

The Texas Natural Resource Conservation Commission (commission) adopts an amendment to §281.2, Applicability; and the repeal of §281.7, Applications for Weather Modification Permits. The proposal was published in the November 23, 2001 issue of the *Texas Register* (26 TexReg 9523). The amendment to §281.2 and the repeal of §281.7 are adopted *without changes* and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

Senate Bill (SB) 1175, 77th Legislature, 2001, transferred all powers, duties, obligations, rights, records, employees, and property that are used to administer the weather modification licensing and permitting program from the commission to the Texas Department of Licensing and Regulation (TDLR); and all powers, duties, obligations, rights, contracts, records, property, and unspent and unobligated appropriations and other funds used to administer the weather modification grant program to the Texas Department of Agriculture (TDA). The TDLR was required to adopt rules no later than December 31, 2001. This transfer necessitates that the commission repeal 30 TAC Chapter 289 and make certain conforming changes to Chapter 281. The commission is adopting the amendment to and the repeal in Chapter 281 simultaneously with the repeal of Chapter 289.

SECTION BY SECTION DISCUSSION

Section 281.2, Applicability, is adopted to delete language that relates specifically to the weather modification program; and §281.7, Applications for Weather Modification Permits, is adopted to repeal language that is no longer necessary due to the repeal of Chapter 289 and the transfer of the weather modification licensing and permitting program to the TDLR.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission has reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a “major environmental rule” as defined in §2001.0225(g)(3).

The regulations contained in Chapter 289 were designed solely to establish licensing requirements governing who may or may not conduct weather modification in the state. A strict regulatory analysis of this commission action is not necessary since it does not meet the four criteria for applicability contained in Texas Government Code, §2001.0225(a). Regulatory analysis is necessary only for rulemaking of major environmental rules adopted by state agencies, “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.” Specifically, this rulemaking does not involve the adoption of a major environmental rule which either exceeds a federal or state standard because there are no federal or other state standards regarding the subject matter of this rulemaking.

They do not 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 because no such agreements regarding the licensure of persons conducting weather modification exist. Finally, this rulemaking is not being adopted without the guidance of a specific state law because the legislature mandated that Chapter 289 be repealed and that licensing and regulation be reassigned from the commission to other state agencies.

Weather modification licensing and regulation formerly conducted by the commission was conducted after September 1, 2001 by TDLR under the same rules until TDLR adopted its own rules in compliance with SB 1175, which supercede those being repealed by the commission. Likewise, grant administration will be subject to the TDA's rules. Because the program is simply being moved to other state agencies by this action and because there will be no new regulatory requirements as a result of this action, there will be no regulatory effect and the repeal of Chapter 289 will not adversely impact the economy, jobs, environment, or health or safety.

The commission has reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking does not meet the four applicability requirements listed in §2001.0225(a). The commission invited public comment on the draft regulatory impact analysis determination. No comments were received.

TAKINGS IMPACT ASSESSMENT

The specific purpose of this rulemaking is to implement the transfer of a regulatory program from the commission to TDA and TDLR as mandated by state law. This action will not burden, restrict, or limit an owner's right to property, nor will it cause a reduction in market value of private real property; therefore, it will not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and found that the rules are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the

Coastal Management Program, nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the adopted rules are not subject to the Texas Coastal Management Program.

HEARING AND COMMENTERS

A public hearing was not held on the proposal, and no comments were received on the proposal.

STATUTORY AUTHORITY

The amendment is adopted under SB 1175, Chapter 20 (Act), 77th Legislature, 2001, which made the following finding: “that the Department of Agriculture is the proper state agency to administer grants to political subdivisions for weather modification and control activities” (SB 1175, Article 2, §2.01; amending Texas Agricultural Code, Chapter 20). It removed “the state’s weather modification program including the issuance of permits and licenses and the enforcement of permits, licenses, rules, standards, and orders relating to weather modification” from the commission’s jurisdiction by deleting the quoted language from Texas Water Code (TWC), §5.013 (SB 1175, Article 3, §3.01; amending TWC, §5.013(a)). It repealed TWC, Chapter 18 (Weather Modification) and TWC, §7.144 (Violation Relating to Weather Modification) (SB 1175, Article 3, §3.06). As of the September 1, 2001 effective date of the Act, it transferred all powers, duties, obligations, rights, records, employees, and property of the commission on the effective date of this Act to administer the weather modification program to the TDLR (SB 1175, Article 3, §3.07(a)). It transferred all powers, duties, obligations, rights, contracts, records, property, and unspent or unobligated appropriations and other funds of the commission on the effective date of this Act to administer the weather modification grant program to

