

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST
for Rulemaking Adoption

AGENDA REQUESTED: November 2, 2016

DATE OF REQUEST: October 14, 2016

INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Derek Baxter, (512) 239-2613

CAPTION: Docket No. 2016-0336-RUL. Consideration of the adoption of amended Sections 9.11 - 9.13 and 9.15 - 9.17 of 30 TAC Chapter 9, Training.

The adopted rulemaking would implement House Bill 3337, 84th Texas Legislature, 2015, Regular Session, by updating training and education procedures for agency administrators and employees. The proposed rules were published in the July 8, 2016, issue of the *Texas Register* (41 TexReg 4947). (Amber Kaskie, Yen Tran) (Rule Project No. 2015-039-009-AD)

John Racanelli
Deputy Director

Melissa Applegate
Division Director

Derek Baxter
Agenda Coordinator

Copy to CCC Secretary? NO X YES

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** October 14, 2016

Thru: Bridget C. Bohac, Chief Clerk
Richard A. Hyde, P.E., Executive Director

From: John Racanelli, Deputy Director
Office of Administrative Services

Docket No.: 2016-0336-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 9, Training
HB 3337: Education and Training
Rule Project No. 2015-039-009-AD

Background and reason(s) for the rulemaking:

House Bill (HB) 3337, 84th Texas Legislature, 2015, requires the Texas Commission on Environmental Quality (TCEQ, agency, or commission) to adopt rules requiring that before an agency administrator or employee may be reimbursed for tuition expenses, the Executive Director must authorize the tuition reimbursement payment (Texas Government Code, §656.048). HB 3337, which became effective September 1, 2015, was intended to provide the appropriate executive-level oversight for authorizing payments for potentially costly reimbursements. Along with revisions to agency policy, 30 Texas Administrative Code (TAC) Chapter 9, Subchapter B, Employee Training and Education, will also need to be updated to reflect the changes of HB 3337.

Scope of the rulemaking:

In addition to updating §9.15, Reimbursement, the adopted rulemaking will also update other areas of Chapter 9 to improve clarity and reflect current TCEQ training procedures.

Agency staff adopts amending §9.11, Definitions, and §9.12, Scope, to reduce repetition in the existing rules.

Additionally, Office of Administrative Services, Human Resources and Staff Services (HRSS) Division has recently removed outdated program language and clarified the functions of the Training Unit in its revisions to Operating Policies and Procedures (OPP) 16.01, Training and Development. Section 9.13, Eligibility, and §9.16, Training Records, will be revised accordingly.

Lastly, TCEQ adopts amending §9.17, At-Will Employment Status, to clarify that participation in the agency's training and education programs does not affect an employee's at-will status.

A.) Summary of what the rulemaking will do:

The rulemaking will reflect the legislative-mandated changes, employ HRSS updated training language, and clean up the rule language overall.

B.) Scope required by federal regulations or state statutes:

Re: Docket No. 2016-0336-RUL

Effective September 1, 2015, HB 3337 requires the commission to adopt rules requiring that before an agency administrator or employee may be reimbursed for tuition expenses, the Executive Director must authorize the tuition reimbursement payment (Texas Government Code, §656.048).

C.) Additional staff recommendations that are not required by federal rule or state statute:

In addition to updating §9.15, revisions are adopted to other sections of Chapter 9 to improve clarity and reflect current changes to TCEQ training practices.

Statutory authority:

- House Bill 3337
- Texas Government Code, §656.041 *et seq.* (State Employee's Training Act) and §2001.004
- Texas Water Code, §5.103 and §5.105

Effect on the:

A.) Regulated community:

No direct impact is anticipated.

B.) Public:

No direct impact is anticipated.

C.) Agency programs:

Internal forms, policies, and procedure were changed to comply with the statute, and all tuition reimbursement have been approved by the Deputy Executive Director since the effective date of the statutory change, September 1, 2015. Instead of division directors approving reimbursements, employees will need the recommendation of their division director and approval of the Executive Director. The HRSS Division is responsible for mirroring existing changes to TCEQ Training and Development.

Stakeholder meetings:

The commission did not hold any stakeholder meetings related to this rulemaking.

Public comment:

The commission offered a public hearing on August 2, 2016; however, no members of the public were present to offer comments. Therefore, the hearing was not officially opened. Additionally, there were no written comments submitted for this rulemaking project.

