

Source of flooding and location	#Depth in feet above ground *Elevation in feet (NGVD) •Elevation in feet (NAVD)	Source of flooding and location	#Depth in feet above ground *Elevation in feet (NGVD) •Elevation in feet (NAVD)
<b>City of Durham, Durham County (Unincorporated Areas)</b> <i>Stirrup Iron Creek Tributary B-1:</i> At the confluence with Stirrup Iron Creek Tributary B ..... • 359 Approximately 1,450 feet upstream of Weck Drive Tributary B ..... • 381		<b>Maps available for inspection</b> at the City of Durham Public Works Department, Stormwater Services Division, 101 City Hall Plaza, Durham, North Carolina. <b>Durham County (Unincorporated Areas)</b> <b>Maps available for inspection</b> at the City of Durham Public Works Department, Stormwater Services Division, 101 City Hall Plaza, Durham, North Carolina.	
<b>Durham County (Unincorporated Areas)</b> <i>Stirrup Iron Creek Tributary C:</i> At the confluence with Stirrup Iron Creek ..... • 325 Approximately 2,000 feet upstream of the confluence with Stirrup Iron Creek ..... • 325		<b>TENNESSEE</b>	
<b>City of Durham, Durham County (Unincorporated Areas)</b> <i>Stirrup Iron Creek Tributary D:</i> At the confluence with Stirrup Iron Creek ..... • 325 Approximately 1,500 feet upstream of Chin Page Road ..... • 357		<b>Hardin County (FEMA Docket No. D-7612)</b> <i>Tennessee River:</i> At approximately River Mile Marker 160 along the DeCATUR County line ..... • 388 Approximately 7.75 miles upstream of Pickwick Dam .... • 419	
<b>Durham County (Unincorporated Areas), City of Durham</b> <i>Sycamore Creek:</i> At the Durham/Wake County boundary ..... • 398 Approximately 1 mile upstream of Leesville Road .. • 450		<b>City of Crump, City of Saltillo, City of Savannah, Hardin County (Unincorporated Areas)</b> <i>Horse Creek:</i> At the confluence with the Tennessee River ..... • 395 Approximately 3,000 feet upstream of Airport Road ..... • 421	
<b>Durham County (Unincorporated Areas)</b> <i>Warren Creek:</i> Approximately 300 feet upstream of the confluence with Eno River ..... • 298 Approximately 100 feet upstream of West Carver Street ..... • 386		<b>Hardin County (Unincorporated Areas)</b> <b>City of Crump</b> <b>Maps available for inspection</b> at the Crump City Hall, 3020 Highway 64, Crump, Tennessee.	
<b>City of Durham</b> <i>Warren Creek Tributary 1:</i> At the confluence with Warren Creek ..... • 334 Approximately 200 feet downstream of Stadium Drive ..... • 339		<b>Hardin County (Unincorporated Areas)</b> <b>Maps available for inspection</b> at the Hardin County Courthouse, 465 Main Street, Savannah, Tennessee. <b>City of Saltillo</b> <b>Maps available for inspection</b> at the Saltillo City Hall, 160 Oak Street, Saltillo, Tennessee.	
<i>Warren Creek Tributary A:</i> At the confluence with Warren Creek ..... • 314 Approximately 350 feet upstream of Hillendale Road ..... • 381		<b>City of Savannah</b> <b>Maps available for inspection</b> at the Savannah City Hall, 140 Main Street, Savannah, Tennessee.	
<b>Durham County (Unincorporated Areas), City of Durham</b> <i>Warren Creek Tributary B:</i> Approximately 900 feet upstream of the confluence with Warren Creek ..... • 313 Approximately 250 feet upstream of Hillendale Road ..... • 340			
<b>City of Durham</b> <b>Town of Butner</b> <b>Maps available for inspection</b> at the Butner Town Hall, 205C West E Street, Butner, North Carolina. <b>City of Durham</b>			

**COMMISSION ON CIVIL RIGHTS**

**45 CFR Part 703**

**Membership Requirement of State Advisory Committees**

**AGENCY:** Commission on Civil Rights.

**ACTION:** Final rule.

**SUMMARY:** This final rule revises the regulations of the United States Commission on Civil Rights to amend the State Advisory Committee membership criteria to ensure both diversity and nondiscrimination in the State Advisory Committee member appointment process.

