

PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 17. MARKETING AND PROMOTION

SUBCHAPTER A. TEXAS COMMODITY REFERENDUM LAW

The Texas Department of Agriculture (Department) proposes the repeal of Title 4, Part 1, Chapter 17, Subchapter A, Texas Commodity Referendum Law, Division 1, General Rules, §§17.1 - 17.10, and §17.12; Division 2, Texas Beef Checkoff Program, §§17.20 - 17.25; and Division 3, Texas Grain Producer Indemnity Fund Program, §§17.26 - 17.29. Subchapter A of Chapter 17 is proposed for repeal and shall be moved to Title 4, Part 1, Chapter 23, related to new proposed Texas Commodity Law (Chapter 23), which is filed and proposed simultaneously at the time of this submission.

Jessica Escobar, Assistant General Counsel, has determined that for the first five-year period after the proposed repeals take effect, there will be no fiscal impact for state government. There is no fiscal impact for local governments.

Ms. Escobar has also determined that for each year of the first five years the proposed repeals are in effect there will be no adverse fiscal impact on individuals, or small or micro-businesses as a result of the proposed repeals.

Written comments on the proposal may be submitted to Jessica Escobar, Assistant General Counsel, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711 or to Jessica.Escobar@Texasagriculture.gov. Written comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

DIVISION 1. GENERAL RULES

4 TAC §§17.1 - 17.10, 17.12

The proposal is made pursuant to Chapter 41 of the Agriculture Code, which provides the Department with the authority to adopt rules to administer its duties under the Code.

The code affected by the proposal is Texas Agriculture Code, Chapter 41.

- §17.1. *Certification of Commodity Organizations.*
- §17.2. *Notice of Referendum and Election.*
- §17.3. *Conduct of Elections; Ballots; Canvass; Reporting.*
- §17.4. *Certification of the Board.*
- §17.5. *Assessment of Funds.*

§17.6. *Expending Funds and Budget Approval.*

§17.7. *Geographic Representation on Board.*

§17.8. *Discontinuance of Assessment.*

§17.9. *Penalty and Remedies.*

§17.10. *Restrictions on Use of Producer Assessments.*

§17.12. *Disposition of Funds Held by the Southern Rolling Plains Cotton Producers Board.*

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 August 28, 2017.

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Jessica Escobar

Assistant General Counsel

Texas Department of Agriculture

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For further information, please call: (512) 463-4075



DIVISION 2. TEXAS BEEF CHECKOFF PROGRAM

4 TAC §§17.20 - 17.25

The proposal is made pursuant to Chapter 41 of the Agriculture Code, which provides the Department with the authority to adopt rules to administer its duties under the Code.

The code affected by the proposal is Texas Agriculture Code, Chapter 41.

§17.20. *Scope and Applicability.*

§17.21. *Definitions.*

§17.22. *Voter Eligibility.*

§17.23. *Conduct of Referendum; Ballots; Canvass.*

§17.24. *Council Duties; Reporting Requirements.*

§17.25. *Collection of Assessment; Refunds.*

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

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DIVISION 3. TEXAS GRAIN PRODUCER INDEMNITY FUND PROGRAM

4 TAC §§17.26 - 17.29

The proposal is made pursuant to Chapter 41 of the Agriculture Code, which provides the Department with the authority to adopt rules to administer its duties under the Code.

The code affected by the proposal is Texas Agriculture Code, Chapter 41.

§17.26. *Scope and Applicability.*

§17.27. *Definitions.*

§17.28. *Voter Eligibility.*

§17.29. *Conduct of Referendum; Ballots; Canvass and Watchers; Re-counts.*

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

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PART 6. TEXAS GRAIN PRODUCER INDEMNITY BOARD

CHAPTER 90. TEXAS GRAIN PRODUCER INDEMNITY FUND PROGRAM RULES

The Texas Department of Agriculture (Department), on behalf of the Texas Grain Producer Indemnity Board (Board), proposes the repeal of Title 4, Part 6, Chapter 90, Subchapter A, General Provisions, §90.1; Subchapter B, Board Members, §§90.20 - 90.24; Subchapter C, Producer Assessments, §§90.30 - 90.38 Subchapter D, Claims, §§90.40 - 90.46; Subchapter E, Appeals, Remedies, §90.50 and §90.51. These sections of Chapter 90 are proposed for repeal and shall be moved to Title 4, Part 1, Chapter 23, related to Texas Commodity Law (Chapter 23), which is filed and proposed simultaneously at the time of this submission.

The Department makes this administrative change on behalf of the Board due to the fact that it was designated "inactive" during the 85th Regular Legislative Session.

Jessica Escobar, Assistant General Counsel, has determined that for the first five-year period the proposed repeals are in effect, there will be no fiscal impact for state government. There is no fiscal impact for local governments.

Ms. Escobar has also determined that for each year of the first five years the proposed repeals are in effect will be no adverse fiscal impact on individuals, small or micro businesses as a result of the proposed repeals.

Written comments on the proposal may be submitted to Jessica Escobar, Assistant General Counsel, Texas Department of

Agriculture, P.O. Box 12847, Austin, Texas 78711 or to *Jessica.Escobar@Texasagriculture.gov*. Written comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

SUBCHAPTER A. GENERAL PROVISIONS

4 TAC §90.1

The repeals are proposed pursuant to §41.211 of the Agriculture Code, which provides the Board with the authority to adopt rules to administer its duties under the Code.

The code affected by the proposal is Texas Agriculture Code, Chapter 41.

§90.1. *Definitions.*

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

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SUBCHAPTER B. BOARD MEMBERS

4 TAC §§90.20 - 90.24

The repeals are proposed pursuant to §41.211 of the Agriculture Code, which provides the Board with the authority to adopt rules to administer its duties under the Code.

The code affected by the proposal is Texas Agriculture Code, Chapter 41.

§90.20. *Meetings.*

§90.21. *Election of Officers.*

§90.22. *Management of Budget.*

§90.23. *Selection of Board Agents.*

§90.24. *Reporting Requirements.*

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

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SUBCHAPTER C. PRODUCER ASSESSMENTS

4 TAC §§90.30 - 90.38

The repeals are proposed pursuant to §41.211 of the Agriculture Code, which provides the Board with the authority to adopt rules to administer its duties under the Code.

The code affected by the proposal is Texas Agriculture Code, Chapter 41.

§90.30. *Maximum Assessment Rate.*

§90.31. *Assessment Calculation.*

§90.32. *Notice to Grain Buyers.*

§90.33. *Grain Buyer Collection.*

§90.34. *Remittance of Assessment.*

§90.35. *Grain Producer Reporting.*

§90.36. *Refunds.*

§90.37. *Discontinuance of Assessment.*

§90.38. *Restrictions on Use of Producer Assessments.*

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

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SUBCHAPTER D. CLAIMS

4 TAC §§90.40 - 90.46

The repeals are proposed pursuant to §41.211 of the Agriculture Code, which provides the Board with the authority to adopt rules to administer its duties under the Code.

The code affected by the proposal is Texas Agriculture Code, Chapter 41.

§90.40. *Initiation of Claim.*

§90.41. *Claim Review and Determination.*

§90.42. *Denial of Claim.*

§90.43. *Award.*

§90.44. *Subrogation.*

§90.45. *Borrowing Funds.*

§90.46. *Use of Reinsurance.*

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

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SUBCHAPTER E. APPEALS, REMEDIES

4 TAC §90.50, §90.51

The repeals are proposed pursuant to §41.211 of the Agriculture Code, which provides the Board with the authority to adopt rules to administer its duties under the Code.

The code affected by the proposal is Texas Agriculture Code, Chapter 41.

§90.50. *Administrative Review.*

§90.51. *Penalty and Remedies.*

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

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TITLE 22. EXAMINING BOARDS

PART 14. TEXAS OPTOMETRY BOARD

CHAPTER 273. GENERAL RULES

22 TAC §273.4

The Texas Optometry Board proposes amendments to §273.4 to set fees for license renewal. The amendments to the fees will fund the agency's contribution to the costs of the Prescription Monitoring Program as set out in House Bill 2561, Regular Session, 85th Legislature. Fee changes will also fund the agency's national databank query at license renewal. The query is required by Senate Bill 314, Regular Session, 85th Legislature. The rule also amends language referring to fingerprint requirements in this title.

Chris Kloeris, executive director of the Texas Optometry Board, estimates that for the first five-year period the amendments are in effect, the Optometry Board will collect an additional \$26,741.93 each year. Fifteen percent of the additional amount collected is allocated by statute to the University of Houston. Of the total amount, \$14,161.85 each year will be transferred to the Texas State Board of Pharmacy to operate the Prescription Monitoring Program. The amendment of license renewal fees is estimated to provide \$9,092.00 to pay for a query from a national databank on each renewing licensee. There will be no fiscal implications for local government as a result of enforcing or administering the amendments.

Chris Kloeris also has determined that for each of the first five years the amendments are in effect, the public benefit anticipated is that the Prescription Monitoring Program, which detects potentially harmful prescribing or dispensing patterns or practices that may suggest drug diversion or drug abuse, will be adequately funded. The query of a national databank benefits the public by identifying licensees disciplined in other states.

It is anticipated that there will be economic costs of \$7.65 per year for active licensed Optometric Glaucoma Specialists for each of the first five years the amendments are in effect. All

other licensees will see a \$2.36 increase in the annual license renewal fee.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

The agency licenses approximately 4,000 optometrists and therapeutic optometrists. A significant majority of licensees own or work in one or more of the 1,000 to 3,000 optometric practices which meet the definition of a small business. Some of these practices meet the definition of a micro business. The agency does not license these practices.

ENVIRONMENT AND TAKINGS IMPACT ASSESSMENT

The agency has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. The agency has determined that the proposed rule does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action, and therefore does not constitute a taking under Texas Government Code §2007.043.

Comments on the proposal may be submitted to Chris Kloeris, Executive Director, Texas Optometry Board, 333 Guadalupe Street, Suite 2-420, Austin, Texas 78701-3942. The deadline for furnishing comments is thirty days after publication in the *Texas Register*.

The amendment is proposed under the Texas Optometry Act, Texas Occupations Code, §§351.151, 351.152, 351.154, 351.304, and 351.308; and House Bill 2561 and Senate Bill 314, Regular Session, 85th Legislature. No other sections are affected by the amendments.

The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession. The agency interprets §§351.152, 351.154, 351.304, and 351.308 as authorizing the agency to set license renewal and late renewal fees and requiring a deposit to the University of Houston of a percentage of the renewal fee. House Bill 2561 amends the Prescription Monitoring Program and authorizes the agency to increase renewal fees to fund a transfer to the Texas State Board of Pharmacy. Senate Bill 314 requires the agency to query a national databank at cost for each license renewal.

§273.4. Fees (Not Refundable).

(a) - (f) (No change.)

(g) License Renewal.

(1) Optometrist and Therapeutic Optometrist: \$210.36 [~~\$208.00~~] plus \$1.00 fee required by House Bill 2985, 78th Legislature. Total fees: \$211.36 [~~\$209.00~~]. The license renewal fee includes \$10.00 to fund a program to aid impaired optometrists and optometry students as authorized by statute.

(2) Optometric Glaucoma Specialist: \$223.50 [~~\$208.00~~] plus \$1.00 fee required by House Bill 2985, 78th Legislature [~~and \$7.85 fee to fund the Prescription Monitoring Program authorized by Senate Bill 195, 84th Legislature~~]. The inactive license renewal fee does not include the Prescription Monitoring Program fee. Total fees: \$224.50 [~~\$216.85~~] active renewal; \$211.36 [~~\$209.00~~] inactive renewal. The license renewal fee includes \$10.00 to fund a program to aid impaired optometrists and optometry students as authorized by statute.

(h) License fee for late renewal, one to 90 days late.

(1) Optometrist and Therapeutic Optometrist: \$315.54 [~~\$312.00~~] plus \$1.00 fee required by House Bill 2985, 78th Legislature. Total late license fees: \$316.54 [~~\$313.00~~].

(2) Optometric Glaucoma Specialist: \$335.25 [~~\$312.00~~] plus \$1.00 fee required by House Bill 2985, 78th Legislature [~~and \$7.85 fee to fund the Prescription Monitoring Program authorized by Senate Bill 195, 84th Legislature~~]. The inactive license renewal fee does not include the Prescription Monitoring Program fee. Total fees: \$336.25 [~~\$320.85~~] active renewal; \$316.54 [~~\$313.00~~] inactive renewal.

(i) License fee for late renewal, 90 days to one year late.

(1) Optometrist and Therapeutic Optometrist: \$420.72 [~~\$416.00~~] plus \$1.00 fee required by House Bill 2985, 78th Legislature. Total late license fees: \$421.72 [~~\$417.00~~].

(2) Optometric Glaucoma Specialist: \$447.00 [~~\$416.00~~] plus \$1.00 fee required by House Bill 2985, 78th Legislature [~~and \$7.85 fee to fund the Prescription Monitoring Program authorized by Senate Bill 195, 84th Legislature~~]. The inactive license renewal fee does not include the Prescription Monitoring Program fee. Total fees: \$448.00 [~~\$424.85~~] active renewal; \$421.72 [~~\$417.00~~] inactive renewal.

(j) Late fees (for all renewals with delayed continuing education) \$210.36 [~~\$208.00~~].

(k) - (n) (No change.)

(o) Retired License.

(1) Optometrist and Therapeutic Optometrist: \$210.36 [~~\$208.00~~] plus \$1.00 fee required by House Bill 2985, 78th Legislature. Total fee: \$211.36 [~~\$209.00~~].

(2) Optometric Glaucoma Specialist: \$223.50 [~~\$208.00~~] plus \$1.00 fee required by House Bill 2985, 78th Legislature [~~and \$7.85 fee to fund the Prescription Monitoring Program authorized by Senate Bill 195, 84th Legislature~~]. Total fee: \$224.50 [~~\$216.85~~].

(p) - (q) (No change.)

(r) Section 273.8 of this title defines when the fee required for FBI criminal history in the amount charged by the Texas Department of Public Safety is required.

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 August 22, 2017.

TRD-201703270

Chris Kloeris

Executive Director

Texas Optometry Board

Earliest possible date of adoption: October 8, 2017

For further information, please call: (512) 305-8500



CHAPTER 277. PRACTICE AND PROCEDURE

22 TAC §277.1, §277.11

The Texas Optometry Board proposes amendments to §277.1 and new §277.11 to comply with Senate Bill 314, Regular Session, 85th Legislature, including implementing new Texas Optometry Act §351.5014 of Senate Bill 314. The amendments state that anonymous complaints cannot be accepted and that the agency will attempt to preserve the confidentiality of the complainant in the investigative process, with some exceptions. New

Rule §277.11 authorizes the agency to require a licensee or applicant to submit to a Mental or Physical Examination if evidence of an incapacity prevents or could prevent the applicant or license holder from practicing with reasonable skill, competence, and safety to the public

Chris Kloeris, executive director of the Texas Optometry Board, estimates that for the first five-year period the proposal is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments.

Chris Kloeris also has determined that for each of the first five years the proposal is in effect, the public benefit anticipated is that only valid complaints will be investigated by the agency and that the agency will be able to investigate, and if needed, restrict the practice of applicants or licensees who are prevented or could be prevented from competently practicing because of an incapacity

It is anticipated that there will be no economic costs for complainants or respondents, the only groups affected by the amendments to Rule §277.1. For new Rule §277.11, the agency is unable to predict economic costs for applicants or licensees who are required to submit to a Mental or Physical Examination and invites comments on possible economic costs. Only those applicants or licensees meeting the probable cause set out in this rule will be required to submit to an examination, and that examination could take many forms with costs possibly covered by other payors.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

The agency licenses approximately 4,000 optometrists and therapeutic optometrists. A significant majority of licensees own or work in one or more of the 1,000 to 3,000 optometric practices which meet the definition of a small business. Some of these practices meet the definition of a micro business. The agency does not license these practices.

ENVIRONMENT AND TAKINGS IMPACT ASSESSMENT

The agency has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. The agency has determined that the proposed rule does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action, and therefore does not constitute a taking under Texas Government Code §2007.043.

Comments on the proposal may be submitted to Chris Kloeris, Executive Director, Texas Optometry Board, 333 Guadalupe Street, Suite 2-420, Austin, Texas 78701-3942. The deadline for furnishing comments is thirty days after publication in the *Texas Register*.

The amendment and new rule are proposed under the Texas Optometry Act, Texas Occupations Code, §§351.151, 351.2045, and 351.205; and Senate Bill 314, Regular Session, 85th Legislature, including new §351.5014 in Senate Bill 314. No other sections are affected by the amendments and new rule.

The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession. The agency interprets §351.2045, and §351.205 as setting out the confidential status of a complaint and requiring the agency to adopt rules

concerning the investigation of a complaint. Senate Bill 314 adds requirements regarding anonymous complaints and notice requirements for complaints from insurers, agents, administrators and drug companies. Senate Bill 314 in §351.5014 creates a process for the agency to order a physical or mental examination.

§277.1. Complaint Procedures.

(a) Filing complaints. Complaints may be filed in writing with the agency, either in person at the board's office, or by mail. The board shall adopt a form as its official complaint form which shall be maintained at the board's office for use at the request of any complainant. Complaints are privileged and confidential. At a minimum, all complaints shall contain information necessary for the proper processing of the complaint by the board, including, but not limited to:

(1) complainant's name, address, and phone number. The board cannot accept an anonymous complaint. The board shall protect the identity of a complainant in the investigative process to the extent possible. If the complainant is an insurance agent, insurer, pharmaceutical company, or third-party administrator, the board will notify the respondent within 15 days of the name and address of the complainant;

(2) name, address, and phone number of the optometrist, therapeutic optometrist, or other person, firm, or corporation, if known;

(3) date, time, and place of occurrence of alleged violation;

(4) complete description of incident giving rise to the complaint; and

(5) express authorization to release patient records to the Board where applicable.

(b) - (h) (No change.)

§277.11. Submission to Mental or Physical Examination.

(a) If the board has probable cause to believe that a licensee/applicant has developed an incapacity that prevents or could prevent the applicant or license holder from practicing optometry or therapeutic optometry with reasonable skill, competence, and safety to the public (an incapacity), the board shall require the licensee/applicant to submit to a mental and/or physical examination by a physician or other healthcare professional designated by the board. Probable cause may include, but is not limited to, any one of the following:

(1) sworn statements from two people, willing to testify before the board, that a certain licensee/applicant has developed an incapacity;

(2) a sworn statement from a representative of the Peer Assistance Program, stating that the representative is willing to testify before the board that a certain licensee/applicant has developed an incapacity;

(3) evidence that a licensee/applicant left a treatment program for alcohol or chemical dependency before a completion of that program;

(4) evidence that a licensee/applicant has engaged in the intemperate use of drugs or alcohol at a time and under circumstances that would lead a reasonable person to believe that the licensee/applicant has developed an incapacity;

(5) evidence of repeated arrests of a licensee/applicant for intoxication or drug use;

(6) evidence of recurring temporary commitments to a mental institution of a licensee/applicant;

(7) medical records showing that a licensee/applicant has an illness or condition that results in the inability to function properly in his or her practice; or

(8) actions or statements by a licensee/applicant at a hearing conducted by the board that gives the board reason to believe that the licensee has developed an incapacity.

(b) Upon presentation to the Executive Director of probable cause, the board authorizes the Executive Director to write the licensee/applicant requesting that the licensee/applicant submit to a physical or mental examination within 30 days of the receipt of the letter from the Executive Director. The letter shall state the reasons for the request for the mental or physical examination and the physician or other healthcare professional designated by the Executive Director to conduct such examinations. The applicant/licensee shall authorize the release of the results of the examination to the board and the results shall be submitted to the board within 15 days of the date of the examination. The results of any board-ordered mental or physical examination are confidential.

(c) If the licensee/applicant to whom a letter requiring a mental or physical examination is sent refuses to submit to the examination, the board, through its Executive Director, shall issue an order requiring the licensee/applicant to show cause why the licensee/applicant should not be required to submit to the examination and shall schedule a hearing on the order not later than 30 days after the date on which the notice of the hearing is provided to the licensee. The licensee/applicant shall be notified by either personal service or certified mail with return receipt requested.

(d) At the hearing provided in for in subsection (c) of this section, three members of the board appointed by the president of the board shall determine whether the licensee/applicant shall submit to an evaluation or that the matter shall be closed with no examination required.

(1) At the hearing, the applicant/licensee has the burden of proof once probable cause has been established by the board to rebut the probable cause. The applicant/licensee and the licensee/applicant's attorney, if any, are entitled to present testimony and other evidence to show why probable cause has not been established requiring the applicant/licensee to submit to the examination. An applicant/licensee is entitled to cross-examine an expert who offers testimony at the hearing.

(2) If, after consideration of the evidence presented at the hearing, the panel determines that the licensee/applicant shall submit to an examination, the panel shall authorize the Executive Director to issue an order requiring the examination within 60 days after the date of the entry of the order requiring examination. The applicant/licensee shall authorize the release of the results of the examination to the board, and the results shall be submitted to the board within 15 days of the date of the examination.

(3) If the panel determines that no such examination is necessary, the panel will withdraw the request for examination.

(e) The provisions of this rule shall not be construed so as to prohibit other appropriate disciplinary action under the Act, civil or criminal action and remedy and enforcement under other laws.

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

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TRD-201703271

Chris Kloeris
Executive Director
Texas Optometry Board
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For further information, please call: (512) 305-8500

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TITLE 25. HEALTH SERVICES

**PART 1. DEPARTMENT OF STATE
HEALTH SERVICES**

**CHAPTER 37. MATERNAL AND INFANT
HEALTH SERVICES**

**SUBCHAPTER G. SPINAL SCREENING
PROGRAM**

25 TAC §§37.142 - 37.145

The Executive Commissioner of the Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), proposes amendments to §§37.142 - 37.145, concerning the Spinal Screening Program (program).

BACKGROUND AND PURPOSE

DSHS administers the state program designed to identify abnormal spinal curvature in certain school-age children attending public and private schools, in accordance with Health and Safety Code, Chapter 37. The rules implement and outline the appropriate standards for spinal screening in school-age children. The program is responsible for the training and certification of individuals who conduct spinal screenings in the schools. The schools are responsible for ensuring that enrolled children comply with the screening requirements of this subchapter.

The proposed amendments will update the rules in accordance with House Bill (H.B.) 1076, 85th Legislature, Regular Session, 2017. H.B. 1076 requires rules to be adopted with consideration of the most recent nationally accepted and peer-reviewed scientific research when determining the appropriate ages for conducting spinal screening. H.B. 1076 is effective on September 1, 2017, and will be implemented during the 2018-2019 school year.

SECTION-BY-SECTION SUMMARY

The proposed amendments to §37.142 include adding and removing definitions for clarity and consistency. A definition for the term Chief Administrator is added and will be defined as the principal of each school, as defined in Title 19, Education, of the Texas Administrative Code. This will clarify responsibility for ensuring compliance with screening requirements in accordance with Health and Safety Code, Chapter 37, §37.002. The definitions for American Academy of Orthopaedic Surgeons (AAOS), Forward-bend test, and Scoliosis Inclinator are proposed for removal, as they are no longer referenced in this subchapter.

The proposed amendment to §37.143(a) removes the language that specifies spinal screening is required in grades six and nine. H.B. 1076 allows for consideration of the most recent nationally accepted and peer-reviewed scientific research when determining the appropriate ages for conducting spinal screening. The current rule references a position statement from 2007 and has an invalid hyperlink. DSHS proposes removing the hyperlink ref-

erence and paragraphs (1) - (5) from the rule and create a policy for the most current recommended spinal screening information on the DSHS website. In 2015, the Scoliosis Research Society (SRS), AAOS, Pediatric Orthopedic Society of North America (POSNA) and American Academy of Pediatrics (AAP) released a joint position statement and believe that screening examinations for spine deformity should be part of the medical home preventative services visit for females at age 10 and 12 years, and males once at age 13 or 14 years. Placing nationally accepted practices in policy will allow DSHS flexibility to comply with current national recommendations and guidelines for spinal screening, while still maintaining oversight over the training and certification requirements of screeners.

The proposed amendment to §37.144 adds new subsection (a) related to the process to notify parents of the spinal screening requirement, process, procedure, and method to decline, in accordance with H.B. 1076. Current subsections (a) - (e) will be renumbered to subsections (b) - (f).

The proposed amendment to renumbered subsection (c)(1), removes the language related to the requirement of spinal screening in grades six and nine and was replaced with "who meet the criteria outlined in department policy." Language in renumbered §37.144(c)(1) allows for the screening requirement to be met if a parent, managing conservator, or guardian substitutes a professional examination as defined in §37.142, relating to Definitions.

Current language in §37.144(b)(2), renumbered to subsection (c)(2), is recommended for deletion to simplify the rule.

The proposed amendment to renumbered §37.144(c)(3) removes the language related to grades ten, eleven, or twelve, and allows any child the opportunity for spinal screening if the student does not have a record of having been screened previously.

The proposed amendment to §37.145(b)(3) will allow spinal screening records to transfer between schools without written consent. Texas Health and Safety Code, Chapter 37, related to Abnormal Spinal Curvature in Children, does not require consent to perform the screen or to report results. Allowing schools to transfer spinal screening records between schools, will streamline student transfers and align the process for transfer of records with Texas Health and Safety Code, §36.006(c), related to Special Senses and Communication Disorders; the Texas Education Code, §25.002, related to Transfer, Admission and Attendance; and Texas Education Code, §38.002(b), which do not require written consent for the transfer of screening records between schools.

The proposed amendment to §37.145(c) is necessary to update the mailing address for the Vision, Hearing, and Spinal Screening Program at DSHS.

FISCAL NOTE

Mr. Felipe Rocha, Director, Public Health Screening and Services Coordination Section, has determined that for each year of the first five years the section will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Mr. Rocha has also determined there will be no adverse economic impact on micro-businesses or small businesses required to comply with the section as proposed. This was determined by

interpretation of the rule that small businesses and micro-businesses will not be required to alter their business practices.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no fiscal impact on local employment.

PUBLIC BENEFIT

Mr. Rocha has also determined the public will benefit from adoption of the sections. The anticipated public benefit is assurance that required spinal screening for school-age children would be performed according to the most recent nationally accepted recommendations, as mandated by law.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted in writing to Elijah Brown, Vision, Hearing, and Spinal Screening, Public Health Screening and Services Coordination Section, Department of State Health Services, P.O. Box 149347, Austin, Texas 78714-9347; by fax to (512) 776-7414; or by email to vhssprogram@dshs.texas.gov within 30 days of publication of this proposal in the *Texas Register*. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 25R049" in the subject line.

STATUTORY AUTHORITY

The amendments are authorized by Health and Safety Code, Chapter 37, which mandates adoption of rules necessary to carry out the program; and by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation of and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The amendments affect Government Code, Chapter 531; and Health and Safety Code, Chapters 37 and 1001.

§37.142. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) (No change.)

~~[(2) American Academy of Orthopaedic Surgeons (AAOS)—A nationally-recognized professional body which develops musculoskeletal health guidelines as part of the organization's research and quality goals.]~~

(2) ~~[(3)] Certification—The process by which the Department of State Health Services (department) trains individuals to conduct spinal screening as well as to then provide training screening procedures.~~

(3) Chief Administrator--The principal (or designee) of a school as defined by the Texas Education Agency, Title 19, Part 2, Chapter 149, Subchapter BB.

(4) (No change.)

~~[(5) Forward-bend test--A screening procedure to determine whether a child may have an abnormal spinal curvature.]~~

(5) ~~[(6)]~~ Licensed professional--An individual who is appropriately licensed under state law, including physicians, chiropractors, physical therapists, and registered nurses, and has completed a course of study in physical assessment.

(6) ~~[(7)]~~ Professional examination--A diagnostic evaluation performed by an appropriately licensed professional whose expertise addresses the diagnostic needs of the individual identified as having a possible abnormal spinal curvature. A professional examination is one that is performed according to the requirements of this subchapter and of Texas Health and Safety Code, Chapter 37.

(7) ~~[(8)]~~ School--An educational institution, public or private, that admits children who are five through twenty-one years of age, which includes an individual school campus.

~~[(9) Scoliosis inclinometer--An instrument for measuring the clinical deformity of patients with scoliosis. The brand name "Scoliometer" is sometimes used interchangeably.]~~

(8) ~~[(10)]~~ Screening--A test or battery of tests for rapidly determining the need for a professional examination.

§37.143. Spinal Screening Procedures.

(a) Spinal screening is required, for all children ~~[in grades six and nine]~~ who attend public and private schools, to detect abnormal spinal curvature. Spinal screening, conducted under this subchapter by a person who is not a licensed professional, as the term is defined in this subchapter, must be conducted following the most recent, nationally accepted and peer-reviewed standards for spinal screening. The spinal screening requirements are established in policy located on the department's website at <http://www.dshs.texas.gov/spinal> [national standards for screening set by the AAOS currently found at <http://www.aaos.org/news/bulletin/nov07/clinical5.asp>, as they apply to allowable method of screening and age of screening, with the following exceptions].

~~[(1) The use of a scoliosis inclinometer is optional for spinal screening.]~~

~~[(2) If a scoliosis inclinometer is used for spinal screening, a rescreen should be conducted for reading results of 5 to 7 degrees. The rescreen should be conducted within two weeks of the initial screening. A follow-up rescreen should be conducted in six months to one year to determine if the abnormal curvature is increasing.]~~

~~[(3) When using a scoliosis inclinometer, results of 7 degrees or more shall be documented as "abnormal findings."]~~

~~[(4) If a scoliosis inclinometer is not used for spinal screening, a rescreen should be conducted for abnormal findings. The rescreen should be conducted within two weeks of the initial screening. Abnormal findings detected during the rescreen shall be documented in the child's spinal screening record. The school's chief administrator shall inform the child's parent, managing conservator, or guardian, as specified in §37.144(a) of this title (relating to School Requirements; Department Activities).]~~

~~[(5) In accordance with Health and Safety Code, Chapter 37 requirements, children will be screened in grades six and nine instead of the AAOS guidelines.]~~

(b) - (c) (No change.)

