

ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 12. COMMISSION ON STATE EMERGENCY COMMUNICATIONS

CHAPTER 254. REGIONAL POISON CONTROL CENTERS

1 TAC §254.2

The Commission on State Emergency Communications (CSEC) adopts amendments to §254.2, concerning the agency's Poison Control Coordinating Committee (PCCC), without changes to the proposed text as published for comment in the August 11, 2023, issue of the *Texas Register* (48 TexReg 4358). The adopted rule will not be republished.

REASONED JUSTIFICATION

CSEC adopts amendments to §254.2 (Title 1, Part 12, Chapter 254 of the Texas Administrative Code) to extend the date on which the PCCC is abolished from September 1, 2023, to September 1, 2029. The extended date corresponds to CSEC's current sunset date. The PCCC fulfills the statutory purpose of coordinating the activities of the regional poison control centers designated under Health and Safety Code §777.001(a).

PUBLIC COMMENT AND AGENCY RESPONSE

To date no comments were received regarding the proposed amendment.

STATEMENT OF AUTHORITY

The amended section is authorized under Health and Safety Code §777.008 and Government Code Chapter 2110. The former establishes the PCCC and the latter requires state agencies to describe by rule an advisory committee's purpose and tasks, the manner in which an advisory committee reports to the agency, and the duration of an advisory committee.

No other statutes, articles or codes are affected by the proposed amendment.

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

Filed with the Office of the Secretary of State on September 28, 2023.

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 745. LICENSING

SUBCHAPTER N. ADMINISTRATOR'S LICENSING

The Texas Health and Human Services Commission (HHSC) adopts amendments to §§745.8901, 745.8903, 745.8909, 745.8915, 745.8917, 745.8919, 745.8933, 745.8935, 745.9031, and 745.9037; new §§745.8906, 745.8908, 745.8923, 745.8925, 745.8927, 745.8929, 745.8930, 745.8973, 745.8975 - 745.8977, 745.8979, 745.8981 - 745.8983, 745.8985 - 745.8987, and 745.8989; and repeal of §§745.8991, 745.8994, 745.8999, 745.9007, 745.9019, 745.9021, and 745.9023 in Title 26, Texas Administrative Code, Chapter 745, Licensing, Subchapter N, Administrator's Licensing.

Amended §§745.8901, 745.8903, 745.8909, 745.8915, 745.8917, 745.8919, 745.8933, 745.8935, 745.9031, and 745.9037; new §§745.8906, 745.8908, 745.8923, 745.8925, 745.8927, 745.8929, 745.8930, 745.8973, 745.8975 - 745.8977, 745.8979, 745.8981 - 745.8983, 745.8985 - 745.8987, and 745.8989; and repealed §§745.8991, 745.8994, 745.8999, 745.9007, 745.9019, 745.9021, and 745.9023 are adopted without changes to the proposed text as published in the May 26, 2023, issue of the *Texas Register* (48 TexReg 2661). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

The rule changes implement Senate Bill (S.B.) 1896, 87th Legislature, Regular Session, 2021, as it relates to Section 25 of the bill.

Section 25 amended Texas Human Resources Code (HRC) §43.0081(a) to add (a)(2)(A) and (B) to allow HHSC Child Care Regulation (CCR) to issue a provisional child-care administrator's license when an applicant does not meet the one-year supervisory experience requirement provided in HRC §43.004(a)(4), but otherwise qualifies for a license so long as the applicant complies with any additional requirements

established in rule. Section 25 also amended HRC §43.0081 by adding subsection (e), to allow the executive commissioner to establish in rule any additional requirements that apply when a provisional child-care administrator's license is issued under HRC §43.0081(a)(2)(A).

In addition to implementing Section 25 of S.B. 1896, CCR is adopting other changes to Chapter 745, Licensing, Subchapter N, Administrator's Licensing. These changes add administrator conduct expectations, update rules to reflect current business practice, update wording in the rules to improve understanding and readability, add a new division, renumber divisions, and reorganize divisions to improve the overall organization of Subchapter N.

COMMENTS

The 31-day comment period ended June 26, 2023. During this period, HHSC received two comments regarding the rules from Texas Alliance of Child and Family Services. A summary of comments relating to rules and HHSC's responses follows.

Comment: Regarding §745.8929, the commenter recommended that HHSC provide clarity on what the rule means by "retaliation" and "harassment," asking if there are criminal or other definitions that HHSC could incorporate and whether harassment means situations when a provider insists CCR respond timely or complete investigations. The commenter recommended CCR consider adding clarification to include that these terms mean a level of misconduct that is reportable to authorities.

Response: HHSC disagrees with the comment and declines to amend the rule. HHSC agrees that consistent interpretation is important and will train CCR staff appropriately. However, as CCR regulates administrators and childcare operations, HHSC disagrees that an incident should be reportable to a third-party authority in order for CCR to apply the terms in the rule and to enforce the rule. As for the meaning of "retaliation" and "harassment," HHSC believes that a reasonable interpretation of these terms would require egregious behavior well beyond merely insisting that CCR respond timely or complete investigations. HHSC also expects that CCR will develop policy to support consistent and fair implementation of this rule and its terms.

Comment: Regarding §745.8973, the commenter recommended that HHSC remove the reference to "a complaint against" an administrator. The commenter also requested removal of language in the rule relating to abuse or neglect because, the Child Care Regulation Handbook outlines that the Texas Department of Family and Protective Services (DFPS) notifies HHSC of these investigations.

Response: HHSC disagrees with this comment and declines to amend the rule. The language proposed in 745.8973(a)(7) already exists in current rule (proposed repealed §745.9021(a)(7)) and was moved to a new division in the subchapter for improved organization of the subchapter. This rule ensures that CCR has the information needed to track if an individual is still eligible for an administrator's license. The commenter refers to a CCR handbook policy that requires DFPS Child Care Investigations (CCI) to communicate investigation details with CCR; however, in this rule, the terms "abuse" and "neglect" do not relate exclusively to investigations completed by CCI.

DIVISION 1. OVERVIEW OF ADMINISTRATOR'S LICENSING

26 TAC §§745.8901, 745.8903, 745.8906, 745.8908, 745.8909, 745.8915, 745.8917, 745.8919, 745.8923, 745.8925, 745.8927, 745.8929, 745.8930

STATUTORY AUTHORITY

The amendments and new sections, are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §43.005 requires HHSC to adopt rules to carry out requirements of HRC Chapter 43.

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

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Karen Ray

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Health and Human Services Commission

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For further information, please call: (512) 438-3269



DIVISION 2. SUBMITTING YOUR APPLICATION MATERIALS

26 TAC §745.8933, §745.8935

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §43.005 requires HHSC to adopt rules to carry out requirements of HRC Chapter 43.

