

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST
for Rulemaking Adoption

AGENDA REQUESTED: October 19, 2016

DATE OF REQUEST: September 30, 2016

INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Derek Baxter, (512) 239-2613

CAPTION: Docket No. 2016-0292-RUL. Consideration of the adoption of amended Section 7.102 of 30 TAC Chapter 7, Memoranda of Understanding.

The adopted Memoranda of Understanding (MOU) rulemaking is a coordination between the Texas Commission on Environmental Quality and the Texas State Soil and Water Conservation Board that adopts by reference updates and procedures for coordinating the jurisdictional authority, program responsibilities, procedural mechanisms for point and nonpoint source pollution programs, and incorporates applicable conditions of the Letter of Agreement into the MOU. The proposed rule was published in the June 10, 2016, issue of the *Texas Register* (41 TexReg 4157). (Kerry Niemann, Robert Brush) (Rule Project No. 2016-020-007-OW)

L'Oreal Stepney, P.E.
Deputy Director

Kelly Holligan
Division Director

Derek Baxter
Agenda Coordinator

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** September 30, 2016

Thru: Bridget C. Bohac, Chief Clerk
Richard A. Hyde, P.E., Executive Director

From: L'Oreal W. Stepney, P.E., Deputy Director
Office of Water

Docket No.: 2016-0292-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 7, Memoranda of Understanding
MOU Between the Texas State Soil and Water Conservation Board and
TCEQ
Rule Project No. 2016-020-007-OW

Background and reason(s) for the rulemaking:

The Memorandum of Understanding (MOU) between the Texas State Soil and Water Conservation Board (TSSWCB) and Texas Commission on Environmental Quality (TCEQ) (30 Texas Administrative Code (TAC) §7.102) became effective on June 9, 1997. A Letter of Agreement (LOA) regarding inspections of dry poultry litter operations and complaint protocol for water quality complaints on animal feeding operations (AFOs) with a certified water quality management plan (WQMP) and dry poultry litter operations became effective on August 24, 2007. Changes to the MOU are necessary to reflect the TCEQ's current statutory name and the TSSWCB and TCEQ's current procedures for coordinating the jurisdictional authority, program responsibilities, procedural mechanisms for point and nonpoint source pollution programs, and to incorporate applicable conditions of the LOA into the MOU. Both agencies agreed to coordinate rulemaking to update the MOU.

Scope of the rulemaking:

A.) Summary of what the rulemaking will do:

This rulemaking adopts the repeal of the current MOU in 30 TAC §7.102 and replaces it with an adoption by reference of the full text of the revised MOU at 31 TAC §523.5(b).

Representatives from the Water Quality Planning Division, Environmental Law Division, Office of Compliance and Enforcement Program Support Section, and Water Quality Division coordinated reviews and comments with the TSSWCB, and developed the MOU with the following changes:

- The TCEQ's statutory name was updated throughout the MOU.
- The TSSWCB's jurisdictional responsibility was updated throughout the MOU for consistency with the Texas Agriculture Code. The MOU states that the TSSWCB is the lead agency in the state for planning, management, and abatement of agricultural and silvicultural nonpoint source pollution.
- Provisions related to Federal Clean Water Act, §319(h) grant program for nonpoint source pollution were updated to accurately express how this program is currently awarded and administered. The TSSWCB and TCEQ are independently and directly

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awarded equal halves of this program and both agencies independently coordinate and administer the preparation of work projects under the grant. TCEQ is responsible for implementing the Texas Nonpoint Source Management Program for non-agricultural/silvicultural surface and ground water nonpoint source pollution.

- The MOU establishes that the TCEQ is responsible for the enforcement of all laws and regulations related to water and air quality, including both point and nonpoint sources, regardless of whether or not a facility has an approved WQMP.
- The MOU establishes that the TSSWCB is the lead agency and has primary responsibility for complaint investigations and compliance inspections on AFOs not required to obtain a water quality permit and on dry litter poultry concentrated animal feeding operations (CAFOs). The TSSWCB will investigate first odor complaints, where none have been received within the previous 12 months, at any dry litter poultry CAFO. Subsequent odor complaints at the same facility will be conducted by TCEQ.
- The MOU establishes that the TCEQ will respond to the second and all subsequent odor complaints for a rolling 12-month period at any dry litter poultry CAFO within 18 hours of complaint notification.
- The MOU requires both agencies to coordinate and cooperate with each other to establish protocols on activities related to complaint, inspection, and enforcement of non-permitted AFOs and dry litter poultry CAFOs.
- The MOU requires operations referred to the TCEQ by the TSSWCB be resolved prior to the TCEQ referring the operation back to the TSSWCB for WQMP development or investigation. A letter will serve as formal correspondence documenting the resolution of enforcement compliance issues.
- The MOU requires interagency meetings with regional office staff to be conducted on an annual basis to review and update the AFO and dry litter poultry CAFO complaint/referral process and to refine agency coordination procedures.
- The MOU requires the TSSWCB to provide TCEQ documentation of compliance inspection activities at dry litter poultry CAFOs on a quarterly basis.
- The MOU establishes that the TSSWCB can refer violations at AFOs and dry litter poultry CAFOs to TCEQ without decertifying the facility's WQMP.

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

No state statutes or federal regulations require revisions to this MOU.

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

The MOU reorganizes and streamlines current procedures for coordinating the jurisdictional authority, program responsibilities, procedural mechanisms for point and nonpoint source pollution programs, and incorporates applicable conditions of the LOA into the MOU.

Statutory authority:

- Texas Water Code, §5.103 and §5.104(b)
- Texas Agriculture Code, §201.026

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Effect on the:

The MOU does not create a group of affected persons who were not affected previously. There is no fiscal impact.

A.) Regulated community:

The MOU affects the enforcement of laws and regulations related to water and air quality, including both point and nonpoint sources; typically the complaint, inspection, and enforcement of non-permitted AFOs and dry litter poultry operation CAFOs.

B.) Public:

The MOU does not directly affect the public.

C.) Agency programs:

The MOU affects the following agency programs:

- Water Quality Planning Division
 - NPS Team – implementation of the NPS Management Program
- Office of Compliance and Enforcement Program Support Section
 - Field Support Team – complaint response and coordination of air and water regional operation activities
- Water Quality Division
 - CAFO Permitting Team – review and approval of dry litter poultry facility odor control plans

Stakeholder meetings:

There were no stakeholder meetings held related to this rulemaking.

Public comment:

The commission held a public hearing on July 12, 2016. The comment period closed on July 15, 2016. The commission did not receive any comments on this rulemaking.

Significant changes from proposal:

No changes were made to the rulemaking from the proposal to adoption.

Potential controversial concerns and legislative interest:

The TSSWCB initiated rulemaking for 31 TAC §523.5 on November 19, 2015, and published for comment the proposal in the December 18, 2015, issue of the *Texas Register* (40 TexReg 9099). During the TSSWCB comment period no comments were received. On January 21, 2016, the TSSWCB adopted the amendment to 31 TAC §523.5, specifically adopting the MOU. The next step requires that the TCEQ go through the rulemaking process to revise 30 TAC §7.102 to adopt the MOU by reference.

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

This rulemaking adopts the repeal of the current MOU in 30 TAC §7.102 and replaces it with an adoption by reference of the full text of the revised MOU at 31 TAC §523.5. The rulemaking does not affect any current policies or require development of new policies.

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

If this rule does not go forward the current MOU in 30 TAC §7.102 will remain in effect and will not reflect the revised MOU in 31 TAC §523.5(b).

Key points in the adoption rulemaking schedule:

***Texas Register* proposal publication date:** June 10, 2016

Anticipated *Texas Register* adoption publication date: November 4, 2016

Anticipated effective date: November 10, 2016

Six-month *Texas Register* filing deadline: December 10, 2016

Agency contacts:

Kerry Niemann, Rule Project Manager, Water Quality Planning Division, (512) 239-0483

Bob Brush, Staff Attorney, (512) 239-5600

Derek Baxter, Texas Register Coordinator, (512) 239-2613

Attachments

31 TAC §523.5

Letter of Agreement between the TSSWCB and TCEQ for the Dry Litter Poultry Operations and Animal Feeding Operations

cc: Chief Clerk, 2 copies
Executive Director's Office
Marshall Coover
Erin Chancellor
Stephen Tatum
Jim Rizk
Office of General Counsel
Kerry Niemann
Derek Baxter

§523.5. MEMORANDUM OF UNDERSTANDING BETWEEN THE TEXAS STATE SOIL AND WATER CONSERVATION BOARD AND THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY.

(a) The Texas State Soil and Water Conservation Board may enter into and maintain a Memorandum of Understanding with the Texas Commission on Environmental Quality which sets forth the coordination of jurisdictional authority, program responsibility, and procedural mechanisms for point and nonpoint source pollution programs.

(b) Adoption of Memoranda of Understanding between the Texas State Soil and Water Conservation Board and Texas Commission on Environmental Quality.