§37.144. School Requirements; Department Activities.

(a) The chief administrator of each school is responsible for notifying a parent, managing conservator, or guardian of the requirement to conduct spinal screening, the purpose of and the reasons for spinal screening and potential risk to the child if declined, the method used to perform the screening based on §37.143 of this title (related to Spinal Screening Procedures), and the method to decline spinal screening based on subsection (e) of this section. For purposes of this section, the notification may be in electronic format.

(b) ~~[(a)]~~ The chief administrator of each school is responsible for the school maintaining a copy of the screening results and the mailing of a copy of the report to the parent, managing conservator, or guardian of the individual screened if an abnormal spinal curvature is suspected, based on §37.143(a) of this title (relating to Spinal Screening Procedures).

(c) ~~[(b)]~~ The chief administrator of each school shall ensure that each individual admitted to the school complies with the screening requirements of this subchapter, according to the following schedule:

(1) All children enrolled in a public or private school, who meet the criteria outlined in department policy, [in grades six and nine] shall be screened for abnormal spinal curvature before the end of the school year. The screening requirements may also be met by a professional examination as defined in §37.142 of this title (relating to Definitions).

~~[(2) The screening requirements for children entering grades six and nine may be met if the child has been screened for abnormal spinal curvature during the previous year.]~~

(2) ~~[(3)]~~ If a child is enrolled within 60 days of the date a school closes for the summer, the child's spinal screening must be conducted within 120 days of the beginning of the following school year.

(3) ~~[(4)]~~ Schools may offer a student ~~[enrolling in grades ten, eleven, or twelve]~~ the opportunity for spinal screening if the student has no record of having been screened previously.

(d) ~~[(e)]~~ A child's parent, managing conservator, or legal guardian, or the individual under the scenarios described in Texas Family Code, §32.003, may execute an affidavit stating that a person, other than the individual secured by the school to conduct screenings at the school, shall conduct the screening as soon as is feasible. The school may admit the child on a provisional basis for up to 60 days, or may deny admission until the screening record(s) are provided to the school. The 60-day time period is from November 30 to January 30 of each school year.

(e) ~~[(d)]~~ A school shall not require a child to be screened if the child's parent, managing conservator, or legal guardian, or the individual under the scenarios described in Texas Family Code, §32.003, submits to the school, on or before the date spinal screening is scheduled, an affidavit in lieu of the screening record(s) stating that the spinal screening conflicts with the tenets and practices of a church or religious denomination of which the affiant is an adherent or member.

(f) ~~[(e)]~~ Only individuals who have completed high school may serve as volunteer assistants during spinal screenings. It is the responsibility of the certified screener to determine how any volunteer assistant(s) will be used during the screening process, consistent with all state and federal confidentiality requirements.

§37.145. Recordkeeping and Reporting.

(a) (No change.)

(b) Schools must comply with the following recordkeeping and reporting requirements:

(1) - (2) (No change.)

(3) Spinal screening records are transferrable between schools without the [if written] consent of the individual or, if the individual is a minor, the minor's parent [their parent], managing conservator, or legal guardian [is obtained].

(4) - (5) (No change.)

(c) All correspondence shall be submitted to the department under this subchapter, with the following contact information (unless otherwise specified): Vision, Hearing and Spinal Screening Program[, Mail Code 1978], Department of State Health Services, P.O. Box 149347, Austin, Texas 78714-9347.

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 August 25, 2017.

TRD-201703330

Lisa Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: October 8, 2017

For further information, please call: (512) 776-6972



TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 307. TEXAS SURFACE WATER QUALITY STANDARDS

30 TAC §§307.2, 307.3, 307.6, 307.7, 307.9, 307.10

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figures in 30 TAC §§307.2, 307.3, 307.6, 307.7, 307.9, and 307.10 are not included in the print version of the Texas Register. The figures are available in the on-line version of the September 8, 2017, issue of the Texas Register.)

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §§307.2, 307.3, 307.6, 307.7, 307.9, and 307.10.

Background and Summary of the Factual Basis for the Proposed Rules

The Federal Water Pollution Control Act, or the Clean Water Act (1972), §303 (33 United States Code, §1313), requires all states to adopt water quality standards for surface water. A water quality standard consists of the designated beneficial uses of a water body or a segment of a water body and the water quality criteria that are necessary to protect those uses. Water quality standards are the basis for establishing effluent limits in wastewater permits, setting instream water quality goals for total maximum daily loads (TMDLs), and providing water quality targets used to assess water quality monitoring data.

The states are required under the Clean Water Act to review their water quality standards at least once every three years and revise them, if appropriate. States review the standards because new scientific and technical data may be available that have a bearing on the review. Environmental changes over time may also warrant the need for a review. Where the standards do not meet established uses, they must be periodically reviewed to see if uses can be attained. Additionally, water quality standards may have been previously established for the protection and propagation of aquatic life and for recreation in and on the water without sufficient data to determine whether the uses were attainable. Finally, changes in the Texas Water Code (TWC), Clean Water Act, or regulations issued by the United States Environmental Protection Agency (EPA) may necessitate reviewing and revising standards to ensure compliance with current statutes and regulations.

Following adoption of revised Texas Surface Water Quality Standards (TSWQS) by the commission, the Governor or their designee must submit the officially adopted standards to the EPA Region 6 Administrator for review. The Regional Administrator reviews the TSWQS to determine compliance with the Clean Water Act and implementing regulations. TSWQS are not applicable to regulatory actions under the Clean Water Act until approved by the EPA.

The TSWQS were last amended in February 2014. The EPA approved a portion of the state's revised standards in September 2014.

Reviews and revisions of the TSWQS address many provisions that apply statewide, such as criteria for toxic pollutants. They also address the water quality uses and criteria that are applicable to individual water bodies. An extensive review of water quality standards for individual water bodies is often initiated when the existing standards appear to be inappropriate for water bodies that are listed as impaired under the Clean Water Act, §303(d), or that are potentially affected by permitted wastewater discharges or other permitting actions.

States may modify existing designated uses or criteria when it can be demonstrated through a use-attainability analysis (UAA) that attaining the current designated uses or criteria is not appropriate. Most changes in designated uses or criteria are based on a demonstration that natural characteristics of a water body cannot attain the currently designated uses or criteria. Natural characteristics include temperature, pH, dissolved oxygen, diversity of aquatic organisms, amount of streamflow, physical conditions such as depth, and natural background pollutant levels. Conversely, a UAA might demonstrate that the currently designated uses and criteria are appropriate, or even that they should be more stringent.

UAAs can require several years of additional sampling studies, or they may focus on a long-term evaluation of existing historical data. For UAAs on water bodies that are potentially impacted by pollutant loadings above natural background levels, sampling and evaluation are often conducted on similar but relatively unimpacted water bodies to determine reference conditions that can be applied to the water body of concern.

The focus of UAAs depends on the uses and criteria that need to be reevaluated. The applicable aquatic life use is determined by repeatedly sampling fish or invertebrates in relatively unimpacted areas and applying quantitative indices, such as indices of biotic integrity, to the sampling data of the biological communities. UAAs to assign aquatic recreational uses include as-

sessing physical and hydrological conditions, observing existing recreation, and collecting information on current and historical recreational activities. Dissolved oxygen criteria are evaluated by monitoring dissolved oxygen over numerous (usually ten) 24-hour periods in relatively unimpacted areas. Site-specific criteria for toxic pollutants are evaluated by placing selected small aquatic organisms in water samples from the site and exposing them to different doses of the toxic pollutant of concern.

The commission is proposing editorial revisions as well as substantive changes. Editorial revisions would be adopted to improve clarity, make grammatical corrections, and renumber or re-letter subdivisions as appropriate.

Numerous revisions of toxic criteria are proposed to incorporate new data on toxicity effects. Other proposed revisions provide clarity on how water quality standards would be assessed using instream monitoring data for bacteria. Numerous revisions are also proposed for the uses and criteria of individual water bodies to incorporate new data and the results of recent UAAs.

Section by Section Discussion

§307.2, *Description of Standards*

The commission proposes to amend §307.2 to include language regarding temporary standards to comply with changes in federal rules listed in 40 Code of Federal Regulations (CFR) §131.14. These revisions clarify what standard applies when a criterion or designated use is not attained and cannot be attained for one or more reasons listed in 40 CFR §131.10(g) or to facilitate restoration activities. Other revisions are editorial and proposed to improve overall clarity.

§307.3, *Definitions and Abbreviations*

The commission proposes to amend §307.3 to add a definition for "Coastal recreation waters." Other revisions are editorial and proposed to improve overall clarity.

§307.6, *Toxic Materials*

The commission proposes to amend §307.6 to update references to guidance documents and sources used to calculate aquatic life and human health criteria. Other revisions are editorial and proposed to improve overall clarity.

Section 307.6(c)(1), Table 1, which lists numeric criteria for the protection of aquatic life, includes proposed revisions to the existing entry for carbaryl based on the EPA issuance of an updated national criteria document. Revisions also include the addition of acrolein to the table based on the EPA issuance of a new national criteria document.

Proposed changes to the human health criteria in §307.6(d)(1), Table 2, include the addition of the following four chemicals to the table: epichlorohydrin; ethylene glycol; 4,4'-isopropylidenediphenol; and methyl *tert*-butyl ether. Bioconcentration factor updates led to revisions of criteria for the following 18 noncarcinogens: anthracene; chlorobenzene; chloroform; *m*-dichlorobenzene; *o*-dichlorobenzene; 1,1-dichloroethylene; 2,4-dimethylphenol; di-*n*-butyl phthalate; endrin; hexachlorocyclohexane (*gamma*); hexachlorocyclopentadiene; methoxychlor; nitrobenzene; pentachlorobenzene; 1,2,4,5-tetrachlorobenzene; 2,4,5-TP (Silvex); 1,1,1-trichloroethane; and 2,4,5-trichlorophenol. Bioconcentration factor updates also led to revisions of criteria for the following 37 carcinogens: acrylonitrile; aldrin; benzene; benzidine; benzo(*a*)anthracene; benzo(*a*)pyrene; bis(2-chloroethyl)ether; bromodichloromethane; bromoform; carbon tetrachloride; chlor-

dane; chrysene; 4,4'-DDD; 4,4'-DDE; 4,4'-DDT; bis(2-ethylhexyl)phthalate; chlorodibromomethane; 3,3'-dichlorobenzidine; 1,2-dichloroethane; dichloromethane; 1,2-dichloropropane; 1,3-dichloropropene; dieldrin; heptachlor; heptachlor epoxide; hexachlorobenzene; hexachlorobutadiene; hexachlorocyclohexane (*alpha*); hexachlorocyclohexane (*beta*); hexachloroethane; pentachlorophenol; 1,1,2,2-tetrachloroethane; tetrachloroethylene; toxaphene; 1,1,2-trichloroethane; trichloroethylene; and vinyl chloride. Revisions to footnotes were included to clarify what fish consumption rates were used to calculate mercury criteria and to cite the source for the new table entry for methyl *tert*-butyl ether.

§307.7, *Site-Specific Uses and Criteria*

The commission proposes an amendment to §307.7 to include an update of the saltwater single sample criterion for Enterococci from 104 per 100 milliliters (mL) to 130 per 100 mL in subsection (b)(1)(B)(i). Other revisions are editorial and proposed to improve overall clarity.

§307.9, *Determination of Standards Attainment*

The commission proposes an amendment to §307.9 to include basing attainment of bacteria standards in coastal recreation waters on both geometric mean and single sample criteria. Other revisions, including those regarding nutrient assessment, are editorial and proposed to improve overall clarity.

§307.10, *Appendices A - G*

The commission proposes an amendment to §307.10 to revise Appendices A - G. The proposed amendment to §307.10(1), Appendix A, includes the addition of a new segment, Blind Oso Bay (2486), based on the results of a UAA; changes to the footnote for the Houston Ship Channel Tidal (1006) and Houston Ship Channel/Buffalo Bayou Tidal (1007) to clarify that numerical toxic criteria applicable to sustainable fisheries apply to these segments; adding a footnote for Spring Creek (1008) to assign site-specific seasonal dissolved oxygen criteria based on the results of a UAA; adding a footnote for Mid Cibolo Creek (1913) to indicate that it is intermittent with perennial pools based on the results of a UAA; and removing the footnote for the Rio Grande Below Riverside Diversion Dam (2307) due to the removal of the Riverside Diversion Dam. The public water supply use for Cedar Bayou Above Tidal (0902) is proposed for removal due to a lack of public water supply intakes. Proposed changes also include changing the primary contact recreation use for Big Cypress Creek Below Lake Bob Sandlin (0404) to a secondary contact recreation 1 use with a corresponding change to the indicator bacteria criterion.

The following water bodies are proposed for deletion from §307.10(2), Appendix B, because they no longer qualify as sole-source drinking water supplies in accordance with TWC, §26.0286: Farmers Creek Reservoir (0210); Big Cypress Creek Below Lake O' the Pines (0402); Sabine River Above Caney Creek (0503); Sabine River Above Toledo Bend Reservoir (0505); Lower Neches Valley Authority Canal (0602); Neches River Below B.A. Steinhagen Lake (0602); Trinity River Tidal (0801); Lake Worth (0807); West Fork Trinity River Below Bridgeport Reservoir (0810); Lavon Lake (0821); Lake Grapevine (0826); Joe Pool Lake (0838); Lake Houston (1002); Brazos River Below Navasota River (1202); Lake Mexia (1210); Stillhouse Hollow Lake (1216); Leon Reservoir (1224); Waco Lake (1225); Lake Stamford (1235); White River Lake (1240); Lake Georgetown (1249); Lake Limestone (1252); Llano City Lake (1415); Brady Creek Reservoir (1416); Concho River

(1421); Lake Texana (1604); Guadalupe River Below San Antonio River (1802); Guadalupe River Below San Marcos River (1803); Lake Placid (1804); Lake Wood (1804); Guadalupe River Above Canyon Lake (1806); Lower San Marcos River (1808); Upper Blanco River (1813); Medina River Below Medina Diversion Lake (1903); and Boerne Lake (1908). Additions and deletions were made to the "County" column as needed to better describe the general location of the water body.

The proposed amendment to §307.10(3), Appendix C, includes a description for a new segment, Blind Oso Bay (2486), and revisions to the description of the existing related segment, Oso Bay (2485), based on the results of a UAA. Other changes include revisions for the upper boundary for Sabine River Tidal (0501) and lower boundary for Sabine River Above Tidal (0502) based on the results of a tidal influence study. Segment description revisions are proposed for Lower Cibolo Creek (1902), Mid Cibolo Creek (1913), and Upper Cibolo Creek (1908) to better define the flow regime based on the results of a UAA. Editorial changes were made to clarify other water body descriptions.

The proposed amendment to §307.10(4), Appendix D, includes the addition of eight water bodies along with their designated aquatic life uses and dissolved oxygen criteria. Some of the additions are due to the results of receiving water assessments; however, most are the result of more extensive investigations via UAAs. All the water bodies are tributaries within the listed segment numbers as follows: Bois d'Arc Creek (0202); Catfish Creek* (0804); Elm Creek* (1803); Sandies Creek* (1803); Hurricane Levee Canal (2437); and Garcitas Creek* (2453). Water bodies added because of UAAs are indicated with an asterisk (*). UAAs also led to the revision of two existing Appendix D entries: Thompsons Creek (1242), which was given seasonal dissolved oxygen criteria, and Slaughter Creek (1427), which was divided into three entries in Appendix D to account for changing flow regimes as it passes over the Edwards Aquifer Recharge Zone and becomes intermittent. The flow regime for the existing entry for Bois d'Arc Creek (0202) was changed from perennial to intermittent with perennial pools based on U.S. Geological Survey gauge data. Editorial changes were made to correct clerical errors in water body descriptions and the dissolved oxygen criterion for Town Creek (0831), misspellings in stream names, and for overall consistency. Editorial changes to footnotes for numerous water bodies throughout Appendix D were made to improve clarity.

The proposed amendment to §307.10(5), Appendix E, includes the addition of five new site-specific copper water-effect ratios in the watersheds of segments 0601, 0820, 1008, 1014, and 2484. A site-specific water-effect ratio for aluminum is also proposed for Segment 1014 along with two site-specific water-effect ratios for zinc for segments 1006 and 1014. Some existing entries in the appendix have been reordered to arrange all table entries in numeric order by segment and then permit number.

The proposed amendment to §307.10(6), Appendix F, includes editorial changes to the opening text of the appendix and deletion of one footnote to improve clarity.

The proposed amendment to §307.10(7), Appendix G, includes changing the presumed use of primary contact recreation 1 with a corresponding criterion of 126 colonies per 100 mL to a secondary contact recreation 1 use with a corresponding criterion of 630 colonies per 100 mL for one unclassified water body in the Canadian River Basin, seven unclassified water bodies in the Red River Basin, two unclassified water bodies in the Cypress Creek Basin, five unclassified water bodies in the Sabine

River Basin, three unclassified water bodies in the Neches River Basin, one unclassified water body in the Trinity River Basin, 24 unclassified water bodies in the Brazos River Basin, one unclassified water body in the Brazos Colorado Coastal Basin, and one unclassified water body in the San Antonio-Nueces Coastal Basin. These proposed changes are based on the results from recreational UAAs.

The proposed amendment to §307.10(7), Appendix G, also includes, changing the presumed use of primary contact recreation 1 with a corresponding criterion of 126 colonies per 100 mL to a secondary contact recreation 2 use with a corresponding criterion of 1030 colonies per 100 mL for six unclassified water bodies in the Brazos River Basin. Proposed changes are based on the results from recreational UAAs.

Fiscal Note: Costs to State and Local Government

Jeffrey Horvath, Analyst in the Chief Financial Officer's Division, has determined that for the first five-year period the proposed rules are in effect, no significant costs or cost savings have been identified for the agency or other units of state or local government as a result of the implementation of the proposed TSWQS.

The proposed rulemaking amends the TSWQS. The TSWQS are required by the TWC and the Clean Water Act. Revisions to the TSWQS are proposed to address new information and results from studies on the appropriate uses and criteria of individual water bodies, incorporate new scientific data on the effects of specific pollutants, and address new provisions in federal regulations and guidance of the EPA. The TWC stipulates that the TCEQ may amend the TSWQS from time to time, and the Clean Water Act directs that the TSWQS be reviewed and revised as needed every three years.

The TSWQS establish the instream water quality conditions for surface waters in the state. A water quality standard for a specific water body consists of designated beneficial uses and the water quality criteria that are necessary to protect the uses. The TSWQS are the basis for: 1) establishing discharge limits in wastewater permits; 2) setting instream water quality goals for TMDLs; and 3) providing water quality targets to assess water quality.

The proposed rulemaking includes numerous revisions of toxic criteria to incorporate new data on toxicity effects. Other revisions are proposed for the uses and criteria of individual water bodies in order to incorporate new data and the results of recent UAAs and recreational UAAs. Revisions are also made to provisions regarding temporary standards and coastal recreation waters to comply with the Clean Water Act.

For the proposed statewide aquatic life toxic criteria, three are new, one is more stringent than the current TSWQS, and none are less stringent than the current TSWQS. For the proposed statewide human health toxic criteria, nine are new, 69 are more stringent than the current TSWQS, and 24 are less stringent than the current TSWQS. Proposed site-specific aquatic life use and dissolved oxygen changes in §307.10(1) and (4), Appendices A and D, include six new water bodies. The existing entry for Slaughter Creek in §307.10(4), Appendix D, is now divided into three entries. Two of those entries have different flow regimes and therefore less stringent aquatic life and dissolved oxygen criteria than those found in the current rule. For the proposed changes to existing site-specific dissolved oxygen criteria in §307.10(1) and (4), Appendices A and D, one is more stringent and two have new footnotes with less stringent seasonal criteria. The proposed site-specific toxic criteria changes in §307.10(5),

Appendix E, include eight new water bodies. No criteria changes are being made to the existing entries of §307.10(5), Appendix E., The proposed site-specific bacteria criteria to protect recreation in §307.10(7), Appendix G, include 51 new water bodies with no changes to existing criteria.

Most of the revisions of statewide toxic criteria are based on federal guidance, but the state is afforded, and during this revision has used, a measure of discretion regarding which criteria to revise. Departures from federal guidance were based on valid scientific reasons which will be provided to the EPA when the rule is submitted for federal approval.

The effects of the revised TSWQS for the TCEQ are primarily operational and procedural. The statewide monitoring and assessment of surface water quality data, and the review of wastewater permit applications, will need to incorporate the changes and additions to numerical criteria.

Some effects of the rulemaking will require procedural and operational adjustments in the TCEQ water quality management programs to accommodate the proposed revisions. These effects will tend to be higher during the first two years after TCEQ adoption and EPA approval of the TSWQS.

No additional costs are anticipated for the TCEQ to implement the revisions to the TSWQS. The incorporation of revised criteria in wastewater permits will be facilitated by concurrent revisions in the TCEQ's *Procedures to Implement the Texas Surface Water Quality Standards*.

Several of the proposed revisions of the site-specific criteria for individual water bodies in §307.10 are intended to address water bodies that are listed as impaired because of apparent inappropriate water quality standards. In these cases, the proposed revisions to the TSWQS can streamline the TCEQ's water quality management program by curtailing unnecessary restorative activities, such as TMDLs, for water bodies that are currently identified as being impaired and redirecting funds to water bodies where restoration activities are needed.

The proposed changes for dissolved oxygen and aquatic life criteria in §307.10(1), Appendix A, for classified water bodies, and §307.10(4), Appendix D, for unclassified water bodies, will remove two impairments from the current Texas 303(d) List of impaired waters. There are 51 proposed additions to §307.10(7), Appendix G, which designates site-specific contact recreation criteria. The changes in §307.10(7), Appendix G, will result in the removal of 50 impairments from the current Texas 303(d) List of impaired waters. Where appropriate, the removal of water bodies that are listed for dissolved oxygen impairments or contact recreation impairments also eliminates the need for a study to define a TMDL for these water bodies.

According to the agency staff on the TMDL Team, a typical TMDL costs approximately \$87,000 per assessment unit (AU). If the proposed amendment delist 50 impairments or AUs, the agency may realize cost savings of approximately \$1,450,000 each year for the second, third, and fourth years covered by this fiscal note due to the elimination of the need for a study to define a TMDL. The delisting of two AUs in §307.10(1) and (4), Appendices A and D, may result in additional cost savings projected to be \$58,000 each year for the second, third, and fourth years for the five-year period covered by this fiscal note. These cost savings will be redirected to water bodies where restoration activities are needed.

No significant costs or cost savings have been identified for other state agencies or units of local government as a result of the implementation of the proposed TSWQS. Any potential cost increases would primarily be for certain units of state or local government that own and operate wastewater facilities that discharge into Texas water bodies who may need to perform additional monitoring and reporting or upgrade their facilities. These upgrades may range from making changes in treatment processes to renovation or construction of new wastewater treatment facilities.

The proposed amendment to §307.10(1) and (4), Appendices A and D, includes six new and four revised entries which result in dissolved oxygen criteria that are less stringent than the criteria currently being applied to these water bodies. A cost analysis did not indicate an immediate cost savings for the affected facilities.

Other State Agencies

State agencies that operate permitted domestic wastewater discharges include the Texas Department of Criminal Justice, Texas Parks and Wildlife Department, Texas Department of Transportation, and certain state universities and schools. Domestic wastewater permits are the permits that are primarily affected by the applicable dissolved oxygen criteria in the TSWQS.

In addition, the TSWQS have indirect effects on the operation of environmental programs of other state agencies. The Texas State Soil and Water Conservation Board coordinates nonpoint source programs and watershed plans related to agriculture under the Clean Water Act, §319. The location of watershed plans is affected in part by whether a water body is considered to be meeting water quality standards. Changes to the TSWQS may result in some water bodies being added or removed from the current Texas 303(d) List of impaired waters and affect priorities for watershed plans.

The Texas Water Development Board administers loans for wastewater treatment plant construction under the Clean Water Act, Title 2. The water quality standards for dissolved oxygen have a bearing on the level of wastewater treatment needed and, therefore, on the appropriate amount and priority of a loan. The proposed changes to site-specific water quality standards for dissolved oxygen can increase or decrease the required treatment levels. In rare instances, numerical toxic criteria can affect domestic wastewater permits of state agencies, but the number of affected permits cannot be predicted.

Local Governments

The TSWQS can directly affect permitted wastewater discharges in Texas. Governmental entities with permitted discharges of domestic wastewater include cities, water districts, municipal utility districts, and river authorities. A relatively small number of governmental entities have permits for industrial wastewater discharges, and these permits are primarily for: 1) discharges related to public electricity generating facilities; or 2) discharges related to salt reduction at public drinking water treatment plants.

There are approximately 2,042 domestic discharge facilities with permits issued under the Texas Pollutant Discharge Elimination System. An estimated 1,423 of these permittees are governmental entities. Permits are issued for up to a five-year period, so that approximately 284 of the permits for governmental entities are reissued each year. There are approximately 10 wastewater permits associated with electricity generation by governmental entities.

The proposed amendment applies to state, municipal, agricultural, and industrial facilities that discharge wastewater directly into bodies of water in Texas. The proposed amendment has cost implications associated with revised criteria for toxic substances to protect human health and aquatic life, revised criteria for recreational uses, and revised dissolved oxygen criteria and aquatic life uses for classified and unclassified water bodies. Cost implications are generally associated with chemical screening and monitoring and the additional treatment of wastewater which may be needed to meet the TSWQS. Dischargers may have to change or employ new wastewater treatment methods or techniques to meet the proposed TSWQS. These changes may range from developing new wastewater processes to building a new wastewater treatment facility. The costs for state agencies and municipalities affected by the proposed amendment are anticipated to be similar to those for other entities.

The proposed changes in dissolved oxygen criteria can affect local governments that operate domestic wastewater facilities. In the absence of site-specific information, unclassified perennial water bodies are assigned a presumed high aquatic life use and associated dissolved oxygen criteria. None of the proposed revisions for dissolved oxygen criteria for classified segments in §307.10(1) or (4), Appendix A or D, are anticipated to require more stringent treatment by domestic wastewater facilities.

The proposed amendment to §307.10(1) and (4), Appendices A and D, includes six new and four revised entries which result in dissolved oxygen criteria that are less stringent than the criteria currently being applied to these water bodies. Estimates were completed to determine potential savings to dischargers located in these watersheds. The analysis did not indicate an immediate cost savings for the facilities; however, there are approximately 12 domestic permittees and 14 industrial permittees which discharge directly to, or near, these water bodies. Future expansions of these facilities may be facilitated by the proposed revisions.

Public Benefits and Costs

Mr. Horvath has also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from enforcement of, and compliance with, the proposed rules will result in increased protection of public drinking water supplies and aquatic life resources, an improved regulatory process for permitted wastewater discharges, and potentially improved quality of the surface water resources of the state.

The proposed rules are intended to establish instream water quality standards in accordance with the TWC and will satisfy federal requirements for a triennial review of the TSWQS. In addition, the proposed site-specific standards are necessary to incorporate new water quality sampling data and establish the appropriate revisions in the rule so permit issues for specific water bodies may be resolved. The proposed changes to the TSWQS can also help streamline the TCEQ's water quality management program by curtailing unnecessary restorative activities, such as TMDLs, for water bodies that are currently identified as being impaired and redirecting funds to water bodies where restoration activities are needed.

The proposed rules are not anticipated to result in significant fiscal implications for businesses or individuals. No significant costs or cost savings have been identified for affected facilities as a result of the implementation of the proposed TSWQS.

On a statewide basis, wastewater discharge facilities monitor toxic substances to protect human health and aquatic life. There

are approximately 529 wastewater permits for industrial facilities in Texas. When applying for permit renewals or amendments, industrial facilities provide substantial sampling data on a broad range of toxic pollutants that are potentially in their effluents. The screening data are evaluated to ensure compliance with the toxic criteria in the TSWQS and determine if permit limits or monitoring requirements may be required. In the proposed revisions, 70 toxic criteria become more stringent, 24 become less stringent, 215 remain unchanged, and 12 new toxic criteria are added.

It is anticipated that the majority of facilities affected by the revised toxic criteria will be industrial facilities. Although the proposed amendment includes new pollutants and various criteria changes to existing criteria, which will result in both increases and decreases in permit limits, there are no additional costs associated with facilities or the commission because the TCEQ currently screens and requires monitoring for these substances.

New site-specific metals criteria proposed for eight sites in §307.10(5), Appendix E are less stringent than the existing criteria. It is anticipated the site-specific criteria in the proposed rulemaking will avoid the imposition of inappropriately stringent criteria for a minimum of seven industrial discharge permits.

Where applicable, the costs associated with compliance with toxic standards will be determined by the size and current condition of a facility, the extent of current controls, and the nature of the wastewater and receiving waters. Because of the variability in receiving waters, the number of toxic substances, and the current condition of treatment facilities, an engineering study and design may be required to determine the extent of any facility or process changes that might be required in order to comply with the proposed requirements. This variability precludes calculation of specific costs associated with achieving proposed standards for toxic substances.