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

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DIVISION 4. MAINTAINING YOUR ADMINISTRATOR'S LICENSE

26 TAC §§745.8973, 745.8975 - 745.8977, 745.8979, 745.8981 - 745.8983, 745.8985 - 745.8987, 745.8989

STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §43.005 requires HHSC to adopt rules to carry out requirements of HRC Chapter 43.

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DIVISION 4. RENEWING YOUR ADMINISTRATOR LICENSE

26 TAC §§745.8991, 745.8994, 745.8999, 745.9007, 745.9019, 745.9021, 745.9023

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §43.005 requires HHSC to adopt rules to carry out requirements of HRC Chapter 43.

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DIVISION 7. REMEDIAL ACTIONS

26 TAC §745.9031, §745.9037

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §43.005 requires HHSC to adopt rules to carry out requirements of HRC Chapter 43.

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CHAPTER 748. MINIMUM STANDARDS FOR GENERAL RESIDENTIAL OPERATIONS

The Texas Health and Human Services Commission (HHSC) adopts amendments to §748.153, concerning What changes must I notify Licensing about regarding my operation and §748.533, concerning Can a child-care administrator be an administrator for two residential child-care operations; and new §748.154, concerning What is my timeframe for filling my child-care administrator position if it becomes vacant while I do not have a back-up administrator to carry out the administrator duties and §748.532, concerning When can a child-care administrator with a provisional license serve as the administrator for a general residential operation, in Title 26, Texas Administrative Code, Chapter 748, Minimum Standards for General Residential Operations.

New §748.532 is adopted with changes to the proposed text as published in the May 26, 2023, issue of the *Texas Register* (48 TexReg 2675). This rule will be republished.

Amended §748.153 and §748.533; and new §748.154 are adopted without changes to the proposed text as published in the May 26, 2023, issue of the *Texas Register* (48 TexReg 2675). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

The rule changes implement Senate Bill (S.B.) 1896, 87th Legislature, Regular Session, 2021, as it relates to Sections 22 and 25 of the bill.

Section 22 added Texas Human Resources Code (HRC) §42.080 to prohibit HHSC Child Care Regulation (CCR) from issuing a citation or taking any other disciplinary action against a general residential operation for failing to employ a licensed administrator as long the operation or agency has been without

a licensed administrator for fewer than 60 days and makes substantial efforts to hire a qualified administrator.

Section 25 amended HRC §43.0081(a) to add (a)(2)(A) and (B) to allow CCR to issue a provisional child-care administrator's license when an applicant does not meet the one-year supervisory experience requirement provided in HRC §43.004(a)(4), but otherwise qualifies for a license so long as the applicant complies with any additional requirements established in rule. Section 25 also amended HRC §43.0081 by adding subsection (e), to allow the executive commissioner to establish in rule any additional requirements that apply when a provisional child-care administrator's license is issued under HRC §43.0081(a)(2)(A).

COMMENTS

The 31-day comment period ended June 26, 2023. During this period, HHSC received one comment regarding the rules from the Texas Alliance of Child and Family Services. A summary of the comment and HHSC's response follows.

Comment: Regarding §748.532, the commenter recommended that operations on heightened monitoring be allowed to have an administrator with a provisional child-care administrator's license. The commenter said there is a lack of qualified and experienced administrators who are willing to work at an operation on heightened monitoring. The commenter requested CCR develop a process for possible approval to allow a general residential operation that is on heightened monitoring to hire a child-care administrator with a provisional child-care administrator's license.

Response: HHSC agrees with this comment and has updated the rule to remove the reference to heightened monitoring.

SUBCHAPTER C. ORGANIZATION AND ADMINISTRATION

DIVISION 2. OPERATIONAL RESPONSIBILITIES AND NOTIFICATIONS

26 TAC §748.153, §748.154

STATUTORY AUTHORITY

The amendment and new section are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC 42, and HRC §43.005 requires HHSC to adopt rules to carry out requirements of HRC Chapter 43.

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

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SUBCHAPTER E. PERSONNEL

DIVISION 2. CHILD-CARE ADMINISTRATOR

26 TAC §748.532, §748.533

STATUTORY AUTHORITY

The amendment and new section are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC 42, and HRC §43.005 requires HHSC to adopt rules to carry out requirements of HRC Chapter 43.

§748.532. When can a child-care administrator with a provisional license serve as the administrator for a general residential operation?

A child-care administrator with a provisional license may serve as the child-care administrator at a general residential operation if, at the time the administrator is hired, the operation is not:

- (1) On a voluntary plan of action;
- (2) On corrective action;
- (3) Subject to an adverse action; or
- (4) Pending due process for a corrective or an adverse action.

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

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CHAPTER 749. MINIMUM STANDARDS FOR CHILD-PLACING AGENCIES

The Texas Health and Human Services Commission (HHSC) adopts amendments to §749.153, concerning What changes must I notify Licensing about regarding my child-placing agency and §749.633, concerning Can a child-placing agency administrator be an administrator for two residential child-care operations; and new §749.154, concerning What is my time-

frame for filling my child-placing agency administrator position if it becomes vacant while I do not have a back-up administrator to carry out the administrator duties, in Title 26, Texas Administrative Code, Chapter 749, Minimum Standards for Child-Placing Agencies.

New §749.154 and amended §749.153 and §749.633 are adopted without changes to the proposed text as published in the May 26, 2023, issue of the *Texas Register* (48 TexReg 2677). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

The rule changes implement Senate Bill 1896, 87th Legislature, Regular Session, 2021, as it relates to Sections 22 and 25 of the bill.

Section 22 added Texas Human Resources Code (HRC) §42.080 to prohibit HHSC Child Care Regulation (CCR) from issuing a citation or taking any other disciplinary action against a child-placing agency for failing to employ a licensed administrator as long the operation or agency has been without a licensed administrator for fewer than 60 days and makes substantial efforts to hire a qualified administrator.

Section 25 amended HRC §43.0081(a) to add (a)(2)(A) and (B) to allow CCR to issue a provisional child-care administrator's license when an applicant does not meet the one-year supervisory experience requirement provided in HRC §43.004(a)(4), but otherwise qualifies for a license so long as the applicant complies with any additional requirements established in rule. Section 25 also amended HRC §43.0081 by adding subsection (e), to allow the executive commissioner to establish in rule any additional requirements that apply when a provisional child-care administrator's license is issued under HRC §43.0081(a)(2)(A).

COMMENTS

The 31-day comment period ended June 26, 2023. During this period, HHSC received no comments regarding the rules in Chapter 749.

SUBCHAPTER C. ORGANIZATION AND ADMINISTRATION

DIVISION 2. OPERATIONAL RESPONSIBILITIES AND NOTIFICATIONS

26 TAC §749.153, §749.154

STATUTORY AUTHORITY

The amendment and new section are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, and HRC §43.005 requires HHSC to adopt rules to carry out requirements of HRC Chapter 43.

