

TO: Board Members

THROUGH: Jeff Walker, Executive Administrator
Sam Hermitte, Interim Deputy Executive Administrator, Water
Science & Conservation
Jessica Zuba, Deputy Executive Administrator, Water Supply &
Infrastructure
Todd Chenoweth, General Counsel

FROM: Kevin Kluge, Director, Conservation & Innovative Water Technologies

DATE: January 11, 2018

SUBJECT: Adoption of amendments to 31 Texas Administrative Code Chapter
358 relating to state water plan development guidelines and water
loss audits

ACTION REQUESTED

Consider adopting amendments to 31 Texas Administrative Code Chapter 358 relating to state water plan development guidelines and water loss audits.

BACKGROUND

The Texas Water Development Board (TWDB) authorized publication of proposed amendments to 31 Texas Administrative Code (TAC) 358 relating to state water plan development guidelines and water loss audits on October 17, 2017. The proposed amendments were published in the *Texas Register* on November 3, 2017 with a comment period that ended on December 5, 2017. The proposed rules and dates of the comment period were also posted on the TWDB website.

No comments were received and no changes have been made to the proposed rules.

KEY ISSUES

The purpose of the proposed amendments is to implement legislative changes from Senate Bill (SB) 1511 and House Bill (HB) 1573, 85th Regular Legislative Session. Portions of SB 1511 require that the state water plan include an assessment of the extent to which projects prioritized by the board for providing financial assistance from the State Water Implementation Fund for Texas were implemented and an analysis of any impediments to

Our Mission : **Board Members**

To provide leadership, information, education, and
support for planning, financial assistance, and
outreach for the conservation and responsible
development of water for Texas : Kathleen Jackson, Board Member | Peter Lake, Board Member
: Jeff Walker, Executive Administrator

implementation in the decade in which the projects were needed. Remaining requirements in SB 1511 have been addressed in a separate rulemaking process with proposed amendments to 31 TAC Chapter 357. HB 1573 requires that mandatory water loss audits be completed by a person trained to conduct water loss auditing and that such training shall be made available free of charge on the Texas Water Development Board's website.

SUBCHAPTER A STATE WATER PLAN DEVELOPMENT

§358.4 Guidelines

- Subsection 358.4(b)(7) is revised to include the words "and projects" following "water management strategies" to clarify that water management strategy projects will be evaluated for implementation in the state water plan.
- A new Subsection 358.4(b)(9) is added to implement the requirement in SB 1511 that the state water plan include an assessment of the extent to which projects prioritized by the board for providing financial assistance from the State Water Implementation Fund for Texas were implemented and an analysis of any impediments to implementation in the decade in which the projects were needed.

SUBCHAPTER B DATA COLLECTION

§358.6 Water Loss Audits

- Subsection 358.6(b)(4) is added to implement the requirement in HB 1573 that water loss audits be 'completed by a person trained to conduct water loss auditing.'
 - To ensure that the training is developed and effectively distributed prior to implementation of the requirement for individuals completing audits to be trained, the requirement will become effective January 2019 and apply to the 2018 water loss audits.
 - Municipal Water Conservation staff are currently working with members of the Water Conservation Advisory Council's Water Loss Workgroup and other interested stakeholders to develop the most appropriate scope and media for the water loss audit training.
- Subsection 358.6(c) is revised to include the specification that a water loss audit is considered administratively complete if the audit was completed by a person who has been trained to conduct water loss auditing in addition to having all required responses provided.

RECOMMENDATION

The Executive Administer recommends approval of this item in order to implement Senate Bill 1511 and House Bill 1573 of the 85th Regular Legislative Session.

Attachments: Attachment 1 - Adoption of Amendments to Chapter 358 for publication in the *Texas Register*

Attachment 2 – *Texas Register*, November 3, 2017

Preamble and Amendments to 31 TAC Chapter 358

The Texas Water Development Board (“TWDB” or “board”) adopts amendments to §358.4, relating to state water planning guidelines, and §358.6, relating to water loss audits, as published in the November 3, 2017 issue of the Texas Register (42 TexReg 6120) without changes.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED AMENDMENTS.

