

#### STATUTORY AUTHORITY

The new sections are adopted under the TWC, §5.103, authorizes the commission to adopt any rules needed to carry out its powers and duties. Chapter 261 establishes procedures and requirements which help the commission implement requirements for water rights applications under various sections of the Texas Water Code (TWC). The TWC, §11.085, Interbasin Transfers, requires the commission to assess projected economic impacts; impacts on water rights, instream uses, water quality, and aquatic habitats; and effects on bays and estuaries expected to occur in each basin as a result of an interbasin transfer. Section 11.134, Action on Application, requires the commission to consider public welfare criteria for water rights applications. Section 11.147, Effects of Permits on Bays and Estuaries and Instream Uses, requires the commission to assess the inflow quality, quantity, and frequency on bays and estuaries. Section 11.150, Effects of Permits on Water Quality, requires the commission to assess a permit's effects on water quality. Section 11.151, Effects of Permits on Groundwater, requires the commission to assess a permit's effects on groundwater and groundwater recharge. Section 11.152,

Effects of Permits on Fish and Wildlife Habitats, requires the commission to assess a permit's effects on fish and wildlife habitats.

**SUBCHAPTER A : ENVIRONMENTAL, SOCIAL, AND ECONOMIC  
IMPACTS STATEMENTS**

**§§261.1 - 261.6**

**§261.1. Relevance of Impacts Evidence.**

The commission may require and will consider environmental, social, and economic impacts evidence as relevant in any hearing in which the commission is directed by law to consider such evidence or to determine whether any proposed project or permit is detrimental to the public interest or welfare.

**§261.2. Filing of Federal Statement Required.**

If an agency of the federal government prepares or requires an environmental, social, and economic impacts statement for authorization or funding of a proposed project, then the applicant shall file the statement prepared or required by the federal government, or the most current draft statement, in each proceeding before the commission in which such statement is pertinent.

**§261.3. Executive Director's Recommendation.**

After initial review of an application, and prior to submission to the commission, the executive director shall notify the applicant if the executive director intends to recommend to the commission that

the applicant be required to offer environmental, social, and economic impacts evidence either in a written statement, oral testimony, or both. This section shall not preclude the executive director or any other party in any proceeding before the commission from offering, nor preclude the commission from considering, any environmental, social, and economic impacts evidence.

**§261.4. Statement Filed with Executive Director.**

If an environmental, social, and economic impacts statement is required, the applicant shall file it with the executive director for review in accordance with §§281.1 - 281.24 of this title (relating to Applications Processing) or as otherwise directed by the executive director.

**§261.5. Impacts Statement Guidelines.**

If the federal government does not prepare or require an environmental, social, and economic impacts statement, then any written evidence which may be required of the applicant by the commission shall be prepared in accordance with the guidelines set forth in Subchapter B of this chapter (relating to Guidelines for Preparation of Environmental, Social, and Economic Impacts Statements).

**§261.6. Impact Statement Supplemented by Testimony.**

Nothing in this subchapter shall be construed to prohibit supplementing environmental, social, and economic impacts statement with additional evidence developed through testimony during a public hearing.

**SUBCHAPTER B : GUIDELINES FOR PREPARATION OF  
ENVIRONMENTAL, SOCIAL, AND ECONOMIC IMPACTS STATEMENTS**

**§§261.21 - 261.23**

The new sections are adopted under the Texas Water Code (TWC), §§5.103, 5.105, 11.147, 11.150, 11.151, 11.152, 26.003, 26.011, 27.003, and 27.019, which require the commission to permit and otherwise regulate activities which affect ecology, habitat, productivity, and public welfare as they relate to groundwater, surface water, and instream water quality. These sections of the TWC authorize the commission to adopt rules necessary to carry out its responsibilities and duties under the TWC and other laws of Texas; to establish and approve all general policy of the commission; to consider impacts on public welfare; and to promote the state policies of maintaining the propagation and protection of terrestrial and aquatic life, preventing contamination which is dangerous to animal life, and protecting the state's natural resources.