**EFFECTIVE DATE:** This final rule is effective March 20, 2006.

**FOR FURTHER INFORMATION CONTACT:** Contact Christopher Byrnes, Attorney-Advisor, U.S. Commission on Civil Rights, 624 Ninth Street NW., Washington, DC 20425. Telephone: (202) 376-7700.

**SUPPLEMENTARY INFORMATION:** On November 4, 2005, (70 FR 67129) the U.S. Commission on Civil Rights published for public comment its proposed rule change for selecting State Advisory Committee members. Comments were received from thirteen sources, including past and present State Advisory Committee members, a non-profit public policy organization, a lawyers' association, an agency of the Federal Government, and a private citizen.

One notable comment suggested enumerating some specific membership criteria in committee charters, committee bylaws, and the Commission's Federal Advisory Committee Act guidance documents rather than in the regulation. This comment pointed out that, in the unique venue of federal advisory committees, placing criteria in regulations prevents the rapid adaptation necessary to address new and different problems that are certain to arise. According to this comment, the individual committee charters, the committee bylaws, and the agency Federal Advisory Committee Act guidance document could be used more effectively and customized quickly to suit the agency's needs in addressing such problems. Thus, this commenter recommended placing in non-regulatory guidance the provisions contained in sections (c), (d), and (e). This comment suggested that including these as regulatory requirements would be too restrictive, as the Commission's needs for these particular experiences, professions, interests, and affiliations may change over time.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: February 6, 2006.

**David I. Maurstad,**

*Acting Director, Mitigation Division, Federal Emergency Management Agency, Department of Homeland Security.*

[FR Doc. 06-1461 Filed 2-16-06; 8:45 am]

**BILLING CODE 9110-12-P**

Another comment expressed full support for the regulation as proposed by the Commission, arguing that the change would improve the quality of State Advisory Committee membership while also bringing Commission regulations into conformance with the Constitution. According to this comment, the Commission's use of racial and ethnic quotas and preferences in selecting State Advisory Committee members could prevent the best qualified individuals from serving on the committees. Furthermore, this comment argued that the previous regulation and internal agency guidance on racial selection criteria involved the use of suspect classifications by a government agency and was therefore presumptively unlawful as a constitutional matter.

One commenter, supported by six others, recommended that the State Advisory Committee membership rules proposed by the Commission be rejected in their entirety. These commenters believed that the membership rules should mandate the inclusion of the persons most directly affected by the laws and policies in question, instead of relying on only professionals, including, but not limited to, educators, lawyers, business and labor leaders, social scientists, researchers, and news gatherers. They also believed that those most directly affected should be given preference for selection. With respect to diversity, they expressed their concern that race and ethnicity remain as specific and required criteria for selection of State Advisory Committee members, rather than relying solely on the non-discrimination clause of section (b). Finally, they recommended that the expression in section (d) of the proposed regulation, "an interest in civil rights issues," be replaced with "a demonstrated role in traditional advocacy on behalf of the civil rights of the protected classes."

Another commenter recommended rejecting the proposed changes to State Advisory Committee membership criteria and retaining the present rules unaltered. Comments in the letter made clear that the membership rules should ensure that minority and traditionally underrepresented groups have the opportunity to be represented. Comments from the one private individual who responded recommend amending section (e) to require balance in political party representation, not merely representation.

One commenter recommended that State Advisory Committee members be selected for a maximum of five two-year terms, allowing the State Advisory Committee member to resign at the

completion of any two-year term. The recommended change would allow grandfathering of current State Advisory Committee members with greater than 10 years experience. That same commenter also recommended amending the rule to allow State Advisory Committee members to be removed by the Commission upon consultation with the Regional Director and recommended amending section (c) to eliminate the emphasis on professionals and skill development in favor of an emphasis on participation in civil rights issues/activities.

