The Texas Natural Resource Conservation Commission (commission) proposes the repeal of §114.250, concerning Memorandum of Understanding adopted by reference with the Texas Department of Transportation. The primary purpose of the repeal is to consolidate current Memorandums of Understanding (MOU) adopted by reference with the Texas Department of Transportation (TxDOT) into 30 TAC §7.119. The repeal is also a revision to the state implementation plan.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The proposed 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 §7.119. The consolidated MOU will also address other topics such as water quality.

SECTION BY SECTION DISCUSSION

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

FISCAL NOTE: COST TO STATE AND LOCAL GOVERNMENT

Jeffrey Horvath, Strategic Planning and Appropriations, has determined that for the first five-year period the repeal as proposed is in effect, there will be no significant fiscal implications for state government. There are also no fiscal implications for units of local government.

PUBLIC BENEFIT AND COSTS

Mr. Horvath has also determined that for the first five years the repeal as proposed is in effect the public benefit anticipated will be the consolidation of MOUs, resulting in access to and increased

comprehension of the issues coordinated between two state agencies. The proposed repeal will result in no increase in costs to affected parties. Cost savings are not anticipated to any person who is required to comply with the section as proposed.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

The commission has reviewed the proposed rulemaking in light of Texas Government Code, §2006.002 requirements, and has determined that there is no economic effect on small businesses because the proposed rulemaking adds no regulatory burden, but only reflects coordination of activities between two state agencies.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

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 §2001.0225 and it does not meet any of the four applicability requirements listed in §2001.0225(a). 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 has prepared a Takings Impact Assessment for the rule under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rule 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 rule will advance this purpose by consolidating existing MOUs into one location (Chapter 7). Promulgation and enforcement of the rule will not burden private real property which is the subject of the rule 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 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 Resources Code, §§33.201 et seq.) and the commission's rules in 30 TAC Chapter 281, Subchapter B (Consistency with 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 the commission rules comply with regulations in 40 CFR to protect and enhance air quality in the coastal area. This rule is a repeal of §114.250 in order to consolidate planning MOUs with TxDOT in §7.119 and thereby implementing within the state a portion of 40 CFR 93 which is protective of the air quality in the coastal area because it coordinates transportation planning with environmental review by the commission. Therefore, the rule is in agreement with the CMP policy governing air pollutant emissions.

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 October 24, 2000, at 10:00 a.m. in the first floor hearing room of the Dewitt C. Greer State Highway Building, 125 East 11th Street, 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 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

Comments may be submitted to Lisa Martin, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Log Number 1998-043-007-AD. Comments must be received by 5:00 p.m., November 13, 2000. For further information, please contact David Parmer, Strategic Assessment Division, (512) 239-1761.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact Eloise Lundgren, Director, Public Information Office, 125 East 11th Street, Austin, Texas 78701-2483, (512) 463-8588 at least two working days prior to the hearing so that services can be provided.

STATUTORY AUTHORITY

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

The proposed repeal implements Texas Water Code §5.104, which requires the commission to enter into MOUs with other state agencies to clarify and provide for their respective duties.

SUBCHAPTER G: TRANSPORTATION PLANNING

§114.250

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