

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST
for Rulemaking Adoption

AGENDA REQUESTED: April 27, 2022

DATE OF REQUEST: April 8, 2022

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

CAPTION: Docket No. 2021-0765-RUL. Consideration of the adoption of the amendment of Section 7.103 of 30 TAC Chapter 7, Memoranda of Understanding.

The rulemaking adoption will implement portions of Senate Bill 703, 87th Legislature, which removed the Texas Department of Agriculture's (TDA) roles and responsibilities related to regulation of the aquaculture industry, by amending the Memorandum of Understanding (MOU) to remove the TDA. The rulemaking adoption will also make additional updates to the MOU, based on rule changes related to the aquaculture industry since the MOU was last adopted. The proposed rules were published in the December 3, 2021, issue of the *Texas Register* (46 TexReg 8197). (Laurie Fleet, Aubrey Pawelka; Rule Project No. 2021-021-007-OW)



Director



Division Deputy Director

Cecilia Mena

Agenda Coordinator

Copy to CCC Secretary? NO YES

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners

Date: April 8, 2022

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

From: Earl Lott, Director
Office of Water

Docket No.: 2021-0765-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 7, Memoranda of Understanding
SB 703: Memorandum of Understanding Relating to Regulation of the
Aquaculture Industry
Rule Project No. 2021-021-007-OW

Background and reason(s) for the rulemaking:

This adopted rulemaking will implement portions of Senate Bill (SB) 703, 87th Legislature, which removed the Texas Department of Agriculture's (TDA) roles and responsibilities related to regulation of the aquaculture industry. Previously, the Texas Commission on Environmental Quality (TCEQ or commission), the TDA, and the Texas Parks and Wildlife Department (TPWD) coordinated on regulating the aquaculture industry. This multi-agency coordination was codified in a Memorandum of Understanding (MOU) in Chapter 7, §7.103. This rulemaking will revise the MOU to remove the TDA from this multi-agency coordination.

Scope of the rulemaking:

A.) Summary of what the rulemaking will do:

This rulemaking will amend §7.103 to remove the TDA from the multi-agency coordination on regulating the aquaculture industry.

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

None required.

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

Staff recommended additional updates to the MOU, based on rule changes related to the aquaculture industry since the MOU was last adopted. These included the repeal of the permit-by-rule and exemptions in Chapter 321, Subchapter O and the development of the Aquaculture General Permit Number TXG130000.

Statutory authority:

The rulemaking is adopted under the authority of:

- Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state;
- TWC, §5.102, which establishes the commission's authority necessary to carry out its jurisdiction;
- TWC, §5.103, which establishes that the commission, by rule, shall establish and approve all general policy of the commission;

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- TWC, §5.104, which establishes the authority of the commission to enter memoranda of understanding with any other state agency and adopt by rule the memoranda of understanding;
- TWC, §5.105, which establishes the general authority of the commission to adopt rules necessary to carry out its powers and duties under the TWC and other laws of this state;
- TWC, §5.120, which requires the commission to administer the law so as to promote judicious use and maximum conservation and protection of the environment and the natural resources of the state;
- TWC, §26.011, which provides the commission with the authority to establish the level of quality to be maintained in, and to control the quality of, the water in the state by subjecting waste discharges or impending waste discharges to reasonable rules or orders adopted or issued by the TCEQ in the public interest; and
- TWC, §26.027, which authorizes the commission to issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to water in the state.

Effect on the:

A.) Regulated community:

This rulemaking is not expected to affect the regulated community.

B.) Public:

This rulemaking is not expected to affect the public.

C.) Agency programs:

This rulemaking will remove the Water Quality Division's (WQD) coordination with TDA regarding regulation of the aquaculture industry. The WQD would still be required to coordinate with TPWD regarding regulation of the aquaculture industry.

Stakeholder meetings:

This rulemaking was discussed at the quarterly Water Quality Advisory Workgroup meetings.

Public comment:

The commission held a public hearing on January 4, 2022. The comment period closed on January 5, 2022. No public comments were received.

Significant changes from proposal:

None.

Potential controversial concerns and legislative interest:

There is no known controversial concerns or legislative interest at this time.

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

No policy issues are anticipated.

Commissioners

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

This rulemaking is required to implement portions of SB 703 related to removing TDA's coordination with TCEQ and TPWD regarding regulation of the aquaculture industry.

Key points in the adoption rulemaking schedule:

***Texas Register* proposal publication date:** December 3, 2021

Anticipated *Texas Register* adoption publication date: May 13, 2022

Anticipated effective date: May 19, 2022

Six-month *Texas Register* filing deadline: June 3, 2022

Agency contacts:

Laurie Fleet, Rule Project Manager, Office of Water, (512) 239-5445

Aubrey Pawelka, Staff Attorney, (512) 239-0622

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

Attachments:

SB 703

cc: Chief Clerk, 2 copies
Executive Director's Office
Jim Rizk
Morgan Johnson
Brody Burks
Office of General Counsel
Laurie Fleet
Aubrey Pawelka
Cecilia Mena

AN ACT

relating to the continuation and functions of the Department of Agriculture, the Prescribed Burning Board, and the Texas Boll Weevil Eradication Foundation and the abolishment of the Early Childhood Health and Nutrition Interagency Council.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 11.003, Agriculture Code, is amended to read as follows:

Sec. 11.003. SUNSET PROVISION. The Department of Agriculture is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the department is abolished September 1, 2033 [2021].

SECTION 2. Section 12.0175, Agriculture Code, is amended to read as follows:

Sec. 12.0175. "GO-TEXAN" [~~GROWN OR PRODUCED IN TEXAS~~] PROGRAM. (a) The department by rule shall [~~may~~] establish the "GO-TEXAN" program [~~programs~~] to promote and encourage the development and expansion of markets for Texas [~~market~~] agricultural products and other products grown, processed, or produced in the state.

(b) The department may charge a membership fee, as provided by department rule, for each participant in the "GO-TEXAN" [~~a~~] program.

(c) The department shall [~~may~~] adopt rules necessary to

1 administer the "GO-TEXAN" [a] program established under this
2 section, including rules:

3 (1) governing the use of any registered logo of the
4 department;

5 (2) providing membership eligibility requirements and
6 grounds for denial of membership;

7 (3) establishing membership categories or tiers; and

8 (4) specifying membership benefits.

9 (d) The department may revoke or cancel a certificate of
10 registration or license issued under the "GO-TEXAN" [a] program
11 established under this section if a participant fails to comply
12 with a rule adopted by the department.

13 (e) In this section, "Texas agricultural product" means an
14 agricultural, apicultural, horticultural, silvicultural,
15 viticultural, or vegetable product, either in its natural or
16 processed state, that has been produced, processed, or otherwise
17 had value added to the product in this state, including:

18 (1) feed for use by livestock or poultry;

19 (2) fish or other aquatic species;

20 (3) livestock, a livestock product, or a livestock
21 by-product;

22 (4) planting seed;

23 (5) poultry, a poultry product, or a poultry
24 by-product; or

25 (6) wildlife processed for food or by-products.

26 SECTION 3. Chapter 12, Agriculture Code, is amended by
27 adding Section 12.0204 to read as follows:

1 Sec. 12.0204. ADVISORY COMMITTEES. (a) The department by
2 rule may establish advisory committees to make recommendations to
3 the department on programs, rules, and policies administered by the
4 department.

5 (b) In establishing an advisory committee under this
6 section, the department shall adopt rules, including rules
7 regarding:

8 (1) the purpose, role, responsibility, goals, and
9 duration of the committee;

10 (2) the size of and quorum requirement for the
11 committee;

12 (3) qualifications for committee membership;

13 (4) appointment procedures for members;

14 (5) terms of service for members;

15 (6) training requirements for members;

16 (7) policies to avoid conflicts of interest by
17 committee members;

18 (8) a periodic review process to evaluate the
19 continuing need for the committee; and

20 (9) policies to ensure the committee does not violate
21 any provisions of Chapter 551, Government Code, applicable to the
22 department or the committee.

23 SECTION 4. Chapter 12, Agriculture Code, is amended by
24 adding Section 12.0205 to read as follows:

25 Sec. 12.0205. COORDINATION OF CONSUMER PROTECTION
26 ENFORCEMENT WITH OFFICE OF ATTORNEY GENERAL. (a) The department
27 and the office of the attorney general shall enter into a memorandum

1 of understanding to coordinate the enforcement of consumer
2 protection programs.

3 (b) The memorandum of understanding shall require the
4 department to communicate with the consumer protection division of
5 the office of the attorney general to identify and avoid potential
6 duplication of effort before taking final disciplinary or
7 enforcement action related to consumer protection.

8 SECTION 5. The heading to Section 12.026, Agriculture Code,
9 is amended to read as follows:

10 Sec. 12.026. PUBLIC INTEREST INFORMATION[~~, COMPLAINTS~~].

11 SECTION 6. Chapter 12, Agriculture Code, is amended by
12 adding Section 12.02601 to read as follows:

13 Sec. 12.02601. COMPLAINTS. (a) The department shall
14 maintain a system to promptly and efficiently act on complaints
15 filed with the department. The department shall maintain
16 information about parties to the complaint, the subject matter of
17 the complaint, a summary of the results of the review or
18 investigation of the complaint, and its disposition.

19 (b) The department shall make information available
20 describing its procedures for complaint investigation and
21 resolution.

22 (c) The department shall periodically notify the complaint
23 parties of the status of the complaint until final disposition
24 unless the notice would jeopardize an investigation.

25 SECTION 7. Sections 12.042(a), (b), (c), (e), and (i),
26 Agriculture Code, are amended to read as follows:

27 (a) The department shall establish a home-delivered meal

1 grant program to benefit homebound elderly persons and persons with
2 disabilities [~~disabled people~~] in this state. The program must be
3 designed to help defray the costs of providing home-delivered meals
4 that are not fully funded by the Health and Human [~~Department of~~
5 ~~Aging and Disability~~] Services Commission or an area agency on
6 aging.

7 (b) From funds appropriated for that purpose, the
8 department shall make grants to qualifying organizations that
9 provide home-delivered meals to [~~the~~] homebound elderly persons and
10 persons with disabilities [~~disabled~~]. The department may use not
11 more than five percent of those appropriated funds for the
12 administration of the grant program.

13 (c) An organization applying to the department for a grant
14 under this section must:

15 (1) be a governmental agency or a nonprofit private
16 organization that is exempt from taxation under Section 501(a),
17 Internal Revenue Code of 1986, as an organization described by
18 Section 501(c)(3) of that code, that is a direct provider of
19 home-delivered meals to [~~the~~] elderly persons or persons with
20 disabilities in this state;

21 (2) if it is a nonprofit private organization, have a
22 volunteer board of directors;

23 (3) practice nondiscrimination;

24 (4) have an accounting system or fiscal agent approved
25 by the county in which it provides meals;

26 (5) have a system to prevent the duplication of
27 services to the organization's clients; and

1 (6) agree to use funds received under this section
2 only to supplement and extend existing services related directly to
3 home-delivered meal services.

4 (e) The department shall require an organization seeking a
5 grant to file an application in a form approved by the department.
6 The application must be [~~notarized and~~] signed or electronically
7 acknowledged by the organization's executive director [~~and board~~
8 ~~chair, if applicable~~], be postmarked or electronically submitted
9 not later than November 1, and must include:

10 (1) the organization's name and address;

11 (2) the names and titles of the organization's
12 executive director and board chair, if applicable;

13 (3) the name of the county in relation to which the
14 organization is applying;

15 (4) the number of residents at least 60 years of age
16 who reside in that county, according to the most recent federal
17 decennial census;

18 (5) the amount of the grant awarded by that county as
19 required by Subsection (d);

20 (6) the number of meals the organization delivered to
21 elderly persons or [~~disabled~~] persons with disabilities in that
22 county during the preceding state fiscal year that were not fully
23 funded [~~for~~] by the Health and Human [~~Department of Aging and~~
24 ~~Disability~~] Services Commission or an area agency on aging;

25 (7) appropriate documentation demonstrating that the
26 organization:

27 (A) is a qualifying governmental agency or

1 nonprofit private organization;

2 (B) has been awarded a grant by the county in
3 relation to which the organization is applying, as required by
4 Subsection (d); and

5 (C) has delivered the number of meals reported
6 under Subdivision (6);

7 (8) the organization's most recent financial statement
8 or audited financial report; and

9 (9) a list of the organization's board and officers.

10 (i) Not later than February 1 of each year, the department
11 shall make a grant to each qualifying organization that has
12 submitted an approved application under this section. Subject to
13 Subsections (d) and (h), the department shall make grants in an
14 amount equal to one dollar for each meal that the organization
15 delivered to homebound elderly persons or ~~[disabled]~~ persons with
16 disabilities in the county in the preceding state fiscal year that
17 was not fully funded ~~[for]~~ by the Health and Human ~~[Department of~~
18 ~~Aging and Disability]~~ Services Commission or an area agency on
19 aging. If more than one qualifying organization delivers meals in a
20 county, the department shall reduce the grants proportionally to
21 each qualifying organization in that county so that the total
22 amount of the grants to the organizations does not exceed the amount
23 described by Subsection (h).

24 SECTION 8. Chapter 12, Agriculture Code, is amended by
25 adding Section 12.051 to read as follows:

26 Sec. 12.051. FARMER MENTAL HEALTH AND SUICIDE PREVENTION
27 PROGRAM. (a) The department shall establish a farmer mental health

1 and suicide prevention program to raise awareness among farmers of
2 issues relating to mental health and suicide prevention.

3 (b) As part of the program, the department shall:

4 (1) promote suicide prevention among farmers through a
5 public awareness campaign;

6 (2) provide a toll-free telephone hotline for farmer
7 mental health assistance;

8 (3) develop a mental wellness plan for farmers
9 affected by a disaster; and

10 (4) coordinate suicide prevention activities with
11 other state agencies, including the Department of State Health
12 Services.

13 SECTION 9. Subchapter A, Chapter 12A, Agriculture Code, is
14 amended by adding Sections 12A.004 and 12A.005 to read as follows:

15 Sec. 12A.004. INSPECTION AND ENFORCEMENT STRATEGIC PLAN.

16 (a) The department shall develop and publish an annual plan for
17 each state fiscal year to use the inspection and enforcement
18 resources of the department strategically to ensure public safety
19 and protect agriculture and consumers in this state.

20 (b) The department shall seek input from stakeholders when
21 developing each annual plan.

22 (c) The department shall collect and maintain information
23 that accurately shows the department's inspection and enforcement
24 activities. Each annual plan must include a report of the
25 information collected by the department that shows the department's
26 inspection and enforcement activities over time.

27 (d) The information described by Subsection (c) must

1 include data regarding violations of statutes or department rules,
2 including:

3 (1) the number, type, and severity of:

4 (A) violations the department found to have
5 occurred;

6 (B) violations the department referred for
7 enforcement to the section of the department responsible for
8 enforcement; and

9 (C) violations for which the department imposed a
10 penalty or took other enforcement action;

11 (2) the number of major violations for which the
12 department imposed a penalty or took other enforcement action; and

13 (3) the number of repeat major violations, categorized
14 by license type, if applicable.

15 (e) The department shall publish each annual plan on the
16 department's Internet website not later than July 1 of the year
17 preceding the state fiscal year in which the department implements
18 the plan.

19 Sec. 12A.005. CRIMINAL HISTORY EVALUATION. The department
20 shall perform the duties of a licensing authority under Chapter 53,
21 Occupations Code, for each license issued by the department under
22 this code or other law, including issuing guidelines under Section
23 53.025, Occupations Code.