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

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SUBCHAPTER E. AGENCY STAFF AND CAREGIVERS

DIVISION 2. CHILD-PLACING AGENCY ADMINISTRATOR

26 TAC §749.633

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Government Code §531.02011, which transferred the regulatory functions of the Texas Department of Family and Protective Services to HHSC. In addition, HRC §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42, and HRC §43.005 requires HHSC to adopt rules to carry out requirements of HRC Chapter 43.

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

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Karen Ray
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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 50. ACTION ON APPLICATIONS AND OTHER AUTHORIZATIONS

SUBCHAPTER G. ACTION BY THE EXECUTIVE DIRECTOR

30 TAC §50.131

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendments to §50.131. Amended §50.131 is adopted with changes to the proposed text as published in the July 14, 2023, issue of the *Texas Register* (48 TexReg 3832) and, therefore, will be republished.

Background and Summary of the Factual Basis for the Adopted Rules

The adopted amendments will conform an agency rule with statutory requirements. The agency will amend 30 Texas Administrative Code (TAC) §50.131(c)(1) to state that the exemption applies except when a registration to use an air quality standard permit requires a decision by the executive director. This will remove the exemption from the agency's motion to overturn process for registrations under an air quality standard permit that require an executive director decision. When the adopted rule becomes effective, it will be clear that applicants (i.e., registrants) and affected persons who wish to challenge an executive director decision to approve or deny a registration for an air quality standard permit may request that the commission overturn that decision through the agency's motion to overturn process. This administrative action will be required before such a decision can be challenged in district court. Thus, the administrative remedy will have to be exhausted prior to a judicial challenge. This change is being adopted to align the agency's rules with Texas Health and Safety Code (THSC), §382.061(b), which requires executive director decisions on permits to be reviewable by the commission. The commission changed the deletion of the exemption that was proposed to the adopted language that mirrors the statutory language in THSC, §382.061(b) in response to comments that not all air quality standard permit registrations require a decision by the executive director.

Section by Section Discussion

An amendment to §50.131(c)(1) to state that the exemption applies except when a registration to use an air quality standard permit requires a decision by the executive director is adopted.

Final Regulatory Impact Analysis Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is a rule the specific intent of which is 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. The adopted amendment of §50.131 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 amends rule language to align the rule with statutory requirements relating to the review by the commission of executive director decisions on air quality standard permit registrations through a motion to overturn opportunity in the commission's rules.

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 authority of the commission. The adopted amendment of §50.131 does not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement or contract, and was not developed solely under the general powers of the agency but is authorized by specific sections of the Texas Government Code and the Texas Water Code that 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(b).

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments on the Draft Regulatory Impact Analysis were received.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an analysis of whether Texas Government Code, Chapter 2007, is applicable. The adopted amendment does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5). Therefore, this rulemaking action will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted 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 adopted rule is not subject to the Texas Coastal Management Program (CMP).

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received during the public comment period.

Effect on Sites Subject to the Federal Operating Permits Program

Section 50.131 is not an applicable requirement under 30 TAC Chapter 122, Federal Operating Permits Program; and therefore, no effect on sites subject to the Federal Operating Permits program is expected when the commission adopts this rule.

Public Comment

The commission offered two public hearings, on August 1, and August 15, 2023. The comment period closed at 11:59 p.m. on August 18, 2023. The commission received comments from State Senator Carol Alvarado; Energy Transfer LP (ET); Texas Chemical Council (TCC) and the Texas Oil and Gas Association (TXOGA), jointly; Texas Industry Project (TIP); Texas Pipeline Association (TPA); and State Representative Armando Walle. Senator Alvarado and Representative Walle were supportive of the proposed amendment. The remaining comments expressed support for a more limited change than what the commission proposed and suggested changes to the proposed amendment. TCC, TXOGA, and TPA jointly requested that the commission extend the comment period for the proposed rulemaking from August 15, 2023, until August 29, 2023. The commission granted a limited extension of the comment period to August 18, 2023. The commission made changes to the proposed rule

amendment in response to the comments that were received. In response to comments, the rule language has been amended to explicitly mirror the statutory language of THSC, §382.061(b).

Response to Comments

Comment

State Senator Carol Alvarado supports the proposed amendments to align TCEQ rules with statutory requirements.

Response

The commission appreciates the support for the proposed rule-making. No changes were made in response to this comment.

Comment

ET opposes the proposed amendments to 30 TAC §50.131. ET disagrees that the proposed amendment is necessary to reconcile the rule with the statutory requirement of THSC, §382.061(b). ET states that standard permits are exempted from coverage under §50.131 because they are claimed registrations and not issued permits. ET states that action by the executive director occurs on standard permits when the specific standard permit is promulgated; and when a standard permit is registered for a process, there is no further executive director decision that occurs that would be addressed with a motion to overturn. ET states that if the proposed amendment is adopted, it will have an adverse impact on energy reliability in Texas and needlessly increase the costs and time spent by the commission and operators who use standard permits.

Response

The commission disagrees with the assertion that the proposed amendment is not necessary. The discrepancy between 30 TAC §50.131(c)(1) and THSC, §382.061(b) was identified and discussed at the April 26, 2023, hearing of the Senate Natural Resources and Economic Development Committee during the 88th Regular Legislative Session. Although it is possible that the commission may receive an increased number of motions to overturn for air quality standard permit registrations, the commission does not anticipate any undue burden on either the commission or on the regulated community. The commission understands that air quality standard permits themselves are generally open for public comment when the standard permit itself is promulgated; however, the approval or denial of a registration to use some types of air quality standard permits is still a decision delegated to the executive director. Accordingly, pursuant to statute, these authorizations should be reviewable by the commission. The commission agrees that the rule language should only encompass authorizations involving a decision by the executive director. Therefore, in response to comment the commission has amended the proposed rule language to specify that air quality standard permits that require a decision by the executive director are not exempt from the motion to overturn process.

Comment

TCC, TXOGA, and TPA requested an extension of the comment period on the proposed rulemaking until August 29, 2023.

Response

The commission extended the comment period for this rulemaking to Friday, August 18, 2023.

Comment

TCC and TXOGA state that the proposed rule amendment will remove all standard permits issued under 30 TAC Chapter 116

from the scope of actions that are exempt from motion to overturn procedures.

Response

TCC and TXOGA are correct that the proposed rule amendment would have meant that all registrations for authorization under an air quality standard permit issued under Chapter 116 are subject to a motion to overturn. The commission acknowledges that some air quality standard permit registrations do not require a decision by the executive director. In response to comment, the commission has clarified in the adopted rule language that only those air quality standard permit registrations that require a decision of the executive director are subject to a motion to overturn.

Comment

TCC and TXOGA state that the proposed rulemaking is three separate rulemakings in one.

Response

Commenters are incorrect. The amendment to the proposed rule is one rulemaking that has been undertaken to align TCEQ rules with statutory requirements as discussed in the rule preamble. No changes were made in response to this comment.

