

The Texas Natural Resource Conservation Commission (commission) proposes new §7.110, concerning entering into a Memorandum of Understanding (MOU) with the Texas Department of Public Safety (DPS). The addition of this section will satisfy requirements established in Executive Order GWB 96-1.

The MOU establishes areas of agency responsibility and a formal mechanism by which the two agencies will share information and coordinate Inspection/Maintenance (I/M) program planning, implementation, oversight, and evaluation.

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.

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the section is in effect there will be no significant fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Minick also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the efficient operation of the Texas

Motorists' Choice Program. There will be no costs or adverse impacts anticipated for small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

A public hearing on the proposal will be held on October 3, 1996 at 11:00 a.m. in Building F, Room 5108 at the 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.

Written comments may be mailed to Heather Evans, Texas Natural Resource Conservation Commission 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 Number 96125-007-AI.

Comments must be received by 5:00 p.m., October 3, 1996. For further information, please contact Thomas Ortiz, Air Policy and Regulations Division, (512) 239-1054.

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.

The new section is proposed 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.

The new section implements Texas Health and Safety Code, §382.0365(e) and Texas Government Code, §481.028(b)(6).

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

(a) Need for agreement.

(1) Executive Order GWB 96-1, authorized by Senate Bill 178, Act of the 74th Legislature, directs the commission to enter into an agreement with the Texas Department of Public Safety (DPS) 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, and federal regulations.

(2) The commission and the DPS 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 DPS may be exchanged for the benefit of the I/M program.

(b) Definitions. Unless specifically defined in the Texas Clean Air Act (TCAA), 37 Texas Administrative Code §23.93 relating to Vehicle Emission Inspection Requirements, the DPS "Rules and

Regulations Manual for Official Vehicle Inspection Stations and Certified Inspectors”, 30 Texas Administrative Code §114.3 relating to Vehicle Emission Inspection Requirements, or in other rules of the commission or the DPS, 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:

(i) matters that relate directly to emissions reduction credits awarded by the United States Environmental Protection Agency (EPA);

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

(2) The DPS:

(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 DPS's nor the commission's intention to direct the other agency's activities by rule or otherwise.

(d) Activities.

(1) In consultation with the DPS, 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 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 DPS 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 DPS will:

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

(B) actively enforce the Texas Motorists' 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 Motorists' 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 both agencies.

(D) to consult on an appropriate course of action if an analysis of program data indicates that the Texas Motorists' 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 DPS 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 DPS 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 proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on August 21, 1996.