

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST
for Rulemaking Adoption

AGENDA REQUESTED: June 28, 2023

DATE OF REQUEST: June 9, 2023

INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Gwen Ricco, Rule/Agenda Coordinator, (512) 239-2678

CAPTION: **Docket No. 2022-1697-MIS.** Consideration of the adoption of amendment to 30 TAC Chapter 9, Training.

The rulemaking adoption will implement House Bill 2063, 87th Texas Legislature, 2021, relating to the establishment of a State Employee Family Leave Pool. The rulemaking adoption establishes the agency's sick leave pool and family leave pool programs. The proposed rules were published in the March 10, 2023, issue of the *Texas Register* (48 TexReg 1402). (Robert Icenogle, Alma Borsheim; Rule Project No. 2023-112-009-AS)

Kelly Keel

Director

Elizabeth West

Division Deputy Director

Gwen Ricco

Agenda Coordinator

Copy to CCC Secretary? NO YES

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** June 9, 2023

Thru: Laurie Gharis, Chief Clerk
Erin E. Chancellor, Interim Executive Director

From: Kelly Keel, Director KK 5/11/23
Office of Administrative Services

Docket No.: 2022-1697-MIS

Subject: Commission Approval for Rulemaking Adoption
Chapter 9, Training
Employee Leave Pool Programs
Rule Project No. 2023-112-09-AS

Background and reason(s) for the rulemaking:

The following statutes require all state agencies to adopt rules relating to the operation of two employee leave pool programs: Texas Government Code, Subchapter A, State Employee Sick Leave Pool, §§661.001, et seq., and Texas Government Code, Subchapter A-1, State Employee Family Leave Pool, §§661.021, et seq.

Scope of the rulemaking:

The Texas Commission on Environmental Quality's (TCEQ or agency) established sick leave pool policy is in Operating Policy and Procedure (OPP) 9.06, Sick Leave Pool, and administered in accordance with the statute by the Human Resources and Staff Services Division.

The 87th Legislature, 2021, passed House Bill (HB) 2063 that requires TCEQ to establish a new family leave pool program. TCEQ will incorporate this new family leave pool program into OPP 9.06 and follow similar administrative procedures. The rulemaking adoption confirms the establishment of the agency's programs for the sick leave and family leave pools and incorporates by reference the agency's policy and procedure.

A.) Summary of what the rulemaking will do:

The rulemaking will retitle Chapter 9 to Training and Employee Programs and add a new Subchapter C: Employee Leave Pool Programs. New rule §9.20 establishes TCEQ's sick leave pool and family leave pool programs and incorporates by reference the agency's policy and procedures.

B.) Scope required by federal regulations or state statutes:

Establish by rule the agency's sick leave pool and family leave pool programs and incorporate by reference the agency's policy and procedure.

C.) Additional staff recommendations that are not required by federal rule or state statute:

No additional recommendations.

Statutory authority:

Texas Government Code, Subchapter A, State Employee Sick Leave Pool, §§661.001, et seq.
HB 2063, creating Texas Government Code, Subchapter A-1, State Employee Family Leave Pool, §§661.021, et seq.

Re: Docket No. 2022-1697-MIS

Effect on the:

A.) Regulated community:
None.

B.) Public:
None.

C.) Agency programs:
The Human Resources and Staff Services Division in the Office of Administrative Services will administer the family leave pool consistent with the policy and procedures of the established sick leave pool. This policy applies only to TCEQ employees.

Stakeholder meetings:
There were no stakeholder meetings as the statutory leave pool programs are available only to TCEQ employees.

Public Involvement Plan
None.

Alternative Language Requirements
None.

Public comment:
The commission offered a public hearing on April 7, 2023. The comment period closed on April 10, 2023. No public comments were received.

Significant changes from proposal:
None.

Potential controversial concerns and legislative interest:
None.

Will this rulemaking affect any current policies or require development of new policies?
Rulemaking confirms the agency's established sick leave pool policy and incorporates the new family leave pool created by HB 2063.

What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?
There are no alternatives to rulemaking. State law requires the establishment of a family leave pool and sick leave pool.

