

The Texas Natural Resource Conservation Commission (commission) proposes an amendment to §281.2, Applicability; and the repeal of §281.7, Applications for Weather Modification Permits.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED 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 is 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 proposing the amendments to Chapter 281 simultaneously with the repeal of Chapter 289.

#### SECTION BY SECTION DISCUSSION

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

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, has determined for each year of the first five-year period the proposed amendments are in effect, there will be no significant fiscal implications for the agency or other units of state and local government as a result of administration and enforcement of the proposed amendments. This rulemaking is intended to repeal rules covering the processing of weather modification permit applications.

Senate Bill 1175 (an act relating to the administration of the weather modification program; providing penalties), 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 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 TDA. The proposed amendments repeal rule language that is no longer necessary due to the transfer of the program to the TDLR and TDA.

The proposed amendments are procedural in nature and only affect the commission; therefore, the commission anticipates no fiscal impacts to any units of state and local government due to implementation of the proposed amendments. The approximately \$2.6 million that funded the commission's weather modification program has already been reallocated to the TDLR and TDA by the 77th Legislature.

PUBLIC BENEFITS AND COSTS

Mr. Davis has also determined for each of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of implementing the proposed amendments will be compliance with state law.

Senate Bill 1175 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 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 TDA. The proposed amendments repeal rule language that is no longer necessary due to the transfer of the program to the TDLR and TDA. This rulemaking is procedural in nature and only affects the commission. The commission anticipates no fiscal implications for individuals and businesses due to implementation of the proposed amendments.

#### SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There will be no adverse fiscal implications for small or micro-businesses due to implementation of the proposed amendments, which repeal rule language that is no longer necessary due to the transfer of the weather modification program from the commission to the TDLR and TDA. This rulemaking is procedural in nature and only affects the commission. The commission anticipates no fiscal implications for small or micro-businesses due to implementation of the proposed amendments.

#### 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 affect.

#### DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission has reviewed the proposed 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, other state standards regarding the subject matter of this rulemaking. Neither do they 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 will be conducted after September 1, 2001 by TDLR under the same rules until TDLR adopts its own rules in compliance with SB 1175, which will supercede those being repealed by the commission. Likewise, grant administration will be subject to the TDA's own 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 proposed 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 invites public comment on the draft regulatory impact analysis determination.

#### 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 proposed rulemaking and found that the rules are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

#### SUBMITTAL OF COMMENTS

Comments may be submitted to Joyce Spencer, Office of Environmental Policy, Analysis, and Assessment, Texas Natural Resource Conservation Commission, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Log Number 2001-062-289-WT. Comments must be received by 5:00 p.m., December 27, 2001. For further information, please contact Debra Barber, Policy and Regulations Division, at (512) 239-0412.

#### STATUTORY AUTHORITY

The amendment is proposed under SB 1175, Chapter 20 (Act), of the 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 Chapter 20 of the Texas Agricultural Code). 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 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)).

The proposed amendment implements SB 1175, 77th Legislature, 2001, §3.06, which repealed TWC, Chapter 18 and §7.44, relating to the regulation of weather modification by the commission.

**SUBCHAPTER A: APPLICATIONS PROCESSING**

**§281.2**

**§281.2. Applicability.**

These sections are applicable to the processing of:

(1) - (7) (No change.)

[~~(8)~~ applications for weather modification permits and licenses;]

~~(8)~~ [(9)] applications for new or amended certificates of convenience and necessity;

~~(9)~~ [(10)] applications for new, amended, or renewed municipal solid waste permits;

and

~~(10)~~ [(11)] applications for new, amended, or renewed radioactive material licenses.

## **SUBCHAPTER A: APPLICATION'S PROCESSING**

### **§281.7**

#### **STATUTORY AUTHORITY**

The repeal is proposed under SB 1175, Chapter 20 (Act), of the 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 Chapter 20 of the Texas Agricultural Code). 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 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)).

The proposed repeal implements SB 1175, 77th Legislature, 2001, §3.06, which repealed TWC, Chapter 18 and §7.44, relating to the regulation of weather modification by the commission.

**§281.7 Applications for Weather Modification Permits.**