

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 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 54. SPECIAL PROGRAMS

SUBCHAPTER C. HUMAN TRAFFICKING PREVENTION SIGNS

1 TAC §54.80, §54.81

The Office of the Attorney General (OAG) adopts an amendment to §54.80 and a new rule, §54.81. The rules are adopted without changes to the proposed text published in the August 28, 2020, issue of the *Texas Register* (45 TexReg 6011), and the rules will not be republished.

The title of §54.80 is amended to include the type of business to which the rule applies. Section 54.81 concerns the posting of human trafficking prevention signs at transportation hubs. Section 54.81 implements Government Code §402.0351, which requires the OAG to prescribe the design, content, and manner of display for signs posted at transportation hubs.

No written comments were received regarding the rules.

The amendment to §54.80 is adopted in accordance with Business and Commerce Code §102.101, which requires the OAG to adopt rules prescribing the design, content, and manner of display for human trafficking prevention signs posted at sexually oriented businesses. Section 54.81 is adopted in accordance with Government Code §402.0351, which requires the OAG to adopt rules prescribing the design, content, and manner of display for human trafficking prevention signs posted at transportation hubs.

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 October 26, 2020.

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS

SUBCHAPTER BB. COMMISSIONER'S

RULES ON REPORTING REQUIREMENTS

19 TAC §61.1025

The Texas Education Agency (TEA) adopts §61.1025, concerning Public Education Information Management System (PEIMS) data and reporting standards. The amendment is adopted without changes to the proposed text as published in the August 21, 2020 issue of the *Texas Register* (45 TexReg 5767) and will not be republished. The adopted amendment implements changes made by House Bill (HB) 3, 86th Texas Legislature, 2019, by incorporating an additional reporting requirement about students who withdraw from or otherwise no longer attend public school.

REASONED JUSTIFICATION: Section 61.1025 defines the data and reporting standards for the PEIMS established by Texas Education Code (TEC), §48.008 and §48.009, as transferred, redesignated, and amended by HB 3, 86th Texas Legislature, 2019.

The adopted amendment to §61.1025 codifies the requirement to include pregnancy as a reason a student withdraws from or otherwise no longer attends public school in the information reported by school districts for students who leave the Texas public school system. Currently, pregnancy is not available as a reporting reason for students who leave Texas public schools.

In addition, the adopted amendment updates references to align with HB 3, which transferred and redesignated TEC, §42.006, to TEC, §48.008 and §48.009.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began August 21, 2020, and ended October 5, 2020. No public comments were received.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §48.008, as transferred, redesignated, and amended by House Bill (HB) 3, 86th Texas Legislature, 2019, which establishes the Public Education Information Management System (PEIMS), a system school districts shall use to report information to the agency; and TEC, §48.009, as transferred, redesignated, and amended by HB 3, 86th Texas Legislature, 2019, which specifies certain required reporting by school districts through PEIMS.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §48.008 and §48.009.

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 October 21, 2020.

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Proposal publication date: August 21, 2020

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 111. CONTROL OF AIR POLLUTION FROM VISIBLE EMISSIONS AND PARTICULATE MATTER

SUBCHAPTER B. OUTDOOR BURNING

30 TAC §111.209

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendment to 30 TAC §111.209.

The amendment to §111.209 is adopted *without changes* to the proposed text as published in the May 22, 2020, issue of the *Texas Register* (45 TexReg 3425) and, therefore, will not be republished.

The commission will submit amended §111.209 to the United States Environmental Protection Agency (EPA) as a revision to the State Implementation Plan (SIP).