Key points in the adoption rulemaking schedule:
Texas Register proposal publication date: March 10, 2023
Anticipated *Texas Register* adoption publication date: June 30, 2023
Anticipated effective date: July 6, 2023
Six-month *Texas Register* filing deadline: September 10, 2023

Agency contacts:
Robert Icenogle, Rule Project Manager, Human Resources and Staff Services Division, (512) 239-0131

Commissioners

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June 9, 2023

Re: Docket No. 2022-1697-MIS

Alma Borsheim, Staff Attorney, General Law Division, (512) 239-0688

Gwen Ricco, Texas Register Rule/Agenda Coordinator, General Law Division, (512) 239-2678

Attachments:

HB 2063

cc: Chief Clerk, 2 copies
Executive Director's Office
Jim Rizk
Morgan Johnson
Krista Kyle
Office of General Counsel
Robert Icenogle
Alma Borsheim
Gwen Ricco

AN ACT

relating to the establishment of a state employee family leave pool.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 661, Government Code, is amended by adding Subchapter A-1 to read as follows:

SUBCHAPTER A-1. STATE EMPLOYEE FAMILY LEAVE POOL

Sec. 661.021. PURPOSE. The purpose of the state employee family leave program is to:

(1) provide eligible state employees more flexibility

in:

(A) bonding with and caring for children during a child's first year following birth, adoption, or foster placement; and

(B) caring for a seriously ill family member or the employee, including pandemic-related illnesses or complications caused by a pandemic; and

(2) allow employees to apply for leave time under the family leave pool.

Sec. 661.022. GUIDELINES. (a) The governing body of a state agency shall, through the establishment of a program, allow an agency employee to voluntarily transfer sick or vacation leave earned by the employee to a family leave pool.

(b) The executive head of the state agency or another

1 individual appointed by the governing body shall administer the
2 family leave pool.

3 (c) The governing body of the state agency shall adopt rules
4 and prescribe procedures relating to the operation of the agency
5 family leave pool.

6 Sec. 661.023. CONTRIBUTION TO FAMILY LEAVE POOL. (a) A
7 state employee may contribute to the family leave pool one or more
8 days of the employee's accrued sick or vacation leave.

9 (b) The pool administrator shall credit the family leave
10 pool with the amount of time contributed by a state employee and
11 deduct a corresponding amount of time from the employee's earned
12 sick or vacation leave as if the employee had used the time for
13 personal purposes.

14 (c) A retiring state employee may designate the number of
15 the retiring employee's accrued sick or vacation leave hours to be
16 used for retirement credit and the number of the retiring
17 employee's accrued sick or vacation leave hours to be donated on
18 retirement to the sick or family leave pool.

19 Sec. 661.024. USE OF TIME IN POOL. (a) A state employee is
20 eligible to use time contributed to the family leave pool of the
21 state agency that employs the employee if the employee has
22 exhausted the employee's eligible compensatory, discretionary,
23 sick, and vacation leave because of:

24 (1) the birth of a child;

25 (2) the placement of a foster child or adoption of a
26 child under 18 years of age;

27 (3) the placement of any person 18 years of age or

1 older requiring guardianship;

2 (4) a serious illness to an immediate family member or
3 the employee, including a pandemic-related illness;

4 (5) an extenuating circumstance created by an ongoing
5 pandemic, including providing essential care to a family member; or

6 (6) a previous donation of time to the pool.

7 (b) A state employee who applies to use time under
8 Subsection (a) to care for another person must submit and be listed
9 on the other person's birth certificate, birth facts, or adoption
10 or foster paperwork for a child under 18 years of age, including
11 being listed as the mother, father, adoptive parent, foster parent,
12 or partner of the child's mother, adoptive parent, or foster
13 parent, or provide documentation that the employee is the guardian
14 of a person who is 18 years of age or older and requiring
15 guardianship.

16 Sec. 661.025. WITHDRAWAL OF TIME FROM POOL. (a) A state
17 employee may apply to the pool administrator for permission to
18 withdraw time from the family leave pool.

19 (b) If the state employee is seeking permission to withdraw
20 time because of a serious illness, including a pandemic-related
21 illness, of an immediate family member or the employee and does not
22 qualify for or has exhausted time available in the sick leave pool,
23 the employee must provide the pool administrator with a written
24 statement from the licensed practitioner who is treating the
25 employee or the employee's immediate family member.

