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 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 90. MIGRANT LABOR HOUSING FACILITIES

10 TAC §§90.1 - 90.9

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 90, Migrant Labor Housing Facilities. The purpose of the proposed repeal is to eliminate an outdated rule while adopting a new updated rule under separate action.

The Department has analyzed this proposed rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

1. Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed repeal would be in effect, the proposed repeal does not create or eliminate a government program, but relates to the repeal, and simultaneous readoption making changes to an existing activity, adding new requirements and codifying current policies and procedures to the Migrant Labor Housing Facilities rule.

2. The proposed repeal does not require a change in work that would require the creation of new employee positions, nor is the proposed repeal significant enough to reduce workload to a degree that any existing employee positions are eliminated.

3. The proposed repeal does not require additional future legislative appropriations.

4. The proposed repeal does not result in an increase in fees paid to the Department nor in a decrease in fees paid to the Department.

5. The proposed repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The proposed action will repeal an existing regulation, but is associated with a simultaneous readoption making changes to an existing activity, including adding new requirements and codifying current policies and procedures to the Migrant Labor Housing Facilities rule.

7. The proposed repeal will not increase or decrease the number of individuals subject to the rule's applicability.

8. The proposed repeal will not negatively or positively affect this state's economy,

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated this proposed repeal and determined that the proposed repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The proposed repeal does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the proposed repeal as to its possible effects on local economies and has determined that for the first five years the proposed repeal would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of the repealed section would be to eliminate an outdated rule while adopting a new updated rule under separate action. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the proposed repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held February 23, 2024, to March 22, 2024, to receive input on the proposed repealed section. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Wendy Quackenbush, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or email wendy.quackenbush@tdhca.texas.gov. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local (Central) time, March 22, 2024.

STATUTORY AUTHORITY. The proposed repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed repealed sections affect no other code, article, or statute.

§90.1. Purpose.

§90.2. Definitions.

§90.3. Applicability.

§90.4. Standards and Inspections.

§90.5. Licensing.

§90.6. Records.

§90.7. Complaints.

§90.8. Administrative Penalties and Sanctions.

§90.9. Dispute Resolution, Appeals, and Hearings.

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 February 6, 2024.

TRD-202400453
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: March 24, 2024
For further information, please call: (512) 475-3959

♦ ♦ ♦

10 TAC §§90.1 - 90.9

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 90, Migrant Labor Housing Facilities. The purpose of the proposed changes are to provide compliance with Tex. Gov't Code §2306, Subchapter LL and to update the rule, including: update the definition for "Director" and add a new definition for "Couple" to provide better clarity. Additional substantive changes include the requirement of carbon monoxide detectors, separate beds for each worker or couple, implementation of a 90-day expiration period for incomplete applications, and clarification of license validity periods at renewal. In addition, update to the rule is made to allow the Department to accept email correspondence, to make clear that any complaint received will seek to preserve the anonymity of the complainant and that failure to allow access to a facility will result in a failed inspection.

Tex. Gov't Code §2001.0045 does not apply to the new rule proposed for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this proposed rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson, Executive Director, has determined that, for the first five years the proposed new rule would be in effect:

1. The proposed new rule does not create or eliminate a government program, but relates to the readoption of this rule which makes changes to an existing activity, to ensure all requirements related to the Migrant Labor Housing Facilities are specified in writing.

2. The proposed new rule does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.

3. The proposed new rule does not require additional future legislative appropriations.

4. The proposed new rule will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The proposed new rule is not creating a new regulation, except that it is replacing a rule being repealed simultaneously to provide for revisions.

6. The proposed new rule will not expand, limit, or repeal an existing regulation.

7. The proposed new rule will not increase or decrease the number of individuals subject to the rule's applicability; and

8. The proposed new rule will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002. The Department, in drafting this proposed new rule, has attempted to reduce any adverse economic effect on small or micro-business or rural communities while remaining consistent with the statutory requirements of Tex. Gov't Code §2306.053.

1. The Department has evaluated this new rule and determined that none of the adverse effect strategies outlined in Tex. Gov't Code §2006.002(b) are applicable.