Small Business and Micro-Business Assessment

In general, no adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rules for the first five-year period the proposed rules are in effect. However, some economic effects are anticipated for small businesses and micro-businesses as a result of implementing the proposed rules. Small and micro-businesses served by municipal or commercial wastewater facilities may indirectly incur increased service rates from local governments or other operators of treatment facilities that must recover increased wastewater treatment costs from their customers. Major municipal wastewater treatment systems are required by the TCEQ and EPA to establish programs that specify effluent requirements for small industries and businesses that discharge pollutants to city sewer systems. The levels of treatment required for these dischargers to sewer systems are affected by the toxic criteria in the TSWQS, since the rule determine what effluent limits are needed for a wastewater discharge. Because of the variability in treatment costs and facility characteristics and rates, the costs to customers are virtually impossible to estimate for the regulated community. However, given the limited impact of the proposed rules, if facility upgrade costs are capitalized and annualized, the effect on ratepayers should be minimal if the customer base is of a moderate size.

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 rules will not adversely affect a small or micro-business in a material way for the first five years

that the proposed rules are in effect and are necessary to comply with state and federal law.

Local Employment Impact Statement

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

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to Texas Government Code §2001.0225 because it does not meet any of the four applicability criteria listed in Texas Government Code §2001.0225(a). According to subsection (a), §2001.0225 only applies to a major environmental rule, the result of which is to exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; exceed 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 adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it does not exceed a standard set by federal law; does not exceed an express requirement of state law; does not exceed 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; and is not proposed solely under the general powers of the agency but, rather, specifically under 33 United States Code, §1313(c), which requires states to adopt water quality standards and review them at least once every three years; and TWC, §26.023, which requires the commission to set water quality standards and allows the commission to amend them. Therefore, this proposed rulemaking does not fall under any of the applicability criteria in Texas Government Code, §2001.0225.

The commission invites public comment regarding this Draft Regulatory Impact Analysis Determination. 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 this proposed rulemaking and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rulemaking is to incorporate changes to the TSWQS deemed necessary based on the commission's triennial review of the TSWQS, which mainly consist of incorporating new data on toxicity effects and from recent UAAs and clarifying how water quality standards related to bacteria would be assessed using instream monitoring data. The proposed rulemaking would substantially advance this stated purpose by making revisions to toxic criteria, individual water bodies' uses and criteria, and bacteria standards attainment criteria in Chapter 307 of the commission's rules.

The commission's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this proposed rulemaking because this is an action that is reasonably taken to fulfill an

obligation mandated by federal law, which is exempt under Texas Government Code, §2007.003(b)(4). Clean Water Act, §303 requires the State of Texas to adopt water quality standards, review those standards at least once every three years, and revise the standards as necessary based on the review. TWC, §26.023 delegates the responsibility of adopting and revising the standards to the commission.

Nevertheless, the commission further evaluated this proposed rulemaking and performed an assessment of whether it constitutes a taking under Texas Government Code, Chapter 2007. Promulgation and enforcement of this proposed rulemaking would be neither a statutory nor a constitutional taking of private real property. Specifically, the proposed rules do not affect a landowner's rights in private real property because this rulemaking does not burden, restrict, or limit an owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the rules. In other words, this rulemaking makes necessary revisions to the TSWQS without burdening, restricting, or limiting an owner's right to property and reducing its value by 25% or more. Therefore, the proposed rulemaking does not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found that the proposal is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 et seq., and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the proposed rules in accordance with the Coastal Coordination Act Implementation Rules, 31 Texas Administrative Code (TAC) §505.22, and found the proposed rulemaking is consistent with the applicable CMP goals and policies.

CMP goals applicable to the proposed rules include protecting, preserving, restoring, and enhancing the diversity, quality, quantity, functions, and values of coastal natural resources by establishing standards and criteria for instream water quality for Texas streams, rivers, lakes, estuaries, wetlands, and other water bodies. These proposed water quality standards and criteria will provide parameters for permitted discharges that will protect, preserve, restore, and enhance the quality, functions, and values of coastal natural resources.

CMP policies applicable to the proposed rules include 31 TAC §501.21. The proposed rulemaking will require wastewater discharge permit applicants to provide information and monitoring data to the commission so the commission may make an informed decision in authorizing a discharge permit and ensuring the authorized activities in a wastewater discharge permit comply with all applicable requirements, thus making the rulemaking consistent with the administrative policies of the CMP.

The proposed rulemaking considers information gathered through the biennial assessments of water quality in the commission's Integrated Report of Surface Water Quality to prioritize coastal waters for studies and analysis when reviewing and revising the TSWQS. The TSWQS are established to protect designated uses of coastal waters, including protecting uses for recreational purposes and propagating and protecting terrestrial and aquatic life. The proposed rulemaking is consistent with the CMP's policies for discharges of municipal and industrial wastewater to coastal waters and how they relate to specific activities and coastal natural resource areas.

Promulgation and enforcement of these proposed rules will not violate or exceed any standards identified in the applicable CMP goals and policies because the proposed rules are consistent with these CMP goals and policies, do not create or have a direct or significant adverse effect on any coastal natural resource areas, and do not create or have a direct or significant adverse effect on any coastal natural resource areas.

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

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on October 16, 2017, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The webcast from this hearing may be viewed at <http://www.texasadmin.com/tceqs.shtml>. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

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

Submittal of Comments

Written comments may be submitted to Ms. Kris Hogan, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at <http://www1.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2016-002-307-OW. The comment period closes on October 17, 2017. Copies of the proposed rulemaking can be obtained from the commission's website at http://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Debbie Miller, Monitoring and Assessment Section, at (512) 239-1703.

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; TWC, §5.103, which establishes the commission's general authority to adopt rules; TWC, §5.105, which establishes the commission's authority to set policy by rule; TWC, §5.120, which requires the commission to administer the law so as to promote the conservation and protection of the quality of the state's environment and natural resources; TWC, §26.011, which authorizes the commission to establish the level of quality to be maintained in and control the quality of water in the state; TWC, §26.0135, which authorizes the commission to monitor and assess the water quality of each watershed and river basin in the state; TWC, §26.023, which authorizes the commission to set water quality standards for water in the state by rule; TWC, §26.027, which authorizes the commission to issue permits; and TWC, §26.121, which provides the commission's authority to prohibit unauthorized discharges; and 33 United States Code, §1313, which requires states to adopt wa-

ter quality standards and review them at least once every three years.

The amendments implement TWC, §26.023.

§307.2. Description of Standards.

(a) Contents of the Texas Surface Water Quality Standards.

(1) Section 307.1 of this title (relating to General Policy Statement) contains the general standards policy of the commission.

(2) This section lists the major sections of the standards, defines basin classification categories, describes justifications for standards modifications, and provides the effective dates of the rules.

(3) Section 307.3 of this title (relating to Definitions and Abbreviations) defines terms and abbreviations used in the standards.

(4) Section 307.4 of this title (relating to General Criteria) lists the general criteria that are applicable to all surface waters of the state unless specifically excepted in §307.8 of this title (relating to Application of Standards) or §307.9 of this title (relating to Determination of Standards Attainment).

(5) Section 307.5 of this title (relating to Antidegradation) describes the antidegradation policy and implementation procedures.

(6) Section 307.6 of this title (relating to Toxic Materials) establishes criteria and control procedures for specific toxic substances and total toxicity.

(7) Section 307.7 of this title (relating to Site-Specific Uses and Criteria) defines appropriate water uses and supporting criteria for site-specific standards.

(8) Section 307.8 of this title [~~relating to the Application of Standards~~] sets forth conditions when portions of the standards do not apply - such as in mixing zones or below critical low-flows.

(9) Section 307.9 of this title describes sampling and analytical procedures to determine standards attainment.

(10) Section 307.10 of this title (relating to Appendices A - G) lists site-specific standards and supporting information for classified segments (Appendices A and C), water bodies that are sole-source surface drinking water supplies (Appendix B), site-specific uses and criteria for unclassified water bodies (Appendix D), site-specific toxic criteria that may be derived for any water in the state (Appendix E), chlorophyll *a* criteria for selected reservoirs (Appendix F), and site-specific recreational uses and criteria for unclassified water bodies (Appendix G). Specific appendices are as follows:

(A) Appendix A - Site-specific Uses and Criteria for Classified Segments;

(B) Appendix B - Sole-source Surface Drinking Water Supplies;

(C) Appendix C - Segment Descriptions;

(D) Appendix D - Site-specific Uses and Criteria for Unclassified Water Bodies;

(E) Appendix E - Site-specific Toxic Criteria;

(F) Appendix F - Site-specific Nutrient Criteria for Selected Reservoirs; and

(G) Appendix G - Site-specific Recreational Uses and Criteria for Unclassified Water Bodies.

(b) Applicability. The Texas Surface Water Quality Standards apply to surface waters in the state - including wetlands.

(c) Classification of surface waters. The major surface waters of the state are classified as segments for purposes of water quality management and designation of site-specific standards. Classified segments are aggregated by basin, and basins are categorized as follows:

(1) River basin waters. Surface inland waters comprising the major rivers and their tributaries, including listed impounded waters and the tidal portion of rivers to the extent that they are confined in channels.

(2) Coastal basin waters. Surface inland waters, including listed impounded waters but exclusive of paragraph (1) of this subsection, discharging, flowing, or otherwise communicating with bays or the gulf, including the tidal portion of streams to the extent that they are confined in channels.

(3) Bay waters. All tidal waters, exclusive of those included in river basin waters, coastal basin waters, and gulf waters.

(4) Gulf waters. Waters that are not included in or do not form a part of any bay or estuary but that are a part of the open waters of the Gulf of Mexico to the limit of the state's jurisdiction.

(d) Modification of standards.

(1) The commission reserves the right to amend these standards following the completion of special studies.

(2) Any errors in water quality standards resulting from clerical errors or errors in data may be corrected by the commission through amendment of the affected standards. Water quality standards not affected by such clerical errors or errors in data remain valid until changed by the commission.

(3) The narrative provisions, presumed uses, designated uses, and numerical criteria of the Texas Surface Water Quality Standards may be amended for a specific water body to account for local conditions. A site-specific standard is an explicit amendment to this chapter [title, Chapter 307 (Texas Surface Water Quality Standards)], and adoption of a site-specific standard requires the procedures for public notice and hearing established under the Texas Water Code, §26.024 and §26.025. An amendment that establishes a site-specific standard requires a use-attainability analysis that demonstrates that reasonably attainable water-quality related uses are protected. Upon adoption, site-specific amendments to the standards will be listed in §307.10 of this title.

(4) Factors that may justify the development of site-specific standards are described in §307.4 and §§307.6 - 307.8 [§§307.4, 307.6, 307.7, and 307.8] of this title.

(5) Temporary variance. When scientific information indicates that a site-specific standards amendment is justified, the commission may allow a corresponding temporary variance to the water quality standards in a permit for a discharge of wastewater or stormwater.

(A) A temporary variance is only applicable to an existing permitted discharge.

(B) A permittee may apply for a temporary variance prior to or during the permit application process. The temporary variance request must be included in a public notice during the permit application process. An opportunity for public comment is provided, and the request may be considered in any public hearing on the permit application.

(C) A temporary variance for a Texas Pollutant Discharge Elimination System permit also requires review and approval by the United States Environmental Protection Agency (EPA) during the permitting process.

(D) The permit must contain effluent limitations that protect existing uses and preclude degradation of existing water quality, and the term of the permit must not exceed three years. Effluent limitations that are needed to meet the existing standards are listed in the permit and are effective immediately as final permit effluent limitations in the succeeding permit, unless the permittee fulfills the requirements of the conditions for the variance in the permit.

(E) When the permittee has complied with the terms of the conditions in the temporary variance, then the succeeding permit may include a permit schedule to meet standards in accordance with subsection (f) of this section. The succeeding permit may also extend the temporary variance in accordance with subsection (f) of this section in order to allow additional time for a site-specific standard to be adopted in this chapter [title]. This extension can be approved by the commission only after a site-specific study that supports a standards change is completed and the commission agrees the completed study supports a change in the applicable standard(s).

(F) Site-specific standards that are developed under a temporary variance must be expeditiously proposed and publicly considered for adoption at the earliest opportunity.

(e) Standards implementation procedures. Provisions for implementing the water quality standards are described in a document entitled *Procedures to Implement the Texas Surface Water Quality Standards* (RG-194) as amended and approved by the Texas Commission on Environmental Quality and EPA.

(f) Permit schedules to meet standards. Upon permit amendment or permit renewal, the commission may establish interim effluent limitations to allow a permittee time to modify effluent quality in order to attain final effluent limitations. The duration of any interim effluent limitations may not be longer than three years from the effective date of the permit issuance, except in accordance with a temporary variance as described in subsection (d)(5) of this section.

(g) Temporary standards. Where a criterion or designated use is not attained and cannot be attained for one or more of the reasons listed in 40 Code of Federal Regulations (CFR) §131.10(g), or to facilitate restoration or reconfiguration activities that preclude the attainment of the designated use or criterion, then a temporary standard for specific water bodies or permittees may be adopted in §307.10 of this title as an alternative to changing uses. A [criterion that is established as a temporary standard must be adopted in accordance with the provisions of subsection (d)(3) of this section] temporary standard identifies the interim numerical criteria or use that applies during the existence of the temporary standard. A temporary standard must be adopted in accordance with the provisions of subsection (d)(3) of this section. Once adopted, a temporary standard is the applicable standard for the purposes of developing wastewater discharge permit limits and issuing certifications specified in the federal Clean Water Act, §401 and Chapter 279 of this title (relating to Water Quality Certification). Specific reasons and additional procedures for justifying a temporary standard are provided in the standards implementation procedures. A temporary standard must identify the water body or permittee to which [water bodies where] the temporary standard [criterion] applies. [A temporary standard identifies the numerical criteria that apply during the existence of the temporary standard.] A temporary standard does not exempt any discharge from compliance with applicable technology-based effluent limits. A temporary standard must be reevaluated every five years at a minimum, which may be conducted through the permit process if a triennial review of the Texas Surface Water Quality Standards has not occurred. A temporary standard expires no later than the completion of the next triennial review [revision] of the Texas Surface Water Quality Standards. When a temporary standard expires, subsequent discharge permits are issued to meet the applicable existing water quality stan-

dards. If a temporary standard is sufficiently justified in accordance with the provisions of subsection (d)(3) of this section, it can be renewed during revisions of the Texas Surface Water Quality Standards. A temporary standard cannot be established that would impair an existing use.

(h) Effective date of standards. Except as provided in 40 CFR §131.21 (EPA review and approval of water quality standards), this chapter becomes [these rules become] effective 20 days after the date the chapter is [they are] filed in the Office of the Secretary of State [office of the secretary of state]. As to actions covered by 40 CFR §131.21, the rules become effective upon approval by EPA.

(i) Effect of conflict or invalidity of rule.

(1) If any provision of this chapter or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the provisions contained in this chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

(2) To the extent of any irreconcilable conflict between provisions of this chapter and other rules of the commission, the provisions of this chapter supersede.

§307.3. Definitions and Abbreviations.

(a) Definitions. The following words and terms, when used in this chapter, have the defined meanings, unless the context clearly indicates otherwise.

(1) Acute toxicity--Toxicity that exerts a stimulus severe enough to rapidly induce an effect. The duration of exposure applicable to acute toxicity is typically 96 hours or less. Tests of total toxicity normally use lethality as the measure of acute impacts. (Direct thermal impacts are excluded from definitions of toxicity.)

(2) Ambient--Refers to the existing water quality in a particular water body.

(3) Aquatic vegetation--Refers to aquatic organisms, i.e., plant life, found in the water and includes phytoplankton; algae, both attached and floating; and vascular and nonvascular plants, both rooted and floating.

(4) Attainable use--A use that can be reasonably achieved by a water body in accordance with its physical, biological, and chemical characteristics whether it is currently meeting that use or not. Guidelines for the determination and review of attainable uses are provided in the standards implementation procedures. The designated use, existing use, or presumed use of a water body may not necessarily be the attainable use.

(5) Background--Refers to the water quality in a particular water body that would occur if that water body were relatively unaffected by human activities.

(6) Bedslope--Stream gradient, or the extent of the drop in elevation encountered as the stream flows downhill. One measure of bedslope is the elevation decline in meters over the stream distance in kilometers.

(7) Best management practices--Schedules of activities, maintenance procedures, and other management practices to prevent or reduce the pollution of water in the state from point and nonpoint sources, to the maximum extent practicable. Best management practices also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

(8) Bioaccumulative--Describes a chemical that is taken up by aquatic organisms from water directly or through the consumption of food containing the chemical.

(9) Bioconcentration factor--A unitless value describing the degree to which a chemical can be concentrated in the tissues of an organism in the aquatic environment and that is absorbed directly from the water. The bioconcentration factor is the ratio of a chemical's concentration in the tissue of an organism compared to that chemical's average concentration in the surrounding water.

(10) Biological integrity--The species composition, diversity, and functional organization of a community of organisms in an environment relatively unaffected by pollution.

(11) Biotic ligand model--A metal bioavailability model that uses receiving water body characteristics to develop site-specific water quality criteria.

(12) Chronic toxicity--Toxicity that continues for a long-term period after exposure to toxic substances. Chronic exposure produces sub-lethal effects, such as growth impairment and reduced reproductive success, but it may also produce lethality. The duration of exposure applicable to the most common chronic toxicity test is seven days or more.

(13) Classified--Refers to a water body that is listed and described in Appendices A and C of [Appendix A and Appendix C in] §307.10 of this title (relating to Appendices A - G). Site-specific uses and criteria for classified water bodies are listed in Appendix A of §307.10 of this title.

(14) Coastal recreation waters--Marine coastal waters including oceans, coastal estuaries, and bays designated as primary contact recreation 1 or 2. Waters upstream of an unimpaired natural connection to the open sea or tidal inland waters are not considered coastal recreation waters (e.g., tidal rivers or streams).

(15) [(14)] Commission--Texas Commission on Environmental Quality.

(16) [(15)] Criteria--Water quality conditions that are to be met in order to support and protect desired uses, i.e., existing, designated, attainable, and presumed uses.

(17) [(16)] Critical low-flow--Low-flow condition that consists of the seven-day, two-year low-flow [(7Q2 flow)] or the alternative low-flows for spring-fed streams as discussed in §307.8(a)(2) of this title (relating to Application of Standards) and below which some standards do not apply.

(18) [(17)] Designated use--A use that is assigned to specific water bodies in Appendix A, D, or G of [Appendix D, or Appendix G in] §307.10 of this title (relating to Appendices A - G). Typical uses that may be designated for specific water bodies include domestic water supply, categories of aquatic life use, recreation categories, and aquifer protection.

(19) [(18)] Discharge permit--A permit issued by the state or a federal agency to discharge treated effluent or cooling water into waters of the state.

(20) [(19)] Dry weather flows--Sustained or typical dry, warm-weather flows between rainfall events, excluding unusual antecedent conditions of drought or wet weather.

(21) [(20)] EC₅₀--The concentration of a toxicant that produces an adverse effect on 50% of the organisms tested in a specified time period.

(22) [(21)] *E. coli*--*Escherichia coli*, a subgroup of fecal coliform bacteria that is present in the intestinal tracts and feces of warm-blooded animals. It is used as an indicator of the potential presence of pathogens.

(23) [(22)] Effluent--Wastewater discharged from any point source prior to entering a water body.

(24) [(23)] Enterococci--A subgroup of fecal streptococci bacteria (mainly *Streptococcus faecalis* and *Streptococcus faecium* that is present in the intestinal tracts and feces of warm-blooded animals. It is used as an indicator of the potential presence of pathogens.

(25) [(24)] Epilimnion--The upper mixed layer of a lake (including impoundments, ponds, and reservoirs).

(26) [(25)] Existing use--A use that is currently being supported by a specific water body or that was attained on or after November 28, 1975.

(27) [(26)] Fecal coliform--A portion of the coliform bacteria group that is present in the intestinal tracts and feces of warm-blooded animals; heat tolerant bacteria from other sources can sometimes be included. It is used as an indicator of the potential presence of pathogens.

(28) [(27)] Freshwaters--Inland waters that exhibit no measurable elevation changes due to normal tides.

(29) [(28)] Halocline--A vertical gradient in salinity under conditions of density stratification that is usually recognized as the point where salinity exhibits the greatest difference in the vertical direction.

(30) [(29)] Harmonic mean flow--A measure of mean flow in a water course that is calculated by summing the reciprocals of the individual flow measurements, dividing this sum by the number of measurements, and then calculating the reciprocal of the resulting number.

(31) [(30)] Incidental fishery--A level of fishery that applies to water bodies that are not considered to have a sustainable fishery but that have an aquatic life use of limited, intermediate, high, or exceptional.

(32) [(31)] Industrial cooling impoundment--An impoundment that is owned or operated by, or in conjunction with, the water rights permittee, and that is designed and constructed for the primary purpose of reducing the temperature and removing heat from an industrial effluent.

(33) [(32)] Industrial cooling water area--A designated area associated with a permitted wastewater discharge where numerical temperature criteria are not applicable in accordance with conditions and requirements specified in §307.4(f) of this title (relating to General Criteria) and §307.8(b) of this title (relating to Application of Standards).

(34) [(33)] Intermittent stream--A stream that has a period of zero flow for at least one week during most years. Where flow records are available, a stream with a seven-day, two-year low-flow [7Q2 flow] of less than 0.1 cubic feet per second is considered intermittent.

(35) [(34)] Intermittent stream with perennial pools--An intermittent stream that maintains persistent pools even when flow in the stream is less than 0.1 cubic feet per second.

(36) [(35)] LC₅₀--The concentration of a toxicant that is lethal (fatal) to 50% of the organisms tested in a specified time period.

(37) [(36)] Main pool station--A monitoring station that is located in the main body of a reservoir near the dam and not located in a cove or in the riverine portion or transition zone of a reservoir.

(38) [(37)] Method detection limit--The minimum concentration of a substance that can be measured and reported with 99% confidence that the analyte concentration is greater than zero and is determined from analysis of a sample in a given matrix containing the analyte. The method detection limit [(MDL)] is estimated in accordance with 40 Code of Federal Regulations Part 136, Appendix B.

(39) [(38)] Minimum analytical level--The lowest concentration that a particular substance can be quantitatively measured with a defined accuracy and precision level using approved analytical methods. The minimum analytical level is not the published method detection limit [MDL] for a United States Environmental Protection Agency [(EPA)]-approved analytical method that is based on laboratory analysis of the substance in reagent (distilled) water. The minimum analytical level is based on analyses of the analyte in the matrix of concern (e.g., wastewater effluents). The commission establishes general minimum analytical levels that are applicable when information on matrix-specific minimum analytical levels is unavailable.

(40) [(39)] Mixing zone--The area contiguous to a permitted discharge where mixing with receiving waters takes place and where specified criteria, as listed in §307.8(b)(1) of this title (relating to Application of Standards), can be exceeded. Acute toxicity to aquatic organisms is not allowed in a mixing zone, and chronic toxicity to aquatic organisms is not allowed beyond a mixing zone.

(41) [(40)] Noncontact recreation--Activities that do not involve a significant risk of water ingestion, such as those with limited body contact incidental to shoreline activity, including birding, hiking, and biking. Noncontact recreation use may also be assigned where primary and secondary contact recreation activities should not occur because of unsafe conditions, such as ship and barge traffic.

(42) [(41)] Nonpersistent--Describes a toxic substance that readily degrades in the aquatic environment, exhibits a half-life of less than 60 days, and does not have a tendency to accumulate in organisms.

(43) [(42)] Nutrient criteria--Numeric and narrative criteria that are established to protect surface waters from excessive growth of aquatic vegetation. Nutrient numeric criteria for reservoirs are expressed in terms of chlorophyll *a* concentration per unit volume as a measure of phytoplankton density.

(44) [(43)] Nutrient--A chemical constituent, most commonly a form of nitrogen or phosphorus, that in excess can contribute to the undesirable growth of aquatic vegetation and impact uses as defined in this title.

(45) [(44)] Oyster waters--Waters producing edible species of clams, oysters, or mussels.

(46) [(45)] Persistent--Describes a toxic substance that is not readily degraded and exhibits a half-life of 60 days or more in an aquatic environment.

(47) [(46)] Pollution--The alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in the state that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property or to the public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

(48) [(47)] Point source--Any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating

craft, from which pollutants or wastes are or may be discharged into or adjacent to any water in the state.

(49) [(48)] Presumed use--A use that is assigned to generic categories of water bodies (such as perennial streams). Presumed uses are superseded by designated uses for individual water bodies in Appendix A, D, or G [Appendix D, or Appendix G] of §307.10 of this title (relating to Appendices A - G).

(50) [(49)] Primary contact recreation 1--Activities that are presumed to involve a significant risk of ingestion of water (e.g., wading by children, swimming, water skiing, diving, tubing, surfing, hand-fishing as defined by Texas Parks and Wildlife Code, §66.115, and the following whitewater activities: kayaking, canoeing, and rafting).

(51) [(50)] Primary contact recreation 2--Water recreation activities, such as wading by children, swimming, water skiing, diving, tubing, surfing, handfishing as defined by Texas Parks and Wildlife Code, §66.115, and whitewater kayaking, canoeing, and rafting, that involve a significant risk of ingestion of water but that occur less frequently than for primary contact recreation 1 due to:

- (A) physical characteristics of the water body; or
- (B) limited public access.

(52) [(51)] Protection zone--Any area within the watershed of a sole-source surface drinking water supply that is:

(A) within two miles of the normal pool elevation of a body of surface water that is a sole-source surface drinking water supply;

(B) within two miles of that part of a perennial stream that is:

(i) a tributary of a sole-source surface drinking water supply; and

(ii) within three linear miles upstream of the normal pool elevation of a sole-source surface drinking water supply; or

(C) within two miles of that part of a stream that is a sole-source surface drinking water supply, extending three linear miles upstream from the water supply intake (Texas Water Code, §26.0286).

(53) [(52)] Public drinking water supply--A water body designated to provide water to a public water system as defined in Chapter 290 of this title (relating to Public Drinking Water).

(54) [(53)] Saltwater--A coastal water that has a measurable elevation change due to normal tides. In the absence of tidal information, saltwater is generally considered to be a coastal water that typically has a salinity of two parts per thousand or greater in a significant portion of the water column.

(55) [(54)] Salinity--The total dissolved solids in water after all carbonates have been converted to oxides, all bromide and iodide have been replaced by chloride, and all organic matter has been oxidized. For most purposes, salinity is considered equivalent to total dissolved salt content. Salinity is usually expressed in parts per thousand.

(56) [(55)] Seagrass propagation--A water-quality-related existing use that applies to saltwater with significant stands of submerged seagrass.

(57) [(56)] Secondary contact recreation 1--Activities that commonly occur but have limited body contact incidental to shoreline activity (e.g. fishing, canoeing, kayaking, rafting, and motor boating). These activities are presumed to pose a less significant risk of water in-

gestion than primary contact recreation 1 or 2 but more than secondary contact recreation 2.

(58) [(57)] Secondary contact recreation 2--Activities with limited body contact incidental to shoreline activity (e.g. fishing, canoeing, kayaking, rafting, and motor boating) that are presumed to pose a less significant risk of water ingestion than secondary contact recreation 1. These activities occur less frequently than secondary contact recreation 1 due to physical characteristics of the water body or limited public access.

(59) [(58)] Segment--A water body or portion of a water body that is individually defined and classified in Appendices A and C of §307.10 of this title (relating to Appendices A - G) in the Texas Surface Water Quality Standards. A segment is intended to have relatively homogeneous chemical, physical, and hydrological characteristics. A segment provides a basic unit for assigning site-specific standards and for applying water quality management programs of the agency. Classified segments may include streams, rivers, bays, estuaries, wetlands, lakes, or reservoirs.

(60) [(59)] Settleable solids--The volume or weight of material that settles out of a water sample in a specified period of time.

(61) [(60)] Seven-day, two-year low-flow (7Q2)--The lowest average stream flow for seven consecutive days with a recurrence interval of two years, as statistically determined from historical data. As specified in §307.8 of this title, some water quality standards do not apply at stream flows that are less than the 7Q2 flow.

(62) [(61)] Shellfish--Clams, oysters, mussels, crabs, crayfish, lobsters, and shrimp.

(63) [(62)] Sole-source surface drinking water supply--A body of surface water that is identified as a public water supply in rules adopted by the commission under Texas Water Code, §26.023 and is the sole source of supply of a public water supply system, exclusive of emergency water connections (Texas Water Code, §26.0286).

(64) [(63)] Standard Methods for the Examination of Water and Wastewater--A document describing sampling and analytical procedures that is published by the American Public Health Association, American Water Works Association, and Water Environment Federation. The most recent edition of this document is to be followed whenever its use is specified by this chapter [these rules].

(65) [(64)] Standards--Desirable uses (i.e., existing, attainable, designated, or presumed uses as defined in this section [the]) and the narrative and numerical criteria deemed necessary to protect those uses in surface waters.

(66) [(65)] Standards implementation procedures--Methods and protocols in the guidance document *Procedures to Implement the Texas Surface Water Quality Standards* (RG-194), as amended and approved by the commission and EPA.

(67) [(66)] Stormwater--Rainfall runoff, snow melt runoff, surface runoff, and drainage.

(68) [(67)] Stormwater discharge--A point source discharge that is composed entirely of stormwater associated with an industrial activity, a construction activity, a discharge from a municipal separate storm sewer system, or other discharge designated by the agency.

(69) [(68)] Stream order--A classification of stream size, where the smallest, unbranched tributaries of a drainage basin are designated first order streams. Where two first order streams join, a second order stream is formed; where two second order streams join, a third order stream is formed, etc. For purposes of water quality standards

application, stream order is determined from United States Geological Survey topographic maps with a scale of 1:24,000.