(1) This rule contains the memorandum of understanding ("MOU") between the Texas State Soil and Water Conservation Board and the Texas Commission on Environmental Quality, which sets forth the coordination of jurisdictional authority, program responsibility, and procedural mechanisms for point and nonpoint source pollution programs.

(A) Whereas, the Texas State Soil and Water Conservation Board (the Board) is the lead agency in this state for planning, management, and abatement of agricultural and silvicultural nonpoint source pollution; and

(B) Whereas, the Board shall represent the State before the United States Environmental Protection Agency (EPA), or other federal agencies on all matters relating to the planning, management, and abatement of agricultural and silvicultural nonpoint source pollution abatement; and

(C) Whereas, for purposes of this MOU, the Board is responsible for nonpoint source pollution abatement and prevention activities on all agricultural and silvicultural land as required by Texas Water Code §26.1311; and

(D) Whereas, the Board has established and implemented a water quality management plan (WQMP) certification program, in accordance with Texas Agriculture Code §201.026(g) for agricultural and silvicultural lands; and

(E) Whereas, the Texas Commission on Environmental Quality (the Commission) is the state agency with primary responsibility for implementing the constitution and laws of the State related to the quality of water and air; and

(F) Whereas, the Commission shall coordinate all its activities related to this MOU with the Board; and

(G) Whereas, consistent with the intent of Federal Clean Water Act §319, the Board and the Commission are committed to coordinate and jointly

administer the development and implementation of the Texas Nonpoint Source Management Program; and

(H) Whereas the Board and the Commission are independently and directly awarded equal halves of the annual Federal Clean Water Act §319 grant program for nonpoint source pollution by the EPA, both agencies independently coordinate and administer the preparation of work projects under the grant; and

(I) Whereas, for the purpose of this MOU, the Commission is responsible for the enforcement of all laws of the State related to water and air quality including point source and nonpoint source pollution regulations, including agricultural and silvicultural lands; and

(J) Whereas, consistent with Texas law and public policy, the Board and Commission mutually desire to protect and maintain a high quality environment and the health of the people of the State; therefore

(2) Now the Parties agree as follows:

(A) The Commission agrees to:

(i) Coordinate and administer the preparation of grant work projects for the Federal Clean Water Act §319 grant program that primarily target nonpoint source pollution from sources other than agriculture and silviculture.

(ii) Execute cooperative agreements, associated amendments, grant awards, and contracts related to grant work projects coordinated and administered by the Commission. For those grant work projects, the Commission is independently responsible for monitoring, implementation, and providing EPA with the required financial and programmatic reporting information.

(iii) Implement the provisions of the EPA approved Texas Nonpoint Source Management Program for non-agricultural/silvicultural surface and ground water nonpoint source pollution.

(iv) Develop and maintain state guidance for all nonpoint source pollution abatement projects other than agricultural or silvicultural nonpoint source pollution projects as described by this MOU.

(v) Coordinate with the Board those compliance and enforcement actions dealing with agricultural and silvicultural pollution.

(vi) Provide to the Board all current forms, timetables, procedural rules, and any policy documents of the Commission for addressing and processing citizen complaints related to agricultural and silvicultural pollution.

(vii) Refer to the Board complaints concerning violations of a WQMP or violations of laws or rules relating to agricultural or silvicultural nonpoint source pollution under the jurisdiction of the Board, except for any person referred to the Commission for enforcement action pursuant to clause (ix) of this subparagraph.

(viii) Retain the responsibility for pursuing any enforcement action related to a violation of state environmental laws and regulations, inclusive of rules, orders, and nonpoint source pollution regulations (including those applied to agricultural and silvicultural lands).

(ix) Pursue appropriate enforcement action in accordance with Commission rules against any person referred in accordance with paragraphs (4) and (5) of this subsection.

(x) Ensure that any operation that was previously referred to the Commission by the Board for environmental non-compliance and subsequent decertification of a WQMP has resolved any Commission enforcement issues prior to referring the operation to the Board for WQMP development or investigation. Any such

referral shall be accompanied by a letter to the Board stating the operation has resolved its Commission regulated environmental compliance issues.

(B) The Board agrees to:

(i) Coordinate and administer the preparation of grant work projects for the Federal Clean Water Act §319 grant program that primarily target nonpoint source pollution from agricultural and silvicultural sources.

(ii) Execute cooperative agreements and associated amendments; and grant awards and contracts relating to grant work projects coordinated and administered by the Board. For those grant work projects, the Board is independently responsible for monitoring, implementation, and providing EPA with the required financial and programmatic reporting information.

(iii) Implement the provisions of the EPA approved Texas Nonpoint Source Management Program for agricultural/silvicultural surface and ground water nonpoint source pollution.

(iv) Provide the EPA with required reports for all agricultural/silvicultural projects funded through the Board by the Federal Clean Water Act §319. Reports will be submitted in accordance with EPA requirements.

(v) Develop and maintain state guidance for agricultural or silvicultural nonpoint source pollution as described by this MOU and 31 TAC §523.1.

(vi) Provide to the Commission information about agricultural and silvicultural activities required for the annual evaluation of the state's implementation of the Texas Nonpoint Source Management Program.

(vii) Process citizen complaints related to agricultural and silvicultural nonpoint source pollution in a manner that is consistent with the practices and standards of the Commission.

(viii) Schedule and conduct management meetings with the EPA to review the status of agricultural and silvicultural nonpoint source pollution project activities as negotiated with EPA.

(ix) Develop and maintain a current electronic database to track and document all WQMPs. Data recorded for each WQMP will include, but is not limited to, the name of the WQMP applicant(s), the facility address or location, date of the WQMP application request, the type of operation covered by each WQMP, and the approval date of each WQMP.

(x) Provide the Commission with documentation Board rules, policies, guidance, etc. concerning the development, supervision, and monitoring of individual certified WQMPs.

(xi) Investigate complaints concerning violations of a WQMP or violations of laws or rules relating to agricultural or silvicultural nonpoint source pollution under the jurisdiction of the Board, except for any person referred to the Commission for enforcement action pursuant to paragraph (1)(I) of this subsection.

(xii) Refer to the Commission violations of a WQMP or violations of laws or rules relating to agricultural or silvicultural nonpoint source pollution under the jurisdiction of the Board, where the Board has determined that the necessary corrective action has not been taken. The Board, upon referral, shall provide the Commission documentation, including but not limited to, any original documents or Board certified copies of the original documents; and hard copies of all photographs, correspondence, records, and other documents relating to the violation.

(C) Both parties agree to:

(i) Maintain each party's existing level of effort required by the EPA for the implementation of Federal Clean Water Act §319 projects.

(ii) Communicate and coordinate directly with each other and the EPA on matters relating to project planning and implementation of nonpoint source pollution projects funded by Federal Clean Water Act §319.

(iii) Provide required reports to the EPA on nonpoint source pollution project activities. Reports will include status of project implementation, summary of information/education activities, monitoring activities, and other outputs satisfactory to EPA.

(iv) Meet annually to review and discuss the state's nonpoint source water quality program and to refine agency coordination mechanisms.

(v) Work together to develop and implement water quality management programs that satisfy State water quality standards as established by the Commission.

(vi) Comply with all relevant state and federal rules and regulations; and grant conditions, including financial audits, data quality assurance, quality control, and progress reports.

(vii) Cooperate on activities related to the implementation of the "Texas State Management Plan for Prevention of Pesticide Contamination of Groundwater."

(viii) Coordinate on inspection and enforcement activities relating to animal feeding operations (AFOs) authorized under 30 TAC §321.47 or a WQMP certified by the Board in accordance with Texas Agriculture Code §201.026(g) for the protection of water quality in the State.

(ix) Coordinate on inspection and enforcement activities for the protection of water quality in the State relating to dry litter poultry concentrated animal feeding operations (CAFOs) authorized under 30 TAC Chapter 321 and a Board certified WQMP.

(x) Cooperate to establish protocols for the coordination of activities related to complaint response, compliance inspections, and enforcement of AFOs and CAFOs operating under a Board certified WQMP.

(xi) Conduct interagency meetings annually with regional office staff of both agencies to review and update the AFO and dry litter poultry CAFO complaint/referral process and to refine agency coordination procedures.

(3) Coordination on Dry Litter Poultry CAFOs:

(A) The Board is the lead agency and has primary responsibility for complaint investigations and compliance inspections to determine if a dry litter poultry CAFO meets the requirements of a Board certified WQMP and CAFO regulations.

(B) The Board shall perform a number of dry litter poultry CAFO compliance inspections to be negotiated annually with the Commission. The Board will provide documentation of such activities to the Commission on a quarterly basis.

(C) For any dry litter poultry CAFO operating under a Board certified WQMP, the Board shall investigate in a timely manner all water quality complaints and the first odor complaint where none has been received by either the Commission or the Board within the previous twelve (12) months.

(D) The Commission shall investigate within eighteen (18) hours the second and all subsequent odor complaints for a rolling twelve (12) month period at any dry litter poultry CAFO operating under a Board certified WQMP.

