

The Texas Natural Resource Conservation Commission (commission) proposes the repeal of §290.20, General Provisions; §290.21, Definitions; §290.22, Types of Certificates; §290.23, Qualification Requirements; §290.24, Applying for Certificates; §290.25, Revocation of Certificates; and §290.26, Fees.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

Rules administering the water treatment certification program were originally promulgated when this program was administered by the Texas Department of Health (TDH). The certification program was transferred to the commission in 1992 and the commission adopted the existing rules which had been promulgated by TDH. Those rules were promulgated by the commission as Subchapter A of Chapter 290. Chapter 290, Public Drinking Water, Subchapter A, Certification of Person to Install, Exchange, Service, or Repair Residential Water Treatment Facilities, is proposed for repeal and readoption as Chapter 30, Subchapter H, Water Treatment Specialists. The proposed repeals are part of a concurrent rulemaking which consolidates several of the occupational licensing programs under the authority of the commission into one chapter, new 30 TAC Chapter 30, Occupational Licenses and Registrations, to incorporate new provisions of Texas Water Code (TWC), Chapter 37, implemented by House Bill (HB) 3111 and HB 2912 of the 77th Legislature, 2001.

SECTION BY SECTION DISCUSSION

To implement HB 3111, the commission is consolidating ten licensing and registration programs into new Chapter 30. As part of that consolidation, Chapter 290, Subchapter A, is proposed for repeal and readoption as Chapter 30, Subchapter H, Water Treatment Specialists. Changes to the rules are

discussed in the preamble of the rulemaking for Chapter 30, and published in this issue of the *Texas Register*.

The commission concurrently proposes the review of Chapter 290, Subchapter A, in this issue of the *Texas Register*.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Jeffrey Horvath, Strategic Planning and Appropriations, has determined that for the first five-year period the proposed repeals are in effect, no significant fiscal implications are anticipated for the agency or other units of state government or local government.

The proposed repeals implement certain provisions in HB 3111 (relating to occupational licenses and registrations issued by the commission), 77th Legislature, 2001, and provisions in HB 2912 (relating to the continuation and functions of the commission; providing penalties), 77th Legislature, 2001.

House Bill 3111 creates a new chapter of the TWC, which consolidates the administrative requirements for several commission-regulated licensing and registration programs into one new chapter. The bill also consolidates the deposit of licensing fees from different funds or accounts into the occupational licensing account. House Bill 2912 also requires the commission to adopt rules for the certification of water treatment specialists. Costs to the commission to implement HB 2912 provisions for the certification of water treatment specialists are not significant, as the provisions provide clarification for

certification requirements and establish that the commission is responsible for administering the program.

The proposed repeals would delete provisions relating to the certification of water treatment specialists. This subchapter provides qualification requirements, fees, certification levels, and general licensing requirements for persons who install, exchange, service, or repair residential water treatment systems. Because this rulemaking also incorporates the quadrennial review of Chapter 290, Subchapter A, there are other proposed changes to the current rules which were originally promulgated when the water treatment certification program was administered by TDH.

The repeals would affect approximately 525 certified residential water treatment specialists and result in the loss of fee revenue to the commission of an estimated \$8,500 in certification and renewal fees. Currently, there are three classes of certification: Class 1 is valid for two years for a cost of \$20; Class 2 is valid for three years and costs \$30; Class 3 is valid for five years and costs \$50. Individuals seeking certification as residential water treatment specialists pay these fees or companies that employ these individuals may pay these fees. There are no known state or local governments who currently employ certified residential water treatment specialists.

In concurrent rulemaking, the qualification requirements, fees, certification levels, and other provisions relating to the qualifications for issuing and renewing licenses to an individual who installs and repairs water treatment equipment are established in a new Chapter 30, Subchapter H. Those provisions establish new fee rates and renewal cycles for the certification of water treatment specialists, including

certification for commercial, industrial, and residential water treatment specialists. The proposed new fee rates are higher than current fee rates. Fee rates will increase by \$50 over a two-year period per license.

PUBLIC BENEFITS AND COSTS

Mr. Horvath also determined that for each year of the first five years the proposed repeals are in effect, the public benefit anticipated from enforcement of and compliance with the proposed repeals will be the implementation of certain provisions in HB 3111 and increased compliance through the consolidation and standardization of the commission occupational licensing programs.

Adoption of the proposed repeals would delete the qualification and certification requirements for water treatment specialists. If amendments in concurrent rulemaking are not adopted, the adoption of these repeals would result in cost savings for those individuals certified as water treatment specialists, though these cost savings are not considered significant.

The proposed repeals implement certain provisions in HB 3111 and provisions in HB 2912.

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certification of water treatment specialists are not significant, as the provisions provide clarification for certification requirements and establish that the commission is responsible for administering the program.

