

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes the amendment to §330.647.

Background and Summary of the Factual Basis for the Proposed Rules

In Texas, 24 regional planning commissions, also known as councils of governments (COGs), have the primary responsibility under Texas Health and Safety Code (THSC), §363.0615 for regional solid waste management planning. All 24 COGs submitted regional solid waste management plans to TCEQ and TCEQ reviewed the plans in accordance with THSC, Chapter 363, Subchapter D. This rulemaking proposes to adopt the approved regional solid waste management plans in compliance with THSC, §363.062(f), which states the commission will adopt the plans by rule. THSC, §363.062 and 30 Texas Administrative Code (TAC) §330.641 describe the procedures for submission and approval of the regional solid waste management plans.

These new regional solid waste management plans would replace existing regional plans developed in 2002. The period for the existing regional solid waste management plans is from 2002 to 2022. All 24 COGs would continue to reference the goals and strategies in their existing plans in implementation activities and projects until the proposed plans are fully adopted.

The regional solid waste management plans include goals and strategies for implementing and promoting proper waste disposal management, waste diversion from landfills, recycling, and waste minimization, as well as initiatives for reducing illegal dumping of waste in each planning region. The regional solid waste management plans also describe the regions' current and anticipated activities as required by 30 TAC §330.643(a)(3). Plan requirements include documenting and estimating future growth for the region's population and commercial and

industrial base; estimating future solid waste amounts by type; descriptions of current and planned waste management activities; and assessment and adequacy of existing waste management facilities, practices, and programs. The regional solid waste management plan also requires assessment of current and future efforts of source reduction and waste minimization activities, as well as reuse and recycling of waste.

The regional solid waste management plans were developed by each COG using the most recent population, business, industry, and solid waste management data available from the State of Texas, universities, and financial and business entities. Local stakeholders were also surveyed to solicit feedback and ideas on goals and strategies.

Notice of the plans' availability for public review were published in local newspapers and/or media pages and public comment meetings were scheduled and held in all 24 COG areas. The final regional solid waste management plans were approved by each COG's Solid Waste Advisory Committee and Boards of Directors.

Section by Section Discussion

§330.647, Approved Regional and Local Solid Waste Management Plans

The commission proposes to amend §330.647(a) to specify that subsection (d) contains the adopted regional solid waste management plans.

The commission proposes to add §330.647(d)(1)-(24) to incorporate the new approved regional solid waste management plans by reference.

Fiscal Note: Costs to State and Local Government

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

Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated would be compliance with state law, the potential for increased access to proper waste disposal, waste diversion, and recycling, and a reduction in illegal dumping of waste. The proposed rulemaking is not anticipated to result in fiscal implications for businesses or individuals.

Local Employment Impact Statement

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

Rural Communities Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The amendments would apply statewide and have the same effect in rural communities as in urban communities.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rule for the first five-year period the proposed rules are in effect.

Small Business Regulatory Flexibility Analysis

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

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a state government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking does not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create, expand, repeal, or limit an existing regulation, nor does the proposed rulemaking increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rule should not positively or negatively impact the state's economy.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking under the regulatory analysis requirements

of Texas Government Code, §2001.0225, and 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 the statute. A "Major environmental rule" is a rule that is specifically intended to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. This proposed rulemaking is administrative in nature and is not specifically intended to protect the environment or reduce risks to human health from environmental exposure, nor does it affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Rather, this rulemaking is procedurally required for the commission to adopt the approved regional solid waste management plans by rule in accordance with the THSC, §363.062(f).

Furthermore, Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or adopt a rule solely under the general powers of the agency instead of under a specific state law. The proposed rulemaking action does not exceed a standard set by federal law, an express requirement of state law, a requirement of a delegation agreement, or adopt a rule solely under the general powers of the commission but is authorized by specific sections of the Texas Water Code, the Texas Government Code, and the Texas Health and Safety Code, which are cited in the statutory authority section of this preamble. Therefore, this rulemaking is

not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225.

The commission invites public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. 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 this proposed rulemaking and performed analysis of whether these proposed rules constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of this proposed rulemaking is to adopt the new regional solid waste management plans for the 2022-2042 planning period that the commission has approved to replace the existing regional solid waste management plans from the 2002-2022 planning period, in accordance with THSC, §363.062(f) which states that the commission shall adopt an approved regional solid waste management plan by rule. The proposed rules would substantially advance this stated purpose by amending 30 TAC §330.647(a) and adding §330.647(d)(1)-(24) to incorporate the new approved regional solid waste management plans by reference into 30 TAC Chapter 330, Subchapter O.

Promulgation and enforcement of the proposed rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the proposed rule 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 rules. In other words, the proposed rulemaking would not burden private real property because the proposed rule is

not directed at private real property owners but plans reflecting goals and objectives for solid waste management that regional and local councils of government submit to the commission for review. Therefore, the proposed rule would not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rule and found the proposal is a rulemaking identified in the Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(4), (relating to Actions and Rules Subject to the Coastal Management Program (CMP)), and would, therefore, require that goals and polices of the Texas CMP be considered during the rulemaking process.

The commission reviewed this action for consistency with the CMP goals and polices in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking is administrative in nature and would have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and polices.

The commission invites public comment regarding the consistency of this rulemaking with the CMP goals and policies during the public comment period. 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 hybrid in-person and virtual public hearing on this proposal in Austin on March 23, 2023 at 10:00 a.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.