2. The Department has determined that this rule provides specific details on the process of how licenses are issued, renewed, denied and/or revoked. Other than in a case of small or micro-businesses subject to the proposed new rule, the economic impact of the rule is projected to be none. If rural communities are subject to the proposed new rule, the economic impact of the rule is projected to be none.

3. The Department has determined that this rule provides specific detail on the process of how licenses are issued, renewed, denied and/ or revoked there will be no economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The proposed new rule does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the new rule as to its possible effects on local economies and has determined that for the first five years the new rule will be in effect the proposed new rule has no economic effect on local employment because the rule relates only to the process of which licenses are issued, renewed, denied and or revoked; therefore, no local employment impact statement is required to be prepared for the new rule.

Tex. Gov't Code §2001.022(a) states that this "impact statement must describe in detail the probable effect of the new rule on

employment in each geographic region affected by this new rule "There are no "probable" effects of the new rule on particular geographic regions.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Bobby Wilkinson, Executive Director, has determined that, for each year of the first five years the new rule is in effect, the public benefit anticipated as a result of the new rule will be a clearer rule for applicants applying for or renewing licenses for migrant labor housing facilities. There will not be any economic cost to any individuals required to comply with the new rule because the activities described by the rule have already been in existence.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new rule is in effect, enforcing or administering the new rule does not have any foreseeable implications related to costs or revenues of the state or local governments because the rule relates to a process that already exists and is not being significantly revised.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held February 23, 2024, to March 22, 2024, to receive input on the newly proposed rule. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Wendy Quackenbush, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, or by email: wendy.quackenbush@tdhca.texas.gov. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local (Central) time, March 22, 2024.

STATUTORY AUTHORITY. The new rule is proposed pursuant to Tex. Gov't Code, §2306.053, which authorizes the Department to adopt rules.

Except as described herein the proposed new rule affects no other code, article, or statute.

§90.1 Purpose.

The purpose of Chapter 90 is to establish rules governing Migrant Labor Housing Facilities that are subject to being licensed under Tex. Gov't Code Chapter 2306, Subchapter LL (§§2306.921 - 2306.933). It is recognized that aligning state requirements with the federal standards for migrant farmworker housing that must be inspected in order to participate in other state and federal programs, such as with the U.S. Department of Labor's H2-A visa program, allows for cooperative efforts between the Department and other state and federal entities to share information. This will reduce redundancies and improve the effectiveness of the required licensing.

§90.2 Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Additionally, any words and terms not defined in this section but defined or given specific meaning in Tex. Gov't Code Chapter §§2306.921 - 2306.933, are capitalized. Other terms in 29 CFR §§500.130 - 500.135, 20 CFR §§654.404 et seq., and 29 CFR §1910.142 or used in those sections and defined elsewhere in state or federal law or regulation, when used in this chapter, shall have the meanings defined therein, unless the context herein clearly indicates otherwise.

(1) Act--The state law that governs the operation and licensure of Migrant Labor Housing Facilities in the state of Texas, found at Tex. Gov't Code, §§2306.921 - 2306.933.

(2) Board--The governing board of the Texas Department of Housing and Community Affairs.

(3) Business Day--Any day that is not a Saturday, Sunday, or a holiday observed by the State of Texas.

(4) Business hours--8:00 a.m. to 5:00 p.m., local time.

(5) Couple--A pair of people, whether legally related or not, that act as and hold themselves out to be a couple; provided, however, that nothing herein shall be construed as creating or sanctioning any unlawful relationship or arrangement.

(6) Department--The Texas Department of Housing and Community Affairs.

(7) Director--The Executive Director of the Department or their designated staff.

(8) Family--A group of people, whether legally related or not, that act as and hold themselves out to be a Family; provided, however, that nothing herein shall be construed as creating or sanctioning any unlawful relationship or arrangement such as the custody of an unemancipated minor by a person other than their legal guardian.

(9) License--The document issued to a Licensee in accordance with the Act.

(10) Licensee--Any Person that holds a valid License issued in accordance with the Act.

(11) Occupant--Any person, including a Worker, who uses a Migrant Labor Housing Facility for housing purposes.

