

The commission proposes amendments to §101.1, concerning Definitions, by adding and amending definitions which are used in multiple air chapters; and to §101.30 concerning Conformity of General Federal and State Actions to State Implementation Plans (SIP), by changing the title of the section and by deleting three portions of the section which are considered by the U.S. Environmental Protection Agency (EPA) to be more stringent than the federal General Conformity rules.

EXPLANATION OF PROPOSED RULE

Chapter 122, concerning Federal Operating Permits, contains the definition for “nonattainment areas” and a general description of each of the nonattainment areas in the state. The nonattainment area definition and general descriptions are being placed into Chapter 101, §101.1 concerning Definitions, because they are used in several chapters regarding air quality. The existing definitions in Chapter 122, as well as other air chapters, will be reviewed and/or repealed in future rulemakings as necessary. The definition for “maintenance area” was added to this section, and the term “nonattainment area” was expanded to include a listing of the current nonattainment areas in the state. The terms “nonattainment area” and “maintenance area” are used in the General Conformity rule in §101.30, as well as other air-related chapters. This action will provide a single point of reference for the nonattainment and maintenance areas within the state. This action will also allow the commission to streamline all air related chapters by deleting the need to define the terms in each chapter.

The Texas General Conformity rule and associated SIP revision were adopted on November 21, 1994, and submitted to the EPA for approval. The federal General Conformity rule allows the state rule to be more stringent, but only if the state rule applies to state and local actions in addition to federal actions.

During their review, EPA determined that §101.30 was more stringent than the federal rule in three places, and requested specific wording changes to make the rules essentially equivalent. The last sentence of §101.30(c)(3)(D) is proposed to be deleted; the phrase “presumed to be de minimis under paragraph (3)(A) or (3)(B) of this subsection, or” in §101.30(c)(10) is proposed to be deleted; and the phrase “if a final conformity determination is made within three years of such analysis” in §101.30(i)(2)(A)(ii) is proposed to be deleted to make the rule no more stringent than the federal rule. Finally, the words “and State” are proposed to be deleted from the title of the section to clarify that the intent of the rule is to be essentially equivalent.

FISCAL NOTE

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the sections as proposed are in effect, there will be no significant fiscal implications for state or local government as a result of administration or enforcement of the sections. There will be no significant fiscal implications to the commission. There will be no additional economic impact on owners and operators of affected sources.

PUBLIC BENEFIT

Mr. Minick has also determined that for each year of the first five-years the section as proposed is in effect, there will be no significant public benefit or disbenefit. There will be no added affect on small business. There are no economic costs anticipated for any individual required to comply with the section as proposed.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for this proposal pursuant to Texas Government Code Annotated, §2007.043. The following is a summary of that assessment. The specific purpose of this rulemaking is to streamline the use of the various chapters by incorporating air program specific definitions into one specific location. Promulgation and enforcement of the rule amendments will not affect private real property.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has determined that the proposed rulemaking relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code § 33.201 et. seq.), and the commission's rules at 30 TAC Chapter 281, Subchapter B, Consistency with the Texas Coastal Management Program. As required by 31 TAC §505.11(b)(2) and 30 TAC §281.45(a)(3) relating to actions and rules subject to the CMP, agency rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission has reviewed this proposed action for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council. For the proposed action in 30 TAC §101.30, the commission has determined that the proposed action is consistent with the applicable CMP goals and policies. The purpose of 30 TAC §101.30 is to set forth policy, criteria and procedures for demonstrating and assuring conformity of certain agency actions to the applicable SIP, and is in compliance with the regulations adopted pursuant to Title 40, Code of Federal Regulations adopted pursuant to the Clean Air Act, 42 United States Code Annotated, § 7401, et. seq. to protect and enhance air quality in the coastal area so as to protect coastal natural resource

areas (CNRAs) and promote the public health, safety and welfare. Regarding the definitions proposed for 30 TAC §101.1, the commission has determined that the proposed action will not have a direct and significant adverse impact on the CNRAs identified in the applicable policies. These definitions do not change any regulatory requirements regarding the use and development of CNRAs. Interested persons may submit comments on the consistency of the proposed rule with the CMP during the public comment period.

PUBLIC HEARING

A public hearing on this proposal will be held in Austin on April 24, 1997, at 11:00 a.m. in Building F, Room 5108 of the Texas Natural Resource Conservation Commission complex, located at 12100 North IH-35, Park 35 Technology Center, Austin, Texas. 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 within the audience will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

SUBMITTAL OF COMMENTS

Written comments may be mailed to Heather Evans, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 96167-101-AI. Comments must be received by 5:00 p.m., May 1, 1997. For further information concerning this proposal, contact Alan J. Henderson, P.E., Air Policy and Regulations Division, Office of Policy and Regulatory Development, (512) 239-1510.

Persons with disabilities, who have special communication or other accommodation needs, and who are planning to attend the hearings should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

STATUTORY AUTHORITY

The amendments are proposed under the Texas Clean Air Act (TCAA), Texas Health and Safety Code, §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA.