24 SECTION 10. Section 19.005, Agriculture Code, is reenacted
25 and amended to read as follows:

26 Sec. 19.005. ADVISORY COUNCIL. (a) The commissioner shall
27 appoint the advisory council. The advisory council is composed of

1 seven members, including:

- 2 (1) one member representing the department;
- 3 (2) one member representing The Texas A&M
4 University-Kingsville Citrus Center at Weslaco;
- 5 (3) two members representing the citrus nursery
6 industry;
- 7 (4) two members representing citrus growers; and
- 8 (5) one member having specialized knowledge in citrus
9 diseases and pests.

10 (b) A member serves a two-year term and may be reappointed.

11 (c) Members of the advisory council are not eligible for
12 reimbursement of expenses arising from service on the advisory
13 council.

14 (d) Chapter 2110, Government Code, does not apply to the
15 duration of the advisory council.

16 SECTION 11. Section 41.154, Agriculture Code, is amended to
17 read as follows:

18 Sec. 41.154. ANNUAL REPORT. The council shall deliver to
19 the commissioner [~~and the appropriate oversight committee in the~~
20 ~~senate and house of representatives~~] an annual report giving
21 details of its efforts to carry out the purposes of this subchapter.

22 SECTION 12. Section 45.005(c), Agriculture Code, is amended
23 to read as follows:

24 (c) The program may undertake agricultural research and
25 development projects of mutual benefit that are located in Texas,
26 Israel, or any other location considered advisable by the
27 department [~~or suggested by the advisory committee~~].

1 SECTION 13. Section 46.005, Agriculture Code, is amended to
2 read as follows:

3 Sec. 46.005. DEPARTMENT POWERS AND DUTIES. The department
4 shall administer the "Go Texan" Partner Program. The duties of the
5 department in administering the program include:

6 (1) developing procedures for acceptance and
7 administration of funds received to administer the program,
8 including appropriations, gifts, license plate revenue, and
9 matching funds;

10 (2) developing application and selection procedures
11 including procedures for soliciting and accepting applications
12 [~~and screening applications for review by the "Go Texan" Partner~~
13 ~~Program Advisory Board~~];

14 (3) developing a general promotional campaign for
15 Texas agricultural products and advertising campaigns for specific
16 Texas agricultural products based on project requests submitted by
17 successful applicants;

18 (4) developing advertising programs and promotional
19 materials for use by program participants and establishing
20 guidelines on advertising activities by participants;

21 (5) contracting with media representatives for the
22 purpose of dispersing promotional materials; and

23 (6) receiving matching funds from program
24 participants and donations or grants from any source, and
25 establishing internal reporting requirements for use of funds.

26 SECTION 14. Section 46.011, Agriculture Code, is amended to
27 read as follows:

1 Sec. 46.011. CRITERIA FOR ALLOCATION OF FUNDS. The
2 department shall by rule [~~and with the advice of the board~~]
3 establish criteria for allocation of funds to participant projects.
4 Rules adopted under this section must include:

5 (1) the factors to be considered in evaluating
6 projects; and

7 (2) a maximum funding amount for each project.

8 SECTION 15. Section 47.052(b), Agriculture Code, is amended
9 to read as follows:

10 (b) The commissioner [~~, in consultation with the advisory~~
11 ~~committee established under Section 47.053,~~] shall adopt rules as
12 necessary to implement the program.

13 SECTION 16. Section 50B.0025, Agriculture Code, is amended
14 to read as follows:

15 Sec. 50B.0025. ANNUAL PLAN AND BUDGET. Not later than
16 November 1 of each year, the commissioner shall prepare for the
17 current fiscal year:

18 (1) a [the] schedule and plan of action designed to
19 implement and further the objectives of this chapter and Chapter
20 110, Alcoholic Beverage Code; and

21 (2) a budget and prioritized spending plan for
22 expenditures of the wine industry development fund [described by
23 ~~Section 50B.002(g), considering the recommendations of the~~
24 ~~committee under that section and following them to the extent the~~
25 ~~commissioner considers appropriate].~~

26 SECTION 17. Sections 62.002(a) and (b), Agriculture Code,
27 are amended to read as follows:

1 (a) The State Seed and Plant Board is an agency of the state.
2 The board is composed of:

3 (1) one individual, appointed by the president of
4 Texas A&M University, from the Soils and Crop Sciences Department,
5 Texas Agricultural Experiment Station, Texas A&M University;

6 (2) one individual, appointed by the president of
7 Texas Tech University, from the Department of Plant and Soil
8 Sciences, Texas Tech University;

9 (3) one individual, appointed by the commissioner,
10 licensed as a Texas Foundation, Registered, or Certified seed or
11 plant producer who is not employed by a public institution;

12 (4) one individual, appointed by the commissioner, who
13 sells Texas Foundation, Registered, or Certified seed or plants;
14 and

15 (5) one individual, appointed by the commissioner,
16 actively engaged in farming but not a producer or seller of Texas
17 Foundation, Registered, or Certified seed or plants~~[, and~~

18 ~~[(6) the head of the seed division of the department].~~

19 (b) An individual appointed from a state university ~~[or the~~
20 ~~department]~~ serves on the board as an ex officio member. A member
21 serves for a term of two years and until a successor has qualified.
22 Members serve without compensation but are entitled to
23 reimbursement by the state for actual expenses incurred in the
24 performance of their duties.

25 SECTION 18. Section 62.005(a), Agriculture Code, is amended
26 to read as follows:

27 (a) A person who wants to produce a certified class of seed

1 or plant for which the board has established standards of genetic
2 purity and identity may apply to the board for licensing as a
3 Foundation, Registered, or Certified producer of seed or plants.
4 To be licensed as a producer, a person must satisfy the board that:

5 (1) ~~[he or she is of good character and has a~~
6 ~~reputation for honesty,~~

7 ~~[(2)]~~ his or her facilities meet board requirements
8 for producing and maintaining seed or plants for the certification
9 generations desired; and

10 (2) ~~[(3)]~~ he or she has met any other board
11 requirements as to knowledge of the production or maintenance of
12 seed or plants for the certification generations for which he or she
13 applies to be licensed.

14 SECTION 19. Section 74.0031(d), Agriculture Code, is
15 amended to read as follows:

16 (d) The department shall set a cotton stalk destruction
17 deadline for each pest management zone, with consideration given to
18 the recommendations of the foundation ~~[and the applicable~~
19 ~~administrative committee submitted under Subsection (b)]~~.

20 SECTION 20. Sections 74.0032(b) and (c), Agriculture Code,
21 are amended to read as follows:

22 (b) If adverse weather conditions or other good cause
23 exists, the Texas Boll Weevil Eradication Foundation
24 ~~[administrative committee that governs the applicable pest~~
25 ~~management zone]~~ may request that the department grant an extension
26 of the cotton stalk destruction deadline for any specified part of
27 the pest management zone or for the entire pest management zone. A

1 request under this subsection must be made within the period
2 specified by department rule. A field is not subject to a hostable
3 cotton fee if the department grants an extension of the deadline.
4 The Texas Boll Weevil Eradication Foundation shall submit to the
5 department an estimate of the amount by which an extension under
6 this subsection will increase the cost of administering the boll
7 weevil eradication program.

8 (c) If the Texas Boll Weevil Eradication Foundation
9 [~~applicable administrative committee~~] does not request an
10 extension, or if the department denies a request for an extension of
11 the cotton stalk destruction deadline for a specified part of a pest
12 management zone, a cotton grower may apply for an individual
13 extension of the deadline. A request under this subsection must be
14 made within the period specified by department rule.

15 SECTION 21. Section 74.004(a), Agriculture Code, is amended
16 to read as follows:

17 (a) The [~~On petition of the administrative committee of a~~
18 ~~pest management zone, the~~] department may establish regulated
19 areas, dates, and appropriate methods of destruction of stalks,
20 other parts, and products of host plants for cotton pests,
21 including requirements for destruction of foliage, fruiting
22 structures, and root systems of host plants after the harvest
23 deadline.

24 SECTION 22. Section 74.0041, Agriculture Code, is amended
25 to read as follows:

26 Sec. 74.0041. REGULATION OF PLANTING DATES. The [~~On~~
27 ~~petition of the administrative committee of a pest management zone,~~

1 ~~the~~] department may establish uniform planting dates for host
2 plants.

3 SECTION 23. Subchapter D, Chapter 74, Agriculture Code, is
4 amended by adding Section 74.1091 to read as follows:

5 Sec. 74.1091. SEPARATION OF RESPONSIBILITIES. The board
6 shall develop and implement policies that clearly separate the
7 policy-making responsibilities of the board and the management
8 responsibilities of the chief executive officer and staff of the
9 foundation.

10 SECTION 24. Section 74.127(a), Agriculture Code, is amended
11 to read as follows:

12 (a) The board of directors of the official cotton growers'
13 boll weevil eradication foundation is subject to Chapter 325,
14 Government Code (Texas Sunset Act). Unless continued in existence
15 as provided by that chapter, the board is abolished [~~and this~~
16 ~~subchapter expires~~] September 1, 2033 [~~2021~~].

17 SECTION 25. Subchapter D, Chapter 74, Agriculture Code, is
18 amended by adding Section 74.132 to read as follows:

19 Sec. 74.132. COMPLAINTS. (a) The foundation shall
20 maintain a system to promptly and efficiently act on complaints
21 filed with the foundation. The foundation shall maintain
22 information about parties to the complaint, the subject matter of
23 the complaint, a summary of the results of the review or
24 investigation of the complaint, and its disposition.

25 (b) The foundation shall make information available
26 describing its procedures for complaint investigation and
27 resolution.

1 (c) The foundation shall periodically notify the complaint
2 parties of the status of the complaint until final disposition
3 unless the notice would jeopardize an investigation.

4 SECTION 26. Section 122.201(a), Agriculture Code, is
5 amended to read as follows:

6 (a) A license holder shall harvest the plants from a plot
7 not later than the 30th [~~20th~~] day after the date a preharvest
8 sample is collected under Section 122.154 unless field conditions
9 delay harvesting or the department authorizes the license holder to
10 delay harvesting. This subsection does not prohibit the license
11 holder from harvesting the plants immediately after the preharvest
12 sample is collected.

13 SECTION 27. The heading to Section 134.002, Agriculture
14 Code, is amended to read as follows:

15 Sec. 134.002. SUPPORT OF AQUACULTURE [~~PROGRAM~~].

16 SECTION 28. Section 134.004, Agriculture Code, is amended
17 to read as follows:

18 Sec. 134.004. CONTRACTS. The department, the Texas
19 [~~Natural Resource Conservation~~] Commission on Environmental
20 Quality, the Texas Animal Health Commission, and the Parks and
21 Wildlife Department may contract with state, federal, or private
22 entities for assistance in carrying out the purposes of this
23 chapter.

24 SECTION 29. The heading to Subchapter B, Chapter 134,
25 Agriculture Code, is amended to read as follows:

26 SUBCHAPTER B. AQUACULTURE REQUIREMENTS [~~LICENSE~~]

27 SECTION 30. Section 134.013, Agriculture Code, is amended

1 to read as follows:

2 Sec. 134.013. ADDITIONAL REQUIREMENTS FOR SHRIMP
3 PRODUCTION WITHIN THE COASTAL ZONE. (a) A commercial aquaculture
4 facility located within the coastal zone and engaged in the
5 production of shrimp must:

6 (1) [~~must~~] obtain a site-specific wastewater
7 discharge permit from the Texas [~~Natural Resource Conservation~~]
8 Commission on Environmental Quality before the facility may
9 discharge wastewater if the facility will discharge wastewater or
10 another substance into waters in the state;

11 (2) [~~must~~] provide the report described in Subsection
12 (b) to the Texas Commission on Environmental Quality [~~and is~~
13 ~~subject to the review described in Section 134.031(c) if the~~
14 ~~aquaculture facility applies for a site-specific discharge~~
15 ~~permit~~];

16 (3) [~~must~~] obtain an amendment to its site-specific
17 discharge permit from the Texas [~~Natural Resource Conservation~~]
18 Commission on Environmental Quality before the facility may
19 increase the amount of discharge or change the nature of the
20 discharge above levels allowed by the wastewater discharge permit
21 issued by the Texas [~~Natural Resource Conservation~~] Commission on
22 Environmental Quality, except as otherwise provided by Section
23 26.0191, Water Code; and

24 (4) [~~must~~] provide the report described by Subsection
25 (b) [~~and is subject to the review described in Section 134.031(c)~~]
26 before the facility may increase the amount of discharge, or change
27 the nature of the discharge above levels allowed by the wastewater

1 discharge permit issued by the Texas [~~Natural Resource~~
2 ~~Conservation~~] Commission on Environmental Quality, except as
3 otherwise provided by Section 26.0191, Water Code.

4 (b) Before issuing a permit [~~license~~] to a new aquaculture
5 facility designed for the commercial production of shrimp that will
6 discharge wastewater into waters in the state within the coastal
7 zone, the Texas Commission on Environmental Quality [~~department~~]
8 shall require the applicant to provide a report describing the
9 existing environmental conditions at the proposed site, including
10 aquatic habitat and the conditions of the waters in the state into
11 which a discharge is proposed. The report must provide an
12 assessment of any potential impacts of wastewater discharges on
13 sensitive aquatic habitats in the area of the proposed site,
14 significant impacts related to the construction or operation of the
15 facility, and any mitigation actions proposed by the applicant.

16 (c) The applicant must provide the report required under
17 Subsection (b) to the [~~Texas Natural Resource Conservation~~
18 ~~Commission and the~~] Parks and Wildlife Department. The Texas
19 [~~Natural Resource Conservation~~] Commission on Environmental
20 Quality may not issue a wastewater discharge permit to a new
21 aquaculture facility designed for the commercial production of
22 shrimp and located within the coastal zone without consideration of
23 the report described by Subsection (b).

24 (d) In coordination with [~~the department and~~] the Parks and
25 Wildlife Department, the Texas [~~Natural Resource Conservation~~]
26 Commission on Environmental Quality shall establish guidelines
27 relating to the report required by Subsection (b) that:

1 (1) give public notice as to what the reporting
2 requirements include; and

3 (2) minimize duplication of reporting requirements
4 and other requirements related to the application for a wastewater
5 discharge permit.

6 SECTION 31. Section [134.016](#)(a), Agriculture Code, is
7 amended to read as follows:

8 (a) The operator [~~holder~~] of a commercial [~~an~~] aquaculture
9 facility [~~license~~] shall maintain a record of sales of cultured
10 species for at least [~~a period of time of not less than~~] one year.
11 The record is open for inspection by designated employees of the
12 Parks and Wildlife Department [~~and the department~~] during normal
13 business hours.

14 SECTION 32. Section [134.017](#), Agriculture Code, is amended
15 to read as follows:

16 Sec. 134.017. CULTURE AND SALE OF CULTURED SPECIES.
17 Cultured species of any kind, size, or number may be raised,
18 possessed, transported, and sold anywhere, at any time, to any
19 person, for any purpose by the operator [~~holder~~] of a commercial
20 [~~an~~] aquaculture facility [~~license~~] unless prohibited by the Parks
21 and Wildlife Code or regulation.