Comment

TCC and TXOGA state that the proposed rule amendment will impact an average of 850-1000 standard permits a year, allow for potential challenges through the motion to overturn process, and has the potential to greatly impact the timeframe for claiming standard permits, the Texas economy as a whole, TCEQ ED staff resources, TCEQ commission staff resources, and potentially Alternative Dispute and State Office of Administrative Hearings (SOAH) staff resources.

Response

The commission evaluated the potential impact of the proposed rule and does not agree with the commenters that there will be adverse effects on the Texas economy, TCEQ resources, or SOAH resources. Although the number of actions that may be subject to a motion to overturn will increase, the commission does not anticipate that all such actions will receive challenges. Given that few motions to overturn have historically been filed on air quality standard permits, the commission does not believe that adoption of the proposed amendment would significantly impact the number of motions to overturn filed on air quality standard permit registrations. No changes were made in response to this comment.

Comment

TCC and TXOGA detail the process for promulgating a standard permit, and state that the appropriate place for the public to comment on a standard permit is when the standard permit is developed by the commission. The commenters state that a registration to use a standard permit is not a decision by the executive director that should be subject to a motion to overturn as contemplated by THSC, §382.061(b). TCC and TXOGA state that only standard permit registrations that require notice, specifically, the Concrete Batch Plant, Concrete Batch Plant with Enhanced Controls, Permanent Rock and Concrete Crushers, Animal Carcass Incinerator, and Hot Mix Asphalt Plant Standard Permits, should be subject to a motion to overturn. Commenters state that other standard permit registrations do not require a decision by the executive director; and therefore, the commission should change

the proposed amendment to limit the opportunity for a motion to overturn to those specific enumerated types of standard permits.

Response

The commission agrees that the rule language should be explicit that only those air quality standard permit registrations that require a decision by the executive director, such as those for concrete batch plants, permanent rock and concrete crushers, and animal carcass incinerators, are subject to a motion to overturn. Because these standard permit registrations require public notice and an opportunity for public comment and require the executive director to decide whether to approve (or "grant") or deny the registration, they involve a decision by the executive director that is subject to appeal to the commission. By contrast, those standard permit registrations, including registrations for hot mix asphalt plants, that become effective (1) without notice or registration, or (2) immediately upon registration, or (3) when they are "accepted" or received with "no objection," or (4) a certain number of days after registration if there is no response from the executive director do not involve an appealable decision by the executive director. Therefore, in response to comment, the commission has amended the proposed rule language to specify that air quality standard permit registrations that require a decision by the executive director are not exempt from the motion to overturn process.

Comment

TCC and TXOGA state that the proposed amendment should be narrowed to only apply to standard permits that require a more in-depth review by the executive director and that have the opportunity for public comment and a response to those comments from TCEQ.

Response

The commission agrees that the rule language should be explicit that only those air quality standard permit registrations that require a decision by the executive director, such as those for concrete batch plants, permanent rock and concrete crushers, and animal carcass incinerators, are subject to a motion to overturn. Because these standard permit registrations require public notice and an opportunity for public comment and require the executive director to decide whether to approve (or "grant") or deny the registration, they involve a decision by the executive director that is subject to appeal to the commission. By contrast, those standard permit registrations, including registrations for hot mix asphalt plants, that become effective (1) without notice or registration, or (2) immediately upon registration, or (3) when they are "accepted" or received with "no objection," or (4) a certain number of days after registration if there is no response from the executive director do not involve an appealable decision by the executive director. Therefore, in response to comment, the commission has amended the proposed rule language to specify that air quality standard permit registrations that require a decision by the executive director are not exempt from the motion to overturn process.

Comment

TIP believes that the proposed amendment would have unintended consequences. TIP states that the proposed amendment would make any response by the executive director to a standard permit registration under Chapter 116 a "decision of the executive director" that would be subject to the motion to overturn. TIP states that this reading is inconsistent with the standard permit rules and with conditions of standard permits that require only

registration, such as the Oil and Gas Standard Permit and Pollution Control Standard Permits. TIP contrasts these types of standard permits with those that require notice, including the Concrete Batch Plant, Permanent Rock and Concrete Crushers, Animal Carcass Incinerators, and Hot Mix Asphalt Plant Standard Permits. TIP asks the commission to amend the rule proposal to leave the exemption for standard permits in place except for these specific types of standard permits.

Response

The commission agrees that the rule language should be explicit that only those air quality standard permit registrations that require a decision by the executive director, such as those for concrete batch plants, permanent rock and concrete crushers, and animal carcass incinerators, are subject to a motion to overturn. Because these standard permit registrations require public notice and an opportunity for public comment and require the executive director to decide whether to approve (or "grant") or deny the registration, they involve a decision by the executive director that is subject to appeal to the commission. By contrast, those standard permit registrations, including registrations for hot mix asphalt plants, that become effective (1) without notice or registration, or (2) immediately upon registration, or (3) when they are "accepted" or received with "no objection," or (4) a certain number of days after registration if there is no response from the executive director do not involve an appealable decision by the executive director. Therefore, in response to comment, the commission has amended the proposed rule language to specify that air quality standard permit registrations that require a decision by the executive director are not exempt from the motion to overturn process.

Comment

TPA suggests that the commission should alter the proposed amendment to limit the change to air quality standard permits for concrete batch plants, permanent rock and concrete crushers, animal carcass incinerators, and permanent hot mix asphalt plants. TPA states that this change would avoid unintended consequences, and that it is erroneous to conclude that any authorization to operate under an air quality standard permit is subject to appeal.

Response

The commission agrees that the rule language should be explicit that only those air quality standard permit registrations that require a decision by the executive director, such as those for concrete batch plants, permanent rock and concrete crushers, and animal carcass incinerators, are subject to a motion to overturn. Because these standard permit registrations require public notice and an opportunity for public comment and require the executive director to decide whether to approve (or "grant") or deny the registration, they involve a decision by the executive director that is subject to appeal to the commission. By contrast, those standard permit registrations, including registrations for hot mix asphalt plants, that become effective (1) without notice or registration, or (2) immediately upon registration, or (3) when they are "accepted" or received with "no objection," or (4) a certain number of days after registration if there is no response from the executive director do not involve an appealable decision by the executive director. Therefore, in response to comment, the commission has amended the proposed rule language to specify that air quality standard permit registrations that require a decision by the executive director are not exempt from the motion to overturn process.

Comment

TPA states that the appropriate place for the public to comment on a standard permit is when the standard permit is developed by the commission.

Response

The commission agrees that the process of developing and issuing an air quality standard permit offers the opportunity for public comment on the air quality standard permit itself. However, the process of registering to use certain air quality standard permits may still require a decision of the executive director. As discussed above, some types of air quality standard permits involve a process more like an application than a simple registration, including public notice, an opportunity for public comment, and the express approval of the commission or the executive director before an applicant can move forward with construction or operation. Decisions on registrations for these types of standard permits are subject to motions to overturn. Therefore, in response to comment, the commission has amended the proposed rule language to specify that air quality standard permit registrations that require a decision by the executive director are not exempt from the motion to overturn process.

