

The commission adopts new §113.1, concerning Definitions and the repeal of §113.21, concerning Beryllium without changes to the proposed text as published in the April 3, 1998 issue of the *Texas Register* (23 TexReg 3416). The commission also adopts the deletion of the division, Beryllium, and the change of the Subchapter A title from “Hazardous Air Pollutants” to “Definitions.”

EXPLANATION OF ADOPTED RULES

This adoption is part of the regulatory reform effort. Regulatory reform projects identify rules and regulations which need clarification for the benefit of the public; are outdated; impose regulatory requirements in excess of their contribution to the commission’s mission; or are duplicated, unnecessary, or inconsistent.

The adopted repeal will reduce duplication by controlling beryllium air emissions by individual New Source Review (NSR) permit instead of by rule. Permit requests with beryllium emissions submit technical representations stating that they comply with the beryllium emission standard in Chapter 113. The NSR Permit Division reviews the technical representations and includes the emissions limit in the Maximum Allowable Emissions Rate Table. After the repeal of the state beryllium standard, any permit request will be subject to a standard NSR permit review which includes computer dispersion modeling and an impacts analysis using Effects Screening Levels (ESLs). The permit review will be conducted at the same level as the repealed Chapter 113 beryllium standard.

The adopted new subchapter for definitions will make the Chapter 113 format more consistent with other air regulations. The adopted new definition for “Section 111(d) State Plan” in Subchapter A

partially implements the Federal Clean Air Act (FCAA), §111(d) concerning performance standards for existing sources. The definition is being adopted in preparation for rulemaking to implement the Municipal Solid Waste Landfills Emissions Guidelines, and the Hospital/Medical/Infectious Waste Incinerator Emissions Guidelines and associated §111(d) State Plan revisions as required by the federal rules promulgated on March 12, 1996 (61 *Federal Register* 9905) and on September 15, 1997 (62 *Federal Register* 48347) respectively.

FINAL REGULATORY IMPACT ANALYSIS

The commission has reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has 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 the act, and it does not meet any of the four applicability requirements listed in §2001.0225(a).

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for this rule under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of this rulemaking is to reduce duplication and improve compliance by controlling beryllium air emissions by individual New Source Review permit instead of by rule, and make the Chapter 113 format more consistent with other air regulations through the addition of a subchapter for definitions. Promulgation and enforcement of this rulemaking will not affect private real property.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has determined that this 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 Resource Code, §§33.201 et. seq.), and the commission's 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 has reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council and has determined that the rulemaking is consistent with the applicable CMP goals and policies. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with regulations at Title 40, Code of Federal Regulations (40 CFR), to protect and enhance air quality in the coastal area (31 TAC §501.14(q)). This proposal does not change existing requirements which already comply with regulations at 40 CFR, and is therefore consistent with this policy.

HEARING AND COMMENTERS

A public hearing on the proposal was held in Austin on April 28, 1998, in Austin, however, there were no attendees at the hearing. The comment period closed on May 4, 1998, and only the U.S.

Environmental Protection Agency (EPA) submitted written comments.

ANALYSIS OF TESTIMONY

EPA stated that the proposed new definition, “Section 111(d) State Plan,” accurately reflects the intent of §111(d) of the FCAA.

STATUTORY AUTHORITY

The new section is adopted under the Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA because the primary purposes of this rulemaking are to rescind a subchapter which contains an air emission standard which is redundant to the permitting process, and to add a new Subchapter A, concerning Definitions, to make air regulations more consistent in format with each other. The new section is also adopted under the TCAA, §382.011 which provides the commission with the authority to control the quality of the state’s air, and §382.012 which provides for the commission to prepare and develop a general, comprehensive plan for the proper control of the state’s air.

SUBCHAPTER A : DEFINITIONS

§113.1

§113.1. Definitions.

The words and terms of this subchapter have the meanings assigned to them in the Texas Clean Air Act (TCAA). If no meanings are assigned to them by the TCAA, they shall have the meanings ascribed to them by this section. If a word or term of this subchapter is not defined either in the TCAA or this section, they will have the meaning commonly ascribed to them in the field of air pollution control. **Section 111(d) state plan** - A plan submitted by the state to the EPA Administrator which establishes standards of performance for any existing source for any air pollutant for which air quality criteria have not been issued or which is not included on a list published under FCAA §108(a), or emitted from a source category which is regulated under FCAA §112 or §112(b), but to which a standard of performance under FCAA §111 would apply if such existing source were a new source, and provides for the implementation and enforcement of such standards of performance.

SUBCHAPTER A : HAZARDOUS AIR POLLUTANTS

BERYLLIUM

§113.21

STATUTORY AUTHORITY

The repeal is adopted under the Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purpose of the TCAA.

§113.21. Beryllium.