Registration

Individuals who plan to attend the hearing virtually and want to provide oral comments and/or want their attendance on record must register by Tuesday, March 21, 2023. To register for the hearing, please email Rules@tceq.texas.gov and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on Thursday, March 22, 2023, to those who register for the hearing.

Members of the public who do not wish to provide oral comments but would like to view the hearing virtually may do so at no cost at:

https://teams.microsoft.com/l/meetup-join/19%3ameeting_MmVIZTk4YTMtNDhjNC00YjhkLWJhYTktMWMYyE3MjA3NmZk%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%22e74a40ea-69d4-469d-a8ef-06f2c9ac2a80%22%2c%22IsBroadcastMeeting%22%3a%22true%22%7d

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 Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to fax4808@tceq.texas.gov. Electronic comments may be submitted at: <https://tceq.commentinput.com/>. File size restrictions may apply to comments being submitted via the TCEQ Public Comment system. All comments should reference Rule Project Number 2022-035-330-WS. The comment period closes on March 27, 2023. Please choose one of the methods provided to submit your written comments.

Copies of the proposed rulemaking can be obtained from the commission's website at https://www.tceq.texas.gov/rules/propose_adopt.html. Copies of the proposed regional solid waste management plans are available for public review on the commission's website at www.tceq.texas.gov/goto/wastegrant. For further information, please contact Jessica Uramkin, Business and Program Services, (512) 239-6685, jessica.uramkin@tceq.texas.gov (include “RSWMP Comment” in the email subject line).

**SUBCHAPTER O: REGIONAL AND LOCAL SOLID WASTE MANAGEMENT PLANNING AND
FINANCIAL ASSISTANCE GENERAL PROVISIONS**

§330.647

Statutory Authority

The rulemaking is proposed under Texas Water Code (TWC), §5.102 (relating to General Powers), which provides the commission the power to perform any acts necessary and convenient to the commission's exercise of its jurisdiction and powers as provided in this code and other laws; TWC, §5.103 (relating to Rules), which authorizes the commission to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state; TWC, §5.105 (relating to General Policy), which provides the commission with the authority to establish and approve by rule all general policy of the commission; the Administrative Procedures Act under Texas Government Code, Chapter 2001, which authorizes the commission as a state agency to adopt rules pursuant to the rulemaking process; and Texas Health and Safety Code (THSC), §363.062 (relating to Regional Solid Waste Management Plan), which authorizes the commission to consider for approval and to adopt by rule an approved regional solid waste management plan that is developed and submitted to the commission for review in accordance with THSC, §363.0615 (relating to Responsibility for Regional Planning).

The proposed rulemaking implements THSC, Chapter 363, Subchapter D (relating to Regional and Local Solid Waste Management Plans).

§330.647. Approved Regional and Local Solid Waste Management Plans.

(a) Plans approved. The current effective regional solid waste management plan for each region or local solid waste management plan for a local government is the latest plan, including plan amendments, that has been adopted by the commission or approved by the executive director. Copies of approved plans shall be kept on file and available for public review at the Texas Commission on Environmental Quality library. Those plans, including the regional solid waste management plans adopted in subsection (d) of this section, and any adopted amendments to the plans, are incorporated into this subchapter. Updates to an approved regional or local plan that do not require official adoption by the commission, as specified under §330.641(f) of this title (relating to Procedures for Regional and Local Plan Submission, Approval, and Distribution), may be incorporated into an approved plan for informational purposes, as each update is approved by the executive director. Each plan's effectiveness applies only for the geographical area described in the plan and for the period designated in the plan.

(b) Conflicting provisions. By adopting a regional or local plan, the commission determined that the plan has been developed according to commission rules and does not conflict with the state plan. If it should later be determined that provisions of an adopted plan do conflict with provisions of the state plan, then provisions of the state plan shall prevail.

(c) Agency responsibilities. It shall be the responsibility of the council of governments to coordinate the implementation of regional policies and recommended actions in an approved regional plan and coordinate local planning efforts. It shall be the responsibility of affected local governments to implement the policies and recommended actions of adopted regional and local plans and to maintain policies and activities that do not conflict with provisions in current state, regional, and local solid waste management plans.

(d) Approved plans. The following plans, and their effective dates are adopted by reference.

(1) Alamo Area Council of Governments (2022-2042)

(2) Ark-Tex Council of Governments (2022-2042)

(3) Brazos Valley Council of Governments (2022-2042)

(4) Capital Area Council of Governments (2022-2042)

(5) Central Texas Council of Governments (2022-2042)

(6) Coastal Bend Council of Governments (2022-2042)

(7) Concho Valley Council of Governments (2022-2042)

(8) Deep East Texas Council of Governments (2022-2042)

(9) East Texas Council of Governments (2022-2042)

(10) Golden Crescent Regional Planning Commission (2022-2042)

(11) Heart of Texas Council of Governments (2022-2042)

(12) Houston-Galveston Area Council (2022-2042)

(13) Lower Rio Grande Valley Development Council (2022-2042)

(14) Middle Rio Grande Development Council (2022-2042)

(15) Nortex Regional Planning Commission (2022-2042)

(16) North Central Texas Council of Governments (2022-2042)

(17) Panhandle Regional Planning Commission (2022-2042)

(18) Permian Basin Regional Planning Commission (2022-2042)

(19) Rio Grande Council of Governments (2022-2042)

(20) South East Texas Regional Planning Commission (2022-2042)

(21) South Plains Association of Governments (2022-2042)

(22) South Texas Development Council (2022-2042)

(23) Texoma Council of Governments (2022-2042)

(24) West Central Texas Council of Governments (2022-2042)