Comment

TPA comments that subjecting routine standard permit authorizations to commission review would create substantial new burdens for applicants and TCEQ staff and be contrary to the purpose of standard permits and the intent of legislature. TPA believes it would be expensive and time-consuming and require additional staff if the proposed amendment is adopted and the motion to overturn process is opened up to all standard permit registrations.

Response

The commission evaluated the potential impact of the proposed rule and does not agree with the commenters that there will be adverse effects on TCEQ resources or applicants for air quality standard permit registrations. Although the number of actions that may be subject to a motion to overturn will increase, the commission does not anticipate that all such actions will receive challenges. Given the historical record of motions to overturn filed on air quality standard permits, the commission does not have reason to believe that adoption of the proposed amendment would lead to a significant increase in motions to overturn air quality standard permit registrations. The commission also disagrees with the commenters that the amendment as proposed is contrary to the intent of the legislature, particularly given the discussion during the April 26, 2023, meeting of the Senate Natural Resources and Economic Development Committee. However, the commission does agree that the rule language should be explicit that only those registrations of air quality standard permits that require a decision by the executive director are subject to a motion to overturn. Therefore, in response to comment the commission has amended the proposed rule language to specify that air quality standard permits that require a decision by the executive director are not exempt from the motion to overturn process.

Comment

TPA's comment suggests that registrations to use agency Permits by Rule, those promulgated under Chapter 106, would also potentially be subject to a motion to overturn under the reasoning that they also do not require any sort of detailed review or decision of the executive director.

Response

The commission disagrees that registrations to use permits by rule promulgated under 30 TAC Chapter 106 are the same as registrations to use an air quality standard permit. While permits by rule and air quality standard permits share similar features, there are no permits by rule that require a decision by the executive director to approve or deny the registration following public notice and comment. Therefore, permits by rule do not involve executive director decisions subject to the motion to overturn process.

Comment

State Representative Armando L. Walle supports the proposed amendment to align TCEQ rules with statutory requirements.

Response

The commission appreciates the support for the proposed rule-making. No changes were made in response to this comment.

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state; and TWC, §5.122, which authorizes the commission to delegate uncontested matters to the executive director. The amendments are also adopted under Texas Health and Safety Code (THSC), §382.011, which authorizes the commission to control the quality of the state's air; THSC, §382.017, which authorizes the commission to adopt any rules necessary to carry out its powers and duties to control the quality of the state's air; and THSC, §382.061, which concerns the delegation of powers and duties from the commission to the executive director. In addition, the amendments are also adopted under Texas Government Code (Tex. Gov't Code), §2001.004, which requires state agencies to adopt procedural rules and Tex. Gov't Code, §2001.006, which authorizes state agencies to adopt rules or take other administrative action that the agency deems necessary to implement legislation.

The rulemaking implements TWC, §§5.013, 5.102, 5.103, and 5.122; and THSC, §§382.011, 382.017, and 382.061.

§50.131. Purpose and Applicability.

(a) The purpose of this subchapter is to delegate authority to the executive director and to specify applications on which the executive director may take action on behalf of the commission. This subchapter does not affect the executive director's authority to act on an application where that authority is delegated elsewhere.

(b) This subchapter applies to applications that are administratively complete on or after September 1, 1999 and to certifications of Water Quality Management Plan (WQMP) updates. Except as provided by subsection (c) of this section, this subchapter applies to:

- (1) air quality permits under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification);
- (2) appointments to the board of directors of districts created by special law;
- (3) certificates of adjudication;

(4) district matters under Texas Water Code (TWC), Chapters 49 - 66;

(5) districts' proposed impact fees, charges, assessments, or contributions approvable under Texas Local Government Code, Chapter 395;

(6) extensions of time to commence or complete construction;

(7) industrial and hazardous waste permits;

(8) municipal solid waste permits;

(9) on-site wastewater disposal system permits;

(10) radioactive waste or radioactive material permits or licenses;

(11) underground injection control permits;

(12) water rights permits;

(13) wastewater permits;

(14) weather modification measures permits;

(15) driller licenses under TWC, Chapter 32;

(16) pump installer licenses under TWC, Chapter 33;

(17) irrigator or installer registrations under TWC, Chapter 34; and

(18) municipal management district matters under Texas Local Government Code, Chapter 375.

(c) In addition to those things excluded from coverage under §50.102 of this title (relating to Applicability), this subchapter does not apply to:

(1) air quality standard permits under Chapter 116 of this title, except for air quality standard permits that require a decision by the executive director;

(2) air quality exemptions from permitting and permits by rule under Chapter 106 of this title (relating to Permits by Rule) except for concrete batch plants which are not contiguous or adjacent to a public works project;

(3) consolidated proceedings covering additional matters not within the scope of subsection (b) of this section;

(4) district matters under TWC, Chapters 49 - 66, as follows:

(A) an appeal under TWC, §49.052 by a member of a district board concerning his removal from the board;

(B) an application under TWC, Chapter 49, Subchapter K, for the dissolution of a district;

(C) an application under TWC, §49.456 for authority to proceed in bankruptcy;

(D) an appeal under TWC, §54.239, of a board decision involving the cost, purchase, or use of facilities; or

(E) an application under TWC, §54.030 for conversion of a district to a municipal utility district;

(5) actions of the executive director under Chapters 101, 111 - 115, 117, and 118 of this title (relating to General Air Quality Rules; Control of Air Pollution From Visible Emissions and Particulate Matter; Control of Air Pollution From Sulfur Compounds; Standards of Performance for Hazardous Air Pollutants and for Designated Facilities and Pollutants; Control of Air Pollution From Motor Vehicles; Control of Air Pollution From Volatile Organic Compounds; Control of Air Pollution From Nitrogen Compounds; and Control of Air Pollution Episodes);

(6) all compost facilities authorized to operate by registration under Chapter 332 of this title (relating to Composting); and

(7) an application for creation of a municipal management district under Texas Local Government Code, Chapter 375.

(d) Regardless of subsection (b) or (c) of this section, when the rules governing a particular type of application allow a motion for reconsideration, §50.139(b) - (f) of this title (relating to Motion to Overturn Executive Director's Decision) applies. If the rules under which the executive director evaluates a registration application provide criteria for evaluating the application, the commission's reconsideration will be limited to those criteria.

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

Filed with the Office of the Secretary of State on September 29, 2023.

TRD-202303609

Charmaine Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Effective date: October 19, 2023

Proposal publication date: July 14, 2023

For further information, please call: (512) 239-2678

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REVIEW OF AGENCY RULES

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039.

Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Public Utility Commission of Texas

Title 16, Part 2

The Public Utility Commission of Texas (commission) publishes this notice of intention to review Chapter 26, Substantive Rules Applicable to Telecommunications Service Providers, in accordance with Texas Government Code §2001.039, Agency Review of Existing Rules. The text of the rule sections will not be published. The text of the rules may be found in the Texas Administrative Code, Title 16, Economic Regulation, Part 2, or through the commission's website at www.puc.texas.gov.

Texas Government Code §2001.039 requires that each state agency review and readopt, readopt with amendments, or repeal the rules adopted by that agency pursuant to Texas Government Code, Chapter 2001, Subchapter B, Rulemaking. As required by Texas Government Code §2001.039(e), this review is to assess whether the reasons for adopting or readopting a rule continue to exist. The commission requests specific comments from interested persons on whether the reasons for adopting each rule section in Chapter 26 continue to exist.

The commission has conducted a review of the rules based on comments received in response to the preliminary notice published in the *Texas Register* on March 3, 2023, at (48 TexReg 1368) and proposes repeals and amendments of several rules throughout the chapter. The commission contemporaneously proposes the repeals and amendments in the Proposed Rules section of the *Texas Register*.

If it is determined during this review that any other section of Chapter 26 needs to be repealed or amended, the repeal or amendment will be initiated under a separate proceeding. Thus, this notice of intention to review Chapter 26 has no effect on the sections as they currently exist.

Interested persons may file comments on the review of Chapter 26 electronically through the interchange on the commission's website or may submit comments to the filing clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, by October 27, 2023. When filing comments, interested persons are requested to comment on the sections in the same order they are found in the chapter and to clearly designate which section is being commented upon. All comments should refer to Project Number 54589.

The notice of intention to review Chapter 26 is proposed for publication under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002, which provides the commission with the authority to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction and Texas Government Code §2001.039 which requires each state agency to review its rules every four years.

Cross Reference to Statutes: Texas Utilities Code Annotated, Title II, Public Utility Regulatory Act, §14.002; Texas Government Code §2001.039.

TRD-202303588

Adriana Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: September 28, 2023



Department of State Health Services

Title 25, Part 1

The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of State Health Services (DSHS) proposes to review and consider for readoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 25, Part 1, of the Texas Administrative Code:

Chapter 97, Communicable Diseases

Subchapter A - Control of Communicable Diseases

Subchapter B - Immunization Requirements in Texas Elementary and Secondary Schools and Institutions of Higher Education

Subchapter C - Consent for Immunization

Subchapter D - Statewide Immunization of Children in Certain Facilities and by Hospitals, Physicians, and Other Health Care Providers

Subchapter E - Provision of Anti-Rabies Biologicals

Subchapter F - Sexually Transmitted Diseases Including Acquired Immunodeficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV)

Subchapter G - Vaccination Stamps

Subchapter H - Tuberculosis Screening for Jails and Other Correctional Facilities

Subchapter I - Immunization Requirements for Residents of Texas Nursing Homes

Subchapter K - Respiratory Syncytial Virus

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 97, Communicable Diseases, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to HHSRulesCoordinationOffice@hhs.texas.gov. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register*.

The text of the rule sections being reviewed will not be published, but may be found in Title 25, Part 1, of the Texas Administrative Code or on the Secretary of State's website at State Rules and Open Meetings (texas.gov).

TRD-202303595
Jessica Miller
Director, Rules Coordination Office
Department of State Health Services
Filed: September 29, 2023



The Texas Health and Human Services Commission (HHSC), on behalf of Texas Department of State Health Services (DSHS), proposes to review and consider for readoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 25, Part 1, of the Texas Administrative Code:

- Chapter 296, Texas Asbestos Health Protection
 - Subchapter A. General Provisions
 - Subchapter B. Definitions
 - Subchapter C. Standards of Conduct
 - Subchapter D. License and Registration
 - Subchapter E. Training Provider License and Training Courses
 - Subchapter F. License and Registration Fees
 - Subchapter G. State Licensing Examination
 - Subchapter H. License and Registration Provisions Related to Military Service Members, Military Veterans, and Military Spouses
 - Subchapter I. Accreditation
 - Subchapter J. Exemptions
 - Subchapter K. Asbestos Management in a Public Building, Commercial Building, or Facility
 - Subchapter L. General Requirements, and Practices and Procedures for Asbestos Abatement in a Public Building
 - Subchapter M. Alternative Asbestos Practices and Procedures in a Public Building
 - Subchapter N. Notifications
 - Subchapter O. Inspections and Investigations
 - Subchapter P. Recordkeeping
 - Subchapter Q. Compliance

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 296, Texas Asbestos Health Protection, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to

HHSRulesCoordinationOffice@hhs.texas.gov. When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 296" in the subject line. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register*.

The text of the rule sections being reviewed will not be published, but may be found in Title 25, Part 1, of the Texas Administrative Code or on the Secretary of State's website at State Rules and Open Meetings (texas.gov).

TRD-202303684
Jessica Miller
Director, Rules Coordination Office
Department of State Health Services
Filed: October 4, 2023



The Texas Health and Human Services Commission (HHSC), on behalf of Texas Department of State Health Services (DSHS), proposes to review and consider for readoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 25, Part 1, of the Texas Administrative Code:

- Chapter 297, Indoor Air Quality
 - Subchapter A Government Buildings

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 297, Indoor Air Quality, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to HHSRulesCoordinationOffice@hhs.texas.gov.

When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 297" in the subject line. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register*.

The text of the rule sections being reviewed will not be published, but may be found in Title 25, Part 1, of the Texas Administrative Code or on the Secretary of State's website at State Rules and Open Meetings (texas.gov).

TRD-202303685
Jessica Miller
Director, Rules Coordination Office
Department of State Health Services
Filed: October 4, 2023



Adopted Rule Reviews

Commission on State Emergency Communications

Title 1, Part 12

The Commission on State Emergency Communications (CSEC) has concluded the statutory review of its Chapter 254 rules. Based on its review, CSEC readopts without amendment §§254.1, 254.3, and 254.4. In the Adopted Rules section of this issue of the *Texas Register*, CSEC adopts amendments to §254.2, relating to CSEC's Poison Control Coordinating Committee, to extend the duration of the committee to September 1, 2029.

CSEC's notice of intent to review its Chapter 254 rules was published in the August 11, 2023 issue of the *Texas Register* (48 TexReg 4401). Proposed amended §254.2 was published in the August 11, 2023 issue of the *Texas Register* (48 TexReg 4359). The review assessed and determined that the original reasons and justifications for adopting each rule continue to exist and remain valid, and are within the agency's legal authority as certified by legal counsel. For amended §254.2, CSEC provides its reasoned justification and certification of legal authority.

No comments were received regarding CSEC's notice of review. This notice concludes CSEC's review of its Chapter 254 rules.