(12) Provider--Any Person who provides for the use of a Migrant Labor Housing Facility by Migrant Agricultural Workers, whether the Facility is owned by the Provider, or is contractually obtained (or otherwise established) by the Provider. An agricultural industry employer or a contracted or affiliated entity may be a Provider if it owns, contracts, or pays for the use of a Migrant Labor Housing Facility by Migrant Agricultural Workers, regardless of whether any rent or fee is required to be paid by a Worker. A common short-term property rental owner or operator that does not exclusively rent to Migrant Agricultural Workers is not a Provider solely because they have rented to Migrant Agricultural Workers. The Provider is the operator under Tex. Gov't Code §2306.928.

(13) Worker--A Migrant Agricultural Worker, being an individual who is:

(A) working or available for work seasonally or temporarily in primarily an agricultural or agriculturally related industry, and

(B) moves one or more times from one place to another to perform seasonal or temporary employment or to be available for seasonal or temporary employment.

§90.3 Applicability.

(a) All Migrant Labor Housing Facilities in the state of Texas, which may include hotels and other public accommodations if owned by or contracted for by Providers must be inspected and comply with the requirements in this chapter and 29 CFR §§500.130, 500.132 - 500.135, without the exception provided in 29 CFR §500.131.

(b) Where agricultural employers own, lease, rent, or otherwise contract for Facilities "used" by individuals or Families that meet the criteria described in the Act, the employer as Provider of said housing, "establishes" and becomes the "operator" of a Migrant Labor Housing Facility, and is the responsible entity for obtaining and "maintaining" the License on such Facility, as those terms are used in Tex. Gov't Code §2306.921 - .922.

(c) An applicant for a License must facilitate an inspection by the Department with the owner of the property(ies) at which the Mi-

grant Labor Housing Facility is located, or the inspection will be considered failed.

(d) Owners or operators of homeless shelters, public camp grounds, youth hostels, hotels and other public or private accommodations that do not contract for services with Providers to house Workers are not required to be licensed.

(e) No License would be required where a Worker is housed exclusively with his/her Family using their own structure, trailer, or vehicle, but temporarily residing on the land of another.

(f) A Facility may include multiple buildings on scattered or noncontiguous sites, as long as the scattered sites are in a reasonable distance from each other, and the work location and the buildings are operated as one Facility by the Provider.

§90.4 Standards and Inspections.

(a) Facilities must follow the appropriate housing standard as defined in 29 CFR §500.132, (the Employment and Training Administration (ETA) and Occupational Safety and Health Administrations (OSHA) housing standards also referred to as the "ETA and OSHA Housing Standards"), or if applicable the Range Housing standard as defined in 20 CFR §655.235 or Mobile Housing Standards as defined in 20 CFR §655.304. The inspection checklists setting forth those standards are available on the Department's website at https://www.tdhca.texas.gov/migrant-labor-housing-facilitieshttps://www.tdhca.state.tx.us/migrant-housing/index.htm.

(b) Inspections of the Facilities of applicants for a License and Licensees may be conducted by the Department under the authority of Tex. Gov't Code §2306.928 upon reasonable notice and using the appropriate inspection forms noted in subsection (a) of this section. Inspections may be conducted by other State or Federal agencies, on behalf of the Department, on forms promulgated by those agencies.

(c) In addition to the standards noted in subsection (a) of this section, all Facilities must comply with the following additional state standards:

(1) Facilities shall be constructed in a manner to insure the protection of Occupants against the elements. Facilities shall be maintained in good repair and in a sanitary condition. All doors to the exterior shall have working locks and all windows shall have working interior latches. Each unit shall have a working smoke detector. Fire extinguishing equipment shall be provided in an accessible place located within 100 feet from each Facility. Such equipment shall provide protection equal to a 2 1/2 gallon stored pressure of five gallon pump type water extinguisher. A working carbon monoxide detector must be present in all units that use gas or other combustible fuel.

(2) Combined cooking, eating, and sleeping arrangements must have at least 100 SF per person (aged 18 months and older); the portion of the Facility for sleeping areas must include at least a designated 50 square feet per person.

(3) Facilities for Families with children must have a separate room or partitioned area for adult Family members.