(70) [(69)] Surface water in the state--Lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, wetlands, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the state as defined in the Texas Water Code, §26.001, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, and including the beds and banks of all water-courses and bodies of surface water, that are wholly or partially inside or bordering the state or subject to the jurisdiction of the state; except that waters in treatment systems that are authorized by state or federal law, regulation, or permit, and that are created for the purpose of waste treatment are not considered to be water in the state.

(71) [(70)] Sustainable Fisheries--Descriptive of water bodies that potentially have sufficient fish production or fishing activity to create significant long-term human consumption of fish. Sustainable fisheries include perennial streams and rivers with a stream order of three or greater; lakes and reservoirs greater than or equal to 150 acre-feet or 50 surface acres; all bays, estuaries, and tidal rivers. Water bodies that are presumed to have sustainable fisheries include all designated segments listed in Appendix A of §307.10 of this title (relating to Appendices A - G) unless specifically exempted.

(72) [(71)] Thalweg--The deepest portion of a stream or river channel cross-section.

(73) [(72)] Tidal--Descriptive of coastal waters that are subject to the ebb and flow of tides. For purposes of standards applicability, tidal waters are considered to be saltwater. Classified tidal waters include all bays and estuaries with a segment number that begins with 24xx, all streams with the word tidal in the segment name, and the Gulf of Mexico.

(74) [(73)] To discharge--Includes to deposit, conduct, drain, emit, throw, run, allow to seep, or otherwise release or dispose of, or to allow, permit, or suffer any of these acts or omissions.

(75) [(74)] Total dissolved solids--The amount of material (inorganic salts and small amounts of organic material) dissolved in water and commonly expressed as a concentration in terms of milligrams per liter. The term is equivalent to the term filterable residue, as used in 40 Code of Federal Regulations Part 136 and in previous editions of the publication entitled, *Standard Methods for the Examination of Water and Wastewater*.

(76) [(75)] Total maximum daily load (TMDL)--The total amount of a substance that a water body can assimilate and still meet the Texas Surface Water Quality Standards.

(77) [(76)] Total suspended solids--Total suspended matter in water, which is commonly expressed as a concentration in terms of milligrams per liter. The term is equivalent to nonfilterable residue, as used in 40 Code of Federal Regulations Part 136 and in previous editions of the publication entitled, *Standard Methods for the Examination of Water and Wastewater*.

(78) [(77)] Total toxicity--Toxicity as determined by exposing aquatic organisms to samples or dilutions of instream water or treated effluent. Also referred to as whole effluent toxicity or biomonitoring.

(79) [(78)] Toxic equivalency factor [(TEF)]--A factor to describe an order-of-magnitude consensus estimate of the toxicity of a compound relative to the toxicity of 2,3,7,8-tetrachlorodibenzo-p-dioxin (2,3,7,8-TCDD). The factor is applied to transform various concentrations of dioxins and furans or dioxin-like polychlorinated biphenyls

[(PCBs)] into equivalent concentrations of 2,3,7,8-TCDD, expressed as a toxic equivalency [(TEQ)].

(80) [(79)] Toxic equivalency [(TEQ)]--The sum of the products from the concentration of each dioxin and furan, or dioxin-like polychlorinated biphenyl [PCB] congener, multiplied by its respective toxic equivalency factor [TEF] to give a single 2,3,7,8-tetrachlorodibenzo-p-dioxin [2,3,7,8-TCDD] equivalent.

(81) [(80)] Toxicity--The occurrence of adverse effects to living organisms due to exposure to toxic materials. Adverse effects caused by conditions of temperature and dissolved oxygen are excluded from the definition of toxicity. With respect to the provisions of §307.6(e) of this title (relating to Toxic Materials), which concerns total toxicity and biomonitoring requirements, adverse effects caused by concentrations of dissolved salts (such as sodium, potassium, calcium, chloride, carbonate) in source waters are excluded from the definition of toxicity. Source water is defined as surface water or groundwater that is used as a public water supply or industrial water supply (including a cooling-water supply). Source water does not include brine water that is produced during the extraction of oil and gas, or other sources of brine water that are substantially uncharacteristic of surface waters in the area of discharge. In addition, adverse effects caused by concentrations of dissolved salts that are added to source water by industrial processes are not excluded from the requirements of §307.6(e) of this title, except as specifically noted in §307.6(e)(2)(B) of this title, which concerns requirements for toxicity testing of 100% effluent. This definition of toxicity does not affect the standards for dissolved salts in this chapter other than §307.6(e) of this title. The standards implementation procedures contain provisions to protect surface waters from adverse effects of dissolved salts and methods to address the effects of dissolved salts on total toxicity tests.

(82) [(81)] Toxicity biomonitoring--The process or act of determining total toxicity. Documents that describe procedures for toxicity biomonitoring are cited in §307.6 of this title (relating to Toxic Materials). Also referred to simply as biomonitoring.

(83) [(82)] Water-effect ratio (WER)--The WER is calculated as the toxic concentration (LC_{50}) of a substance in water at a particular site, divided by the toxic concentration of that substance as reported in laboratory dilution water. The WER can be used to establish site-specific acute and chronic criteria to protect aquatic life. The site-specific criterion is equal to the WER times the statewide aquatic life criterion in §307.6(c) of this title.

(84) [(83)] Water quality management program--The agency's overall program for attaining and maintaining water quality consistent with state standards, as authorized under the Texas Water Code, the Texas Administrative Code, and the Clean Water Act, §§106, 205(j), 208, 303(e) and 314 (33 United States Code, §§1251 et seq.).

(85) [(84)] Wetland--An area (including a swamp, marsh, bog, prairie pothole, or similar area) having a predominance of hydric soils that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support and that under normal circumstances supports the growth and regeneration of hydrophytic vegetation. The term "hydric soil" means soil that, in its undrained condition, is saturated, flooded, or ponded long enough during a growing season to develop an anaerobic condition that supports the growth and regeneration of hydrophytic vegetation. The term "hydrophytic vegetation" means a plant growing in: water or a substrate that is at least periodically deficient in oxygen during a growing season as a result of excessive water content. The term "wetland" does not include irrigated acreage used as farmland; a man-made wetland of less than one acre; or a man-made wetland where construction or creation commenced on

or after August 28, 1989, and that was not constructed with wetland creation as a stated objective, including but not limited to an impoundment made for the purpose of soil and water conservation that has been approved or requested by soil and water conservation districts. If this definition of wetland conflicts with the federal definition in any manner, the federal definition prevails.

(86) [(85)] Wetland water quality functions--Attributes of wetlands that protect and maintain the quality of water in the state, which include stormwater storage and retention and the moderation of extreme water level fluctuations; shoreline protection against erosion through the dissipation of wave energy and water velocity, and anchoring of sediments; habitat for aquatic life; and removal, transformation, and retention of nutrients and toxic substances.

(87) [(86)] Zone of initial dilution--The small area at the immediate point of a permitted discharge where initial dilution with receiving waters occurs and that may not meet certain criteria applicable to the receiving water. A zone of initial dilution is substantially smaller than a mixing zone.

(b) Abbreviations. The following abbreviations apply to this chapter:

- (1) ALU--aquatic life use.
- (2) AP--aquifer protection.
- (3) AS--agricultural water supply.
- (4) ASTER--Assessment Tools for the Evaluation of Risk.
- (5) BCF--bioconcentration factor.
- (6) CASRN--Chemical Abstracts Service Registry number.
- (7) CFR--Code of Federal Regulations.
- (8) cfs--cubic feet per second.
- (9) Cl-1--chloride.
- (10) CR--county road.
- (11) DO--dissolved oxygen.
- (12) E--exceptional aquatic life use.
- (13) EPA--United States Environmental Protection Agency.
- (14) degrees F--degrees [Degree(s)] Fahrenheit.
- (15) FM--Farm to Market Road.
- (16) ft³/s--cubic feet per second.
- (17) H--high aquatic life use.
- (18) HEAST--Health Effects Assessment Summary Tables.
- (19) I--intermediate aquatic life use.
- (20) BWC--International Boundary and Water Commission.
- (21) IH--Interstate Highway.
- (22) [(21)] IRIS--Integrated Risk Information System.
- (23) [(22)] IS--industrial water supply.
- (24) [(23)] km--kilometer.
- (25) [(24)] L--limited aquatic life use.
- (26) [(25)] M--minimal aquatic life use.

- (27) [(26)] m--multiplier.
- (28) [(27)] m/km--meters per kilometer.
- (29) [(28)] MCL--maximum contaminant level (for public drinking water supplies).
- (30) [(29)] MDL--method detection limit.
- (31) [(30)] mg/L--milligrams per liter.
- (32) [(31)] mi--mile.
- (33) [(32)] mL--milliliter.
- (34) [(33)] N--navigation.
- (35) [(34)] NCR--noncontact recreation.
- (36) [(35)] O--oyster waters.
- (37) [(36)] PCR--primary contact recreation.
- (38) [(37)] PS--public water supply.
- (39) [(38)] RfD--reference dose.
- (40) [(39)] RR--ranch road.
- (41) [(40)] 7Q2--seven-day, two-year low-flow.
- (42) [(41)] SCR--secondary contact recreation.
- (43) [(42)] SH--state highway.
- (44) [(43)] SO4-2 --sulfate.
- (45) [(44)] SU--standard units.
- (46) [(45)] TCEQ--Texas Commission on Environmental Quality.
- (47) [(46)] TDS--total dissolved solids.
- (48) [(47)] TEF--toxic equivalency factor.
- (49) [(48)] TMDL--total maximum daily load.
- (50) [(49)] TPDES--Texas Pollutant Discharge Elimination System.
- (51) [(50)] TRE--toxicity reduction evaluation.
- (52) [(51)] TSS--total suspended solids.
- (53) [(52)] US--United States.
- (54) [(53)] USFDA--United States Food and Drug Administration.
- (55) [(54)] USGS--United States Geological Survey.
- (56) [(55)] WER--Water-effect ratio.
- (57) [(56)] WF--waterfowl habitat.
- (58) [(57)] WQM--water quality management.
- (59) [(58)] µg/L--micrograms per liter.
- (60) [(59)] ZID--zone of initial dilution

§307.6. *Toxic Materials.*

(a) Application. The toxic criteria set forth in this section apply to surface water in the state and specifically apply to substances attributed to waste discharges or human activity. With the exception of numeric human health criteria, toxic criteria do not apply to those instances where surface water, solely as a result of natural phenomena, exhibit characteristics beyond the limits established by this section. Standards and procedures set forth in this section are applied in accordance with §307.8 of this title (relating to Application of Stan-

dards) and §307.9 of this title (relating to Determination of Standards Attainment).

(b) General provisions.

(1) Water in the state must not be acutely toxic to aquatic life in accordance with §307.8 of this title.

(2) Water in the state with designated or existing aquatic life uses of limited or greater must not be chronically toxic to aquatic life, in accordance with §307.8 of this title.

(3) Water in the state must be maintained to preclude adverse toxic effects on human health resulting from contact recreation, consumption of aquatic organisms, consumption of drinking water or any combination of the three. Water in the state with sustainable fisheries or public drinking water supply uses must not exceed applicable human health toxic criteria, in accordance with subsection (d) of this section and §307.8 of this title.

(4) Water in the state must be maintained to preclude adverse toxic effects on aquatic life, terrestrial life, livestock, or domestic animals, resulting from contact, consumption of aquatic organisms, consumption of water, or any combination of the three.

(c) Specific numerical aquatic life criteria.

(1) Numerical criteria are established in Table 1 of this paragraph for those specific toxic substances where adequate toxicity information is available and that have the potential for exerting adverse impacts on water in the state.

Figure: 30 TAC §307.6(c)(1)

[Figure: 30 TAC §307.6(e)(1)]

(2) Numerical criteria are based on ambient water quality criteria documents published by the EPA [United States Environmental Protection Agency (EPA)]. EPA guidance criteria have been appropriately recalculated to eliminate the effects of toxicity data for aquatic organisms that are not native to Texas, in accordance with procedures in the EPA guidance documents [document] entitled *Guidelines for Deriving Numerical Site-specific Water Quality Criteria* (EPA 600/3-84-099) and *Revised Deletion Process for the Site-Specific Recalculation Procedure for Aquatic Life Criteria* (EPA-823-R-13-001). [Appendix B of the EPA draft guidance document entitled *Interim Guidance on the Determination and Use of Water-Effect Ratios for Metals* (EPA-823-B-94-001).] Additional EPA guidelines that may be used to establish aquatic life criteria are detailed in the guidance documents.

(3) Specific numerical acute aquatic life criteria are applied as 24-hour averages, and specific numerical chronic aquatic life criteria are applied as seven-day averages.

(4) Ammonia and chlorine toxicity are addressed by total toxicity (biomonitoring) requirements in subsection (e) of this section.

(5) Specific numerical aquatic life criteria for metals and metalloids in Table 1 of paragraph (1) of this subsection apply to dissolved concentrations where noted. Dissolved concentrations can be estimated by filtration of samples prior to analysis, or by converting from total recoverable measurements in accordance with procedures approved by the commission in the standards implementation procedures (RG-194) as amended. Specific numerical aquatic life criteria for non-metallic substances in Table 1 of paragraph (1) of this subsection apply to total recoverable concentrations unless otherwise noted.

(6) Specific numerical acute criteria for toxic substances are applicable to all water in the state except for small zones of initial dilution (ZIDs) at discharge points. Acute criteria may be exceeded within a ZID and below extremely low streamflow conditions (one-fourth of critical low-flow conditions) in accordance with §307.8 of

this title. There must be no lethality to aquatic organisms that move through a ZID, and the sizes of ZIDs are limited in accordance with §307.8 of this title. Specific numerical chronic criteria are applicable to all water in the state with designated or existing aquatic life uses of limited or greater, except inside mixing zones and below critical low-flow conditions, in accordance with §307.8 of this title.

(7) For toxic materials where specific numerical criteria are not listed in Table 1 of paragraph (1) of this subsection, the appropriate criteria for aquatic life protection may be derived in accordance with current EPA guidelines for deriving site-specific water quality criteria. When insufficient data are available to use EPA guidelines, the following provisions are applied in accordance with this section and §307.8 of this title. The LC_{50} data used in the subsequent calculations are typically obtained from traditional laboratory studies; however, if LC_{50} data are unavailable or incomplete, other methodologies (such as quantitative structure-activity relationships) may be used:

(A) acute criteria are calculated as 0.3 of the LC_{50} of the most sensitive aquatic species; $LC_{50} \times (0.3) =$ acute criteria;

(B) concentrations of nonpersistent toxic materials must not exceed concentrations that are chronically toxic as determined from appropriate chronic toxicity data obtained in accordance with procedures in the EPA guidance document entitled *Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Life and Their Uses* (EPA 822-R-85-100) or calculated as 0.1 of acute LC_{50} values to the most sensitive aquatic species; $LC_{50} \times (0.1) =$ chronic criteria;

(C) concentrations of persistent toxic materials that do not bioaccumulate shall not exceed concentrations that are chronically toxic as determined from appropriate chronic toxicity data obtained in accordance with procedures in the EPA guidance document entitled *Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Life and Their Uses* (EPA 822-R-85-100) or calculated as 0.05 of LC_{50} values to the most sensitive aquatic species; $LC_{50} \times (0.05) =$ chronic criteria; and

(D) concentrations of toxic materials that bioaccumulate must not exceed concentrations that are chronically toxic as determined from appropriate chronic toxicity data obtained in accordance with procedures in the EPA guidance document entitled *Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Life and Their Uses* (EPA 822-R-85-100) or calculated as 0.01 of LC_{50} values to the most sensitive aquatic species; $LC_{50} \times (0.01) =$ chronic criteria.

(8) For toxic substances where the relationship of toxicity is defined as a function of pH or hardness, numerical criteria are presented as an equation based on this relationship. Site-specific values for each segment are given in the standards implementation procedures (RG-194) as amended.

(9) Criteria for most metals are multiplied by a water-effect ratio (WER) in order to incorporate the effects of local water chemistry on toxicity. The WER is assumed to be equal to one except where sufficient site-specific data are available to determine the WER for a particular water body or portion of a water body. A WER is only applicable to those portions of a water body that are adequately addressed by site-specific data. WERs that have been determined for particular water bodies are listed in Appendix E of §307.10 of this title (relating to Appendices A - G) when standards are revised. A site-specific WER that affects an effluent limitation in a wastewater discharge permit, and that has not been incorporated into Appendix E of §307.10 of this title, must be noted in a public notice during the permit application process. An opportunity for public comment must be provided, and the WER may be considered in any public hearing on the permit application.

(10) Freshwater copper aquatic-life criteria include a multiplier (m) to incorporate effects of local water chemistry on toxicity. This multiplier may be based on either a WER or a biotic ligand model. The multiplier is assumed to be equal to one except where sufficient site-specific data are available to determine the multiplier for a particular water body or portion of a water body. The multiplier is only applicable to those portions of a water body that are adequately addressed by site-specific data. As multipliers are determined for particular water bodies they are listed in Appendix E of §307.10 of this title when standards are revised. A site-specific multiplier that affects an effluent limitation in a wastewater discharge permit, and that has not been incorporated into Appendix E of §307.10 of this title, is noted in a public notice during the permit application process. An opportunity for public comment must be provided, and the multiplier may be considered in any public hearing on the permit application.

(11) Additional site-specific factors may indicate that the numerical criteria listed in Table 1 of paragraph (1) of this subsection are inappropriate for a particular water body. These factors are applied as a site-specific standards modification in accordance with §307.2(d) of this title (relating to Description of Standards). The application of a site-specific standard must not impair an existing, attainable, or designated use. Factors that may justify a temporary variance or site-specific standards amendment include the following:

- (A) background concentrations of specific toxics of concern in receiving waters, sediment, or indigenous biota;
 - (B) persistence and degradation rate of specific toxic materials;
 - (C) synergistic, additive, or antagonistic interactions of toxic substances with other toxic or nontoxic materials;
 - (D) measurements of total effluent toxicity;
 - (E) indigenous aquatic organisms, which may have different responses to particular toxic materials;
 - (F) technological or economic limits of treatability for specific toxic materials;
 - (G) bioavailability of specific toxic substances of concern, as determined by WER tests or other analyses approved by the commission; and
 - (H) new information concerning the toxicity of a particular substance.
- (d) Specific numerical human health criteria.

(1) Numerical human health criteria are established in Table 2 of this paragraph.

Figure: 30 TAC §307.6(d)(1)

[Figure: 30 TAC §307.6(d)(1)]

(2) Categories of human health criteria:

(A) concentration criteria to prevent contamination of drinking water, fish, and other aquatic life to ensure that they are safe for human consumption. These criteria apply to surface waters that are designated or used for public drinking water supplies, including all water bodies identified as having a public drinking water supply use in Appendix A of §307.10 of this title [this chapter] or as a sole-source surface drinking water supply in Appendix B of §307.10 of this title [this chapter]. (Column A in Table 2 of paragraph (1) of this subsection);

(B) concentration criteria to prevent contamination of fish and other aquatic life to ensure that they are safe for human consumption. These criteria apply to surface waters that have sustainable

fisheries and that are not designated or used for public water supply or as a sole-source surface drinking water supply (Column B in Table 2 of paragraph (1) of this subsection);

(3) Specific assumptions and procedures (except where noted in Table 2 of paragraph (1) of this subsection).

(A) Sources for the toxicity factors to calculate criteria were derived from EPA's Integrated Risk Information System (IRIS); EPA's *National Recommended Water Quality Criteria: 2002, Human Health Criteria Calculation Matrix* (EPA-822-R-02-012); EPA inputs for calculating the 2015 updated national recommended human health criteria; EPA Health Effects Assessment Summary Tables (HEAST); Assessment Tools for the Evaluation of Risk (ASTER); EPA's QSAR Toxicity Estimation Software Tool, version 4.1; and the computer program, CLOGP3.

(B) For known or suspected carcinogens (as identified in EPA's IRIS database), an incremental cancer risk level of 10⁻⁵ (1 in 100,000) was used to derive criteria. An RfD (reference dose) was determined for carcinogens [noncarcinogens] and noncarcinogens [for carcinogens] where the EPA has not derived cancer slope factors.

(C) Consumption rates of fish and shellfish were estimated as 17.5 grams per person per day, unless otherwise specified in Table 2 of paragraph (1) of this subsection.

(D) Drinking water consumption rates were estimated as 2.0 liters per person per day.

(E) For carcinogens, a body-weight scaling factor of 3/4 power was used to convert data on laboratory test animals to human scale. Reported weights of laboratory test animals are used, and an average weight of 70 kilograms is assumed for humans.

(F) Childhood exposure was considered for all noncarcinogens. Consumption rates for fish and shellfish were estimated as 5.6 grams per child per day, and drinking water consumption rates were estimated as 0.64 liters per child per day. A child body weight was estimated at 15 kilograms. Both the water consumption rate and body weight are age-adjusted for a six-year-old child. The consumption rate for fish and shellfish for children is from Table 10-61 of EPA's 1997 *Exposure Factors Handbook* (EPA/600/P-95/002Fa-c).

(G) Numerical human health criteria were derived in accordance with the general procedures and calculations in the EPA guidance documents entitled *Technical Support Document for Water Quality-based Toxics Control* (EPA/505/2-90-001); *Guidance Manual for Assessing Human Health Risks from Chemically Contaminated Fish and Shellfish* (EPA/503/8-89-002); and *Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health* (2000) (EPA-822-B-00-004).

(H) If a calculated criterion to prevent contamination of drinking water and fish to ensure they are safe for human consumption (Column A in Table 2 of paragraph (1) of this subsection) was greater than the applicable maximum contaminant level (MCL) in Chapter 290 of this title (relating to Public Drinking Water), then the MCL was used as the criterion.

(I) If the concentration of a substance in fish tissue used for these calculations was greater than the applicable United States Food and Drug Administration Action Level for edible fish and shellfish tissue, then the acceptable concentration in fish tissue was lowered to the Action Level for calculation of criteria.

(4) Human health criteria for additional toxic materials are adopted by the commission as appropriate.

(5) Specific human health concentration criteria for water are applicable to water in the state that has sustainable fisheries or designation or use as a public drinking water supply or as a sole-source drinking water supply except within mixing zones and below stream flow conditions as specified in §307.8 of this title. The following waters are considered to have sustainable fisheries:

(A) all designated segments listed in Appendix A of §307.10 of this title, unless specifically exempted;

(B) perennial streams and rivers with a stream order of three or greater, as defined in §307.3 of this title (relating to Definitions and Abbreviations);

(C) lakes and reservoirs greater than or equal to 150 acre-feet or 50 surface acres;

(D) all bays, estuaries, and tidal rivers; and

(E) any other waters that potentially have sufficient fish production or fishing activity to create significant long-term human consumption of fish.

(6) Waters that are not considered to have a sustainable fishery, but that have an aquatic life use of limited or greater, are considered to have an incidental fishery. Consumption rates assumed for incidental fishery waters are 1.75 grams per person per day. Therefore, numerical criteria applicable to incidental fishery waters are ten times the criteria listed in Column B in [redacted] Table 2 of paragraph (1) of this subsection.

(7) Specific human health criteria are applied as long term average exposure criteria designed to protect populations over a life time. Attainment measures for human health are addressed in §307.9 of this title.

(8) For toxic materials of concern where specific human health criteria are not listed in Table 2 of paragraph (1) of this subsection, the following provisions apply:

(A) For known or suspected carcinogens (as identified in EPA's IRIS database), a cancer risk of 10-5 (1 in 100,000) is applied to the most recent numerical criteria adopted by the EPA and published in the *Federal Register*. If an MCL or equivalent agency guideline for protection of drinking water sources is less than the resulting criterion, then the MCL applies to public drinking water supplies in accordance with paragraph (3)(H) of this subsection.

(B) For toxic materials not defined as carcinogens, the most recent numerical criteria adopted by the EPA and published in the *Federal Register* are applicable. If an MCL or equivalent agency guideline for protection of drinking water sources is less than the resulting criterion, then the MCL applies to public drinking water supplies in accordance with paragraph (3)(H) of this subsection.

(C) In the absence of available criteria, numerical criteria may be derived from technically valid information and calculated in accordance with the provisions of paragraph (3) of this subsection.

(9) Numerical criteria for bioconcentratable pollutants are derived in accordance with the general procedures in the EPA guidance document entitled *Assessment and Control of Bioconcentratable Contaminants in Surface Water* (March 1991). The commission may develop discharge permit limits in accordance with the provisions of this section.

(10) Numerical human health criteria are expressed as total recoverable concentrations for nonmetals and selenium and as dissolved concentrations for other metals and metalloids.

(11) Additional site-specific factors may indicate that the numerical human health criteria listed in Table 2 of paragraph (1) of this subsection are inappropriate for a particular water body. These factors are applied as a site-specific standards modification in accordance with §307.2(d) of this title. The application of site-specific criteria must not impair an existing, attainable, presumed, or designated use or affect human health. Factors that may justify a temporary variance or site-specific standards amendment include the following:

(A) background concentrations of specific toxics of concern in receiving waters, sediment, or indigenous biota;

(B) persistence and degradation rate of specific toxic materials;

(C) synergistic or antagonistic interactions of toxic substances with other toxic or nontoxic materials;

(D) technological or economic limits of treatability for specific toxic materials;

(E) bioavailability of specific toxic substances of concern;

(F) local water chemistry and other site-specific conditions that may alter the bioconcentration, bioaccumulation, or toxicity of specific toxic substances;

(G) site-specific differences in the bioaccumulation responses of indigenous, edible aquatic organisms to specific toxic materials;

(H) local differences in consumption patterns of fish and shellfish or drinking water, but only if any changes in assumed consumption rates are protective of the local population that frequently consumes fish, shellfish, or drinking water from a particular water body; and

(I) new information concerning the toxicity of a particular substance.

(e) Total toxicity.

(1) Total (whole-effluent) toxicity of permitted discharges, as determined from biomonitoring of effluent samples at appropriate dilutions, must be sufficiently controlled to preclude acute total toxicity in all water in the state with the exception of small ZIDs at discharge points and at extremely low streamflow conditions (one-fourth of critical low-flow conditions) in accordance with §307.8 of this title. Acute total toxicity levels may be exceeded in a ZID, but there must be no significant lethality to aquatic organisms that move through a ZID, and the sizes of ZIDs are limited in accordance with §307.8 of this title. Chronic total toxicity, as determined from biomonitoring of effluent samples at appropriate dilutions, must be sufficiently controlled to preclude chronic toxicity in all water in the state with an existing or designated aquatic life use of limited or greater except in mixing zones at discharge points and at flows less than critical low-flows, in accordance with §307.8 of this title. Chronic toxicity levels may be exceeded in a mixing zone, but there must be no significant sublethal toxicity to aquatic organisms that move through the mixing zone.

(2) General provisions for controlling total toxicity.

(A) Dischargers whose effluent has a significant potential for exerting toxicity in receiving waters as described in the *Procedures to Implement the Texas Surface Water Quality Standards* (RG-194) as amended are required to conduct whole effluent toxicity biomonitoring at appropriate dilutions.

(B) In addition to the other requirements of this section, the effluent of discharges to water in the state must not be acutely toxic

to sensitive species of aquatic life, as demonstrated by effluent toxicity tests. Toxicity testing for this purpose is conducted on samples of 100% effluent, and the criterion for acute toxicity is mortality of 50% or more of the test organisms after 24 hours of exposure. This provision does not apply to mortality that is a result of an excess, deficiency, or imbalance of dissolved inorganic salts (such as sodium, calcium, potassium, chloride, or carbonate) that are in the effluent and are not listed in Table 1 of [in] subsection (c)(1) of this section or that are in source waters.

(C) The latest revisions of the following EPA publications provide methods for appropriate biomonitoring procedures: *Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms*, *Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms*, *Short-term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms*, and *the Technical Support Document for Water Quality-based Toxics Control*. The use of other procedures approved by the agency and the EPA is also acceptable. Toxicity tests must be conducted using representative, sensitive aquatic organisms as approved by the agency, and any such testing must adequately determine if toxicity standards are being attained.

(D) If toxicity biomonitoring results indicate that a discharge is not sufficiently controlled to preclude acute or chronic toxicity as described in this subsection, then the permittee will be required to eliminate sources of toxicity and may be required to conduct a toxicity reduction evaluation (TRE) in accordance with the permitting procedures of the commission. In accordance with the standards implementation procedures (RG-194), permits are amended to include appropriate provisions to eliminate toxicity. Such provisions may include total toxicity limits, chemical-specific limits, best management practices, or other actions (such as moving a discharge location) designed to reduce or eliminate toxicity. Where sufficient to attain and maintain applicable numeric and narrative state water quality standards, a chemical-specific limit, best management practices, or other actions designed to reduce or eliminate toxicity rather than a total toxicity limit may be established in the permit. Where conditions may be necessary to prevent or reduce effluent toxicity, permits must include a reasonable schedule for achieving compliance with such additional conditions.

(E) Discharge permit limits based on total toxicity may be established in consideration of site-specific factors, but the application of such factors must not result in impairment of an existing, attainable, presumed, or designated use. These factors are applied as a site-specific standards modification in accordance with §307.2(d) of this title. A demonstration that uses are protected may consist of additional effluent toxicity testing, instream monitoring requirements, or other necessary information as determined by the agency. Factors that may justify a temporary variance or site-specific standards amendment include the following:

- (i) background toxicity of receiving waters;
- (ii) persistence and degradation rate of principal toxic materials that are contributing to the total toxicity of the discharge;
- (iii) site-specific variables that may alter the impact of toxicity in the discharge;
- (iv) indigenous aquatic organisms, that may have different levels of sensitivity than the species used for total toxicity testing; and
- (v) technological, economic, or legal limits of treatability or control for specific toxic material.

§307.7. Site-Specific Uses and Criteria.