Background and Summary of the Factual Basis for the Adopted Rule

House Bill (HB) 2386, 85th Texas Legislature, 2017, amended Texas Health and Safety Code (THSC), §382.018(d), Outdoor Burning of Waste and Combustible Material. THSC, §382.018(d), states that the commission may not control or prohibit outdoor burning of waste consisting of trees, brush, grass, leaves, branches, trimmings, or other plant growth if certain conditions have been met. Specifically, burning is allowed if the person burning the waste is doing so at a site designated for consolidated burning of waste generated from specific residential properties that is located in a county with a population of less than 50,000, located outside of a municipality. Furthermore, the burn is allowed if the burn is supervised at the time of the burning by an employee of a fire department acting in the scope of the person's employment. HB 2386 added the phrase "a volunteer firefighter acting in the scope of the firefighter's volunteer duties" to THSC, §382.018(d)(1)(D)(ii). The implementation of HB 2386 requires an amendment to §111.209(5) to include volunteer firefighters, acting within the scope of their duties, as an option to fulfill the requirements for providing supervision of the burning of waste.

Demonstrating Noninterference under Federal Clean Air Act, Section 110(l)

The adopted revision to add volunteer firefighters acting in the scope of the firefighter's volunteer duties to §111.209(5) will not negatively impact the state's attainment of the particulate matter National Ambient Air Quality Standard (NAAQS), will not interfere with control measures for NAAQS compliance, and will not prevent reasonable further progress toward attainment of the particulate matter NAAQS.

The outdoor burning rules in Chapter 111, Subchapter B, are included in the SIP as part of the state's strategy for control of particulate matter emissions. The revision will not interfere with applicable requirements for attainment and for reasonable further progress toward attainment, or with other applicable requirements of the federal Clean Air Act. Allowing volunteer firefighters to supervise the burning of specific waste at a designated site should allow paid fire department employees to conduct more important duties. Furthermore, allowing volunteer firefighters to supervise these types of burning activities, will allow some counties that meet the population requirements, but might not have a paid firefighting department in the county, to conduct these types of previously approved SIP activities.

Section Discussion

§111.209, *Exception for Disposal Fires*

The commission adopts the amendment to §111.209(5) to add the phrase "or a volunteer firefighter" to the placard requirement in §111.209(5)(A). The commission also adopts the amendment to §111.209(5)(F) to add language that a volunteer firefighter acting in the scope of the firefighter's volunteer duties is allowed to directly supervise the burning of the waste material per the requirements in §111.209(5). Adopted rule language also notes that the volunteer firefighter is required to notify the appropriate commission's regional office with a telephone or electronic facsimile notice, 24 hours in advance of any scheduled supervised burn, which is presently a requirement of a fire department employee that is planning to supervise a burn.

Final Regulatory Impact Determination

The commission reviewed the adopted rulemaking in light of the Regulatory Impact Analysis (RIA) requirements of Texas Government Code, §2001.0225, and determined that the adopted rulemaking is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute, and in addition, if it did meet the definition, would not be subject to the requirements to prepare an RIA.

A "Major environmental rule" means 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 will add volunteer firefighters, acting within the scope of their duties, to fulfill the requirements for providing supervision of the burning of waste at a designated site. Therefore, the adopted amendment will not 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.

In addition, an RIA is not required because the rule does not meet any of the four applicability criteria for requiring a regulatory analysis of a "Major environmental rule" as defined in the Texas Government Code. Texas Government Code, §2001.0225, ap-

plies only to a major environmental rule the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not exceed a standard set by federal law. In addition, this rulemaking does not exceed an express requirement of state law and does not exceed a requirement of a delegation agreement or contract to implement a state or federal program. Finally, this rulemaking is not adopted solely under the general powers of the agency but is specifically authorized by the provisions cited in the Statutory Authority section of this preamble.