(4) In dormitory-type facilities, separate sleeping accommodations shall be provided for each sex. In Family housing units, separate sleeping accommodations shall be provided for each Family unit.

(5) Facilities previously used to mix, load, or store pesticides and toxic chemicals may not be used for cooking, dishwashing, eating, sleeping, housing purposes, or other similar purposes.

(6) In a central mess or multifamily feeding operation, the kitchen and mess hall shall be constructed in accordance with any applicable local or state rules on food services sanitation.

(7) Beds, bunks, or cots shall have a clear space of at least 12 inches from the floor. Triple-deck bunks shall be prohibited. Single beds shall be spaced not closer than 36 inches laterally or end to end. Bunk beds shall be spaced not less than 48 inches laterally or 36 inches end to end. There shall be a clear ceiling height above a mattress of not less than 36 inches. The clear space above the lower mattress of the bunk beds and the bottom of the upper bunk shall not be less than 27 inches.

(8) Communal Bathrooms shall have a minimum of one showerhead per 10 persons and one lavatory sink per six persons. Showerheads shall be spaced at least three feet apart to insure a minimum of nine square feet of showering space per showerhead.

(9) In all communal bathrooms separate shower stalls shall be provided.

(10) Mechanical clothes washers with dryers or clothes lines shall be provided in a ratio of one per 50 persons. In addition to mechanical clothes washers, one laundry tray per 100 persons shall be provided. In lieu of mechanical clothes washers, one laundry tray (which is a fixed tub (made of slate, earthenware, soapstone, enameled iron, stainless steel, heavy duty plastic, or porcelain) with running water and drainpipe for washing clothes and other household linens) or tub per 25 persons may be provided.

(11) All Facility sites shall be provided with electricity. The electrical systems shall conform to all applicable codes and shall be sufficient to provide the electricity with sufficient amperage to operate all required and available features, including but not limited to lighting, stoves, hot water heaters, heating systems, portable heaters, refrigeration, and such other devices as may be connected to wall type convenience outlets.

(12) A separate bed and bedding must be provided for each individual worker or Couple.

§90.5. Licensing.

(a) Tex. Gov't Code, §2306.922 requires the licensing of Migrant Labor Housing Facilities.

(b) Any Person who wants to apply for a License to operate a Facility may obtain the application form from the Department. The required form is available on the Department's website at https://www.tdhca.texas.gov/migrant-labor-housing-facilitieshttps://www.tdhca.state.tx.us/migrant-housing/index.htm.

(c) An application must be submitted to the Department prior to the intended operation of the Facility, but no more than 60 days prior to said operation. Applications submitted to the Department that are not complete, due to missing items and/or information, expire 90 days from Department receipt. In this circumstance, the fees paid are ineligible for a refund.

(d) The fee for a License is $250 per year, except in such cases where the Facility was previously inspected and approved to be utilized for housing under a State or Federal migrant labor housing program, and that such inspection conducted by a State or Federal agency is provided to the Department. Where a copy of such inspection conducted by a State or Federal agency is less than 90 days old, has no material deficiencies or exceptions, and is provided to the Department prior to the Department's scheduled inspection, the application fee shall be reduced to $75. However, if an inspection or re-inspection by the Department is required at the sole determination by the Department, the full application fee maywill apply.

(e) The License is valid for one year from the date of issuance unless sooner revoked or suspended. Receipt of a renewal application that is fully processed resulting in the issuance of a renewed license shall be considered as revoking the previous license, with the effective and expiration dates reflecting the renewal. All licenses have the same effective date as their issuance.

(f) Fees shall be tendered by check, money order, or via an online payment system (if provided by the Department), payable to the Texas Department of Housing and Community Affairs. If any check or other instrument given in payment of a licensing fee is returned for any reason, any License that has been issued in reliance upon such payment being made is null and void.

(g) A fee, when received in connection with an application is earned and is not subject to refund. At the sole discretion of the Department, refunds may be requested provided the fee payment or portion of a payment was not used toward the issuance of a License or conducting of an inspection.

