

The Texas Commission on Environmental Quality (commission) proposes the repeal of §7.105.

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

In 1998, the General Land Office and the commission entered into a memorandum of understanding regarding the governance and funding of the Galveston Bay Estuary Program. The memorandum of understanding is currently incorporated into commission rules. At the time that the agencies entered into the memorandum of understanding, the 75th Legislature funded the Galveston Bay Estuary Program through the General Land Office's Coastal Protection Fund; however, the program was administered by the commission. The following biennium, the 76th Legislature funded the Galveston Bay Estuary Program directly through the commission, and that remains the case today. Additionally, that legislature clarified the roles and responsibilities of both agencies for estuary programs and designated the commission as the lead entity by enacting Texas Water Code (TWC), §§5.601 - 5.609.

#### SECTION DISCUSSION

Section 7.105, Adoption of Memoranda of Understanding between the Texas General Land Office and the Texas Natural Resource Conservation Commission, is an administrative agreement between the commission and the General Land Office. The memorandum of understanding has been cancelled by a mutual agreement consistent with the memorandum of understanding between the General Land Office and the commission. The rulemaking would repeal obsolete text that remains in the Texas Administrative Code.

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

Nina Chamness, Analyst with the Strategic Planning and Grants Management Section, determined that for the first five-year period that the proposed repeal is in effect there will be no significant fiscal impacts for units of state and local government as a result of administration or enforcement of the proposed repeal. The proposal would repeal §7.105, which is obsolete text that remains in the Texas Administrative Code and is no longer needed.

#### PUBLIC BENEFIT AND COSTS

Ms. Chamness also determined that for each year of the first five years that the proposed repeal is in effect, the public benefit anticipated from enforcement of and compliance with the proposed repeal will be the elimination of unnecessary rules contained in Chapter 7.

There will be no fiscal implications to persons and businesses as a result of the administration and enforcement of the proposal because the elimination of unnecessary rules is an administrative action that has no fiscal impact to any individual or business.

#### SMALL AND MICRO-BUSINESS ASSESSMENT

No adverse economic effects are anticipated to any small or micro-businesses as a result of implementing the proposed repeal because the elimination of unnecessary rules is an administrative action that has no fiscal impact to any small or micro-businesses. There are no known small or micro-businesses that would be adversely affected by the proposed repeal.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed repeal does not adversely affect a local economy in a material way for the first five years that the proposed repeal is in effect.

#### DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed repeal in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed repeal is not subject to §2001.0225 because it does not meet the criteria for a "major environmental rule" as defined in that statute.

A "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 specific intent of the proposed rulemaking is to repeal obsolete text that remains in the Texas Administrative Code. Therefore, it is not anticipated that the proposed repeal will 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 commission concludes that the proposed repeal does not meet the definition of a major environmental rule.

Furthermore, even if the proposed repeal did meet the definition of a major environmental rule, the proposed repeal is not subject to Texas Government Code, §2001.0225, because it does not meet any of the four applicable requirements specified in §2001.0225(a). Section 2001.0225(a) applies to a rule adopted by an agency, the result of which is to: 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.

In this case, the proposed repeal does not meet any of these requirements. First, there are no applicable federal standards that this rulemaking would address. Second, the proposed repeal does not exceed an express requirement of state law but instead implements the statutory requirement of TWC, §§5.601 - 5.609, which designates the commission as the lead agency for estuary program implementation in the state. Third, there is no delegation agreement that would be exceeded by the proposed repeal because none relates to this subject matter area. Fourth, the commission proposes the repeal under TWC, §5.104, which authorizes the commission to enter into a memorandum of understanding with any other state agency, and not solely under the commission's general powers.

Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

#### TAKINGS IMPACT ASSESSMENT

The commission evaluated the proposed repeal and performed an assessment of whether the proposed repeal constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of the proposed rulemaking is to repeal obsolete text that remains in the Texas Administrative Code. The proposed repeal would substantially advance this stated purpose.

Promulgation and enforcement of the proposed repeal would be neither a statutory nor a constitutional taking of private real property because the proposed repeal does not affect real property.

In particular, there are no burdens imposed on private real property and the proposed repeal would eliminate an unnecessary and obsolete rule. Because the regulation does not affect real property, it does not burden, restrict, or limit an owner's right to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. Therefore, the proposed repeal will not constitute a taking under Texas Government Code, Chapter 2007.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

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

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

#### SUBMITTAL OF COMMENTS

Comments may be submitted to Joyce Spencer, Texas Register Team, Office of Legal Services, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Project Number 2004-088-007-AD. Comments must be received by 5:00 p.m., April 11, 2005. For further information or questions concerning this proposal, please contact Frank Fuller, Chief Engineer's Office, at (512) 239-5796.

**CHAPTER 7: MEMORANDA OF UNDERSTANDING**

**§7.105**

**STATUTORY AUTHORITY**

The repeal is proposed under TWC, §5.104, which authorizes the commission to enter into a memorandum of understanding with any other state agency; and TWC, §§5.601 - 5.609, which designates the commission as the lead agency for estuary program implementation in the state.

The proposed repeal implements TWC, §§5.601 - 5.609.

**§7.105. Adoption of Memoranda of Understanding between the Texas General Land Office and the Texas Natural Resource Conservation Commission.**