26 (c) If the state employee is seeking permission to withdraw
27 time because of an extenuating circumstance created by an ongoing

1 pandemic, including providing essential care to a family member,
2 the employee must provide any applicable documentation, including
3 an essential caregiver designation, proof of closure of a school or
4 daycare, or other appropriate documentation.

5 (d) If the pool administrator determines the state employee
6 is eligible, the administrator shall:

7 (1) approve the transfer of time from the pool to the
8 employee; and

9 (2) credit the time to the employee.

10 Sec. 661.026. LIMITATION ON WITHDRAWALS. (a) A state
11 employee may not withdraw time from the family leave pool in an
12 amount that exceeds the lesser of:

13 (1) one-third of the total time in the pool; or

14 (2) 90 days.

15 (b) Subject to Subsection (a), the pool administrator shall
16 determine the amount of time that an employee may withdraw from the
17 pool.

18 Sec. 661.027. EQUAL TREATMENT. A state employee absent
19 while using time withdrawn from the family leave pool may use the
20 time as sick leave earned by the employee. The employee shall be
21 treated for all purposes as if the employee is absent on earned sick
22 leave.

23 Sec. 661.028. NO ENTITLEMENT TO ESTATE. The estate of a
24 deceased state employee is not entitled to payment for unused time
25 withdrawn by the employee from the family leave pool.

26 SECTION 2. This Act takes effect September 1, 2021.

President of the Senate

Speaker of the House

I certify that H.B. No. 2063 was passed by the House on May 5, 2021, by the following vote: Yeas 135, Nays 10, 1 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 2063 was passed by the Senate on May 27, 2021, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amended Chapter 9, Training, by adding Subchapter C: Employee Programs, and retitling Chapter 9 to Training and Employee Programs.

Amended Chapter 9 is adopted *without changes* to the proposed text as published in the March 10, 2023, issue of the *Texas Register* (48 TexReg 1402) and, therefore, will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

The following statutes require all state agencies to adopt rules relating to the operation of two employee leave pool programs: Texas Government Code, Subchapter A, State Employee Sick Leave Pool, §§661.001, et seq., and Texas Government Code, Subchapter A-1, State Employee Family Leave Pool, §§661.021, et seq.

TCEQ's established sick leave pool policy is in Operating Policy and Procedure (OPP) 9.06, Sick Leave Pool, and administered in accordance with the statute by the Human Resources and Staff Services Division. TCEQ is revising OPP 9.06 to establish a family sick leave pool program and follow similar administrative procedures to the sick leave pool program to incorporate House Bill (HB) 2063, 87th Texas Legislature, 2021.

The adopted rule confirms the establishment of the agency's programs for the sick leave and family leave pools and incorporates by reference the agency's policy and procedure.

Section by Section Discussion

The commission rulemaking adoption amends the title of Chapter 9 from “Training” to “Training and Employee Programs.”

The commission adopts new Subchapter C, Employee Programs, and new §9.20, Employee Leave Pool Programs, to establish by rule the agency’s sick leave pool and family leave pool programs and incorporate by reference the agency’s policies to administer these programs.

Final Regulatory Impact Determination

The commission reviewed the new rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the new rulemaking is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a “major environmental rule” as defined by statute. Furthermore, it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a).

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, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.” The intent of the adopted rulemaking is to conform to Texas Government Code, §661.002 and §661.022, and to provide an internal family leave pool program and sick

leave pool program to TCEQ employees. Because the changes are not expressly to protect the environment and reduce risks to human health and environment, the rulemaking does not meet the definition of a “major environmental rule.”

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received regarding the regulatory impact analysis determination.

Takings Impact Assessment

The commission evaluated the adopted new rule and assessed whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this new rule is to conform to Texas Government Code, §661.002 and §661.022, and to provide an internal family leave pool program and sick leave pool program to TCEQ employees. Promulgation and enforcement of this adopted new rule will be neither a statutory nor a constitutional taking of private real property. Specifically, the subject adopted regulation does not affect a landowner’s rights in private real property because this rulemaking does not burden (constitutionally); nor restrict or limit the owner’s right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. Therefore, there are no burdens imposed on private real property.

Consistency with the Coastal Management Program

The commission reviewed the rulemaking adoption 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 rulemaking adoption is not subject to the Texas Coastal Management Program.

The commission invited public comment regarding the consistency with the coastal management program during the public comment period. No public comments were received.

