

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners **Date:** September 16, 2011

**Thru:** Melissa Chao, Acting Chief Clerk  
Mark R. Vickery, P.G., Executive Director

**From:** Susana M. Hildebrand, P.E, Chief Engineer

**Docket No.:** 2010-2068-RUL

**Subject:** Commission Approval for Rulemaking Adoption  
Chapter 101, General Air Quality Rules  
General Conformity Rule Repeal  
Rule Project No. 2010-047-101-EN

### **Background and reason(s) for the rulemaking:**

On December 12, 1994, the Texas Natural Resource Conservation Commission, now known as the Texas Commission on Environmental Quality (TCEQ), adopted 30 Texas Administrative Code (TAC) Chapter 101, Subchapter A, §101.30, Conformity of General Federal Actions to State Implementation Plans. The purpose of the rule was to establish the criteria and procedures for general conformity determinations, as required by 40 Code of Federal Regulations (CFR) §51.851. In August 2005, the United States Congress passed the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) that eliminated the requirement for states to adopt and submit general conformity state implementation plan (SIP) revisions. On April 5, 2010, the United States Environmental Protection Agency (EPA) adopted revisions to the general conformity regulations in 40 CFR Parts 51 and 93 (*75 Federal Register* 17254, April 5, 2010). The revisions made the adoption and submittal of the general conformity SIP optional for the state and deleted all of 40 CFR Part 51, Subpart W except for §51.851. Title 40 CFR §51.851 was revised to clarify that if a state chooses to submit a general conformity SIP, it must be consistent with the requirements of 40 CFR Part 93, Subpart B. These changes became effective on July 6, 2010.

The EPA's April 2010 revisions also added four new sections to 40 CFR Part 93: §§93.161, 93.163, 93.164, and 93.165. Under the new 40 CFR §93.161, federal agencies may negotiate a facility-wide emissions budget to be incorporated into the SIP. After the EPA approves the SIP revision, any action at the facility can be presumed to conform if the emissions from the proposed action along with all other emissions at the facility are within the approved facility-wide emissions budget. Therefore, a conformity determination would not be necessary. The new 40 CFR §93.163 allows alternate schedules for mitigating emission increases. Federal agencies and states can negotiate a program for some emissions mitigation to occur in future years, and states can use this approach to accommodate short-term increases in emissions if the state believes that a substantial long-term reduction in emissions will result from a federal action. The new 40 CFR §93.164 allows the emissions of one precursor of a criteria pollutant to be offset by the

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reduction in the emissions of another precursor of that pollutant. For example, emissions of volatile organic compounds could be offset by a reduction in emissions of nitrogen oxides. Finally, the new 40 CFR §93.165 incorporates the use of early emissions reduction credits into the regulations. This section also provides other federal agencies with regulations and guidance similar to the Airport Early Emissions Reduction Credit program established by the United States Congress in the Federal Aviation Administration Reauthorization Act of 2003.

The general conformity requirements in 30 TAC §101.30 mirror the federal requirements in 40 CFR Part 93, Subpart B and Part 51, Subpart W, and specifically reference the now repealed Part 51, Subpart W. Amended 40 CFR Part 93, Subpart B continues to subject certain federal actions to general conformity requirements without the need for identical state rules and SIPs. Therefore, repealing the state rule will not impact program continuity, but it will eliminate references in state rules to repealed federal rules and the need for future state rule revisions as a result of amendments to federal regulations.

**Scope of the rulemaking:**

The adopted rule revision will repeal 30 TAC §101.30.

**A.) Summary of what the rulemaking will do:**

The adopted rulemaking will repeal the general conformity requirements in 30 TAC §101.30, which mirror the federal requirements in 40 CFR Part 93, Subpart B and Part 51, Subpart W, and specifically reference the now repealed Part 51, Subpart W. Amended 40 CFR Part 93, Subpart B continues to subject certain federal actions to general conformity requirements without the need for identical state rules and SIPs. Therefore, repealing the state rule will not impact program continuity, but it will eliminate references in state rules to repealed federal rules and the need for future state rule revisions as a result of amendments to federal regulations.

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

The adopted rulemaking will repeal the general conformity requirements in 30 TAC §101.30, which mirror the federal requirements in 40 CFR Part 93, Subpart B and Part 51, Subpart W, and specifically reference the now repealed Part 51, Subpart W.

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

None.

**Statutory authority:**

The repeal is adopted under Texas Water Code (TWC), §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules as necessary to carry out its power and duties under the TWC. The repeal is also adopted under Texas Health and Safety Code (THSC), Texas Clean Air Act (TCAA), §382.011, which authorizes the commission to administer the requirements of

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the TCAA; THSC, §382.013, which authorizes the commission to designate air quality control regions to provide adequate implementation of air quality standards; and THSC, §382.017 which authorizes the commission to adopt rules consistent with the policy and purpose of the TCAA.

The adopted repeal implements TWC, §§5.102, 5.103, and 5.105; and THSC, §§382.011, 382.013, and 382.017.

**Effect on the:**

**A.) Regulated community:**

There will be no effect on the regulated community because the regulated community will need to comply with the federal rules whether state rules are revised or not. The rule repeal improves clarity by eliminating references to outdated requirements.

**B.) Public:**

The adopted rule revisions will not have an adverse affect on the public.

**C.) Agency programs:**

Repealing the rule will streamline the process for the agency by eliminating the need for any future federal rule revisions that might affect conformity determination.

**Stakeholder meetings:**

Stakeholder meetings were not held.

**Public comment:**

No public comments were received.

**Significant changes from proposal:**

There are no changes from proposal.

**Potential controversial concerns and legislative interest:**

None anticipated.

**Does this rulemaking affect any current policies or require development of new policies?**

No policies are affected by this adopted rulemaking.

**What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?**

If the rule repeal does not go forward, 30 TAC §101.30 will continue to reference the now repealed 40 CFR Part 51, Subpart W.

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**Key points in the adoption rulemaking schedule:**

***Texas Register* proposal publication date:** May 6, 2011

**Anticipated *Texas Register* publication date:** October 21, 2011

**Anticipated effective date:** October 27, 2011

**Six-month *Texas Register* filing deadline:** November 7, 2011

**Agency contacts:**

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John Minter, Staff Attorney, 239-0663

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**Attachments**

*75 Federal Register* 17254, April 5, 2010

cc: Chief Clerk, 2 copies  
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