TRD-202303581

Patrick Tyler

General Counsel

Commission on State Emergency Communications

Filed: September 28, 2023



Health and Human Services Commission

Title 26, Part 1

The Health and Human Services Commission (HHSC) adopts the review of the chapter below in Title 26, Part 1, of the Texas Administrative Code:

Chapter 551, Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions

Subchapter A Introduction

Subchapter B Application Procedures

Subchapter C Standards for Licensure

Subchapter D General Requirements for Facility Construction

Subchapter F Inspections, Surveys, and Visits

Subchapter G Abuse, Neglect, and Exploitation; Complaint and Incident Reports and Investigations

Subchapter H Enforcement

Subchapter J Respite Care

Subchapter L Provisions Applicable to Facilities Generally

Notice of the review of this chapter was published in the August 4, 2023, issue of the *Texas Register* (48 TexReg 4283). HHSC received no comments concerning this chapter.

HHSC has reviewed Chapter 551 in accordance with §2001.039 of the Government Code, which requires state agencies to assess, every four years, whether the initial reasons for adopting a rule continue to exist. The agency determined that the original reasons for adopting all rules in the chapter continue to exist and readopts Chapter 551. Any appropriate amendments to Chapter 551 identified by HHSC in the rule review will be proposed in a future issue of the *Texas Register*.

This concludes HHSC's review of 26 TAC Chapter 551 as required by the Government Code, §2001.039.

TRD-202303599

Jessica Miller

Director, Rules Coordination Office

Health and Human Services Commission

Filed: September 29, 2023



The Health and Human Services Commission (HHSC) adopts the review of the chapter below in Title 26, Part 1, of the Texas Administrative Code:

Chapter 566, Texas Home Living (TxHmL) Program and Community First Choice (CFC) Certification Standards

Notice of the review of this chapter was published in the August 18, 2023, issue of the *Texas Register* (48 TexReg 4527). HHSC received no comments concerning this chapter.

HHSC has reviewed Chapter 566 in accordance with §2001.039 of the Government Code, which requires state agencies to assess, every four years, whether the initial reasons for adopting a rule continue to exist. The agency determined that the original reasons for adopting all rules in the chapter continue to exist and readopts Chapter 566. Any appropriate amendments to Chapter 566 identified by HHSC in the rule review will be proposed in a future issue of the *Texas Register*.

This concludes HHSC's review of 26 TAC Chapter 566 as required by the Government Code, §2001.039.

TRD-202303601

Jessica Miller

Director, Rules Coordination Office

Health and Human Services Commission

Filed: September 29, 2023



Texas Commission on Environmental Quality

Title 30, Part 1

The Texas Commission on Environmental Quality (TCEQ) has completed its Rule Review of 30 Texas Administrative Code (TAC) Chapter 20, Rulemaking, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for readoption, readoption with amendments, or repeal each of its rules every four years. TCEQ published its Notice of Intent to Review these rules in the February 24, 2023, issue of the *Texas Register* (48 TexReg 1157) and an extension of the public comment was published in the April 7, 2023, issue of the *Texas Register* (48 TexReg 1875).

The review assessed whether the initial reasons for adopting the rules continue to exist, and TCEQ has determined that those reasons exist. The rules in Chapter 20 are required because they describe the process TCEQ must use to adopt rules. The rules are necessary to ensure rules adopted by TCEQ comply with Administrative Procedure Act rulemaking requirements and are enforceable.

Public Comment

The public comment period closed on April 14, 2023. TCEQ did not receive comments on the rules review of this chapter.

As a result of the review, TCEQ finds that the reasons for adopting the rules in 30 TAC Chapter 20 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

TRD-202303619

Charmaine Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: September 29, 2023



The Texas Commission on Environmental Quality (TCEQ) has completed its Rule Review of 30 Texas Administrative Code (TAC) Chapter 25, Environmental Testing Laboratory Accreditation and Certification, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for re-adoption, re-adoption with amendments, or repeal each of its rules every four years. TCEQ published its Notice of Intent to Review these rules in the January 20, 2023, issue of the *Texas Register* (48 TexReg 230).

The review assessed whether the initial reasons for adopting the rules continue to exist and TCEQ has determined that those reasons exist. The rules in Chapter 25 are required because they provide the requirements for accreditation and certification of environmental testing laboratories. Texas Water Code (TWC), §5.134 requires, with certain exceptions, all environmental testing laboratory data and analyses used in TCEQ decisions regarding any matter under TCEQ's jurisdiction relating to permits or other authorizations, compliance matters, enforcement action, or remedial action must be from an accredited environmental testing laboratory. The rules are specifically required by TWC, §5.802 which requires TCEQ to adopt rules for the voluntary environmental testing laboratory accreditation program.

The rules are necessary to ensure the data used by TCEQ in its decisions are of known and documented quality.

Public Comment

The public comment period closed on February 21, 2023. TCEQ did not receive comments on the rules review of this chapter.

As a result of the review, TCEQ finds that the reasons for adopting the rules in 30 TAC Chapter 25 continue to exist and re-adopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

TRD-202303623

Charmaine Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: September 29, 2023



The Texas Commission on Environmental Quality (commission) has completed its Rule Review of 30 Texas Administrative Code (TAC) Chapter 33, Consolidated Permit Processing, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for re-adoption, re-adoption with amendments, or repeal each of its rules every four years. The commission published its Notice of Intent to Review these rules in the May 5, 2023, issue of the *Texas Register* (48 TexReg 2394).

The review assessed whether the initial reasons for adopting the rules continue to exist and the commission has determined that those reasons exist. The rules in 30 TAC Chapter 33 are required because they implement House Bill 1228, 75th Texas Legislature, 1997, codified in the Texas Water Code, Chapter 5, Subchapter J, Consolidated Permit Processing. Chapter 33 allows the commission to issue, on the request of the applicant, a consolidated permit. If the plant, facility, or site is required to have more than one permit and the applications for all permits are filed within a 30-day period, the commission may conduct coordinated application reviews. Federal operating permits may not be consolidated with other permits under this chapter.

Public Comment

The public comment period closed on June 6, 2023. The commission did not receive comments on the rules review of this chapter.

As a result of the review the commission finds that the reasons for adopting the rules in 30 TAC Chapter 33 continue to exist and re-adopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

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Texas Commission on Environmental Quality

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The Texas Commission on Environmental Quality (TCEQ) has completed its Rule Review of 30 Texas Administrative Code (TAC) Chapter 90, Innovative Programs, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for re-adoption, re-adoption with amendments, or repeal each of its rules every four years. TCEQ published its Notice of Intent to Review these rules in the May 5, 2023, issue of the *Texas Register* (48 TexReg 2394).

The review assessed whether the initial reasons for adopting the rules continue to exist and TCEQ has determined that those reasons exist. The rules in Chapter 90 are required because Chapter 90 implements the requirement for TCEQ to adopt rules in Texas Water Code (TWC), §5.755, relating to incentives for enhanced environmental performance based on a person's compliance history and any voluntary measures undertaken by the person to improve environmental quality.