(E) The Board shall refer to the Commission for possible enforcement action violations at dry litter poultry CAFOs regardless of WQMP certification status if it involves:

(i) failure to obtain authorization under an individual or general permit if evidence of a discharge is observed; or

(ii) unauthorized discharge(s) into or adjacent to surface water in the State; or

(iii) failure to notify Commission of any discharge; or

(iv) failure to maintain water quality buffers; or

(v) failure to completely implement nutrient management practices required by CAFO rules and the WQMP; or

(vi) failure to completely implement mortality management practices required by the WQMP; or

(vii) operating a commercial poultry operation without the required WQMP; or

(viii) a documented nuisance odor violation; or

(ix) chronic violations for failure to implement WQMP practices required to meet CAFO rules under 30 TAC Chapter 321, Subchapter B.

(F) The Board shall perform follow-up compliance inspections at dry litter poultry CAFOs found out of compliance with their WQMP to verify that the operation has returned to compliance with the Board-certified WQMP and CAFO regulations.

(4) Coordination on AFOs:

(A) The Board is the lead agency and has primary responsibility for agricultural or silvicultural nonpoint source pollution abatement resulting from all AFOs, as defined under 30 TAC Chapter 321, Subchapter B (relating to concentrated animal feeding operations) that are not designated as CAFOs or otherwise required to operate under a water quality permit issued by the Commission.

(B) The Board shall investigate water quality complaints and monitor compliance of all AFOs regardless of their participation in the WQMP Program. The Board shall also investigate the first odor complaint, where none has been received

by the Commission or the Board within the previous twelve (12) months, at any dry litter poultry AFO operating under a Board-certified WQMP.

(C) The Commission, upon receiving a general water quality complaint regarding an AFO, will determine if the AFO is required to obtain authorization pursuant to 30 TAC Chapter 321, Subchapter B (relating to Control of Certain Activities by Rule). If the determination by the Commission indicates the facility does not meet the definition of a CAFO or otherwise require a water quality permit, the complaint and any written documentation will be referred to the Board, except for any person referred to the Commission for enforcement action pursuant to paragraph (1)(I) of this subsection. Additionally, the Commission shall investigate within eighteen (18) hours the second and all subsequent odor complaints for a rolling twelve (12) month period at any dry litter poultry AFO.

(D) The Board, upon receiving a general complaint regarding an AFO, will investigate to determine whether such a facility will need to obtain authorization from the Commission or initiate corrective actions to avoid impacts to aquatic life or human health. Those facilities that are determined to require authorization from the Commission pursuant to 30 TAC Chapter 321, Subchapter B (relating Control of Certain Activities by Rule) will be referred to the Commission in writing within five working days from the date of the investigation.

(E) The Board shall refer an AFO to the Commission for possible enforcement action, if the complaint investigation determines that the potential for a water quality violation exists at a facility and the facility owner or operator does not submit a request for a Board certified WQMP to resolve the complaint within 45 days of notification of the investigation outcome or does not implement appropriate corrective action.

(F) When the owner or operator of an AFO fails to sign a WQMP that was developed to resolve a complaint involving a potential water quality violation within 90 days of signing a request for planning assistance, the Board shall refer the AFO to the Commission for possible enforcement action.

(G) The Board shall refer to the Commission for possible enforcement any AFO complaint received where there is evidence of a discharge.

(H) The Board shall refer to the Commission for possible enforcement action, regardless of WQMP status, any investigation and documentation by the Board of a complaint related to an AFO where there is a documented violation that causes a discharge of pollutants to the air, water, or land that causes serious impact to the environment; or affects human health and safety.

(I) The Board shall refer to the Commission for possible enforcement action, regardless of WQMP status, any violation related to an AFO that the Board has determined that the necessary corrective action has not been taken. The Board, upon referral, shall provide the Commission documentation, including but not limited to, any original documents or Board certified copies of the original documents; and hard copies of all photographs, correspondence, records, and other documents relating to the complaint or violation.

(5) General conditions:

(A) Term of MOU. The term of this MOU shall be from the effective date until termination.

(B) Notice of Termination. Either party may terminate this MOU upon 90-day written notice to the other party. Only upon written concurrence of the other agency can this MOU be modified.

(C) Cooperation of Parties. It is the intention of the Board and the Commission that the details of providing the services in support of this MOU shall be worked out, in good faith, by both agencies.

(D) Nondiscrimination. Activities conducted under this MOU will be in compliance with the nondiscrimination provisions as contained in Titles VI and VII of the Civil Rights Act of 1964, as amended, the Civil Rights Restoration Act of 1987, and other nondiscrimination statutes, namely Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and the Americans With Disabilities Act of 1992, which provide that no person in the United States shall, on the grounds of race, color, national origin, age, sex, religion, marital status, or handicap be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving federal financial assistance.

(E) Notices. Any notices required by this MOU shall be in writing and addressed to the respective agency as follows: Texas Commission on Environmental Quality, Attn: _____, P.O. Box 13087, Austin, TX 78711-3087 and to the Texas State Soil and Water Conservation Board, Attn: _____, P.O. Box 658, Temple, TX 76503-0658.

(F) Effective Date of MOU. This MOU is effective upon execution by both agencies. By signing this MOU, the signatories acknowledge that they are acting under proper authority from their governing bodies. Adopted [insert date] Effective [insert date]

Jerry D. Nichols , *Chairman*
Reed Stewart, *Vice Chairman*
José Dodier, Jr., *Member*
Barry Mahler, *Member*



Aubrey Russell, *Member*
Joe Ward, *Member*
Larry Jacobs, *Member*
Rex Isom, *Executive Director*

TEXAS STATE SOIL & WATER CONSERVATION BOARD
Protecting and Enhancing Natural Resources for Tomorrow

August 24, 2007

Mr. Glenn Shankle
Executive Director
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

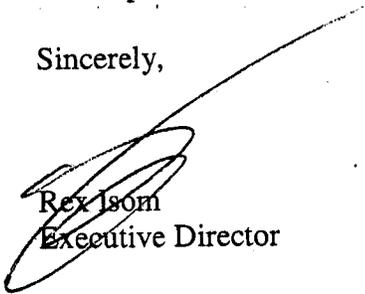
Re: TSSWCB and TCEQ Letter of Agreement for the Dry Litter Poultry Operations and Animal Feeding Operations

Dear Mr. Shankle:

The TSSWCB concurs that the enclosed Letter of Agreement (LOA), now signed and effective, should be used as guidance for the TSSWCB and TCEQ on dry litter poultry operations and animal feeding operations until our Memorandum of Understanding (30 TAC 7.102 & 31 TAC 523.5) is amended to reflect the current CAFO rules and our agreement regarding the handling of odor issues. Our staff is currently in the process of developing a first draft for an amended Memorandum of Understanding, and will provide that draft to your staff soon.

If you or your staff ever have any questions relating to TSSWCB's processes or procedures for implementing the provisions of the LOA, please contact Mr. John Foster at (254) 773-2250, ext. 235. As always, thank you for your continued cooperation in our partnership to control nonpoint source pollution in Texas.

Sincerely,


Rex Isom
Executive Director

Enclosure

RECEIVED

AUG 28 2007

TCEQ
FIELD OPERATIONS

cc: Mark Vickery, Deputy Executive Director, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087

Texas State Soil and Water Conservation Board and Texas Commission on Environmental Quality Supplemental Letter of Agreement to Memorandum of Understanding found in 30 TAC § 7.102 for Dry Litter Poultry Operations and Animal Feeding Operations (AFOs)

Inspections on Dry Litter Poultry CAFOs

The majority of dry litter poultry facilities have certified water quality management plans (CWQMPs) from the TSSWCB which meet the requirements of the Pollution Prevention Plan in accordance with Title 30 Texas Administrative Code (30 TAC) § 321.46(a)(5). At this time, the TSSWCB conducts about 200 annual audits of these facilities. As discussed, the TCEQ proposes that the TSSWCB assume compliance monitoring responsibilities over all dry litter poultry Concentrated Animal Feeding Operations (CAFOs) with CWQMPs. If any problems are encountered with the grower and the compliance issues are not resolved, current procedure requires the TSSWCB to refer the grower to the TCEQ for possible enforcement action once the TSSWCB removes certification of the WQMP. The TCEQ proposes to amend this procedure to allow the TSSWCB to refer growers without removing certification of the plan.

Problems requiring referral to the TCEQ for enforcement consideration include:

1. Failure to obtain coverage under a general permit if evidence of a discharge or discharges is observed;
2. An unauthorized discharge or discharges into or adjacent to surface water in the state;
3. Failure to notify TCEQ of any discharge;
4. Failure to maintain required water quality buffers;
5. Failure to completely implement nutrient management practices required by CAFO rules and the CWQMP; and
6. Failure to completely implement mortality management practices documented in the CWQMP.