22 SECTION 33. Section [134.018](#), Agriculture Code, is amended
23 to read as follows:

24 Sec. 134.018. [~~LICENSE NOT REQUIRED FOR~~] SALE OF CERTAIN
25 FISH. (a) This section applies to [~~An aquaculture license is not~~
26 ~~required for~~] the sale of fish:

27 (1) that are not on the Parks and Wildlife Department's

1 list of exotic fish, shellfish, and aquatic plants;

2 (2) collected from a private facility on private land
3 by a person who operates a commercial [~~holds an~~] aquaculture
4 facility [~~license~~];

5 (3) by the owner of the private facility from which the
6 fish were collected;

7 (4) to manage the fish population in the private
8 facility; and

9 (5) to a person who operates a commercial [~~holds an~~]
10 aquaculture facility [~~license~~].

11 (b) Not later than the 30th day after the sale of fish under
12 this section, a [~~the~~] buyer who operates a commercial [~~holds an~~]
13 aquaculture facility [~~license~~] shall submit a copy of the invoice
14 for the sale to the Parks and Wildlife Department. The seller and
15 the buyer shall maintain a record of the sale for not less than one
16 year. The record must contain at least:

17 (1) the invoice number;

18 (2) the date of the sale;

19 (3) the name and address of the seller;

20 (4) the physical location of the facility from which
21 the fish were collected;

22 (5) the buyer's name and [~~the~~] address [~~of~~] and the name and
23 address of the buyer's commercial aquaculture facility [~~license~~
24 ~~number of the buyer~~]; and

25 (6) the number of fish sold.

26 (c) Sections 66.020 and 66.111, Parks and Wildlife Code, do
27 not apply to a sale under this section.

1 SECTION 34. Section 134.023(b), Agriculture Code, is
2 amended to read as follows:

3 (b) A person who violates Section [~~134.019 or~~] 134.020
4 commits an offense that is a Class B misdemeanor.

5 SECTION 35. Sections 134.031(a), (b), (c), (d), (e), (f),
6 and (g), Agriculture Code, are amended to read as follows:

7 (a) The [~~department, the~~] Texas [~~Natural Resource~~
8 ~~Conservation~~] Commission on Environmental Quality[~~7~~] and the Parks
9 and Wildlife Department shall enter into a memorandum of
10 understanding for the regulation of matters related to aquaculture.

11 (b) The Texas [~~Natural Resource Conservation~~] Commission on
12 Environmental Quality, after receiving an application for a
13 wastewater discharge authorization from an aquaculture facility,
14 shall provide a copy of the application to the [~~department and the~~]
15 Parks and Wildlife Department.

16 (c) The [~~department, the~~] Texas [~~Natural Resource~~
17 ~~Conservation~~] Commission on Environmental Quality[~~7~~] and the Parks
18 and Wildlife Department shall [~~each appoint one member of a~~
19 ~~three-member application review committee to review the wastewater~~
20 ~~discharge authorization application to~~] ensure that the proposed
21 discharge will not adversely affect a bay, an estuary, or other
22 waters in the state.

23 (d) The Parks and Wildlife Department, in consultation with
24 the Texas [~~Natural Resource Conservation~~] Commission on
25 Environmental Quality, may establish general guidelines that
26 identify sensitive aquatic habitat within the coastal zone. The
27 general guidelines must include factors such as the presence of sea

1 grass beds, depth of receiving waters, and amount of tidal
2 exchange.

3 (e) If the Parks and Wildlife Department establishes the
4 guidelines described in Subsection (d), the Parks and Wildlife
5 Department must provide the guidelines to the Texas [~~Natural~~
6 ~~Resource Conservation~~] Commission on Environmental Quality [~~and~~
7 ~~the department~~].

8 (f) If the Parks and Wildlife Department has established the
9 guidelines described in Subsection (d), the Texas [~~Natural Resource~~
10 ~~Conservation~~] Commission on Environmental Quality must consider
11 the guidelines when reviewing wastewater discharge authorization
12 applications for new aquaculture facilities located within the
13 coastal zone, or expansion of existing facilities located within
14 the coastal zone if the expansion will increase the amount of
15 discharge, or change the nature of the discharge, above levels
16 allowed by the wastewater discharge permit.

17 (g) In developing the guidelines under Subsection (d)
18 applicable to aquaculture facilities engaged in the production of
19 shrimp in the coastal zone, the Parks and Wildlife Department, in
20 consultation with the Texas [~~Natural Resource Conservation~~]
21 Commission on Environmental Quality, shall consider the best
22 management practices that the facilities developed under the
23 direction of the Texas [~~Natural Resource Conservation~~] Commission
24 on Environmental Quality.

25 SECTION 36. Section 110.002(b), Alcoholic Beverage Code, is
26 amended to read as follows:

27 (b) The commissioner [~~, in consultation with the advisory~~

1 ~~committee established under Section 50B.002, Agriculture Code,~~
2 shall adopt rules as necessary to implement the program.

3 SECTION 37. Section 153.046, Natural Resources Code, is
4 amended to read as follows:

5 Sec. 153.046. DUTIES. The board by rule shall establish:

6 (1) ~~establish~~ standards for prescribed burning;

7 (2) ~~develop~~ a comprehensive training curriculum for
8 certified and insured prescribed burn managers;

9 (3) ~~establish~~ standards for certification,
10 recertification, and training for certified and insured prescribed
11 burn managers;

12 (4) ~~establish~~ minimum education and professional
13 requirements for instructors for the approved curriculum; and

14 (5) ~~establish~~ insurance requirements for certified
15 and insured prescribed burn managers in amounts not less than those
16 required by Section 153.082.

17 SECTION 38. Section 153.048, Natural Resources Code, is
18 amended by adding Subsection (f) to read as follows:

19 (f) The board may waive any prerequisite to obtaining
20 certification for an applicant after reviewing the applicant's
21 credentials and determining that the applicant holds a valid
22 certification from another state that has certification
23 requirements substantially equivalent to those of this state.

24 SECTION 39. Subchapter B, Chapter 153, Natural Resources
25 Code, is amended by adding Section 153.049 to read as follows:

26 Sec. 153.049. CRIMINAL HISTORY EVALUATION. The board shall
27 perform the duties of a licensing authority under Chapter 53,

1 Occupations Code, for each certification issued by the board under
2 this chapter or other law, including issuing guidelines under
3 Section 53.025, Occupations Code.

4 SECTION 40. Section 153.101, Natural Resources Code, is
5 amended to read as follows:

6 Sec. 153.101. COMPLAINTS. The department shall receive and
7 process complaints concerning certified and insured prescribed
8 burn managers in the manner described by Sections [~~Section~~] 12.026
9 and 12.02601, Agriculture Code, and rules adopted under those
10 sections [~~that section~~].

11 SECTION 41. Section 153.102(b), Natural Resources Code, is
12 amended to read as follows:

13 (b) The board [~~department~~] by rule shall adopt a schedule of
14 the disciplinary sanctions that the department shall [~~may~~] impose
15 under this chapter. In adopting the schedule of sanctions, the
16 board [~~department~~] shall ensure that the severity of the sanction
17 imposed is appropriate to the type of violation or conduct that is
18 the basis for disciplinary action.

19 SECTION 42. Section 43.551, Parks and Wildlife Code, is
20 amended to read as follows:

21 Sec. 43.551. PERMIT FOR THE TAKING OF BROOD STOCK BY
22 COMMERCIAL AQUACULTURE FACILITIES [~~FISH FARMERS~~]. The department
23 may issue a permit to an operator of a commercial aquaculture
24 facility as defined by Section 134.001, Agriculture Code, [~~a~~
25 ~~licensed fish farmer~~] that authorizes the operator [~~fish farmer~~] to
26 take a specified quantity of fish brood stock from specified public
27 water.

1 SECTION 43. Section 43.553(a), Parks and Wildlife Code, is
2 amended to read as follows:

3 (a) A [~~The~~] permit under this subchapter may allow the
4 operator of a commercial aquaculture facility [~~fish farmer~~] to take
5 a specified quantity of fish brood stock reasonably necessary for
6 the operation of the aquaculture facility [~~fish farm~~] but limited
7 to the extent necessary to protect the availability of fish in
8 public water.

9 SECTION 44. Section 43.554, Parks and Wildlife Code, is
10 amended to read as follows:

11 Sec. 43.554. FEES. The commission shall charge the
12 operator of a commercial aquaculture facility [~~a fish farmer~~] a fee
13 equal to the value of the fish authorized to be taken under this
14 subchapter.

15 SECTION 45. Section 47.009(c), Parks and Wildlife Code, is
16 amended to read as follows:

17 (c) An operator of [~~A person who has an aquaculture license~~
18 ~~for~~] a Texas commercial aquaculture facility as defined by [~~under~~]
19 Section 134.001 [~~134.011~~], Agriculture Code, is not required to
20 obtain or possess a wholesale fish dealer's license if the
21 operator's [~~person's~~] business activities with regard to the sale
22 of aquatic products involve aquatic products raised on the
23 operator's commercial [~~person's~~] aquaculture facility only.

24 SECTION 46. Section 47.0091, Parks and Wildlife Code, is
25 amended to read as follows:

26 Sec. 47.0091. PURCHASE OF AQUATIC PRODUCTS BY WHOLESAL
27 FISH DEALERS. No wholesale fish dealer may purchase for resale or

1 receive for sale, barter, exchange, or any other commercial purpose
2 any aquatic product from any person or entity in this state unless
3 the dealer [~~he~~] purchases the product from the operator of a
4 commercial aquaculture facility as defined by Section 134.001,
5 Agriculture Code, or the holder of:

- 6 (1) a general commercial fisherman's license;
- 7 (2) a commercial oyster fisherman's license;
- 8 (3) a commercial oyster boat license;
- 9 (4) a wholesale fish dealer's license;
- 10 (5) [~~a fish farmer's license;~~
- 11 [~~(6)~~] a commercial shrimp boat license;
- 12 (6) [~~(7)~~] a commercial oyster boat captain's license;
- 13 (7) [~~(8)~~] a commercial shrimp boat captain's license;
- 14 (8) [~~(9)~~] a commercial crab fisherman's license;
- 15 (9) [~~(10)~~] a commercial finfish fisherman's license;
- 16 (10) [~~(11)~~] a commercial gulf shrimp unloading
17 license; or
- 18 (11) [~~(12)~~] a cultivated oyster mariculture permit.

19 SECTION 47. Section 47.010(b), Parks and Wildlife Code, is
20 amended to read as follows:

21 (b) A resident who operates a [~~holds a fish farm~~] vehicle
22 used to transport cultured species from a private facility, as
23 those terms are defined by [~~license under~~] Section 134.001
24 [~~134.012~~], Agriculture Code, and sells cultured species from the
25 vehicle is not required to obtain a license for the vehicle under
26 this section if the vehicle is used with regard to the sale or
27 transportation of only aquatic products raised on a [~~licensed~~]

1 Texas commercial aquaculture facility belonging to the operator
2 [~~owner~~] of the vehicle.

3 SECTION 48. Section 47.011(c), Parks and Wildlife Code, is
4 amended to read as follows:

5 (c) An operator of [~~A person with an aquaculture license~~
6 ~~for~~] a Texas commercial aquaculture facility as defined by [~~under~~]
7 Section 134.001 [~~134.011~~], Agriculture Code, is not required to
8 obtain or possess a retail fish dealer's license if the operator's
9 [~~person's~~] business activities with regard to the sale of aquatic
10 products involve aquatic products raised on the operator's
11 commercial [~~person's~~] aquaculture facility only.

12 SECTION 49. Section 47.0111, Parks and Wildlife Code, is
13 amended to read as follows:

14 Sec. 47.0111. PURCHASE OF AQUATIC PRODUCTS BY RETAIL FISH
15 DEALERS. No retail fish dealer may purchase for resale or receive
16 for sale, barter, exchange, or any other commercial purposes any
17 aquatic products from any person or entity in this state unless the
18 dealer [~~he~~] purchases the product from the operator of a commercial
19 aquaculture facility as defined by Section 134.001, Agriculture
20 Code, or the holder of:

- 21 (1) a wholesale fish dealer's license; or
22 (2) a general commercial fisherman's license, a
23 commercial shrimp boat license, a commercial shrimp boat captain's
24 license, a commercial gulf shrimp unloading license, a commercial
25 crab fisherman's license, or a commercial finfish fisherman's
26 license when the retail fish dealer has given written notification
27 to the director or the director's [~~his~~] designee of the dealer's

1 intent to purchase aquatic products from the holder of a general
2 commercial fisherman's license, a commercial shrimp boat license, a
3 commercial shrimp boat captain's license, a commercial crab
4 fisherman's license, or a commercial finfish fisherman's license[+
5 ~~or~~

6 [~~(3) a fish farmer's license~~].

7 SECTION 50. Section 47.012, Parks and Wildlife Code, is
8 amended to read as follows:

9 Sec. 47.012. PURCHASE OF AQUATIC PRODUCTS BY RESTAURANT
10 OWNER, OPERATOR, OR EMPLOYEE. No restaurant owner, operator, or
11 employee may purchase for consumption by the restaurant's patrons
12 on the restaurant's premises any aquatic product from any person or
13 entity in this state unless the person purchases the aquatic
14 product from the operator of a commercial aquaculture facility as
15 defined by Section 134.001, Agriculture Code, or the holder of:

- 16 (1) a wholesale fish dealer's license;
- 17 (2) a general commercial fisherman's license;
- 18 (3) [~~a fish farmer's license,~~
- 19 [~~(4)~~] a commercial shrimp boat license;
- 20 (4) [~~(5)~~] a commercial shrimp boat captain's license;
- 21 (5) [~~(6)~~] a commercial crab fisherman's license;
- 22 (6) [~~(7)~~] a commercial finfish fisherman's license; or
- 23 (7) [~~(8)~~] a commercial gulf shrimp unloading license.

24 SECTION 51. Section 47.013(c), Parks and Wildlife Code, is
25 amended to read as follows:

26 (c) A resident who operates [~~owns~~] a vehicle used to
27 transport cultured species from a private facility, as those terms

1 are defined by [~~licensed under~~] Section 134.001 [~~134.012~~],
2 Agriculture Code, and sells cultured species from the vehicle is
3 not required to obtain a license for the vehicle under this section
4 when the vehicle is used with regard to the sale or transportation
5 of only aquatic products raised on a [~~licensed~~] Texas commercial
6 aquaculture facility belonging to the operator [~~owner~~] of the
7 vehicle.

8 SECTION 52. Section 47.014(c), Parks and Wildlife Code, is
9 amended to read as follows:

10 (c) An operator of [~~A person who has an aquaculture license~~
11 ~~for~~] a Texas commercial aquaculture facility as defined by [~~under~~]
12 Section 134.001 [~~134.011~~], Agriculture Code, is not required to
13 obtain or possess a bait dealer's license if the operator's
14 [~~person's~~] business activities with regard to the sale of aquatic
15 products for bait involve only aquatic products raised on the
16 operator's commercial [~~person's~~] aquaculture facility.

17 SECTION 53. Sections 66.007(d) and (f), Parks and Wildlife
18 Code, are amended to read as follows:

19 (d) An operator of a commercial aquaculture facility as
20 defined by Section 134.001, Agriculture Code, [~~A fish farmer~~] may
21 import, possess, or sell harmful or potentially harmful exotic fish
22 species as provided by Section 134.020, Agriculture Code.

23 (f) An operator of a commercial aquaculture facility as
24 defined by Section 134.001, Agriculture Code, [~~A fish farmer~~] may
25 not import, possess, propagate, or transport exotic shellfish
26 unless the operator [~~fish farmer~~] furnishes evidence required by
27 the department showing that the shellfish are free of disease.

