

# 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.

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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:**

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**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