

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST
for Proposed Rulemaking

AGENDA REQUESTED: October 19, 2022

DATE OF REQUEST: September 30, 2022

INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Cecilia Mena, Rule/Agenda Coordinator, (512) 239-6098

CAPTION: **Docket No. 2022-0772-RUL.** Consideration for publication of, and hearing on, proposed revisions to 30 TAC Chapter 7, Memoranda of Understanding.

The proposed rulemaking would repeal 30 TAC Section 7.101, Memorandum of Understanding between the Texas Department of Commerce and the Texas Natural Resource Conservation Commission in response to a quadrennial rule review (Project Number 2019-096-007-LS) during which the commission determined that 30 TAC Section 7.101 was obsolete (February 28, 2020 issue of the *Texas Register* (45 TexReg 1446)). (Kathy Humphreys; Rule Project No. 2022-020-007-LS)

Erin Chancellor
Director

Charmaine Backens
Division Deputy Director

Cecilia Mena
Agenda Coordinator

Copy to CCC Secretary? NO

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** September 30, 2022

Thru: Laurie Gharis, Chief Clerk
Toby Baker, Executive Director

From: Erin E. Chancellor, Director
Office of Legal Services

Docket No.: 2022-0772-RUL

Subject: Commission Approval for Proposed Rulemaking
Chapter 7, Memoranda of Understanding
Rule Project No. 2022-020-007-LS

Background and reason(s) for the rulemaking:

This rulemaking is being proposed in response to a quadrennial rule review (Project Number 2019-096-007-LS) during which the commission determined that 30 Texas Administrative Code (TAC) §7.101 was obsolete (February 28, 2020 issue of the *Texas Register* (45 TexReg 1446)).

Scope of the rulemaking:

This rulemaking would repeal 30 TAC §7.101 (Memorandum of Understanding between the Texas Natural Resource Conservation Commission (TNRCC) and the Texas Department of Commerce (TDC)).

A.) Summary of what the rulemaking would do:

The rulemaking would repeal the obsolete rule. Subsection (d) of the rule provides "this memorandum shall terminate August 31, 1999, unless extended by mutual agreement." The TNRCC and TDC did not extend the term of the MOU.

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

None.

C.) Additional staff recommendations that are not required by federal rule or state statute:

None.

Statutory authority:

Texas Government Code, §2001.039; Texas Water Code, §§5.101 - 5.104.

Effect on the:

A.) Regulated community:

None.

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B.) Public:

None.

C.) Agency programs:

None.

Stakeholder meetings:

The commission did not hold any stakeholder meetings related to this rulemaking; however, a rule public hearing will be held during the comment period in Austin.

Potential controversial concerns and legislative interest:

None.

Would this rulemaking affect any current policies or require development of new policies?

None.

What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?

There would not be any consequences if the rulemaking does not go forward. The alternative to rulemaking is to allow the obsolete rule to remain in the Texas Administrative Code.

Key points in the proposal rulemaking schedule:

Anticipated proposal date: October 19, 2022

Anticipated *Texas Register* publication date: November 4, 2022

Anticipated public hearing date: December 7, 2022

Anticipated public comment period: November 4, 2022 - December 7, 2022

Anticipated adoption date: May 2023

Agency contacts:

Kathy Humphreys, Rule Project Manager/Staff Attorney, Environmental Law Division,
(512) 239-3417

Cecilia Mena, Texas Register Rule/Agenda Coordinator, (512) 239-6098

Attachments:

None.

cc: Chief Clerk, 2 copies
Executive Director's Office
Jim Rizk
Morgan Johnson
Krista Kyle
Office of General Counsel
Kathy Humphreys
Cecilia Mena

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes the repeal of §7.101.

Background and Summary of the Factual Basis for the Proposed Rules

This rulemaking is being proposed in response to a quadrennial rule review (Project Number 2019-096-007-LS) during which the commission determined that 30 Texas Administrative Code (TAC) §7.101 was obsolete (February 28, 2020, issue of the *Texas Register* (45 TexReg 1446)).

Section by Section Discussion

The proposed rulemaking would repeal 30 TAC §7.101, which is the Memorandum of Understanding between the Texas Natural Resource Conservation Commission (TNRCC) and the Texas Department of Commerce (TDC). The rule delineates the responsibilities of the TNRCC and the TDC. Subsection (d) of the rule provides "this memorandum shall terminate August 31, 1999, unless extended by mutual agreement." The TNRCC and TDC did not extend the term of the MOU.

Senate Bill (SB) 932, 75th Regular Session (1997), abolished the Texas Department of Commerce and transferred its duties to the newly formed Texas Department of Economic Development. SB 275, 78th Regular Session (2003), abolished the Texas Department of Economic Development and transferred its duties to the Texas Economic Development and Tourism Office.

Fiscal Note: Costs to State and Local Government

Jené Bearse, Analyst in the Budget and Planning Division, has determined that for the first five-year period the proposed repeal is in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rulemaking.

Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed repeal is in effect, the public benefit anticipated would be improved accuracy of the Texas Administrative Code due to the removal of an obsolete provision.

The proposed rulemaking is not anticipated to result in fiscal implications for businesses or individuals.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed repeal is in effect.

Rural Communities Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first

five years that the proposed repeal is in effect. The repeal would apply statewide and have the same effect in rural communities as in urban communities.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed repeal for the first five-year period the proposed repeal is in effect.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed repeal does not adversely affect a small or micro-business in a material way for the first five years the proposed repeal is in effect.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking does not require the creation of new employee positions, eliminate current employee positions, or require an increase or decrease in fees paid to the agency. The proposed rulemaking does repeal an existing, obsolete regulation. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability because the provision

has expired. During the first five years, the proposed repeal should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. "Major environmental rule" is defined as 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. This rulemaking does not adversely affect, in a material way, the economy, a section of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

This rulemaking would repeal an obsolete rule. The rulemaking does not meet the definition of "Major environmental rule" because it is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. Therefore, the commission finds that this rulemaking is not a "Major environmental rule."

Furthermore, the rulemaking does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225, only applies to a state agency's adoption of a major environmental rule that: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopts a rule solely under the general powers of the agency instead of under a specific state law. Specifically, the rulemaking does not exceed a standard set by federal law, rather it repeals an obsolete rule. The rulemaking does not exceed an express requirement of state law nor exceed a requirement of a delegation agreement. Under Texas Government Code, §2001.0225, only a major environmental rule requires a regulatory impact analysis. Because the proposed rulemaking does not constitute a major environmental rule, a regulatory impact analysis is not required.

The commission invites public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission performed an assessment of this rulemaking in accordance with Texas Government Code, §2007.043. This rulemaking will only repeal an obsolete rule. This repeal would not constitute either a statutory nor a constitutional taking of private real property. This rulemaking would impose no burdens on private real property because the proposed repeal neither relates to, nor has any impact on the use or enjoyment of private real property, and there is no reduction in value of the property as a result of this rulemaking.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found that the sections proposed for repeal are neither identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(b)(2) or (4), nor will the repeal affect any action or authorization identified in Coastal Coordination Act implementation rules, 31 TAC §505.11(a)(6). Therefore, the proposed rulemaking is not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a hybrid virtual and in-person public hearing on this

proposal in Austin on Wednesday December 7, at 10:00 a.m. in Building E, Room 201S at the commission's central office located at 12100 Park 35 Circle. 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 be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Individuals who plan to attend the hearing virtually and want to provide oral comments and/or want their attendance on record must register by Monday December 5, 2022. To register for the hearing, please email Rules@tceq.texas.gov and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on Tuesday, December 6, 2022, to those who register for the hearing.

For the public who do not wish to provide oral comments but would like to view the hearing may do so at no cost at:

https://teams.microsoft.com/l/meetup-join/19%3ameeting_OTRiNjA4NjItMTFkOS00ZTFmLTllM2UtMGVmYjO1YzOzODJl%40thread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%22e74a40ea-69d4-469d-a8ef-06f2c9ac2a80%22%2c%22IsBroadcastMeeting%22%3a%22true%22%7d

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Cecilia Mena, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to *fax4808@tceq.texas.gov*. Electronic comments may be submitted at: <https://tceq.commentinput.com/>. File size restrictions may apply to comments being submitted via the TCEQ Public Comment system. All comments should reference Rule Project Number 2022-020-007-LS. The comment period closes on December 7, 2022. Please choose one of the methods provided to submit your written comments.

Copies of the proposed rulemaking can be obtained from the commission's website at https://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Kathy Humphreys, Environmental Law Division, (512) 239-3417.

**MEMORANDUM OF UNDERSTANDING BETWEEN THE TEXAS DEPARTMENT OF
COMMERCE AND THE TEXAS NATURAL RESOURCE CONSERVATION COMMISSION**

§ 7.101

Statutory Authority

The repeal is proposed under Texas Water Code (TWC), §5.102, which establishes the general authority of the commission necessary to carry out its jurisdiction; TWC, §5.103, which establishes that the commission, by rule, shall establish and approve all general policy of the commission; TWC, §5.105, which establishes the general authority of the commission to adopt rules necessary to carry out its powers and duties under the TWC and other laws of this state; and TWC, §5.120, which requires the commission to administer the law so as to promote the conservation and protection of the quality of the state's environment and natural resources.

The proposed repeal implements Tex. Gov't Code §2001.039, Agency Review of Existing Rules.

