

The Texas Natural Resource Conservation Commission (commission) adopts new §7.110, concerning entering into a Memorandum of Understanding (MOU) with the Texas Department of Public Safety (department). The new §7.110 has been adopted with changes as published in the September 3, 1996, issue of the *Texas Register* (21 TexReg 8382).

### **Explanation of Adopted Rule**

The addition of §7.110 satisfies requirements established in Executive Order GWB 96-1. This MOU divides program responsibilities between the commission and the department with regard to the Texas Motorist's Choice Program. Subsection (a) describes the need for the MOU, while subsection (b) defines which agencies are parties to the agreement. Subsections (c) and (d) delineate the responsibilities and related activities of each agency. Subsection (e) provides a mechanism for resolving any disputes between the two agencies. Subsection (f) provides conditions for review, amendment, and termination of the MOU by either agency.

### **Takings Impact Assessment**

The commission has prepared a Takings Impact Assessment pursuant to Texas Government Code Annotated, Section 2007.043, and has determined this rule will have no affect on private real property.

### **Hearings and Commenters**

A public hearing was held in Austin on October 3, 1996. The comment period closed October 3, 1996. No oral comments were presented at the hearing.

Only one written comment was received on the proposal. The United States Environmental Protection Agency (EPA) requested that the MOU be incorporated into the State Implementation Plan at the next major revision, or be submitted to the EPA when finalized.

**The commission will submit the MOU to the EPA once the MOU has been approved by the commission and the department.**

Administrative and clerical changes were made by the commission in order to make terminology consistent with terminology in the rules of the department, to clarify a reference, and to clarify the responsibilities of the commission.

#### **Statutory Authority**

The new section is adopted under Texas Water Code, §§5.103, 5.105, 13.041, 26.011, 27.019, 32.009, 33.007, and 34.006 and Texas Health and Safety Code, §§341.002, 341.031, 361.011, 361.017, 361.024, 366.012, 382.017, 401.011, 401.051, and 401.412, which provide the commission with the authority to adopt the rules necessary to carry out its powers and duties.

**§7.110. Memorandum of Understanding Between the Texas Natural Resource Conservation Commission (commission) and the Texas Department of Public Safety (department).**

(a) Need for agreement.

(1) Executive Order GWB 96-1, authorized by Senate Bill 178 (Chapter 34, Acts of the 74th Legislature, Regular Session, 1995), directs the commission to enter into an agreement with the department to provide for the establishment of an Inspection/Maintenance (I/M) program in accordance with Executive Order GWB 96-1, the Texas Clean Air Act (TCAA), and federal regulations.

(2) The commission and the department have agreed to develop this Memorandum of Understanding between these agencies. This agreement will supplement any previous Memoranda of Understanding between these two agencies or including these two agencies as participating parties.

(3) The agencies entering into this Memorandum of Understanding are establishing a formal mechanism by which they will coordinate I/M program planning, implementation, oversight, evaluation, and areas of primary responsibility. This Memorandum of Understanding also provides for a system by which information developed by the commission and the department may be exchanged for the benefit of the I/M program.

(b) Definitions. Unless specifically defined in the TCAA, 37 Texas Administrative Code §23.93 relating to Vehicle Emissions Inspection Requirements, the department "Rules and Regulations

Manual for Official Vehicle Inspection Stations and Certified Inspectors”, 30 Texas Administrative Code §114.3 relating to Vehicle Emissions Inspection Requirements, or in other rules of the commission or the department, the terms used in this Memorandum of Understanding shall have the meanings commonly ascribed to them in the fields of air pollution control and vehicle inspection unless the context clearly indicates otherwise.

(c) Responsibilities.

(1) The commission:

(A) is the state agency responsible for conservation of natural resources;

(B) is the principal state authority on matters relating to the state’s air quality;

and

(C) shall have authority to make rules for the I/M program on matters that relate directly to:

(i) emissions reduction credits awarded by the United States Environmental Protection Agency (EPA);

(ii) computer modeling of the emissions reduction credits available to the Texas I/M Program;

(iii) data collection efforts required by 40 CFR Part 51 or the Texas I/M State Implementation Plan (SIP); and

(iv) responsibilities of the commission identified in this agreement.

(2) The department:

(A) is the state agency responsible for the safety of the motoring public;

(B) is the principal authority on matters relating to testing motor vehicles for safety and emissions compliance; and

(C) shall have authority to make rules for the implementation and operation of the I/M program.

(3) Both agencies agree to comply with the provisions of the Texas I/M SIP, including the most recent proposed revision signed by the Governor and submitted to the EPA on June 21, 1996, and the provisions of Executive Order GWB 96-1.

(4) It is neither the department's nor the commission's intention to direct the other agency's activities by rule or otherwise.

(d) Activities.

(1) In consultation with the department, the commission will:

(A) develop and design an I/M program for the State of Texas that satisfies the requirements of the Federal Clean Air Act and 40 CFR Part 51, Executive Order GWB 96-1 and other relevant legislation, including any amendments made to these requirements;

(B) develop, update, and amend the Texas I/M SIP and program rules as necessary to support state and federal requirements;

(C) evaluate the Texas I/M Program;

(D) develop criteria for emissions testing equipment required for use in emissions testing facilities;

(E) serve as the state's liaison with the EPA;

(F) provide the department with timely reports and data analysis as requested;

and

(G) set fees for the Texas I/M Program by rule.

(2) In consultation with the commission, the department will:

(A) implement the Texas Motorist's Choice Program, including the adoption of necessary rules and procedures;

(B) actively enforce the Texas Motorist's Choice Program;

(C) serve as the state's liaison with participating emissions testing facilities;

(D) license emissions testing facilities;

(E) provide the commission with timely reports and data analysis as requested;

(F) implement Repair Effectiveness provisions of the Texas I/M SIP; and

(G) collect emissions testing and other applicable fees for the Texas Motorist's Choice Program.

(3) In order for both agencies to fulfill their respective program responsibilities, both agencies agree:

(A) to share information necessary for maintaining program effectiveness, quality, and approvability by the EPA;

(B) to allow the EPA to audit their program records;

(C) to jointly determine, within 60 days of the effective date of this Memorandum of Understanding, a list of information to be shared along with a schedule and acceptable format for its provision. This list may be amended by mutual agreement of the agencies.

(D) to consult on an appropriate course of action if an analysis of program data indicates that the Texas Motorist's Choice Program is not meeting commitments made in the Texas I/M SIP. Consultation requests may be made by the program director in either agency.

(e) Dispute resolution. In the event that the commission and the department are not able to decide on a mutually agreeable plan of action with regard to the terms of this agreement, each agency shall inform the other of its concerns, in writing, and make a good faith effort to address the major concerns of the other party.

(f) Reviews of and changes to the Memorandum of Understanding.

(1) This Memorandum of Understanding shall be reviewed and updated, at a minimum, every fifth year from its effective date. Either party may suggest amendments when it feels such changes are warranted.

(2) If a change in state or federal law or a change in the Texas SIP necessitates a change in this Memorandum of Understanding, then both the Director of the Mobile Source Division of the commission and the Director of the Vehicle Inspection and Emissions program of the department or their respective staffs will meet to work out a mutually agreeable amendment to the Memorandum of Understanding. If such an amendment is not possible, then either party may require dispute resolution under subsection (e) of this section.

(3) This Memorandum of Understanding may be terminated by either agency upon at least 30 days written notice.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be within the agency's legal authority.

Issued in Austin, Texas, on November 20, 1996.