1 SECTION 54. Section 66.020(b), Parks and Wildlife Code, is
2 amended to read as follows:

3 (b) This section applies to the possession, transportation,
4 sale, or purchase of any fish described by Subsection (a) [~~of this~~
5 ~~section~~] without regard to where the fish was taken, caught, or
6 raised, but does not apply to:

7 (1) the transportation or possession of fish taken,
8 caught, or raised outside this state and transported by common
9 carrier without being unloaded from outside this state to a point of
10 delivery outside this state;

11 (2) fish raised by being continuously fed a prepared
12 feed and sold by an operator of a Texas commercial aquaculture
13 facility, [~~licensed Texas fish farmer if marked and identified~~] as
14 defined by Section 134.001 [~~required under Chapter 134~~],
15 Agriculture Code; or

16 (3) the lawful importation by the holder of a Texas
17 finfish import license into this state from another state or
18 foreign country of farm-raised red drum, bass of the genus
19 Micropterus, crappie, flathead catfish, striped bass, white bass,
20 or a hybrid of any of those fish that have been continuously fed a
21 prepared feed as a primary food source or lawfully taken, caught, or
22 raised blue marlin, jewfish, longbill spearfish, muskellunge,
23 northern pike, sailfish, sauger, snook, spotted sea trout, tarpon,
24 walleye, white marlin, yellow bass, or a hybrid of any of those
25 fish, if the fish are transported or sold when not alive and are
26 tagged, invoiced, packaged, and labeled under regulations of the
27 commission and if the license holder complies with any requirements

1 the commission may establish by proclamation that the fish enter
2 the stream of commerce for sale in this state in a condition
3 allowing ready identification of the species, including a
4 requirement that the fish come into the state with the head and tail
5 intact and tagged and a requirement that an invoice accompany all
6 imported fish regulated by this section through each sales
7 transaction, including transactions at the place of the final sale
8 to the consumer.

9 SECTION 55. Section 66.111(b), Parks and Wildlife Code, is
10 amended to read as follows:

11 (b) Subsection (a) [~~of this section~~] does not apply to:

12 (1) a fish, other than a bass of the genus *Micropterus*,
13 reared in private water by an operator of a commercial aquaculture
14 facility, as defined by Section 134.001, Agriculture Code [~~under a~~
15 ~~fish farmer's license~~];

16 (2) a fish possessed legally outside this state and
17 transported into this state;

18 (3) bass of the genus *Micropterus* reared in private
19 water by an operator of a commercial aquaculture facility, as
20 defined by Section 134.001, Agriculture Code, [~~under a fish~~
21 ~~farmer's license~~] and marketed for the purpose of stocking the
22 water of this state;

23 (4) nongame fish regulated under Chapter 67 of this
24 code; or

25 (5) channel catfish of more than 14 inches in length or
26 blue catfish of more than 14 inches in length taken from the public
27 fresh water of Angelina, Bowie, Camp, Cass, Chambers, Franklin,

1 Freestone, Gregg, Hardin, Harris, Harrison, Jasper, Jefferson,
2 Lamar, Leon, Liberty, Madison, Marion, Montgomery, Morris,
3 Nacogdoches, Navarro, Newton, Orange, Panola, Polk, Red River,
4 Sabine, San Augustine, San Jacinto, Shelby, Titus, Trinity, Tyler,
5 Upshur, or Walker County, the public fresh water of the Neches or
6 Trinity River in Houston County, the public fresh water of the
7 Colorado River in Bastrop, Colorado, Fayette, Matagorda, or Wharton
8 County, or the public fresh water of Falcon Lake in Starr or Zapata
9 County.

10 SECTION 56. The following provisions are repealed:

- 11 (1) Section 12.0178, Agriculture Code;
- 12 (2) Sections 12.026(c) and (d), Agriculture Code;
- 13 (3) Sections 15.006, 45.009, and 46.010, Agriculture
14 Code;
- 15 (4) Section 47.051(1), Agriculture Code;
- 16 (5) Sections 47.053, 49.006, and 50B.002, Agriculture
17 Code;
- 18 (6) Sections 74.003(d), 74.0031(a), 74.120(d), and
19 102.167(e), Agriculture Code;
- 20 (7) Section 134.003, Agriculture Code;
- 21 (8) Section 134.005(b), Agriculture Code;
- 22 (9) Sections 134.006, 134.011, 134.012, 134.014,
23 134.015, and 134.019, Agriculture Code;
- 24 (10) Chapter 42, Agriculture Code;
- 25 (11) Subchapter P, Chapter 487, Government Code;
- 26 (12) Subchapter R, Chapter 487, Government Code; and
- 27 (13) Chapter 116, Health and Safety Code.

1 SECTION 57. (a) On the effective date of this Act, a
2 license issued under former Section 134.011 or 134.012, Agriculture
3 Code, expires.

4 (b) As soon as practicable after the effective date of this
5 Act, the Department of Agriculture shall repeal all rules relating
6 to a license issued under former Section 134.011 or 134.012,
7 Agriculture Code.

8 (c) The repeal by this Act of Sections 134.011 and 134.012,
9 Agriculture Code, does not affect the validity of a proceeding
10 pending before a court or other governmental entity on the
11 effective date of this Act.

12 SECTION 58. Not later than December 31, 2022, the Texas
13 Department of Agriculture, in consultation with the standing Sunset
14 Advisory Commission, shall study and report its findings on the
15 purpose and objectives of the GO TEXAN program, and prepare a report
16 with any findings and recommendations to improve efficiency,
17 fairness, accountability, effectiveness, stakeholder engagement,
18 and public information as outlined by the Sunset Staff Report with
19 Commission Decisions, as reported to the 87th Legislature. This
20 report shall make recommendations to the program's processes,
21 eliminate inefficiencies, including any necessary statutory or
22 legislative changes specific to the oversight and regulation of the
23 GO TEXAN program. In conducting the study, the department, in
24 partnership with the Sunset Commission, may consult with any
25 interested organizations, associations, and stakeholders. The
26 department shall submit the report to each standing Sunset
27 Commission member, including the Sunset Advisory Commission,

1 Speaker of the House, Lieutenant Governor, and the Office of the
2 Governor.

3 SECTION 59. Not later than January 1, 2022, the
4 commissioner of agriculture shall appoint the members of the citrus
5 budwood advisory council under Section 19.005, Agriculture Code, as
6 reenacted and amended by this Act. The advisory council is
7 re-created on the date the commissioner of agriculture makes the
8 appointments required by this section, notwithstanding any
9 previous abolishment under Section 2110.008, Government Code.

10 SECTION 60. The changes in law made by this Act apply only
11 to an offense committed on or after the effective date of this Act.
12 An offense committed before the effective date of this Act is
13 governed by the law in effect when the offense was committed, and
14 the former law is continued in effect for that purpose. For
15 purposes of this section, an offense was committed before the
16 effective date of this Act if any element of the offense occurred
17 before that date.

18 SECTION 61. This Act takes effect September 1, 2021.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 703 passed the Senate on April 19, 2021, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendments on May 29, 2021, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 703 passed the House, with amendments, on May 23, 2021, by the following vote: Yeas 144, Nays 1, one present not voting.

Chief Clerk of the House

Approved:

Date

Governor

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendments to §7.103.

Amendments to §7.103 are adopted *with changes* to the text as published in the December 3, 2021, issue of the *Texas Register* (46 TexReg 8197), and, therefore, the rule will be republished. Non-substantive changes to the proposed text are made to conform to *Texas Register* formatting requirements.

Background and Summary of the Factual Basis for the Adopted Rule

This rulemaking adoption will implement portions of Senate Bill (SB) 703, 87th Legislature, Regular Session, which removed the Texas Department of Agriculture's (TDA) roles and responsibilities related to regulation of the aquaculture industry. Previously, the TCEQ, the TDA, and the Texas Parks and Wildlife Department (TPWD) coordinated on regulating the aquaculture industry. This multi-agency coordination is codified in a Memorandum of Understanding (MOU) in 30 Texas Administrative Code (TAC) §7.103. This rulemaking will revise the MOU to remove the TDA from this multi-agency coordination.

Additionally, this rulemaking adoption will make additional updates to the MOU, based on TCEQ rule changes related to the aquaculture industry since the MOU was last adopted. These include repeal of the permit-by-rule and exemptions in Chapter 321, Subchapter O, and the issuance of the Aquaculture General Permit Number

TXG130000.

Section Discussion

The commission adopts revisions throughout the rule to remove all references to the TDA, in accordance with SB 703, which removed the TDA’s roles and responsibilities related to regulation of the aquaculture industry. Additionally, the commission adopts revisions throughout the rule to change the commission’s name from the Texas Natural Resource Conservation Commission to the TCEQ. The commission also adopts revisions throughout the rule to improve readability and the overall structure of the rule.

Lastly, the commission adopts revisions throughout the rule to remove references to registrations and exemptions issued by the TCEQ to the aquaculture industry because the TCEQ repealed the regulations in Chapter 321, Subchapter O, that provided for these types of authorizations. These authorization types have been replaced by the Aquaculture General Permit Number TXG130000.

The commission adopts minor clarifications and revisions to subsection (a) as noted above regarding revisions throughout the rule.

The commission adopts revisions to subsection (b) to update the definition of “Aquaculture” consistent with the definition in the Aquaculture General Permit

Number TXG130000 and to remove the definition of “Memorandum of Understanding” because this definition is not included in other MOUs.

The commission adopts revisions to subsection (c) to add references to additional applicable state statutes that establish TCEQ and TPWD authorities.

The commission adopts revisions to subsection (d) to establish coordination activities regarding renewal and amendment of the Aquaculture General Permit Number TXG130000. The adopted revisions will also revise procedures related to TPWD requesting additional information from applicants rather than from the TCEQ during their review of Notices of Intent (NOI) and individual permit applications. Additional adopted revisions to this subsection will revise the timing of when, in the permitting process, the TCEQ must send applications to the TPWD, and remove the TCEQ’s requirement to develop guidelines for a site assessment environmental report for new commercial shrimp facilities located within the coastal zone. The report guidelines have been developed and the TCEQ’s individual permit application form requires new commercial shrimp facilities located within the coastal zone to develop and submit a site assessment report.

The commission adopts removal of subsection (e) relating to the executive review committee and adopts new subsection (e) relating to other coordination activities that were previously included as part of subsection (d). The executive review committee is

being removed because SB 703 removed the requirement for an executive review committee. The TCEQ and TPWD would continue coordination effort via the interagency workgroup as described in new subsection (e)(3).

The commission adopts amendments to subsection (f) to revise the effective date of the MOU to coordinate with the effective date of the rule and to remove the requirement for the agency governing bodies to sign the MOU. The governing bodies will each adopt the rule to signify their agreement to the MOU requirements.

Final Regulatory Impact Analysis

The commission reviewed the rulemaking adoption in light of the regulatory analysis requirements of Texas Government Code (TGC), §2001.0225, and determined that the rulemaking action is not subject to §2001.0225 because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is defined as a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The rulemaking adoption does not meet the definition of "Major environmental rule" because it is not specifically intended to protect the environment or reduce risks to

human health from environmental exposure. Rather, this rulemaking adoption is intended to implement an interagency review procedure for applications requesting authorization to discharge wastewater from aquaculture facilities and coordinate enforcement actions in response to discharges from aquaculture facilities. The rulemaking adoption will also implement portions of SB 703, which removed the TDA's roles and responsibilities related to regulation of the aquaculture industry. This rulemaking adoption should not adversely affect, in a material way, the economy, a section of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Therefore, the commission finds that this rulemaking adoption is not a "Major environmental rule."

Furthermore, the rulemaking adoption does not meet any of the four applicability requirements listed in TGC, §2001.0225(a). TGC, §2001.0225 only applies to a state agency's adoption of a major environmental rule that: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopts a rule solely under the general powers of the agency instead of under a specific state law.

Specifically, the rulemaking adoption does not exceed a standard set by federal law,

rather it addresses the process for the TCEQ and TPWD to coordinate the regulation of aquaculture facilities within the federal law and authority delegated to the state.

Likewise, the rulemaking adoption does not exceed an express requirement of state law nor exceed a requirement of a delegation agreement because state law expressly authorizes it. Finally, the rulemaking adoption was not developed solely under the general powers of the agency because it is also authorized under TWC, §5.104, which authorizes TCEQ to enter into an MOU with any other state agency, and Texas Agriculture Code, §134.031, which directs the TCEQ and TPWD to enter into an MOU.

Under TGC, §2001.0225, only a "Major environmental rule" requires a regulatory impact analysis. Because the rulemaking adoption does not constitute a "Major environmental rule," a regulatory impact analysis is not required.

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 rulemaking adoption and performed analysis of whether the rulemaking adoption constitutes a taking under TGC, §2007.043. The specific purpose of the rulemaking adoption is to improve coordination between the TCEQ and TPWD and facilitate an exchange of information to assist the TCEQ in

making environmentally sound decisions. The rulemaking adoption will substantially advance this stated purpose by updating the current MOU between the TCEQ and TPWD. The rulemaking adoption provides a formal mechanism by which the TPWD may review and provide feedback on aquaculture issues that are subject to regulation by the TCEQ and have the potential to affect natural resources and the regulation of aquaculture within the jurisdiction of the TPWD.

Promulgation and enforcement of the rulemaking adoption will be neither a statutory nor a constitutional taking of private real property. Specifically, the subject regulations will not affect a landowner's rights in private real property because this rulemaking will not burden (constitutionally) nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. Thus, this rule will not impose burdens on private real property because the rulemaking adoption neither relates to, nor has any impact on the use or enjoyment of private real property, and there will be no reduction in value of the property as a result of this rulemaking.

Consistency with the Coastal Management Program

The commission reviewed the rulemaking adoption and found that 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 rulemaking adoption 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 regarding the CMP.

Public Comment

The commission held a public hearing on January 4, 2022. The comment period closed on January 5, 2022. No public comments were received.

§7.103

Statutory Authority

The rule is adopted under Texas Water Code (TWC), §5.102, concerning general powers of the commission; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its power and duties; TWC, §5.104, which authorizes the Texas Commission on Environmental Quality (TCEQ) to enter into a Memorandum of Understanding (MOU) with any other state agency; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; TWC, §26.011, which establishes the commission's jurisdiction over all aspects of establishing and controlling the quality of waters of the state with all power necessary or convenient to carry out the responsibilities of that jurisdiction; and Texas Agriculture Code, §134.031, which requires the TCEQ and the Texas Parks and Wildlife Department to enter into an MOU for the regulation of matters relating to aquaculture.

The adopted rule implements portions of Senate Bill 703, 87th Legislature, Regular Session.

§7.103. Memorandum of Understanding (MOU) between the Texas Commission on Environmental Quality (TCEQ) and [Texas Natural Resource Conservation Commission (commission),] the Texas Parks and Wildlife Department (TPWD) Regarding the Regulation of Aquaculture [, and the Texas Department of

Agriculture (TDA)].

(a) Need for agreement.

(1) The Texas Commission on Environmental Quality (TCEQ) and Texas Parks and Wildlife Department (TPWD) [commission, TPWD, and TDA] seek to ensure that regulation of aquaculture is conducted in a manner that is both collaborative and responsible.

(2) The TCEQ and TPWD [commission, TPWD, and TDA] are concerned about issues relating to the raising of non-native aquatic species and their potential for [the attendant concern about] escape into natural ecosystems, including the introduction of disease into natural ecosystems.