the TDA (SB 1175, Article 3, §3.07(b)). “All rules, policies, procedures, and decisions that affect the weather modification program are continued in effect until superceded by a rule or other appropriate action of the TDLR.” (SB 1175, Article 3, §3.07(c)). It further transferred any commission weather modification program actions or proceedings to TDLR without change in status (SB 1175, Article 3, §3.07(d)). Finally, it abolished the commission’s weather modification program under TWC, Chapter 18 and provided for a December 31, 2001 deadline for TDLR to adopt rules to implement the Act (SB 1175, Article 3, §3.07(e) and (f)).

SUBCHAPTER A: APPLICATIONS PROCESSING

§281.2

§281.2. Applicability.

These sections are applicable to the processing of:

- (1) applications for new, amended, or renewed water use permits, certificates of adjudication and certified filings, and extensions of time to commence and/or complete construction of water use facilities;
- (2) applications for new, amended, or renewed wastewater discharge permits;
- (3) applications for new, amended, or renewed injection well permits;
- (4) applications for new, amended, or modified or renewed industrial solid and/or municipal hazardous waste permits filed pursuant to §335.2 of this title (relating to Permit Required) and §335.43 of this title (relating to Permit Required) or for new or amended compliance plans filed pursuant to §305.401 of this title (relating to Compliance Plan);
- (5) applications for plan approval of reclamation projects (levees, etc.);

- (6) applications for creation of water districts;
- (7) water district applications and petitions requiring commission approval;
- (8) applications for new or amended certificates of convenience and necessity;
- (9) applications for new, amended, or renewed municipal solid waste permits; and
- (10) applications for new, amended, or renewed radioactive material licenses.

SUBCHAPTER A: APPLICATION'S PROCESSING

§281.7

STATUTORY AUTHORITY

The repeal is adopted under SB 1175, Chapter 20 (Act), 77th Legislature, 2001, which made the following finding: “that the Department of Agriculture is the proper state agency to administer grants to political subdivisions for weather modification and control activities” (SB 1175, Article 2, §2.01; amending Texas Agricultural Code, Chapter 20). It removed “the state’s weather modification program including the issuance of permits and licenses and the enforcement of permits, licenses, rules, standards, and orders relating to weather modification” from the commission’s jurisdiction by deleting the quoted language from Texas Water Code (TWC), §5.013 (SB 1175, Article 3, §3.01; amending TWC, §5.013(a)). It repealed TWC, Chapter 18 (Weather Modification) and TWC, §7.144 (Violation Relating to Weather Modification) (SB 1175, Article 3, §3.06). As of the September 1, 2001 effective date of the Act, it transferred all powers, duties, obligations, rights, records, employees, and property of the commission on the effective date of this Act to administer the weather modification program to the TDLR (SB 1175, Article 3, §3.07(a)). It transferred all powers, duties, obligations, rights, contracts, records, property, and unspent or unobligated appropriations and other funds of the commission on the effective date of this Act to administer the weather modification grant program to the TDA (SB 1175, Article 3, §3.07(b)). “All rules, policies, procedures, and decisions that affect the weather modification program are continued in effect until superceded by a rule or other appropriate action of the TDLR.” (SB 1175, Article 3, §3.07(c)). It further transferred any commission weather modification program actions or proceedings to TDLR without change in status (SB 1175, Article 3,

§3.07(d)). Finally, it abolished the commission's weather modification program under TWC, Chapter 18 and provided for a December 31, 2001 deadline for TDLR to adopt rules to implement the Act (SB 1175, Article 3, §3.07(e) and (f)).

§281.7. Applications for Weather Modification Permits.