(a) Uses and numerical criteria are established on a site-specific basis in Appendices A, B, D, E, F, and G of §307.10 of this title (relating to Appendices A - G). Site-specific uses and numerical criteria may also be applied to unclassified waters in accordance with §307.4 of this title (relating to General Criteria) and §307.5(c) of this title (relating to Antidegradation). Site-specific criteria apply specifically to substances attributed to waste discharges or human activity. Site-specific criteria do not apply to those instances when surface waters exceed criteria due to natural phenomena. The application of site-specific uses and criteria is described in §307.8 of this title (relating to the Application of Standards) and §307.9 of this title (relating to the Determination of Standards Attainment).

(b) Appropriate uses and criteria for site-specific standards are defined as follows.

(1) Recreation. Recreational use consists of five categories--primary contact recreation 1, primary contact recreation 2, secondary contact recreation 1, secondary contact recreation 2, and noncontact recreation waters. Classified segments are designated for primary contact recreation 1 unless sufficient site-specific information demonstrates that elevated concentrations of indicator bacteria frequently occur due to sources of pollution that cannot be reasonably controlled by existing regulations, wildlife sources of bacteria are unavoidably high and there is limited aquatic recreational potential, or primary or secondary contact recreation is considered unsafe for other reasons such as ship or barge traffic. In a classified segment where contact recreation is considered unsafe for reasons unrelated to water quality, a designated use of noncontact recreation may be assigned either noncontact recreation criteria or criteria normally associated with primary contact recreation. A designation of primary or secondary contact recreation is not a guarantee that the water so designated is completely free of disease-causing organisms. Indicator bacteria, although not generally pathogenic, are indicative of potential contamination by feces of warm blooded animals. Recreational criteria are based on these indicator bacteria rather than direct measurements of pathogens. Criteria are expressed as the number of bacteria per 100 [milliliters] mL of water (in terms of colony forming units, most probable number, or other applicable reporting measures). Even where the concentration of indicator bacteria is less than the criteria for primary or secondary contact recreation, there is still some risk of contracting waterborne diseases. Additional guidelines on minimum data requirements and procedures for evaluating standards attainment are specified in the *TCEQ Guidance for Assessing and Reporting Surface Water Quality in Texas*, as amended.

(A) Freshwater.

(i) Primary contact recreation 1. The geometric mean criterion for *E. coli* is 126 per 100 mL. In addition, the single sample criterion for *E. coli* is 399 per 100 mL.

(ii) Primary contact recreation 2. The geometric mean criterion for *E. coli* is 206 per 100 mL.

(iii) Secondary contact recreation 1. The geometric mean criterion for *E. coli* is 630 per 100 mL.

(iv) Secondary contact recreation 2. The geometric mean criterion for *E. coli* is 1,030 per 100 mL.

(v) Noncontact recreation. The geometric mean criterion for *E. coli* is 2,060 per 100 mL.

(vi) For high saline inland water bodies where Enterococci is the designated recreational indicator in Appendix A of §307.10 of this title, Enterococci is the applicable recreational indicator for instream bacteria sampling at all times for the classified water body and for the unclassified water bodies that are within the watershed

of that classified segment, unless it is demonstrated that an unclassified water body is not high saline. E. coli is the applicable recreational indicator for instream bacteria sampling at all times for unclassified water bodies where conductivity values indicate that the water bodies are not high saline. For high saline inland waters with primary contact recreation 1, the geometric mean criterion for Enterococci is 33 per 100 mL and the single sample criterion is 78 per 100 mL. For high saline inland waters with secondary contact recreation 1, the geometric mean criterion for Enterococci is 165 per 100 mL. For high saline inland waters with secondary contact recreation 2, the geometric mean criterion for Enterococci is 270 per 100 mL. For high saline inland water bodies with noncontact recreation, the geometric mean criterion for Enterococci is 540 per 100 mL.

(B) Saltwater.

(i) Primary contact recreation 1. The geometric mean criterion for Enterococci is 35 per 100 mL. In addition, the single sample criterion for Enterococci is 130 [404] per 100 mL.

(ii) Secondary contact recreation 1. A secondary contact recreation 1 use for tidal streams and rivers can be established on a site-specific basis in §307.10 of this title if justified by a use-attainability analysis and the water body is not a coastal recreation water as defined in the Beaches Environmental Assessment and Coastal Health Act of 2000 (BEACH Act). The geometric mean criterion for Enterococci is 175 per 100 mL.

(iii) Noncontact recreation. A noncontact recreation use for tidal streams and rivers can be established on a site-specific basis in §307.10 of this title if justified by a use-attainability analysis and the water body is not a coastal recreation water, as defined in §307.3 of this title (relating to Definitions and Abbreviations) [as defined in the BEACH Act]. The geometric mean criterion for Enterococci is 350 per 100 mL.

(C) Swimming advisory programs. For areas where local jurisdictions or private property owners voluntarily provide public notice or closure based on water quality, the use of any single-sample or short-term indicators of recreational suitability are selected at the discretion of the local managers of aquatic recreation. Guidance for single-sample bacterial indicators is available in the EPA documents entitled *Recreational Water Quality Criteria* (EPA-820-F-12-058) and *Ambient Water Quality Criteria for Bacteria - 1986* (EPA 440/5-84-002). [Guidance for single-sample bacterial indicators is available in the United States Environmental Protection Agency (EPA) document entitled *Ambient Water Quality Criteria for Bacteria - 1986*.] Other short-term indicators to assess water quality suitability for recreation - such as measures of streamflow, turbidity, or rainfall - may also be appropriate.

(2) Domestic water supply.

(A) Use categories. Domestic water supply consists of three use subcategories - public water supply, sole-source surface drinking water supply, and aquifer protection.

(i) Public water supply. Segments designated for public water supply are those known to be used or exhibit characteristics that would allow them to be used as the supply source for public water systems as defined by Chapter 290 of this title (relating to Public Drinking Water).

(ii) Sole-source surface drinking water supplies and their protection zones. Water bodies that are sole-source surface drinking water supplies are listed in Appendix B of §307.10 of this title. Sole-source surface drinking water supplies and their protection zones are addressed in Chapter 321, Subchapter B of this title (relating to [Subchapter B:] Concentrated Animal Feeding Operations).

(iii) Aquifer protection. Segments designated for aquifer protection are capable of recharging the Edwards Aquifer. The principal purpose of this use designation is to protect the quality of water infiltrating into and recharging the aquifer. The designation for aquifer protection applies only to those portions of the segments so designated that are on the recharge zone, transition zone, or contributing zone as defined in Chapter 213 of this title (relating to the Edwards Aquifer). Chapter 213 of this title establishes provisions for activities in the watersheds of segments that are designated for aquifer protection.

(B) Use criteria. The following use criteria apply to all domestic water supply use subcategories.

(i) Radioactivity associated with dissolved minerals in the freshwater portions of river basin and coastal basin waters should not exceed levels established by drinking water standards as specified in Chapter 290 of this title unless the conditions are of natural origin.

(ii) Surface waters utilized for domestic water supply must not exceed toxic material concentrations that prevent them from being treated by conventional surface water treatment to meet drinking water standards as specified in Chapter 290 of this title.

(iii) Chemical and microbiological quality of surface waters used for domestic water supply should conform to drinking water standards as specified in Chapter 290 of this title.

(3) Aquatic life. The establishment of numerical criteria for aquatic life is highly dependent on desired use, sensitivities of aquatic communities, and local physical and chemical characteristics. Six subcategories of aquatic life use are established. They include minimal, limited, intermediate, high, and exceptional aquatic life and oyster waters. Aquatic life use subcategories designated for segments listed in Appendix A of §307.10 of this title recognize the natural variability of aquatic community requirements and local environmental conditions.

(A) Dissolved oxygen.

(i) The characteristics and associated dissolved oxygen criteria for limited, intermediate, high, and exceptional aquatic life use subcategories are indicated in Table 3 of this clause. This table also includes dissolved oxygen criteria for a minimal aquatic life use subcategory that applies to intermittent streams without perennial pools as indicated in §307.4(h)(4) of this title.

Figure: 30 TAC §307.7(b)(3)(A)(i)
[Figure: 30 TAC §307.7(b)(3)(A)(i)]

(ii) Critical low-flow values associated with the bed-slopes and dissolved oxygen criteria in Table 4 of this clause apply to streams that have limited, intermediate, high, or exceptional aquatic life uses and to streams that are specifically listed in Appendix A or D of §307.10 of this title. The critical low-flow values in Table 4 of this clause apply to streams in Texas that are east of a line defined by Interstate Highways 35 and 35W from the Red River to the community of Moore in Frio County, and by US [United States] Highway 57 from the community of Moore to the Rio Grande. Table 4 of this clause does not apply where specifically superseded by the equation that is listed in footnote 3 in the Cypress Creek Basin in Appendix A and in footnote 2 in Appendix D of §307.10 of this title. The critical low-flow values in Table 4 of this clause (at the appropriate stream bed-slope) are utilized as headwater flows when the flows are larger than applicable seven-day, two-year low-flows in order to determine discharge effluent limits necessary to achieve dissolved oxygen criteria. For streams that have bed-slopes less than the minimum bed-slopes in Table 4 of this clause, the flows listed for the minimum bed-slope of 0.1 meters per kilometer (m/km) are applicable. For streams that have bed-slopes

greater than the maximum bedslope in Table 4 of this clause, the flows listed for the maximum bedslope of 2.4 m/km are applicable. The required effluent limits are those necessary to achieve each level of dissolved oxygen (as defined in Table 3 of clause (i) of this subparagraph, Table 3]) at or below an assigned, designated, or presumed aquatic life use. Presumed aquatic life uses must be in accordance with those required by §307.4(h) of this title. The critical low-flow values in Table 4 of this clause do not apply to tidal streams.

Figure: 30 TAC §307.7(b)(3)(A)(ii)
[Figure: 30 TAC §307.7(b)(3)(A)(ii)]

(iii) The critical low-flow values in Table 4 of clause (ii) of this subparagraph for limited, intermediate, high, and exceptional aquatic life uses are based upon data from the commission's least impacted stream study (Texas Aquatic Ecoregion Project). Results of this study indicate a strong dependent relationship for average summertime background dissolved oxygen concentrations and several hydrologic and physical stream characteristics - particularly bedslope (stream gradient) and stream flow. The critical low-flow values in Table 4 of clause (ii) of this subparagraph are derived from a multiple regression equation for the eastern portion of Texas as defined in clause (ii) of this subparagraph. Further explanation of the development of the regression equation and its application are contained in the standards implementation procedures as amended.

(iv) The critical low-flow values in Table 4 of clause (ii) of this subparagraph may be adjusted based on site-specific data relating dissolved oxygen concentrations to factors such as flow, temperature, or hydraulic conditions in accordance with the standards implementation procedures as amended. Site-specific, critical low-flow values require approval by the commission. The EPA must review any site-specific, critical low-flow values that could affect permits or other regulatory actions that are subject to approval by EPA. Critical low-flow values that have been determined for particular streams are listed in the standards implementation procedures

(B) Oyster waters.

(i) A 1,000 foot buffer zone, measured from the shoreline at ordinary high tide, is established for all bay and gulf waters except those contained in river or coastal basins as defined in §307.2 of this title (relating to Description of Standards). Recreational criteria for indicator bacteria, as specified in §307.7(b)(1) of this title (relating to Site-Specific Uses and Criteria), are applicable within buffer zones.

(ii) The criteria for median fecal coliform concentration in bay and gulf waters, exclusive of buffer zones, are 14 colonies per 100 mL with not more than 10% of all samples exceeding 43 colonies per 100 mL.

(iii) Oyster waters should be maintained so that concentrations of toxic materials do not cause edible species of clams, oysters, and mussels to exceed accepted guidelines for the protection of public health. Guidelines are provided by the United States Food and Drug Administration Action Levels for molluscan shellfish, but additional information related to human health protection may also be considered in determining acceptable toxic concentrations.

(4) Additional criteria.

(A) Chemical parameters. Site-specific criteria for chloride, sulfate, and total dissolved solids are established as averages over an annual period for either a single sampling point or multiple sampling points.

(B) pH. Site-specific numerical criteria for pH are established as absolute minima and maxima.

(C) Temperature. Site-specific temperature criteria are established as absolute maxima.

(D) Toxic materials. Criteria for toxic materials are established in §307.6 of this title (relating to Toxic Materials).

(E) Nutrient criteria. Numeric and narrative criteria to preclude excessive growth of aquatic vegetation are intended to protect multiple uses such as primary, secondary, and noncontact recreation, aquatic life, and public water supplies. Nutrient numeric criteria for specific reservoirs, expressed as concentrations of chlorophyll *a* in water, are listed in Appendix F of §307.10 of this title.

(5) Additional uses. Other basic uses, such as navigation, agricultural water supply, industrial water supply, seagrass propagation, and wetland water quality functions must be maintained and protected for all water in the state where these uses can be achieved.

§307.9. *Determination of Standards Attainment.*

(a) General standards attainment sampling and assessment procedures. The procedures listed in this section are solely for the purposes of assessing water quality monitoring data to determine if water quality standards are attained in individual water bodies. Unless otherwise stated in this chapter, additional details concerning sampling procedures for the measurement, collection, preservation and laboratory analysis of water quality samples are provided in the Texas Commission on Environmental Quality (TCEQ) *Surface Water Quality Monitoring Procedures, Volume 1: Physical and Chemical Monitoring Methods (RG-415)* as amended, the most recently published edition of the book entitled *Standard Methods for the Examination of Water and Wastewater*, 40 Code of Federal Regulations (CFR) Part 136, or other reliable sources acceptable to the commission. Laboratory accreditation requirements are specified in Chapter 25 of this title (relating to Environmental Testing Laboratory Accreditation and Certification). Unless otherwise stated in this chapter, additional details concerning how sampling data are evaluated to assess standards compliance are provided in the TCEQ *Guidance for Assessing and Reporting Surface Water Quality in Texas* as amended.

(b) Samples to determine standards attainment are collected at locations approved by the commission. Samples collected at non-approved locations may be accepted at the discretion of the commission. Samples to determine standards attainment in ambient water must be representative in terms of location, seasonal variations, and hydrologic conditions. Locations must be typical of significant areas of a water body. Temporal sampling must be sufficient to appropriately address seasonal variations of concern. Sample results that are used to assess standards attainment must not include samples that are collected during extreme hydrologic conditions such as high-flows and flooding immediately after heavy rains. Further guidance on representative sampling, both spatially, temporally, and hydrologically, can be found in the TCEQ *Surface Water Quality Monitoring Procedures, Volume 1: Physical and Chemical Monitoring Methods (RG-415)*, *Surface Water Quality Monitoring Procedures, Volume 2: Methods for Collecting and Analyzing Biological Assemblage and Habitat (RG-416)*, and the TCEQ *Guidance for Assessing and Reporting Surface Water Quality in Texas* as amended.

(c) Collection and preservation of water samples.

(1) For the purposes of assessing standards attainment, samples are collected and preserved in accordance with procedures set forth in the most recently published edition of the book entitled *Standard Methods for the Examination of Water and Wastewater*, the TCEQ *Surface Water Quality Monitoring Procedures, Volume 1: Physical and Chemical Monitoring Methods (RG-415)* as amended, 40 CFR Part 136, or other reliable procedures acceptable to the commission.

(2) Bacterial and temperature determinations must be conducted on samples or measurements taken at or near the surface in accordance with the TCEQ *Surface Water Quality Monitoring Procedures, Volume 1: Physical and Chemical Monitoring Methods* (RG-415) as amended. Depth collection procedures for chloride, sulfate, total dissolved solids, dissolved oxygen, chlorophyll *a*, and pH to determine standards attainment may vary depending on the water body being sampled. Standards for chloride, sulfate, total dissolved solids, dissolved oxygen, chlorophyll *a*, pH are applicable to the mixed surface layer, but a single sample taken near the surface normally provides an adequate representation of these parameters. When the water column is entirely mixed according to determinations described in TCEQ *Guidance for Assessing and Reporting Surface Water Quality in Texas* as amended, standards may apply to any sample taken in the water column for parameters indicated in this section.

(3) For toxic materials, numerical aquatic life criteria are applicable to water samples collected at any depth. Numerical human health criteria are applicable to the average (arithmetic) concentration from the surface to the bottom. For the purposes of standards attainment for aquatic life protection and human health protection, samples that are collected at approximately one foot below the water surface are acceptable for assessing standards attainment of numerical criteria.

(d) Sample analysis.

(1) Numerical criteria. Procedures for laboratory analysis must be in accordance with the most recently published edition of the book entitled *Standard Methods for the Examination of Water and Wastewater*; the TCEQ [Texas] *Surface Water Quality Monitoring Procedures, Volume 1: Physical and Chemical Monitoring Methods* (RG-415) as amended, 40 CFR Part 136, or other reliable procedures acceptable to the commission, and in accordance with Chapter 25 of this title.

(2) Radioactivity. Measurements must be made on filtered samples to determine radioactivity associated with dissolved minerals in accordance with current analytical methodology approved by the EPA [United States Environmental Protection Agency (EPA)].

(3) Toxicity. Bioassay techniques must be selected as testing situations dictate but are generally conducted using representative sensitive organisms in accordance with §307.6 of this title (relating to Toxic Materials).

(e) Sampling periodicity and evaluation.

(1) Chloride, sulfate, total dissolved solids. Standards attainment determinations to demonstrate compliance with the annual average may be based on the long term mean in accordance with TCEQ *Guidance for Assessing and Reporting Surface Water Quality in Texas* as amended. Results from all monitoring stations within the segment are used to allow for reasonable parametric gradients. Total dissolved solids determinations may be based on measurements of specific conductance.

(2) Radioactivity. The impact of radioactive sources on surface waters must be evaluated in accordance with Chapter 336 of this title (relating to Radioactive Substance Rules), and in accordance with Chapter 290 of this title (relating to Public Drinking Water).

(3) Bacteria. [Standards attainment must be based on a long-term geometric mean of applicable samples in accordance with TCEQ *Guidance for Assessing and Reporting Surface Water Quality in Texas* as amended, and data are evaluated in accordance with the provisions of §307.7(b)(1) of this title (relating to Site-Specific Uses and Criteria). Determination of attainment may account for statistical variability to reduce uncertainty in evaluations in accordance with TCEQ *Guidance for Assessing and Reporting Surface Water Quality in Texas*

as amended. Samples may be evaluated with the single sample maximum criterion for purposes of swimmer safety notification programs and wastewater permit compliance.]

(A) For coastal recreation waters, as defined in §307.3 of this title (relating to Definitions and Abbreviations), standards attainment must be based on a geometric mean and a single sample maximum. Data are evaluated in accordance with §307.7(b)(1) of this title (relating to Site-Specific Uses and Criteria).

(B) For inland waters (tidal rivers, high saline inland waters, and freshwater), and other non-coastal recreation waters, standards attainment must be based on a long-term geometric mean of applicable samples in accordance with the TCEQ's *Guidance for Assessing and Reporting Surface Water Quality in Texas* as amended. Data are evaluated in accordance with §307.7(b)(1) of this title.

(C) Samples may be evaluated with the single sample maximum criterion for the purposes of swimmer safety notification programs and wastewater permit compliance.

(D) Determination of attainment may account for statistical variability to reduce uncertainty in evaluations in accordance with the TCEQ's *Guidance for Assessing and Reporting Surface Water Quality in Texas*.

(4) Toxic materials. Standards attainment must be evaluated in accordance with §307.6 of this title, and in accordance with §307.8 of this title (relating to Application of Standards). To protect aquatic life, specific numerical acute toxic criteria are applied as 24-hour averages, and specific numerical chronic toxic criteria are applied as seven-day averages. Human health criteria are applied as long-term average exposure criteria designed to protect populations over a life time. Standards attainment for acute and chronic toxic criteria for aquatic life and human health criteria must be in accordance with the TCEQ *Guidance for Assessing and Reporting Surface Water Quality in Texas* as amended. Standards attainment for human health criteria must be based on the mean of samples collected in accordance with the TCEQ *Guidance for Assessing and Reporting Surface Water Quality in Texas* as amended.

(5) Temperature and pH. Standards attainment must be in accordance with the TCEQ *Guidance for Assessing and Reporting Surface Water Quality in Texas* as amended.

(6) Dissolved oxygen.

(A) Criteria for daily (24-hour) average concentrations must be compared to a time-weighted average of measurements taken over a 24-hour period in accordance with TCEQ *Guidance for Assessing and Reporting Surface Water Quality in Texas* as amended.

(B) Criteria for minimum concentrations must be compared to individual measurements in accordance with TCEQ *Guidance for Assessing and Reporting Surface Water Quality in Texas* as amended. When data are collected over a 24-hour period, the lowest measurement observed during that 24-hour period is compared to the applicable minimum criterion.

(7) Assessment of chlorophyll *a* criteria in reservoirs. Procedures to determine standards attainment for chlorophyll *a* criteria in reservoirs must be in accordance with the TCEQ *Guidance for Assessing and Reporting Surface Water Quality in Texas* as amended, including the evaluation of multiple uses as indicated in §307.7(b)(4) of this title. Chlorophyll *a* criteria in individual reservoirs are found in Appendix F of §307.10 of this title (relating to Appendices A - G). The data for the assessment must be collected at the sampling stations used for calculating the criteria, as listed in Appendix F of §307.10 of this title, or from comparable stations in the main pool of the reservoir. As-

assessment values indicated in the TCEQ Guidance for Assessing and Reporting Surface Water Quality in Texas are to be used for assessment purposes only and are not to be used as water quality-based effluent limits in wastewater discharge permits for wastewater permitting. [Chlorophyll *a* in reservoirs: Standards attainment must be based on the long term median of chlorophyll *a* measurements in accordance with TCEQ Guidance for Assessing and Reporting Surface Water Quality in Texas as amended. Medians are compared to the chlorophyll *a* criteria for individual reservoirs in Appendix F of §307.10 of this title (relating to Appendices A - G): The data for the assessment must be collected at the sampling stations used for calculating the criteria, as listed in Appendix F of §307.10 of this title, or from comparable stations in the main pool of the reservoir.]

(8) Site-specific criteria for aquatic recreation (geometric mean), total dissolved solids, chloride, and sulfate as established in Appendix A of §307.10 of this title, and human health criteria as established in Table 2 of §307.6(d)(1) of this title do not apply in the following stream types and flow conditions:

(A) perennial streams when flows are below 0.1 cubic feet per second;

(B) intermittent streams when less than 20% of the stream bed of a 500 meter sampling reach is covered by pools; or when extremely dry conditions are indicated by comparable observations of flow severity.

(f) Biological integrity. Biological integrity, which is an essential component of the aquatic life categories defined in §307.7(b)(3) of this title [(relating to Site-Specific Uses and Criteria)], is assessed by sampling the aquatic community. Attainment of biological integrity is assessed by indices of biotic integrity that are described in the TCEQ Surface Water Quality Monitoring Procedures, Volume 2: Methods for Collecting and Analyzing Biological Assemblage and Habitat Data (RG-416) as amended. Determination of attainment may account for statistical variability to reduce uncertainty in evaluations in accordance with TCEQ Guidance for Assessing and Reporting Surface Water Quality in Texas as amended. Primary criteria associated with assessing the attainment of aquatic life uses are indices of biotic integrity and criteria for dissolved oxygen. When the appropriate aquatic life use as determined by the use-attainability study is less stringent than the presumed high use, then the appropriate aquatic life use and dissolved oxygen criteria are listed in Appendix D of §307.10 of this title after approval by EPA.

(g) Additional parameters. Assessment of narrative criteria parameters must be performed in accordance with the TCEQ Guidance for Assessing and Reporting Surface Water Quality in Texas as amended.

§307.10. *Appendices A - G.*

The following appendices are integral components of this chapter of the Texas Surface Water Quality Standards.

(1) Appendix A - Site-specific Uses and Criteria for Classified Segments:

Figure: 30 TAC §307.10(1)

[Figure: 30 TAC §307.10(1)]

(2) Appendix B - Sole-source Surface Drinking Water Supplies:

Figure: 30 TAC §307.10(2)

[Figure: 30 TAC §307.10(2)]

(3) Appendix C - Segment Descriptions:

Figure: 30 TAC §307.10(3)

[Figure: 30 TAC §307.10(3)]

(4) Appendix D - Site-specific Uses and Criteria for Unclassified Water Bodies:

Figure: 30 TAC §307.10(4)

[Figure: 30 TAC §307.10(4)]

(5) Appendix E - Site-specific Toxic Criteria:

Figure: 30 TAC §307.10(5)

[Figure: 30 TAC §307.10(5)]

(6) Appendix F - Site-specific Nutrient Criteria for Selected Reservoirs:

Figure: 30 TAC §307.10(6)

[Figure: 30 TAC §307.10(6)]

(7) Appendix G - Site-specific Recreational Uses and Criteria for Unclassified Water Bodies:

Figure: 30 TAC §307.10(7)

[Figure: 30 TAC §307.10(7)]

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

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Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

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For further information, please call: (512) 239-6812



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 15. DRIVER LICENSE RULES SUBCHAPTER C. EXAMINATION REQUIREMENTS

37 TAC §15.61

The Texas Department of Public Safety (the department) proposes amendments to §15.61, concerning Third Party Skills Testing. Texas Transportation Code, §521.165 authorizes the department to permit third parties to administer the skills test for a driver license on the department's behalf. The amendments update language to reflect the change in driver education program administration from Texas Education Agency (TEA) to the Texas Department of Licensing and Regulation (TDLR). The amendments also reduce the amount of time an authorized organization or instructor must have been licensed in order to participate in the Third Party Skills Testing (TPST) program and clarify that qualifying successor in interest ownership changes will not prevent program participation.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses or micro-businesses

required to comply with the rule as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be more scheduling and location options for driver license applicants to take the skills test which will free resources in driver license field offices to perform other services, thereby decreasing customer wait times.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk 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 a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Janie Sawatsky, Driver License Division, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas 78773; by fax to (512) 424-5233; or by email to DLDrulecomments@dps.texas.gov. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This amendment is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Transportation Code, §521.165, which authorizes the department to delegate skills testing to other entities.

Texas Government Code, §411.004(3) and Texas Transportation Code, §521.165 are affected by this proposal.

§15.61. *Third Party Skills Testing.*

(a) The following words and terms, when used in this section, shall have the following meanings, unless the context shall clearly indicate otherwise.

(1) Authorized organization (AO)--An entity that has entered into a Memorandum of Understanding (MOU) with the department to administer the driving skills test for a non-commercial driver license on the department's behalf.

(2) Examiner--An individual certified by the department to conduct a skills test.

(3) Successor in interest--Change of ownership of a business that is carried on and controlled substantially as it was before the ownership change.

(b) An organization is eligible to enter into a MOU [Memorandum of Understanding] with the department and to administer a skills test for a non-commercial driver license if it:

(1) Maintains a valid driver education school license issued by the Texas Department of Licensing and Regulation (TDLR) [Texas Education Agency];

(2) Has held the driver education school license issued by the TDLR [Texas Education Agency] for a minimum of one year [two years];

(3) Ensures completion of the appropriate [Teaches the] Impact Texas Drivers (ITD) curriculum to its driver education students; and

(4) Complies with the requirements of the MOU [Memorandum of Understanding] with the department.

(c) An individual employed by an AO [authorized organization] is eligible to become an examiner and conduct skills tests if he or she:

(1) Maintains a valid driver education instructor license issued by the TDLR [Texas Education Agency];

(2) Has held the driver education instructor license issued by the TDLR [Texas Education Agency] for at least one year [two years];

(3) Maintains a valid, unexpired Texas driver license;

(4) Has not been convicted of:

(A) Any felony;

(B) Criminally negligent homicide;

(C) Driving while intoxicated within seven years; or

(D) Driving under the influence within seven years.

(5) Does not have six or more points assigned to his or her Texas driver license;

(6) Has successfully completed the department prescribed training set out in the MOU [Memorandum of Understanding]; and

(7) Conforms to the standards of the MOU [Memorandum of Understanding] between the department and his or her employer.

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

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D. Phillip Adkins

General Counsel

Texas Department of Public Safety

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For further information, please call: (512) 424-5848



SUBCHAPTER I. RELEASE OF DRIVER RECORD INFORMATION

37 TAC §15.142

The Texas Department of Public Safety (the department) proposes amendments to §15.142, concerning Agreement to Monitor Certain Records and Purchase Driver Record Information. These amendments are necessary to conform to changes made by the 85th Legislative Session, HB 1699 to Texas Transportation Code, §521.062 regarding program qualifications.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rule as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be the insurance industry monitoring more drivers to ensure increased safety on Texas roadways.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk 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 a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Janie Sawatsky, Driver License Division, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas 78773; by fax to (512) 424-5233; or by email to DLDrulecomments@dps.texas.gov. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This amendment is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Transportation Code, §521.062, which authorizes the department to conduct a pilot program to provide driver record monitoring services.

Texas Government Code, §411.004(3) and Texas Transportation Code, §521.062 are affected by this proposal.

§15.142. *Agreement to Monitor Certain Records and Purchase Driver Record Information.*

(a) The department approved Agreement Form will be used by all parties desiring to monitor certain records and/or purchase driver record information.

(1) The pilot for a driver record monitoring program will be limited to persons eligible under Texas Transportation Code, §521.062(b). [~~Solicitation for participation will be announced in the Texas Register, and selection criteria will be established so that agreements will be made with a maximum of three participants.~~]

(2) Fees for the driver record monitoring program will be set by contract based on the volume of records purchased during the period of the contract, and will be no less than \$.06 per record per month monitored to no more than \$.20 per record per month monitored.

