

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amended §20.15.

The amended §20.15 is adopted *without changes* to the proposed text as published in the September 4, 2015, issue of the *Texas Register* (40 TexReg 5720) and will not be republished.

Background and Summary of the Factual Basis for the Adopted Rule

This rulemaking implements House Bill (HB) 763, 84th Texas Legislature, 2015, authored by Representative Susan King, which provides the definition of "interested person" for the purposes of filing a petition for rulemaking.

Section Discussion

§20.15, Petition for Adoption of Rules

The commission adopts amended subsection (a) to implement new subsection (d) of Texas Government Code, §2001.021 in Section 1 of HB 763. HB 763, Section 1, requires that a petition for rulemaking be filed by an interested person, and defines interested person as: Texas resident, a business entity located in Texas, a governmental subdivision located in Texas, or a public or private organization located in Texas. HB 763 also specifically excludes state agencies from the definition of "interested person." For clarity, the existing subsection (a) has been divided into two subsections. The

specific requirements regarding the contents of a petition for rulemaking have been moved to subsection (b) and the remaining subsections have been relettered.

Additionally, in subsection (a) the commission adds the word "interested" to clarify that only interested persons may file a petition for rulemaking.

The commission adopts amended subsection (c) by providing that a petition may be denied for failure to comply with the requirements of §20.15(a) or (b).

The commission also adopts amended subsection (d) by replacing the acronym "APA" with "Administrative Procedure Act."

Final Regulatory Impact Determination

The commission reviewed the rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" is 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 adopted amendment to §20.15 is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. Rather, the rulemaking revises procedural rules regarding who may submit a petition for rulemaking to the commission. The primary purpose of the proposed rulemaking is to implement changes made to the Texas Government Code in HB 763.

The rulemaking is procedural in nature and does not 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.

As defined in the Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; 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 adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking action does not meet any of these four applicability requirements of a "major environmental rule." Specifically, the adopted amendment to §20.15 revises procedural rules regarding the persons that may submit a rulemaking petition to the commission and are procedural in nature. The primary purpose of the adopted

rulemaking is to implement changes made to the Texas Government Code in HB 763.

This adopted rulemaking action does not exceed an express requirement of state law or a requirement of a delegation agreement, and was not developed solely under the general powers of the agency, but was specifically developed to meet the requirements of the law described in the Statutory Authority section of this preamble.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. The commission did not receive any comments on the Draft Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007, is applicable. The adopted amendment to §20.15 revises procedural rules regarding the persons that may submit a rulemaking petition to the commission. Promulgation and enforcement of the adopted rulemaking will not burden private real property. The adopted rule does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Consequently, this rulemaking action does not meet the definition of a taking under Texas Government Code, §2007.002(5).

Consistency with the Coastal Management Program

The commission reviewed the adopted rule and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rule is not subject to the Texas Coastal Management Program (CMP).

The commission invited public comment regarding the consistency with the CMP during the public comment period. The commission did not receive any comments on the CMP.

Public Comment

The commission held a public hearing on September 29, 2015. The comment period closed on October 5, 2015. The commission did not receive any comments on the proposed rule.

§20.15

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.013, concerning General Jurisdiction of Commission, which establishes the general jurisdiction of the commission; TWC, §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, which authorizes the commission by rule to establish and approve all general policy of the commission; and Texas Government Code, §2001.021, concerning Petition for Adoption of Rules.

The adopted amendment implements Texas Government Code, §2001.021, Petition for Adoption of Rules, and House Bill 763 (84th Texas Legislature, 2015).

§20.15. Petition for Adoption of Rules.

(a) Any interested person may petition the commission to request the adoption of a rule. For the purposes of this section, an interested person must be:

- (1) a resident of Texas;

(2) a business entity located in Texas;

(3) a governmental subdivision located in Texas; or

(4) a public or private organization located in Texas that is not a Texas state agency.

(b) Petitions shall be submitted in writing to: Executive Director, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, and shall comply with the following requirements:

(1) each rule requested must be submitted by separate petition;

(2) each petition must state the name and address of the petitioner;

(3) each petition shall include:

(A) a brief explanation of the proposed rule;

(B) the text of the proposed rule prepared in a manner to indicate the words to be added or deleted from the text of the current rule, if any;

(C) a statement of the statutory or other authority under which the proposed rule is to be promulgated; and

(D) an allegation of injury or inequity that could result from the failure to adopt the proposed rule.

(c) A petition may be denied for failure to comply with the requirements of subsection (a) or (b) of this section.

(d) Within 60 days after submission of a petition, the commission shall consider the petition and shall either deny the petition in writing, stating its reasons for the denial, or shall initiate rulemaking proceedings in accordance with the Administrative Procedure Act.