(h) Upon receipt of a complete application and fee, the Department shall review the existing inspection conducted by a State or Federal agency, if applicable and/or schedule an inspection of the Facility by an authorized representative of the Department. Inspections shall be conducted during Business Hours on weekdays that the Department is open, and shall cover all units that are subject to being occupied. Inspections by other State or Federal agencies in accordance with the requirements in 29 CFR §§500.130 - 500.135 may be accepted by the Department for purposes of this License, only if notice is given to the Department prior to the inspection in order for the Department to consider the inspection as being conducted by an authorized representative of the Department in accordance with Tex. Gov't Code §2306.928. In addition, a certification of the additional state standards described in 10 TAC §90.4(c), relating to Standards and Inspections, must be provided by the applicant, along with any supplemental documentation requested by the Department, such as photographs.

(i) The Person performing the inspection on behalf of the Department shall prepare a written report of findings of that inspection. The Department, when it determines it is necessary based on risk, complaint, or information needed at time of application, may conduct follow-up inspections.

(1) If the Person performing the inspection finds that the Migrant Labor Housing Facility, based on the inspection, is in compliance with 10 TAC §90.4, relating to Standards and Inspections, and the Director finds that there is no other impediment to licensure, the License will be issued.

(2) If the Person performing the inspection finds that although one or more deficiencies were noted that will require timely corrective action which may be confirmed by the Provider without need for re-inspection, and the Director finds that there is no other impediment to licensure, the License will be issued subject to such conditions as the Director may specify. The applicant may, in writing by signed letter, agree to these conditions, request a re-inspection within 60 days from the date of the Director's letter advising of the conditions, provide satisfactory documentation to support the completion of the corrective action as may be required by the Department, or treat the Director's imposing of conditions as a denial of the application.

(3) If the Person performing the inspection finds that although one or more deficiencies were noted that will require timely corrective action, the deficiencies are of such a nature that a re-inspection is required, the applicant shall address these findings and advise the inspector or the Department, within 60 days from the date of written notice of the findings, of a time when the Facility may be re-inspected. If a re-inspection is required, the License will not be eligible for the reduced fee described in subsection (d) of this section and the balance of the $250 fee must be remitted to the Department prior to the re-inspection. If Occupants are allowed to use the Facility prior to the re-inspection the applicant must acknowledge the operation of the Facility in violation of these rules, and pay a fee to the Department of up to $200 per day of operation through the date the Facility is approved by the inspector, and eligible for licensing. If the results of the re-inspection are satisfactory and the Director finds that there is no other impediment to licensure, the License will be issued. If it is the determination of the Director that the applicant made all reasonable efforts to complete any repairs and have the property re-inspected in a timely manner, the penalty for operating a Facility without a License may be reduced to an amount determined by the Director, but not less than $200.

(4) If the person performing the inspection finds that the Migrant Labor Housing Facility is in material noncompliance with §90.4 of this chapter, relating to Standards and Inspections, or that one or more imminent threats to health or safety are present, the Director may deny the application. In addition, the Department may also take action in accordance with §90.8, relating to Administrative Penalties and Sanctions.

(5) If access to all units subject to inspection is not provided or available at time of inspection, the inspection will automatically fail.

(j) If the Director determines that an application for a License ought to be granted subject to one or more conditions, the Director shall issue an order accompanying the License, and such order shall:

(1) Be clearly incorporated by reference on the face of the License;

(2) Specify the conditions and the basis in law or rule for each of them; and

(3) Such conditions may include limitations whereby parts of a Migrant Labor Housing Facility may be operated without restriction and other parts may not be operated until remedial action is completed and documented in accordance with the requirements set forth in the order.

(k) Correspondence regarding an application should be addressed to: Texas Department of Housing and Community Affairs, Attention: Migrant Labor Housing Facilities, P.O. Box 12489, Austin, Texas 78711-2489 or migrantlaborhousing@tdhca.texas.gov.

(l) The Department shall issue a letter informing inform the applicant in writing of what is needed to complete the application and/or if a deviation found during the inspection requires a correction in order to qualify for issuance of a License.

(m) Any changes to an issued License (such as increasing occupancy and/or adding a building or unit) may be made at the sole determination of the Department, based on current rules and policy, within 30 days of the License issuance. Any changes requested more than 30 days after License issuance will require the submission of an application for renewal, new inspection, and new fee payment, per the applicable rate.