The proposed amendments implement the Texas Health and Safety Code, §382.017.

§101.1. Definitions.

Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the Texas Natural Resource Conservation Commission (commission), the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA, the following terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Maintenance area - A geographic region of the state previously designated nonattainment pursuant to the FCAA Amendments of 1990 and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan under the FCAA, §175A, as amended. The following are the maintenance areas within the state: Victoria Ozone Maintenance Area (60 FR 12453) - Victoria County.

Nonattainment area - A defined region within the state which is designated by EPA [the United State Environmental Protection Agency (EPA)] as failing to meet the National Ambient Air Quality Standard for a pollutant for which a standard exists. The EPA will designate the area as nonattainment under the provisions of the Federal Clean Air Act, §107(d). For the official list and boundaries of nonattainment areas, see the Code of Federal Regulations (40 CFR Part 81) and pertinent Federal Register notices. The following areas comprise the nonattainment areas within the state:

(A) Carbon monoxide (CO). El Paso (Moderate ≤ 12.7 parts per million) CO nonattainment area (56 FR 56694) - Portion of El Paso County. Portion of the city limits of El Paso: That portion of the city of El Paso bounded on the north by Highway 10 from Porfirio Diaz Street to Reynolds Street, Reynolds Street from Highway 10 to the Southern Pacific Railroad lines, the Southern Pacific Railroad lines from Reynolds Street to Highway 62, Highway 62 from the Southern Pacific Railroad lines to Highway 20, and Highway 20 from Highway 62 to Polo Inn Road. Bounded on the east by Polo Inn Road from Highway 20 to the Texas-Mexico border. Bounded on the south by the Texas-Mexico border from Polo Inn Road to Porfirio Diaz Street. Bounded on the west by Porfirio Diaz Street from the Texas-Mexico border to Highway 10.

(B) Inhalable particulate matter (PM₁₀). El Paso (Moderate) PM₁₀ nonattainment area (56 FR 56694) - Portion of El Paso County which comprises the El Paso city limit boundaries as they existed on November 15, 1990.

(C) Lead. Collin County lead nonattainment area (56 FR 56694) - Portion of Collin County. Eastside: Starting at the intersection of south Fifth Street and the fence line approximately 1000 feet south of the Gould National Batteries (GNB) property line going north to the intersection of south Fifth Street and Eubanks Street; Northside: Proceeding west on Eubanks to the Burlington Railroad tracks; Westside: Along the Burlington Railroad tracks to the fence line approximately 1000 feet south of the GNB property line; Southside: Fence line approximately 1000 feet south of the GNB property line.

(D) Nitrogen Dioxide (NO₂). No designated nonattainment areas.

(E) Ozone.

(i) Houston-Galveston-Brazoria (Severe-17) ozone nonattainment area (56 FR 56694) - Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties.

(ii) El Paso (Serious) ozone nonattainment area (56 FR 56694) - El Paso County.

(iii) Beaumont (Moderate) ozone nonattainment area (61 FR 14496) - Hardin, Jefferson, and Orange Counties.

(iv) Dallas/Fort Worth (Moderate) ozone nonattainment area (56 FR 56694) - Collin, Dallas, Denton, and Tarrant Counties.

(F) Sulfur Dioxide (SO₂). No designated nonattainment areas.

§101.30. Conformity of General Federal [and State] Actions to State Implementation Plans.

(a) - (b) (No change.)

(c) Applicability.

(1) - (2) (No change.)

(3) The requirements of this rule shall not apply to:

(A) - (C) (No change.)

(D) individual actions which implement a decision to conduct or carry out a program that has been found to conform to the applicable SIP, such as prescribed burning actions which are consistent with a land management plan that has been found to conform to the applicable SIP.

[Such land management plan shall have been found to conform within the past five years.]

(4) - (9) (No change.)

(10) Where an action [, presumed to be *de minimis* under paragraph (3)(A) or (B) of this subsection, or] otherwise presumed to conform under paragraph (6) of this subsection is a regionally significant action or does not in fact meet one of the criteria in paragraph (7)(A) of this section, that action shall not be considered *de minimis* or presumed to conform and the requirements of subsections (a) and (e) - (j) of this section shall apply for the federal action.

(11) - (12) (No change.)

(d) - (h) (No change.)

(i) Procedures for Conformity Determination of General Federal Actions.

(1) (No change.)

(2) The analyses required under this rule must be based on the latest and most accurate emission estimation techniques available as described below, unless such techniques are inappropriate. If such techniques are inappropriate and written approval of the EPA Regional Administrator is obtained for any modification or substitution, they may be modified or another technique substituted on a case-by-case basis or, where appropriate, on a generic basis for a specific federal agency program.

(A) For motor vehicle emissions, the most current version of the motor vehicle emissions model specified by EPA for use in the preparation or revision of implementation plans in the state or area shall be used for the conformity analysis as specified below:

(i) (No change.)

(ii) a grace period of three months shall apply during which the motor vehicle emissions model previously specified by EPA as the most current version may be used.