Significant changes from proposal:

No significant changes were made to the proposed text. A minor revision was made to §9.15 to eliminate redundancy and improve clarity.

Re: Docket No. 2016-0336-RUL

Potential controversial concerns and legislative interest:

HB 3337 was passed to address the practice in state government of allowing staff-level state employees to authorize advance payments for graduate degree program costs for certain high-level employees without appropriate executive-level oversight.

Does this rulemaking affect any current policies or require development of new policies?

The relevant language in OPP 16.01, Employee Training Program, and OPP 16.02, Education Assistance Program, have already been updated as of September 1, 2015.

What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?

If the rulemaking does not go forward, the TAC will not reflect the legislative changes to the reimbursement processes nor will it reflect updates with how training is administered by the HRSS Division. Additionally, we will also not be in compliance with Texas Government Code, §656.048.

Key points in the adoption rulemaking schedule:

Anticipated adoption date: November 2, 2016

Anticipated *Texas Register* publication date: November 18, 2016

Anticipated effective date: November 24, 2016

Six-month *Texas Register* filing deadline: January 8, 2017

Agency contacts:

Amber Kaskie, Rule Project Manager, Human Resources and Staff Services Division, (512) 239-0137

Yen Tran, Staff Attorney, General Law Division, (512) 239-4610

Derek Baxter, Texas Register Coordinator, General Law Division, (512) 239-2613

Attachments

HB 3337

cc: Chief Clerk, 2 copies
Executive Director's Office
Marshall Coover
Erin Chancellor
Stephen Tatum
Jim Rizk
Office of General Counsel
Amber Kaskie
Sarah Calder
Yen Tran
Derek Baxter

AN ACT

relating to training and education for state agency administrators and employees.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 656.043, Government Code, is amended to read as follows:

Sec. 656.043. DEFINITION. In this subchapter, "state agency" means a department, agency, or institution of the executive, legislative, or judicial branch of [this] state government, including an institution of higher education as defined by Section 61.003, Education Code.

SECTION 2. Section 656.047, Government Code, is amended to read as follows:

Sec. 656.047. PAYMENT OF PROGRAM EXPENSES. (a) Except as provided by this section or other law, a [A] state agency may spend public funds as appropriate to pay the salary, tuition and other fees, travel and living expenses, training stipend, expense of training materials, and other necessary expenses of an instructor, student, or other participant in a training or education program.

(b) For an administrator or employee of a state agency who seeks reimbursement for a training or education program offered by an institution of higher education or private or independent institution of higher education as defined by Section 61.003, Education Code, the agency may only pay the tuition expenses for a

1 program course successfully completed by the administrator or
2 employee at an accredited institution of higher education.

3 SECTION 3. Section 656.048, Government Code, is amended by
4 adding Subsection (b) to read as follows:

5 (b) A state agency shall adopt rules requiring that before
6 an administrator or employee of the agency may be reimbursed under
7 Section 656.047(b), the executive head of the agency must
8 authorize the tuition reimbursement payment.

9 SECTION 4. Section 656.101, Government Code, is amended by
10 amending Subdivision (1) and adding Subdivision (1-a) to read as
11 follows:

12 (1) "State agency" has the meaning assigned by Section
13 656.043.

14 (1-a) "State [~~and "state~~] employee" has the meaning
15 [~~have the meanings~~] assigned by Section 572.002 [~~except that the~~
16 ~~terms do not include a river authority or an employee of a river~~
17 ~~authority~~].

18 SECTION 5. Section 656.102, Government Code, is amended to
19 read as follows:

20 Sec. 656.102. AGENCY POLICY. (a) Before a state agency
21 spends any money on training for a state employee, the state agency
22 must adopt a policy governing the training of employees, in
23 addition to the rules required by Section 656.048, that requires
24 training to relate to an employee's duties following the training.

25 (b) The policy must:

26 (1) provide clear and objective guidelines to govern
27 tuition reimbursement for an administrator or employee of a state

1 agency who is enrolled in training for which the administrator or
2 employee seeks reimbursement from this state; and

3 (2) address tuition reimbursement for nontraditional
4 training, including online courses or courses not credited towards
5 a degree.

6 (c) The state agency shall post the policy adopted under
7 this section on the employment section of the agency's Internet
8 website.

9 SECTION 6. The changes in law made by this Act apply only to
10 training and education expenses paid by a state agency on or after
11 the effective date of this Act.