(3) The TCEQ and TPWD [commission, TPWD, and TDA] are concerned about the quality of wastewater discharges from aquaculture facilities and their effects on receiving waters in reservoirs, streams, bays, and estuaries.

(4) The TCEQ and TPWD [commission, TPWD, and TDA] seek to implement [establish] an interagency review procedure for applications requesting authorization to discharge wastewater from aquaculture facilities.

(5) The TCEQ and TPWD [commission, TPWD, and TDA] seek to implement [institute] an effective system by which coordination and collaboration can be achieved to expedite enforcement actions in response to discharges from aquaculture facilities that are found to contain contagious disease that may impact state waters.

(6) Texas Water Code, §5.104, authorizes the TCEQ [commission] to enter into an MOU with any other state agency.

(7) Texas Agriculture Code, §134.031, directs the TCEQ and TPWD [commission, TPWD, and TDA] to enter into an MOU for the regulation of matters relating to aquaculture.

(8) It is the intention of this MOU to provide a formal mechanism by which the TPWD [and TDA] may review and provide feedback on aquaculture issues that are subject to regulation by the TCEQ [commission] and that have the potential to affect natural resources and the regulation of aquaculture within the jurisdiction of the TPWD [or TDA]. This exchange of information would assist the TCEQ [commission] in making environmentally sound decisions and would improve coordination between the TCEQ and TPWD [commission, TPWD, and TDA].

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings.

(1) Aquaculture--The business of producing or rearing aquatic species (fish, crustaceans, mollusks, or any [and] other organisms, excluding aquatic plants and algae, living in either fresh or marine waters) utilizing ponds, lakes, cages, fabricated tanks and raceways, or other similar structures.

[(2) Memorandum of Understanding (MOU)--A formal document that clarifies and provides for the respective duties, responsibilities, or functions of the state agencies who are signatories on any matter or matters under their jurisdiction that are not expressly assigned to either one of them.]

(2) [(3)] Application--A request submitted by an aquaculture facility to the TCEQ [commission] for authorization to discharge under an individual permit or [registration;] a Notice of Intent (NOI) to seek authorization under a general permit [; or a request for an exemption].

(c) Responsibilities.

(1) [The commission.] The responsibilities of the TCEQ [commission] relate primarily to its role as the natural resource agency with primary responsibility

over conservation of natural resources and the protection of the environment, under Texas Water Code, §5.012.

(A) The TCEQ [commission] has general jurisdiction over the state's water quality program including issuance of wastewater [waste] discharge permits, water quality planning, and enforcement of water quality rules, standards, orders, and permits, under Texas Water Code, §5.013.

(B) The TCEQ [commission] seeks to maintain the quality of water in the state consistent with public health and enjoyment, the propagation and protection of terrestrial and aquatic life, the operation of existing industries, and the economic development of the state, and to require the use of all reasonable methods to implement this policy.

(C) The TCEQ [commission] is responsible for review of wastewater [NOIs and requests for exemption, and review of] applications and [subsequent] issuance of wastewater [waste] discharge permits [, temporary orders, emergency orders, and registrations].

(2) [TPWD.] The responsibilities of the TPWD relate primarily to its functions as a natural resource agency, including its resource protection functions, as designated by the Texas Parks and Wildlife Code, §12.001 and §12.0011.

(A) The TPWD is the state agency with primary responsibility for protecting the state's fish and wildlife resources.

(B) The TPWD provides recommendations that will protect fish and wildlife resources to local, state, and federal agencies that approve, permit, license, or construct developmental projects.

(C) The TPWD provides information on fish and wildlife resources to any local, state, and federal agencies or private organizations that make decisions affecting those resources.

(D) The TPWD regulates the taking, possession, and conservation of all kinds of marine life and other aquatic life.

(E) The TPWD regulates the introduction of fish, shellfish, and aquatic plants into public water, under Texas Parks and Wildlife Code, §66.015(b).

(F) The TPWD regulates the importation, possession, and placing into state water of harmful or potentially harmful exotic species of fish, shellfish, or aquatic plants, under Texas Parks and Wildlife Code, §66.007(a), and is responsible for review of applications and subsequent issuance of permits relating to these activities.

[(G) TPWD is responsible for review of applications and subsequent issuance of permits relating to the importation, possession, and placing into state water of harmful or potentially harmful exotic species of fish, shellfish, or aquatic plants, under Texas Parks and Wildlife Code, §66.007(a).]

[(3) TDA. The responsibilities of TDA relate primarily to its functions as a regulatory agency that oversees the licensing and regulation of aquaculture operations under Texas Agriculture Code, Chapter 134.]

[(A) TDA is responsible for establishing recordkeeping requirements for commercial aquaculture facilities.]

[(B) TDA is responsible for the review of applications and subsequent issuance of aquaculture licenses under Texas Agriculture Code, Chapter 134, to aquaculture facilities that produce and sell cultured species.]

[(C) TDA is responsible for the review of applications and subsequent issuance of aquaculture licenses under Texas Agriculture Code, Chapter 134, for fish farm vehicles selling cultured species from the vehicle.]

(d) Coordination procedures for wastewater discharge applications and permits.

[Provisions. This MOU is to facilitate the coordination and collaboration between the commission, TPWD, and TDA with regard to aquaculture facilities.]

(1) Coordination procedures for the Aquaculture General Permit Number TXG130000 and associated NOIs [, applications for registrations, and requests for exemptions].

(A) During renewal or amendment of the Aquaculture General Permit, the TCEQ will provide the initial draft permit to the TPWD for review and comment prior to submitting the draft to EPA for review and approval. [The executive director will provide copies of all NOIs, registration applications, and requests for exemption to TPWD and TDA within 14 days of the stamped date of receipt.]

(i) Within 45 days of the date of receipt of the initial draft permit, the TPWD will complete its initial assessment, and by letter shall provide the TCEQ with formal written recommendations designed to protect fish and wildlife resources or indicate that it has no comments. [Within 45 days of the date of receipt of the NOI, registration application, or request for exemption, by TPWD and TDA, each will complete its initial assessment, and by letter shall:]

[I] provide the executive director with formal written recommendations designed to protect fish and wildlife resources; or]

[II] indicate that it has no comments; or]

[III] request additional information from the commission.]

(ii) If the TCEO does not receive formal written comments from the TPWD within 45 days of the date of receipt of the initial draft permit, the TCEO will conclude that there are no comments and continue processing of the general permit renewal or amendment. [If the commission does not receive formal written comments from TPWD or TDA within 45 days of the date of receipt of the NOI, registration application, or request for exemption, by TPWD and TDA, the executive director will conclude that there are no comments and continue normal processing of the application.]

(iii) Formal written comments received from the TPWD will be considered by the TCEO in developing the final draft permit. The TPWD's comments will be evaluated in conjunction with all other applicable factors and will be incorporated by the TCEO whenever it is consistent with the TCEO's responsibilities. In accordance with the responsibilities of the TCEO as described in subsection (c)(1) of

this section, the TCEQ reserves the right to determine the requirements of the final draft permit. Concurrent with submission of the final draft permit to EPA, the TCEQ will provide a copy of the final draft permit to the TPWD.

(B) The TCEQ will provide copies of all NOIs to the TPWD within 14 days of the date of receipt. [Upon receipt of a request from TPWD or TDA for additional information, the executive director will immediately provide such information if it is contained in the application materials. If the additional information is not included in the application materials, and if the information is necessary for TPWD or TDA to make its evaluation, the TPWD or TDA will request such additional information from the applicant, notify the executive director of this request, and ask the applicant to send a copy of its reply to the commission. If the applicant does not provide the additional information to the TPWD or TDA within 30 days of a request, the TPWD or TDA may request that the executive director suspend processing of the application. If the executive director determines that this additional information is essential to complete the technical review, the executive director will determine whether it is appropriate to either suspend processing or deem the application incomplete and return it to the applicant.]

(i) Within 45 days of the date of receipt of the NOI by the TPWD, the TPWD will complete its initial assessment, and by letter shall provide the TCEQ with formal written recommendations designed to protect fish and wildlife

resources; indicate that it has no comments; or notify the TCEQ that it has requested additional information from the applicant. If TPWD requires additional information to make its evaluation, then the TPWD may request such additional information from the applicant within 45 days of the date of receipt of the NOI.

(ii) Except as provided by paragraph (3)(B) of this subsection, if the TCEQ does not receive a response from the TPWD within 45 days of TPWD receipt of the NOI, the TCEQ will conclude that there are no comments and continue processing of the application.

(iii) Formal written comments received from the TPWD will be considered by the TCEQ in determining whether to grant authorization under the general permit or require the applicant to seek authorization under an individual permit. The TPWD's comments will be evaluated in conjunction with all other applicable factors consistent with the TCEQ's responsibilities. In accordance with the responsibilities of the TCEQ as described in subsection **paragraph** (c)(1) of this section, the TCEQ reserves the right to determine the final disposition of the NOI.

[(C) Upon receipt of additional information from the executive director or the applicant, the TPWD and TDA will each have 30 days to complete its review and either make final recommendations or indicate by letter that it has no comments. If formal written comments or additional information is not received from

the TPWD or TDA within 30 days, the executive director will conclude that there are no comments and will continue normal processing of the application.]

(2) Coordination procedures for individual permit applications.

(A) The TCEQ [executive director] will provide [notification] to the TPWD a copy [and TDA] of each individual permit application file received which requests [individual permit] authorization to [for the] discharge [or disposal of] wastewater from aquaculture facilities within 14 days of the TCEQ administrative review completion. The application file [Notification shall be transmitted within 14 days of a request received from either TPWD or TDA, or after the permit application has been assigned to a permit writer. Notification] shall include a copy of the application and any comments, memoranda, letters, or other information incorporated in the application file following date of application receipt so that the TPWD [and TDA] may complete an initial assessment of the proposed operation.

[i) Within 45 days of the date of receipt of notification by TPWD and TDA, each will complete its initial assessment, and by letter shall:]

[(I) provide the executive director with formal written recommendations designed to protect fish and wildlife resources; or]

[(II) indicate that it has no comments; or]

[(III) request additional information from the
commission.]

[(ii) If the commission does not receive formal written comments from TPWD or TDA within 45 days of the date of receipt of the notification by TPWD and TDA, the executive director will conclude that there are no comments and continue normal processing of the application.]

(B) Within 45 days of the date of receipt of the permit application file, the TPWD will complete its initial assessment, and by letter shall provide the TCEQ with formal written recommendations designed to protect fish and wildlife resources; indicate that it has no comments; or notify the TCEQ that it has requested additional information from the applicant. If TPWD requires additional information to make its evaluation, then the TPWD may request such additional information from the applicant within 45 days of the date of receipt of the permit application file. [Upon receipt of a request from TPWD or TDA for additional information, the executive director will immediately provide such information if it is contained in the application materials. If additional information is not included in the application materials, and if the information is necessary for TPWD or TDA to make its evaluation, the TPWD or TDA will request such additional information from the applicant, notify the executive

director of this request, and ask the applicant to send a copy of its reply to commission. If the applicant does not provide the additional information to the TPWD or TDA within 30 days of a request, the TPWD or TDA may request that the executive director suspend processing of the application. If the executive director determines that this additional information is essential to complete the technical review, the executive director will determine whether it is appropriate to either suspend processing or deem the application incomplete and return it to the applicant.]

(C) Except as provided by paragraph (3)(B) of this subsection of this section, if the TCEQ does not receive a response from the TPWD within 45 days of the TPWD receipt of the permit application file, the TCEQ will conclude that there are no comments and continue processing of the application. [Upon receipt of additional information from the executive director or applicant, the TPWD and TDA will each have 30 days to complete its review and either make final recommendations or indicate that it has no comments. If formal written comments are not received from the TPWD or TDA within 30 days, the executive director will conclude that there are no comments and continue normal processing of the application.]

(D) Formal written comments received from the TPWD will be considered by the TCEQ in developing the final draft permit. The TPWD's comments will be evaluated in conjunction with all other applicable factors and will be incorporated by the TCEQ whenever it is consistent with the TCEQ's responsibilities. In

accordance with the responsibilities of the TCEQ as described in subsection **paragraph**
(c)(1) of this section, the TCEQ reserves the right to determine the requirements of the
final draft permit. Upon making a preliminary recommendation regarding an
application, the TCEQ will provide a response to the TPWD that contains a copy of the
final draft permit and documentation providing an explanation on why any of the
TPWD's comments were not incorporated. [In coordination with the TPWD and TDA,
the commission shall, within 120 days of the date of adoption of this MOU, establish
guidelines for a site assessment environmental report for new commercial shrimp
facilities located within the coastal zone. This report shall describe the existing
environmental conditions at the proposed site including aquatic habitat and the
conditions of water in the state into which a discharge is proposed. The report must
provide an assessment of any potential impacts of wastewater discharges on sensitive
aquatic habitats in the area of the proposed site, and significant impacts related to the
construction or operation of the facility, and any mitigation actions proposed by the
applicant.]

(3) Coordination procedures applicable to all applications.

(A) The scope of review by the TPWD may include, but is not
limited to: consideration of especially sensitive receiving water conditions (aquatic
habitat); impacts of the discharge on substrate (scouring, sedimentation) and water
transparency; alteration of receiving water flow characteristics; existing or attainable

biological and recreational uses; discharge rate and volume; and the likelihood of disease transmission. Comments may be addressed directly to the applicant by the TPWD.

(B) If the TPWD requests additional information from the applicant, the TPWD will request that the applicant provide a copy of the information to the TCEQ. If the applicant does not provide the additional information to the TPWD within 30 days of a request, the TCEQ will determine whether it is appropriate to either suspend processing the application or return it to the applicant. Upon receipt of additional information from the applicant, the TPWD will have 30 days to complete its review and either make final recommendations to the TCEQ or indicate that it has no comments. If formal written comments are not received from the TPWD within 30 days of receipt of the additional information, the TCEQ will conclude that there are no comments and continue processing of the application. [The scope of review by TDA may include, but is not limited to, whether or not an application for the discharge or disposal of wastewater from aquaculture facilities should be approved.]

[(C) Formal written comments received from TPWD and TDA will be considered by the executive director in making decisions on applications requesting authorization for the discharge or disposal of wastewater from aquaculture facilities. TPWD's and TDA's comments will be evaluated in conjunction with all other applicable factors and will be incorporated by the executive director whenever it is consistent

with the commission's responsibilities. In accordance with the responsibilities of the commission as described in this document, the executive director reserves the right to determine the final disposition of applications. Upon making a preliminary recommendation regarding an application, the executive director will provide a response to TPWD and TDA that contains a copy of the initial draft permit, draft order, or final decision on an exemption or registration, and documentation providing an explanation on why any of TPWD's and TDA's comments were not incorporated. A final draft permit will be transmitted to the TPWD and the TDA.]

(C) [(D)] [TPWD shall, within 120 days of the date of adoption of this MOU, develop guidelines identifying sensitive aquatic habitat within the coastal zone. TPWD will provide the guidelines it develops to the executive director and TDA.] The TCEQ [executive director] will consider guidelines developed by the TPWD with input from the TCEQ and stakeholders identifying [the] sensitive aquatic habitat within the coastal zone [guidelines] when reviewing wastewater discharge applications for new aquaculture facilities or expansion of existing facilities in the coastal zone.