Complaint Protocol On AFOs with a CWQMP and Dry Litter Poultry CAFOs

Water Quality Complaints on dry litter poultry CAFOs with a CWQMP and AFOs with a CWQMP:

1. The TSSWCB will be the first responder at AFOs and CAFOs with a CWQMP.
 - a. If evidence of a discharge is observed or a nuisance odor violation is documented, the operation will be referred to TCEQ for possible enforcement action in accordance with our MOU.
 - b. If no evidence of a discharge is observed or no nuisance odor violation is documented, but other CWQMP deficiencies exist, the TSSWCB will resolve the complaint or refer the operation to TCEQ for possible enforcement action in accordance with the MOU.
 - c. TCEQ may take enforcement action at an operation without referral from TSSWCB for violations of the Texas Water Code or 30 TAC, Chapter 321; Subchapter B.

2. The TCEQ will be the first responder on all other CAFOs and AFOs. In cases where the TCEQ receives a complaint, but the complainant does not identify the name of the operation, TCEQ staff will ask the complainant for the farm information/location and contact the TSSWCB regional office for a determination of CWQMP status.
 - a. If the site does not have a CWQMP, the TCEQ would handle the complaint. If any discharge or nuisance odor violation is documented by the TCEQ, the operation will be subject to enforcement action.
 - b. If the site has a CWQMP and no violations of the Texas Water Code or 30 TAC, Chapter 321, Subchapter B is documented, the TCEQ will refer the matter to the TSSWCB.

Odor Complaints on dry litter poultry CAFOs with a CWQMP and AFOs with a CWQMP:

1. For dry litter poultry (CAFOs/AFOs) with a CWQMP, the TSSWCB will be the first responder. If a nuisance odor condition exists, the TSSWCB will resolve the complaint or refer the operation to TCEQ for possible enforcement action in accordance with the MOU. If evidence of a discharge or discharges is observed, when responding to a poultry odor complaint, the operation will be referred to TCEQ for possible enforcement action in accordance with the MOU. However, TCEQ may take enforcement action at an operation without referral from TSSWCB for violations of the Texas Water Code or 30 TAC, Chapter 321, Subchapter B.
2. For all other CAFOs and AFOs, the TCEQ will be the first responder. If a discharge or nuisance odor violation is documented, the operation will be subject to enforcement action.



Glenn Shankle, Executive Director
Texas Commission on Environmental Quality

8-2-07

Date



Rex Isom, Executive Director
Texas State Soil & Water Conservation Board

8/8/07

Date

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amended §7.102.

The commission adopts amended §7.102 *without change* to the proposed text as published in the June 10, 2016, issue of the *Texas Register* (41 TexReg 4157), and therefore will not be republished.

Background and Summary of the Factual Basis for the Adopted Rule

The Memorandum of Understanding (MOU) between the Texas State Soil and Water Conservation Board (TSSWCB) and TCEQ became effective on June 9, 1997. A Letter of Agreement (LOA) regarding inspections of dry poultry litter operations and complaint protocol for water quality complaints on animal feeding operations (AFOs) with a certified water quality management plan (WQMP) and dry poultry litter operations became effective on August 24, 2007. Changes to the MOU are necessary to reflect the TCEQ's current statutory name and the TSSWCB and TCEQ's current procedures for coordinating the jurisdictional authority, program responsibilities, procedural mechanisms for point and nonpoint source pollution programs, and to incorporate applicable conditions of the LOA into the MOU. To update the MOU, the TSSWCB initiated rulemaking for 31 TAC §523.5 (Memorandum of Understanding between the Texas State Soil and Water Conservation Board and the Texas Commission on Environmental Quality) on November 19, 2015, and published for comment the proposal in the December 18, 2015, issue of the *Texas Register* (40 TexReg 9099). During the TSSWCB comment period no comments were received. On January 21, 2016, the TSSWCB adopted the amendment

to 31 TAC §523.5, specifically adopting the MOU and making the rule effective (February 19, 2016, issue of the *Texas Register* (41 TexReg 1253)). This rulemaking adopts the amendment of the current MOU in §7.102 and replaces it with an adoption by reference of the full text of the revised MOU at 31 TAC §523.5.

Section by Section Discussion

The adopted amendment to §7.102 changes the agency's name from the "Texas Natural Resource Conservation Commission" to the "Texas Commission on Environmental Quality" and adopts by reference the MOU adopted by the TSSWCB in 31 TAC §523.5.

Final Regulatory Impact Determination

The commission reviewed the adopted rule in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rule is not subject to Texas Government Code, §2001.0225 because it does not meet the criteria for a "major environmental rule" as defined in that statute. A "major environmental rule" is a rule with the specific intent 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. The specific intent of the adopted rule is to update the MOU between the TSSWCB and the TCEQ to reflect the TCEQ's current statutory name and the TSSWCB and TCEQ's current procedures for coordinating the jurisdictional authority, program responsibilities, and procedural mechanisms for point and nonpoint source pollution programs. The original MOU

between the agencies became effective June 9, 1997. An LOA regarding inspections of dry poultry litter operations and complaint protocol for water quality complaints on AFOs with a certified WQMP and dry poultry litter operations became effective on August 24, 2007. Changes to the MOU are also necessary to incorporate applicable conditions of the LOA into the MOU. The adopted amendment would replace the LOA.

The adopted rule does not meet the definition of a major environmental rule because the adopted rule only explains existing agency responsibilities rather than creates substantive requirements to protect the environment. The intent of the rule is merely to clarify and explain jurisdiction of the respective agencies. Because the intent of the rule does not create or require actions for the purpose of protecting the environment or reducing risks to human health from environmental exposure, the adopted rule is not an environmental rule. Additionally, the adopted rule does not meet the definition of a major environmental rule because it is not anticipated that the adopted rule will 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 because the adopted rule merely explicates jurisdiction of the respective agencies and does not impose new requirements. Finally, the adopted rule action does not meet any of the four applicability requirements for a major environmental rule listed in Texas Government Code, §2001.0225(a). Therefore, the commission concludes that the adopted rule does not meet the definition of a major environmental rule.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received on the Regulatory Impact Analysis Determination.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an assessment of whether the adopted rule constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rulemaking is to update the MOU between the TSSWCB and the TCEQ to reflect the TCEQ's current statutory name and the TSSWCB and TCEQ's current procedures for coordinating the jurisdictional authority, program responsibilities, and procedural mechanisms for point and nonpoint source pollution programs. The adopted rulemaking would substantially advance this stated purpose by providing one reference point interpreting the jurisdiction of the respective agencies. Promulgation and enforcement of the adopted rule would be neither a statutory nor a constitutional taking of public or private real property because the adopted rule does not affect real property. Because the regulation does not affect real property, it does not burden, restrict, or limit an owner's right to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. The adopted rule merely clarifies and explains jurisdiction of the respective agencies. Therefore, the adopted rulemaking will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rule and found it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rule is not subject to the Texas Coastal Management Program (CMP).

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received on consistency with the CMP.

Public Comment

The commission held a public hearing on July 12, 2016. The comment period closed on July 15, 2016. The commission did not receive any comments on this rulemaking.

§7.102

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.104, concerning Memoranda of Understanding (MOU), which authorizes the commission to enter into MOUs and adopt them as rules with other state agencies. Additionally, the amendment is adopted under TWC, §5.103 concerning Rules and TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC and other laws of the state.

The adopted amendment implements 31 TAC §523.5.

§7.102. Adoption of Memoranda of Understanding between the Texas State Soil and Water Conservation Board and the Texas Commission on Environmental Quality [Natural Resource Conservation Commission].

[(a)] The regulations of this section adopt by reference 31 TAC §523.5 (relating to Memorandum of Understanding between the Texas State Soil and Water Conservation Board and the Texas Commission on Environmental Quality) as adopted and published in the February 19, 2016, issue of the *Texas Register* (41 TexReg 1253). [This rule contains the memorandum of understanding ("MOU") between the Texas State Soil and Water Conservation Board and the Texas Natural Resource Conservation Commission, which

sets forth the coordination of jurisdictional authority, program responsibility, and procedural mechanisms for point and nonpoint source pollution programs.]

[(1) Whereas, the Texas State Soil and Water Conservation Board, here within called the Board, is the state agency with the primary responsibility for activities relating to agricultural and silvicultural nonpoint source (NPS) pollution abatement; and]

[(2) Whereas, the board shall represent the State before the United States Environmental Protection Agency (EPA), or other federal agencies on matters relating to agricultural and silvicultural nonpoint source pollution abatement; and]

[(3) Whereas, for purposes of this MOU, the board is responsible for NPS pollution abatement activities on all agricultural and silvicultural land as defined by Senate Bill (SB) 503, Texas 73rd State Legislature; and]

[(4) Whereas, the board has established and implemented a water quality management plan certification program, in accordance with SB 503 of the Texas 73rd State Legislature for agricultural and silvicultural lands; and]

[(5) Whereas, the Texas Natural Resource Conservation Commission here within known as the commission, is the state agency with primary responsibility for implementing the constitution and laws of the State related to the quality of water and air; and]

[(6) Whereas, the commission has been designated as the lead agency for the Federal Clean Water Act, §319 program administered by the EPA; and]

[(7) Whereas, the commission shall coordinate all its activities related to this MOU with the board; and]

[(8) Whereas, consistent with the intent of Federal Clean Water Act, §319, the board and the commission are committed to the development and implementation of a coordinated NPS pollution program for the State; and]

[(9) Whereas, for the purpose of this MOU, the commission is responsible for the enforcement of all point source and NPS pollution regulations, including that on agricultural and silvicultural lands; and]

[(10) Whereas, consistent with Texas law and public policy, the board and commission mutually desire to protect and maintain a high quality environment and the health of the people of the State; and]

[(11) Now, therefore, in consideration of the following promises, covenants, conditions, and the mutual benefits to accrue to the parties of this MOU, the Parties, desiring to cooperate in function and service agree as follows:]

[(b) The Texas Natural Resource Conservation Commission agrees to:]

[(1) Administer, for the State, the Federal Clean Water Act, §319 grant program for NPS pollution. The commission will be responsible for coordinating the preparation of grant work programs.]