The requirement to provide a fiscal analysis of regulations in the Texas Government Code was amended by Senate Bill (SB) 633, 75th Texas Legislature, 1997. The intent of SB 633 was to require agencies to conduct an RIA of extraordinary rules. These are identified in the statutory language as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program, or are adopted solely under the general powers of the agency. With the understanding that this requirement would seldom apply, the commission provided a cost estimate for SB 633 that concluded, "based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application." The commission also noted that the number of rules that would require assessment under the provisions of SB 633 was not large. This conclusion was based, in part, on the criteria set forth in SB 633 that exempted rules from the full RIA unless the rule was a major environmental rule that exceeds a federal law. Because of the ongoing need to meet federal requirements, the commission routinely proposes and adopts rules incorporating or designed to satisfy specific federal requirements. The legislature is presumed to understand this federal scheme. If each rule adopted by the commission to meet a federal requirement was considered to be a major environmental rule that exceeds federal law, then each of those rules would require the RIA contemplated by SB 633. This conclusion is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board in its fiscal notes. The commission contends that the intent of SB 633 was only to require the full RIA for rules that are extraordinary in nature. Any impact the adopted rule may have is no greater than is necessary or appropriate to meet the requirements of the federal Clean Air Act and, in fact, creates no additional impacts since the adopted rule does not exceed the requirement to attain and maintain the NAAQS. For these reasons, the adopted rule falls under the exception in Texas Government Code, §2001.0225(a), because it is required by, and does not exceed, federal law.

The commission consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature revised the Texas Government Code, but left this provision substantially unamended. It is presumed that "when an agency interpretation is in effect at the time the legislature amends the laws without making substantial change in the statute, the legislature is deemed to have accepted the agency's interpretation." (*Central Power & Light Co. v. Sharp*, 919 S.W.2d 485, 489 (Tex. App. Austin 1995), writ denied with per curiam opinion respecting another issue, 960 S.W.2d 617 (Tex. 1997); *Bullock*

v. Marathon Oil Co., 798 S.W.2d 353, 357 (Tex. App. Austin 1990, no writ); *Cf. Humble Oil & Refining Co. v. Calvert*, 414 S.W.2d 172 (Tex. 1967); *Berry v. State Farm Mut. Auto Ins. Co.*, 9 S.W.3d 884, 893 (Tex. App. Austin 2000, no writ); *Southwestern Life Ins. Co. v. Montemayor*, 24 S.W.3d 581 (Tex. App. Austin 2000, pet. denied); and *Coastal Indust. Water Auth. v. Trinity Portland Cement Div.*, 563 S.W.2d 916 (Tex. 1978)).

The commission's interpretation of the RIA requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of "substantial compliance" (Texas Government Code, §2001.035). The legislature specifically identified Texas Government Code, §2001.0225, as falling under this standard. As discussed in this analysis and elsewhere in this preamble, the commission substantially complied with the requirements of Texas Government Code, §2001.0225.

The purpose of the adopted amendment is to add volunteer firefighters, acting within the scope of their duties, to fulfill the requirements for providing supervision of the burning of waste at a designated site. The adopted amendment is not developed solely under the general powers of the agency, but is authorized by specific sections of the THSC, Chapter 382 and the Texas Water Code, which are cited in the Statutory Authority section of this preamble. Therefore, this adopted rulemaking action 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 were received.

Takings Impact Assessment

Under Texas Government Code, §2007.002(5), taking means a governmental action that affects private real property, in whole or in part, or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or the Texas Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect with the market value of the property as if the governmental action is in effect.

The commission completed a takings impact assessment for this rulemaking action under Texas Government Code, §2007.043. The primary purpose of this adopted rulemaking action, as discussed elsewhere in this preamble, is to adhere to the directives of the legislature. The adopted amendment intends to add volunteer firefighters, acting within the scope of their duties, to fulfill the requirements for providing supervision of the burning of waste at a designated site. The adopted rulemaking action will not create any additional burden on private real property. The adopted rulemaking action will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The adopted rulemaking also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the

governmental action. Therefore, the adopted rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found it is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

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

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

Effect on Sites Subject to the Federal Operating Permits Program

Chapter 111 contains applicable requirements for sites subject to the Federal Operating Permits Program. However, the adopted changes to Chapter 111 are so minor that they are not expected to require any revisions to federal operating permits or have any other significant effect on holders of federal operating permits.

Public Comment

The commission offered a public hearing on June 1, 2020. The comment period closed on June 23, 2020. The commission did not receive any comments.

