

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** December 7, 2018
Thru: Toby Baker, Executive Director
Thru: Margaret Ligarde, Deputy Director
Office of Legal Services
From: Robert Martinez, Division Director
Environmental Law Division
Subject: Rulemaking Draft Concept and Initiation Memo
Chapter 7, Memoranda of Understanding

Suggested short title:

MOU between the Texas Commission on Environmental Quality and the Texas Department of Transportation

Introduction and reason(s) for the rulemaking:

This rulemaking will adopt, by reference, updates to the current Memorandum of Understanding (MOU) between the Texas Commission on Environmental Quality (TCEQ or agency) and the Texas Department of Transportation (TxDOT) addressing the TCEQ's environmental review of TxDOT highway (transportation) projects. The updates are the result of the review required by the Texas Transportation Code, §201.607.

Scope of the proposed rule:

30 TAC §7.119 is being amended to adopt updates to the MOU between TCEQ and TxDOT regarding the review of the potential environmental effect of transportation projects. The updated MOU removes unnecessary definitions and simplifies the coordination process, so that coordination is only required on transportation projects that require environmental impact statements, supplemental environmental impact statements or environmental assessments.

The TCEQ references the text of the updated MOU between TCEQ and TxDOT found in 43 TAC §§2.301 - 2.308.

A.) Scope required by federal regulations or state statutes:

Texas Transportation Code, §201.607 requires that TxDOT and TCEQ examine and revise their MOU every five years.

B.) Additional staff recommendations:

None.

Potential controversial concerns and legislative interest:

The executive director is not aware of any controversial concerns or legislative interest.

Potential alternatives:

None, since TxDOT and TCEQ are required by Texas Transportation Code §201.607 to revise/update the MOU every five years.

Effect on the:

A.) Regulated community:

None.

B.) Public:

None.

C.) Agency programs:

TCEQ water quality program staff involved in the review of TxDOT projects will have to spend additional time to determine the scope of the review required. The executive director expects the additional TCEQ staff time to be minimal.

Proposed schedule and constraints:

TxDOT proposed the MOU at the November 15, 2018 Transportation Commission Meeting and anticipates adoption of the MOU in January 2019.

Anticipated Proposal Date: February 27, 2019

Anticipated Public Comment Period: March 15, 2019 - April 15, 2019

Anticipated Adoption Date: June 26, 2019

Planned Stakeholder involvement:

None.

Statutory authority:

- Texas Transportation Code, §201.607 (Environmental, Historical, or Archeological Memorandum of Understanding)
- Texas Water Code, §5.104 (Memoranda of Understanding)

Direction and Guidance:

Rule or Non-Rule Project number: 2017-008-007-LS

Electronic cc:

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Attachments:

TexReg copy of rule proposed by TxDOT.

NOTE: *TR will submit electronic notice to the following after ED Briefing:*

Jim Rizk
Martha Landwehr
Office of General Counsel