[(2) Execute cooperative agreements and associated amendments, and grant awards and contracts. The commission will be responsible for monitoring implementation of work programs and providing EPA with necessary financial and programmatic reporting information for non-agricultural/silvicultural surface and ground water work program elements.]

[(3) Implement the provisions of the EPA-approved Federal Clean Water Act, §319 management programs for non-agricultural/silvicultural surface and ground water NPS pollution.]

[(4) Complete, under current administrative procedures, all projects and programs for which grant funds have been awarded, under Federal Clean Water Act, §319. All future projects and programs implementing the EPA-approved Federal Clean Water Act, §319 management program for agricultural/silvicultural NPS pollution, and supported by §319 federal grants, will be administered by the board via a separate grant with EPA.]

[(5) Develop and maintain state guidance for all NPS pollution abatement projects other than agricultural or silvicultural NPS pollution projects as described by this MOU and SB 503.]

[(6) Coordinate with the board those compliance and enforcement actions relative to agricultural and silvicultural pollution.]

[(7) Provide to the board all current forms, timetables, procedural rules and any policy documents of the commission for addressing and processing citizen complaints related to agricultural and silvicultural pollution.]

[(8) Provide the board with access to the commission's electronic database for all current agricultural waste management plans.]

[(9) Investigate and/or monitor compliance of all animal feeding operations (AFO), as defined under Chapter 321, Subchapter K of this title (relating to Concentrated Animal Feeding Operations), other than those covered by subsection (c)(12) of this section.]

[(10) In response to a general complaint, investigate a facility to determine whether a permit or written authorization under Chapter 321 of this title (relating to Control of Certain Activities by Rule) is required of the facility. If problems are documented or conditions exist which have the potential to adversely impact the

environment, the facility owner or operator will have the option of being referred to the board for the purpose of obtaining a certified water quality management plan or obtaining authorization under Chapter 321 of this title from the commission. If the owner or operator of a facility requests referral to the board in order to obtain a certified water quality management plan, the commission will send the board all pertinent documentation within five working days of the investigation.]

[(11) Retain the responsibility for pursuing any enforcement action related to a violation of a commission rule or order which occurred prior to the facility operator/owner obtaining a certified water quality management plan.]

[(12) Pursue appropriate enforcement action in accordance with commission rules against any person referred in accordance with subsection (c)(10) of this section.]

[(c) The Texas State Soil and Water Conservation Board agrees to:]

[(1) Serve as the recipient of grants from EPA for agricultural and silvicultural NPS pollution projects as described in this MOU and SB 503 and funded through Federal Clean Water Act, §319.]

[(2) Coordinate directly with the EPA on matters relating to programmatic and financial issues of agricultural and silvicultural projects funded by the board through separate grants from EPA under Federal Clean Water Act, §319. Notify the commission in

writing on any decision made that results in a change in the programmatic or financial status of a project.]

[(3) Provide the EPA with required reports for all agricultural/silvicultural projects funded through the board by the Federal Clean Water Act, §319. Reports will be submitted in accordance with EPA requirements.]

[(4) Develop and maintain state guidance for agricultural or silvicultural NPS pollution as described by this MOU and SB 503.]

[(5) Provide to the commission information about agricultural and silvicultural activities required for the annual evaluation of the state's implementation of the NPS Management Plan.]

[(6) Process citizen complaints related to agricultural and silvicultural NPS pollution in a manner that is consistent with the practices and standards of the commission.]

[(7) Schedule and conduct management meetings with the EPA to review the status of agricultural and silvicultural NPS pollution project/program activities as negotiated with EPA.]

[(8) Develop and maintain a current electronic database to track and document the proceedings of all water quality management plans and corrective action plans. Data recorded will include, but not be limited to, the identification of applicant(s), date of application for each plan, and approval date of each plan.]

[(9) Provide the commission with access to the board's electronic database for all water quality management plans. Software and equipment necessary to facilitate electronic transfer of data should be compatible with that of the commission.]

[(10) Refer to the commission for possible enforcement action any complaint or violation related to a certified water quality management plan for an AFO, a law or rule relating to agricultural or silvicultural nonpoint source pollution for which the board has determined that the necessary corrective action has not been taken. The board, upon referral, shall provide the commission documentation, including but not limited to, any original documents or "certified copies" of the original documents and hard copies of all photographs, sample analyses, correspondence, records and other documents relating to the complaint.]

[(11) Provide the commission with documentation (board rules, policies, guidance, etc.) for development, supervision, and monitoring of individual certified water quality management plans.]

[(12) Investigate complaints and monitor compliance of all AFOs operating under a certified water quality management plan or any facility covered by law or board rule relating to agricultural or silvicultural nonpoint source pollution.]

[(13) Investigate any complaint received by the board to determine whether such a facility will need to obtain authorization from the commission. Those facilities which are determined to require authorization from the commission under Chapter 321 of this title (relating to Control of Certain Activities by Rule) will be referred to the commission within five working days from the date of investigation. If it is determined that the potential for a water quality violation exists at a facility that does not need authorization under Chapter 321 of this title, and the facility owner/operator does not implement a corrective action plan or does not file an application for a certified water quality management plan to resolve the complaint within 45 days of notification of the investigation outcome, the board shall automatically refer the facility to the commission for possible enforcement action, written authorization, or a permit.]

[(14) Refer to the Commission for possible enforcement action, complaints which were initially resolved by an agreement to develop a site specific certified water quality management plan for the involved facility and for which the facility owner/operator has not signed such a plan within 90 days of the date their request for planning assistance was approved by the Soil and Water Conservation District.]

[(15) Refer to the Commission for possible enforcement any complaint received for which there has been an immediate impact to aquatic life. Any investigation by the Board of a complaint related to an AFO holding a certified water quality management plan and for which a violation is documented that causes a situation in which exposure of contaminants to the air, water or land is affecting human health and safety, or will cause serious impact to the environment unless immediate actions are taken, shall be automatically referred to the Commission for possible enforcement action.]

[(d) Both parties agree to:]

[(1) Work together to refine the existing process for screening and prioritization of project proposals to be funded under Federal Clean Water Act, §319.]

[(2) Coordinate efforts in the development and submission of an annual work program to EPA for Federal Clean Water Act, §319, funding.]

[(3) Maintain each party's existing level of effort required by the EPA for the implementation of §319 programs/projects.]

[(4) Communicate and coordinate directly with each other and the EPA on matters relating to program/project planning and implementation of NPS pollution activities/projects funded by Federal Clean Water Act, §319.]

[(5) Provide required reports to the EPA on NPS pollution project activities.

Reports will include status of project implementation, summary of information/education activities, monitoring activities, and other outputs satisfactory to EPA.]

[(6) Meet semi-annually to review and discuss the state's NPS water quality

program and to refine agency coordination mechanisms.]

[(7) Work together to develop criteria for the development of water quality

management programs that satisfy the state water quality standards as established by the Commission.]

[(8) Comply with all relevant state and federal statutes and procedures, and

grant conditions, including financial audits, data quality assurance and quality control, and progress reports.]

[(9) Cooperate on activities related to the implementation of the "Texas State

Management Plan for Agricultural Chemicals in Ground Water."]

[(e) General conditions:]

[(1) Term of MOU. The term of this MOU shall be from the effective date until termination.]

[(2) Notice of Termination. Any party may terminate this MOU upon a 90 day written notice to the other party. Both parties agree to fulfill any grant commitments in place at the time of termination. Only upon written concurrence of the other agency can this MOU be modified.]

[(3) Cooperation of Parties. It is the intention of the board and the commission that the details of providing the services in support of this MOU shall be worked out, in good faith, by both agencies.]

[(4) Nondiscrimination. Activities conducted under this MOU will be in compliance with the nondiscrimination provisions as contained in Titles VI and VII of the Civil Rights Act of 1964, as amended, the Civil Rights Restoration Act of 1987, and other nondiscrimination statutes, namely Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and the Americans With Disabilities Act of 1992, which provide that no person in the United States shall, on the grounds of race, color, national origin, age, sex, religion, marital status, or handicap be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving federal financial assistance.]