12 SECTION 7. This Act takes effect September 1, 2015.

President of the Senate

Speaker of the House

I certify that H.B. No. 3337 was passed by the House on May 5, 2015, by the following vote: Yeas 143, Nays 0, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 3337 was passed by the Senate on May 20, 2015, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amended §§9.11 - 9.13 and 9.15 - 9.17.

Sections 9.11 - 9.13, 9.16, and 9.17 are adopted *without changes* to the proposed text as published in the July 8, 2016, issue of the *Texas Register* (41 TexReg 4947) and, therefore, will not be republished. Section 9.15 is adopted *with change* to the proposed text and, therefore, will be republished.

Background and Summary of the Factual Basis for the Adopted Rules

House Bill (HB) 3337, 84th Texas Legislature, 2015, requires the commission to adopt rules requiring that before an agency administrator or employee may be reimbursed for tuition expenses, the executive director must authorize the tuition reimbursement payment (Texas Government Code, §656.048). HB 3337, which became effective September 1, 2015, was intended to provide the appropriate executive-level oversight for authorizing payments for potentially costly reimbursements. Along with revisions to agency policy, Chapter 9, Subchapter B, Employee Training and Education, will also need to be updated to reflect the changes of HB 3337.

In addition to updating §9.15, Reimbursement, revisions are adopted to other areas of Chapter 9, to improve clarity and reflect current TCEQ training practices.

Section by Section Discussion

The commission adopts amended §9.11, Definitions, in order to reduce repetition in the existing rule. Additionally, the commission adopts amending the title of §9.11 from "Definition" to "Definition of Training."

The commission adopts amended §9.12, Scope, in order to reduce repetition in the existing rule. Additionally, the commission adopts amending the title of §9.12 from "Scope" to "Training Components."

The commission adopts amended §9.13, Eligibility, to remove outdated program language and to clarify the functions of the Training Unit to mirror updates to agency policy (OPP 16.01, Training and Development).

The commission adopts amended §9.15, Reimbursement, to implement HB 3337, which requires the commission to adopt rules requiring that before an agency administrator or employee may be reimbursed for tuition expenses, the executive director must authorize the tuition reimbursement payment (Texas Government Code, §656.048). Additionally, the commission adopts amended §9.15 to remove outdated program language and to clarify the functions of the Training Unit to mirror updates to agency policy (OPP 16.01, Training and Development).

The commission adopts amended §9.16, Training Records, to remove outdated

program language and to clarify the functions of the Training Unit to mirror updates to agency policy (OPP 16.01, Training and Development).

The commission adopts amended §9.17, At-Will Employment Status, to clarify that participation in the agency's training and education programs does not affect an employee's at-will status.

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 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 the statute. Furthermore, it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a).

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, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Because the specific intent of the adopted rulemaking is procedural in nature and revises procedures concerning how training reimbursements are approved, the rulemaking does not meet the definition of a "major environmental rule."

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

Takings Impact Assessment

The commission evaluated this adopted rulemaking action and performed a preliminary analysis of whether the adopted rulemaking is subject to Texas Government Code, Chapter 2007. The primary purpose of the adopted rulemaking is to revise TCEQ rules regarding the approval process for reimbursing trainings and to reflect current changes to how TCEQ conducts training. Promulgation and enforcement of the rules will not burden private real property. Further, the adopted rulemaking does not affect private property in a manner which restricts or limits an owner's right to the property that would otherwise exist in the absence of governmental action. Consequently, the adopted rulemaking action does not meet the definition of a takings under Texas Government Code, §2007.002(5).

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 (CMP).

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

Public Comment

The commission offered a public hearing on August 2, 2016. The comment period closed on August 8, 2016. The commission did not receive any comments on this rulemaking.

SUBCHAPTER B: EMPLOYEE TRAINING AND EDUCATION

§§9.11 - 9.13 , 9.15 - 9.17

Statutory Authority

The amendments are adopted under the authority of the Texas Government Code, §656.048, concerning Rules Relating to Training and Education, which provides the commission authority to adopt rules requiring that before an administrator or employee of the agency may be reimbursed under Texas Government Code, §656.047(b), the executive head of the agency must authorize the tuition reimbursement payment; and Texas Government Code, §2001.004, concerning Requirement to Adopt Rules of Practice and Index Rules, Orders, and Decisions, which requires state agencies to adopt procedural rules.

Additionally, the amendments are adopted under the Texas Water Code (TWC), §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission.