Conformity analyses for which the analysis was begun during the grace period, or no more than three years before the Federal Register notice of availability of the latest emission model, may continue to use the previous version of the model specified by EPA[, if a final determination as to conformity is made within three years of such analysis].

(B) (No change.)

(3) - (4) (No change.)

(j) - (k) (No change.)

The commission proposes an amendment to §3.2, concerning Definitions, by adding several definitions which are used in multiple chapters by the various agency offices.

EXPLANATION OF PROPOSED RULE

Chapter 122, concerning Federal Operating Permits, contains the definitions for the Environmental Protection Agency (EPA) and the Federal Clean Air Act (FCAA). The two definitions are being placed into Chapter 3 because they are of general interest to various offices of the agency. The existing definitions in Chapter 122, as well as other air chapters, will be reviewed and/or repealed in future rulemakings as necessary. In addition, as part of regulatory reform, the definitions for several of the other federal environmental laws were added to Chapter 3. This action will allow the commission to streamline all chapters by deleting the need to define the terms in each chapter and to spell out the acronyms in each section in which they are used.

FISCAL NOTE

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the section as proposed is in effect, there are no significant fiscal implications for state or local government as a result of administration or enforcement of the section. There will be no significant fiscal implications to the commission. There will be no additional economic impact on owners and operators of affected sources.

PUBLIC BENEFIT

Mr. Minick has also determined that for each year of the first five-years the section as proposed is in effect, there will be no significant public benefit or disbenefit. There will be no added affect on small business. There are no economic costs anticipated for any individual required to comply with the section as proposed.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for this proposal pursuant to Texas Government Code Annotated, §2007.043. The following is a summary of that assessment. The specific purpose of this rulemaking is to streamline the use of the various chapters by incorporating agency-wide definitions into one specific location. Promulgation and enforcement of this rule amendment will not affect private real property.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW:

The commission has determined that the proposed rulemaking relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code § 33.201 et. seq.), and the commission's rules at 30 TAC Chapter 281, Subchapter B, Consistency with the Texas Coastal Management Program. As required by 31 TAC §505.11(b)(2) and 30 TAC §281.45(a)(3) relating to actions and rules subject to the CMP, agency rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission has reviewed this proposed action for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council, and has determined that the proposed action will not have a direct and significant adverse effect on the coastal

natural resource areas (CNRAs) identified in applicable policies. These definitions proposed for Chapter 3 do not change any regulatory requirements regarding the use and development of CNRAs. Interested persons may submit comments on the consistency of the proposed rule with the CMP during the public comment period.

PUBLIC HEARING

A public hearing on this proposal will be held at in Austin on April 24, 1997 at 11:00 a.m. in Building F, Room 5108 of the Texas Natural Resource Conservation Commission complex, located at 12100 North IH-35, Park 35 Technology Center, Austin, Texas. 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 within the audience will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

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Persons with disabilities, who have special communication or other accommodation needs, and who are planning to attend the hearings should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

STATUTORY AUTHORITY

The amendments are proposed under the Texas Water Code §5.103 and §5.105, which provides the commission with the authority to carry out its powers and duties under the Texas Water Code and other laws of Texas; and the Texas Clean Air Act (TCAA), Texas Health and Safety Code, §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA.

The proposed amendments implement the Texas Water Code, §§5.103 and 5.105; and the Texas Health and Safety Code, §382.017.

§3.2. Definitions.

The following words and terms, when used in this part, shall have the following meanings, unless the context clearly indicates otherwise.

CERCLA (Superfund) - Comprehensive Environmental Response, Compensation, and Liability Act, 42 United States Code §§ 9601-9675 (1980, as amended).

CWA - Clean Water Act, Federal Water Pollution Control Act, 33 United States Code §§ 1251-1387 (1977, as amended).

EPA - The United States Environmental Protection Agency, the Administrator of the EPA, or his/her designee.

EPCRA - The Emergency Planning and Community Right-To-Know Act, 42 United States Code §§ 11011-11050 (1986).

FCAA - The Federal Clean Air Act, 42 United States Code §§ 7401-7671q (1970, as amended).

FIFRA - The Federal Insecticide, Fungicide, and Rodenticide Act, 7 United States Code §§ 135-136y (1972, as amended).

NEPA - The National Environmental Policy Act, 42 United States Code §§ 4321-4370d
(1969, as amended).

PPA - Pollution Prevention Act - 42 United States Code §§ 13101-13109 (1990).

RCRA - The Resource Conservation and Recovery Act, 42 United States Code
§§ 6901-6991i (1976, as amended).

SARA - Superfund Amendments and Reauthorization Act, Public Law No. 99-499, 100
Stat. 1613 (codified as amended in scattered sections of 10 United States Code, 26 United States Code,
and 42 United States Code) (1986).

SDWA - Safe Drinking Water Act, 43 United States Code §§ 300f-300j-26 (1974, as
amended).

TSCA - Toxic Substances Control Act, 15 United States Code §§ 2601-2692 (1976, as
amended).