[(5) Notices. Any notices required by this MOU to be in writing shall be addressed to the respective agency as follows: Texas Natural Resource Conservation Commission, Attn: _____, P.O. Box 13087, Austin, TX 78711-3087 and to the Texas State Soil and Water Conservation Board, Attn: _____, P.O. Box 658, Temple, TX 76503-0658.]

[(6) Effective Date of MOU. This MOU is effective upon execution by both agencies. By signing this MOU, the signatories acknowledge that they are acting under proper authority from their governing bodies.]

apy in their treatment of animals. However, veterinarians who practice Laser Therapy shall exercise the same degree of humane care, skill, and diligence in treating patients as are ordinarily used in the same or similar circumstances, including the type of practice, by average members of the veterinary medical profession in good standing in the locality or geographic community in which they practice, or in similar communities.

(d) Other Board Rules Not Preempted. Nothing in this rule shall remove or limit in any way the applicability of other rules of the Board as they apply to the practice of veterinary medicine.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 25, 2016.

TRD-201602656

Loris Jones

Executive Assistant

Texas Board of Veterinary Medical Examiners

Earliest possible date of adoption: July 10, 2016

For further information, please call: (512) 305-7563



CHAPTER 577. GENERAL ADMINISTRATIVE DUTIES

SUBCHAPTER B. STAFF

22 TAC §577.15

The Texas Board of Veterinary Medical Examiners (Board) proposes amendments to §577.15, concerning the Fee Schedule.

In accordance with Senate Bill 195, passed during the 84th Legislative Session, the amendment increases the renewal fee for certain veterinary licenses by \$7.85. Senate Bill 195 transfers the Texas Prescription Program (TPP) from the Department of Public Safety to the Texas State Board of Pharmacy (TSBP) and authorizes the Board to collect a fee in an amount sufficient to cover the cost of administering the TPP. Fees collected for the purpose of administering TPP are transferred to the TSBP.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect, the fiscal implications for state government are no more than the changes in the fee increase listed in the rule. Ms. Oria does not anticipate any impact on revenue to local government. Ms. Oria has also determined that there will be no increase or reduction in costs to either state or local government as a result of enforcing or administering the rule as proposed. Ms. Oria has further determined that the amendment to the rule will have no impact on local employment.

Ms. Oria has determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to ensure that the Board is compliant with the funding obligation set out in Senate Bill 195.

Ms. Oria has determined that for the first five-year period the proposed rule is in effect, costs to persons or small businesses who are required to comply with the rule are no more than the fee increase listed in the rule. There is no adverse impact expected for small or micro businesses, and no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment to the rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail to vet.board@veterinary.texas.gov. Comments will be accepted for 30 days following publication in the *Texas Register*.

The amendment is proposed under the authority of the Veterinary Licensing Act, Texas Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; and §801.154(a), which states that the board by rule shall set fees in amounts that are reasonable and necessary so that the fees, in the aggregate, cover the costs of administering this chapter. The amendment is also proposed under the authority of Texas Occupations Code 554.006, as amended by Senate Bill 195, which authorizes the Board to increase fees for the purpose of funding the TPP.

No other statutes, articles or codes are affected by the proposal.

§577.15. *Fee Schedule.*

The Texas Board of Veterinary Medical Examiners has established the following fixed fees as reasonable and necessary for the administration of its functions. Other variable fees exist, including but not limited to costs as described in §575.10 of this title (relating to Costs of Administrative Hearings), and are not included in this schedule.

Figure: 22 TAC §577.15

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 25, 2016.

TRD-201602657

Loris Jones

Executive Assistant

Texas Board of Veterinary Medical Examiners

Earliest possible date of adoption: July 10, 2016

For further information, please call: (512) 305-7563



TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 7. MEMORANDA OF UNDERSTANDING

30 TAC §7.102

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §7.102.

Background and Summary of the Factual Basis for the Proposed Rule

The Memorandum of Understanding (MOU) between the Texas State Soil and Water Conservation Board (TSSWCB or Board) and TCEQ became effective on June 9, 1997 (See §7.102). A Letter of Agreement (LOA) regarding inspections of dry poultry litter operations and complaint protocol for water quality complaints on animal feeding operations (AFOs) with a certified water quality management plan (WQMP) and dry poultry litter op-

erations became effective on August 24, 2007. Changes to the MOU are necessary to reflect the TCEQ's current statutory name and the TSSWCB and TCEQ's current procedures for coordinating the jurisdictional authority, program responsibilities, procedural mechanisms for point and nonpoint source pollution programs, and to incorporate applicable conditions of the LOA into the MOU. To update the MOU, the TSSWCB initiated rulemaking for 31 TAC §523.5 on November 19, 2015, and published for comment the proposal in the December 18, 2015, issue of the *Texas Register* (40 TexReg 9099). During the TSSWCB comment period no comments were received. On January 21, 2016, the TSSWCB adopted the amendment to 31 TAC §523.5 (Memorandum of Understanding between the Texas State Soil and Water Conservation Board and the Texas Commission on Environmental Quality), specifically adopting the MOU and making the rule effective (41 TexReg 1253). This rulemaking proposes to repeal the current MOU in §7.102 and replace it with an adoption by reference of the full text of the revised MOU at 31 TAC §523.5.

Section Discussion

The proposed amendment to §7.102 changes the agency's name from the "Texas Natural Resource Conservation Commission" to the "Texas Commission on Environmental Quality" and adopts by reference the MOU adopted by the TSSWCB in 31 TAC §523.5.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rule in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rule is not subject to Texas Government Code, §2001.0225 because it does not meet the criteria for a "major environmental rule" as defined in that statute. A "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. The specific intent of the proposed rule is to update the MOU between the TSSWCB and the TCEQ to reflect the TCEQ's current statutory name and the TSSWCB and TCEQ's current procedures for coordinating the jurisdictional authority, program responsibilities, and procedural mechanisms for point and nonpoint source pollution programs. The original MOU between the agencies became effective June 9, 1997. An LOA regarding inspections of dry poultry litter operations and complaint protocol for water quality complaints on AFOs with a certified WQMP and dry poultry litter operations became effective on August 24, 2007. Changes to the MOU are also necessary to incorporate applicable conditions of the LOA into the MOU. The proposed amendment would replace the LOA.

The proposed rule does not meet the definition of a major environmental rule because the proposed rule only explains existing agency responsibilities rather than creates substantive requirements to protect the environment. The intent of the rule is merely to clarify and explain jurisdiction of the respective agencies. Because the intent of the rule does not create or require actions for the purpose of protecting the environment or reducing risks to human health from environmental exposure, the proposed rule is not an environmental rule. Additionally, the proposed rule does not meet the definition of a major environmental rule because it is not anticipated that the proposed rule will 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 because the proposed rule merely explicates jurisdiction of the respective agencies and does not impose new requirements. Finally, the proposed rule action does not meet any of the four applicability requirements for a major environmental rule listed in Texas Government Code, §2001.0225(a). Therefore, the commission concludes that the proposed rule does not meet the definition of a major environmental rule. The commission invites comment on the Draft Regulatory Impact Determination. Comments 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 evaluated the proposed rulemaking and performed an assessment of whether the proposed rule constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rulemaking is to update the MOU between the TSSWCB and the TCEQ to reflect the TCEQ's current statutory name and the TSSWCB and TCEQ's current procedures for coordinating the jurisdictional authority, program responsibilities, and procedural mechanisms for point and nonpoint source pollution programs. The proposed rulemaking would substantially advance this stated purpose by providing one reference point interpreting the jurisdiction of the respective agencies. Promulgation and enforcement of the proposed rule would be neither a statutory nor a constitutional taking of public or private real property because the proposed rule does not affect real property. Because the regulation does not affect real property, it does not burden, restrict, or limit an owner's right to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. The proposed rule merely clarifies and explains jurisdiction of the respective agencies. Therefore, the proposed rulemaking will not constitute a taking under Texas Government Code, Chapter 2007.

Fiscal Note: Costs to State and Local Government

Jeffrey Horvath, Analyst in the Chief Financial Officer's Division, has determined that for the first five-year period the proposed rule 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 rule.

The proposed rule would implement an MOU between the TSSWCB and TCEQ. The original MOU became effective on June 9, 1997. An LOA regarding inspections of dry poultry litter operations and complaint protocol for water quality complaints on AFOs with a certified WQMP and dry poultry litter operations became effective on August 24, 2007. Changes to the MOU are necessary to incorporate applicable conditions of the LOA into the MOU and to update the MOU to reflect TCEQ's current statutory name as well as the TSSWCB and TCEQ's current procedures for coordinating jurisdictional authority, program responsibilities, and procedural mechanisms for point and nonpoint source pollution programs.