(D) [(E)] The TCEQ and TPWD will strive to provide each other notification of public meetings and contested case hearings that relate to aquaculture applications. [TPWD shall, within 120 days of the date of adoption of this MOU, develop guidelines which list the type of information it needs from permit applicants, in addition to the commission wastewater permit application, in order to make a

determination as to whether the proposed discharges will not adversely affect a bay, an estuary, or other water in the state. This additional information will be used during the review of the permit application. The TPWD will develop these guidelines with input from the stakeholders, the commission, and TDA. When the guidelines are finalized by TPWD, the agencies will make them available to stakeholders and applicants, and it is expected that the requested information will routinely be required as part of any wastewater discharge application. It is understood that occasions may arise when information beyond that which is listed in the guidelines may be required by TPWD.]

[F) A new exotic species permit will not be issued by TPWD to any aquaculture facility that proposes to discharge wastewater until a commission waste discharge permit or other authorization has been issued or it is determined that the facility is exempted from such requirements.]

[(G) TDA will provide a copy of each aquaculture license application received to the commission and TPWD. An aquaculture license will not be issued by TDA to any aquaculture facility until a commission waste discharge permit or other authorization has been issued, or it is determined that the facility is exempted from such requirements.]

[(H) An interagency work group will be formed, whose function will be to meet at least annually to address aquaculture issues relating to water quality, fish and wildlife resources, and receiving stream habitat and uses. This work group will serve to strengthen coordination of the commission, TPWD, and TDA activities related to the aquaculture industry and provide a conduit for shared information. The work group shall be composed of members of each agency and staffed at levels which are mutually agreeable as adequate to accomplish the stated goals. Each agency shall designate a primary contact person for this group and notify the other agencies of any changes to the primary contact person.]

[(I) The executive director and TPWD will coordinate studies related to applications that request authorizations for the discharge and disposal of wastewater. This may include on-site visits, receiving water assessments, sample collection, data analysis and related activities. Notification of these activities will be provided at least five days prior to the activity or as soon as is practicable. TPWD will notify the appropriate commission regional office and the Wastewater Permitting Section. The executive director will notify TPWD Resource Protection Regional Office and headquarters.]

[(J) The executive director and TPWD will strive to coordinate responses to emergency conditions, investigation of unauthorized waste discharges, and compliance inspections of aquaculture facilities. The executive director and TPWD

will provide notice to each other regarding site inspections, so as to allow the other agency to participate if desired. Notifications of scheduled compliance inspections will be provided at least five days before the inspection. Notification of other activities will be provided as soon as practicable. TPWD will notify the commission regional office and the executive director will notify TPWD Resource Protection Regional Office.]

[K) The executive director, TPWD, and TDA will strive to provide to each agency notification of public meetings, public hearings, and contested case hearings that relate to aquaculture applications.]

[L) The executive director and TPWD will continue to develop and provide to applicants, permit conditions and, as appropriate, guidance related to disease, quarantine conditions, and emergency plans.]

(e) Other coordination activities.

(1) The TPWD shall, within 120 days of the date of adoption of this MOU, review the wastewater discharge application forms and provide proposed changes that are necessary to obtain relevant information for the TPWD's review. The TCEQ will solicit feedback from the TPWD each time the TCEQ revises the forms related to aquaculture facilities.

(2) A new exotic species permit will not be issued by the TPWD to any aquaculture facility that proposes to discharge wastewater until a TCEQ wastewater discharge permit or other authorization has been issued or it is determined that the facility is exempted from such requirements.

(3) An interagency work group will be formed, whose function will be to coordinate on matters related to aquaculture to aid in ensuring that proposed wastewater discharges will not adversely affect bays, estuaries, or other water in the state. This work group will meet at least annually to address aquaculture issues relating to water quality, fish and wildlife resources, and receiving stream habitat and uses. This work group will serve to strengthen coordination between the TCEQ and TPWD related to the aquaculture industry and provide a conduit for shared information. The work group shall be composed of members of each agency and staffed at levels which are mutually agreeable as adequate to accomplish the stated goals. Each agency shall designate a primary contact person for this group and notify the other agency of any changes to the primary contact person.

(4) The TCEQ and TPWD will coordinate studies related to applications that request authorizations for the discharge wastewater. This may include on-site visits, receiving water assessments, sample collection, data analysis and related activities. Notification of these activities will be provided at least five days prior to the

activity or as soon as is practicable. The TPWD will notify the appropriate TCEO regional office and the Wastewater Permitting Section Manager. The TCEQ will notify the TPWD Water Quality Program.

(5) The TCEQ and TPWD will strive to coordinate responses to emergency conditions, investigation of unauthorized wastewater discharges, and compliance inspections of aquaculture facilities for wastewater discharges. The TCEQ and TPWD will provide notice to each other at least five days prior to conducting a site inspection related to wastewater discharges, so as to allow the other agency to participate if desired. The TPWD will notify the appropriate TCEQ regional office and the TCEQ will notify the TPWD Water Quality Program.

(6) The TCEQ and TPWD will continue to develop and provide to applicants, permit conditions and, as appropriate, guidance related to disease, quarantine conditions, and emergency plans.

[(e) Application Review Committee.]

[(1) Purpose.]

[(A) The application review committee (ARC) will review wastewater discharge authorization applications to ensure that the proposed discharges will not adversely affect a bay, an estuary, or other water in the state.]

[(B) The commission, TPWD, and TDA recognize the importance of integrating and coordinating among themselves to ensure that this ultimate goal, stated in subparagraph (A) of this paragraph, is achieved.]

[(C) In order to accomplish this, the ARC will function as a forum for discussion, answering questions and resolving differences, in an attempt to come to consensus regarding the controls needed to meet the ultimate goal.]

[(D) The ARC shall primarily be used as a means for settling unresolved disputes concerning aquaculture between the agencies.]

[(2) Membership.]

[(A) Each agency, the commission, TPWD, and TDA, will appoint one member to the ARC.]

[(B) Each agency shall appoint an alternate member of the committee.]

[(C) If a member or alternate is unable to attend a meeting, then that member or alternate will temporarily delegate his or her decision-making authority to other staff of that agency for that meeting only.]

[(D) At meetings of the ARC, technical specialists representing the agencies may participate in or contribute to the committee's discussions and other activities.]

[(E) Within two weeks of the adoption of this MOU, each agency will inform the other two agencies of the member and alternates.]

[(F) An agency may change its member or alternate by providing notice to each of the other members and alternates.]

[(3) Applicability. The ARC may consider any wastewater discharge application when disputes can not be resolved at the staff level.]

[(4) Functioning of the ARC.]

[(A) Meetings.]

[(i) Meetings will be on an as needed basis.]

[(ii) Any member of the ARC may request a meeting of the committee to consider one or more discharge applications.]

[(iii) Any meeting of the ARC to consider a specific discharge permit application should, whenever possible, be requested prior to the public notice of the application and preliminary decision.]

[(iv) It is the responsibility of the member requesting the meeting to notify all the members and alternates, and to establish a mutually agreeable meeting time and location.]

[(v) The meeting shall take place within seven calendar days of the request.]

[(vi) It is the responsibility of the agency requesting the meeting to take minutes of the meeting, to provide the minutes for review and comment by the other parties, and to provide a final version of the minutes which reflects any comments received.]

[(B) Decision making. The ARC will strive for unanimous consent on all decisions. In the event that unanimous agreement cannot be reached among members of the committee, the matter under consideration may be referred to officials of the agencies for resolution in an expeditious manner. The agencies agree that, while recognizing the areas of expertise and authority of the members, decision-making deliberations will focus on the agencies' mutual purpose of ensuring that the proposed discharge will not adversely affect a bay, an estuary, or other water in the state.]

[(C) Confidentiality. The ARC supports an open government policy and it is understood and agreed that information subject to public disclosure under the Texas Public Information Act shall be released upon written request.]

(f) General conditions.

(1) The term of this MOU shall be from the effective date until amendment or termination of this agreement. Any amendment to the MOU shall be made by mutual agreement of the parties [and shall be adopted by rule by all parties].

(2) Each party shall adopt the MOU by rule, including subsequent amendments. [All amendments shall also be adopted by rule.] This MOU, and any subsequent amendment, shall become effective on the effective date of the rule [20 days after the date on which the rule is filed in the Office of the Secretary of State].

[~~(3)~~ By signing this MOU, the signatories acknowledge that they are acting upon proper authority from their governing bodies.]

(3) [(4)] Reservation of rights. Each agency has and reserves the right to take whatever actions necessary to pursue or preserve any legal remedies available to that agency, and nothing in this MOU is intended to waive or foreclose any such right.

or equal to 1000 percent of the federal poverty level. HHSC calculates the maximum charge for each income range by applying a fixed percentage (ranging from 0.25 to 5 percent) to the mid-point income within each range based on the U.S. Department of Health and Human Services most recently published Federal Poverty Levels.

(c) For children and families who enroll in ECI services on or after September 1, 2015, the family's maximum charge shall be pursuant to Figure: 26 TAC §350.1431(c) [40 TAC §108.1431(e)] identified in this subsection. If the parent refuses to attest in writing that information about their third-party coverage, family size, and gross income is true and accurate, then the family monthly maximum payment equals the full cost of services. Figure: 26 TAC §350.1431(c) [Figure: 40 TAC §108.1431(e)]

§350.1435. *Suspension of Services for Nonpayment.*

(a) The contractor must suspend Individualized Family Service Plan (IFSP) [IFSP] services subject to an out-of-pocket payment as identified in §350.1413 [§108.1413] of this subchapter [title] (relating to IFSP Services Subject to Out-of-Pocket Payment from the Family) when the balance remains delinquent for 90 days. If the parent uses their public or private insurance, the 90-day time period begins the date the contractor receives notice that the claims are denied for reimbursement and all appeals are exhausted.

(b) Before suspending IFSP services, the contractor must inform the parent that:

(1) he or she has the option to request a:

(A) review of the family cost share agreement, as described in §350.1417 [§108.1417] of this subchapter [title] (relating to Family Cost Share Agreement); or

(B) [a] reconsideration and adjustment of the family cost share obligation, as described in §350.1437 [§108.1437] of this subchapter [title] (relating to Extraordinary Circumstances);

(2) IFSP services subject to an out-of-pocket payment will be suspended when a balance is delinquent for 90 days; and

(3) the contractor cannot guarantee the same schedule or the same individual service provider if IFSP services are later reinstated.

(c) Respite vouchers will be denied during a suspension period.

(d) A notation must be made on the family cost share agreement that IFSP services subject to an out-of-pocket payment have been suspended due to non-payment.

(e) The contractor must reinstate suspended IFSP services when the family's account is paid in full or the family negotiates an acceptable payment plan with the contractor. The IFSP team must reassess the appropriateness of the IFSP before reinstating IFSP services if IFSP services are suspended for more than six months. The contractor must document the reinstatement of IFSP services date on the IFSP and the family cost share agreement.

(f) The contractor must maintain written local policy for collecting delinquent family cost share accounts. Documentation must reflect all reasonable attempts to collect unpaid balances. Reasonable attempts include multiple attempts at written notification, phone notification, and e-mail.

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 November 19, 2021.

TRD-202104688

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: January 2, 2022

For further information, please call: (512) 438-5031

TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 7. MEMORANDA OF UNDERSTANDING

30 TAC §7.103

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §7.103.

Background and Summary of the Factual Basis for the Proposed Rule

This rulemaking would implement portions of Senate Bill (SB) 703, 87th Regular Legislature, which removed the Texas Department of Agriculture's (TDA) roles and responsibilities related to regulation of the aquaculture industry. Previously, the TCEQ, the TDA, and the Texas Parks and Wildlife Department (TPWD) coordinated on regulating the aquaculture industry. This multi-agency coordination is codified in a Memorandum of Understanding (MOU) in 30 Texas Administrative Code (TAC) §7.103. This rulemaking would revise the MOU to remove TDA from this multi-agency coordination.

Additionally, this rulemaking would make additional updates to the MOU, based on TCEQ rule changes related to the aquaculture industry since the MOU was last adopted. These include repeal of the permit-by-rule and exemptions in Chapter 321, Subchapter O, and the issuance of the Aquaculture General Permit Number TXG130000.

Section Discussion

The commission proposes revisions throughout the rule to remove all references to the TDA, in accordance with SB 703, which removed the TDA's roles and responsibilities related to regulation of the aquaculture industry. Additionally, the commission proposes revisions throughout the rule to change the commission's name from the Texas Natural Resource Conservation Commission to the TCEQ. The commission also proposes revisions throughout the rule to improve readability and the overall structure of the rule.

Lastly, the commission proposes revisions throughout the rule to remove references to registrations and exemptions issued by the TCEQ to the aquaculture industry because the TCEQ repealed the regulations in Chapter 321, Subchapter O, that provided for these types of authorizations. These authorization types have been replaced by the Aquaculture General Permit Number TXG130000.

The commission proposes minor clarifications and revisions to subsection (a) as noted above regarding revisions proposed throughout the rule.

The commission proposes revisions to subsection (b) to update the definition of "Aquaculture" consistent with the definition in the Aquaculture General Permit Number TXG130000 and to remove the definition of "Memorandum of Understanding" because this definition is not included in other MOUs.

The commission proposes revisions to subsection (c) to add references to additional applicable state statutes that establish TCEQ and TPWD authorities.

The commission proposes revisions to subsection (d) to establish coordination activities regarding renewal and amendment of the Aquaculture General Permit Number TXG130000. The proposed revisions would also revise procedures related to TPWD requesting additional information from applicants rather than from the TCEQ during their review of Notices of Intent (NOI) and individual permit applications. Additional proposed revisions to this subsection would revise the timing of when, in the permitting process, the TCEQ must send applications to the TPWD, and remove the TCEQ's requirement to develop guidelines for a site assessment environmental report for new commercial shrimp facilities located within the coastal zone. The report guidelines have been developed and the TCEQ's individual permit application form requires new commercial shrimp facilities located within the coastal zone to develop and submit a site assessment report.

The commission proposes removal of subsection (e) relating to the executive review committee and proposes new subsection (e) relating to other coordination activities that were previously included as part of subsection (d). The executive review committee is proposed for removal because SB 703 removed the requirement for an executive review committee. The TCEQ and TPWD would continue coordination effort via the interagency workgroup as described in proposed new subsection (e)(3).

The commission proposes amendments to subsection (f) to revise the effective date of the MOU to coordinate with the effective date of the rule and to remove the requirement for the agency governing bodies to sign the MOU. The governing bodies will each adopt the rule to signify their agreement to the MOU requirements.

Fiscal Note: Costs to State and Local Government

Jené Bearse, Analyst in the Budget and Planning Division, has determined that for the first five-year period the proposed 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.

Public Benefits and Costs

Ms. Bearse determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated would be coordination of regulatory oversight activities between the TCEQ and TPWD regarding aquaculture facilities. The proposed rulemaking is not anticipated to result in fiscal implications for businesses or individuals.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rulemaking does not adversely affect a

local economy in a material way for the first five years that the proposed rule is in effect.

Rural Community Impact Statement

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rule is in effect. The amendments would apply statewide and have the same effect in rural communities as in urban communities.