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.102, General Powers, 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, Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and TWC, §5.105, General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission; and Texas Health and Safety Code (THSC), §382.017, Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendment is also adopted under THSC, §382.002, Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; THSC, §382.018, which authorizes the commission to control outdoor burning; and THSC, §382.085, which prohibits unauthorized air emissions.

The adopted amendment will implement THSC, §382.018, and House Bill 2386 (85th Texas Legislature, 2017).

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 October 23, 2020.

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Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

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For further information, please call: (512) 239-1806

CHAPTER 319. GENERAL REGULATIONS INCORPORATED INTO PERMITS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendments to §§319.1, 319.2, 319.4 - 319.9, 319.11, 319.12, 319.22, 319.23, 319.25, 319.28, and 319.29; and the repeal of §319.3.

Amended §319.12 is adopted *with changes* to the proposed text as published in the June 5, 2020, issue of the *Texas Register* (45 TexReg 3732), and, therefore, will be republished. The amendments to §§319.1, 319.2, 319.4 - 319.9, 319.11, 319.22, 319.23, 319.25, 319.28, and 319.29; and the repeal of §319.3 are adopted *without changes* to the proposed text and, therefore, will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

The United States Environmental Protection Agency (EPA) periodically updates the list of approved federal Clean Water Act (CWA) analytical methods to reflect advances in technology, refine quality assurance and quality control requirements, and provide regulated entities more choices of approved compliance monitoring methods. On August 28, 2017, the EPA published the "Clean Water Act Methods Update Rule for the Analysis of Effluent" in the *Federal Register* (Volume 82, No. 165, pp. 40836-40941). In addition to changes in the analytical methods, revised 40 Code of Federal Regulations (CFR) §136.5 clarifies that while requests for a limited-use alternate test procedure (ATP) are sent to the state agency responsible for issuance of National Pollutant Discharge Elimination System (NPDES) permits, approval can only be granted by the EPA's Regional ATP Coordinator. Current rules in Chapter 319 conflict with updated 40 CFR §136.5 by indicating ATP approval will come from the TCEQ. This rulemaking will amend Chapter 319 to clarify the procedure for ATP approval in accordance with the EPA's 2017 federal CWA Methods Update Rule.

Section by Section Discussion

The adopted rulemaking will clarify the procedures for approval of ATPs, remove inconsistencies, and improve readability. The adopted rulemaking will also include administrative and technical changes.

The commission adopts the amendment to the title of Chapter 319 from "General Regulations Incorporated into Permits" to "General Requirements for Wastewater Permits" to provide clarity.

The commission adopts the replacement of the term "waste" with "wastewater" throughout the chapter to clarify that regulations apply to wastewater permits (§§319.1, 319.28, and 319.29) and to replace "disposal" and "treatment" with "application", where

appropriate, when describing no discharge permits (i.e., Texas Land Application Permits or TLAPs) throughout for clarity and consistency (§319.2 and §319.5). The commission adopts the removal of "or his designee" throughout the chapter when referring to actions by the executive director since such reference is unnecessary.

The commission adopts the amendment to Chapter 319 to update references to ensure current and accurate cross-references, improve readability, improve rule structure, and use consistent terminology. These changes are non-substantive and may not specifically be discussed in the Section by Section Discussion of this preamble.

§319.3, Prior Permit Reporting Requirements

The commission repeals §319.3 in its entirety. This section was determined to be obsolete in the agency's last rules review of this chapter (Non-Rule Project No. 2019-028-319-OW). This section applied to reporting procedures for permits issued prior to December 19, 1969 until reporting forms are developed by the executive director. Discharge monitoring reporting (DMR) forms have been developed and are available for all permittees to report their effluent monitoring results. All wastewater permits require that monitoring results be submitted online using the Net-DMR reporting system available through the TCEQ website unless the permittee requests and obtains an electronic reporting waiver.

