

The Texas Commission on Environmental Quality (commission) proposes amendments to §§101.221 - 101.223.

The amendments will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the state implementation plan (SIP).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

This rulemaking action would extend the expiration date of June 30, 2005, to January 15, 2006, unless the commission submits a revised version of §§101.221 - 101.223 to the EPA for review and approval into the SIP. If the commission submits these revisions to the EPA, these sections would expire on June 30, 2006.

SECTION BY SECTION DISCUSSION

The proposed revisions to §§101.221 - 101.223 delete references to the June 30, 2005, expiration and replace it with a new expiration date of January 15, 2006, unless the commission submits a revised version of these sections to the EPA for review and approval into the SIP. The proposed revisions further provide that if the commission submits a revised version of these sections, these sections expire on June 30, 2006.

The commission is seeking comment specifically regarding the proposed changes to §§101.221(g), 101.222(h), and 101.223(e). The commission is not seeking comment on, nor does it intend to make changes to, any other subsections of these sections. Simultaneously with this proposal, the commission

initiated a stakeholder process to receive input regarding possible changes to the other subsections as well as the associated reporting rules, §101.210 and §101.211. This extension will allow additional time for the commission to obtain stakeholder input as part of its plan to address §§101.201 - 101.223 in a subsequent rulemaking.

FISCAL NOTE: COST TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Grants Management Section, determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for units of state and local governments due to implementation of the proposed amendments. The proposed amendments do not implement additional requirements that are not already required by the commission.

PUBLIC BENEFIT AND COSTS

Ms. Chamness also determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated from extension of the expiration date would be to continue the rules currently in effect. The proposed amendments do not implement additional requirements that are not already required by the commission. The commission anticipates the proposed amendments will not result in fiscal implications for individuals and businesses.

SMALL AND MICRO-BUSINESS ASSESSMENT

There will not be adverse fiscal implications for small and micro-businesses due to implementation of the proposed amendments, which are intended to extend the expiration date of these rules. The

proposed amendments do not implement additional requirements. The commission anticipates the proposed amendments will not result in fiscal implications for small and micro-businesses.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed rulemaking does not meet the definition of a “major environmental rule.” Furthermore, it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). 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 proposed amendments are intended to extend the expiration date of June 30, 2005, to January 15, 2006, unless the commission submits a revised version of these sections to the EPA for review and approval into the SIP. If the commission submits a revised version of these sections, these sections expire on June 30, 2006. The proposed amendments will not 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.

In addition, Texas Government Code, §2001.0225, only applies to a major environmental rule, 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. The proposed amendments do not exceed a standard set by federal law or exceed an express requirement of state law. There is no contract or delegation agreement that covers the topic that is the subject of this rulemaking. Finally, this rulemaking was not developed solely under the general powers of the agency, but is authorized by specific sections of the Texas Health and Safety Code and Texas Water Code, which are cited in the STATUTORY AUTHORITY section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b), because the proposed amendments do not meet any of the four applicability requirements.

The commission invites public comment regarding the draft regulatory impact analysis determination during the public comment period.

TAKINGS IMPACT ASSESSMENT

The commission completed a takings impact analysis for the proposed amendments. The specific purpose of this rulemaking is to extend the expiration date of June 30, 2005, to January 15, 2006, unless the commission submits a revised version of these sections to the EPA for review and approval

into the SIP. If the commission submits a revised version of these sections, these sections expire on June 30, 2006. Promulgation and enforcement of the proposed amendments would be neither a statutory nor a constitutional taking because they do not affect private real property. Specifically, the proposed amendments do not affect private property in a manner which restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Therefore, the proposed amendments do not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that this rulemaking action 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 rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the CMP. As required by §281.45(a)(3) and 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. 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 goal applicable to this rulemaking action is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). No new sources of air contaminants will be authorized and the adopted amendments will maintain the same level of emissions control as the existing rules. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with federal regulations in 40 Code of Federal Regulations (CFR), to protect

and enhance air quality in the coastal areas (31 TAC §501.14(q)). This rulemaking action complies with 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this rulemaking action is consistent with CMP goals and policies.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

Sections 101.221 - 101.223 are applicable requirements under 30 TAC Chapter 122, Federal Operating Permits. Upon the effective date of this rulemaking, owners or operators subject to the Federal Operating Permits Program will be required to certify compliance with amended §§101.221 - 101.223.

ANNOUNCEMENT OF HEARING

A public hearing for this proposed rulemaking has been scheduled for April 26, 2005, at 2:00 p.m., at the Texas Commission on Environmental Quality, 12100 North I-35, Building A, Room 328, Austin. The hearing will be 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. A five-minute time limit may be established at the hearing to assure that enough time is allowed for every interested person to speak. There will be no open discussion during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes before the hearing and will answer questions before and after the hearing.

Persons planning to attend the hearing who have special communication or other accommodation needs should contact Patricia Durón, Office of Legal Services at (512) 239-6087. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Patricia Durón, MC 205, Texas Register Team, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas, 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Project Number 2005-023-101-AI. Comments must be received no later than 5:00 p.m., April 26, 2005. For further information, please contact Steve Ligon, Field Operations Division at (512) 239-1526.

**SUBCHAPTER F: EMISSIONS EVENTS AND SCHEDULED MAINTENANCE, STARTUP,
AND SHUTDOWN ACTIVITIES**

**DIVISION 3: OPERATIONAL REQUIREMENTS, DEMONSTRATIONS, AND ACTIONS TO
REDUCE EXCESSIVE EMISSIONS**

§§101.221 - 101.223

STATUTORY AUTHORITY

The amendments are adopted under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendments are also adopted under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state air; §382.085, concerning Unauthorized Emissions Prohibited, which prohibits emissions except as authorized by commission rule or order; §382.0215, concerning Assessment of Emissions Due to Emissions Events, which authorizes the commission to collect and assess unauthorized emissions data due to emissions events; §382.0216, concerning Regulation of Emissions Events, which authorizes the commission to establish criteria for determining when emissions events are excessive and to require

facilities to take action to reduce emissions from excessive emissions events; §382.05101, concerning *De Minimis* Air Contaminants, which authorizes the commission to develop by rule the criteria to establish a *de minimis* level of air contaminants for which a permit is not required; and §382.085, concerning Unauthorized Emissions Prohibited, which prohibits emissions of air contaminants except as authorized by commission by rule or order.

The proposed amendments implement Texas Health and Safety Code, §§382.002, 382.011, 382.012, and 382.017.

§101.221. Operational Requirements.

(a) - (f) (No change.)

(g) This section expires on January 15, 2006, unless the commission submits a revised version of this section to the Environmental Protection Agency (EPA) for review and approval into the Texas state implementation plan. If the commission submits a revised version of this section, this section expires on June 30, 2006 [June 30, 2005].

§101.222. Demonstrations.

(a) - (g) (No change.)

(h) This section expires on January 15, 2006, unless the commission submits a revised version of this section to the Environmental Protection Agency (EPA) for review and approval into the Texas state implementation plan. If the commission submits a revised version of this section, this section expires on June 30, 2006 [June 30, 2005].

§101.223. Actions to Reduce Excessive Emissions.

(a) - (d) (No change.)

(e) This section expires on January 15, 2006, unless the commission submits a revised version of this section to the Environmental Protection Agency (EPA) for review and approval into the Texas state implementation plan. If the commission submits a revised version of this section, this section expires on June 30, 2006 [June 30, 2005].