

The Texas Natural Resource Conservation Commission (commission) proposes new §11.200, concerning Applicability and §11.201, concerning Roles and Responsibilities.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The purpose of the proposed rules is to implement the requirements of Senate Bill (SB) 177, signed into law during the 76th Texas Legislative Session. The bill amended Texas Government Code, Title 10, Subtitle F, by adding Chapter 2259, State Contracting Standards and Oversight. Section 2259.202 of the added chapter requires state agencies, that make procurements to which the new chapter applies, to establish and adopt by rule a policy that clearly defines the contract monitoring roles and responsibilities of that agency's internal audit staff as well as any other inspection, investigative, or audit staff within that agency. The rules have been drafted to be consistent with the intent and language of the bill, and to specifically satisfy the rulemaking requirements applicable to state agencies under this new chapter of the Texas Government Code.

The proposed rules apply only to contracts that meet the applicability requirements set forth in Texas Government Code, §2259.001.

The rules describe three existing units within the commission and establish for each certain tasks and responsibilities. The units include: 1) the Internal Audit Unit which reports directly to the agency's commissioners; 2) the Compliance, Evaluation and Audit Unit which reports directly to the commission's Chief Financial Officer; and 3) the Special Investigations Unit (for criminal enforcement

issues) that is located in the commission's Office of Legal Services and which reports to the deputy director for Office of Legal Services.

SECTION BY SECTION DISCUSSION

Chapter 11 is amended by the addition of a new Subchapter E: Contract Monitoring Roles and Responsibilities.

The new proposed §11.200 establishes applicability requirements for the proposed subchapter.

The new proposed §11.201(1) establishes and describes roles and responsibilities for the commission's Internal Audit Unit.

The new proposed §11.201(2) establishes and describes roles and responsibilities for the commission's Compliance, Evaluation and Audit Unit.

The new proposed §11.201(3) establishes and describes roles and responsibilities for the commission's criminal enforcement unit (currently the Special Investigations Unit).

The roles and responsibilities set forth in new proposed §11.201 for the above identified units, are consistent with the "General Roles and Responsibilities" contained in proposed §3.12 of the commission's Operating Policies and Procedures.

FISCAL NOTE

Jeff Grymkoski, Director, Strategic Planning and Appropriations, has determined that for the first five-year period the proposed rules are in effect, there will be no fiscal implications for state or local governments as a result of administration or enforcement of the proposed new rules. Nor will enforcement of the new rules result in an increase in workload for commission staff.

PUBLIC BENEFIT

Jeff Grymkoski has also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the enforcement of and compliance with the rules will be a greater assurance that the relevant requirements and conditions contained in commission contracts are being complied with by both the contractor and the commission staff.

SMALL AND MICRO-BUSINESS IMPACT ANALYSES

The rules are not anticipated to impose additional costs on individuals, small businesses, or micro-businesses.

DRAFT REGULATORY IMPACT ANALYSIS

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 the Texas Government Code. "Major environmental rule" means 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. In addition, the proposed rulemaking does not meet any of the four applicability requirements of a “major environmental rule” which triggers the analysis under Texas Government Code, §2001.0225(b). The proposed rules describe an internal agency policy and in no way address, establish, or modify specific contract-related standards, federal or otherwise. The proposed rules do not exceed an express requirement of state law and are not specifically required by federal law. The proposed rules are consistent with federal contract-management requirements, although the rules themselves are not required by federal law. The proposed rules describe internal agency procedures specifically required by state law, but in no way exceed state law requirements. There is no federal law or federal delegation agreement specifically applicable to contract monitoring roles and responsibilities. The rules are expressly required by Texas Government Code, §2259.001, instead of the general powers of the agency.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for the proposed rules pursuant to Texas Government Code, §2007.043. The specific purpose of the rules is to implement legislation concerning the establishment of roles and responsibilities of various inspection, investigative, and/or audit staff personnel within each state agency as those roles and responsibilities apply to contract monitoring. The proposed rules do not affect private real property. Therefore, these rules will not constitute a takings under Texas Government Code, Chapter 2007.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed the proposed rulemaking and found that the rules are neither identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the proposed rules are not subject to the CMP.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Angela Slupe, 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 1999-041-011-AD. Comments must be submitted by 5:00 p.m. on April 10, 2000. For further information, please contact Doug McArthur, Office of Administrative Services, Procurements and Contracts, MC 181, P.O. Box 13087, Austin, Texas 78711-3087, telephone number (512) 239-6857 or by fax number (512) 239-0371.

STATUTORY AUTHORITY

The proposed rules implement SB 177, 76th Legislature, 1999, and are specifically authorized by Texas Government Code, Chapter 2259.

SUBCHAPTER E: CONTRACT MONITORING ROLES AND RESPONSIBILITIES

§11.200, § 11.201

§11.200. Applicability.

This subchapter applies only to contracts for goods or services which have been procured by one of the procurement methods described in Texas Government Code, §2259.001, as being subject to the requirements of Texas Government Code, Chapter 2259.

§11.201. Roles and Responsibilities.

The contract monitoring roles and responsibilities of agency internal audit staff and other inspection, investigative, or audit staff are as follows.

(1) A unit within the agency will perform internal audit activities which will include providing assistance and consulting regarding contract monitoring issues. This unit will also perform audits of the contract management function and systems when they are warranted by the results of risk assessment and are included in an audit plan approved by the commission.

(2) A unit within the agency will seek to improve voluntary contract compliance by performing contract compliance audits of entities which receive funds from the agency.

(3) A unit within the agency will function as the agency's criminal enforcement unit. This unit will take action regarding criminal activity related to agency contracts.