Small Business and Micro-Business Assessment

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

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed 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.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and would not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking does not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create, expand, or limit an existing regulation, nor does the proposed rulemaking increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rule should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code (TGC), §2001.0225, and determined that the rulemaking action is not subject to §2001.0225 because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is defined as a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The proposed rulemaking does not meet the definition of "Major environmental rule" because it is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. Rather, this proposed rulemaking is intended to implement an interagency review procedure for applications requesting authorization to discharge wastewater from aquaculture facilities and coordinate enforcement actions in response to discharges from aquaculture facilities. The proposed rulemaking would also implement portions of SB 703, which removed the TDA's roles and responsibilities related to regulation of the aquaculture industry. This proposed rulemaking should not adversely affect, in a material way, the economy, a section of the economy, productivity, competition, jobs, the environment,

or the public health and safety of the state or a sector of the state. Therefore, the commission finds that this proposed rulemaking is not a "Major environmental rule."

Furthermore, the proposed rulemaking does not meet any of the four applicability requirements listed in TGC, §2001.0225(a). TGC, §2001.0225 only applies to a state agency's adoption of a major environmental rule that: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopts a rule solely under the general powers of the agency instead of under a specific state law.

Specifically, the proposed rulemaking does not exceed a standard set by federal law, rather it addresses the process for the TCEQ and TPWD to coordinate the regulation of aquaculture facilities within the federal law and authority delegated to the state. Likewise, the proposed rulemaking does not exceed an express requirement of state law nor exceed a requirement of a delegation agreement because state law expressly authorizes it. Finally, the proposed rulemaking was not developed solely under the general powers of the agency because it is also authorized under TWC, §5.104, which authorizes TCEQ to enter into an MOU with any other state agency, and Texas Agriculture Code, §134.031, which directs the TCEQ and TPWD to enter into an MOU.

Under TGC, §2001.0225, only a "Major environmental rule" requires a regulatory impact analysis. Because the proposed rulemaking does not constitute a "Major environmental rule," a regulatory impact analysis is not required.

Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated the proposed rule and performed analysis of whether the proposed rule constitutes a taking under TGC, §2007.043. The specific purpose of the proposed rule is to improve coordination between the TCEQ and TPWD and facilitate an exchange of information to assist the TCEQ in making environmentally sound decisions. The proposed rule would substantially advance this stated purpose by updating the current MOU between the TCEQ and TPWD. The proposed rule provides a formal mechanism by which the TPWD may review and provide feedback on aquaculture issues that are subject to regulation by the TCEQ and have the potential to affect natural resources and the regulation of aquaculture within the jurisdiction of the TPWD.

Promulgation and enforcement of the proposed rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulations would not affect a landowner's rights in private real property because this rulemaking would not burden (constitutionally); nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. Thus, this rule would not impose burdens on private real property because the proposed rule neither relates to, nor has any impact on the use or enjoyment of private real

property, and there would be no reduction in value of the property as a result of this rulemaking.

Consistency with the Coastal Management Program

The commission reviewed the proposed rule and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor would 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 virtual public hearing on this proposal on January 4, 2022, at 2:00 p.m. 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.

Registration

The hearing will be conducted remotely using an internet meeting service. Individuals who plan to attend the hearing and want to provide oral comments and/or want their attendance on record must register by January 3, 2022. To register for the hearing, please email Rules@tceq.texas.gov and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on January 3, 2022, to those who register for the hearing.

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

https://teams.microsoft.com/l/meetup-join/19%3ameeting_ZjQ-1MjYxMGUtMzFjMi00NTBkLTIYzQtNWQ5ZDRiYjY0Yjc2%40t-hread.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%2230ec-010b-ff0b-4618-bbc4-622a14f9cb18%22%2c%22IsBroadcast-Meeting%22%3a%22true%7d&type=a&role=a.

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 (800) RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Cecilia Mena, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to fax4808@tceq.texas.gov. Electronic comments may be submitted at: <https://www6.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 2021-021-007-OW. The comment period closes on January 5, 2022. Copies of the proposed rulemaking can be obtained from the commission's website at https://www.tceq.texas.gov/rules/propose_adopt.html. For

further information, please contact Ms. Laurie Fleet, Water Quality Division, (512) 239-5445.

Statutory Authority

The rule is proposed under Texas Water Code (TWC), §5.102, concerning general powers of the commission; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out its power and duties; TWC, §5.104, which authorizes the Texas Commission on Environmental Quality (TCEQ) to enter into a Memorandum of Understanding (MOU) with any other state agency; TWC, §5.105, which authorizes the commission to establish and approved all general policy of the commission by rule; TWC, §26.011, which establishes the commission's jurisdiction over all aspects of establishing and controlling the quality of waters of the state with all power necessary or convenient to carry out the responsibilities of that jurisdiction; and Texas Agriculture Code, §134.031, which requires the TCEQ and the Texas Parks and Wildlife Department to enter into an MOU for the regulation of matters relating to aquaculture.

The proposed rule implements portions of Senate Bill 703, 87th Regular Legislature.

§7.103. Memorandum of Understanding (MOU) between the Texas Commission on Environmental Quality (TCEQ) and [Texas Natural Resource Conservation Commission (commission);] the Texas Parks and Wildlife Department (TPWD) Regarding the Regulation of Aquaculture [; and the Texas Department of Agriculture (TDA)].

(a) Need for agreement.

(1) The Texas Commission on Environmental Quality (TCEQ) and Texas Parks and Wildlife Department (TPWD) [~~commission, TPWD, and TDA~~] seek to ensure that regulation of aquaculture is conducted in a manner that is both collaborative and responsible.

(2) The TCEQ and TPWD [~~commission, TPWD, and TDA~~] are concerned about issues relating to the raising of non-native aquatic species and their potential for [~~the attendant concern about~~] escape into natural ecosystems, including the introduction of disease into natural ecosystems.

(3) The TCEQ and TPWD [~~commission, TPWD, and TDA~~] are concerned about the quality of wastewater discharges from aquaculture facilities and their effects on receiving waters in reservoirs, streams, bays, and estuaries.

(4) The TCEQ and TPWD [~~commission, TPWD, and TDA~~] seek to implement [~~establish~~] an interagency review procedure for applications requesting authorization to discharge wastewater from aquaculture facilities.

(5) The TCEQ and TPWD [~~commission, TPWD, and TDA~~] seek to implement [~~institute~~] an effective system by which coordination and collaboration can be achieved to expedite enforcement actions in response to discharges from aquaculture facilities that are found to contain contagious disease that may impact state waters.

(6) Texas Water Code, §5.104, authorizes the TCEQ [~~commission~~] to enter into an MOU with any other state agency.

(7) Texas Agriculture Code, §134.031, directs the TCEQ and TPWD [~~commission, TPWD, and TDA~~] to enter into an MOU for the regulation of matters relating to aquaculture.

(8) It is the intention of this MOU to provide a formal mechanism by which the TPWD [~~and TDA~~] may review and provide feedback on aquaculture issues that are subject to regulation by the TCEQ [~~commission~~] and that have the potential to affect natural

resources and the regulation of aquaculture within the jurisdiction of the TPWD [~~or TDA~~]. This exchange of information would assist the TCEQ [~~commission~~] in making environmentally sound decisions and would improve coordination between the TCEQ and TPWD [~~commission, TPWD, and TDA~~].

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings.

(1) Aquaculture--The business of producing or rearing aquatic species (fish, crustaceans, mollusks, or any [~~and~~] other organisms, excluding aquatic plants and algae, living in either fresh or marine waters) utilizing ponds, lakes, cages, fabricated tanks and raceways, or other similar structures.

[(2) Memorandum of Understanding (MOU)--A formal document that clarifies and provides for the respective duties, responsibilities, or functions of the state agencies who are signatories on any matter or matters under their jurisdiction that are not expressly assigned to either one of them.]

[(2) [(3)] Application--A request submitted by an aquaculture facility to the TCEQ [~~commission~~] for authorization to discharge under an individual permit or [~~registration~~;] a Notice of Intent (NOI) to seek authorization under a general permit [~~; or a request for an exemption~~].

(c) Responsibilities.

(1) [~~The commission.~~] The responsibilities of the TCEQ [~~commission~~] relate primarily to its role as the natural resource agency with primary responsibility over conservation of natural resources and the protection of the environment, under Texas Water Code, §5.012.

(A) The TCEQ [~~commission~~] has general jurisdiction over the state's water quality program including issuance of wastewater [~~waste~~] discharge permits, water quality planning, and enforcement of water quality rules, standards, orders, and permits, under Texas Water Code, §5.013.

(B) The TCEQ [~~commission~~] seeks to maintain the quality of water in the state consistent with public health and enjoyment, the propagation and protection of terrestrial and aquatic life, the operation of existing industries, and the economic development of the state, and to require the use of all reasonable methods to implement this policy.

(C) The TCEQ [~~commission~~] is responsible for review of wastewater [~~NOIs and requests for exemption, and review of~~] applications and [~~subsequent~~] issuance of wastewater [~~waste~~] discharge permits [~~; temporary orders, emergency orders, and registrations~~].

(2) [~~TPWD.~~] The responsibilities of the TPWD relate primarily to its functions as a natural resource agency, including its resource protection functions, as designated by the Texas Parks and Wildlife Code, §12.001 and §12.0011.

(A) The TPWD is the state agency with primary responsibility for protecting the state's fish and wildlife resources.

(B) The TPWD provides recommendations that will protect fish and wildlife resources to local, state, and federal agencies that approve, permit, license, or construct developmental projects.

(C) The TPWD provides information on fish and wildlife resources to any local, state, and federal agencies or private organizations that make decisions affecting those resources.

(D) The TPWD regulates the taking, possession, and conservation of all kinds of marine life and other aquatic life.

(E) The TPWD regulates the introduction of fish, shellfish, and aquatic plants into public water, under Texas Parks and Wildlife Code, §66.015(b).

(F) The TPWD regulates the importation, possession, and placing into state water of harmful or potentially harmful exotic species of fish, shellfish, or aquatic plants, under Texas Parks and Wildlife Code, §66.007(a), and is responsible for review of applications and subsequent issuance of permits relating to these activities.

~~[(G) TPWD is responsible for review of applications and subsequent issuance of permits relating to the importation, possession, and placing into state water of harmful or potentially harmful exotic species of fish, shellfish, or aquatic plants, under Texas Parks and Wildlife Code, §66.007(a).]~~

~~[(3) TDA. The responsibilities of TDA relate primarily to its functions as a regulatory agency that oversees the licensing and regulation of aquaculture operations under Texas Agriculture Code, Chapter 134.]~~

~~[(A) TDA is responsible for establishing recordkeeping requirements for commercial aquaculture facilities.]~~

~~[(B) TDA is responsible for the review of applications and subsequent issuance of aquaculture licenses under Texas Agriculture Code, Chapter 134, to aquaculture facilities that produce and sell cultured species.]~~

~~[(C) TDA is responsible for the review of applications and subsequent issuance of aquaculture licenses under Texas Agriculture Code, Chapter 134, for fish farm vehicles selling cultured species from the vehicle.]~~

(d) Coordination procedures for wastewater discharge applications and permits. [Provisions. This MOU is to facilitate the coordination and collaboration between the commission, TPWD, and TDA with regard to aquaculture facilities.]

(1) Coordination procedures for the Aquaculture General Permit Number TXG130000 and associated NOIs [applications for registrations, and requests for exemptions].

(A) During renewal or amendment of the Aquaculture General Permit, the TCEQ will provide the initial draft permit to the TPWD for review and comment prior to submitting the draft to EPA for review and approval. [The executive director will provide copies of all NOIs, registration applications, and requests for exemption to TPWD and TDA within 14 days of the stamped date of receipt.]

(i) Within 45 days of the date of receipt of the initial draft permit, the TPWD will complete its initial assessment, and by letter shall provide the TCEQ with formal written recommendations designed to protect fish and wildlife resources or indicate that it has no comments. [Within 45 days of the date of receipt of the NOI, registration application, or request for exemption, by TPWD and TDA, each will complete its initial assessment, and by letter shall:]

~~[(H) provide the executive director with formal written recommendations designed to protect fish and wildlife resources; or]~~

~~[(H) indicate that it has no comments; or]~~

~~[(HH) request additional information from the commission.]~~

(ii) If the TCEQ does not receive formal written comments from the TPWD within 45 days of the date of receipt of the initial draft permit, the TCEQ will conclude that there are no comments and continue processing of the general permit renewal

or amendment. [If the commission does not receive formal written comments from TPWD or TDA within 45 days of the date of receipt of the NOI, registration application, or request for exemption, by TPWD and TDA, the executive director will conclude that there are no comments and continue normal processing of the application.]

(iii) Formal written comments received from the TPWD will be considered by the TCEQ in developing the final draft permit. The TPWD's comments will be evaluated in conjunction with all other applicable factors and will be incorporated by the TCEQ whenever it is consistent with the TCEQ's responsibilities. In accordance with the responsibilities of the TCEQ as described in subsection (c)(1) of this section, the TCEQ reserves the right to determine the requirements of the final draft permit. Concurrent with submission of the final draft permit to EPA, the TCEQ will provide a copy of the final draft permit to the TPWD.

(B) The TCEQ will provide copies of all NOIs to the TPWD within 14 days of the date of receipt. [Upon receipt of a request from TPWD or TDA for additional information, the executive director will immediately provide such information if it is contained in the application materials. If the additional information is not included in the application materials, and if the information is necessary for TPWD or TDA to make its evaluation, the TPWD or TDA will request such additional information from the applicant, notify the executive director of this request, and ask the applicant to send a copy of its reply to the commission. If the applicant does not provide the additional information to the TPWD or TDA within 30 days of a request, the TPWD or TDA may request that the executive director suspend processing of the application. If the executive director determines that this additional information is essential to complete the technical review, the executive director will determine whether it is appropriate to either suspend processing or deem the application incomplete and return it to the applicant.]

(i) Within 45 days of the date of receipt of the NOI by the TPWD, the TPWD will complete its initial assessment, and by letter shall provide the TCEQ with formal written recommendations designed to protect fish and wildlife resources; indicate that it has no comments; or notify the TCEQ that it has requested additional information from the applicant. If TPWD requires additional information to make its evaluation, then the TPWD may request such additional information from the applicant within 45 days of the date of receipt of the NOI.

(ii) Except as provided by paragraph (3)(B) of this subsection, if the TCEQ does not receive a response from the TPWD within 45 days of TPWD receipt of the NOI, the TCEQ will conclude that there are no comments and continue processing of the application.

(iii) Formal written comments received from the TPWD will be considered by the TCEQ in determining whether to grant authorization under the general permit or require the applicant to seek authorization under an individual permit. The TPWD's comments will be evaluated in conjunction with all other applicable factors consistent with the TCEQ's responsibilities. In accordance with the responsibilities of the TCEQ as described in paragraph (c)(1) of this section, the TCEQ reserves the right to determine the final disposition of the NOI.

[(C) Upon receipt of additional information from the executive director or the applicant, the TPWD and TDA will each have 30 days to complete its review and either make final recommendations or indicate by letter that it has no comments. If formal written comments or additional information is not received from the TPWD or TDA within 30 days, the executive director will conclude that there are no comments and will continue normal processing of the application.]

(2) Coordination procedures for individual permit applications.

(A) The TCEQ [executive director] will provide [notification] to the TPWD a copy [and TDA] of each individual permit application file received which requests [individual permit] authorization to [for the] discharge [or disposal of] wastewater from aquaculture facilities within 14 days of the TCEQ administrative review completion. The application file [Notification shall be transmitted within 14 days of a request received from either TPWD or TDA, or after the permit application has been assigned to a permit writer. Notification] shall include a copy of the application and any comments, memoranda, letters, or other information incorporated in the application file following date of application receipt so that the TPWD [and TDA] may complete an initial assessment of the proposed operation.