The purpose of the amendments is to implement legislative changes from Senate Bill (SB) 1511, 85th Legislative Session, and House Bill (HB) 1573, 85th Legislative Session. The specific provisions being amended or added and the reasons for the amendments are addressed in more detail below.

SECTION BY SECTION DISCUSSION OF THE ADOPTED AMENDMENTS.

Subchapter A. State Water Plan Development.

Section 358.4. Guidelines

An amendment to §358.4(b)(7) includes the words “and projects” following “water management strategies” to clarify that water management strategy projects will be evaluated for implementation in the state water plan.

A new §358.4(b)(9) implements the requirement in SB 1511 that the state water plan include an assessment of the extent to which projects prioritized by the board for providing financial assistance from the State Water Implementation Fund for Texas were implemented and an analysis of any impediments to implementation in the decade in which the projects were needed.

Subchapter B. Data Collection

Section 358.6. Water Loss Audits

A new §358.6(b)(4) implements the requirement in HB 1573 that required water loss audits be “completed by a person trained to conduct water loss auditing,” and the requirement that the board make water loss audit training available without charge on its website.

An amendment to §358.6(c) includes the specification that a water loss audit is considered administratively complete if the audit was completed by a person who has been trained to conduct water loss auditing in addition to having all required responses provided.

REGULATORY IMPACT ANALYSIS

The board 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 implement legislative changes, improve processes, increase flexibility, and provide greater clarity regarding the TWDB’s rules related to regional water planning and water loss audits.

Attachment 1

Even if the adopted amendments 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 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 Texas Water Code §16.0121 and §16.053. Therefore, this rulemaking does not fall under any of the applicability criteria in Texas Government Code, §2001.0225.

TAKINGS IMPACT ASSESSMENT

The board evaluated these rule amendments and performed an analysis of whether they constitute a taking under Texas Government Code Chapter 2007. The specific purpose of these amendments is to implement legislative changes regarding the TWDB's rules related to state water planning and water loss audits. The rule amendments will substantially advance this stated purpose by adding language related to legislative changes regarding state water planning and water loss audits.

The board's analysis indicates that Texas Government Code Chapter 2007 does not apply to this rulemaking 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 board is the agency that administers the regional water planning process in order to develop a state water plan. In addition, the board is the agency that administers water loss audits.

Nevertheless, the board further evaluated this rulemaking and performed an assessment of whether it constitutes a taking under Texas Government Code, Chapter 2007. Promulgation and enforcement of these amended rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the amendments do not affect a landowner's rights in private real property because this rulemaking does not burden 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 regulation. In other words, this rulemaking requires compliance with state law regarding the state water planning process and the water loss audit process. Therefore, the rulemaking does not constitute a taking under Texas Government Code Chapter 2007.

PUBLIC COMMENT

The proposed rule amendments were open for public comment, and the comment period ended on December 4, 2015. No comments were received, and no changes to the proposed rules have been made.

STATUTORY AUTHORITY

This rulemaking is adopted under the authority of Texas Water Code §6.101, §16.0121, and §16.053.

The rulemaking affects Chapter 16 of the Texas Water Code.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Michelle Griffin
Interim General Counsel
Texas Board of Veterinary Medical Examiners
Earliest possible date of adoption: December 3, 2017
For further information, please call: (512) 305-7573

◆ ◆ ◆
TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 358. STATE WATER PLANNING GUIDELINES

The Texas Water Development Board ("TWDB" or "board") proposes amendments to §358.4, relating to state water planning guidelines, and §358.6, relating to water loss audits.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED AMENDMENT.

