

The Texas Commission on Environmental Quality (commission or TCEQ) proposes amendments to §25.9 and §25.62.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The purpose of the proposed rules is to refer to more recent laboratory accreditation standards adopted by the National Environmental Laboratory Accreditation Conference (NELAC) and to expand the sources of proficiency test samples for drinking water laboratories seeking or holding certifications issued by the commission.

SECTION BY SECTION DISCUSSION

Proposed §25.9, Standards for Environmental Testing Laboratory Accreditation, would replace the phrase “Chapters 3, 4, and 5, adopted July 2002, and Chapters 1, 2, and 6, adopted June 2003” with “approved June 2003” to refer to the most recent laboratory accreditation standards adopted by NELAC.

Proposed §25.62(d), Proficiency Test Sample Analyses, would replace the phrase “Proficiency test samples shall be purchased from a provider approved by the National Institute for Standards and Technology, if available” with “Proficiency test samples, if available, shall be purchased from a National Environmental Laboratory Accreditation Program-designated provider or a provider approved by the National Institute of Standards and Technology.” The change would expand the number of potential sources of proficiency test samples for drinking water laboratories seeking or holding certifications issued by the commission.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Jeffrey Horvath, Analyst, Strategic Planning and Assessment Section, determined that for the first five-year period the proposed rules are in effect, no fiscal implications are expected for the agency or other units of state and local government as a result of administration or enforcement of the proposed rules.

The proposed amendments update NELAC standards currently referenced in existing rules and expand the sources of proficiency test samples for drinking water laboratories seeking or holding certifications issued by the commission.

Current §25.9 refers to standards approved by NELAC July 2002 and June 2003. The reference to NELAC standards adopted July 2002 is out-of-date. The proposed change brings the reference to NELAC standards up-to-date. There are no fiscal implications anticipated from this proposed change. Further, the change is necessary for the agency's accreditation program to be consistent with National Environmental Laboratory Accreditation Program standards, as required by Texas Water Code (TWC), §5.802.

Current §25.62 requires drinking water laboratories seeking or holding certifications issued by the commission to purchase proficiency test samples, if available, from providers approved by the National Institute of Standards and Technology. The proposed change allows these laboratories to purchase proficiency test samples from National Environmental Laboratory Accreditation Program-designated

providers, as well as providers approved by the National Institute of Standards and Technology. There are no fiscal implications anticipated from this proposed change.

PUBLIC BENEFITS AND COSTS

Mr. Horvath also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the enforcement of and compliance with the proposed rules would be compliance with state law and an expanded number of potential sources of proficiency test samples for drinking water laboratories seeking or holding certifications issued by the commission.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated as a result of implementation of the proposed rules for small or micro-businesses.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission 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 rulemaking is not subject to §2001.0225 because it does not meet the definition of a major environmental rule. 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, 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.

This rulemaking updates the agency's standards for accreditation and expands the number of potential sources of proficiency test samples for drinking water laboratories seeking or holding certifications issued by the commission. Thus, these rules do not meet the definition of a "major environmental rule." These rules are not a major environmental rule and do not meet any of the four applicability requirements that apply to a major environmental rule. Under Texas Government Code, §2001.0225, the proposed rules do not exceed a standard set by federal law or 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. The proposed rules do not exceed a standard set by federal law nor exceed the requirement of a delegation agreement because there is no federal authority regarding laboratory accreditation.

These revisions do not adopt a rule solely under the general powers of the commission and do not exceed an express requirement of state law. The requirements that would be implemented through these rules are expressly defined under TWC, Chapter 5, Subchapter R, which requires the commission to enact rules governing the accreditation of environmental laboratories.

TAKINGS IMPACT ASSESSMENT

The commission's preliminary assessment indicates that Texas Government Code, Chapter 2007, does not apply to these proposed amendments because the proposed amendments are not a taking as defined in Chapter 2007, nor are they a constitutional taking of private real property. The purpose of the proposed amendments is to update NELAC standards currently referenced in existing rules.

Promulgation and enforcement of these proposed rules will not affect private real property, which is the subject of the rules, because the proposed amendments will neither restrict or limit the owner's right to the property, nor cause a reduction of 25% or more in the market value of the property. The proposed rules only apply to environmental testing laboratories that submit data to the commission for use in its decisions. Property values will not be decreased because the proposed amendments will not limit the use of real property. Thus, these proposed rules will not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed this rulemaking and found that the proposal is not a rulemaking subject to the Texas Coastal Management Program (CMP) because the rulemaking is neither identified in 31 TAC §505.11, nor will it affect any action or authorization identified in §505.11. Therefore, the proposal is not subject to the CMP.

SUBMITTAL OF COMMENTS

Comments may be submitted to Joyce Spencer, MC 205, Texas Register Team, Office of Legal Services, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Comments must be

received by 5:00 p.m., April 24, 2006, and should reference Rule Project Number 2006-014-025-CE.

Copies of the proposal may be obtained from the commission's Web site at

http://www.tceq.state.tx.us/nav/rules/propose_adopt.html. For further information, please contact

Stephen Stubbs, Compliance Support Division, at (512) 239-6343.

SUBCHAPTER B: ENVIRONMENTAL TESTING LABORATORY ACCREDITATION

§25.9

STATUTORY AUTHORITY

The amendment is proposed 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; §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under the TWC; and §5.802 and §5.805, which require the agency to adopt rules for the administration of the laboratory accreditation program.

The proposed amendment implements TWC, §§5.013, 5.103, 5.105, 5.802, and 5.805.

§25.9. Standards for Environmental Testing Laboratory Accreditation.

Accreditation must be based on an environmental testing laboratory's conformance to National Environmental Laboratory Accreditation Conference standards approved [, Chapters 3, 4, and 5, adopted July 2002, and Chapters 1, 2, and 6, adopted] June 2003 and the requirements of this chapter.

SUBCHAPTER C: ENVIRONMENTAL TESTING LABORATORY CERTIFICATION

§25.62

STATUTORY AUTHORITY

The amendment is proposed 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; §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under the TWC; and §5.802 and §5.805, which require the agency to adopt rules for the administration of the laboratory accreditation program.

The proposed amendment implements TWC, §§5.013, 5.103, 5.105, 5.802, and 5.805.

§25.62. Proficiency Test Sample Analyses.

(a) The operator of an environmental testing laboratory applying for initial certification shall ensure that laboratory personnel successfully analyze one proficiency test sample for each requested field of certification. The proficiency test samples shall be analyzed no more than 12 months prior to submitting the application.

(b) The operator of a certified environmental testing laboratory shall ensure that laboratory personnel analyze at least two proficiency test samples each year approximately six months apart. The

operator of a certified environmental testing laboratory shall ensure that laboratory personnel successfully analyze one proficiency test sample for each field of certification each year. An environmental testing laboratory that does not meet the requirements of this subsection may participate in a supplemental proficiency test study.

(c) The executive director shall determine the environmental testing laboratory's certification status for all affected fields of certification within 60 days of determining that laboratory personnel failed to analyze proficiency test samples successfully according to this subsection.

(d) Proficiency test samples, if available, shall be purchased from a National Environmental Laboratory Accreditation Program-designated provider or a provider approved by the National Institute of [for] Standards and Technology[, if available].