~~[(b) The department will review all agreements to determine the requestor's eligibility to enter into this agreement.]~~

~~(b) [(e)] The agreement will contain [require the following information]:~~

~~(1) All names used by the requestor, including names of all sub parties and companies making up the requestor's entity.~~

~~(2) All web address internet sites (Uniform Resource Locator - URL) used by the requestor.~~

~~(3) Nature of the entity's business practices.~~

~~(4) Detailed explanation of the intended uses of the requested information.~~

~~(5) Copies of agreements used by the requestor to release driver record information to third parties.~~

~~(6) Any additional material provided to third party requestors detailing the process in which they obtain driver record information and describing their limitations as to how this information may be used.~~

~~(c) [(d)] If the department determines any of the information provided is incomplete, inaccurate, or does not meet statutory requirements the department will not enter into an agreement to release driver record information.~~

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

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D. Phillip Adkins

General Counsel

Texas Department of Public Safety

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For further information, please call: (512) 424-5848



CHAPTER 23. VEHICLE INSPECTION

SUBCHAPTER D. VEHICLE INSPECTION ITEMS, PROCEDURES, AND REQUIREMENTS

37 TAC §23.41, §23.42

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figures in 37 TAC §23.41(b) and §23.42(b) are not included in the print version of the Texas Register. These figures are available in the on-line version of the September 8, 2017, issue of the Texas Register.) The Texas Department of Public Safety (the department) proposes amendments to §23.41 and §23.42, concerning Vehicle Inspection Items, Procedures, and Requirements. The amendments reflect changes to the attached graphics necessitated by 85th Legislative Session, S.B. 1001. The bill raises the inspection exemption weight limit for trailers from 4,500 pounds to 7,500 pounds, requiring amendment to the attached graphics' inspection guidelines. The proposed amendments also include general updates and additional cleanup of language required by Transportation Code, Chapter 548.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period these rules are in effect

there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rules as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be consistency with recent legislative changes and with federal regulations governing vehicle safety equipment.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk 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 a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0240, Austin, Texas 78773-0246, or by email at <https://www.txdps.state.tx.us/rsd/contact/default.aspx>. Select "Vehicle Inspection". Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This amendment is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Transportation Code, §548.002, which authorizes the department to adopt rules to administer and enforce Chapter 548.

Texas Government Code, §411.004(3), and Texas Transportation Code, §548.002 are affected by this proposal.

§23.41. *Passenger (Non-Commercial) Vehicle Inspection Items.*

(a) All items of inspection enumerated in this section shall be required to be inspected in accordance with the Texas Transportation Code, Chapter 547, any other applicable state or federal law, and department or federal regulation as provided in the DPS Training and Operations Manual prior to the issuance of a vehicle inspection report.

(b) All items must be inspected in accordance with the attached inspection procedures. (The figure in this section reflects excerpts from the DPS Training and Operations Manual, Chapter 4.)
Figure: 37 TAC §23.41(b)
[Figure: 37 TAC §23.41(b)]

(c) A vehicle inspection report may not be issued for a vehicle equipped with a compressed natural gas (CNG) fuel system unless the vehicle inspector can confirm in a manner provided by subsection (d) of this section that:

(1) the CNG fuel container meets the requirements of Code of Federal Regulations, Title 49, §571.304; and

(2) the CNG fuel container has not exceeded the expiration date provided on the container's label.

(d) The requirements of subsection (c) of this section may be confirmed by any appropriate combination of the items detailed in this subsection:

(1) Observation of Container Label. The vehicle inspector may confirm the requirement of (c)(2) of this section through direct observation of the expiration date on the container;

(2) Observation of Label at Fueling Connection Receptacle. The vehicle inspector may confirm through direct observation of a label affixed to the vehicle by the original equipment manufacturer or by a certified installer or inspector of CNG systems (as defined in subsection (g) of this section) reflecting that the requirements of subsection (c)(1) or [(e)](2) of this section are satisfied; or

(3) Documentation. The vehicle owner may furnish to the vehicle inspector documentation provided by the original vehicle equipment manufacturer or by a certified installer or inspector of CNG systems (as defined in subsection (g) of this section) reflecting that either or both requirements of subsection (c)(1) and (2) of this section are satisfied.

(e) The owner or operator of a fleet vehicle may, as an alternative to the requirements of subsection (c) of this section, provide proof in the form of a written statement or report issued by the owner or operator that the vehicle is a fleet vehicle for which the fleet operator employs a certified installer or inspector of CNG systems (as defined in subsection (g) of this section).

(f) A copy of the written statement or report provided to the vehicle inspector under subsections (d)(3) or (e) of this section must be maintained in the vehicle inspection station's files for a period of one year from the date of the inspection and made available to the department on request.

(g) Certified installer or inspector of CNG systems: For purposes of this section, a certified installer or inspector of CNG systems is a person licensed by the Railroad Commission of Texas under 16 TAC §13.61.

§23.42. *Commercial Vehicle Inspection Items.*

(a) All items of inspection enumerated in this section must be inspected in accordance with the Federal Motor Carrier Safety Regulations, Texas Transportation Code, Chapter 547, and any other applicable state law and department regulation as provided in the DPS Training and Operations Manual prior to the issuance of a passing vehicle inspection report.

(b) All items must be inspected in accordance with the attached inspection procedures. The figure in this section reflects excerpts from the DPS Training and Operations Manual, Chapter 6.
Figure: 37 TAC §23.42(b)
[Figure: 37 TAC §23.42(b)]

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

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D. Phillip Adkins
General Counsel
Texas Department of Public Safety
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For further information, please call: (512) 424-5848



CHAPTER 36. METALS RECYCLING ENTITIES

SUBCHAPTER B. CERTIFICATE OF REGISTRATION

37 TAC §36.16

The Texas Department of Public Safety (the department) proposes amendments to §36.16, concerning Renewal of Certificate of Registration. This amendment is necessary to clarify the authority of the department to deny an application for renewal if the applicant is found to have been operating with an expired certificate of registration.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rule as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be greater clarity in the rules and improved efficiency in the administration of the Metals Recycling Program.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk 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 a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0240, Austin, Texas 78773-0246, or by email at <https://www.dps.texas.gov/rsd/contact/default.aspx>. Select "Texas Metals Program". Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This amendment is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commis-

sion to adopt rules considered necessary for carrying out the department's work, and Texas Occupations Code, §1956.013, which authorizes the commission to adopt rules to administer Chapter 1956.

Texas Government Code, §411.004(3) and Texas Occupations Code, §1956.013, are affected by this proposal.

§36.16. *Renewal of Certificate of Registration.*

(a) To renew a certificate of registration, an application for renewal and the appropriate renewal fee must be submitted prior to the certificate's expiration date but not more than forty-five (45) days before the expiration date of the current certificate of registration.

(b) A certificate of registration that has been expired less than one (1) year may be renewed by submitting an application for renewal and the appropriate renewal fee pursuant to §36.17 of this title (relating to Fees).

(c) A certificate of registration that has expired for one (1) year or more may not be renewed. An application for a new certificate of registration must be submitted according to the procedures pursuant to §36.11 of this title (relating to Application for Certificate of Registration) and by paying the appropriate fees pursuant to §36.17 of this title.

(d) To renew a certificate of registration, registrants must submit proof of training pursuant to §36.34 of this title (relating to Texas Metals Program Recycler Training). The department may waive this requirement if there have been no significant updates since the previous training.

(e) Except as authorized pursuant to §36.42 of this title (relating to Extension of Registration Renewal Deadlines for Military Service Members) no extension for registration renewal is authorized.

(f) An applicant for a renewal of certificate of registration that is expired is not authorized to engage in any activity for which a registration is required prior to being issued a renewal certificate of registration by the department. Violation of this subsection may result in the denial of the renewal application.

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

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SUBCHAPTER C. PRACTICE BY CERTIFICATE HOLDERS AND REPORTING REQUIREMENTS

37 TAC §36.31, §36.36

The Texas Department of Public Safety (the department) proposes amendments to §36.31 and §36.36, concerning Practice by Certificate Holders and Reporting Requirements. These amendments are necessary to implement the requirements of 85th Legislative Session, S.B. 208.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rule as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be greater clarity in the rules and therefore improved efficiency in the administration of the Metals Recycling Program.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk 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 a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0240, Austin, Texas 78773-0246, or by email at <https://www.dps.texas.gov/rsd/contact/default.aspx>. Select "Texas Metals Program". Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This amendment is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Occupations Code, §1956.013, which authorizes the commission to adopt rules to administer Chapter 1956.

Texas Government Code, §411.004(3) and Texas Occupations Code, §1956.013 are affected by this proposal.

§36.31. Reporting Requirements.

The statutorily required reports must include the physical [Not later than the second (2nd) working day after the date of purchase or other acquisition of regulated material for which a record is required pursuant to §1956.033 of the Act, the entity shall collect and submit to the department an electronic transaction report using the department's on-line reporting system. The report must contain the statutorily required documentation. In addition, the] address of the individual from whom the regulated material is purchased [must be a physical address]. This address must not be a post office box.

§36.36. Standards of Conduct.

(a) Pursuant to §1956.035 of the Act, a metal recycling entity shall cooperate fully with any investigation or inspection conducted by

a peace officer, a representative of the department, or a representative of a county, municipality, or political subdivision that issues a license or permit under §1956.003(b) of the Act.

(b) Pursuant to §1956.035 of the Act, a metal recycling entity shall permit access during normal business hours to a person authorized to inspect.

(c) A metal recycling entity must not purchase, sell, or possess an explosive device, as defined by §1956.001(6-a) of the Act [any regulated material that reasonably could have been known to contain a substance as defined by Texas Penal Code, §46.01(2)].

(d) If convicted of a disqualifying offense pursuant to §36.55 of this title (relating to Disqualifying Offenses), an applicant or registrant shall notify the department within seventy-two (72) hours of the conviction. Notification shall be made in a manner prescribed by the department.

(e) Any violation of subsection (a) - (d); ~~(b)~~, or ~~(e)~~ of this section by a business owner, or on-site representative will be construed as a violation by the registrant.

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

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D. Phillip Adkins

General Counsel

Texas Department of Public Safety

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SUBCHAPTER E. DISCIPLINARY PROCEDURES AND ADMINISTRATIVE PROCEDURES

37 TAC §§36.52, 36.56, 36.60

The Texas Department of Public Safety (the department) proposes amendments to §§36.52, 36.56, and 36.60, concerning Disciplinary Procedures and Administrative Procedures. These amendments are necessary to implement the requirements of the 85th Legislative Session, SB 208, which expand the conduct for which the department may impose an administrative penalty against a person and require the department adopt by rule a standardized penalty schedule.

Suzy Whittenton, Chief Financial Officer, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rules as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be

greater efficiency in the administration of the Metals Recycling Program, specifically with respect to the administrative disciplinary process.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risk 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 a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0240, Austin, Texas 78773-0246, or by email at <https://www.dps.texas.gov/rsd/contact/default.aspx>. Select "Texas Metals Program". Comments must be received no later than thirty (30) days from the date of publication of this proposal.

These amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, Texas Occupations Code, §1956.013, which authorizes the commission to adopt rules to administer Chapter 1956; and Texas Occupations Code, §1956.041, which requires that the commission adopt rules establishing a standardized penalty schedule for certain violations of the statute or rules.

Texas Government Code, §411.004(3), Texas Occupations Code, §1956.013; and Texas Occupations Code, §1956.041, are affected by this proposal.

§36.52. Advisory Letters, Reprimands and Suspensions of a Certificate of Registration.

(a) The department may reprimand a person who is registered under the Act or suspend a certificate of registration of a person who is registered under the Act if the person:

(1) Fails to submit the required reports to the department pursuant to §1956.036 of the Act;

(2) Willfully or knowingly submits false, inaccurate, or incomplete information to the department on the reports submitted pursuant to §1956.036 of the Act;

(3) Fails to preserve the records required pursuant to §1956.034 of the Act; ~~or~~

(4) Fails to pay in full, within twenty (20) days of receipt of a final order, an administrative penalty assessed under §36.60 of this title (relating to Administrative Penalties), for which the department has issued a final order; or

(5) ~~[(4)]~~ Violates the Act or this chapter.

(b) For the first (1st) violation of subsection (a) of this section, the person may receive a written reprimand in the form of a letter notifying the person of the violation and directing the person to immediately remedy the violation.

(c) For a second (2nd) violation of subsection (a) of this section occurring within two (2) years of an earlier violation for which a final order has been issued, the person's certificate of registration may be suspended for a period not to exceed three (3) months.

(d) For a third (3rd) violation of subsection (a) of this section occurring within two (2) years of two (2) earlier violations for which final orders have been issued, the person's certificate of registration may be suspended for a period not to exceed six (6) months.

(e) Upon receipt of a notice of reprimand or suspension under this section, a person may request a hearing before the department pursuant to §36.56 of this title (relating to Informal Hearings). The failure to timely appeal the proposed action will result in the issuance of a final order.

(f) In lieu of a reprimand imposed pursuant to subsection (b) of this section, the person may receive an advisory letter.

(g) Upon issuance of a final order for any violation of this section, the department may require a person to complete training pursuant to §36.34 of this title (relating to Texas Metals Program Recycler Training).

(h) A violation under (a)(4) of this section will result in suspension of the registration until the administrative penalty is paid in full. The registration may not be renewed until all administrative penalties for which final orders have been issued are paid in full.

§36.56. Informal Hearings.

(a) A person who receives notice of the department's intention to deny an application for a certification of registration, to reprimand, suspend or revoke a certificate of registration, [to be reprimanded, or] to prohibit the registrant [be prohibited] from paying cash for a purchase of regulated material pursuant to §1956.036(e) of the Act, or to impose an administrative penalty under §36.60 of this title (relating to Administrative Penalties), may appeal the decision by requesting an informal hearing.

(b) The request for hearing must be submitted by mail, facsimile, or electronic mail, to the department in the manner provided on the department's metals recycling program website within twenty (20) calendar days after receipt of notice of the department's proposed action [denial, suspension, revocation, or reprimand]. If a written request for a hearing is not submitted within twenty (20) calendar days of the date notice was received, the right to a hearing under this section or §36.57 of this title (relating to Hearings before the State Office of Administrative Hearings) is waived.

(c) An informal hearing will be scheduled and conducted by the department's designee.

(d) Following the informal hearing, the hearing officer will issue a written statement of findings to the person at the address on file. The result may be appealed to the State Office of Administrative Hearings as provided in §36.57 of this title.

§36.60. Administrative Penalties.

(a) In addition to or in lieu of discipline imposed pursuant to §36.52 of this title (relating to Advisory Letters, Reprimands and Suspensions of a Certificate of Registration) the department may impose an administrative penalty on a person who violates this Chapter or Subchapter A-2 or Subchapter A-3 [§1956.036] of the Act, or who engages in conduct that would constitute an offense under §1956.040(c-2) or (c-4) of the Act.

(b) The figure in this section reflects the department's penalty schedule applicable to administrative penalties imposed under this section. For any violation not expressly addressed in the penalty schedule,

the department may impose a penalty not to exceed \$500 for the first (1st) violation. For the second (2nd) violation within the preceding one (1) year period, the penalty may not exceed \$1,000. [For a first (1st) violation, the penalty may not exceed \$500.]

Figure: 37 TAC §36.60(b)

~~[(e) For a second (2nd) violation, within the preceding one (1) year period, the penalty may not exceed \$1,000.]~~

~~[(d) In determining the amount of the administrative penalty, the department shall consider:]~~

~~[(1) The degree of knowledge or intent;]~~

~~[(2) The amount necessary to deter a future violation;]~~

~~[(3) Efforts to correct the violation; and]~~

~~[(4) Any other matter that justice may require.]~~

(c) ~~[(e)]~~ Upon receipt of a notice of administrative penalty under this section, a person may request a hearing before the department pursuant to §36.56 of this title (relating to Informal Hearings). The failure to timely appeal the proposed action will result in the issuance of a final order.

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

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D. Phillip Adkins
General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: October 8, 2017

For further information, please call: (512) 424-5848



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 807. CAREER SCHOOLS AND COLLEGES

The Texas Workforce Commission (TWC) proposes adding the following new section to Chapter 807, relating to Career Schools and Colleges:

Subchapter Q. Truck Driver Training Programs, §807.326.

TWC proposes amendments to the following section of Chapter 807, relating to Career Schools and Colleges:

Subchapter A. General Provisions, §807.2.

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART III. IMPACT STATEMENTS

PART IV. COORDINATION ACTIVITIES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

Texas law charges TWC with exercising jurisdiction and control of the oversight of career schools and colleges operating in

Texas. TWC's Career Schools and Colleges department (CSC) licenses and regulates nonexempt private postsecondary career schools and colleges that offer vocational training or continuing education to Texas residents. TWC currently regulates more than 560 career schools and colleges, which provide training to more than 160,000 students annually.

House Bill (HB) 29 and Senate Bill (SB) 128, passed by the 85th Texas Legislature, Regular Session (2017), enacted new Texas Education Code §132.006 to require each career school or college that offers a Commercial Driver's License (CDL) training program to include, as a part of that program, education and training on the recognition and prevention of human trafficking. These rules are proposed under Texas Education Code §132.006, which directs TWC to adopt rules to administer this new requirement and, in conjunction with the Office of the Attorney General, to *establish the content of the required education and training*. Additionally, Texas Labor Code §301.0015 and §302.002(d) provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities. The legislation requires TWC to adopt these rules no later than December 1, 2017.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. GENERAL PROVISIONS

TWC proposes the following amendments to Subchapter A:

§807.2. Definitions

New §807.2(26) adds the definition of Human Trafficking to read: "the action or practice of illegally transporting people from one country or area to another, typically for the purposes of forced labor or commercial sexual exploitation, including all offenses referred to in Chapter 20A of the Texas Penal Code."

SUBCHAPTER Q. TRUCK DRIVER TRAINING PROGRAMS

TWC proposes the following amendments to Subchapter Q:

§807.326. Required Training for Students

New §807.326 is added to require Career Schools and Colleges that offer CDL training to include education and training on the recognition and prevention of human trafficking, the content of which is to be established by TWC and the Office of the Attorney General.

PART III. IMPACT STATEMENTS

Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to persons required to comply with the rules.

There is no anticipated adverse economic impact on small business, microbusinesses, or rural communities as a result of enforcing or administering the rules.

Based on the analyses required by Texas Government Code §2001.024, TWC has determined that the requirement to repeal or amend a rule as required by House Bill (HB) 1290, passed by the 85th Texas Legislature, Regular Session (2017), and to be codified at Texas Government Code §2001.0045, does not apply to this rulemaking.

Economic Impact Statement and Regulatory Flexibility Analysis

TWC has determined that the proposed rules will not have an adverse economic impact on small businesses or rural communities, as these proposed rules place no requirements on small businesses or rural communities.

Doyle Fuchs, Director of Labor Market and Career Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

Courtney Arbour, Director, Workforce Development Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be the education of professional truck drivers on indicators of human trafficking which can result in early detection and protection of affected persons.

PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, TWC sought the involvement of Texas' 28 Boards. TWC provided the concept paper regarding these rule amendments to the Boards for consideration and review. During the rulemaking process, TWC considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

Comments on the proposal may be submitted to TWC Policy Comments, Workforce Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us. Comments must be received or postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §807.2

The amendment is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rule affects Title 4, Texas Labor Code, particularly Chapters 301 and 302, as well as Texas Education Code, Chapter 132.

§807.2. Definitions.

In addition to the definitions contained in §800.2 of this title, the following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

(1) Academic quarter--A period of instruction that includes at least ten weeks of instruction, unless otherwise approved by the Agency.

(2) Academic semester--A period of instruction that includes at least 15 weeks of instruction, unless otherwise approved by the Agency.

(3) Academic term--An academic quarter, academic semester, or other progress evaluation period.

(4) Academically related activity--An exam, tutorial, computer-assisted instruction, academic counseling, academic advisement, turning in a class assignment, or attending a study group that is assigned by the institution, or other activity as determined by the Agency.

(5) Accountant--An independent certified public accountant properly registered with the appropriate state board of accountancy.

(6) Act--Texas Education Code, Chapter 132, Career Schools and Colleges.

(7) Address of record--In addition to the mailing address contained in the application for a certificate of approval, each career school or college shall establish an e-mail address of record for a distribution list that consistently maintains a minimum of two current subscribers, with the format of the address to be "School#Director@xdo-main," e.g., S1111Director@gmail.com.

(8) Advertising--Any affirmative act designed to call attention to a school or program for the purpose of encouraging enrollment.

(9) Agency--The unit of state government established under Texas Labor Code, Chapter 301, that is presided over by the Commission and administered by the executive director to operate the integrated workforce development system and administer the unemployment compensation insurance program in this state as established under the Texas Unemployment Compensation Act, Texas Labor Code Annotated, Title 4, Subtitle A, as amended. The definition of Agency shall apply to all uses of the term in rules contained in this chapter.

(10) Appellant--The party or the party's authorized hearing representative who files an appeal from an appealable determination or decision.

(11) Asynchronous distance education--Distance education training that the Agency determines is not synchronous.

(12) Class or course--An identifiable unit of instruction that is part of a program of instruction.

(13) Commission--The body of governance of the Texas Workforce Commission composed of three members appointed by the governor as established under Texas Labor Code §301.002 that includes one representative of labor, one representative of employers, and one representative of the public. The definition of Commission shall apply to all uses of the term in rules contained in this subchapter.

(14) Coordinating Board--The Texas Higher Education Coordinating Board.

(15) Course of instruction--A program or seminar.

(16) Course time--A course or class period that is:

(A) a 50-minute to 60-minute lecture, recitation, or class, including a laboratory class or shop training, in a 60-minute period;

(B) a 50-minute to 60-minute internship in a 60-minute period; or

(C) 60 minutes of preparation in asynchronous distance education.

(17) Date of notice--The date the notice is mailed, unless good cause exists for the hearing officer to determine otherwise.

(18) Date of request of hearing--The date on which the appellant or the hearing representative filed a written notice of appeal with the Agency by hand delivery, facsimile, or mail. If an appeal is mailed to the Agency, then the appeal is perfected as of the postmark date on the envelope containing the appeal request unless good cause exists for the hearing officer to determine otherwise. If an appeal is delivered by hand or facsimile after 5:00 p.m., the date of request shall be the next day.

(19) Distance education course--Either a seminar or a program that is offered to non-residence school students via correspondence or other media from a remote site on a self-paced schedule, excluding programs using interactive instruction.

(20) Distance education school--A school that offers only distance education courses.

(21) Employment--A graduating or graduate student's employment in the same or substantially similar occupation for which the student was trained.

(22) Good reputation--The possession of honesty and truthfulness, trustworthiness and reliability, and a professional commitment to the educational process and the training or preparing of a person for a field of endeavor in a business, trade, technical, or industrial occupation, as well as the condition of being regarded as possessing such qualities. In determining whether a person is of good reputation, the Agency is not limited to the following acts or omissions. The Agency may consider similar acts or omissions and rehabilitation efforts in response to prior convictions in making its determination. A person is considered to be of good reputation if the person:

(A) has never been convicted of a felony or any other crime that would constitute risk of harm to the school or students as determined by the Agency;

(B) has not been successfully sued for fraud or deceptive trade practices, or breach of contract, within the last 10 years;

(C) does not own or administer a school currently in violation of legal requirements, has never owned or administered a school with repeated violations, and has never owned or administered a school that closed with violations including, but not limited to, unpaid refunds; or

(D) has not knowingly falsified or withheld information from the Agency.

(23) Hearing--An informal, orderly, and readily available proceeding held before an impartial hearing officer. A party or hearing representative may present evidence to show that the Agency's determination should be reversed, affirmed, or modified.

(24) Hearing officer--An Agency employee designated to conduct impartial hearings and issue final administrative decisions.

(25) Hearing representative--Any individual authorized by a party to assist the party in presenting the party's appeal. A hearing representative may be legal counsel or another individual. Each party may have a hearing representative to assist in presenting the party's appeal.

(26) Human Trafficking--The action or practice of illegally transporting people for the purposes of forced labor or commercial sexual exploitation, including all offenses referred to in Chapter 20A of the Texas Penal Code.

(27) [(26)] Job placement--An affirmative effort by the school to assist the student in obtaining employment in the same

or substantially similar stated occupation for which the student was trained.

(28) [(27)] Master student registration list--A comprehensive list with an entry made for any person who signs an enrollment agreement, makes a payment to attend the school, or attends a class. The entry shall be made on the date the first of these events occurs.

(29) [(28)] Party--The person or entity with the right to participate in a hearing authorized in applicable statute or rule.

(30) [(29)] Program or program of instruction--A postsecondary program of organized instruction or study that may lead to an academic, professional, or vocational degree, certificate, or other recognized educational credential.

(31) [(30)] Refund--The completed payment of a refund such that the refund instrument has been negotiated or credited into the proper account(s).

(32) [(31)] Reimbursement contract basis--A school operating, or proposing to operate, under a contract with a state or federal entity in which the school receives payment upon completion of the training.

(33) [(32)] Residence school--A school that offers at least one program that includes classroom instruction or synchronous distance education.

(34) [(33)] Response deadline--Deadlines that fall on a weekend, an official state holiday, a state holiday for which minimal staffing is required, or a federal holiday are extended one working day.

(35) [(34)] Sanctions--Administrative or civil actions, including, but not limited to, penalties, revocation of approvals, or cease and desist orders taken by the Agency against an entity in response to violations of the Act or this chapter.

(36) [(35)] School--A "career school or career college," as defined in the Act, that includes each location where courses of instruction shall be offered.

(37) [(36)] Secondary education--Successful completion of public, private, or home schooling at the high school level or obtainment of a recognized high school equivalency credential.

(38) [(37)] Seminar--A course of instruction that enhances a student's career, as opposed to a program that teaches skills and fundamental knowledge required for a stated occupation. A seminar may include a workshop, an introduction to an occupation or cluster of occupations, a short course that teaches part of the skills and knowledge for a particular occupation, language training, continuing professional education, and review for postsecondary examination.

(39) [(38)] Seminar school--A school that offers only seminars.

(40) [(39)] Small school--A "small career school or college" as defined in the Act.

(41) [(40)] Stated occupation--An occupation for which a program is offered that:

(A) is recognized by a state or federal law or by a state or federal agency as existing or emerging;

(B) is in demand; and

(C) requires training to achieve entry-level proficiencies.

(42) [(41)] Student--Any individual solicited, enrolled, or trained in Texas by a school.

(43) [(42)] Suspension of enrollments--A sanction that requires the school to suspend enrollments, re-enrollments, advertising, and solicitation, and to cease, in any way, advising prospective students, either directly or indirectly, of the available courses of instruction.

(44) [(43)] Synchronous distance education--The Agency may determine distance education to be synchronous under the following conditions:

(A) the training is conducted simultaneously in real time, or the training is conducted so that the manner of delivery ensures that even if the instructor and student are separated by time, the course time of instruction that the student experiences can be determined; and

(B) there is consistent interaction between the student(s) and the instructor on a schedule that includes a definite time for completion of the program and periodic verifiable student completion/performance measures that allow the application of the progress standards of Subchapter L and attendance standards of Subchapter M of this chapter.

(45) [(44)] Title IV school--A career school or college that participates in student financial aid programs under Title IV, Higher Education Act of 1965 (20 U.S.C. Section 1070 et seq.).

(46) [(45)] Tour--A required, in-person inspection of the facilities and equipment pertaining to a course of instruction.

(47) [(46)] Week--Seven consecutive calendar days.

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 August 24, 2017.

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Patricia Gonzalez

Deputy Director, Workforce Development Division Programs

Texas Workforce Commission

Earliest possible date of adoption: October 8, 2017

For further information, please call: (512) 680-1655



SUBCHAPTER Q. TRUCK DRIVER TRAINING PROGRAMS

40 TAC §807.326

The new rule is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed new rule affects Title 4, Texas Labor Code, particularly Chapters 301 and 302, as well as Texas Education Code, Chapter 132.

§807.326. Required Training for Students.

All career schools and colleges Commercial Driver's License (CDL) training programs must include training on the recognition and prevention of human trafficking, the content of which is to be established by the Agency in collaboration with the Office of the Attorney General.

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

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Patricia Gonzalez

Deputy Director, Workforce Development Division Programs

Texas Workforce Commission

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For further information, please call: (512) 680-1655



CHAPTER 821. TEXAS PAYDAY RULES SUBCHAPTER C. WAGE CLAIMS

40 TAC §821.41, §821.42

The Texas Workforce Commission (TWC) proposes amendments to the following sections of Chapter 821, relating to Texas Payday Rules:

Subchapter C. Wage Claims, §821.41 and §821.42

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART III. IMPACT STATEMENTS

PART IV. COORDINATION ACTIVITIES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed Chapter 821 rule change is to facilitate implementation of House Bill (HB 2443), 85th Texas Legislature, Regular Session (2017), relating to the electronic filing of wage claims under the Texas Payday Act (Act).

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER C. WAGE CLAIMS

TWC proposes the following amendments to Subchapter C:

§821.41. Validity of Claim/Filing and Investigative Procedures

Section 821.41 is amended to add electronic submission of wage claims, through methods approved by TWC, as an additional way that a worker can file a claim for unpaid wages. Currently, Texas workers can submit claims for unpaid wages to TWC in person at their nearest Workforce Solutions Office, by mailing a wage claim form to TWC at a designated address, or by faxing a claim to a fax number designated by TWC. HB 2443 envisioned that, with advances in technology, TWC would better serve Texans by offering an electronic option for the public to submit wage claims. The proposed rule amendment comports with the intent of the statute to afford electronic wage claim submittal to Texas workers seeking that option while allowing TWC flexibility in the future to leverage as yet undeveloped or under-developed technologies related to electronic wage claim filing and management.