The TSSWCB initiated rulemaking to update the MOU on November 19, 2015, and published for comment the proposal in the December 18, 2015, issue of the *Texas Register*. During the TSSWCB comment period, no comments were received. On January 21, 2016, the TSSWCB adopted the amendment, specifically adopting the MOU and making the rule effective. This rulemaking proposes to repeal the current MOU in §7.102

and replace it with an adoption by reference of the full text of the revised MOU at 31 TAC §523.5.

Incorporating existing procedures for coordinating the jurisdictional authority, program responsibilities, and the procedural mechanisms for point and nonpoint source pollution programs through the repeal of the current MOU and adopting by reference the full text of the revised MOU, is not expected to have any fiscal impact for the agency or any other unit of state or local government.

Public Benefits and Costs

Mr. Horvath has also determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated from the changes seen in the proposed rule will be updated rule for the coordination between the TSSWCB and TCEQ and continued safeguarding of the state's water quality.

The proposed rule is not anticipated to result in fiscal implications for businesses or individuals. Incorporating existing procedures for coordinating the jurisdictional authority, program responsibilities, and the procedural mechanisms for point and nonpoint source pollution programs through the repeal of the current MOU and adopting by reference the full text of the revised MOU, is not expected to have any fiscal impact for any business or individual.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the implementation or administration of the proposed rule for the first five-year period the proposed rule is in effect. The proposed rule imposes no new requirements or regulations on small or micro-businesses and imposes no new costs.

Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rule does not adversely affect a small or micro-business in a material way for the first five years the proposed rule is in effect and is intended to enhance the public health, safety, environmental, and economic welfare of the state.

Local Employment Impact Statement

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

Consistency with the Coastal Management Program

The commission reviewed the proposed rule and found it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rule 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 public hearing on this proposal in Austin on July 12, 2016, at 10:00 a.m., 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.

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.

Public Comment

Written comments may be submitted to Derek Baxter, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www1.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2016-020-007-OW. The comment period closes July 15, 2016. Copies of the proposed rule-making can be obtained from the commission's website at http://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Kerry Niemann, Planning & Implementation Section, (512) 239-0483.

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.104, concerning Memoranda of Understanding (MOUs), which authorizes the commission to enter into MOUs and adopt them as rules with other state agencies. Additionally, the amendment is proposed under TWC, §5.103 concerning Rules and TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC and other laws of the state.

The proposed amendment implements 31 TAC §523.5.

§7.102. Adoption of Memoranda of Understanding between the Texas State Soil and Water Conservation Board and the Texas Commission on Environmental Quality [Natural Resource Conservation Commission].

[(a)] The regulations of this section adopt by reference 31 TAC §523.5 (relating to Memorandum of Understanding between the Texas State Soil and Water Conservation Board and the Texas Commission on Environmental Quality) as adopted and published in the February 19, 2016, issue of the *Texas Register* (41 TexReg 1253). [This rule contains the memorandum of understanding ("MOU") between the Texas State Soil and Water Conservation Board and the Texas Natural Resource Conservation Commission, which sets forth the coordination of jurisdictional authority, program responsibility, and procedural mechanisms for point and nonpoint source pollution programs.]

[(1) Whereas, the Texas State Soil and Water Conservation Board, here within called the Board, is the state agency with the primary responsibility for activities relating to agricultural and silvicultural nonpoint source (NPS) pollution abatement; and]

[(2) Whereas, the board shall represent the State before the United States Environmental Protection Agency (EPA), or other federal agencies on matters relating to agricultural and silvicultural nonpoint source pollution abatement; and]

[(3) Whereas, for purposes of this MOU, the board is responsible for NPS pollution abatement activities on all agricultural and

silvicultural land as defined by Senate Bill (SB) 503, Texas 73rd State Legislature; and]

[(4) Whereas, the board has established and implemented a water quality management plan certification program, in accordance with SB 503 of the Texas 73rd State Legislature for agricultural and silvicultural lands; and]

[(5) Whereas, the Texas Natural Resource Conservation Commission here within known as the commission; is the state agency with primary responsibility for implementing the constitution and laws of the State related to the quality of water and air; and]

[(6) Whereas, the commission has been designated as the lead agency for the Federal Clean Water Act, §319 program administered by the EPA; and]

[(7) Whereas, the commission shall coordinate all its activities related to this MOU with the board; and]

[(8) Whereas, consistent with the intent of Federal Clean Water Act, §319, the board and the commission are committed to the development and implementation of a coordinated NPS pollution program for the State; and]

[(9) Whereas, for the purpose of this MOU, the commission is responsible for the enforcement of all point source and NPS pollution regulations, including that on agricultural and silvicultural lands; and]

[(10) Whereas, consistent with Texas law and public policy, the board and commission mutually desire to protect and maintain a high quality environment and the health of the people of the State; and]

[(11) Now, therefore, in consideration of the following promises, covenants, conditions, and the mutual benefits to accrue to the parties of this MOU, the Parties, desiring to cooperate in function and service agree as follows:]

[(b) The Texas Natural Resource Conservation Commission agrees to:]

[(1) Administer, for the State, the Federal Clean Water Act, §319 grant program for NPS pollution. The commission will be responsible for coordinating the preparation of grant work programs.]

[(2) Execute cooperative agreements and associated amendments, and grant awards and contracts. The commission will be responsible for monitoring implementation of work programs and providing EPA with necessary financial and programmatic reporting information for non-agricultural/silvicultural surface and ground water work program elements.]

[(3) Implement the provisions of the EPA-approved Federal Clean Water Act, §319 management programs for non-agricultural/silvicultural surface and ground water NPS pollution.]

[(4) Complete, under current administrative procedures, all projects and programs for which grant funds have been awarded, under Federal Clean Water Act, §319. All future projects and programs implementing the EPA-approved Federal Clean Water Act, §319 management program for agricultural/silvicultural NPS pollution, and supported by §319 federal grants, will be administered by the board via a separate grant with EPA.]

[(5) Develop and maintain state guidance for all NPS pollution abatement projects other than agricultural or silvicultural NPS pollution projects as described by this MOU and SB 503.]

[(6) Coordinate with the board those compliance and enforcement actions relative to agricultural and silvicultural pollution.]

[(7) Provide to the board all current forms, timetables, procedural rules and any policy documents of the commission for addressing and processing citizen complaints related to agricultural and silvicultural pollution.]

[(8) Provide the board with access to the commission's electronic database for all current agricultural waste management plans.]

[(9) Investigate and/or monitor compliance of all animal feeding operations (AFO), as defined under Chapter 321, Subchapter K of this title (relating to Concentrated Animal Feeding Operations); other than those covered by subsection (e)(12) of this section.]

[(10) In response to a general complaint, investigate a facility to determine whether a permit or written authorization under Chapter 321 of this title (relating to Control of Certain Activities by Rule) is required of the facility. If problems are documented or conditions exist which have the potential to adversely impact the environment, the facility owner or operator will have the option of being referred to the board for the purpose of obtaining a certified water quality management plan or obtaining authorization under Chapter 321 of this title from the commission. If the owner or operator of a facility requests referral to the board in order to obtain a certified water quality management plan, the commission will send the board all pertinent documentation within five working days of the investigation.]

[(11) Retain the responsibility for pursuing any enforcement action related to a violation of a commission rule or order which occurred prior to the facility operator/owner obtaining a certified water quality management plan.]

[(12) Pursue appropriate enforcement action in accordance with commission rules against any person referred in accordance with subsection (e)(10) of this section.]

[(c) The Texas State Soil and Water Conservation Board agrees to:]

[(1) Serve as the recipient of grants from EPA for agricultural and silvicultural NPS pollution projects as described in this MOU and SB 503 and funded through Federal Clean Water Act, §319.]

[(2) Coordinate directly with the EPA on matters relating to programmatic and financial issues of agricultural and silvicultural projects funded by the board through separate grants from EPA under Federal Clean Water Act, §319. Notify the commission in writing on any decision made that results in a change in the programmatic or financial status of a project.]

[(3) Provide the EPA with required reports for all agricultural/silvicultural projects funded through the board by the Federal Clean Water Act, §319. Reports will be submitted in accordance with EPA requirements.]

[(4) Develop and maintain state guidance for agricultural or silvicultural NPS pollution as described by this MOU and SB 503.]

[(5) Provide to the commission information about agricultural and silvicultural activities required for the annual evaluation of the state's implementation of the NPS Management Plan.]

[(6) Process citizen complaints related to agricultural and silvicultural NPS pollution in a manner that is consistent with the practices and standards of the commission.]

[(7) Schedule and conduct management meetings with the EPA to review the status of agricultural and silvicultural NPS pollution project/program activities as negotiated with EPA.]

[(8) Develop and maintain a current electronic database to track and document the proceedings of all water quality management plans and corrective action plans. Data recorded will include, but not be limited to, the identification of applicant(s), date of application for each plan, and approval date of each plan.]

[(9) Provide the commission with access to the board's electronic database for all water quality management plans. Software and equipment necessary to facilitate electronic transfer of data should be compatible with that of the commission.]