(n) An applicant or Licensee that wishes to appeal any order of the Director, including the appeal of a denial of an application for a License or an election to appeal the imposing of conditions upon a License, may appeal such order by sending a signed letter to the Director within thirty (30) days from the date specified on such order, indicating the matter that they wish to appeal.

§90.6. Records.

(a) Each Licensee shall maintain and upon request make available for inspection by the Department, the following records:

(1) Copies of all correspondence to and from the Department. This shall include the current designation of each Provider;

(2) A current list of the Occupants of the Facility and the date that the occupancy of each commenced;

(3) Documentation establishing that all bedding facilities were sanitized prior to their being assigned to the current occupant; and

(4) Copies of any and all required federal, state, or local approvals and permits, including but not limited to any permits to operate a waste disposal system or a well or other water supply, and any correspondence to or from such approving or permitting authorities.

(b) All such records shall be maintained for a period of at least three years.

(c) A Licensee shall post in at least one conspicuous location in a Facility or in at least one building per site for a scattered site Facility:

(1) A copy of the License;

(2) A decal provided by the Department with the licensing program logo and the year for which the License was granted; and

(3) A poster provided by the Department or the following notice in at least 20 point bold face type: If you have concerns or problems with the condition or operation of this Facility or your unit, the Texas Department of Housing and Community Affairs (the Department) is the state agency that licenses and oversees this Facility. You may make a complaint to the Department by calling, toll-free, 1-833-522-7028, or by writing to Migrant Labor Housing c/o TDHCA, P.O. Box 13941, Austin, Texas 78711-3941. This office has staff that speaks Spanish. To the fullest extent that we can, we will keep your identity confidential. The Department's rules prohibit any Facility or Provider from retaliating against you for making a complaint. Si Usted tiene preocupaciones o problemas con la condicón u operación de esta instalación o su unidad, el Departamento de Vivienda y Asuntos Comunitarios del Estado de Texas (El Departamento o TDHCA) es la agencia que da licencia y supervisa esta instalacion. Usted puede mandar sus quejas al Departamento por teléfono gratuitamente por marcando 1-833-522-7028 o escribiendo a Migrant Labor Housing c/o TDHCA, P.O. Box 13941, Austin, Texas 78711-3941. La oficina tiene personas que hablan español. A lo mas posible que podemos, protegeremos su identidad. Las regulaciones del Departamento prohíben cualquier represalias por la instalación por el operador contra personas que se quejen contra ellos.

(4) For hotels, the License may be posted in the lobby or front desk area. If the hotel refuses to allow this posting, the License then must be posted in each room.

§90.7. Complaints.

(a) If the Department receives any complaint, it shall investigate it by appropriate means, including the conducting of a complaint inspection. Any complaint inspection will be conducted after giving the Provider notice of the inspection and an opportunity to be present. The complainant will be contacted by the Department as soon as possible but no later than 10 days after of making a complaint and such a call may be relayed to local authority(s) if a possible life threatening safety or health issue is involved.

(b) A Licensee, through its Provider, shall be provided a copy of the substance of any complaint (or, if the complaint was made verbally, a summary of the matter) and given a reasonable opportunity to respond. Generally, this shall be 10 business days.

(1) Complaints may be made in writing or by telephone to 1-833-522-7028.

(2) Complaints may be made in English, Spanish, or other language.

(3) To the fullest extent permitted by applicable law, the identity of any complainant shall be maintained as confidential (unless the complainant specifically consents to the disclosure of their identity or requests that the Department disclose their identity).

(4) Licensees and Providers shall not engage in any retaliatory action against an Occupant for making a complaint in good faith. Any retaliatory action may be subject to administrative penalties and sanctions per §90.8 of this chapter.

(c) If any complaint involves matters that could pose an imminent threat to health or safety, all time frames shall be accelerated, and such complaint shall be addressed as expeditiously as possible.

(d) The Department may conduct interviews, including interviews of Providers and Occupants, and review such records as it deems necessary to investigate a complaint.