The purpose of the amendments is to implement legislative changes from Senate Bill (SB) 1511, 85th Legislative Session, and House Bill (HB) 1573, 85th Legislative Session. The specific provisions being amended or added and the reasons for the amendments are addressed in more detail below.

SECTION BY SECTION DISCUSSION OF PROPOSED AMENDMENTS.

Subchapter A. State Water Plan Development.

Section 358.4. Guidelines.

An amendment to §358.4(b)(7) is proposed to include the words "and projects" following "water management strategies" to clarify that water management strategy projects will be evaluated for implementation in the state water plan.

A new §358.4(b)(9) is proposed to implement the requirement in SB 1511 that the state water plan include an assessment of the extent to which projects prioritized by the board for providing financial assistance from the State Water Implementation Fund for Texas were implemented and an analysis of any impediments to implementation in the decade in which the projects were needed.

Subchapter B. Data Collection.

Section 358.6. Water Loss Audits.

A new §358.6(b)(4) is proposed to implement the requirement in HB 1573 that water loss audits be "completed by a person trained to conduct water loss auditing," and the requirement that the board make water loss audit training available without charge on its website.

An amendment to §358.6(c) is proposed to include the specification that a water loss audit is considered administratively complete if the audit was completed by a person who has been trained to conduct water loss auditing in addition to having all required responses provided.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS

Rebecca Trevino, Chief Financial Officer, has determined that there will be no significant fiscal implications for state or local

governments as a result of the proposed rulemaking. For the first five years these amended rules are in effect, there are not expected to be additional costs to state or local governments resulting from their administration.

These rules are not expected to result in reduction in costs to local governments. These rules are not expected to result in reductions in costs to state government.

These rules are not expected to have any impact on state or local revenues. The rules do not require any increase in expenditures for state or local governments as a result of administering these rules.

Because these amended rules will not impose a cost on regulated persons, the requirement included in §2001.0045, Texas Government Code, to repeal a rule does not apply. Furthermore, the requirement in §2001.0045 does not apply because these rules are necessary to implement legislation.

The board invites public comment regarding this fiscal note. Written comments on the fiscal note may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

PUBLIC BENEFITS AND COSTS

Ms. Trevino has also determined that for each year of the first five years the proposed rulemaking is in effect there will be no impact to the public.

LOCAL EMPLOYMENT IMPACT STATEMENT

The board has determined that a local employment impact statement is not required because the proposed amendments do not adversely affect a local economy in a material way for the first five years that the proposed amendments are in effect because they will impose no new requirements on local economies. The board also has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of enforcing this rulemaking. The board also has determined that there is no anticipated economic cost to persons who are required to comply with the rulemaking as proposed. Therefore, no regulatory flexibility analysis is necessary. These amended rules are designed to implement legislative changes, improve the planning process and increase flexibility in planning, reduce certain unessential reporting requirements, and standardize and clarify language.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The board reviewed the proposed 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 implement legislative changes, improve processes, increase flexibility, and provide greater clarity regarding the TWDB's rules related to regional water planning and water loss audits.

Even if the proposed rule amendments 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 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 Texas Water Code §6.101 and §16.053. Therefore, this proposed rulemaking does not fall under any of the applicability criteria in Texas Government Code, §2001.0225.

The board invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

TAKINGS IMPACT ASSESSMENT

The board evaluated these proposed rule amendments and performed an analysis of whether they constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of these proposed amendments is to implement legislative changes regarding the TWDB's rules related to state water planning and water loss audits. The proposed rule amendments would substantially advance this stated purpose by adding language related to legislative changes related to state water planning and water loss audits.

The board's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this proposed rulemaking 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 board is the agency that administers the regional water planning process in order to develop a state water plan. In addition, the board is the agency that administers water loss audits.

