

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes new §11.202.

Background and Summary of the Factual Basis for the Proposed Rule

Senate Bill (SB) 20 (84th Texas Legislature, 2015) added Texas Government Code, §2261.253(c), which requires state agencies to establish by rule a procedure to identify each contract that requires enhanced contract or performance monitoring, and submit information to the agencies' governing bodies.

Section Discussion

The commission proposes new §11.202, Enhanced Contract Monitoring, to incorporate this reference now required by statute. The proposed new rule establishes a procedure to ensure that all TCEQ contracts are assessed to determine the level and type of contract monitoring required. The proposed new rule requires the executive director, or his designee, to use risk assessment criteria to identify certain contracts for enhanced contract and performance monitoring. TCEQ's Procurements and Contracts Section, Financial Administration Division, currently maintains internal agency operating procedures for the risk-based assessment of contracts as well as the agency's Contract Management Handbook. The proposed new rule also requires regular reporting to the executive director on contracts identified for enhanced monitoring. The executive director shall notify the commission of serious issues or risks with those contracts.

Fiscal Note: Costs to State and Local Government

Jeffrey Horvath, Analyst in the Chief Financial Officer's Division, determined that for the first five-year period the proposed rule is in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of the administration or enforcement of the proposed rule.

The proposed rule implements SB 20, which requires state agencies to establish by rule a procedure to identify each contract that requires enhanced or performance monitoring and to submit information related to these contracts to the agencies' governing bodies.

TCEQ's Procurements and Contracts Section, Financial Administration Division, currently maintains internal agency operating procedures for the monitoring of contracts that complies with the proposed rule. TCEQ has a Contract Management Handbook that outlines standard contract monitoring and identifies when enhanced monitoring is required. Agency Program Areas also maintain more detailed Standard Operating Procedures. No fiscal implications are anticipated for the agency or for any other unit of state or local government as a result of the implementation of the proposed rule.

Public Benefits and Costs

Mr. Horvath also determined that for each year of the first five years the proposed new rule is in effect, the public benefit anticipated from the changes seen in the proposed rule will

be compliance with state law and to ensure that agencies have established and consistent procedures for their contracts.

No fiscal implications are anticipated for businesses or individuals as a result of the implementation or administration of the proposed rule. TCEQ's Procurements and Contracts Section within the Financial Administration Division currently maintains internal agency operating procedures for the monitoring of contracts in accordance with the new statute. No changes are anticipated from current agency policies and procedures.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rule for the first five-year period the proposed rule is in effect. The proposed rule is not anticipated to result in fiscal implications for any large or small business. The proposed rule is not expected to result in any changes from current agency policies and procedures.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rule is required by state law and does not adversely affect a small or micro-business in a material way for the first five years the proposed rule is in effect.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed new rule in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed new rule is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "major environmental rule." The intent of the proposed rulemaking is to conform to Texas Government Code, §2261.253(c). The changes are not expressly to protect the environment and reduce risks to human health and environment.

Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated the proposed new rule and assessed whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of proposed new §11.202 is to conform to Texas Government Code, §2261.253(c).

Promulgation and enforcement of this proposed new rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulation does not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally); nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. Therefore, there are no burdens imposed on private real property.

Consistency with the Coastal Management Program

The commission reviewed the proposed rule and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rule is not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on September 13, 2016, at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written

comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Derek Baxter, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www1.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2015-030-011-AD. The comment period closes on September 19, 2016. Copies of the proposed rulemaking can be obtained from the commission's website at http://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact LaTresa Stroud, Procurements and Contracts Section, Financial Administration Division, (512) 239-5555.

SUBCHAPTER E: CONTRACTS MONITORING ROLES AND RESPONSIBILITIES

§11.202

Statutory Authority

The new rule is proposed under Texas Water Code (TWC), TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt rules necessary to carry out its power and duties under the TWC and any other laws of the State of Texas.

The proposed new rule implements Texas Government Code, §2261.253(c), as added by Senate Bill 20.

§11.202. Enhanced Contract Monitoring.

(a) Pursuant to Texas Government Code, §2261.253, the commission shall assess each contract to determine appropriate contract and performance monitoring requirements.

(b) The executive director or his designee shall ensure that risk assessment factors are used to determine when enhanced contract or performance monitoring is required for a contract. The criteria for evaluating risk include:

(1) the total contract amount;

(2) the funding source(s);

(3) the scope and complexity of the goods or services;

(4) the risk of fraud, waste, or abuse; and

(5) the importance of the work to the agency's mission or infrastructure.

(c) Contracts shall be monitored in accordance with the agency's policies and Contract Management Handbook.

(d) The executive director will receive regular reports on contracts identified for enhanced monitoring, and where serious issues or risks are identified, the executive director shall notify the commission.

(e) This section does not apply to a memorandum of understanding, memorandum of agreement, interagency contract, inter-local agreement, intergovernmental contract or contract for which there is not a cost.