The adopted amendments implement House Bill 3337, Texas Government Code, §656.041 *et seq.* (State Employee's Training Act), and TWC, §5.103, Rules.

§9.11. Definition of Training [Definitions].

"Training" means instruction, teaching, or other education received by an employee that is designed to enhance the ability of the employee to perform the employee's job. Training can include job-oriented training that is provided within the agency by staff, other state entities, federal organizations, or private vendors. It can also include workshops, seminars, institutes, training sessions, college courses, and other programs or activities offered outside the agency. [The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.]

[(1) Education assistance--Reimbursement of specific costs for job-related learning opportunities provided by universities, colleges, or other institutions of higher learning.]

[(2) In-service training and education—Job-oriented training that is provided within the agency by staff, other state entities, federal organizations, or private vendors.]

[(3) Out-of-agency staff development--Workshops, seminars, institutes, training sessions, college courses, and other programs or activities offered outside the agency either within or outside the state.]

§9.12. Training Components [Scope].

Employee training and education consists of [includes two components: the] employee training opportunities [program] and the education assistance program.

(1) Employees are offered [The employee training program includes the full range of] training opportunities [provided] through in-house [in-service] training and education as well as out-of-agency staff development opportunities.

(A) In-house training is job-oriented training that is provided within the agency by staff, other state entities, federal organizations, or private vendors. In-house training can include [In-service training includes, but is not limited to,] core courses identified by the executive director, technical courses, computer training (from basic to advanced courses), staff development courses, and management development courses. [:]

[i] core curricula courses identified by the executive director for completion by all employees to ensure compliance with federal and state mandates, as well as critical agency policies and procedures;]

[(ii) technical courses that satisfy technical knowledge and skill requirements for effective job performance in a specific classification series;]

[(iii) computer-related basic and advanced courses for desktop applications, as well as advanced courses for information technology professionals and other staff who use advanced computer applications;]

[(iv) staff development courses that satisfy general knowledge and skill requirements for effective job performance in diverse classification series; and]

[(v) management development courses that satisfy knowledge and skill requirements for effective job performance in supervisory, managerial, and executive positions.]

(B) Out-of-agency staff development is offered outside the agency either within or outside the state and includes [, but is not limited to,] workshops, seminars, institutes, training sessions, and other programs or activities [offered outside the agency either within or outside the state].

[(C) The employee training program encompasses training delivered via a variety of media including, but not limited to, computer-based, videotape, Internet-based, satellite-broadcast, webcast, and instructor-led.]

(2) The education assistance program provides external learning [out-of-agency staff development] opportunities to enhance job-related knowledge and skills. It includes courses provided by an accredited [through a] university, college, or other institution of higher learning delivered through [via] a variety of different [delivery] media, such as instructor-led courses, online courses, and courses not credited towards a degree [or Internet-based].

§9.13. Eligibility.

(a) Employee training opportunities [program]. Employees are eligible to participate in the agency's training opportunities [program] to increase their job-related knowledge and skills, without regard to race, color, religion, sex, sexual orientation, age, national origin, disability, or veteran status.

(b) Education assistance program. Employees [Full-time employees] may participate in the agency's education assistance program without regard to the employee's race, color, religion, sex, sexual orientation, age, national origin, disability,

or veteran status. To qualify for reimbursement, employees must [, if they] meet the following eligibility requirements as set forth in the agency's policies:

(1) full-time employment requirement;

(2) [(1)] tenure requirement;

(3) [(2)] performance requirements; and

(4) [(3)] conduct requirements.

§9.15. Reimbursement.

(a) Employee training opportunities [program].

(1) Funding for employee training is provided by [through] the Human Resources and Staff Services Division [agency's central training account] or the employee's [respective] division.

(2) The employee's [respective] division also funds travel-related expenses for training participation.

(b) Education assistance program. Upon the recommendation of the employee's division director and with approval of the executive director, the [The] employee's respective division funds may be used to reimburse the employee for [reimbursement of] specific tuition-related expenses that have been approved by the division director. To qualify for reimbursement, the employee must successfully complete the [courses] requested course at [by the employee must be provided through] an accredited institution of higher education, [learning] and the course must be:

(1) directly related to improving specific knowledge and skills pertinent

[;]

[(2) related] to essential job functions of the current or prospective position;

(2) [(3)] needed for a special job assignment; or

(3) [(4)] required for a career ladder promotion.

§9.16. Training Records.

