

The Texas Natural Resource Conservation Commission (commission) adopts the repeal of §114.250, *Memorandum of Understanding with the Texas Department of Transportation*, as published in the October 26, 2001 issue of the *Texas Register* (26 TexReg 8479).

The repeal of §114.250 will be submitted to the United States Environmental Protection Agency as a revision to the state implementation plan.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE

The purpose of the repeal is to consolidate Memoranda of Understanding (MOU) adopted by reference with the Texas Department of Transportation (TxDOT). The repeal will remove §114.250 and place the MOU on *Transportation Planning Issues: Control of Air Pollution From Motor Vehicles*, into a consolidated MOU with TxDOT in 30 TAC §7.119, *Memorandum of Understanding Between the Texas Department of Transportation and the Texas Natural Resource Conservation Commission*. The consolidated MOU will also address other topics such as water quality. A rule action for §7.119 is proposed in this issue of the *Texas Register*.

SECTION DISCUSSION

The repeal will consolidate references to MOUs with TxDOT in §7.119.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the 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 §2001.0225, and it does not meet any of the four applicability requirements listed in §2001.0225(a). These four requirements are: 1.) exceed a standard set by federal law, unless the rule is specifically required by state law; 2.) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3.) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4.) adopt a rule solely under the general powers of the agency instead of under a specific state law. Elimination of the rule allows MOUs with TxDOT to be consolidated in one location. The repeal of §114.250 places no requirements on the regulated community.

TAKINGS IMPACT ASSESSMENT

The commission prepared a takings impact assessment for the repeal under Texas Government Code, §2007.043. The specific purpose of the repeal is to make it easier for the public and the two state agencies involved to understand the types of activities coordinated in order to prevent duplication of effort and clarify responsibilities. The repeal will advance this purpose by consolidating existing MOUs into one location (30 TAC Chapter 7, *Memoranda of Understanding*). Promulgation and enforcement of the repeal will not burden private real property which is the subject of §2007.043, because there is merely a repeal of an agreement among state agencies in order to support a consolidation at another location in the rules.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that the adopted 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 in 30 TAC Chapter 281, Subchapter B, *Consistency with the Coastal Management Program*.

The commission reviewed this action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council and determined that the action is consistent with the applicable CMP goals and policies. The CMP policy applicable to this proposed rulemaking action is the policy that the commission rules comply with regulations in 40 Code of Federal Regulations (CFR) to protect and enhance air quality in the coastal area. Section 114.250 is repealed in order to consolidate planning MOUs with TxDOT in §7.119, and thereby implement within the state a portion of 40 CFR Part 93, which is protective of the air quality in the coastal area. Therefore, the rule is in agreement with the CMP policy governing air pollutant emissions. The commission solicited comments on the consistency determination. No comments were received on the consistency determination.

HEARINGS AND COMMENTERS

Proposals for this rule were published September 29, 2000 (25 TexReg 9863) and October 26, 2001 (26 TexReg 8496). Public hearings were previously held on October 24, 2000 and November 27, 2001. The comment period for the proposal of September 29, 2000 closed on November 13, 2000, and the comment period for the proposal of October 26, 2001 closed on December 3, 2001. One person attended the hearing held on October 24, 2000, and no persons were present at the hearing of

November 27, 2001. No comments were received during either the hearing or comment period on the repeal of §114.250.

SUBCHAPTER G: TRANSPORTATION PLANNING

§114.250

STATUTORY AUTHORITY

The repeal is adopted under Texas Health and Safety Code (THSC), §382.017, which establishes the commission's authority to adopt rules; and THSC, §382.035, which addresses the commission's authority to adopt MOUs with other state agencies by rule.

§114.250. Memorandum of Understanding with the Texas Department of Transportation.