

The Texas Natural Resource Conservation Commission (commission) proposes the repeal of Subchapter N, Adoption of Memorandum of Understanding by Reference, §305.521, Adoption of Memorandum of Understanding by Reference.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED REPEAL

The purpose of the repeal is to consolidate Memorandums of Understanding (MOU) adopted by reference with the Texas Department of Transportation (TxDOT). The repeal will remove §305.521 and replace the MOU on Consolidated Permits, Water Quality Impacts From Certain Transportation Projects, into a consolidated MOU adopted by reference with TxDOT in 30 TAC §7.119. The consolidated MOU will also address other topics such as air quality.

A previous proposal for this rule was made on September 12, 2000. A public hearing was previously held on 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 was structured for the receipt of oral or written comments by interested persons. The comment period for the proposal on September 12, 2000 closed on November 13, 2000; comments that were received during that comment period will be addressed during this rule adoption, along with any comments received during this second proposal period.

SECTION DISCUSSION

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

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

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

The proposal repeals a provision concerning a Memorandum of Understanding (MOU) between the commission and the Texas Department of Transportation (TxDOT) relating to the assessment of water quality impacts resulting from certain transportation projects. In concurrent rulemaking a new provision is proposed providing for an MOU between TNRCC and TxDOT. This rulemaking is proposed to streamline coordination between the commission and TxDOT by consolidating separate MOUs currently in the air regulations and in the water regulations. No fiscal implications are anticipated to units of state and local government.

PUBLIC BENEFITS AND COSTS

Mr. Horvath has also determined that for the first five years the proposed repeal is in effect the public benefit anticipated will be the consolidation of Memorandums of Understanding (MOUs), resulting in the more efficient coordination of issues between two state agencies.

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between the commission and TxDOT by consolidating separate MOUs currently in the air regulations and in the water regulations. The proposed repeal will result in no increase in costs to businesses or individuals. Cost savings are not anticipated to any person who is required to comply with the section as proposed.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated to small or micro-businesses because the proposed rulemaking adds no regulatory burden, but only reflects coordination of activities between two state agencies.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and 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 §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 §305.521 places no requirements on the regulated community.

TAKINGS IMPACT ASSESSMENT

The commission prepared a takings impact assessment for the proposed repeal under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the repeal 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 repeal will advance this purpose by consolidating existing MOUs into one location (Chapter 7). Promulgation and enforcement of the repeal will not burden private real property which is the subject of §2007.043, 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 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 Chapter 281, Subchapter B (Consistency with 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 regulatory action is consistent with the applicable CMP goals and policies. The CMP goals in 31 TAC §501.12 applicable to this proposed rulemaking action include in general all of the ten goals, but apply more specifically to goal (7): to make agency and subdivision decision-making affecting Coastal Natural Resource Areas (CNRA) efficient by identifying and addressing duplication and conflicts among local, state, and federal

regulatory and other programs for the management of CNRAs. Repealing §305.521 and placing a revised and updated MOU under §7.119 will improve the efficiency of addressing CNRAs when they are the subject of environmental documents processed under the MOU. All of the 18 policies contained in 31 TAC §501.14 have the potential of being addressed in environmental documents prepared by TxDOT and reviewed by the commission under the provisions of the MOU. Repealing §305.521 and placing a revised and updated MOU under §7.119 will also improve the efficiency of coordinated environmental review between the two agencies.

ANNOUNCEMENT OF HEARING

A public hearing on this proposal will be held November 27, 2001 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.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact Randall Dillard, 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.

SUBMITTAL OF COMMENTS

Comments may be submitted to Patricia Durón, 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 2001-102-007-AD. Comments must be received by 5:00 p.m. December 3, 2001. For further information, please contact David Parmer, Strategic Assessment Division, at (512) 239-1761.

STATUTORY AUTHORITY

The repeal is proposed under Texas Water Code (TWC), §5.104, which requires the commission to enter into MOUs with other state agencies to clarify and provide for their respective duties, responsibilities, or functions; TWC, §5.103, which establishes the commission's authority to adopt rules; and TWC, §5.105, which establishes commission authority to set policy.

The proposed repeal implements TWC, §5.104.

**SUBCHAPTER N: ADOPTION OF MEMORANDUM OF
UNDERSTANDING BY REFERENCE**

§305.521

§305.521. Adoption of Memorandum of Understanding by Reference.