

The Texas Commission on Environmental Quality (commission) adopts an amendment to §9.1. The commission also adopts new §§9.10 - 9.17. Section 9.13 is adopted *with change* to the proposed text as published in the November 22, 2002 issue of the *Texas Register* (27 TexReg 10890). Section 9.1, §§9.10 - 9.12, and 9.14 - 9.17 are adopted *without changes* and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

Texas Government Code, Chapter 656, Subchapter C, mandates that state agencies adopt rules relating to the eligibility of employees for training and education supported by the agency and the obligations assumed by employees upon receiving the training and education. It also authorizes agencies to use public funds to provide job-related training and education for its employees and to require employees to attend job-related training. Additionally, it identifies the specific purposes of agency training and education programs, and mandates that agencies adopt policies that relate to an employee's duties following participation in an education assistance program.

SECTION BY SECTION DISCUSSION

The adopted amendments to Chapter 9, Training for Commissioners, include changing the title of the chapter to "Training" to broaden the scope of the chapter by including training for commissioners and the agency's employee training and education programs. Adopted new Subchapter A, Training for Commissioners, contains the existing sections of Chapter 9. Adopted new Subchapter B, Employee Training and Education, establishes the agency's training and education programs.

Subchapter A, Training for Commissioners

The adopted amendment to §9.1, Purpose, changes the name of the commission from the Texas Natural Resource Conservation Commission to the Texas Commission on Environmental Quality.

Subchapter B, Employee Training and Education

The adopted new §9.10, Purpose, establishes the purpose of this subchapter, which is to govern procedures applicable to the employee training and education assistance programs of the agency.

The adopted new §9.11, Definitions, establishes definitions for words and terms used in this subchapter.

The adopted new §9.12, Scope, identifies the types of opportunities available through the employee training and education assistance programs.

The adopted new §9.13, Eligibility, identifies eligibility requirements for participating in employee training and education assistance programs. In adoption, staff broadened the eligibility for participating in the agency's training program to include all employees.

The adopted new §9.14, Obligations, specifies the obligations that employees assume for participating in the employee training and education assistance programs.

The adopted new §9.15, Reimbursement, identifies the sources of funding for the employee training and education assistance programs.

The adopted new §9.16, Training Records, identifies responsibilities for maintaining a centralized training management system for all employees, as well as individual training records for employees.

Adopted new §9.17, At-Will Employment, establishes that approval to participate in agency training and education programs does not affect an employee's at-will employment status.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the 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 that statute.

"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 rulemaking does not meet the definition of "major environmental rule" because the rulemaking is not specifically intended to protect the environment or reduce risks to human health from environmental exposure and is intended to simply implement the State Employees Training Act.

TAKINGS IMPACT ASSESSMENT

The commission evaluated this rulemaking and performed a preliminary assessment of whether Texas Government Code, Chapter 2007, is applicable. The specific primary purpose of the rulemaking is to revise commission rules to comply with Texas Government Code, Chapter 656, Subchapter C. This rulemaking will substantially advance this stated purpose by providing specific procedures applicable to the employee training and education assistance programs of the agency. Accordingly, promulgation and enforcement of the rules will not burden private real property. Further, as explained in this section, the adopted rules do 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 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 determined 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 rules are not subject to the Texas Coastal Management Program.

PUBLIC COMMENT

There was no public hearing held on the proposed rulemaking and there were no written comments submitted during the comment period which closed at 5:00 p.m., December 23, 2002.

CHAPTER 9: TRAINING

SUBCHAPTER A: TRAINING FOR COMMISSIONERS

§9.1

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code (TWC), §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; and TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule.

§9.1. Purpose.

This subchapter governs procedures applicable to the training of commissioners of the Texas Commission on Environmental Quality appointed on or after January 1, 2002.

SUBCHAPTER B: EMPLOYEE TRAINING AND EDUCATION

§§9.10 - 9.17

STATUTORY AUTHORITY

The new sections are adopted under TWC, §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; and Texas Government Code, §656.048, which requires state agencies to adopt rules relating to the eligibility of the agency's administrators and employees for training and education supported by the agency and the obligations assumed by the administrators and employees on receiving the training and education.

§9.10. Purpose.

(a) This subchapter governs procedures applicable to the employee training and education programs of the agency.

(b) The commission encourages the professional development of its employees through job-related training and education assistance programs that are designed to:

- (1) prepare employees for technological and legal developments;

(2) increase employees' work capabilities; and

(3) increase employees' professional and technical competence.

§9.11. Definitions.

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. Scope.

Employee training and education includes two components: the employee training program and the education assistance program.

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

(A) 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 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 out-of-agency staff development opportunities. It includes courses provided through a university, college, or other institution of higher learning via a variety of delivery media, such as instructor-led or Internet-based.

§9.13. Eligibility.

(a) Employee training program. Employees are eligible to participate in the agency's training 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. 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, if they meet the following eligibility requirements as set forth in the agency's policies:

- (1) tenure requirement;
- (2) performance requirements; and
- (3) conduct requirements.

§9.14. Obligations.

Employees who participate in the agency's training and education programs are obligated to comply with agency policies and procedures regarding these programs.

§9.15. Reimbursement.

(a) Employee training program.

(1) Funding for employee training is provided through the agency's central training account or the employee's respective division.

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

(b) Education assistance program. The employee's respective division funds reimbursement of specific tuition-related expenses that have been approved by the division director. To qualify for reimbursement, courses requested by the employee must be provided through an accredited institution of higher learning and:

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

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

(3) needed for a special job assignment; or

(4) required for a career ladder promotion.

§9.16. Training Records.

(a) The Training Academy shall maintain training records for all agency employees via an automated training management system.

(b) 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 shall not in any way affect an employee's at-will status. Participation in these programs shall not constitute a guarantee or indication of future employment in a current or prospective position.