

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes new §7.119, Memorandum of Understanding Between the Texas Department of Transportation and the Texas Natural Resource Conservation Commission.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

The proposed rule would adopt by reference a Texas Department of Transportation (TxDOT) memorandum of understanding (MOU), streamlining coordination between the commission and TxDOT by consolidating separate MOUs currently in the air regulations (30 TAC §114.250) and in the water regulations (30 TAC §305.521). Rule actions regarding these separate MOUs are proposed in this issue of the *Texas Register*.

The MOU would address transportation planning issues required by Texas Transportation Code, §201.607, between TxDOT and state natural resource agencies, specifically including processing of documents required by the National Environmental Policy Act. The MOU establishes periods for review of documents coordinated under §201.607 and ensures coordination between the agencies on road projects that could have environmental impacts. The full text of the amended MOU is proposed in 43 TAC §2.23.

SECTION BY SECTION DISCUSSION

The proposed rule language adopts by reference an MOU with TxDOT.

The following sections are included in the MOU.

The *Purpose* section of the MOU outlines TxDOT and TNRCC policy as they apply to the environmental review of transportation projects. The section contains statements as to why 43 TAC §§2.40-2.51 considers coordination of transportation projects with natural resource agencies important and how the MOU will facilitate that coordination.

The *Authority* section outlines the governing statutes for both the MOU and the rulemaking requirements of TNRCC and TxDOT.

The *Definitions* section provides clarification for important terms used in the MOU.

The *Responsibilities* section states the responsibility of each agency as they apply to the environmental review of transportation projects.

The section on *Provisions Regarding Coordination and Document Review* has two important subsections. Subsection (1) establishes the philosophy and rationale for early and timely actions by the agencies and the necessity for TxDOT districts and TNRCC regional offices to work together. Subsection (2) defines the most important air and water quality issues selected by TNRCC that require project coordination of environmental documents. For air quality, transportation projects in nonattainment and major metropolitan areas are singled out. For water quality, transportation projects which encroach upon impaired stream segments identified under §303(d) of the Clean Water Act and the recharge and contributing zones of the Edwards Aquifer are selected as being important. The subsection also contains administrative guidance for processing environmental documents.

Two sections entitled *Additional Provisions Regarding Air Quality* and *Additional Provisions Regarding Water Quality* provide for exchange of data and studies to support environmental reviews.

The *Dispute Resolution* section provides a stepwise procedure for resolving disputes.

The *Review of MOU* section calls for review and update every five years, or if necessary due to changes in state or federal law.

Copies of the MOU are available from TNRCC, Chief Clerk's Office.

FISCAL NOTE

Jeffrey Horvath, Strategic Planning and Appropriations Division, has reviewed the proposed section under the requirements of Texas Government Code, §2001.024 and has made the following determination concerning the fiscal effects of the rules for each year of the first five years the section is in effect.

COSTS TO STATE AND LOCAL GOVERNMENT

Mr. Horvath, 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.

PUBLIC BENEFIT AND COSTS

Mr. Horvath has also determined that for each year of the first five years the section is in effect, the anticipated public benefit will be the consolidation of MOUs, resulting in access to increased comprehension of the issues coordinated between two state agencies. There is no anticipated economic cost to persons who are required to comply with the section as proposed, because a new regulatory requirement is not established.

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 Texas Government Code, and it does not meet any of the four applicability requirements listed in §2001.0225(a). The rule provides for an MOU which satisfies the need of the commission and TxDOT to coordinate regulatory programs and to ensure that overlapping areas of responsibility are clarified. The rule/MOU 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, §2007.43. The following is a summary of that assessment. The specific purpose of the rule is to establish an MOU between TxDOT and the commission. The rule will substantially advance this purpose by outlining coordination of activities with TxDOT in areas with an overlap of responsibilities. Promulgation and enforcement of the rule will not burden private real property which is the subject of the rule because it pertains to an understanding between state agencies on their joint jurisdiction and on areas of coordination. The MOU is not a substitute for the rulemaking activities of either agency nor an independent cause of rulemaking. The understanding places no requirements on the regulated community.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has reviewed the proposed rulemaking and found that the rule is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the proposal is not subject to the Texas Coastal Management Program.

ANNOUNCEMENT OF 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. To obtain a draft copy of the TxDOT/TNRCC MOU, please contact Sandra Garcia, Office of Environmental Policy, Analysis, and Assessment, (512) 239-4626.

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 new section is proposed under Texas Water Code (TWC), §5.104, which requires the commission to enter into an MOU with any other state agency to clarify and provide for their respective duties, responsibilities, or functions on any matter within their jurisdictions that is not expressly assigned to either agency; Texas Health and Safety Code (THSC), §382.017, and TWC, §5.103, both of which establish the commission's authority to adopt rules; THSC, §382.035, which requires the commission to

adopt MOUs with other state agencies by rule; and TWC, §5.105, which establishes commission authority to set policy.

The proposed new section implements TWC, §5.104, which requires the commission to enter into an MOU with other state agencies to clarify and provide for their respective duties.

CHAPTER 7

MEMORANDA OF UNDERSTANDING

§7.119

§7.119. Memorandum of Understanding Between the Texas Department of Transportation and the Texas Natural Resource Conservation Commission.

The commission adopts by reference the rules of the Texas Department of Transportation in 43 TAC §2.23 (relating to Memorandum of Understanding with the Texas Natural Resource Conservation Commission).