Public Comment

The commission offered a public hearing on April 7, 2023. The comment period closed on April 10, 2023. No public comments were received.

SUBCHAPTER C: Employee Programs

§9.20

Statutory Authority

The new rule is adopted under Texas Water Code (TWC), TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt rules necessary to carry out its power and duties under the TWC and any other laws of the State of Texas.

The rulemaking adoption implements Texas Government Code, §661.002 and §661.022, which states that a governing body of the state agency shall adopt rules and prescribe procedures relating to the operation of the agency sick leave pool and family leave pool.

§9.20. Employee Leave Pool Programs

(a) Sick Leave Pool. A sick leave pool is established to allow eligible agency employees to use time contributed to the sick leave pool, if the employee has exhausted their sick leave due to a catastrophic illness or injury;

(b) Family Leave Pool. A family leave pool is established to allow eligible agency employees to use time contributed to the family leave pool, to allow for more flexibility in bonding with and caring for children during a child's first year following birth, adoption, or foster placement, and caring for a seriously ill family member or the

employee's own serious illness, including pandemic-related illnesses or complications caused by a pandemic; and,

(c) Administration of both pools programs is delegated to the deputy director for the Human Resources and Staff Services Division and shall be implemented by policy and procedures that are consistent with Texas Government code, Chapter 661, as amended.

(a) Both the complainant and respondent in a matter shall have an opportunity to be heard in an informal conference, and each may be represented by legal counsel. In an informal conference requiring medical expertise, the panel shall consist of two veterinarians and one public member of the TBVME. In an informal conference that does not require medical expertise, the panel shall consist of one veterinarian, one member of the legal staff, and one member of the staff or public member designated by the executive director.

(b) Respondent must submit any additional evidence for review by the TBVME on or before the 7th day after the respondent receives the medical review.

(c) The Board shall provide the complainant and respondent and their legal counsel, if any, all information regarding potential outcomes of an informal conference prior to the informal conference.

(d) The Board shall provide the complainant and respondent, if applicable, with reasonable written notice of the time, date, and location of an informal conference. The notice shall include a statement of the alleged violation(s) to be considered by the informal conference panel.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 27, 2023.

TRD-202300913

John Hargis

General Counsel

Texas Board of Veterinary Medical Examiners

Earliest possible date of adoption: April 9, 2023

For further information, please call: (512) 693-4500x3



TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 9. TRAINING

SUBCHAPTER C. EMPLOYEE PROGRAMS

30 TAC §9.20

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amending Chapter 9, Training, to Chapter 9 to Training and Employee Programs, and adding Subchapter C, Employee Programs, new §9.20.

Background and Summary of the Factual Basis for the Proposed Rules

The following statutes require all state agencies to adopt rules relating to the operation of two employee leave pool programs: Texas Government Code, Subchapter A, State Employee Sick Leave Pool, §§661.001, et seq., and Texas Government Code, Subchapter A-1, State Employee Family Leave Pool, §§661.021, et seq.

The Texas Commission on Environmental Quality's (TCEQ or agency) established sick leave pool policy is in Operating Policy and Procedure (OPP) 9.06, Sick Leave Pool, and administered in accordance with the statute by the Human Resources and

Staff Services Division. TCEQ is revising OPP 9.06 to establish a family sick leave pool program and follow similar administrative procedures to the sick leave pool program to incorporate House Bill (HB) 2063 87th Texas Legislature, 2021.

The proposed rule confirms the establishment of the agency's programs for the sick leave and family leave pools and incorporates by reference the agency's policy and procedure.

Section by Section Discussion

The commission proposes to amend the title of Chapter 9 from "Training" to "Training and Employee Programs."

The commission proposes new Subchapter C, Employee Programs, and new §9.20, Employee Leave Pool Programs, to establish by rule the agency's sick leave pool and family leave pool programs and incorporate by reference the agency's policies to administer these programs.

Fiscal Note: Costs to State and Local Government

Jené Bearse, Deputy Director in the Budget and Planning 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 as a result of administration or enforcement of the proposed rule.

Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated will be compliance with state law and an additional leave option for agency employees who have exhausted their leave due to a qualifying event. The proposed rulemaking is not anticipated to result in fiscal implications for businesses or individuals.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

Rural Communities Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rule is in effect. The proposed rule would apply statewide and have the same effect in rural communities as in urban communities.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rule for the first five-year period the proposed rule is in effect.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rule does not adversely affect a small or micro-business in a material way for the first five years the proposed rule is in effect.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed

rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking does not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create, expand, repeal or limit an existing regulation, nor does the proposed rulemaking increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rule should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis Determination [if full RIA not required]

The commission reviewed the proposed new rule in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed new rule is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "Major environmental rule" as defined by statute. Furthermore, it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a).

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, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state." The intent of the proposed rulemaking is to conform to Texas Government Code, §661.002 and §661.022, and to provide an internal family leave pool program and sick leave pool program to TCEQ employees. Because the changes are not expressly to protect the environment and reduce risks to human health and environment, the rulemaking does not meet the definition of a "major environmental rule."

The commission invites public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. 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 new rule and assessed whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this new rule is to conform to Texas Government Code, §661.002 and §661.022, and to provide an internal family leave pool program and sick leave pool program to TCEQ employees. Promulgation and enforcement of this proposed new rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulation does not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally); nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. Therefore, there are no burdens imposed on private real property.

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 would it affect any action/authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the proposed

new 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 hybrid virtual and in-person public hearing on this proposal in Austin on April 7, 2023, at 10:00 a.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.

Individuals who plan to attend the hearing virtually and want to provide oral comments and/or want their attendance on record must register by Wednesday, April 5, 2023. To register for the hearing, please email Rules@tceq.texas.gov and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on Thursday, April 6, 2023, to those who register for the hearing.

For the public who do not wish to provide oral comments but would like to view the hearing may do so at no cost at: https://teams.microsoft.com/l/meetup-join/19%3ameeting_N-DE3ZTk1NWUtOWZlYy00NjM4LWE2MDctYzU4YjU1MGRkY-Wlw%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%22e74a40ea-69d4-469d-a8ef-06f2c9ac2a80%22%2c%22Is-BroadcastMeeting%22%3atru%7d

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 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to fax4808@tceq.texas.gov. Electronic comments may be submitted at: <https://tceq.commentinput.com/comment/search>. File size restrictions may apply to comments being submitted via the TCEQ Public Comments system. All comments should reference Rule Project Number 2023-112-009-AS. The comment period closes on April 10, 2023. Please choose one of the methods provided to submit your written comments.

Copies of the proposed rulemaking can be obtained from the commission's website at https://www.tceq.texas.gov/rules/proposal_adapt.html. For further information, please contact Robert Icenogle, Human Resources and Staff Services, (512) 239-0131.

Statutory Authority

The new rule is proposed under Texas Water Code (TWC), TWC, §5.103, concerning Rules, which provides the commission with the authority to adopt rules necessary to carry out its power and duties under the TWC and any other laws of the State of Texas.

The proposed new rule implements Texas Government Code, §661.002 and §661.022, which governing body of the state agency shall adopt rules and prescribe procedures relating to the operation of the agency sick leave pool and family leave pool.

§9.20. Employee Leave Pool Programs.

(a) Sick Leave Pool. A sick leave pool is established to allow eligible agency employees to use time contributed to the sick leave pool, if the employee has exhausted their sick leave due to a catastrophic illness or injury.

(b) Family Leave Pool. A family leave pool is established to allow eligible agency employees to use time contributed to the family leave pool, to allow for more flexibility in bonding with and caring for children during a child's first year following birth, adoption, or foster placement, and caring for a seriously ill family member or the employee's own serious illness, including pandemic-related illnesses or complications caused by a pandemic.

(c) Administration of both pools programs is delegated to the deputy director for the Human Resources and Staff Services Division and shall be implemented by policy and procedures that are consistent with Texas Government code, Chapter 661, as amended.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 24, 2023.

TRD-202300866

David Timberger

Deputy Director, General Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: April 9, 2023

For further information, please call: (512) 239-2678

◆ ◆ ◆
**CHAPTER 116. CONTROL OF AIR
POLLUTION BY PERMITS FOR NEW
CONSTRUCTION OR MODIFICATION
SUBCHAPTER F. STANDARD PERMITS**

30 TAC §116.615

The Texas Commission on Environmental Quality (TCEQ or commission) proposes amendments to §116.615.