Several individuals commented on the emphasis on professionals in section (c) of the proposed rule. One commenter recommended eliminating the apparent proposed emphasis on professionals, with a diversity of skills and experiences, including, but not limited to, social science research, legal research and analysis, and statistical analysis in favor of wording that more accurately reflected the diversity of the affected populations. Another commenter also criticized the apparent emphasis on professionals with a diversity of skills and experiences, but instead recommended an amendment emphasizing participation in civil rights issues and activities. That same commenter recommended deleting section (e) in its entirety. Another commenter recommended amending section (c) to eliminate the emphasis on an allegedly elite group of academics and professionals in favor of an emphasis on grass roots activity and participation in civil rights issues/activities.

After appropriate, careful consideration of all comments received, the Commission provides the following responses:

The Commission agrees with the comments on relocating the portions of the proposed rule requiring consideration of experiences, including, but not limited to, social science research, legal research and analysis, and statistical analysis; professional expertise and attainment; demonstrated interest in civil rights issues of color, race, religion, sex, age, disability, and national origin and in voting rights; and political affiliation in the selection of State Advisory Committee members. The Commission agrees that the relevant criteria would more appropriately be presented in an internal Administrative Instruction (AI) on procedures for recommending advisory committee appointments. Accordingly, the Commission is removing paragraphs (c), (d), and (e) of section 703.5 from the Final Rule, and they have been included

in a Commission Administrative Instruction.

The Commission appreciates the comments of support received and recognizes the symbolic importance of ensuring that the eyes and ears of the Commission are not themselves products of a discriminatory process. The Commission likewise questions the apparent use of racial and ethnic quotas and caps for the percentage membership of represented groups in the past. Several comments had emphasized that all minorities must have the opportunity to participate in the State Advisory Committee process. The Commission embraces that sentiment wholeheartedly. Though guidance on State Advisory Committee membership criteria was incorporated into non-regulatory guidance, the final regulation retains the non-discrimination provision.

One comment, addressing term limits, was based on a policy adopted at a Commission meeting that was not embodied in the proposed regulation. Nevertheless, since term limits have been approved by the Commission and incorporated into the Administrative Instruction, the Commission will address the comment. First, the Commission agrees with the proposal to limit State Advisory Committee members to a maximum of five two-year terms except under limited circumstances. That has been incorporated into the Administrative Instructions. As for the recommendation on removal of State Advisory Committee members, the Commission has decided to address removal by separate guidance.

Many of the comments addressed portions of the proposed regulation that have been removed from the final rule and placed in the Commission's Administrative Instructions. Even though these portions are no longer incorporated in the final rule, the Commission will address those comments. First, it is important to recognize that the Commission is modifying this regulation to expand the diversity of ideas received from State Advisory Committee membership, while setting the standard for non-discrimination and overall fairness. Generally speaking, the final rule seeks to open up State Advisory Committee membership to a wide array of viewpoints so that relevant civil rights issues are fully explored in a non-discriminatory manner.

With respect to the comments on retaining specific racial and ethnic criteria, the Commission concludes that adoption and strict compliance with a non-discrimination policy is the proper

approach to selecting State Advisory Committee members. Additionally, the Commission decides that the use of racial preferences and caps in the selection of State Advisory Committee members would deprive the Committees of members with much-needed skill sets in a time of diminishing financial support. Denying membership in this manner could also diminish the quality of State Advisory Committee research and reports.

One comment addressed balance in political representation. The guidance as provided in the new Administrative Instruction will provide for representation by both major political parties, while also allowing independent and third party members. The Commission has chosen to rely on its requirement for a broadly diverse membership, instead of seeking a required balance that could be perceived as a quota or cap.