{(i)} Within 45 days of the date of receipt of notification by TPWD and TDA, each will complete its initial assessment, and by letter shall:]

{(i)} provide the executive director with formal written recommendations designed to protect fish and wildlife resources; or]

{(ii)} indicate that it has no comments; or]

{(iii)} request additional information from the commission.]

{(ii)} If the commission does not receive formal written comments from TPWD or TDA within 45 days of the date of receipt of the notification by TPWD and TDA, the executive director will conclude that there are no comments and continue normal processing of the application.]

(B) Within 45 days of the date of receipt of the permit application file, the TPWD will complete its initial assessment, and by letter shall provide the TCEQ with formal written recommendations designed to protect fish and wildlife resources; indicate that it has no comments; or notify the TCEQ that it has requested additional information from the applicant. If TPWD requires additional information to make its evaluation, then the TPWD may request such additional information from the applicant within 45 days of the date of receipt of the permit application file. [Upon receipt of a request from TPWD or TDA for additional information, the executive director will immediately provide such information if it is contained in the application materials. If additional information is not included in the application materials, and if the information is necessary for TPWD or TDA to make its evaluation, the TPWD or TDA will request such additional information from the applicant, notify the executive director of this request, and ask the applicant to send a copy of its reply to commission. If the applicant does not provide the additional information to the TPWD or TDA within 30 days of a request, the TPWD or TDA may request that the executive director suspend processing of the application. If the executive director determines that this additional information is essential to complete the technical review, the executive director will determine whether it is appropriate to either suspend processing or deem the application incomplete and return it to the applicant.]

(C) Except as provided by paragraph (3)(B) of this subsection of this section, if the TCEQ does not receive a response from the TPWD within 45 days of the TPWD receipt of the permit application file, the TCEQ will conclude that there are no comments and continue processing of the application. [Upon receipt of additional information from the executive director or applicant, the TPWD and TDA will each have 30 days to complete its review and either make final recommendations or indicate that it has no comments. If formal written comments

are not received from the TPWD or TDA within 30 days, the executive director will conclude that there are no comments and continue normal processing of the application.]

(D) Formal written comments received from the TPWD will be considered by the TCEQ in developing the final draft permit. The TPWD's comments will be evaluated in conjunction with all other applicable factors and will be incorporated by the TCEQ whenever it is consistent with the TCEQ's responsibilities. In accordance with the responsibilities of the TCEQ as described in paragraph (c)(1) of this section, the TCEQ reserves the right to determine the requirements of the final draft permit. Upon making a preliminary recommendation regarding an application, the TCEQ will provide a response to the TPWD that contains a copy of the final draft permit and documentation providing an explanation on why any of the TPWD's comments were not incorporated. [In coordination with the TPWD and TDA, the commission shall, within 120 days of the date of adoption of this MOU, establish guidelines for a site assessment environmental report for new commercial shrimp facilities located within the coastal zone. This report shall describe the existing environmental conditions at the proposed site including aquatic habitat and the conditions of water in the state into which a discharge is proposed. The report must provide an assessment of any potential impacts of wastewater discharges on sensitive aquatic habitats in the area of the proposed site, and significant impacts related to the construction or operation of the facility, and any mitigation actions proposed by the applicant.]

(3) Coordination procedures applicable to all applications.

(A) The scope of review by the TPWD may include, but is not limited to: consideration of especially sensitive receiving water conditions (aquatic habitat); impacts of the discharge on substrate (scouring, sedimentation) and water transparency; alteration of receiving water flow characteristics; existing or attainable biological and recreational uses; discharge rate and volume; and the likelihood of disease transmission. Comments may be addressed directly to the applicant by the TPWD.

(B) If the TPWD requests additional information from the applicant, the TPWD will request that the applicant provide a copy of the information to the TCEQ. If the applicant does not provide the additional information to the TPWD within 30 days of a request, the TCEQ will determine whether it is appropriate to either suspend processing the application or return it to the applicant. Upon receipt of additional information from the applicant, the TPWD will have 30 days to complete its review and either make final recommendations to the TCEQ or indicate that it has no comments. If formal written comments are not received from the TPWD within 30 days of receipt of the additional information, the TCEQ will conclude that there are no comments and continue processing of the application. [The scope of review by TDA may include, but is not limited to, whether or not an application for the discharge or disposal of wastewater from aquaculture facilities should be approved.]

{(C) Formal written comments received from TPWD and TDA will be considered by the executive director in making decisions on applications requesting authorization for the discharge or disposal of wastewater from aquaculture facilities. TPWD's and TDA's comments will be evaluated in conjunction with all other applicable factors and will be incorporated by the executive director whenever it is consistent with the commission's responsibilities. In accordance with the responsibilities of the commission as described in this document, the executive director reserves the right to determine the final disposition of applications. Upon making a preliminary recommendation regarding an application, the executive director will provide a response to TPWD and TDA that contains a copy of the initial draft permit, draft order, or final decision on an exemption or registration,

and documentation providing an explanation on why any of TPWD's and TDA's comments were not incorporated. A final draft permit will be transmitted to the TPWD and the TDA.}]

(C) [(D)] [TPWD shall, within 120 days of the date of adoption of this MOU, develop guidelines identifying sensitive aquatic habitat within the coastal zone. TPWD will provide the guidelines it develops to the executive director and TDA.]} The TCEQ [executive director] will consider guidelines developed by the TPWD with input from the TCEQ and stakeholders identifying [the] sensitive aquatic habitat within the coastal zone [guidelines] when reviewing wastewater discharge applications for new aquaculture facilities or expansion of existing facilities in the coastal zone.

(D) [(E)] The TCEQ and TPWD will strive to provide each other notification of public meetings and contested case hearings that relate to aquaculture applications. [TPWD shall, within 120 days of the date of adoption of this MOU, develop guidelines which list the type of information it needs from permit applicants, in addition to the commission wastewater permit application, in order to make a determination as to whether the proposed discharges will not adversely affect a bay, an estuary, or other water in the state. This additional information will be used during the review of the permit application. The TPWD will develop these guidelines with input from the stakeholders, the commission, and TDA. When the guidelines are finalized by TPWD, the agencies will make them available to stakeholders and applicants, and it is expected that the requested information will routinely be required as part of any wastewater discharge application. It is understood that occasions may arise when information beyond that which is listed in the guidelines may be required by TPWD.]}]

[(F)] A new exotic species permit will not be issued by TPWD to any aquaculture facility that proposes to discharge wastewater until a commission waste discharge permit or other authorization has been issued or it is determined that the facility is exempted from such requirements.}]

[(G)] TDA will provide a copy of each aquaculture license application received to the commission and TPWD. An aquaculture license will not be issued by TDA to any aquaculture facility until a commission waste discharge permit or other authorization has been issued, or it is determined that the facility is exempted from such requirements.}]

[(H)] An interagency work group will be formed whose function will be to meet at least annually to address aquaculture issues relating to water quality, fish and wildlife resources, and receiving stream habitat and uses. This work group will serve to strengthen coordination of the commission, TPWD, and TDA activities related to the aquaculture industry and provide a conduit for shared information. The work group shall be composed of members of each agency and staffed at levels which are mutually agreeable as adequate to accomplish the stated goals. Each agency shall designate a primary contact person for this group and notify the other agencies of any changes to the primary contact person.}]

[(I)] The executive director and TPWD will coordinate studies related to applications that request authorizations for the discharge and disposal of wastewater. This may include on-site visits, receiving water assessments, sample collection, data analysis and related activities. Notification of these activities will be provided at least five days prior to the activity or as soon as is practicable. TPWD will notify the appropriate commission regional office and the Wastewater Permitting Section. The executive director will notify TPWD Resource Protection Regional Office and headquarters.}]

[(J)] The executive director and TPWD will strive to coordinate responses to emergency conditions, investigation of unauthorized waste discharges, and compliance inspections of aquaculture facilities. The executive director and TPWD will provide notice to each other regarding site inspections, so as to allow the other agency to participate if desired. Notifications of scheduled compliance inspections will be provided at least five days before the inspection. Notification of other activities will be provided as soon as practicable. TPWD will notify the commission regional office and the executive director will notify TPWD Resource Protection Regional Office.}]

[(K)] The executive director, TPWD, and TDA will strive to provide to each agency notification of public meetings, public hearings, and contested case hearings that relate to aquaculture applications.}]

[(L)] The executive director and TPWD will continue to develop and provide to applicants, permit conditions and, as appropriate, guidance related to disease, quarantine conditions, and emergency plans.}]

(e) Other coordination activities.

(1) The TPWD shall, within 120 days of the date of adoption of this MOU, review the wastewater discharge application forms and provide proposed changes that are necessary to obtain relevant information for the TPWD's review. The TCEQ will solicit feedback from the TPWD each time the TCEQ revises the forms related to aquaculture facilities.

(2) A new exotic species permit will not be issued by the TPWD to any aquaculture facility that proposes to discharge wastewater until a TCEQ wastewater discharge permit or other authorization has been issued or it is determined that the facility is exempted from such requirements.

(3) An interagency work group will be formed, whose function will be to coordinate on matters related to aquaculture to aid in ensuring that proposed wastewater discharges will not adversely affect bays, estuaries, or other water in the state. This work group will meet at least annually to address aquaculture issues relating to water quality, fish and wildlife resources, and receiving stream habitat and uses. This work group will serve to strengthen coordination between the TCEQ and TPWD related to the aquaculture industry and provide a conduit for shared information. The work group shall be composed of members of each agency and staffed at levels which are mutually agreeable as adequate to accomplish the stated goals. Each agency shall designate a primary contact person for this group and notify the other agency of any changes to the primary contact person.

(4) The TCEQ and TPWD will coordinate studies related to applications that request authorizations for the discharge wastewater. This may include on-site visits, receiving water assessments, sample collection, data analysis and related activities. Notification of these activities will be provided at least five days prior to the activity or as soon as is practicable. The TPWD will notify the appropriate TCEQ regional office and the Wastewater Permitting Section Manager. The TCEQ will notify the TPWD Water Quality Program.

(5) The TCEQ and TPWD will strive to coordinate responses to emergency conditions, investigation of unauthorized wastewater discharges, and compliance inspections of aquaculture facilities for wastewater discharges. The TCEQ and TPWD will provide notice to each other at least five days prior to conducting a site inspection related to wastewater discharges, so as to allow the other agency to participate if desired. The TPWD will notify the appropriate TCEQ regional office and the TCEQ will notify the TPWD Water Quality Program.

(6) The TCEQ and TPWD will continue to develop and provide to applicants, permit conditions and, as appropriate, guidance related to disease, quarantine conditions, and emergency plans.

~~[(e) Application Review Committee.]~~

~~[(1) Purpose.]~~

~~[(A) The application review committee (ARC) will review wastewater discharge authorization applications to ensure that the proposed discharges will not adversely affect a bay, an estuary, or other water in the state.]~~

~~[(B) The commission, TPWD, and TDA recognize the importance of integrating and coordinating among themselves to ensure that this ultimate goal, stated in subparagraph (A) of this paragraph, is achieved.]~~

~~[(C) In order to accomplish this, the ARC will function as a forum for discussion, answering questions and resolving differences; in an attempt to come to consensus regarding the controls needed to meet the ultimate goal.]~~

~~[(D) The ARC shall primarily be used as a means for settling unresolved disputes concerning aquaculture between the agencies.]~~

~~[(2) Membership.]~~

~~[(A) Each agency, the commission, TPWD, and TDA, will appoint one member to the ARC.]~~

~~[(B) Each agency shall appoint an alternate member of the committee.]~~

~~[(C) If a member or alternate is unable to attend a meeting, then that member or alternate will temporarily delegate his or her decision-making authority to other staff of that agency for that meeting only.]~~

~~[(D) At meetings of the ARC, technical specialists representing the agencies may participate in or contribute to the committee's discussions and other activities.]~~

~~[(E) Within two weeks of the adoption of this MOU, each agency will inform the other two agencies of the member and alternates.]~~

~~[(F) An agency may change its member or alternate by providing notice to each of the other members and alternates.]~~

~~[(3) Applicability. The ARC may consider any wastewater discharge application when disputes can not be resolved at the staff level.]~~

~~[(4) Functioning of the ARC.]~~

~~[(A) Meetings.]~~

~~[(i) Meetings will be on an as needed basis.]~~

~~[(ii) Any member of the ARC may request a meeting of the committee to consider one or more discharge applications.]~~

~~[(iii) Any meeting of the ARC to consider a specific discharge permit application should, whenever possible, be requested prior to the public notice of the application and preliminary decision.]~~

~~[(iv) It is the responsibility of the member requesting the meeting to notify all the members and alternates, and to establish a mutually agreeable meeting time and location.]~~

~~[(v) The meeting shall take place within seven calendar days of the request.]~~

~~[(vi) It is the responsibility of the agency requesting the meeting to take minutes of the meeting, to provide the minutes for review and comment by the other parties, and to provide a final version of the minutes which reflects any comments received.]~~

~~[(B) Decision making. The ARC will strive for unanimous consent on all decisions. In the event that unanimous agreement cannot be reached among members of the committee, the matter under consideration may be referred to officials of the agencies for resolution in an expeditious manner. The agencies agree that, while recognizing the areas of expertise and authority of the members, decision-making deliberations will focus on the agencies' mutual purpose of ensuring that the proposed discharge will not adversely affect a bay, an estuary, or other water in the state.]~~

~~[(C) Confidentiality. The ARC supports an open government policy and it is understood and agreed that information subject to public disclosure under the Texas Public Information Act shall be released upon written request.]~~

~~(f) General conditions.~~

~~(1) The term of this MOU shall be from the effective date until amendment or termination of this agreement. Any amendment to the MOU shall be made by mutual agreement of the parties [and shall be adopted by rule by all parties].~~

~~(2) Each party shall adopt the MOU by rule, including subsequent amendments. [All amendments shall also be adopted by rule.] This MOU, and any subsequent amendment, shall become effective on the effective date of the rule [20 days after the date on which the rule is filed in the Office of the Secretary of State].~~

~~[(3) By signing this MOU, the signatories acknowledge that they are acting upon proper authority from their governing bodies.]~~

~~(3) [(4)] Reservation of rights. Each agency has and reserves the right to take whatever actions necessary to pursue or preserve any legal remedies available to that agency, and nothing in this MOU is intended to waive or foreclose any such right.~~

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 November 19, 2021.

TRD-202104668

Guy Henry

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: January 2, 2022

For further information, please call: (512) 239-2809

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CHAPTER 114. CONTROL OF AIR
POLLUTION FROM MOTOR VEHICLES

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §§114.1, 114.50, and 114.82.

If adopted, amended §§114.1, 114.50, and 114.82 will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the State Implementation Plan (SIP) in a future SIP revision.

Texas Commission on Environmental Quality



ORDER ADOPTING AMENDED RULES

Docket No. 2021-0765-RUL

Rule Project No. 2021-021-007-OW

On April 27, 2022, the Texas Commission on Environmental Quality (Commission) adopted amended rules in 30 Texas Administrative Code Chapter 7, Memoranda of Understanding, Section 7.103. The proposed rules were published for comment in the December 3, 2021 issue of the *Texas Register* (46 TexReg 8197).

IT IS THEREFORE ORDERED BY THE COMMISSION that the amended rules are 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 rules and the preamble to the adopted rules 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 the Administrative Procedure Act, Tex. Gov't Code Ann., Chapter 2001 (West 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

Jon Niermann, Chairman

Date Signed