Nevertheless, the board further evaluated this proposed rulemaking and performed an assessment of whether it constitutes a taking under Texas Government Code, Chapter 2007. Promulgation and enforcement of this proposed rulemaking would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed amendments do not affect a landowner's rights in private real property because this rulemaking does not burden 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 regulation. In other words, this rulemaking requires compliance with state law regarding the state water planning process and the water loss audit process. Therefore, the proposed rulemaking does not constitute a taking under Texas Government Code, Chapter 2007.

SUBMISSION OF COMMENTS

Written comments on the proposed rulemaking may be submitted by mail to Mr. Todd Chenoweth, Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas

78711-3231; by email to rulescomments@twdb.texas.gov; or by fax to (512) 475-2053. Comments will be accepted until 5:00 p.m. of the 31st day following publication in the *Texas Register*.

SUBCHAPTER A. STATE WATER PLAN DEVELOPMENT

31 TAC §358.4

STATUTORY AUTHORITY

This rulemaking is proposed under the authority of Texas Water Code §6.101 and §16.053.

The proposed rulemaking affects Chapter 16 of the Texas Water Code.

§358.4. Guidelines.

(a) The executive administrator shall prepare, develop, and formulate the state water plan and the Board shall adopt a state water plan pursuant to the schedule in Texas Water Code §16.051. The executive administrator shall identify the beginning of the 50-year planning period for the state and regional water plans. The executive administrator shall incorporate into the state water plan presented to the Board those regional water plans approved by the Board pursuant to Texas Water Code §16.053 and Chapter 357 of this title (relating to Regional Water Planning). The Board shall, not less than 30 days before adoption or amendment of the state water plan, publish notice in the *Texas Register* of its intent to adopt a state water plan and shall mail notice to each regional water planning group. The Board shall hold a hearing, after which it may adopt a water plan or amendments thereto.

(b) The state water plan shall include summaries for the state and from approved regional water plans, when available, which shall address, at a minimum, the following topics:

(1) Basis for planning, including sections on planning history, Texas water statutes, rules, regulations, and Texas' water supply institutions;

(2) Description of methods used for projecting future water demands which shall include methods for projecting future population and water demands for municipal and associated commercial and institutional uses, manufacturing, irrigation, steam electric power generation, mining, and livestock watering;

(3) Description of methods to address water quality problems related to water supply, to ensure public health, safety and welfare, to further economic growth, to protect agricultural and natural resources, to determine water supply availability, and to address drought response planning;

(4) Description of future conditions which shall, at a minimum, include:

(A) Demands for water;

(B) Supplies currently available;

(C) Comparison of water demand and supply to identify surpluses or needs of water;

(D) Social and economic impact of not meeting needs;

(E) Recommended solutions to meet needs;

(F) Needs for which no feasible water management strategy exists; and

(G) descriptions in subparagraphs (A) - (F) of this paragraph shall be presented for each county and basin by the major providers of water for municipal uses and for the following water use categories: municipal and associated commercial and institutional

uses; manufacturing; irrigation; steam electric power generation; mining; and livestock watering;

(5) Consideration of recommendations of river and stream segments of unique ecological value and sites of unique value for construction of reservoirs to the legislature for potential protection;

(6) Regulatory, administrative, and legislative recommendations that the Board believes are needed and desirable to facilitate the orderly development, management, and conservation of water resources, to facilitate more voluntary water transfers, and the preparation for and response to drought conditions in order that sufficient water will be available at a reasonable cost to ensure public health, safety and welfare, further economic development, and protect the agricultural and natural resources of the entire state;

(7) The progress in meeting future water needs, including an evaluation of implementation of all water management strategies and projects that were recommended in the previous state water plan and projects funded by the Board; [and]

(8) Current and planned preparations for, and responses to, drought conditions in the state to be used in the development of the state's drought preparedness plan by the Drought Preparedness Council; and[.]

(9) With respect to projects included in the preceding state water plan that were given a high priority by the board for purposes of providing financial assistance under Texas Water Code, Chapter 15, Subchapter G:

(A) an assessment of the extent to which the projects were implemented in the decade in which they were needed; and

(B) an analysis of any impediments to the implementation of any projects that were not implemented in the decade in which they were needed.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 19, 2017.