Others commenting on the proposed regulation chose to focus on the skills, experiences and professional backgrounds sought in potential State Advisory Committee members. The identified professions represent no change from previous guidance. Since at least 1991, educators, lawyers, business and labor leaders, corporate officers, social scientists, researchers and news gatherers have been identified as professions that should be represented in State Advisory Committee membership. The Commission has also chosen to introduce the consideration of technical skills and abilities, including, but not limited to, background in social science research, legal research and analysis, and statistical analysis. Consideration of these skills and abilities in selecting State Advisory Committee members will enhance the ability of these Committees in continuing their work in the face of diminished fiscal resources. The inclusion of these skill sets will also encourage the selection of members with the knowledge and experience necessary to produce effective and influential reports. The established criteria are not exclusionary; they are broadly inclusive and would not bar individuals from a variety of backgrounds, including persons with a background in advocacy.

#### List of Subjects in 45 CFR Part 703

Advisory Committees, organization and functions (Government agencies).

- Accordingly, 45 CFR part 703 is amended as follows:

### PART 703—OPERATIONS AND FUNCTIONS OF STATE ADVISORY COMMITTEES

- 1. The authority citation for part 703 continues to read as follows:

Authority: 42 U.S.C. 1975a(d).

- 2. Revise § 703.5 to read as follows:

#### § 703.5 Membership.

(a) Subject to exceptions made from time to time by the Commission to fit special circumstances, each Advisory Committee shall consist of at least 11 members appointed by the Commission. Members of the Advisory Committees shall serve for a fixed term to be set by the Commission upon the appointment of a member subject to the duration of Advisory Committees as prescribed by the charter, provided that members of the Advisory Committee may, at any time, be removed by the Commission.

(b) No person is to be denied an opportunity to serve on a State Advisory Committee because of race, age, sex, religion, national origin, or disability. The Commission shall encourage membership on the State Advisory Committee to be broadly diverse.

**Kenneth L. Marcus,**

*Staff Director/Acting General Counsel.*

[FR Doc. 06-1489 Filed 2-16-06; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

#### 49 CFR Parts 107 and 171

[Docket No. PHMSA-05-22461]

RIN 2137-AE14

#### Hazardous Materials: Revisions to Civil and Criminal Penalties; Penalty Guidelines

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The Pipeline and Hazardous Materials Safety Administration is revising its regulations to reflect revisions to the civil and criminal penalties in the Hazardous Materials Safety and Security Reauthorization Act (Title VII of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users), enacted on August 10, 2005. We are also revising baseline assessments for violations related to training and security plans and making editorial changes in our List

of Frequently Cited Violations in our Guidelines for Civil Penalties. We publish our Guidelines for Civil Penalties in order to provide the regulated community and the general public with information on the hazardous material penalty assessment process.

**EFFECTIVE DATE:** This rule is effective February 17, 2006.

**FOR FURTHER INFORMATION CONTACT:**

Douglas S. Smith, Office of Hazardous Materials Enforcement, (202) 366-4700; or Joseph Solomey, Office of Chief Counsel, (202) 366-4400, Pipeline and Hazardous Materials Safety Administration.

**SUPPLEMENTARY INFORMATION:**

#### I. Civil and Criminal Penalties

On August 10, 2005, the President signed the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Public Law 109-59, 119 Stat. 1144. Title VII of SAFETEA-LU—the Hazardous Materials Safety and Security Reauthorization Act of 2005—revised the maximum and minimum civil penalties, and the maximum criminal penalty, for violations of Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101 *et seq.*) or a regulation, order, special permit, or approval issued under Federal hazmat law (including 49 CFR subtitle B, Chapter I, subchapters A and C). The Pipeline and Hazardous Materials Safety Administration (PHMSA; we) is revising references in our regulations to the maximum and minimum civil penalties, and the maximum criminal penalties, to reflect the following statutory changes:

- The maximum civil penalty was increased from \$32,500 to \$50,000 for a knowing violation, and to \$100,000 if the violation results in death, serious illness or severe injury to any person, or substantial destruction of property.
- The minimum civil penalty has reverted from \$275 to \$250, except a minimum civil penalty of \$450 applies to a violation related to training.
- Criminal penalties now apply to both reckless and willful violations (as well to as a knowing violation of the prohibition in 49 U.S.C. 5104(b) against tampering with a marking, label, placard, or description on a shipping document) of Federal hazardous material transportation law or the regulations, orders, special permits, and approvals issued thereunder.