§821.42. Timeliness

Section 821.42 is amended to conform the timeliness requirements of wage claim filing to the new electronic submission mechanism mandated in HB 2443. Since TWC will be required to accept wage claims submitted electronically on or after January 1, 2018, it will be necessary to amend §821.42 to stipulate that a wage claim submitted electronically is deemed timely when it is received by TWC.

PART III. IMPACT STATEMENTS

Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to persons required to comply with the rules.

There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural communities as a result of enforcing or administering the rules.

Based on the analyses required by Texas Government Code §2001.024, the TWC has determined that the requirement to repeal or amend a rule as required by HB 1290 passed by the 85th Legislature (to be codified at Texas Government Code §2001.0045), does not apply to this rulemaking.

Economic Impact Statement and Regulatory Flexibility Analysis

TWC has determined that the proposed rules will not have an adverse economic impact on small businesses or rural communities, as these proposed rules place no requirements on small businesses or rural communities.

Doyle Fuchs, Director of Labor Market and Career Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

Paul Carmona, Director of the Regulatory Integrity Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to better serve Texas workers alleging unpaid wages by offering an electronic option for the submission of claims for such wages under the Act.

PART IV. COORDINATION ACTIVITIES

Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or emailed to TWCPolicyComments@twc.state.tx.us. Comments must be received or postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

The amendments are proposed under Texas Labor Code §61.002 and §301.0015 which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules affect Texas Labor Code, Chapter 61.

§821.41. *Validity of Claim/Filing and Investigative Procedures.*

(a) A wage claim may be filed in person at an office of the Commission, by mailing the claim to an address designated by the

Commission, [or] by faxing the claim to a fax number designated by the Commission, or by electronic submission by way of web-based submission points identified through the Commission's Internet pages related to filing a wage claim.

(b) A wage claim must be filled out completely, legibly, and sufficiently to identify and allow the Commission to attempt contact with the employer.

§821.42. *Timeliness.*

(a) The Commission shall determine the filing date of a wage claim as the date delivered in person to the Commission, the date faxed to and received by the Commission at a fax number designated by the Commission, the date received by the Commission through electronic submission, or the date of a mailed wage claim based on the following:

(1) The postmark date of a wage claim properly addressed shall establish by a rebuttable presumption, the date upon which the wage claim was filed unless the party opposing this presumption presents evidence to establish some other filing date.

(2) Absent a postmark or evidence establishing some other filing date, the date of receipt by the Commission shall control.

(b) The Commission shall suspend the time limit for filing a wage claim only for those reasons required by law including, but not limited to, bankruptcy stays.

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

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Patricia Gonzalez

Deputy Director, Workforce Development Division Programs

Texas Workforce Commission

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For further information, please call: (512) 680-1655



TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 217. VEHICLE TITLES AND REGISTRATION

The Texas Department of Motor Vehicles (department) proposes amendments to Chapter 217, Vehicle Titles and Registration, Subchapter A, Motor Vehicle Titles, §217.3, Motor Vehicle Titles, and §217.4, Initial Application for Title; and Subchapter D, Non-repairable and Salvage Motor Vehicles, §217.82, Definitions, and §217.84, Application for Non-repairable or Salvage Vehicle Title.

EXPLANATION OF PROPOSED AMENDMENTS

Amendments are proposed to §217.3 to update the maximum width and length for a travel trailer as authorized by Senate Bill (SB) 2076, 85th Legislature, Regular Session, 2017, which is effective September 1, 2017. An amendment is also proposed to clarify that if a trailer or semitrailer having a gross weight of 4,000 pounds or less has been titled previously, it must be titled by any subsequent owner.

Amendments are proposed to §217.4 to implement a portion of SB 2076 regarding a place of application when motor vehicle ownership is transferred and the county tax assessor-collector's office of the county in which the owner resides is closed or may be closed for a protracted period of time as defined by the department.

Proposed amendments to §217.82(13) amend the definition for nonrepairable motor vehicle to refer to the statutory definition.

Amendments to §217.84(b)(2) implement a portion of SB 2076 regarding the description of a motor vehicle included in an application for a nonrepairable or salvage vehicle title. Amendments to §217.84(b) also delete the paragraph (7) language because the information is no longer necessary in an application for a nonrepairable or salvage vehicle title and renumber the remaining paragraphs accordingly.

Other amendments update the references to "Nonrepairable" motor vehicles to be consistent with statute by deleting the unnecessary hyphen.

FISCAL NOTE

Linda M. Flores, Chief Financial Officer, has determined that for each of the first five years the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the proposed amendments.

Jeremiah Kuntz, Director of the Vehicle Titles and Registration Division, has determined that there will be no impact on local economies or overall employment as a result of enforcing or administering the proposed amendments.

PUBLIC BENEFIT AND COST

Mr. Kuntz has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be clarity and consistency in the rules related to titling of trailers, semitrailers, and house trailers; place of application for a title; and application for nonrepairable or salvage vehicle title. There are no anticipated economic costs for persons required to comply with the amendments as proposed. There will be no adverse economic effect on small businesses or micro-businesses.

TAKINGS IMPACT ASSESSMENT

The department has determined that this proposal affects no private real property interests and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action, and so does not constitute a taking or require a takings impact assessment under Government Code, §2007.043.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments may be submitted to David D. Duncan, General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731 or by email to rules@txdmv.gov. The deadline for receipt of comments is 5:00 p.m. on October 9, 2017.

SUBCHAPTER A. MOTOR VEHICLE TITLES

43 TAC §217.3, §217.4

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the board of the Texas Department

of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department under the Transportation Code; and more specifically, Transportation Code, §501.0041, which provides the department may adopt rules to administer Transportation Code, Chapter 501, Certificate of Title Act.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 501.

§217.3. Motor Vehicle Titles.

Unless otherwise exempted by law or this chapter, the owner of any motor vehicle that is required to be registered in accordance with Transportation Code, Chapter 502, shall apply for a Texas title in accordance with Transportation Code, Chapter 501.

(1) Motorcycles, motor-driven cycles, autocycles, and mopeds.

(A) The title requirements of a motorcycle, motor-driven cycle, autocycle, and moped are the same requirements prescribed for any motor vehicle.

(B) A vehicle that meets the criteria for a moped and has been certified as a moped by the Department of Public Safety will be registered and titled as a moped. If the vehicle does not appear on the list of certified mopeds published by that agency, the vehicle will be treated as a motorcycle for title and registration purposes.

(2) Farm vehicles.

(A) The term "motor vehicle" does not apply to implements of husbandry, which may not be titled.

(B) Farm tractors owned by agencies exempt from registration fees in accordance with Transportation Code, §502.453, are required to be titled and registered with "Exempt" license plates issued in accordance with Transportation Code, §502.451.

(C) Farm tractors used as road tractors to mow rights of way or used to move commodities over the highway for hire are required to be registered and titled.

(D) Farm semitrailers with a gross weight of more than 4,000 pounds that are registered in accordance with Transportation Code, §502.146, may be issued a Texas title.

(3) Neighborhood electric vehicles. The title requirements of a neighborhood electric vehicle (NEV) are the same requirements prescribed for any motor vehicle.

(4) Trailers, semitrailers, and house trailers. Owners of trailers and semitrailers shall apply for and receive a Texas title for any stand alone (full) trailer, including homemade or shopmade full trailers, or any semitrailer having a gross weight in excess of 4,000 pounds. Owners of trailers and semitrailers having a gross weight of 4,000 pounds or less may apply for and receive a Texas title. If a trailer or semitrailer having a gross weight of 4,000 pounds or less has been titled previously, any subsequent owner shall apply for a Texas title for the trailer or semitrailer. House trailer-type vehicles must meet the criteria outlined in subparagraph (C) of this paragraph to be titled.

(A) The rated carrying capacity will not be less than one-third of its empty weight.

(B) Mobile office trailers, mobile oil field laboratories, and mobile oil field bunkhouses are not designed as dwellings, but are classified as commercial semitrailers and must be registered and titled as commercial semitrailers if operated on the public streets and highways.

(C) House trailer-type vehicles and camper trailers must meet the following criteria in order to be titled.

(i) A house trailer-type vehicle designed for living quarters and that is eight [body] feet six inches or more in width and 45 [40] feet or more in length (not including the hitch), is classified as a manufactured home or mobile home and is not eligible for a Texas title under Transportation Code, Chapter 501.

(ii) A house trailer-type vehicle that is less than eight feet six inches in width or less than 45 [40] feet in length is classified as a travel trailer and shall be registered and titled.

(iii) A camper trailer shall be titled as a house trailer and shall be registered with travel trailer license plates.

(iv) A recreational park model type trailer that is primarily designed as temporary living quarters for recreational, camping or seasonal use, is built on a single chassis, and is 400 square feet or less when measured at the largest horizontal projection when in the set up mode shall be titled as a house trailer and may be issued travel trailer license plates.

(5) Assembled vehicles.

(A) An assembled vehicle is a vehicle assembled from the three basic component parts (motor, frame, and body), except that a motorcycle must have a frame and motor, and a trailer or travel trailer will have no motor, and that is:

(i) assembled from new or used materials and parts by someone not regulated as a motor vehicle manufacturer;

(ii) altered or modified to the extent that it no longer reflects the original manufacturer's configuration; or

(iii) assembled from a kit even if a Manufacturer's Certificate of Origin or Manufacturer's Statement of Origin is provided.

(B) A newly assembled vehicle, for which a title has never been issued in this jurisdiction or any other, may be titled if:

(i) it is assembled and completed with a body, motor, and frame, except that a motorcycle must have a frame and motor, and a trailer or travel trailer will have no motor;

(ii) it is not created from different vehicle classes, (as established by the Federal Highway Administration, except as provided by subparagraph (C) of this paragraph), that were never engineered or manufactured to be combined with one another;

(iii) it has all safety components required by federal law during the year of assembly, unless the vehicle qualifies and is registered as a custom vehicle or street rod in accordance with Transportation Code, §504.501;

(iv) it is not a vehicle described by paragraph (6) of this section;

(v) for a vehicle assembled with a body, motor, and frame, the applicant provides proof, on a form prescribed by the department, of a safety inspection performed by an Automotive Service Excellence (ASE) technician with valid certification as a Certified Master Automobile and Light Truck Technician, certifying that the vehicle:

(I) is structurally stable;

(II) meets the necessary conditions to be operated safely on the roadway; and

(III) is equipped and operational with all equipment required by statute or rule as a condition of sale during the year

the vehicle was assembled unless it is being inspected pursuant to Subchapter G of this chapter;

(vi) for a vehicle assembled with a body, motor, and frame, the applicant submits a copy of the Certified Master Automobile and Light Truck Technician's ASE certification;

(vii) the applicant submits a Rebuilt Vehicle Statement; and

(viii) the applicant submits the following to establish the vehicle's vehicle identification number:

(I) an Application for Assigned or Reassigned Number, and Notice of Assigned Number or Installation of Reassigned Vehicle Identification Number, on forms prescribed by the department; or

(II) acceptable proof, as established by the department, of a vehicle identification number assigned by the manufacturer of the component part by which the vehicle will be identified.

(C) Component parts from the following vehicle classes may be interchanged with one another or used in the creation of an assembled vehicle:

(i) 2-axle, 4-tire passenger cars;

(ii) 2-axle, 4 tire pickups, panels and vans;

(iii) 6-tire dually pickups, of which the rear tires are dual tires.

(D) The ASE inspection for a newly assembled vehicle required under subparagraph (B) of this paragraph is in addition to the inspection required by Transportation Code, Chapter 548, except a vehicle that qualifies and is registered as a custom vehicle or street rod in accordance with Transportation Code, §504.501, is exempt from the inspection required under Transportation Code, Chapter 548, for the duration the vehicle is registered as such.

(E) An assembled vehicle which has previously been titled and/or registered in this or any other jurisdiction is subject to subparagraph (B)(i) - (iv) of this paragraph, but is not subject to subparagraph (B)(v) - (viii); however, it is subject to the inspection required by Transportation Code, Chapter 548, except a vehicle that qualifies and is registered as a custom vehicle or street rod in accordance with Transportation Code, §504.501.

(F) An assembled vehicle will be titled using the year it was assembled as the model year and "ASSEMBLED" or "ASVE" as the make of the vehicle unless the body of the vehicle is established to the department's satisfaction to be an original body from a particular year and make. An assembled vehicle utilizing an original body may be titled by the year and the make of the original body but must reflect a "RECONSTRUCTED" remark. An assembled vehicle not utilizing an original body may obtain a title with a "REPLICA" remark featuring the year and make of the replica if the vehicle resembles a prior model year vehicle. This subparagraph applies regardless of how the vehicle's model year or make was previously identified in this or any other jurisdiction.

(6) Not Eligible for Title. The following are not eligible for a Texas title regardless of the vehicle's previous title and/or registration in this or any other jurisdiction:

(A) vehicles that are missing or are stripped of their motor, frame, or body, to the extent that it materially alters the manufacturer's original design or makes the vehicle unsafe for on-road operation as determined by the department;

(B) vehicles designed or determined by the department to be a dune buggy;

(C) vehicles designed or determined by the department to be for on-track racing, unless such vehicles meet Federal Motor Vehicle Safety Standards (FMVSS) for on-road use and are reported to the National Highway Traffic Safety Administration;

(D) vehicles designed or determined by the department to be for off-road use only, unless specifically defined as a "motor vehicle" in Transportation Code, Chapter 501; or

(E) vehicles assembled, built, constructed, rebuilt, or reconstructed in any manner with:

(i) a body or frame from a vehicle which is a "non-repairable motor vehicle" as that term is defined in Transportation Code, §501.091(9); or

(ii) a motor or engine from a vehicle which is flood damaged, water damaged, or any other term which may reasonably establish the vehicle from which the motor or engine was obtained is a loss due to a water related event.

§217.4. Initial Application for Title.

(a) Time for application. A person must apply for the title not later than the 30th day after the date of assignment, except:

(1) in a seller-financed sale, the title must be applied for not later than the 45th day after the date the motor vehicle is delivered to the purchaser;

(2) a member of the armed forces or a member of a reserve component of the United States, a member of the Texas National Guard or of the National Guard of another state serving on active duty, must apply not later than the 60th day after the date of assignment of ownership; or

(3) as otherwise provided by Transportation Code, Chapter 501.

(b) Place of application. Except as otherwise provided by Transportation Code, Chapters 501 and 502, and by §217.84(a) of this title (relating to Application for Nonrepairable or Salvage Vehicle Title), when [When] motor vehicle ownership is transferred, a title application must be filed with:

(1) the county tax assessor-collector in the county in which the applicant resides or in the county in which the motor vehicle was purchased or encumbered, as selected by the applicant; ~~or;~~ ~~except:~~

(2) the county tax assessor-collector of a county who is willing to accept the application if the county tax assessor-collector's office of the county in which the owner resides is closed for more than one week or if the department is notified that the county tax assessor-collector's office may be closed for more than one week.

~~{(1) as provided by Transportation Code, Chapters 501 and 502 and by §217.84(a) of this title (relating to Application for Non-repairable or Salvage Vehicle Title);}~~

~~{(2) if a county has been declared a disaster area, the resident may apply at the closest unaffected county if the affected county tax assessor-collector estimates the county offices will be inoperable for a protracted period; or}~~

~~{(3) if the county tax assessor-collector office in the county in which the owner resides is closed for more than one week, the resident may apply to the county tax assessor-collector in a county that borders the closed county if the adjacent county agrees to accept the application.}~~

(c) Information to be included on application. An applicant for an initial title must file an application on a form prescribed by the department. The form will at a minimum require the:

(1) motor vehicle description including, but not limited to, the motor vehicle:

(A) year;

(B) make;

(C) identification number;

(D) body style; and

(E) empty weight;

(2) license plate number, if the motor vehicle is subject to registration under Transportation Code, Chapter 502;

(3) odometer reading and brand, or the word "exempt" if the motor vehicle is exempt from federal and state odometer disclosure requirements;

(4) previous owner's legal name and complete mailing address, if available;

(5) legal name as stated on the identification presented and complete address of the applicant;

(6) name and mailing address of any lienholder and the date of lien, if applicable;

(7) signature of the seller of the motor vehicle or the seller's authorized agent and the date the title application was signed; and

(8) signature of the applicant or the applicant's authorized agent and the date the title application was signed.

(d) Accompanying documentation. The title application must be supported by, at a minimum, the following documents:

(1) evidence of vehicle ownership, as described in §217.5 of this title (relating to Evidence of Motor Vehicle Ownership);

(2) an odometer disclosure statement properly executed by the seller of the motor vehicle and acknowledged by the purchaser, if applicable;

(3) proof of financial responsibility in the applicant's name, as required by Transportation Code, §502.046, unless otherwise exempted by law;

(4) an identification certificate if required by Transportation Code, Chapter 548, and Transportation Code, §501.030, and if the vehicle is being titled and registered, or registered only;

(5) a release of any liens, provided that if any liens are not released, they will be carried forward on the new title application with the following limitations:

(A) A lien recorded on out-of-state evidence as described in §217.5 cannot be carried forward to a Texas title when there is a transfer of ownership, unless a release of lien or authorization from the lienholder is attached; and

(B) A lien recorded on out-of-state evidence as described in §217.5 is not required to be released when there is no transfer of ownership from an out-of-state title and the same lienholder is being recorded on the Texas application as is recorded on the out-of-state title; and

(6) any documents required by §217.9 of this title (relating to Bonded Titles).

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

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Texas Department of Motor Vehicles

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For further information, please call: (512) 465-5665



SUBCHAPTER D. NONREPAIRABLE AND SALVAGE MOTOR VEHICLES

43 TAC §217.82, §217.84

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department under the Transportation Code; and more specifically, Transportation Code, §501.0041, which provides the department may adopt rules to administer Transportation Code, Chapter 501, Certificate of Title Act.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 501.

§217.82. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Casual sale--The sale by a salvage vehicle dealer, insurance company, or salvage pool operator of not more than five nonrepairable [~~non-repairable~~] or salvage motor vehicles to the same person during a calendar year. The term does not include a sale to a salvage vehicle dealer or the sale of an export-only motor vehicle to a person who is not a resident of the United States.

(2) Certificate of title--A written instrument that may be issued solely by and under the authority of the department and that reflects the transferor, transferee, vehicle description, license plate and lien information, and rights of survivorship agreement as specified in Subchapter A of this chapter or as required by the department.

(3) Application for Title--A form prescribed by the director of the department's Vehicle Titles and Registration Division that reflects the information required by the department to create a motor vehicle title record.

(4) Damage--Sudden damage to a motor vehicle caused by the motor vehicle being wrecked, burned, flooded, or stripped of major component parts. The term does not include gradual damage from any cause, sudden damage caused by hail, or any damage caused only to the exterior paint of the motor vehicle.

(5) Date of sale--The date of the transfer of possession of a specific vehicle from a seller to a purchaser.

(6) Department--The Texas Department of Motor Vehicles.

(7) Export-only sale--The sale of a nonrepairable [~~non-repairable~~] or salvage motor vehicle, by a salvage vehicle dealer, includ-

ing a salvage pool operator acting as agent for an insurance company, or a governmental entity, to a person who resides outside the United States.

(8) Flood damage--A title remark that is initially indicated on a nonrepairable [~~non-repairable~~] or salvage vehicle title to denote that the damage to the vehicle was caused exclusively by flood and that is carried forward on subsequent title issuance.

(9) Insurance company--A person authorized to write automobile insurance in this state or an out-of-state insurance company that pays a loss claim for a motor vehicle in this state.

(10) Manufacturer's certificate of origin--A form prescribed by the department showing the original transfer of a new motor vehicle from the manufacturer to the original purchaser, whether importer, distributor, dealer, or owner, and when presented with an application for title, showing, on appropriate forms prescribed by the department, each subsequent transfer between distributor and dealer, dealer and dealer, and dealer and owner.

(11) Metal recycler--A person who:

(A) is predominately engaged in the business of obtaining ferrous or nonferrous metal that has served its original economic purpose to convert the metal, or sell the metal for conversion, into raw material products consisting of prepared grades and having an existing or potential economic value;

(B) has a facility to convert ferrous or nonferrous metal into raw material products consisting of prepared grades and having an existing or potential economic value, by a method other than the exclusive use of hand tools, including the processing, sorting, cutting, classifying, cleaning, baling, wrapping, shredding, shearing, or changing the physical form or chemical content of the metal; and

(C) sells or purchases the ferrous or nonferrous metal solely for use as raw material in the production of new products.

(12) Motor vehicle--A vehicle described by Transportation Code, §501.002(17).

(13) Nonrepairable [~~Non-repairable~~] motor vehicle--A motor vehicle as defined by Transportation Code, §501.091(9), [regardless of the year model, that is wrecked, damaged, or burned to the extent that the only residual value of the motor vehicle is as a source of parts or scrap metal, or that comes into this state under a title or other ownership document that indicates that the motor vehicle is non-repairable, junked, or for parts or dismantling only.]

(14) Nonrepairable [~~Non-repairable~~] vehicle title--A document that evidences ownership of a nonrepairable [~~non-repairable~~] motor vehicle.

(15) Out-of-state buyer--A person licensed in an automotive business by another state or jurisdiction if the department has listed the holders of such a license as permitted purchasers of salvage motor vehicles or nonrepairable [~~non-repairable~~] motor vehicles based on substantially similar licensing requirements and on whether salvage vehicle dealers licensed in Texas are permitted to purchase salvage motor vehicles or nonrepairable [~~non-repairable~~] motor vehicles in the other state or jurisdiction.

(16) Out-of-state ownership document--A negotiable document issued by another jurisdiction that the department considers sufficient to prove ownership of a nonrepairable [~~non-repairable~~] or salvage motor vehicle and to support issuance of a comparable Texas certificate of title for the motor vehicle. The term does not include a title issued by the department, including a:

(A) regular certificate of title;

- (B) nonrepairable [~~non-repairable~~] vehicle title;
- (C) salvage vehicle title;
- (D) salvage certificate;
- (E) Certificate of Authority to Demolish a Motor Vehicle; or
- (F) any other ownership document issued by the department.

(17) Person--An individual, partnership, corporation, trust, association, or other private legal entity.

(18) Rebuilt salvage certificate of title--A regular certificate of title evidencing ownership of a nonrepairable [~~non-repairable~~] motor vehicle that was issued a nonrepairable [~~non-repairable~~] vehicle title prior to September 1, 2003, or salvage motor vehicle that has been rebuilt.

(19) Salvage motor vehicle--A motor vehicle, regardless of the year model:

(A) that is:

(i) damaged or is missing a major component part to the extent that the cost of repairs exceeds the actual cash value of the motor vehicle immediately before the damage; or

(ii) damaged and comes into this state under an out-of-state ownership document that states on its face "accident damage," "flood damage," "inoperable," "rebuildable," "salvageable," or similar notation, and is not an out-of-state ownership document with a "rebuilt," "prior salvage," or similar notation, or a nonrepairable [~~non-repairable~~] motor vehicle; and

(B) does not include:

(i) a motor vehicle for which an insurance company has paid a claim for repairing hail damage, or theft, unless the motor vehicle was damaged during the theft and before recovery to the extent that the cost of repair exceeds the actual cash value of the motor vehicle immediately before the damage;

(ii) the cost of materials or labor for repainting the motor vehicle; or

(iii) sales tax on the total cost of repairs.

(20) Salvage vehicle dealer--A person engaged in this state in the business of acquiring, selling, dismantling, repairing, rebuilding, reconstructing, or otherwise dealing in nonrepairable [~~non-repairable~~] motor vehicles or salvage motor vehicles or used parts, including a person who is in the business of a salvage vehicle dealer, regardless of whether the person holds a license issued by the department to engage in the business. The term does not include a person who casually repairs, rebuilds, or reconstructs fewer than three salvage motor vehicles in the same calendar year.

(21) Salvage vehicle title--A document issued by the department that evidences ownership of a salvage motor vehicle.

§217.84. *Application for Nonrepairable [~~Non-repairable~~] or Salvage Vehicle Title.*

(a) Place of application. The owner of a nonrepairable [~~non-repairable~~] or salvage motor vehicle who is required to obtain or voluntarily chooses to obtain a nonrepairable [~~non-repairable~~] or salvage vehicle title, as provided by §217.83 of this title (relating to Requirement for Non-repairable or Salvage Vehicle Title), shall apply for a nonrepairable [~~non-repairable~~] or salvage vehicle title by submitting an application, the required accompanying documentation, and the statutory fee to the department.

(b) Information on application. An applicant for a nonrepairable [~~non-repairable~~] or salvage vehicle title shall submit an application on a form prescribed by the department. A completed form, in addition to any other information required by the department, must include:

(1) the name and current address of the owner;

(2) a description of the motor vehicle, including the model year, make, body style, and vehicle identification number; [~~motor vehicle's model year, make, model, identification number, body style, manufacturer's rated carrying capacity in tons for commercial vehicles, and empty weight;~~]

(3) a statement describing whether the motor vehicle is a nonrepairable [~~non-repairable~~] or salvage motor vehicle; and

(A) was the subject of a total loss claim paid by an insurance company under Transportation Code, §501.1001 or §501.1002;

(B) is a self-insured motor vehicle under Transportation Code, §501.091;

(C) is an export-only motor vehicle under Transportation Code, §501.099;

(D) was sold, transferred, or released to the owner or former owner of the motor vehicle; or

(E) was sold, transferred, or released to a buyer at casual sale by a salvage vehicle dealer, insurance company, or salvage pool operator;

(4) whether the damage was caused exclusively by flood;

(5) a description of the damage to the motor vehicle;

(6) the odometer reading and brand, or the word "exempt" if the motor vehicle is exempt from federal and state odometer disclosure requirements, if the motor vehicle is a salvage motor vehicle;

~~[(7) the name, address, and city and state of residence of the previous owner;]~~

(7) ~~[(8)]~~ the name and mailing address of any lienholder and the date of lien, as provided by subsection (e) of this section; and

(8) ~~[(9)]~~ the signature of the applicant or the applicant's authorized agent and the date the certificate of title application was signed.

(c) Accompanying documentation. A nonrepairable [~~non-repairable~~] or salvage vehicle title application must be supported, at a minimum, by:

(1) evidence of ownership, as described by subsection (d)(1) or (3) of this section, if the applicant is an insurance company that is unable to locate one or more of the owners;

(2) an odometer disclosure statement properly executed by the seller of the motor vehicle and acknowledged by the purchaser, if the motor vehicle is less than 10 model years old and the motor vehicle is a salvage motor vehicle; and

(3) a release of any liens.

(d) Evidence of nonrepairable [~~non-repairable~~] or salvage motor vehicle ownership.

(1) Evidence of nonrepairable [~~non-repairable~~] or salvage motor vehicle ownership properly assigned to the applicant must accompany the application for a nonrepairable [~~non-repairable~~] or salvage vehicle title, except as provided by paragraph (2) of this subsection. Evidence must include documentation sufficient to show own-

ership to the nonrepairable [~~non-repairable~~] or salvage motor vehicle, such as:

- (A) a Texas Certificate of Title;
- (B) a certified copy of a Texas Certificate of Title;
- (C) a manufacturer's certificate of origin;
- (D) a Texas Salvage Certificate;
- (E) a nonrepairable [~~non-repairable~~] vehicle title;
- (F) a salvage vehicle title;

(G) a comparable ownership document issued by another jurisdiction, except that if the applicant is an insurance company, evidence must be provided indicating that the insurance company is:

- (i) licensed to do business in Texas; or
- (ii) not licensed to do business in Texas, but has paid a loss claim for the motor vehicle in this state; or

(H) a photocopy of the inventory receipt or a title and registration verification evidencing surrender to the department of the negotiable evidence of ownership for a motor vehicle as provided by §217.86 of this title (relating to Dismantling, Scrapping, or Destruction of Motor Vehicles), and if the evidence of ownership surrendered was from another jurisdiction, a photocopy of the front and back of the surrendered evidence of ownership.

(2) An insurance company that acquires ownership or possession of a nonrepairable [~~non-repairable~~] or salvage motor vehicle through payment of a claim may apply for a nonrepairable [~~non-repairable~~] or salvage vehicle title to be issued in the insurance company's name without obtaining an ownership document or if it received an ownership document without the proper assignment of the owner if the company is unable to obtain a title from the owner, in accordance with paragraph (1) of this subsection, and the application is not made earlier than the 30th day after the date of payment of the claim. The application must also include:

(A) a statement that the insurance company has provided at least two written notices to the owner and any lienholder attempting to obtain the title or proper assignment of title for the motor vehicle;

(B) a copy of a document:

(i) indicating that payment has been made, including an electronic check, canceled check, or screen print from the insurance company's database that identifies the type of payment method; and

(ii) reflecting the vehicle identification number, vehicle owner names, name of the person to whom payment was made if different from vehicle owners, payment amount, and date payment was issued; and

(C) any unassigned or improperly assigned title in the insurance company's possession.

(3) An insurance company that acquires, through payment of a claim, ownership or possession of a salvage motor vehicle or nonrepairable [~~non-repairable~~] motor vehicle covered by an out-of-state ownership document may obtain a salvage vehicle title or nonrepairable [~~non-repairable~~] vehicle title in accordance with paragraph (1) or (2) of this subsection if:

(A) the motor vehicle was damaged, stolen, or recovered in this state; or

(B) the motor vehicle owner from whom the company acquired ownership resides in this state.

