

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §20.15.

Background and Summary of the Factual Basis for the Proposed 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 proposes to amend 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 proposes to add the word "interested" to

clarify that only interested persons may file a petition for rulemaking.

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

The commission also proposes to amend subsection (d) by replacing the acronym APA with Administrative Procedure Act.

Fiscal Note: Costs to State and Local Government

Jeffrey Horvath, Analyst in the Chief Financial Officer Division, has determined that for the first five-year period the proposed rule is in effect, no fiscal implications are anticipated for the agency or for other units of state or local government due to limiting the definition of "interested person" for the purposes of filing a petition for rulemaking.

The proposed rule implements HB 763, 84th Texas Legislature, 2015, and provides the definition of "interested person" for the purposes of filing a petition for rulemaking. The proposed amendment to subsection (a) would implement the amendments to Texas Government Code, §2001.021 in HB 763, Section 1. 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."

The proposed rule will limit the type of person that can petition the TCEQ for rulemaking. No fiscal implications are anticipated for units of state or local government by defining the scope of persons that can file a petition for rulemaking.

Public Benefits and Costs

Mr. Horvath has also determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated from the changes seen in the proposed rule would be compliance with state law.

No fiscal implications are anticipated for businesses or individuals as a result of the implementation of the proposed rule. The proposed rule provides the definition of "interested person" for the purposes of filing a petition for rulemaking. The proposed rule would require 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. No fiscal implications are anticipated for individuals or businesses by defining the scope of persons that can file a petition for rulemaking.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rule. The proposed rule would have the same effect on a small business as it does on a large business. The proposed rule will limit the type of person that can petition the TCEQ for rulemaking. No fiscal implications are anticipated for businesses as a result of defining the scope of persons that can file a petition for rulemaking.

Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rule is necessary to comply with state law and does not adversely affect a small or micro-businesses in a material way for the first five years that the proposed rule is in effect.

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 rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

Draft Regulatory Impact Analysis 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 proposed amendments to Chapter 20 are 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 proposed amendment to Chapter 20 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 proposed rulemaking is to implement changes made to the Texas Government Code in HB 763. This proposed 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 rulemaking.

Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007, is applicable. The proposed amendment to Chapter 20 revises procedural rules regarding the persons that may submit a rulemaking petition to the commission. Promulgation and enforcement of the proposed rulemaking will not burden private real property. The proposed 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 proposed 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 proposed rule is not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on September 29, 2015 at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802. Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Derek Baxter, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www1.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2015-023-020-LS. The comment period closes on October 5, 2015.

Copies of the proposed rulemaking can be obtained from the commission's website at http://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Kathy Humphreys, Environmental Law Division, at (512) 239-3417.

§20.15

Statutory Authority

The amendment is proposed 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 proposed amendment implements Texas Government Code, §2001.021, Petition for Adoption of Rules, and HB 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) [(b)] A petition may be denied for failure to comply with the requirements of subsection (a) or (b) of this section.

(d) [(c)] 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 [APA].