

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.