§319.5, Required Sampling Location and Frequency of Analysis or Measurement

The commission adopts the amendment to §319.5(e) to specify that the executive director may establish more frequent monitoring schedules than provided in Chapter 319. This revision emphasizes the executive director's authority to require more frequent pollutant monitoring to protect human health and the environment. The commission further adopts the amendment to §319.5(e) to replace "locations(s) designated herein" with "sampling point described in the permit" for clarity and plain language usage and to revise the requirements for reporting additional sampling by removing "that indicate permit noncompliance" and removing "The permittee may report results of such monitoring that indicate permit compliance" to clarify that all samples taken shall be included in the discharge monitoring report. The commission also adopts the amendment to §319.5(e) to include "discharge monitoring report or" when describing monthly reporting by the permittee. This revision will use the correct terminology for monthly wastewater reports and provides accuracy.

§319.6, Quality Assurance

The commission adopts the amendment to §319.6 to replace the term "blanks" with "method blanks," replace "standards" with "laboratory control sample," and replace "spikes" with "matrix spikes." This amendment will provide clarity and adopt the terminology used in 40 CFR §136.7. The commission also adopts the amendment to specify this section is for wastewater analyses and move Table 4 from Figure: 30 TAC §319.9(d) and place it in §319.6 as Table 1 in Figure: 30 TAC §319.6. This table pertaining to "Required Quality Control Analyses" is better aligned with the information provided in §319.6. In addition, the commission adopts the revision to Figure: 30 TAC §319.6 items A - F to provide clarity.

§319.7, Documentation of Monitoring Activities

The commission adopts the amendment to §319.7(a) to include reference to 30 TAC §305.125(11)(C) for the records required by

permittees instead of providing a list. This revision will improve readability, consolidate the requirements, and provide consistency with the established rule.

The commission adopts the amendment to §319.7(c) to include reference to §305.125(11)(B) and to §319.7(d) to include "discharge monitoring report or" when describing monthly reporting by the permittee. This amendment will use the correct terminology for monthly wastewater reports and provide accuracy.

The commission adopts the removal of §319.7(e) to eliminate redundancy. The imposition of criminal and/or civil penalties is authorized under §305.125(20).

§319.8, Required Signatures for Effluent Reports

The commission adopts the amendment to §319.8 to include reference to §305.128 and remove §319.8(1) - (3) to improve readability and provide consistency with the established rule. The requirement for two signatures predates the TCEQ's assumption of the Texas Pollutant Discharge Elimination System program and is outdated and inconsistent with §305.128.

§319.9, Self-Monitoring and Quality Assurance Schedules

The commission adopts the amendment to the title of the section from "Self-Monitoring and Quality Assurance Schedules" to "Self-Monitoring Frequency" to improve accuracy.

The commission adopts the amendments to the formatting and titles for all tables in this section to improve readability and accuracy. The table items associated with bacteria measurement frequency are now presented in the text of the section to allow easier citation and reference. The table for measurement frequencies for domestic wastewater has been revised by combining the column for "0 to less than 0.10 MGD" with "0.10 to less than 0.50 MGD" into the new column "0 to less than 0.50 MGD" because the contents of these two columns are identical.

The commission adopts the removal of §319.9(d) and relocates and renames Table 4 as Table 1 in Figure: 30 TAC §319.6.

§319.11, Sampling and Laboratory Testing Methods

The commission adopts the amendment to §319.11(c) to revise "Effluents" to "Effluent samples" for clarity.

The commission adopts the amendment to §319.11(d) to specify "the latest edition of" *Water Measurements Manual* and include "published by the" United States Department of the Interior. This revision will provide accuracy and clarity.

The commission adopts the amendment to §319.11(e) to require compliance with 30 TAC Chapter 25, Environmental Testing Laboratory Accreditation and Certification. This change will provide consistency with established rules. The commission further adopts the replacement of "as recommended in" with "according to" for clarity.

The commission adopts the amendment to §319.11(f) to replace "nonstandard" with "alternate" to be consistent with terminology.