[(10) Refer to the commission for possible enforcement action any complaint or violation related to a certified water quality management plan for an AFO, a law or rule relating to agricultural or silvicultural nonpoint source pollution for which the board has determined that the necessary corrective action has not been taken. The board, upon referral, shall provide the commission documentation, including but not limited to, any original documents or "certified copies" of the original documents and hard copies of all photographs, sample analyses, correspondence, records and other documents relating to the complaint.]

[(11) Provide the commission with documentation (board rules, policies, guidance, etc.) for development, supervision, and monitoring of individual certified water quality management plans.]

[(12) Investigate complaints and monitor compliance of all AFOs operating under a certified water quality management plan or any facility covered by law or board rule relating to agricultural or silvicultural nonpoint source pollution.]

[(13) Investigate any complaint received by the board to determine whether such a facility will need to obtain authorization from the commission. Those facilities which are determined to require authorization from the commission under Chapter 321 of this title (relating to Control of Certain Activities by Rule) will be referred to the commission within five working days from the date of investigation. If it is determined that the potential for a water quality violation exists at a facility that does not need authorization under Chapter 321 of this title, and the facility owner/operator does not implement a corrective action plan or does not file an application for a certified water quality management plan to resolve the complaint within 45 days of notification of the investigation outcome, the board shall automatically refer the facility to the commission for possible enforcement action, written authorization, or a permit.]

[(14) Refer to the Commission for possible enforcement action, complaints which were initially resolved by an agreement to develop a site specific certified water quality management plan for the involved facility and for which the facility owner/operator has not signed such a plan within 90 days of the date their request for planning assistance was approved by the Soil and Water Conservation District.]

[(15) Refer to the Commission for possible enforcement any complaint received for which there has been an immediate impact to aquatic life. Any investigation by the Board of a complaint related to an AFO holding a certified water quality management plan and for which a violation is documented that causes a situation in which exposure of contaminants to the air, water or land is affecting human health and safety, or will cause serious impact to the environment unless immediate actions are taken, shall be automatically referred to the Commission for possible enforcement action.]

[(d) Both parties agree to:]

[(1) Work together to refine the existing process for screening and prioritization of project proposals to be funded under Federal Clean Water Act, §319.]

[(2) Coordinate efforts in the development and submission of an annual work program to EPA for Federal Clean Water Act, §319, funding.]

[(3) Maintain each party's existing level of effort required by the EPA for the implementation of §319 programs/projects.]

[(4) Communicate and coordinate directly with each other and the EPA on matters relating to program/project planning and implementation of NPS pollution activities/projects funded by Federal Clean Water Act, §319.]

[(5) Provide required reports to the EPA on NPS pollution project activities. Reports will include status of project implementation, summary of information/education activities, monitoring activities, and other outputs satisfactory to EPA.]

[(6) Meet semi-annually to review and discuss the state's NPS water quality program and to refine agency coordination mechanisms.]

[(7) Work together to develop criteria for the development of water quality management programs that satisfy the state water quality standards as established by the Commission.]

[(8) Comply with all relevant state and federal statutes and procedures, and grant conditions, including financial audits, data quality assurance and quality control, and progress reports.]

[(9) Cooperate on activities related to the implementation of the "Texas State Management Plan for Agricultural Chemicals in Ground Water."]

[(e) General conditions:]

[(1) Term of MOU. The term of this MOU shall be from the effective date until termination.]

[(2) Notice of Termination. Any party may terminate this MOU upon a 90 day written notice to the other party. Both parties agree to fulfill any grant commitments in place at the time of termination. Only upon written concurrence of the other agency can this MOU be modified.]

[(3) Cooperation of Parties. It is the intention of the board and the commission that the details of providing the services in support of this MOU shall be worked out, in good faith, by both agencies.]

[(4) Nondiscrimination. Activities conducted under this MOU will be in compliance with the nondiscrimination provisions as contained in Titles VI and VII of the Civil Rights Act of 1964, as amended, the Civil Rights Restoration Act of 1987, and other nondiscrimination statutes, namely Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and the Americans With Disabilities Act of 1992, which provide that no person in the United States shall, on the grounds of race, color, national origin, age, sex, religion, marital status, or handicap be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving federal financial assistance.]

[(5) Notices. Any notices required by this MOU to be in writing shall be addressed to the respective agency as follows: Texas Natural Resource Conservation Commission, Attn: _____, P.O. Box 13087, Austin, TX 78711-3087 and to the Texas State Soil and Water Conservation Board, Attn: _____, P.O. Box 658, Temple, TX 76503-0658.]

[(6) Effective Date of MOU. This MOU is effective upon execution by both agencies. By signing this MOU, the signatories ac-

knowledge that they are acting under proper authority from their governing bodies.]

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 26, 2016.

TRD-201602663

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: July 10, 2016

For further information, please call: (512) 239-2613



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 745. LICENSING

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), new §745.8561 and §745.8608 in Chapter 745, concerning Licensing. The purpose of the new rules is to implement Senate Bill (S.B.) 1407 that was passed by the 84th Texas Legislature in 2015 and portions of the federal law H.R. 4980 (also entitled "Preventing Sex Trafficking and Strengthening Families Act") related to normalcy.

"Normalcy" is the ability of a child in care to live as normal a life as possible, including engaging in childhood activities that are suitable for children of the same age, level of maturity, and developmental level as determined by a reasonable and prudent parent standard.

Child Care Licensing (CCL) has met with three different workgroups that have provided input and comments regarding these rules related to normalcy. On September 29, 2015, CCL met with a workgroup of providers and advocates that was organized by Texas CASA (Court Appointed Special Advocates); On October 7, 2015, CCL met with the Committee for Advancing Residential Practices; and on December 16, 2015, CCL met with a workgroup of providers.

One of the changes related to normalcy includes a definition for the "reasonable and prudent standard". The changes to Chapter 745 clarify how the reasonable and prudent parent standard will be used by CCL during investigations and when imposing an enforcement action.

Rule §745.8561 clarifies that CCL will use the reasonable and prudent parent standard when conducting an investigation of a designated person or foster parent that is alleged to have inappropriately allowed a child to participate in a childhood activity or denied a child access to a childhood activity.

Rule §745.8608 clarifies that CCL will not take enforcement actions against a General Residential Operations (GRO) or Child-Placing Agency (CPA) when a designated person or foster parent appropriately uses the reasonable and prudent parent standard when determining whether a child will be allowed to participate in a childhood activity.

Lisa Subia, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed new sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the new sections.

Ms. Subia also has determined that for each year of the first five years the new sections are in effect the public benefit anticipated as a result of enforcing the new sections will be that the safety of children in care and the quality of their care will be improved by integrating the use of "reasonable and prudent parent standard" into Chapter 745. There will be no effect on small or micro-businesses because the proposed change does not impose new requirements on any business and does not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed new sections.

Ms. Subia has determined that the proposed new sections do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043, Government Code.

Questions about the content of the proposal may be directed to Gerry Williams at (512) 438-5559 in DFPS's Child Care Licensing Division. Electronic comments may be submitted to CCLRules@dfps.state.tx.us. Written comments on the proposal may be submitted to *Texas Register* Liaison, Legal Services-543, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

SUBCHAPTER K. INSPECTIONS AND INVESTIGATIONS

DIVISION 5. ABUSE AND NEGLECT

40 TAC §745.8561

The new section is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section implements HRC §42.042, S.B. 1407 (84th Reg. Ses.), and portions of the federal law H.R. 4980 (also entitled "Preventing Sex Trafficking and Strengthening Families Act") related to normalcy.

§745.8561. When will Licensing use the "reasonable and prudent parent standard" in conducting an investigation of a child-placing agency or general residential operation?

We will use the "reasonable and prudent parent standard" when we investigate whether:

(1) A child-placing agency or general residential operation was deficient in a standard, rule, or other law because a foster parent or designated person:

(A) Allowed a child to participate in a childhood activity; or

Texas Commission on Environmental Quality



ORDER ADOPTING AMENDED RULE

Docket No. 2016-0292-RUL

Rule Project No. 2016-020-007-OW

On October 19, 2016, the Texas Commission on Environmental Quality (Commission) adopted amended § 7.102 in 30 Texas Administrative Code (TAC) Chapter 7, concerning Memoranda of Understanding. The proposed rule was published for comment in the June 10, 2016, issue of the *Texas Register* (41 TexReg 4157).

IT IS THEREFORE ORDERED BY THE COMMISSION that amended § 7.102, that adopts by reference the full Memorandum of Understanding located in 31 TAC § 523.5, is hereby adopted. The Commission further authorizes staff to make any non-substantive revisions to the rules necessary to comply with *Texas Register* requirements. The adopted rule and the preamble to the adopted rule are incorporated by reference in this Order as if set forth at length verbatim in this Order.

This Order constitutes the Order of the Commission required by Tex. Gov't Code Ann., Chapter 2001 (Vernon 2016).

If any portion of this Order is for any reason held to be invalid by a court of competent jurisdiction, the invalidity of any portion shall not affect the validity of the remaining portions.

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Bryan W. Shaw, Ph.D., P.E., Chairman

Date Signed