**§261.21. Introduction.**

An impacts statement predicts anticipated changes which are the result of a proposed action, and determines the magnitude and extent of the particular changes through analyses and professional judgment. The statement should demonstrate that a systematic interdisciplinary approach was used in assessing environmental, social, and economic impacts, that all reasonable alternatives were considered, and that the assessment was relied upon to support decisions made in planning the project.

**§261.22. Impact Assessment Process.**

(a) Assessment of the environmental, social, and economic impacts of proposed projects should be undertaken concurrently with initial engineering and other technical studies. The impacts assessment process consists of two basic steps. The first step requires description of potential environmental, social, and economic changes. The second step requires evaluation of these changes, focusing on significant beneficial and adverse impacts.

(b) Examples of "significant adverse impacts" are those which:

- (1) disrupt historical or archeological sites;
- (2) affect natural, cultural, or scenic resources;
- (3) disrupt established communities or their development plans;
- (4) result in deterioration of air or water quality, or flood protection;
- (5) result in unallowable reduction of identifiable in-stream uses;
- (6) endanger species of plant and animal life, or their habitat;

(7) significantly reduce productivity of the bay and estuary systems; or,

(8) contribute to a series of related projects that involve individually minor but collectively significant adverse impacts.

**§261.23. Specific Guidelines for the Impacts Statement.**

(a) The impacts statement should include:

(1) a brief, complete, and accurate description of the proposed project, including its scope, purpose, and cost (referencing the engineering report plus supplemental data, if any);

(2) a description of the environmental setting of the area affected as it exists prior to the proposed action;

(3) a description of the relationship of the proposed action to land use plans, policies, and controls for the affected area and probable future conditions which would exist in the area with and without the proposed action;

(4) an evaluation of the probable environmental, social, and economic impacts including positive and negative, primary and direct, secondary and indirect impacts, of the proposed action, and a discussion of the efforts made to eliminate, reduce, or mitigate the adverse impacts; and

(5) alternatives to the proposed action (referencing the engineering report plus supplemental data, if any).

(b) An environmental studies assessment prepared using the guidelines cited in subsection (a) of this section should provide sufficient information to answer the following basic questions:

(1) What is the scope of the proposed action?

(2) What adverse and/or beneficial environmental, social, and economic impacts will occur to the affected area should the proposed action be implemented?

(3) What area would be served by the action and what effect would it have on the regional population movement and density?

(4) Have all reasonable alternatives to the proposed action been addressed?

(5) Will the proposed action affect groundwater, streams, reservoirs, other water resources and in-stream uses of the study area and will it impact the bay and estuarine systems?

(6) Have plans been included to eliminate, reduce, or mitigate expected adverse impacts on the resources in the area of the proposed action?

(7) What effect does the project have on energy and natural resource conservation and development, or on the use of agricultural land?

(8) What are the relationships between short-term uses provided by the proposed action and the long-term productivity of the environment under the no-action alternative?

(9) How would the project fit into long-term regional development plans?

## **GENERAL PROVISIONS**

### **§§261.21 - 261.26 and §§261.41 - 261.43**

The repealed sections are adopted under the Texas Water Code, §§5.103, 5.105, 11.147, 11.150, 11.151, 11.152, 26.003, 26.011, 27.003, and 27.019, which authorize the commission to adopt rules necessary to carry out its responsibilities and duties under the Texas Water Code and other laws of Texas, to establish and approve all general policy of the commission, and to promote the state policies of maintaining the propagation and protection of terrestrial and aquatic life, preventing contamination which is dangerous to animal life, and protecting the state's natural resources.

**§261.21. Relevance of Impacts Evidence.**

**§261.22. Filing of Federal Statement Required.**

**§261.23. Executive Director's Recommendation.**

**§261.24. Statement Filed with Executive Director.**

**§261.25. Impacts Statement Guidelines.**

**§261.26. Impact Statement Supplemented by Testimony.**

**§261.41. Introduction.**

**§261.42. Impact Assessment Process.**

**§261.43. Specific Guidelines for the Impacts Statement.**