

The Texas Natural Resource Conservation Commission (commission) adopts new Chapter 15, Fleet Vehicle Management, §15.1, Fleet Vehicle Management. Section 15.1 is adopted *without changes* to the proposed text as published in the April 20, 2001 issue of the *Texas Register* (26 TexReg 2943).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE

The purpose of the adopted rule is to implement the requirements of House Bill 3125, signed into law during the 76th Legislature, 1999. The bill amended Texas Government Code, Title 10, Chapter 2171, by adding §2171.1045, Restrictions on Assignment of Vehicles. This section requires state agencies to adopt rules consistent with the fleet management plan (Management Plan) developed in accordance with Texas Government Code, §2171.104. The rule has been drafted to be consistent with the intent and language of the bill.

The rule is consistent with the Management Plan, and requires the executive director to adopt a policy consistent with the Management Plan. The rule describes under what circumstances a commission vehicle may be assigned to an individual. If the exceptions outlined in the rule are not met, then the rule stipulates that each vehicle the commission owns must be assigned to the commission motor pool.

SECTION BY SECTION DISCUSSION

Chapter 15, Fleet Vehicle Management, is added to 30 TAC.

New §15.1(a) will establish that each vehicle will be assigned to the commission's motor pool and will be available to be checked out.

New §15.1(b) will establish the exceptions to §15.1(a). Specifically, a vehicle may be assigned to a field employee or the executive director (ED) may assign a vehicle to an employee on a regular basis only if the ED finds and documents in writing that the regular assignment is critical to the needs and mission of the commission.

New §15.1(c) will establish that the ED will adopt an operating policy that is consistent with the Management Plan developed in accordance with Texas Government Code, §2171.104.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the final rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to §2001.0225 because it 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 adoption does not meet the definition of "major environmental rule" because the rulemaking is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. This rulemaking adopts state statutory requirements relating to vehicle fleet management as required by Texas Government Code, §2171.1045.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the rule and performed a final assessment of whether Texas Government Code, Chapter 2007 is applicable. The commission's final assessment indicates that Texas Government Code, Chapter 2007 does not apply to the rule because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code, §2007.003(b)(4). Nevertheless, the commission further evaluated the rule and performed a final assessment of whether the adopted rule will constitute a takings under Texas Government Code, Chapter 2007. The following is a summary of that evaluation and final assessment. The specific purpose of the rule is to create new Chapter 15, Fleet Vehicle Management, to comply with state statutory requirements relating to vehicle fleet management as required by Texas Government Code, §2171.1045. The adopted rule will substantially advance this stated purpose by requiring commission vehicles, except for vehicles assigned to field employees, to be assigned to the commission motor pool. The adopted rule will also require that prior to assigning a vehicle to an individual administrative or executive employee on a regular basis, the ED shall make a written documented finding that such assignment is critical to the needs and mission of the commission. Promulgation and enforcement of the adopted rule will be neither a statutory nor a constitutional taking of private real property. Specifically, the subject regulations do 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. In other words, no private property will be affected in any way by this rule. The rule will place restrictions only on the assignment of state property, specifically state vehicles. There are no burdens imposed on private real property.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has reviewed the rulemaking and found that the rule is neither identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP), nor will it affect any action/authorization identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the rule is not subject to the CMP.

HEARINGS AND COMMENTERS

The public comment period closed on May 21, 2001 and no comments were received.

STATUTORY AUTHORITY

The new section is adopted under Texas Water Code, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under this code and other laws of this state. The adopted new section is also authorized by Texas Government Code, §2171.1045, which requires a state agency to adopt the vehicle fleet management rules.

CHAPTER 15

FLEET VEHICLE MANAGEMENT

§15.1

§15.1. Fleet Vehicle Management.

(a) Requirements - each commission vehicle shall be assigned to the commission motor pool and shall be available for checkout, except as provided in subsection (b) of this section.

(b) Exceptions - vehicles that meet the criteria in paragraphs (1) and (2) of this subsection are excepted from subsection (a) of this section:

(1) a vehicle assigned to a field employee; or

(2) a vehicle assigned to an individual administrative or executive employee on a regular or everyday basis if the executive director makes a written documented finding that the assignment is critical to the needs and mission of the commission.

(c) The executive director shall adopt an operating policy that is consistent with the Management Plan developed in accordance with Texas Government Code, §2171.104.