The proposed repeals would delete Chapter 290, Subchapter A provisions relating to the certification of water treatment specialists. This subchapter provides qualification requirements, fees, certification levels, and general licensing requirements for persons who install, exchange, service, or repair residential water treatment systems. Because this rulemaking also incorporates the quadrennial review of Chapter 290, Subchapter A, there are other proposed changes to the current rules which were originally promulgated when the water treatment certification program was administered by TDH.

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proposed new fee rates are higher than current fee rates. Fee rates will increase by \$50 over a two-year period per license.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

Adverse fiscal implications are not anticipated for those small or micro-businesses who employ certified water treatment specialists as a result of implementation of the proposed repeals. The proposed repeals would delete certification and fee requirements for water treatment specialists, and small or micro-businesses that employ these individuals would realize cost savings if they currently pay for their employee's license fees.

In concurrent rulemaking, the qualification requirements, fees, certification levels, and other provisions relating to the qualifications for issuing and renewing licenses to an individual who installs and repairs water treatment equipment are established in a new Chapter 30, Subchapter H. Those provisions establish new fee rates and renewal cycles for the certification of water treatment specialists. The proposed new fee rates are higher than current fee rates and would include certification for commercial, residential and industrial water treatment specialists. Fee rates will increase by \$50 over a two-year period per license. For any small or micro-businesses that pays licensing fees for these employees, there will be costs to these businesses, though these costs are not considered significant.

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2 is valid for three years and costs \$30; Class 3 is valid for five years and costs \$50. Individuals seeking certification as residential water treatment specialists pay these fees or companies that employ these individuals may pay these fees.

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 repeals do not adversely affect a local economy in a material way for the first five years that the proposed repeals are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed repeals in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the repeals are not subject to §2001.0225. Section 2001.0225 only applies to rules that are specifically intended to protect the environment, or reduce risks to human health from environmental exposure. The intent of the rulemaking is to consolidate the requirements for the various occupations, licensed or registered by the commission, into one chapter; not to protect the environment or human health. Protection of human health and the environment may be a by-product of the proposed repeals, but it is not the specific intent of the proposed repeals.

Furthermore, the proposed repeals would 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, because the repeals would consolidate existing rule language into one chapter. Thus, the proposed repeals do not meet the definition of a “major environmental rule” as defined in Texas Government Code, §2001.0225(g)(3), and thus, do not require a full

regulatory impact analysis. The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission prepared a takings impact assessment for these repeals under Texas Government Code, §2007.43. The following is a summary of that assessment. The specific purpose of the repeals is to consolidate the requirements for the various occupations, licensed or registered by the TNRCC, into one chapter. The proposed repeals would substantially advance this specific purpose by setting forth detailed procedures for obtaining an occupational licenses or registration including procedures for: the initial application; examinations; and renewal applications. The proposed repeals do not constitute a takings because they would not burden private real property.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and found that the proposed repeals are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP), nor would they affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed repeals are not subject to the CMP.

ANNOUNCEMENT OF HEARING

A public hearing on the proposal will be held October 11, 2001, at 10:00 a.m. in Room 131E, Building C, at the Texas Natural Resource Conservation Commission complex, located at 12100 Park 35 Circle,

Austin. 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 occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the meeting should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Angela Slupe, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Log Number 2001-044-325-WT. Comments must be received by 5:00 pm., October 18, 2001. For further information, contact Melissa Estes, Policy and Regulations Division, at (512) 239-3937.

STATUTORY AUTHORITY

The repeals are proposed under the authority granted to the commission by the Texas Legislature in TWC, Chapter 37. Texas Water Code, Chapter 37, provides the commission the authority to: establish classes and terms of occupational licenses and registrations; establish procedures for granting, denying, and suspending occupational licenses and registrations; establish fees for occupational licenses and registrations; and establish training, continuing education, and examination requirements. The

repeals are also authorized under the general authority granted in 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, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013(15); and TWC, §7.002, which authorizes the commission to enforce provisions of TWC and Texas Health and Safety Code (THSC).

The proposed repeals are implemented under TWC, §37.002, which requires the commission to adopt rules to establish occupational licenses and registrations for water treatment specialists (THSC, §341.033 and §341.034).

**SUBCHAPTER A: CERTIFICATION OF PERSON TO INSTALL, EXCHANGE,
SERVICE, OR REPAIR RESIDENTIAL WATER TREATMENT FACILITIES**

§§290.20 - 290.26

§290.20. General Provisions.

§290.21. Definitions.

§290.22. Types of Certificates.

§290.23. Qualification Requirements.

§290.24. Applying for Certificates.

§290.25. Revocation of Certificates.

§290.26. Fees.