TRD-201704210

Todd Chenoweth

General Counsel

Texas Water Development Board

Earliest possible date of adoption: December 3, 2017

For further information, please call: (512) 463-7686



SUBCHAPTER B. DATA COLLECTION

31 TAC §358.6

STATUTORY AUTHORITY

This rulemaking is proposed under the authority of Texas Water Code §6.101.

The proposed rulemaking affects Chapter 16 of the Texas Water Code.

§358.6. *Water Loss Audits.*

(a) Definitions. Unless otherwise indicated, in this section the following terms shall have the meanings assigned.

(1) Allowed apparent loss--A unique number for allowable apparent loss calculated for each utility.

(2) Annual real loss--A unique number calculated for each utility based on the utility's real loss on an annualized basis.

(3) Apparent loss--Unauthorized consumption, meter inaccuracy, billing adjustments, and waivers.

(4) Average system operating pressure--System operating pressure in pounds per square inch calculated using a weighted average approach as identified in the American Water Works Association M36 Manual.

(5) Category or Categories--A category of retail public utility as listed in Texas Water Code §16.0121(c).

(6) Executive Administrator--The executive administrator of the Board.

(7) Mitigation--An action or actions taken by a retail public utility to reduce the amount of total water loss in a system. Mitigation may include a detailed water loss assessment, pipe or meter replacement, or addition or improvement of monitoring devices to detect water loss.

(8) Real loss--Loss from main breaks and leaks, storage tank overflows, customer service line breaks, and line leaks.

(9) Retail public utility or utility--A retail public utility as defined by Texas Water Code §13.002.

(10) Service connection density--The number of a retail public utility's connections on a per mile basis.

(11) Total water loss--The sum of a utility's real loss and apparent loss.

(12) Unavoidable annual real loss--A unique number calculated for each utility based on the number of connections, miles of distribution lines, and operating pressure.

(b) A retail public utility that provides potable water shall perform a water loss audit and file with the executive administrator a water loss audit computing the utility's system water loss during the preceding calendar year, unless a different 12-month period is allowed by the executive administrator. The water loss audit may be submitted electronically.

(1) Audit required annually. The utility must file the water loss audit with the executive administrator annually by May 1st if the utility:

(A) has more than 3,300 connections; or

(B) is receiving financial assistance from the board, regardless of the number of connections. A retail public utility is receiving financial assistance from the board if it has an outstanding loan, loan forgiveness agreement, or grant agreement from the board.

(2) Audit required every five years. The utility must file the water loss audit with the executive administrator by May 1, 2016, and every five years thereafter by May 1st if the utility has 3,300 or fewer connections and is not receiving financial assistance from the board.

(3) The water loss audit must be performed in accordance with methodologies developed by the executive administrator based on the population served by the utility and taking into consideration the financial feasibility of performing the water loss audit, population density in the service area, the retail public utility's source of water supply, the mean income of the service population, and any other factors determined by the executive administrator. The executive administrator

will provide the necessary forms and methodologies to the retail public utility.

(4) Effective January 1, 2019, the water loss audit must be performed by a person who has completed water loss audit training developed by the executive administrator. The executive administrator will make such training available without charge on the agency website, and may also provide such training in person or by video.

(c) The executive administrator shall determine if the water loss audit is administratively complete. A water loss audit is administratively complete if all required responses are provided and the audit is completed by a person who has been trained to conduct water loss auditing as described in paragraph (4) of subsection (b). In the event the executive administrator determines that a retail public utility's water loss audit is incomplete, the executive administrator shall notify the utility.

