

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** August 19, 2022

Thru: Laurie Gharis, Chief Clerk
Toby Baker, Executive Director

From: *CP* Craig Pritzlaff, Director
Office of Compliance and Enforcement

Docket No.: 2021-1295-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 299, Dams and Reservoirs
SB 600: Dam Safety Updates
Rule Project No. 2021-027-299-CE

Background and reason(s) for the rulemaking:

Senate Bill (SB) 600, Perry, 87th Texas Legislature (2021), required the rulemaking adoption to add the language of SB 600 requiring river authorities to submit information on their dams. There are eight river authorities that meet the requirements of SB 600, and there are 79 dams owned by these river authorities.

House Bill (HB) 2694, 82nd Texas Legislature (2011), Author: Smith, provided language for exemptions to the rules, and HB 677, 83rd Texas Legislature (2013), Author: Geren, added to the language requiring dam exemptions. The recent audit report findings on the Dam Safety Program by Texas State Auditor's Office, issued July 2020, recommended that the language of these two bills be included in the rules.

Revisions were made to clarify language in the rules.

Scope of the rulemaking:

A.) Summary of what the rulemaking would do:

The rulemaking adoption will implement Legislation and make revisions to clarify the language in the rules.

B.) Scope required by federal regulations or state statutes:

- 1) Add 30 Texas Administrative Code §299.7(b)(1) and (2), after reformatting and add "a" to §299.7, to include language from SB 600 that each river authority, designated in Section 325.025(b), Government Code, shall provide to the executive director information regarding the operation and maintenance of dams under the control of that river authority. The following information is to be provided for each dam: (1) location of dam; (2) jurisdiction over the dam; (3) required maintenance schedule for the dam; (4) costs of operation and maintenance; and (5) method of finance for operations and maintenance costs.
- 2) Add §299.7(b)(3) to require the river authorities to submit the information annually.
- 3) Add §299.7(b)(4) to require the TCEQ to create and maintain an internet website to contain the information.
- 4) Add §299.1(c)(6) to include language for exemption of dams from HB 677 if the dams meet all five of the criteria listed in the proposed rule; (a) privately owned;

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(b) low or significant hazard; (c) maximum capacity less than 500 acre-feet; (d) dam located in a county less than 350,000; and (e) dam located outside a city limits.

C.) Additional staff recommendations that are not required by federal rule or state statute:

- 1.) Add clarifying language to §299.1 (Applicability) of the rules to better define a dam. There has been confusion on what constitutes a dam.
- 2.) Revise the figure located in §299.1(a)(2) to clarify the applicability of the rules to a dam.
- 3.) Revise the language for the definitions of major highways, minor highways, and secondary highways in §299.2 to better define each for use in hazard classifications.
- 4.) Revise the definition of “removal” in §299.2(54) to clarify and agree with the definition in the *Dam Removal Guidelines for Dams in Texas*.
- 5.) Revise the language for the Inventory of Dams in §299.7 to better define what is in the Inventory and to remove language for items that are not included.

Statutory authority:

- Texas Water Code (TWC), §12.052, Dam Safety
- TWC, §12.053 Inventory of Dams Operated by River Authorities

Effect on the:

A.) Regulated community:

The river authorities will be required to provide information on their dams annually. The additional updates will clarify the confusion that has resulted from the current rules.

B.) Public:

The public will be able to access the information on river authority dams and will have clarification of the rules.

C.) Agency programs:

The TCEQ Dam Safety Program will be required to maintain the information on river authorities. There will be no fiscal impact to the agency.

Stakeholder meetings:

The commission did not hold any stakeholder meetings related to this rulemaking; however, a rule public hearing was held during the comment period in Austin.

Public comment:

The commission offered a public hearing on May 17, 2022. The comment period closed on May 17, 2022. No public comments were received.

Significant changes from proposal:

None.

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Potential controversial concerns and legislative interest:

There are no known controversial concerns. There is legislative interest, specifically from Senator Perry's office, on the information provided to ensure that the river authorities are maintaining the dams they own.

Will this rulemaking affect any current policies or require development of new policies? No.

What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking? No alternatives.

Key points in the adoption rulemaking schedule:

Texas Register proposal publication date: April 15, 2022

Anticipated Texas Register adoption publication date: September 23, 2022

Anticipated effective date: September 29, 2022

Six-month Texas Register filing deadline: October 15, 2022

Agency contacts:

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Attachments:

SB 600, 87th Texas Legislature (2021)

HB 677, 83rd Texas Legislature (2013)

HB 2694, 82nd Texas Legislature (2011)

cc: Chief Clerk, 2 copies
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