**[§7.101 Memorandum of Understanding between the Texas Department of
Commerce and the Texas Natural Resource Conservation Commission]**

[(a) Need for agreement. Texas Health and Safety Code, §382.0365(e) directs the Texas Natural Resource Conservation Commission (TNRCC) to enter into a Memorandum of Understanding (MOU) with the Texas Department of Commerce

(TDOC) to coordinate assistance to any small business applying for permits from the commission. Texas Government Code, §481.028(b)(6) directs the TDOC to develop an MOU with the TNRCC to cooperate in program planning and budgeting regarding small business finance and permits, the marketing of recyclable products, and business permits.]

[(b) Responsibilities.]

[(1) The TNRCC:]

[(A) is the agency of the state given primary responsibility for implementing the Constitution and laws of this state relating to the conservation of natural resources and the protection of the environment;]

[(B) sets standards, criteria, levels, and limits for pollution to protect the air and water quality of the state's natural resources and the health and safety of the state's citizens;]

[(C) protects the air, land, and water resources through the development, implementation, and enforcement of control programs as necessary to satisfy all federal and state environmental laws and regulations;]

[(D) maintains a Small Business Assistance Program as defined in

Texas Health and Safety Code, §382.0365;]

[E) establishes programs designed to encourage Texas businesses to reduce, reuse, and recycle industrial and hazardous wastes; and]

[F) has the powers and duties specifically prescribed and other powers necessary or convenient to carry out these and other responsibilities.]

[(2) The TDOC:]

[(A) is the state agency designated to promote economic development and tourism and provide business services for small business owners;]

[(B) serves as an information center and referral agency for information on various state and federal programs affecting small businesses, including local governments, local economic development organizations, and small business development centers to promote business development in the state;]

[(C) supports small business ownership and development for the state;]

[(D) collects, publishes, and disseminates information useful to small businesses, including data on employment and business activities and trends;

and]

[E) has the powers and duties specifically prescribed and other powers necessary or convenient to carry out these and other responsibilities.]

[(c) Activities.]

[(1) The TNRCC will, in a timely manner:]

[(A) refer small business owners to the TDOC for information on financial and loan assistance; business licenses, permits, registrations; or certificates necessary to operate a place of business in Texas;]

[(B) provide the TDOC with information regarding environmental permitting processes, registration timelines, fee schedules, reporting requirements, pollution prevention techniques; as well as scheduled workshops, seminars, and conferences that educate small businesses on environmental concerns;]

[(C) provide speakers and educational materials, as requested and subject to staff availability, for seminars, conferences, and workshops sponsored by the TDOC;]

[(D) maintain current information supplied by the TDOC on

financial and loan assistance; business licenses, permits, registrations; or certificates necessary to operate a place of business in Texas;]

[E) research the requirements and costs of pollution control equipment and environmental audits needed by small businesses for compliance with environmental regulations;]

[F) train TDOC staff, as requested and subject to staff availability, on environmental regulations, environmental management techniques, and pollution prevention and recycling practices that apply to small businesses;]

[G) share information with the TDOC to ensure non-duplication of agency efforts;]

[H) provide the necessary permit applications and forms to the TDOC, upon request, so that the TDOC may complete a comprehensive application request by a business; and]

[I) analyze and evaluate alternatives for improving permit processes within the TNRCC, and submit jointly with the TDOC any report required by Texas Government Code, §481.129.]

[(2) The TDOC will, in a timely manner:]

[(A) refer small business owners and prospective owners to the TNRCC Small Business Assistance Program for help with environmental permitting, registration, compliance, and reporting requirements and pollution prevention techniques;]

[(B) provide information to the TNRCC regarding information on financial and loan assistance; business licenses, permits, registrations; or certificates necessary to operate a place of business in Texas;]

[(C) provide speakers and educational materials, as requested and subject to staff availability, for seminars, conferences, and workshops sponsored by the TNRCC;]

[(D) maintain current information supplied by the TNRCC on the application process and timelines for environmental permits, registrations, certifications, or other general environmental compliance information needed to operate a place of business in Texas;]

[(E) incorporate the TNRCC information concerning businesses' rights, obligations, and requirements under environmental regulations into the general material distributed by the TDOC to people establishing business operations in Texas;]

[(F) identify and provide information to the TNRCC on financial assistance programs that make loans to small businesses for the purchase of new equipment or process upgrades necessary to operate in compliance with environmental regulations;]

[(G) serve as a point of contact, when requested, between the TNRCC and the Small Business Administration, Farmers Home Administration, the Small Business Development Centers, the Texas Manufacturing Assistance Centers, Community Development Corporations, and other business and financial assistance programs;]

[(H) maintain the information produced by the TNRCC about the impacts of environmental regulations on the state's economy and small business community;]

[(I) share information with the TNRCC to ensure non-duplication of agency efforts; and]

[(J) analyze and evaluate alternatives for improving permit processes within the TNRCC, and submit jointly with the TNRCC any report required by Texas Government Code, §481.129.]

[(d) Review of MOU. This memorandum shall terminate August 31, 1999, unless

extended by mutual agreement. The TNRCC and the TDOC by rule shall adopt the memorandum and all revisions to the memorandum.]