

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the repeal of §7.101.

The repeal of §7.101 is adopted *without changes* to the proposed text as published in the November 4, 2022, issue of the *Texas Register* (47 TexReg 7391) and, therefore, will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

This rulemaking is adopted in response to a quadrennial rule review (Project Number 2019-096-007-LS) during which the commission determined that 30 Texas Administrative Code (TAC) §7.101 was obsolete (February 28, 2020, issue of the *Texas Register* (45 TexReg 1446)).

Section by Section Discussion

The rulemaking adoption will repeal 30 TAC §7.101, which is the Memorandum of Understanding between the Texas Natural Resource Conservation Commission (TNRCC) and the Texas Department of Commerce (TDC). The rule delineates the responsibilities of the TNRCC and the TDC. Subsection (d) of the rule provides "this memorandum *shall terminate August 31, 1999*, unless extended by mutual agreement." The TNRCC and TDC did not extend the term of the MOU.

Senate Bill (SB) 932, 75th Regular Session (1997), abolished the Texas Department of

Commerce and transferred its duties to the newly formed Texas Department of Economic Development. SB 275, 78th Regular Session (2003), abolished the Texas Department of Economic Development and transferred its duties to the Texas Economic Development and Tourism Office.

Final Regulatory Impact Determination

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. "Major environmental rule" is defined as 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. This rulemaking does not adversely affect, in a material way, the economy, a section of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

This rulemaking would repeal an obsolete rule. The rulemaking does not meet the definition of "Major environmental rule" because it is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. Therefore, the commission finds that this rulemaking is not a "Major environmental rule."

Furthermore, the rulemaking does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225, only applies to a state agency's adoption of a major environmental rule that: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds 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) adopts a rule solely under the general powers of the agency instead of under a specific state law. Specifically, the rulemaking does not exceed a standard set by federal law, rather it repeals an obsolete rule. The rulemaking does not exceed an express requirement of state law nor exceed a requirement of a delegation agreement. Under Texas Government Code, §2001.0225, only a major environmental rule requires a regulatory impact analysis. Because the proposed rulemaking does not constitute a major environmental rule, a regulatory impact analysis is not required.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received.

Takings Impact Assessment

The commission performed an assessment of this rulemaking in accordance with

Texas Government Code, §2007.043. This rulemaking will repeal an obsolete rule. This repeal will not constitute either a statutory nor a constitutional taking of private real property. This rulemaking adoption will impose no burdens on private real property because the adopted repeal neither relates to nor has any impact on the use or enjoyment of private real property, and there is no reduction in value of property as a result of this rulemaking.

Consistency with the Coastal Management Program

The commission reviewed the rulemaking adoption and found that the sections proposed for repeal are neither identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will the repeal affect any action or authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the rulemaking adoption is not subject to the Texas Coastal Management Program.

The commission invited public comment regarding the consistency with the Coastal Management Program during the public comment period. The commission did not receive any comments regarding the coastal management program.

Public Comment

The commission held a public hearing on December 6, 2022. The comment period closed on December 7, 2022. The commission did not receive any comments.

**MEMORANDUM OF UNDERSTANDING BETWEEN THE TEXAS DEPARTMENT OF
COMMERCE AND THE TEXAS NATURAL RESOURCE CONSERVATION COMMISSION**

§7.101

Statutory Authority

The repeal is adopted under Texas Water Code (TWC), §5.102, which establishes the general authority of the commission necessary to carry out its jurisdiction; TWC, §5.103, which establishes that the commission by rule shall establish and approve all general policy of the commission; TWC, §5.105, which establishes the general authority of the commission to adopt rules necessary to carry out its powers and duties under the TWC and other laws of this state; and TWC, §5.120, which requires the commission to administer the law so as to promote the conservation and protection of the quality of the state's environment and natural resources.

The adopted repeal implements Tex. Gov't Code §2001.039, Agency Review of Existing Rules.

**[§7.101 Memorandum of Understanding between the Texas Department of
Commerce and the Texas Natural Resource Conservation Commission]**