§319.12, Alternate Sampling and Laboratory Testing Methods

The commission adopts the amendment to §319.12 to align with federal rules in 40 CFR Part 136. The EPA clarified the provisions for ATPs in the 2017 CWA Methods Update Rule. Revised 40 CFR §136.5 clarifies that while requests for a limited-use ATP are sent to the state agency responsible for issuance of NPDES permits, approval can only be granted by the EPA's Regional ATP Coordinator. Amended §319.12(a) will clarify the procedure for ATP approval to align with federal rules for permits subject to

the CWA, and amended §319.12(b) will establish the procedures for ATP review and approval for state permits and maintain the TCEQ's authority to approve ATPs for TLAPs.

§319.22, *Quality Levels-Inland Waters*

The commission adopts the amendment to §319.22 to specify the section is applicable to inland waters in the text of the section and add a header to the table for clarity.

§319.23, *Quality Levels-Tidal Waters*

The commission adopts the amendment to §319.23 to specify the section is applicable to tidal waters in the text of the section and add a header to the table for clarity.

§319.25, *Sampling and Analysis*

The commission adopts the amendment to §319.25 to include references to other sections in Chapter 319 to provide clarity and eliminate redundancy.

Final Regulatory Impact Determination

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking 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. "Major environmental rule" is defined as 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. This rulemaking will not adversely affect, in a material way, the economy, a section of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The rulemaking adopts changes to Chapter 319 to clarify the procedure for ATP approval in accordance with the EPA's 2017 federal CWA Methods Update Rule. The rulemaking will also remove inconsistencies and improve readability. Amended §319.12(a) will clarify the procedure to review and approve ATPs to align with federal rules and amended §319.12(b) will establish the procedure for ATP approval for state permits. Therefore, the commission finds that this rulemaking is not a "Major environmental rule."

Furthermore, the rulemaking does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225, only applies to a state agency's adoption of a major environmental rule that: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopts a rule solely under the general powers of the agency instead of under a specific state law.

Specifically, the rulemaking will not exceed a standard set by federal law. Also, the rulemaking will not exceed an express requirement of state law or a requirement of a delegation agreement. Finally, the rulemaking was not developed solely under the general powers of the agency but will, in part, clarify the procedure for ATP approval to align with federal rules in 40 CFR Part 136 and establish the procedure for ATP approval for state permits.

Under Texas Government Code, §2001.0225, only a "Major environmental rule" requires a regulatory impact analysis. Because the adopted rulemaking does not constitute a "Major environmental rule," a regulatory impact analysis is not required.

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

Takings Impact Assessment

The commission performed an assessment of this rulemaking in accordance with Texas Government Code, §2007.043. The specific purpose of the adopted rulemaking is to initiate changes to Chapter 319 to clarify the procedure for ATP approval in accordance with the EPA's 2017 federal CWA Methods Update Rule. Revised 40 CFR §136.5 clarifies that while requests for a limited-use ATP are sent to the state agency responsible for issuance of NPDES permits, approval can only be granted by the EPA's Regional ATP Coordinator. The adopted rulemaking will also remove inconsistencies and improve readability. Amended §319.12(a) will clarify the procedure for ATP approval to align with federal rules and amended §319.12(b) will establish the ATP approval procedure for state permits.

This adopted rulemaking will impose no burdens on private real property because the adopted rulemaking neither relates to, nor has any impact on, the use or enjoyment of private real property, and there is no reduction in value of the property as a result of this rulemaking.

Consistency with the Coastal Management Program

The commission reviewed the adopted rules and found that they are neither identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the adopted rules are not subject to the Texas Coastal Management Program.

The commission invited public comment regarding the consistency with the coastal management program during the public comment period. The commission received no public comments.

Public Comment

The comment period closed on July 6, 2020. The commission received no public comments.