(e) The Department shall review the findings of any inspection and its review and, if it finds a violation of the Act or these rules to have occurred, issue a notice of violation.

(f) A notice of violation and order will be sent to the Licensee to the attention of the Provider.

(g) The notice of violation will set forth:

(1) The complaint or other matter made the subject of the notice;

(2) The findings of fact;

(3) The specific provisions of the Act and/or these rules found to have been violated;

(4) The required corrective action;

(5) Any administrative penalty or other sanction to be assessed; and

(6) The timeframe for the Licensee either to agree to the recommended corrective action, and accept the administrative penalties and/or sanctions, or to appeal the matter.

(h) The order will set forth:

(1) The complaint or other matter made the subject of the order;

(2) The findings of fact;

(3) The specific provisions of the Act and/or these rules found to have been violated;

(4) The required corrective action;

(5) Any administrative penalty or other sanction assessed; and

(6) The date on which the order becomes effective if not appealed or otherwise resolved.

(i) Complaints regarding Migrant Labor Housing Facilities will be addressed under this section, and not §1.2 of this title, relating to Department Complaint System to the Department.

§90.8 Administrative Penalties and Sanctions.

(a) When the Director finds that the requirements of the Act or these rules are not being met, he or she may assess administrative penalties or impose other sanctions as set forth in subsections (b) - (d) of this section. Nothing herein limits the right, as set forth in the Act,

to seek injunctive and monetary relief through a court of competent jurisdiction.

(b) For each violation of the Act or rules a penalty of up to $200 per day per violation may be assessed.

(c) For violations that present an imminent threat to health or safety, if not promptly addressed, the Director may suspend or revoke the affected License.

(d) Administrative penalties assessed regarding Migrant Labor Housing Facilities will be addressed exclusively under this section, and are not subject to 10 TAC Chapter 2, relating to Enforcement.

§90.9. Dispute Resolution, Appeals, and Hearings.

(a) A licensee is entitled to appeal any order issued by the Director, including any order as a result of an inspection or a complaint and any order denying a license or issuing a license subject to specified conditions.

(b) In lieu of or during the pendency of any appeal, a licensee may request to meet with the Director or, at his or her option, his or her designee to resolve disputes. Any such meeting may be by telephone or in person. Meetings in person shall be in the county where the migrant labor housing facility affected is located, unless the licensee agrees otherwise.

(c) A licensee may request alternative dispute resolution in accordance with the Department's rules regarding such resolution set forth at §1.17 of this title (relating to Alternative Dispute Resolution).

(d) All administrative appeals are contested cases subject to, and to be handled in accordance with, Chapters 2306 and 2001, Tex. Gov't Code.

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 February 6, 2024.

TRD-202400454
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: March 24, 2024
For further information, please call: (512) 475-3959

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TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 77. SERVICE CONTRACT PROVIDERS AND ADMINISTRATORS

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 77, §§77.40 - 77.42 and 77.70, and the repeal of §77.93, regarding the Service Contract Providers and Administrators program. These proposed changes are referred to as the "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 77, implement Texas Occupations Code, Chapter 1304, the Service Contract Regulatory Act.

The proposed rules implement House Bill (HB) 1560, 87th Legislature, Regular Session (2021), which repealed the former Residential Service Company Act (Occupations Code, Chapter 1303), and amended Chapter 1304 to include residential service contracts as a type of service contract under the department's regulatory authority. The proposed rules additionally clarify the department's interpretation of the financial security requirements of Chapter 1304 and correct an obsolete statutory reference in the rules.

Under the Service Contract Regulatory Act, to obtain or renew a registration, providers must demonstrate the ability to meet their financial obligations to service contract holders. In general, Occupations Code §1304.151 requires providers to satisfy one of three financial requirements: insuring their contracts under a reimbursement insurance policy, maintaining a funded reserve account and security deposit, or meeting net worth requirements. If a provider uses a reimbursement insurance policy, Occupations Code §1304.152 requires the policy to meet certain financial requirements.

