

The commission proposes new §113.1, concerning Definitions and the repeal of §113.21, concerning Beryllium. The commission also proposes to delete the division, Beryllium, and to change the title of Subchapter A from Hazardous Air Pollutants to Definitions.

EXPLANATION OF PROPOSED RULES

This proposal 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 Regulatory reform projects identify rules and regulations which need clarification for the benefit of the public; are outdated; impose regulatory requirements in excess of their contribution to the commission's mission; or are duplicated, unnecessary, or inconsistent.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 proposed 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 proposed repeal of the state beryllium standard, any permit request will be subject to a standard NSR permit review which includes computer dispersion modeling, an impacts analysis, and the Effects Screening Level (ESL). The permit review will be conducted at the same level as the current Chapter 113 standard.

The proposed new subchapter for definitions will make the Chapter 113 format more consistent with other air regulations. The proposed new definition for "Section 111(d) State Plan" in Subchapter A partially implements the Federal Clean Air Act, §111(d) concerning performance standards for existing

sources. The definition is being proposed in anticipation of future rulemaking to implement the Hospital/Medical/Infectious Waste Incinerator Emissions Guidelines and §111(d) State Plan revision as required by the federal rules promulgated on September 15, 1997 (62 *Federal Register* 48347).

FISCAL NOTE

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of administration or enforcement of the rules. Most beryllium emissions are currently regulated by permit instead of by rule; therefore, repealing these provisions and continuing to enforce through a permit will have no significant impact on administration or enforcement.

PUBLIC BENEFIT

Mr. Minick has also determined that for each year of the first five years the public benefit anticipated as a result of enforcing the repeals will be the elimination of rules that are redundant or no longer apply, as well as a more logically arranged Chapter 113. There is no anticipated economic cost to persons or small businesses required to comply with the rules as proposed, because the requirements themselves will not be changed.

DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed 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 proposal 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 PLAN

The commission has determined that the proposed 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 proposed action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council and has determined that the proposed action 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.

Interested persons may submit comments on the consistency of the proposed rules with the CMP during the public comment period.

PUBLIC HEARING

A public hearing on the proposal will be held in Austin on April 28, 1998, at 10:00 a.m. in Building F, Room 2210 of Texas Natural Resource Conservation Commission complex, located at 12100 North IH-35, Park 35 Technology Center, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and answer questions before and after the hearing.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Heather Evans, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Log No. 97135-113-AI. Comments must be received by 5:00 p.m. May 4, 1998. For further information, please contact Alan Henderson of the Air Policy and Regulations Division, Office of Policy and Regulatory Development, (512) 239-1510.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

STATUTORY AUTHORITY

The new section is proposed 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 proposed 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.

The proposed new definition for "Section 111(d) State Plan" in Subchapter A, partially implements of the Federal Clean Air Act §111(d).

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 proposed 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.

The proposed repeal does not implement any new state or federal requirement, and is part of the regulatory reform effort

§113.21. Beryllium.