The chapter implements TWC, §5.758, which requires TCEQ to adopt rules to specify procedures for obtaining an exemption from a statute or commission rule if the applicant for a Regulatory Flexibility Order proposes to control or abate pollution by use of an alternative method or standard that is as protective or more protective than the standard prescribed by the statute or commission rule that would otherwise apply.

Finally, Chapter 90 also implements TWC, §5.127, which requires TCEQ to adopt rules for a comprehensive program that provides regulatory incentives to encourage the use of environmental management systems.

Public Comment

The public comment period closed on June 6, 2023. TCEQ did not receive comments on the rules review of this chapter.

As a result of the review TCEQ finds that the reasons for adopting the rules in 30 TAC Chapter 90 continue to exist and re-adopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

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Charmaine Backens

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The Texas Commission on Environmental Quality (TCEQ) has completed its Rule Review of 30 Texas Administrative Code (TAC) Chapter 116, Control of Air Pollution by Permits for New Construction or Modification, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for re-adoption, re-adoption with amendments, or repeal each of its rules every four years. TCEQ published its Notice of Intent to

Review these rules in the May 5, 2023, issue of the *Texas Register* (48 TexReg 2394).

The review assessed whether the initial reasons for adopting the rules continue to exist, and the commission has determined that those reasons exist for the rules in Chapter 116, Subchapters A - G and I - M.

The rules in Chapter 116 are required because the Texas Clean Air Act (TCAA), Texas Health and Safety Code, Chapter 382, authorizes TCEQ to issue permits and permit amendments to construct or modify a facility that may emit air contaminants. The rules in Chapter 116 establish the requirements for the New Source Review (NSR) permitting program and are also necessary to effectively administer the requirements of the TCAA and applicable portions of the federal Clean Air Act (FCAA), 42 United States Code §7401, *et seq.*

The types of air quality authorizations included in the rules in Chapter 116 are: de minimis facilities and sources; standard permits; NSR case-by-case permits; flexible permits; prevention of significant deterioration permits; and nonattainment permits. The rules provide specific requirements for applications for permit renewals, plant-wide applicability limits, portable facilities, and FCAA, §112(g) hazardous air pollutant permits, as well as emergency orders to respond to catastrophes.

The chapter includes rules adopted to implement statutes with deadlines for issuing permits for electric generating facilities, multiple plant permits, and permits for specific designated facilities (commonly referred to as FutureGen).

Finally, the chapter also includes rules to implement best available retrofit technology associated with the Regional Haze regulations adopted by the United States Environmental Protection Agency (EPA).

Most of the rules in Chapter 116 are incorporated into Texas' State Implementation Plan (SIP) to meet the requirements of FCAA, Title I.

Public Comment

The public comment period closed on June 6, 2023. Comments were received on this review from the EPA Region 6.

Comments

EPA provided a variety of comments and concerns about the major and minor NSR provisions. A summary of EPA's comments is provided below:

A. TCEQ should evaluate 30 TAC §116.119 to determine whether threshold or emission limits below which an emission unit needs to obtain NSR authorization, and thus included in a title V permit if applicable, should be established. Additionally, this rule does not identify applicable permits by rule (PBR) considered as insignificant emission units. The TCEQ further implements this rule in determining exclusion of insignificant emission units from title V permits; however, this rule has not been approved into Texas' SIP.

B. TCEQ should consider revising 30 TAC §116.151 to clarify that nonattainment permit requirements are linked to an area's designation status for air pollutants at the time of permit issuance. This recommendation is to ensure that the language in 30 TAC §116.151 aligns with the language in 30 TAC §116.150(a) which includes "...as of the date of issuance of the permit...". EPA also emphasizes that netting applies to any source meeting the definition of major source based on sitewide emissions, not just those holding a major source permit.

C. EPA stated that there are concerns that PBRs are not being appropriately incorporated into NSR permits. This potentially allows for circumvention of major NSR requirements by not establishing enforceable limits and avoids cumulative increases through multiple PBR authorizations. TCEQ should review the scope and implementation of

30 TAC §116.116 to ensure internal commission guidance aligns with regulations on the use of PBRs in lieu of permit amendments and how those PBRs are incorporated into permits when a permit is amended or renewed.

D. TCEQ should review rules and/or guidance to ensure that the appropriate definition of Best Available Control Technology (BACT) is implemented for major sources and that the definition of BACT used for Prevention of Significant Deterioration BACT determinations is no less stringent than the Federal definition of BACT.

E. EPA stated that Plant-Wide Applicability Limit (PAL) permits are frequently renewed at existing PAL when emissions calculated in accordance with 40 CFR 52.21(aa)(6) are well below 80 percent of the current PAL. TCEQ should review the scope and implementation of PAL permits rules to ensure limits are properly adjusted at renewal and include a written rationale for the limit which is subject to public review and comment.

F. TCEQ should review the use of "retrospective review" under Chapter 116. Specifically, guidance that the use of rules and attainment status that were in place at the time a source was constructed or modified is used instead of rules and major source thresholds and applicability in place at the time of the retrospective review. EPA expressed concern that this could result in a source being authorized in violation of an existing National Ambient Air Quality Standards. EPA acknowledged that the opposite could also occur where a source could be subject to more stringent requirements if the designation is less stringent.

G. EPA stated that, at the time of SIP approval, their interpretation of 30 TAC §116.120 was that a permit or permit amendment was "*automatically void*" if one of the conditions in §116.120(a)(1)-(3) occurs unless there is a request for an extension of time; however, the rule as written does not expressly state when the extension must be requested. TCEQ should review the scope and implementation of 30 TAC §116.120 to clarify the timing for submitting construction extension requests as well as ensure appropriate health impacts reviews and reviews of BACT/Lowest Achievable Emission Rate/netting or offsets are completed prior to approval of a second extension and limit executive director discretion on extension requests.

H. EPA stated that they would like TCEQ to consider environmental justice principles in all permitting activities, particularly in ensuring active engagement with communities located near facilities and potentially impacted by permitting actions. TCEQ should also review all rules to consider what authority TCEQ currently has when considering other permitted facilities within the area of a pending permitting action to consider how all facilities may contribute to community risk.

Response to all comments

TCEQ recognizes that the EPA has expressed concern about several aspects of the Chapter 116 rules implementing the NSR permitting program. As stated in the May 5, 2023, *Texas Register* notice of this rules review, TCEQ is not considering any rule amendments to the Chapter 116 rules as part of this review action. The NSR authorization mechanism implemented by Chapter 116 is an essential component of the agency's air permitting program, and TCEQ finds that the reasons that the Chapter 116 rules were initially adopted continue to exist. TCEQ is readopting Chapter 116 without change. TCEQ will consider these comments as ongoing stakeholder input for possible future policy or rulemaking action.

As a result of the review, TCEQ finds that the reasons for adopting the rules in 30 TAC Chapter 116 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

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