

The Texas Natural Resource Conservation Commission (commission) proposes the repeal of §114.400, Definitions; §114.402, Control Requirements; §114.406, Reporting and Recordkeeping Requirements; and §114.409, Affected Counties and Compliance Schedules; and corresponding revisions to the state implementation plan (SIP).

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED REPEALS

The rules being proposed for repeal were originally adopted on April 19, 2000 as part of the SIP control strategy for the Dallas/Fort Worth (DFW) ozone nonattainment area to achieve attainment with the national ambient air quality standard (NAAQS) for ozone. When the rules were implemented, they would have resulted in nitrogen oxides (NO<sub>x</sub>) emissions reductions through the conversion of airport ground support equipment (GSE) to lower emission equipment. Similar GSE rules were proposed on August 9, 2000, for the Houston/Galveston ozone nonattainment area, but were never adopted because the emission reduction commitments were achieved through federally enforceable agreements among the commission, the major airlines, and the City of Houston.

Recently, the commission developed agreements with Southwest Airlines, American Airlines, Delta Air Lines, the DFW International Airport Board, the City of Dallas, and the City of Fort Worth making federally enforceable certain reductions of local ozone precursor emissions of NO<sub>x</sub> from sources at Love Field, DFW International Airport, Alliance Airport, and Meacham Airport.

These agreements will replace the existing rules and result in a similar level of emission reductions.

Therefore, the NO<sub>x</sub> reductions previously claimed in the DFW Attainment Demonstration SIP will, as a

result of this rulemaking, be achieved through an alternate, but equivalent federally enforceable mechanism.

#### FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications to units of state or local government as a result of implementation of the proposed amendments, which are intended to repeal airport GSE rules for the DFW nonattainment area adopted by the commission in April 2000.

The repealed rules would have required affected airlines at Love Field, DFW International Airport, and Alliance and Meacham Airports to reduce emissions from GSE by 20% by December 31, 2003; 50% by December 31, 2004; and 90% by December 31, 2005. The commission estimated at proposal it would have cost affected owners and operators an estimated \$83.5 million to comply with the rule requirements that are being repealed in this rulemaking.

Although there will be compliance costs due to enforceable agreements reached between the commission and affected owners and operators and airports that are intended to achieve similar emission reductions as the April 2000 rules, those costs are not part of this rulemaking. Additionally, because the adopted April 2000 rules did not require emission reductions in GSE until 2003, the commission estimates there have been no significant fiscal impacts to units of state and local government due to the adoption, and subsequent repeal, of the rules.

#### PUBLIC BENEFIT AND COSTS

Mr. Davis also determined that for each year of the first five years the proposed repeals are in effect, the public benefit anticipated from enforcement of and compliance with the proposed repeals will be the continued potential reduction in emissions from affected airports through the implementation and enforcement of agreements between the commission and affected airlines and airports in the DFW nonattainment area.

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#### SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse economic effects are anticipated to any small or micro-businesses as a result of implementing the proposed changes, which would repeal airport GSE rules for the DFW nonattainment area adopted by the commission in April 2000.

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would have cost affected owners and operators an estimated \$83.5 million to comply with the rule requirements that are being repealed in this rulemaking.

#### DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The staff reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking does not meet the definition of a “major environmental rule” as defined in that statute. “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, 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 rules being proposed for repeal were intended to protect the environment and reduce risks to human health from environmental exposure to ozone and would have affected, in a material way, a sector of the economy, competition, and the environment.

This rulemaking action is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b), because the rules proposed for repeal are being replaced by federally enforceable agreements which will result in NO<sub>x</sub> emission reductions similar to the NO<sub>x</sub> reductions that would have been achieved by the rules. These agreements will protect the environment and reduce risks to human health from environmental exposure to ozone. Therefore there will be no adverse affect of these repeals.

#### TAKINGS IMPACT ASSESSMENT

Staff prepared a takings impact assessment for this proposed repeal of rules under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of this rulemaking is to repeal §§114.200, 114.202, 114.206, and 114.209 which will be replaced by federally enforceable agreements which will obtain the similar NO<sub>x</sub> reductions necessary for the DFW ozone nonattainment area to meet the NAAQS established under federal law. The repeal of these rules will not burden private real property, which is the subject of the rules, because these rules will be replaced by the agreements and therefore not used by the commission.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

When DFW airport GSE rules were originally adopted, the commission determined that the proposed rulemaking related 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 rules in 30 TAC Chapter 281, Subchapter B, concerning 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, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed the previous adoption action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that the action was consistent with the applicable CMP goals and policies. The CMP goal applicable to the rulemaking action was the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(1)). No new sources of air contaminants

were authorized and NO<sub>x</sub> air emissions were anticipated to be reduced as a result of these rules. The CMP policy applicable to the rulemaking action was the policy that commission rules comply with regulations in 40 Code of Federal Regulations (CFR), to protect and enhance air quality in the coastal area (31 TAC §501.14(q)). The rulemaking action complied with 40 CFR 50, National Primary and Secondary Ambient Air Quality Standards, and 40 CFR 51, Requirements for Preparation, Adoption, and Submittal Of Implementation Plans. Therefore, in compliance with 31 TAC §505.22(e), the rulemaking action was consistent with CMP goals and policies.

The repeal of these rules will not invalidate the determination that the previous rulemaking action was consistent with CMP goals and policies, because the rules proposed for repeal are being replaced by federally enforceable agreements which will result in NO<sub>x</sub> emission reductions similar to the NO<sub>x</sub> reductions that would have been achieved by the rules. Therefore, this rulemaking action is also consistent with CMP goals and policies.

Interested persons may submit comments on the consistency of the proposed rules with the CMP during the public comment period.

#### ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal on April 27, 2001 at 11:00 a.m., at the North Central Texas Council of Governments, 2nd Floor Board Room, 616 Six Flags Drive, Suite 200, Arlington. The hearing is structured for the receipt of oral or written comments by interested persons. Registration will begin 30 minutes prior to the hearing. Individuals may present oral statements when

called upon in order of registration. Open discussion will not occur during each hearing; however, agency staff members will be available to discuss the proposal before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs, who are planning to attend a hearing, should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

#### SUBMITTAL OF COMMENTS

Comments may be submitted to Lola Brown, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 2001-013a-114-AI. Comments must be received by 5:00 p.m., April 27, 2001. For further information or questions concerning this proposal, please contact Bill Jordan, Strategic Assessment Division, (512) 239-2583, or Alan Henderson, Policy and Regulations Division, (512) 239-1510.

#### STATUTORY AUTHORITY

The repeals are proposed under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under TWC, and §5.103, which provides the commission with the authority to adopt any rules necessary to carry out the powers and the duties under the provisions of TWC and other laws of this state. These repeals are also proposed under Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.017, which provides the commission the authority to adopt rules consistent with the policy and purposes of TCAA, and §382.012, which

authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air.

No other codes, rules, or statutes will be affected by this proposal.

**SUBCHAPTER I: NON-ROAD ENGINES**

**DIVISION 1: AIRPORT GROUND SUPPORT EQUIPMENT**

**§§114.400, 114.402, 114.406, 114.409**

**§114.400. Definitions.**

**§114.402. Control Requirements.**

**§114.406. Reporting and Recordkeeping Requirements.**

**§114.409. Affected Counties and Compliance Schedules.**