(a) The Human Resources and Staff Services Division maintains [Training Academy shall maintain] training records for all agency employees using [via] an electronic learning [automated training] management system.

(b) Employees can choose to place a copy of their training records in their personnel file. [Supervisors shall maintain individual training records for their employees that include training not provided through the Training Academy.]

§9.17. At-Will Employment Status.

Approval to participate in the agency's training and education programs does [shall] not in any way affect an employee's at-will status. Participation in these programs does [shall] not constitute a guarantee or indication of future employment in a current or prospective position.

chological services prior to initiating the services using language that is reasonably understandable to the recipient(s).

(i) Informed consent for school psychological services is governed by Board rule §465.38 of this title (relating to Psychological Services for Public Schools).

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

Filed with the Office of the Secretary of State on June 21, 2016.

TRD-201603126

Darrel D. Spinks

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: August 7, 2016

For further information, please call: (512) 305-7706



TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 9. TRAINING

SUBCHAPTER B. EMPLOYEE TRAINING AND EDUCATION

30 TAC §§9.11 - 9.13, 9.15 - 9.17

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §§9.11 - 9.13 and §§9.15 - 9.17.

Background and Summary of the Factual Basis for the Proposed Rules

House Bill (HB) 3337, 84th Texas Legislature, 2015, requires the commission to adopt rules requiring that before an agency administrator or employee may be reimbursed for tuition expenses, the executive director must authorize the tuition reimbursement payment (Texas Government Code, §656.048). HB 3337, which became effective September 1, 2015, was intended to provide the appropriate executive-level oversight for authorizing payments for potentially costly reimbursements. Along with revisions to agency policy, Chapter 9, Subchapter B, Employee Training and Education, will also need to be updated to reflect the changes of HB 3337.

In addition to updating §9.15, Reimbursement, revisions are proposed to other areas of Chapter 9, to improve clarity and reflect current TCEQ training practices.

Section by Section Discussion

The commission proposes to amend §9.11, Definitions, in order to reduce repetition in the existing rule. Additionally, the commission proposes to amend the title of §9.11 from "Definition" to "Definition of Training."

The commission proposes to amend §9.12, Scope, in order to reduce repetition in the existing rule. Additionally, the commission proposes to amend the title of §9.12 from "Scope" to "Training Components."

The commission proposes to amend §9.13, Eligibility, to remove outdated program language and to clarify the functions of the Training Unit to mirror updates to agency policy (OPP 16.01, Training and Development).

The commission proposes to amend §9.15, Reimbursement, to implement HB 3337, which requires the commission to adopt rules requiring that before an agency administrator or employee may be reimbursed for tuition expenses, the executive director must authorize the tuition reimbursement payment (Texas Government Code, §656.048). Additionally, the commission proposes to amend §9.15 to remove outdated program language and to clarify the functions of the Training Unit to mirror updates to agency policy (OPP 16.01, Training and Development).

The commission proposes to amend §9.16, Training Records, to remove outdated program language and to clarify the functions of the Training Unit to mirror updates to agency policy (OPP 16.01, Training and Development).

The commission proposes to amend §9.17, At-Will Employment Status, to clarify that participation in the agency's training and education programs does not affect an employee's at-will status.

Fiscal Note: Costs to State and Local Government

Maribel Montalvo, Analyst in the Chief Financial Officer's Division, has determined that for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rules.

The proposed rules would implement HB 3337 and require an agency executive director to authorize tuition reimbursement payments thereby ensuring appropriate executive-level oversight of potentially costly reimbursements to an agency administrator or employee for tuition expenses.

HB 3337 requires that an agency adopt rules to implement the bill by September 1, 2015. Along with revisions to agency policy, Chapter 9, Subchapter B, Employee Training and Education, will also need to be updated to reflect the changes of HB 3337. There are no costs expected for the agency or any other unit of state or local government to implement or administer the proposed rules.

Public Benefits and Costs

Ms. Montalvo has also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules would be a greater oversight through executive level authorization of the agency's tuition reimbursement payments. The agency currently has a policy in place for reimbursement; HB 3337 added another level of approvals; however, it does not require additional resources to implement it.

No fiscal implications are anticipated for businesses or individuals due to implementation or administration of the proposed rules.

Small Business and Micro-Business Assessment

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

Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules do not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

Local Employment Impact Statement

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed rulemaking is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the statute. Furthermore, it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a).

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, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Because the specific intent of the proposed rulemaking is procedural in nature and revises procedures concerning how training reimbursements are approved, the rulemaking does not meet the definition of a "major environmental rule."

Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated this proposed rulemaking action and performed a preliminary analysis of whether the proposed rulemaking is subject to Texas Government Code, Chapter 2007. The primary purpose of the proposed rulemaking is to revise TCEQ rules regarding the approval process for reimbursing trainings and to reflect current changes to how TCEQ conducts training. Promulgation and enforcement of the rules will not burden private real property. Further, the proposed rulemaking does not affect private property in a manner which restricts or limits an owner's right to the property that would otherwise exist in the absence of governmental action. Consequently, the proposed rulemaking action does not meet the definition of a takings under Texas Government Code, §2007.002(5).

Consistency with the Coastal Management Program

The commission reviewed the proposed 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 proposed rules are not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on August 2, 2016, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services, at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Derek Baxter, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www1.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2015-039-009-AD. The comment period closes on August 8, 2016. Copies of the proposed rulemaking can be obtained from the TCEQ's website at http://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Amber Kaskie, Staffing, Classification and Organizational Development, Human Resources & Staff Services Division, at (512) 239-0137 or Yen Tran, Employment Law and Ethics Section, General Law Division, at (512) 239-4610.

Statutory Authority

The amendments are proposed under the authority of the Texas Government Code, §656.048, concerning Rules Relating to Training and Education, which provides the commission authority to adopt rules requiring that before an administrator or employee of the agency may be reimbursed under Texas Government Code, §656.047(b), the executive head of the agency must authorize the tuition reimbursement payment; and Texas Government Code, §2001.004, concerning Requirement to Adopt Rules of Practice and Index Rules, Orders, and Decisions, which requires state agencies to adopt procedural rules.

Additionally, the amendments are proposed under the Texas Water Code (TWC), §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; and TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission.

The proposed amendments implement House Bill 3337, Texas Government Code, §656.041 *et seq.* (State Employee's Training Act), and TWC, §5.103, Rules.

§9.11. Definition of Training [Definitions].

"Training" means instruction, teaching, or other education received by an employee that is designed to enhance the ability of the employee to perform the employee's job. Training can include job-oriented training that is provided within the agency by staff, other state entities, federal organizations, or private vendors. It can also include workshops, seminars, institutes, training sessions, college courses, and other programs or activities offered outside the agency. [The following words

and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.}]

~~[(1) Education assistance—Reimbursement of specific costs for job-related learning opportunities provided by universities, colleges, or other institutions of higher learning.}]~~

~~[(2) In-service training and education—Job-oriented training that is provided within the agency by staff, other state entities, federal organizations, or private vendors.}]~~

~~[(3) Out-of-agency staff development—Workshops, seminars, institutes, training sessions, college courses, and other programs or activities offered outside the agency either within or outside the state.}]~~

§9.12. Training Components [Scope].

Employee training and education consists of [includes two components: the] employee training opportunities [program] and the education assistance program.

(1) Employees are offered [The employee training program includes the full range of] training opportunities [provided] through in-house [in-service] training and education as well as out-of-agency staff development opportunities.

(A) In-house training is job-oriented training that is provided within the agency by staff, other state entities, federal organizations, or private vendors. In-house training can include core courses identified by the executive director, technical courses, computer training (from basic to advanced courses), staff development courses, and management development courses. [In-service training includes, but is not limited to:]

~~[(i) core curricula courses identified by the executive director for completion by all employees to ensure compliance with federal and state mandates, as well as critical agency policies and procedures;]~~

~~[(ii) technical courses that satisfy technical knowledge and skill requirements for effective job performance in a specific classification series;]~~

~~[(iii) computer-related basic and advanced courses for desktop applications, as well as advanced courses for information technology professionals and other staff who use advanced computer applications;]~~

~~[(iv) staff development courses that satisfy general knowledge and skill requirements for effective job performance in diverse classification series; and]~~

~~[(v) management development courses that satisfy knowledge and skill requirements for effective job performance in supervisory, managerial, and executive positions.}]~~

(B) Out-of-agency staff development is offered outside the agency either within or outside the state and includes[, but is not limited to,] workshops, seminars, institutes, training sessions, and other programs or activities [offered outside the agency either within or outside the state].