If approved, amendments to §116.615 will be submitted to the U.S. Environmental Protection Agency (EPA) as a revision to the State Implementation Plan (SIP).

Background and Summary of the Factual Basis for the Proposed Rules

The TCEQ is seeking to amend Chapter 116, Control of Air Pollution by Permits for New Construction or Modification, to ensure that owners or operators of concrete batch plants authorized under TCEQ's Air Quality Standard Permit for Concrete Batch Plants (CBPSP) comply with certain public notice and hearing requirements if they propose to move the registered concrete batch plant to a new location on the site. The proposed rulemaking is intended to address the possibility of situations where an applicant initially represents that a concrete batch plant will

be located greater than 440 yards from a potentially affected person, but subsequently moves the plant to within 440 yards of a potentially affected person after the registration is issued.

Hearing requests on a CBPSP are subject to the requirements in Texas Health and Safety Code (THSC), §382.058(c), which states that "only those persons actually residing in a permanent residence within 440 yards of the proposed plant may request a hearing...as a person who may be affected." Executive Director staff have historically measured the 440 yards from the outline or footprint of the proposed plant (i.e., the individual facilities that constitute the plant, such as the batch plant, stockpiles, etc.).

The proposed location of the plant is a representation, made by an applicant, in their application to register under the CBPSP. Recently, hearing requestors have argued that the 440-yard limitation should be measured from the setbacks contained in the CBPSP because an applicant could update its representations after the permit is issued without notice to the public. Thus, in certain cases, an applicant could propose to locate the plant greater than 440 yards from a hearing requestor and subsequently move a plant within 440 yards of that hearing requestor after the registration is issued and the hearing request has been denied by the commission.

Section by Section Discussion

The commission proposes amendments to §116.615. The commission proposes to amend this section by revising language to clarify the requirements applicable to the holder of a registration under the CBPSP when the permit holder proposes to move a concrete batch plant on-site.

§116.615(2), General Conditions

The commission proposes to amend §116.615(2) by adding language under a new paragraph (2)(B) to require that, to authorize the movement of any concrete batch plant authorized by the CBPSP to a different location on the site, the owner or operator shall submit a new or amended registration and fee and comply with the public notice requirements, including the opportunity to request a contested case hearing, unless the new location is greater than 440 yards from any property line. The existing language and remaining paragraphs under §116.615(2) would be re-lettered or re-numbered as needed for administrative consistency.

Fiscal Note: Costs to State and Local Government

Jené Bearse, Deputy Director in the Budget and Planning Division, has determined that for the first five-year period the proposed rule is in effect, fiscal implications are anticipated for the agency.

Within the proposed §116.615(2), the authorized movement of any concrete batch plant to a different location on the site would require the owner or operator to submit a new or amended registration and fee. The current fee for an amendment to a Standard Permit is \$900, and the agency estimates the change in revenue could range from an increase of \$4,500 to \$13,500 per year. This revenue from this fee is deposited into the General Revenue Account 0151-Clean Air.

The proposed rulemaking is anticipated to result in fiscal implications for units of local government if they own or operate a concrete batch plant and plan to move the facility within 440 yards of a property line. The local governmental entity would be required to submit a new or amended registration and fee of \$900 and comply with public notice and hearing requirements in the

Texas Commission on Environmental Quality



ORDER ADOPTING NEW RULES

Docket No. 2022-1697-MIS

Rule Project No. 2023-112-09-AS

On June 28, 2023, the Texas Commission on Environmental Quality (Commission) adopted new rules in 30 Texas Administrative Code Chapter 30, concerning Training. The proposed rule was published for comment in the March 10, 2023, issue of the *Texas Register* (48 TexReg 1402).

IT IS THEREFORE ORDERED BY THE COMMISSION that the new rule is hereby adopted. The Commission further authorizes staff to make any non-substantive revisions to the rules necessary to comply with *Texas Register* requirements. The adopted rule and the preamble to the adopted rule is incorporated by reference in this Order as if set forth at length verbatim in this Order.

This Order constitutes the Order of the Commission required by the Administrative Procedure Act, Tex. Gov't Code Ann., Chapter 2001 (West 2016).

If any portion of this Order is for any reason held to be invalid by a court of competent jurisdiction, the invalidity of any portion shall not affect the validity of the remaining portions.

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Jon Niermann, Chairman

Date Signed