SUBCHAPTER A. MONITORING AND REPORTING SYSTEM

30 TAC §§319.1, 319.2, 319.4 - 319.9, 319.11, 319.12

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; TWC, §5.102, which establishes the general authority of the commission necessary to carry out its jurisdiction; TWC, §5.103, which requires the commission, by rule, to establish and approve all general policy of the commission; TWC, §5.105, which establishes the general authority of the commission to adopt rules necessary to carry out its powers and duties under the TWC and other laws of this state; TWC, §26.011, which requires the commission to establish the level of quality to be maintained in and control the quality of the water in the state; TWC, §26.027, which

authorizes the commission to issue permits for the discharge of waste pollutants into or adjacent to water in the state; and TWC, §26.127, which requires the executive director to establish a water quality sampling and monitoring program.

This adopted amendment implements TWC, §26.127.

§319.12. Alternate Sampling and Laboratory Testing Methods.

(a) For Texas Pollutant Discharge Elimination System (TPDES) permits, if a permittee determines the sampling and testing methods required by §319.11 of this title (relating to Sampling and Laboratory Testing Methods) are not suited to its particular situation, the permittee shall make a written request for authorization to use alternate sampling and testing procedures. Applications for alternate sampling and testing procedures shall be submitted to the executive director following the requirements of 40 Code of Federal Regulations §136.5. The permittee shall comply with the sampling and testing requirements in §319.11 of this title until written approval to use alternate methods is received from the United States Environmental Protection Agency. A permittee shall only use procedures included in the references cited in §319.11 of this title unless other test procedures have been specified in the permit.

(b) For non-TPDES permits, if a permittee determines the sampling and testing methods required by §319.11 of this title are not suited to its particular situation, the permittee shall make a written request for authorization to use alternate sampling and testing procedures. Applications for alternate sampling and testing procedures shall be submitted to the executive director. The permittee shall comply with the sampling and testing requirements in §319.11 of this title until written approval to use alternate methods is received from the executive director.

(1) Items that shall be included with an application for alternate sampling and testing procedures are:

- (A) name and address of the applicant;
- (B) Texas Commission on Environmental Quality permit number;
- (C) list of parameters for which alternate procedures are being requested;
- (D) copy of the method of the alternate procedures; and
- (E) justification for the alternate sampling and test procedures.

(2) Additional information such as the comparability of data may also be requested by the executive director.

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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30 TAC §319.3

Statutory Authority

The repeal is adopted under TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; TWC, §5.102, which establishes the general authority of the commission necessary to carry out its jurisdiction; TWC, §5.103, which requires the commission, by rule, to establish and approve all general policy of the commission; TWC, §5.105, which establishes the general authority of the commission to adopt rules necessary to carry out its powers and duties under the TWC and other laws of this state; TWC, §26.011, which requires the commission to establish the level of quality to be maintained in and control the quality of the water in the state; TWC, §26.027, which authorizes the commission to issue permits for the discharge of waste pollutants into or adjacent to water in the state; and TWC, §26.127, which requires the executive director to establish a water quality sampling and monitoring program. The repeal is also in accordance with implementing the United States Environmental Protection Agency's (EPA's) National Pollutant Discharge Elimination System Electronic Reporting Rule, which became effective on December 21, 2015. This EPA Rule has been implemented by program staff via the NetDMR reporting requirements.

The repeal implements TWC, §26.127.

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 B. HAZARDOUS METALS

30 TAC §§319.22, 319.23, 319.25, 319.28, 319.29

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; TWC, §5.102, which establishes the general authority of the commission necessary to carry out its jurisdiction; TWC, §5.103, which requires the commission, by rule, to establish and approve all general policy of the commission; TWC, §5.105, which establishes the general authority of the commission to adopt rules necessary to carry out its powers and duties under the TWC and other laws of this state; TWC, §26.011, which requires the commission to establish the level of quality to be maintained in and control the quality of the water in the state; TWC, §26.027, which authorizes the commission to issue permits for the discharge of waste pollutants into or adjacent to water in the state; and TWC, §26.127, which requires the executive director to establish a water quality sampling and monitoring program.

This adopted amendment implements TWC, §26.127.

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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