~~[(C) The employee training program encompasses training delivered via a variety of media including, but not limited to, computer-based, videotape, Internet-based, satellite-broadcast, webcast, and instructor-led.}]~~

(2) The education assistance program provides external learning [out-of-agency staff development] opportunities to enhance job-related knowledge and skills. It includes courses provided by an accredited [through a] university, college, or other institution of

higher learning delivered through [via] a variety of different [delivery] media, such as instructor-led courses, online courses, and courses not credited towards a degree [or Internet-based].

§9.13. Eligibility.

(a) Employee training opportunities [program]. Employees are eligible to participate in the agency's training opportunities [program] to increase their job-related knowledge and skills, without regard to race, color, religion, sex, sexual orientation, age, national origin, disability, or veteran status.

(b) Education assistance program. Employees [Full-time employees] may participate in the agency's education assistance program without regard to the employee's race, color, religion, sex, sexual orientation, age, national origin, disability, or veteran status. To qualify for reimbursement, employees must [, if they] meet the following eligibility requirements as set forth in the agency's policies:

- (1) full-time employment requirement;
- (2) [(4)] tenure requirement;
- (3) [(2)] performance requirements; and
- (4) [(3)] conduct requirements.

§9.15. Reimbursement.

(a) Employee training opportunities [program].

(1) Funding for employee training is provided by [through] the Human Resources and Staff Services Division [agency's central training account] or the employee's [respective] division.

(2) The employee's [respective] division also funds travel-related expenses for training participation.

(b) Education assistance program. Upon the recommendation of the employee's division director and with approval of the executive director, the [The] employee's respective division funds may be used to reimburse the employee for [reimbursement of] specific tuition-related expenses that have been approved by the division director. To qualify for reimbursement, the employee must successfully complete the [courses] requested course at [by the employee must be provided through] an accredited institution of higher education, [learning] and the course must be:

(1) directly related to improving specific knowledge and skills pertinent to essential job functions of the current or prospective position;

[(2) related to essential job functions of the current or prospective position;]

(2) [(3)] needed for a special job assignment; or

(3) [(4)] required for a career ladder promotion.

§9.16. Training Records.

(a) The Human Resources and Staff Services Division maintains [Training Academy shall maintain] training records for all agency employees using [via] an electronic learning [automated training] management system.

(b) Employees can choose to place a copy of their training records in their personnel file. [Supervisors shall maintain individual training records for their employees that include training not provided through the Training Academy.}]

§9.17. At-Will Employment Status.

Approval to participate in the agency's training and education programs does [shall] not in any way affect an employee's at-will status. Participation in these programs does [shall] not constitute a guarantee or indication of future employment in a current or prospective position.

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

Filed with the Office of the Secretary of State on June 24, 2016.

TRD-201603233

David Timberger

Director, General Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: August 7, 2016

For further information, please call: (512) 239-6812



CHAPTER 116. CONTROL OF AIR POLLUTION BY PERMITS FOR NEW CONSTRUCTION OR MODIFICATION

SUBCHAPTER B. NEW SOURCE REVIEW PERMITS

DIVISION 3. PUBLIC NOTIFICATION AND COMMENT PROCEDURES

30 TAC §§116.130 - 116.134, 116.136, 116.137

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to repeal §§116.130 - 116.134, 116.136, and 116.137.

If adopted, the commission will submit the repeal of §§116.130 - 116.134, 116.136, and 116.137 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 Proposed Rules

Sections 116.130 - 116.134, 116.136, and 116.137 were adopted August 27, 1993, (18 TexReg 5746) as public notification and comment procedures for New Source Review air permit applications in a rulemaking action that restructured the existing air quality permit program rules for the Texas Air Control Board. Except for §116.136, these rules were repealed and readopted by the Texas Natural Resource Conservation Commission (TNRCC, predecessor of the TCEQ) on June 17, 1998, and re-submitted to EPA. With the exception of §116.130(c) (regarding hazardous air pollutants which are not part of the SIP), these rules were approved into the SIP, as published in the September 18, 2002, issue of the *Federal Register* (67 FedReg 58709).

In 1999, the 76th Texas Legislature enacted House Bill (HB) 801, which revised public participation in environmental permitting. TCEQ adopted rules to implement HB 801 (and other bills) that consolidated the public participation rules across the agency as published in the September 24, 1999, issue of the *Texas Register* (24 TexReg 8190). That rulemaking included rules in 30 TAC Chapter 39 (Public Notice), Subchapters H (Applicability and General Provisions) and K (Public Notice of Air Quality Permit Applications), that apply to certain air quality permit applications declared administratively complete on or after September 1, 1999. TCEQ submitted portions of the rulemaking to implement HB 801 to the EPA as revisions to the SIP. The public participation rules in Chapter 116 that were superseded by the rules adopted to implement HB 801 were not repealed at that time

because the rules applied to pending applications that were declared administratively complete before September 1, 1999.