(4) A salvage pool operator may apply for title in the name of the salvage pool operator by providing to the department:

(A) documentation from the insurance company that:

(i) the salvage pool operator, on request of an insurance company, was asked to take possession of the motor vehicle subject to an insurance claim and the insurance company subsequently denied coverage or did not take ownership of the vehicle; and

(ii) the name and address of the owner of the motor vehicle and the lienholder, if any; and

(B) proof that the salvage pool operator, before the 31st day after receiving the information from the insurance company, sent a notice to the owner and any lienholder informing them that:

(i) the motor vehicle must be removed from the location specified in the notice not later than the 30th day after the date the notice is mailed; and

(ii) if the motor vehicle is not removed within the time specified in the notice, the salvage pool operator will sell the motor vehicle and retain from the proceeds any costs actually incurred by the operator in obtaining, handling, and disposing of the motor vehicle, except for charges:

(I) that have been or are subject to being reimbursed by a third party; and

(II) for storage or impoundment of the motor vehicle.

(5) Proof of notice under this subsection consists of:

(A) the validated receipts for registered or certified mail and return receipt or an electronic certified mail receipt, including signature receipt; and

(B) any unopened certified letters returned by the post office as unclaimed, undeliverable, or with no forwarding address.

(e) Recordation of lien on nonrepairable [~~non-repairable~~] and salvage vehicle titles. If the motor vehicle is a salvage motor vehicle, a new lien or a currently recorded lien may be recorded on the salvage vehicle title. If the motor vehicle is a nonrepairable [~~non-repairable~~] motor vehicle, only a currently recorded lien may be recorded on the nonrepairable [~~non-repairable~~] vehicle title.

(f) Issuance. Upon receipt of a completed nonrepairable [~~non-repairable~~] or salvage vehicle title application, accompanied by the statutory application fee and the required documentation, the department will, before the sixth business day after the date of receipt, issue a nonrepairable [~~non-repairable~~] or salvage vehicle title, as appropriate.

(1) If the condition of salvage is caused exclusively by flood, a "Flood Damage" notation will be reflected on the face of the document and will be carried forward upon subsequent title issuance.

(2) If a lien is recorded on a nonrepairable [~~non-repairable~~] or salvage vehicle title, the vehicle title will be mailed to the lienholder. For proof of ownership purposes, the owner will be mailed a receipt or printout of the newly established motor vehicle record, indicating a lien has been recorded.

(3) A nonrepairable [~~non-repairable~~] vehicle title will state on its face that the motor vehicle may:

(A) not be repaired, rebuilt, or reconstructed;

(B) not be issued a regular certificate of title or registered in this state;

- (C) not be operated on a public highway; and
- (D) may only be used as a source for used parts or scrap metal.

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 August 25, 2017.

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David D. Duncan

General Counsel

Texas Department of Motor Vehicles

Earliest possible date of adoption: October 8, 2017

For further information, please call: (512) 465-5665



CHAPTER 217. VEHICLE TITLES AND REGISTRATION

The Texas Department of Motor Vehicles (department) proposes amendments to Chapter 217, Vehicle Titles and Registration, Subchapter B, Motor Vehicle Registration, §217.45, Specialty License Plates, Symbols, Tabs, and Other Devices; and Subchapter I, Fees, §217.182, Registration Transaction.

EXPLANATION OF PROPOSED AMENDMENTS

Amendments are proposed to §217.45 and §217.182 to implement House Bill 561, 85th Legislature, Regular Session, 2017, which added Transportation Code, §551.452, License Plates for Package Delivery Vehicles, authorizing the department to issue a license plate for a vehicle operated by a motor carrier for the purpose of picking up and delivering mail, parcels, and packages.

The proposed amendments add "Package Delivery" to §217.45(c)(3)(B) to the list of vehicles that are issued one plate.

The proposed amendments add §217.45(k), package delivery vehicle, to establish the procedure and requirements to issue a "Package Delivery" license plate. The proposed amendments include a department fee of \$25 for each plate issued.

The proposed amendments add §217.182(6) to include issuance of a package delivery plate to the list of transactions defined as a registration transaction for purposes of the processing and handling fee.

FISCAL NOTE

Linda M. Flores, Chief Financial Officer, has determined that for each of the first five years the amendments as proposed are in effect, there will be minimal fiscal implications for state or local governments as a result of enforcing or administering the proposed amendments. The department has determined that the fee for a package delivery plate should be \$25, based on the expected demand and the cost of producing the plate.

Jeremiah Kuntz, Director of the Vehicle Titles and Registration Division, has determined that there will be minimal impact on local economies or overall employment as a result of enforcing or administering the proposed amendments.

PUBLIC BENEFIT AND COST

Mr. Kuntz has also determined that for each year of the first five years the amendments are in effect, the public benefit antic-

ipated as a result of enforcing or administering the amendments will be a procedure to issue package delivery license plates. There will be minimal economic costs for persons required to comply with the proposed amendments. The fee for a package delivery license plate will be \$25. In addition, there will be a processing and handling fee of \$4.75. There will be minimal adverse economic effects on small businesses or micro-businesses to the extent they purchase any package delivery license plates.

TAKINGS IMPACT ASSESSMENT

The department has determined that this proposal affects no private real property interests and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action, and so does not constitute a taking or require a takings impact assessment under Government Code, §2007.043.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments may be submitted to David D. Duncan, General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731 or by email to rules@txdmv.gov. The deadline for receipt of comments is 5:00 p.m. on October 9, 2017.

SUBCHAPTER B. MOTOR VEHICLE REGISTRATION

43 TAC §217.45

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department under the Transportation Code; and more specifically, Transportation Code, §504.0011, which authorizes the board to adopt rules to implement and administer Transportation Code, Chapter 504; and Transportation Code, §551.452(b), which requires the department by rule to establish a procedure to issue license plates to be used only for operation in accordance with Transportation Code, Chapter 551, Subchapter G, Package Delivery Vehicles. The amendment to §217.182 is authorized by Transportation Code, §502.1911, which directs the department to collect a fee to cover the expenses of collecting registration fees for issuance of a license plate.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 502, 551, and 663, and §643.001.

§217.45. *Specialty License Plates, Symbols, Tabs, and Other Devices.*

(a) Purpose and Scope. Transportation Code, Chapters 504 and 551 charge the department with providing specialty license plates, symbols, tabs, and other devices. For the department to perform these duties efficiently and effectively, this section prescribes the policies and procedures for the application, issuance, and renewal of specialty license plates, symbols, tabs, and other devices, through the county tax assessor-collectors, and establishes application fees, expiration dates, and registration periods for certain specialty license plates. This section does not apply to military license plates except as provided by §217.43 of this title (relating to Military Specialty License Plates).

(b) Initial application for specialty license plates, symbols, tabs, or other devices.

(1) Application Process.

(A) Procedure. An owner of a vehicle registered as specified in this subchapter who wishes to apply for a specialty license plate, symbol, tab, or other device must do so on a form prescribed by the director.

(B) Form requirements. The application form shall at a minimum require the name and complete address of the applicant.

(2) Fees and Documentation.

(A) The application must be accompanied by the prescribed registration fee, unless exempted by statute.

(B) The application must be accompanied by the statutorily prescribed specialty license plate fee. If a registration period is greater than 12 months, the expiration date of a specialty license plate, symbol, tab, or other device will be aligned with the registration period and the specialty plate fee will be adjusted to yield the appropriate fee. If the statutory annual fee for a specialty license plate is \$5 or less, it will not be prorated.

(C) Specialty license plate fees will not be refunded after an application is submitted and the department has approved issuance of the license plate.

(D) The application must be accompanied by prescribed local fees or other fees that are collected in conjunction with registering a vehicle, with the exception of vehicles bearing license plates that are exempt by statute from these fees.

(E) The application must include evidence of eligibility for any specialty license plates. The evidence of eligibility may include, but is not limited to:

(i) an official document issued by a governmental entity; or

(ii) a letter issued by a governmental entity on that agency's letterhead.

(F) Initial applications for license plates for display on Exhibition Vehicles must include a photograph of the completed vehicle.

(3) Place of application. Applications for specialty license plates may be made directly to the county tax assessor-collector, except that applications for the following license plates must be made directly to the department:

- (A) County Judge;
- (B) Federal Administrative Law Judge;
- (C) State Judge;
- (D) State Official;
- (E) U.S. Congress--House;
- (F) U.S. Congress--Senate; and
- (G) U.S. Judge.

(4) Gift plates.

(A) A person may purchase general distribution specialty license plates as a gift for another person if the purchaser submits an application for the specialty license plates that provides:

(i) the name and address of the person who will receive the plates; and

(ii) the vehicle identification number of the vehicle on which the plates will be displayed.

(B) To be valid for use on a motor vehicle, the recipient of the plates must file an application with the county tax assessor-collector and pay the statutorily required registration fees in the amount as provided by Transportation Code, Chapter 502 and this subchapter.

(c) Initial issuance of specialty license plates, symbols, tabs, or other devices.

(1) Issuance. On receipt of a completed initial application for registration, accompanied by the prescribed documentation and fees, the department will issue specialty license plates, symbols, tabs, or other devices to be displayed on the vehicle for which the license plates, symbols, tabs, or other devices were issued for the current registration period. If the vehicle for which the specialty license plates, symbols, tabs, or other devices are issued is currently registered, the owner must surrender the license plates currently displayed on the vehicle, along with the corresponding license receipt, before the specialty license plates may be issued.

(2) Classic Motor Vehicles, Classic Travel Trailers, Custom Vehicles, Street Rods, and Exhibition Vehicles.

(A) License plates. Texas license plates that were issued the same year as the model year of a Classic Motor Vehicle, Travel Trailer, Street Rod, or Exhibition Vehicle may be displayed on that vehicle under Transportation Code, §504.501 and §504.502, unless:

(i) the license plate's original use was restricted by statute to another vehicle type;

(ii) the license plate is a qualifying plate type that originally required the owner to meet one or more eligibility requirements; or

(iii) the alpha numeric pattern is already in use on another vehicle.

(B) Validation stickers and tabs. The department will issue validation stickers and tabs for display on license plates that are displayed as provided by subparagraph (A) of this paragraph.

(3) Number of plates issued.

(A) Two plates. Unless otherwise listed in subparagraph (B) of this paragraph, two specialty license plates, each bearing the same license plate number, will be issued per vehicle.

(B) One plate. One license plate will be issued per vehicle for all motorcycles and for the following specialty license plates:

(i) Antique Vehicle (includes Antique Auto, Antique Truck, Antique Motorcycle, and Antique Bus);

(ii) Classic Travel Trailer;

(iii) Rental Trailer;

(iv) Travel Trailer;

(v) Cotton Vehicle;

(vi) Disaster Relief;

(vii) Forestry Vehicle;

(viii) Golf Cart;

(ix) Log Loader; [and]

(x) Military Vehicle; and[-]

(xi) Package Delivery Vehicle.

(C) Registration number. The identification number assigned by the military may be approved as the registration number in-

stead of displaying Military Vehicle license plates on a former military vehicle.

(4) Assignment of plates.

(A) Title holder. Unless otherwise exempted by law or this section, the vehicle on which specialty license plates, symbols, tabs, or other devices is to be displayed shall be titled in the name of the person to whom the specialty license plates, symbols, tabs, or other devices is assigned, or a title application shall be filed in that person's name at the time the specialty license plates, symbols, tabs, or other devices are issued.

(B) Non-owner vehicle. If the vehicle is titled in a name other than that of the applicant, the applicant must provide evidence of having the legal right of possession and control of the vehicle.

(C) Leased vehicle. In the case of a leased vehicle, the applicant must provide a copy of the lease agreement verifying that the applicant currently leases the vehicle.

(5) Classification of neighborhood electric vehicles. The registration classification of a neighborhood electric vehicle, as defined by §217.3(3) of this title (relating to Motor Vehicle Titles) will be determined by whether it is designed as a 4-wheeled truck or a 4-wheeled passenger vehicle.

(6) Number of vehicles. An owner may obtain specialty license plates, symbols, tabs, or other devices for an unlimited number of vehicles, unless the statute limits the number of vehicles for which the specialty license plate may be issued.

(7) Personalized plate numbers.

(A) Issuance. The department will issue a personalized license plate number subject to the exceptions set forth in this paragraph.

(B) Character limit. A personalized license plate number may contain no more than six alpha or numeric characters or a combination of characters. Depending upon the specialty license plate design and vehicle class, the number of characters may vary. Spaces, hyphens, periods, hearts, stars, the International Symbol of Access, or silhouettes of the state of Texas may be used in conjunction with the license plate number.

(C) Personalized plates not approved. A personalized license plate number will not be approved by the executive director if the alpha-numeric pattern:

(i) conflicts with the department's current or proposed regular license plate numbering system;

(ii) would violate §217.27 of this title (relating to Vehicle Registration Insignia), as determined by the executive director; or

(iii) is currently issued to another owner.

(D) Classifications of vehicles eligible for personalized plates. Unless otherwise listed in subparagraph (E) of this paragraph, personalized plates are available for all classifications of vehicles.

(E) Categories of plates for which personalized plates are not available. Personalized license plate numbers are not available for display on the following specialty license plates:

(i) Amateur Radio (other than the official call letters of the vehicle owner);

(ii) Antique Motorcycle;

(iii) Antique Vehicle (includes Antique Auto, Antique Truck, and Antique Bus);

(iv) Apportioned;

(v) Cotton Vehicle;

(vi) Disaster Relief;

(vii) Farm Trailer (except Go Texan II);

(viii) Farm Truck (except Go Texan II);

(ix) Farm Truck Tractor (except Go Texan II);

(x) Fertilizer;

(xi) Forestry Vehicle;

(xii) Log Loader;

(xiii) Machinery;

(xiv) Permit;

(xv) Rental Trailer;

(xvi) Soil Conservation; and

(xvii) Texas Guard.

(F) Fee. Unless specified by statute, a personalized license plate fee of \$40 will be charged in addition to any prescribed specialty license plate fee.

(G) Priority. Once a personalized license plate number has been assigned to an applicant, the owner shall have priority to that number for succeeding years if a timely renewal application is submitted to the county tax assessor-collector each year in accordance with subsection (d) of this section.

(d) Specialty license plate renewal.

(1) Renewal deadline. If a personalized license plate is not renewed within 60 days after its expiration date, a subsequent renewal application will be treated as an application for new personalized license plates.

(2) Length of validation. With the following exceptions, all specialty license plates, symbols, tabs, or other devices shall be valid for 12 months from the month of issuance or for a prorated period of at least 12 months coinciding with the expiration of registration.

(A) Five-year period. Antique Vehicle (includes Antique Auto, Antique Truck, and Antique Bus) and Antique Motorcycle license plates, Antique tabs, and registration numbers are issued for a five-year period.

(B) Seven-year period. Foreign Organization license plates and registration numbers are issued for a seven-year period.

(C) March expiration dates. The registration for Cotton Vehicle and Disaster Relief license plates expires each March 31.

(D) June expiration dates. The registration for the Honorary Consul license plate expires each June 30.

(E) September expiration dates. The registration for the Log Loader license plate expires each September 30.

(F) December expiration dates. The registration for the following license plates expires each December 31:

(i) County Judge;

(ii) Federal Administrative Law Judge;

(iii) State Judge;

- (iv) State Official;
- (v) U.S. Congress--House;
- (vi) U.S. Congress--Senate; and
- (vii) U.S. Judge.

(G) Except as otherwise provided in this paragraph, if a vehicle's registration period is other than 12 months, the expiration date of the specialty license plate, symbol, tab, or other device will be set to align it with the expiration of registration.

(3) Renewal.

(A) Renewal notice. Approximately 60 days before the expiration date of a specialty license plate, symbol, tab, or other device, the department will send each owner a renewal notice that includes the amount of the specialty plate fee and the registration fee.

(B) Return of notice. The owner must return the fee and any prescribed documentation to the tax assessor-collector of the county in which the owner resides, except that the owner of a vehicle with one of the following license plates must return the documentation and specialty license plate fee, if applicable, directly to the department and submit the registration fee to the county tax assessor-collector:

- (i) County Judge;
- (ii) Federal Administrative Law Judge;
- (iii) State Judge;
- (iv) State Official;
- (v) U.S. Congress--House;
- (vi) U.S. Congress--Senate; and
- (vii) U.S. Judge.

(C) Expired plate numbers. The department will retain a specialty license plate number for 60 days after the expiration date of the plates if the plates are not renewed on or before their expiration date. After 60 days the number may be reissued to a new applicant. All specialty license plate renewals received after the expiration of the 60 days will be treated as new applications.

(D) Issuance of validation insignia. On receipt of a completed license plate renewal application and prescribed documentation, the department will issue registration validation insignia as specified in §217.27 unless this section or other law requires the issuance of new license plates to the owner.

(E) Lost or destroyed renewal notices. If a renewal notice is lost, destroyed, or not received by the vehicle owner, the specialty license plates, symbol, tab, or other device may be renewed if the owner provides acceptable personal identification along with the appropriate fees and documentation. Failure to receive the notice does not relieve the owner of the responsibility to renew the vehicle's registration.

(e) Transfer of specialty license plates.

(1) Transfer between vehicles.

(A) Transferable between vehicles. The owner of a vehicle with specialty license plates, symbols, tabs, or other devices may transfer the specialty plates between vehicles by filing an application through the county tax assessor-collector if the vehicle to which the plates are transferred:

- (i) is titled or leased in the owner's name; and

(ii) meets the vehicle classification requirements for that particular specialty license plate, symbol, tab, or other device.

(B) Non-transferable between vehicles. The following specialty license plates, symbols, tabs, or other devices are non-transferable between vehicles:

(i) Antique Vehicle license plates (includes Antique Auto, Antique Truck, and Antique Bus), Antique Motorcycle license plates, and Antique tabs;

(ii) Classic Auto, Classic Truck, Classic Motorcycle, Classic Travel Trailer, Street Rod, and Custom Vehicle license plates;

(iii) Forestry Vehicle license plates; and

(iv) Log Loader license plates.

(C) New specialty license plates. If the department creates a new specialty license plate under Transportation Code, §504.801, the department will specify at the time of creation whether the license plate may be transferred between vehicles.

(2) Transfer between owners.

(A) Non-transferable between owners. Specialty license plates, symbols, tabs, or other devices issued under Transportation Code, Chapter 504, Subchapters C, E, and F are not transferable from one person to another except as specifically permitted by statute.

(B) New specialty license plates. If the department creates a new specialty license plate under Transportation Code, §504.801, the department will specify at the time of creation whether the license plate may be transferred between owners.

(3) Simultaneous transfer between owners and vehicles. Specialty license plates, symbols, tabs, or other devices are transferable between owners and vehicles simultaneously only if the owners and vehicles meet all the requirements in both paragraphs (1) and (2) of this subsection.

(f) Replacement.

(1) Application. When specialty license plates, symbols, tabs, or other devices are lost, stolen, or mutilated, the owner shall apply directly to the county tax assessor-collector for the issuance of replacements, except that Log Loader license plates must be reapplied for and accompanied by the prescribed fees and documentation.

(2) Temporary registration insignia. If the specialty license plate, symbol, tab, or other device is lost, destroyed, or mutilated to such an extent that it is unusable, and if issuance of a replacement license plate would require that it be remanufactured, the owner must pay the statutory replacement fee, and the department will issue a temporary tag for interim use. The owner's new specialty license plate number will be shown on the temporary tag unless it is a personalized license plate, in which case the same personalized license plate number will be shown.

(3) Stolen specialty license plates.

(A) The department or county tax assessor-collector will not approve the issuance of replacement license plates with the same personalized license plate number if the department's records indicate either the vehicle displaying the personalized license plates or the license plates are reported as stolen to law enforcement. The owner will be directed to contact the department for another personalized plate choice.

(B) The owner may select a different personalized number to be issued at no charge with the same expiration as the stolen

specialty plate. On recovery of the stolen vehicle or license plates, the department will issue, at the owner's or applicant's request, replacement license plates, bearing the same personalized number as those that were stolen.

(g) License plates created after January 1, 1999. In accordance with Transportation Code, §504.702, the department will begin to issue specialty license plates authorized by a law enacted after January 1, 1999, only if the sponsoring entity for that license plate submits the following items before the fifth anniversary of the effective date of the law.

(1) The sponsoring entity must submit a written application. The application must be on a form approved by the director and include, at a minimum:

- (A) the name of the license plate;
- (B) the name and address of the sponsoring entity;
- (C) the name and telephone number of a person authorized to act for the sponsoring entity; and
- (D) the deposit.

(2) A sponsoring entity is not an agent of the department and does not act for the department in any matter, and the department does not assume any responsibility for fees or applications collected by a sponsoring entity.

(h) Assignment procedures for state, federal, and county officials.

(1) State Officials. State Official license plates contain the distinguishing prefix "SO." Members of the state legislature may be issued up to three sets of State Official specialty license plates with the distinguishing prefix "SO," or up to three sets of State Official specialty license plates that depict the state capitol, and do not display the distinguishing prefix "SO." An application by a member of the state legislature, for a State Official specialty license plate, must specify the same specialty license plate design for each applicable vehicle. State Official license plates are assigned in the following order:

- (A) Governor;
- (B) Lieutenant Governor;
- (C) Speaker of the House;
- (D) Attorney General;
- (E) Comptroller;
- (F) Land Commissioner;
- (G) Agriculture Commissioner;
- (H) Secretary of State;
- (I) Railroad Commission Presiding Officer followed by the remaining members based on their seniority;
- (J) Supreme Court Chief Justice followed by the remaining justices based on their seniority;
- (K) Criminal Court of Appeals Presiding Judge followed by the remaining judges based on their seniority;
- (L) Members of the State Legislature, with Senators assigned in order of district number followed by Representatives assigned in order of district number, except that in the event of redistricting, license plates will be reassigned; and

(M) Board of Education Presiding Officer followed by the remaining members assigned in district number order, except that in the event of redistricting, license plates will be reassigned.

(2) Members of the U.S. Congress.

(A) U.S. Senate license plates contain the prefix "Senate" and are assigned by seniority; and

(B) U.S. House license plates contain the prefix "House" and are assigned in order of district number, except that in the event of redistricting, license plates will be reassigned.

(3) Federal Judge.

(A) Federal Judge license plates contain the prefix "USA" and are assigned on a seniority basis within each court in the following order:

- (i) Judges of the Fifth Circuit Court of Appeals;
- (ii) Judges of the United States District Courts;
- (iii) United States Bankruptcy Judges; and
- (iv) United States Magistrates.

(B) Federal Administrative Law Judge plates contain the prefix "US" and are assigned in the order in which applications are received.

(C) A federal judge who retired on or before August 31, 2003, and who held license plates expiring in March 2004 may continue to receive federal judge plates. A federal judge who retired after August 31, 2003, is not eligible for U.S. Judge license plates.

(4) State Judge.

(A) State Judge license plates contain the prefix "TX" and are assigned sequentially in the following order:

- (i) Appellate District Courts;
- (ii) Presiding Judges of Administrative Regions;
- (iii) Judicial District Courts;
- (iv) Criminal District Courts; and
- (v) Family District Courts and County Statutory

Courts.

(B) A particular alpha-numeric combination will always be assigned to a judge of the same court to which it was originally assigned.

(C) A state judge who retired on or before August 31, 2003, and who held license plates expiring in March 2004 may continue to receive state judge plates. A state judge who retired after August 31, 2003, is not eligible for State Judge license plates.

(5) County Judge license plates contain the prefix "CJ" and are assigned by county number.

(6) In the event of redistricting or other plate reallocation, the department may allow a state official to retain that official's plate number if the official has had the number for five or more consecutive years.

(i) Development of new specialty license plates.

(1) Procedure. The following procedure governs the process of authorizing new specialty license plates under Transportation Code, §504.801, whether the new license plate originated as a result of an application or as a department initiative.

(2) Applications for the creation of new specialty license plates. An applicant for the creation of a new specialty license plate, other than a vendor specialty plate under §217.52 of this title (relating to Marketing of Specialty License Plates through a Private Vendor), must submit a written application on a form approved by the executive director. The application must include:

(A) the applicant's name, address, telephone number, and other identifying information as directed on the form;

(B) certification on Internal Revenue Service letterhead stating that the applicant is a not-for-profit entity;

(C) a draft design of the specialty license plate;

(D) projected sales of the plate, including an explanation of how the projected figure was established;

(E) a marketing plan for the plate, including a description of the target market;

(F) a licensing agreement from the appropriate third party for any intellectual property design or design element;

(G) a letter from the executive director of the sponsoring state agency stating that the agency agrees to receive and distribute revenue from the sale of the specialty license plate and that the use of the funds will not violate a statute or constitutional provision; and

(H) other information necessary for the board to reach a decision regarding approval of the requested specialty plate.

(3) Review process. The board:

(A) will not consider incomplete applications;

(B) may request additional information from an applicant if necessary for a decision; and

(C) will consider specialty license plate applications that are restricted by law to certain individuals or groups of individuals (qualifying plates) using the same procedures as applications submitted for plates that are available to everyone (non-qualifying plates).

(4) Request for additional information. If the board determines that additional information is needed, the applicant must return the requested information not later than the requested due date. If the additional information is not received by that date, the board will return the application as incomplete unless the board:

(A) determines that the additional requested information is not critical for consideration and approval of the application; and

(B) approves the application, pending receipt of the additional information by a specified due date.

(5) Board decision. The board's decision will be based on:

(A) compliance with Transportation Code, §504.801;

(B) the proposed license plate design, including:

(i) whether the design appears to meet the legibility and reflectivity standards established by the department;

(ii) whether the design meets the standards established by the department for uniqueness;

(iii) other information provided during the application process;

(iv) the criteria designated in §217.27 as applied to the design; and

(v) whether a design is similar enough to an existing plate design that it may compete with the existing plate sales; and

(C) the applicant's ability to comply with Transportation Code, §504.702 relating to the required deposit or application that must be provided before the manufacture of a new specialty license plate.

(6) Public comment on proposed design. All proposed plate designs will be considered by the board as an agenda item at a regularly or specially called open meeting. Notice of consideration of proposed plate designs will be posted in accordance with Office of the Secretary of State meeting notice requirements. Notice of each license plate design will be posted on the department's Internet website to receive public comment at least 25 days in advance of the meeting at which it will be considered. The department will notify all other specialty plate organizations and the sponsoring agencies who administer specialty license plates issued in accordance with Transportation Code, Chapter 504, Subchapter G, of the posting. A comment on the proposed design can be submitted in writing through the mechanism provided on the department's Internet website for submission of comments. Written comments are welcome and must be received by the department at least 10 days in advance of the meeting. Public comment will be received at the board's meeting.

(7) Final approval.

(A) Approval. The board will approve or disapprove the specialty license plate application based on all of the information provided pursuant to this subchapter at an open meeting.

(B) Application not approved. If the application is not approved under subparagraph (A) of this paragraph, the applicant may submit a new application and supporting documentation for the design to be considered again by the board if:

(i) the applicant has additional, required documentation; or

(ii) the design has been altered to an acceptable degree.

(8) Issuance of specialty plates.

(A) If the specialty license plate is approved, the applicant must comply with Transportation Code, §504.702 before any further processing of the license plate.

(B) Approval of the plate does not guarantee that the submitted draft plate design will be used. The board has final approval authority of all specialty license plate designs and may adjust or reconfigure the submitted draft design to comply with the format or license plate specifications.

(C) If the board, in consultation with the applicant, adjusts or reconfigures the design, the adjusted or reconfigured design will not be posted on the department's website for additional comments.

(9) Redesign of specialty license plate.

(A) Upon receipt of a written request from the applicant, the department will allow redesign of a specialty license plate.

(B) A request for a redesign must meet all application requirements and proceed through the approval process of a new specialty plate as required by this subsection.

(C) An approved license plate redesign does not require the deposit required by Transportation Code, §504.702, but the applicant must pay a redesign cost to cover administrative expenses.

(j) Golf carts.

(1) A county tax assessor-collector may issue golf cart license plates as long as the requirements under Transportation Code, §551.403 or §551.404 are met.

(2) A county tax assessor-collector may only issue golf cart license plates to residents or property owners of the issuing county.

(3) A golf cart license plate may not be used as a registration insignia, and a golf cart may not be registered for operation on a public highway.

(4) The license plate fee for a golf cart license plate is \$10.

(k) Package delivery vehicle.

(1) A county tax assessor-collector may issue package delivery license plates as long as the requirements under Transportation Code, §§551.453, 551.454, and 551.455 are met.

(2) The license plate fee for a package delivery license plate is \$25.

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 August 25, 2017.

TRD-201703341

David D. Duncan

General Counsel

Texas Department of Motor Vehicles

Earliest possible date of adoption: October 8, 2017

For further information, please call: (512) 465-5665



SUBCHAPTER I. FEES

43 TAC §217.182

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department under the Transportation Code; and more specifically, Transportation Code, §504.0011, which authorizes the board to adopt rules to implement and administer Transportation Code, Chapter 504; and Transportation Code, §551.452(b), which requires the department by rule to establish

a procedure to issue license plates to be used only for operation in accordance with Transportation Code, Chapter 551, Subchapter G, Package Delivery Vehicles. The amendment to §217.182 is authorized by Transportation Code, §502.1911, which directs the department to collect a fee to cover the expenses of collecting registration fees for issuance of a license plate.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 502, 551, and 663, and §643.001.

§217.182. Registration Transaction.

As used in this subchapter, a registration transaction is a registration or registration renewal under Transportation Code, Chapter 502, or a transaction to issue the following:

(1) a registration, registration renewal, or permit issued under Transportation Code, Chapter 502, Subchapter C (Special Registrations);

(2) a license plate issued under Transportation Code, §502.146;

(3) a temporary additional weight permit under Transportation Code, §502.434;

(4) a license plate or license plate sticker under Transportation Code, §§504.501, 504.502, 504.506, or 504.507; [ø]

(5) a golf cart plate under Transportation Code, §551.402; or[-]

(6) a package delivery vehicle plate under Transportation Code, §551.452.

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 August 25, 2017.

TRD-201703342

David D. Duncan

General Counsel

Texas Department of Motor Vehicles

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For further information, please call: (512) 465-5665