(d) A retail public utility that provides potable water that fails to submit a water loss audit or that fails to correct a water loss audit that is not administratively complete within the timeframe provided by the executive administrator is ineligible for financial assistance for water supply projects under Texas Water Code, Chapter 15, Subchapters C, D, E, F, G, H, J, O, Q, and R; Chapter 16, Subchapters E and F; and Chapter 17, Subchapters D, I, K, and L. The retail public utility will remain ineligible for financial assistance until a complete water loss audit has been filed with and accepted by the executive administrator.

(e) The following thresholds shall apply to the indicated categories of retail public utility:

(1) For a retail public utility with a population of more than 10,000:

(A) Apparent loss expressed as gallons per connection per day must be less than the utility's allowed apparent loss.

(B) Real loss expressed as gallons per connection per day must be less than three times the utility's unavoidable annual real loss.

(2) For a retail public utility with a population of 10,000 or fewer and a service connection density more than or equal to 32 connections per mile:

(A) Apparent loss expressed as gallons per connection per day must be less than the utility's allowed apparent loss.

(B) Real loss expressed as gallons per connection per day must be less than 50 gallons per connection per day.

(3) For a retail public utility with a population of 10,000 or fewer and a service connection density less than 32 connections per mile:

(A) Apparent loss expressed as gallons per connection per day must be less than the utility's allowed apparent loss.

(B) Real loss expressed as gallons per mile per day must be less than 1,600 gallons per mile per day.

(4) For a utility that has a volume of wholesale water sales that flow through the retail water distribution system:

(A) Apparent loss expressed as gallons per connection per day, determined using a modified calculation that includes the wholesale volume, must be less than the utility's allowed apparent loss.

(B) Real loss, expressed as gallons per connection per day and including a wholesale factor that takes into account the wholesale water volume, must be less than three times the utility's unavoidable annual real loss.

(f) If a retail public utility's total water loss meets or exceeds the threshold for that utility, the retail public utility must use a portion of any financial assistance received from the board for a water supply project to mitigate the utility's water loss. Mitigation will be in a manner determined by the retail public utility and the executive administrator in conjunction with the project proposed by the utility and funded by the board. On the request of a retail public utility, the board may waive the requirements of this subsection if the board finds that the utility is satisfactorily mitigating the utility's system water loss. The request for waiver should be addressed to the executive administrator and include information about the utility's current or planned activities to mitigate their water loss and their source of funding for that mitigation.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 19, 2017.

TRD-201704211
Todd Chenoweth
General Counsel
Texas Water Development Board
Earliest possible date of adoption: December 3, 2017
For further information, please call: (512) 463-7686



PART 21. TEXAS LOW-LEVEL RADIOACTIVE WASTE DISPOSAL COMPACT COMMISSION

CHAPTER 675. OPERATIONAL RULES SUBCHAPTER B. EXPORTATION AND IMPORTATION OF WASTE

31 TAC §675.24

The Texas Low-Level Radioactive Waste Disposal Compact Commission (TLLRWDC or Commission) proposes new §675.24, relating to Requirement to Report on the Importation of Certain Low-Level Radioactive Waste for Management or Disposal that is not Required to be Disposed of in the Compact Facility. In order to fulfill its responsibilities with respect to 42 United States Code, §§2021(b) - 2021(j) and §3.04(9) and §3.05(6) of the Compact as set out in Texas Health and Safety Code (THSC), §403.006, the Commission has determined that it is in the public interest that it gather information regarding low-level radioactive waste that enters the host state irrespective of whether it requires an agreement for importation for disposal at the Compact Facility. Proposed new §675.24 seeks to facilitate the gathering of that information by the way of reporting requirements after the entry of the low-level waste into the state rather than requiring approval for the importation of certain categories of low-level radioactive waste into the host state.

Fiscal Note

Leigh Ing, the Commission's Executive Director, has determined that, for the first five-year period the proposed rule is in effect, no fiscal implications are anticipated for the Compact Commission or for units of state or local government as a result of the administration or enforcement of the proposed rule.