In 2010, TCEQ conducted a rulemaking published in the June 18, 2010, issue of the *Texas Register* (35 TexReg 5198) that clarified the public participation requirements for air quality applications. TCEQ's adoption notice included discussions addressing EPA's concerns about TCEQ's SIP submittal of the 1999 rules to implement HB 801, as well as several TCEQ public participation rulemakings for air quality permit applications adopted from 1999 - 2010, and the final set of rules submitted as SIP revisions in 2010. EPA's approvals of the 2010 submittal are published in the January 6, 2014, issue of the *Federal Register* (79 FedReg 551); the March 30, 2015, issue of the *Federal Register* (80 FedReg 16573); and the October 6, 2015, issue of the *Federal Register* (80 FedReg 60295). In addition, EPA has approved subsequent changes to public participation rules adopted by the commission in 2014, as published in the November 20, 2014, issue of the *Federal Register* (79 FedReg 66626). At the time of this proposal, no public participation rules remain pending EPA review. Inclusion in the SIP ensures the public participation requirements are federally enforceable.

No applications for which §§116.130 - 116.134, 116.136, and 116.137 are applicable remain pending with the commission. Repealing the obsolete rules and revising the SIP by removing §§116.130 - 116.134, 116.136, and 116.137 would eliminate any possible confusion as to what the applicable public participation requirements are in the SIP. The public's opportunity to participate in the air permitting process will not change nor be affected in any way as a result of this repeal.

Federal Clean Air Act §110(l)

All revisions to the SIP are subject to EPA's finding that the revision will not interfere with any applicable requirement concerning attainment and reasonable further progress of the national ambient air quality standards, or any other requirement of the Federal Clean Air Act, 42 United States Code (USC), §7410(l). This statute has been interpreted to be whether the revision will "make air quality worse" (*Kentucky Resources Council, Inc. v. EPA*, 467 F.3d 986 (6th Cir. 2006), cited with approval in *Galveston-Houston Association for Smog Prevention (GHASP) v. U.S. EPA*, 289 Fed. Appx. 745, 2008 WL 3471872 (5th Cir.)). Because procedural rules have no direct nexus with air quality, and because the current applicable public participation rules are approved as part of the Texas SIP, EPA should find that there is no backsliding from the current SIP and that this SIP revision complies with 42 USC, §7410(l).

Section by Section Discussion

The commission proposes the repeal of §116.130 (Applicability); §116.131 (Public Notification Requirements); §116.132 (Public Notice Format); §116.133 (Sign Posting Requirements); §116.134 (Notification of Affected Agencies); §116.36 (Public Comment Procedures); and §116.137 (Notification of Final Action by the Commission), because the rules were superseded and are obsolete. These rules apply to air permitting applications that were administratively complete before September 1, 1999. No pending applications meet that criterion.

Fiscal Note: Costs to State and Local Government

Jeffrey Horvath, Analyst in the Chief Financial Officer's Division, has determined that for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the

Texas Commission on Environmental Quality



ORDER ADOPTING AMENDED RULES

Docket No. 2016-0336-RUL

Rule Project No. 2015-039-009-AD

On November 2, 2016, the Texas Commission on Environmental Quality (Commission) adopted amended §§ 9.11 - 9.13 and §§ 9.15 - 9.17 of 30 Texas Administrative Code Chapter 9, concerning Training. The proposed rules were published for comment in the July 8, 2016, issue of the *Texas Register* (41 TexReg 4947).

IT IS THEREFORE ORDERED BY THE COMMISSION that the amended rules are hereby adopted. The Commission further authorizes staff to make any non-substantive revisions to the rules necessary to comply with *Texas Register* requirements. The adopted rules and the preamble to the adopted rules are incorporated by reference in this Order as if set forth at length verbatim in this Order.

This Order constitutes the Order of the Commission required by Tex. Gov't Code Ann., Chapter 2001 (Vernon 2016).

If any portion of this Order is for any reason held to be invalid by a court of competent jurisdiction, the invalidity of any portion shall not affect the validity of the remaining portions.

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Bryan W. Shaw, Ph.D., P.E., Chairman

Date Signed