HB 1560 enacted Occupations Code §1304.157, which provides that residential service contract providers may meet the financial security requirements of Chapter 1304 by using a reimbursement insurance policy issued by a captive insurance company and maintaining a funded reserve. In this scenario, §1304.157 exempts the policy from the financial requirements of §1304.152 and prescribes a formula for determining the minimum funded reserve for these providers, which differs from the formula provided in §1304.151 for other providers. The proposed rules are necessary to clarify that residential service contract providers electing to financially qualify using an insurance policy from a captive insurance company must also maintain the funded reserve as provided in §1304.157(c).

Occupations Code §1304.157 also requires residential service contracts to include a certain disclosure statement if the seller of the contract is not employed by a registered provider or administrator. Although this disclosure statement generally mirrors that required by the rule at 16 TAC §77.93, the rule contains obsolete references to the repealed Residential Service Company Act. The proposed rules are necessary to resolve this discrepancy and do so by repealing §77.93 and adding a reference to the statutorily required disclosure statement in the rules at §77.70(d), which concerns the disclosure responsibilities of providers and administrators.

Under Occupations Code §1304.151(a)(2), one of the methods by which providers may meet the Act's financial security requirements is by both maintaining a funded reserve account and placing in trust a security deposit. For providers electing this option, the amount of the required deposit varies under subsections (b) through (b-4) depending on the type of service contract sold, and in the case of motor vehicle dealers, gross revenue generated the preceding year. For residential service contract providers, the minimum deposit is $25,000.

The formula for determining the required balance in the funded reserve account is stated in Occupations Code §1304.151(b). This formula was amended by House Bill (HB) 4316, 88th Legislature, Regular Session, effective September 1, 2023, and is now computed by subtracting the amount of any claims paid from the product of 40 percent and the gross consideration the provider

received from consumers from the sale of all service contracts issued and outstanding in this state.

Because the statutory formula does not contain a floor, a problem arises of whether the department must grant a registration when a provider elects this financial security option but, due to the amount of claims paid relative to revenue from contracts sold, the statutory formula does not appear to require either a positive balance or an amount that establishes to the department's satisfaction the provider's ability to meet its obligations. Under subsection (e), the executive director is generally not permitted to impose additional financial security requirements beyond those set forth in §1304.151. Under §1304.1025(b), however, the executive director may not issue or renew a registration unless a provider demonstrates to the executive director's satisfaction an ability to meet its obligations under service contracts and the Act.

The proposed rules clarify the department's interpretation that, where a provider elects to establish financial security under §1304.151(a)(2), and the amount of security deposit and funded reserve balance are insufficient to evidence that the provider can meet its obligations under service contracts and the Act, the department has the authority to deny or refuse to renew a registration or to require the provider to establish financial security under another of the authorized methods.

SECTION-BY-SECTION SUMMARY

The proposed rules amend §77.40, Financial Security--General Requirements. The proposed rules amend subsection (b) to remove unnecessary language. The proposed rules also insert a new subsection (c) to describe the method of financial security provided by Occupations Code §1304.157(c), under which residential service contract providers may insure contracts under a reimbursement insurance policy issued by a captive insurance company if they also maintain a required funded reserve account. The subsections that follow the insertion are re-lettered.

The proposed rules amend §77.41, Financial Security--Reimbursement Insurance Policy. The proposed rules insert language in subsection (c) to clarify that a residential service contract provider who elects to insure its contracts under a reimbursement insurance policy issued by a captive insurance company must also maintain a funded reserve account.

The proposed rules amend §77.42, Financial Security--Funded Reserve Account and Security Deposit. The proposed rules insert a new subsection (f) to include language clarifying that where a provider elects to establish financial security under Occupations Code §1304.151(a)(2) and the amount of security deposit and funded reserve balance are insufficient to evidence that the provider can meet its obligations, the department has the authority to deny or refuse to renew a registration, or to require the provider to establish financial security under another of the authorized methods.

The proposed rules amend §77.70, Responsibilities of Providers and Administrators. The proposed rules insert into subsection (d)(1) a necessary reference to Occupations Code §1304.157.

Lastly, the proposed rules repeal §77.93, Disclosures, in its entirety.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rule is in effect, enforcing or administering the proposed rule does not have foreseeable implications relating to costs or revenues of state or local governments.

LOCAL EMPLOYMENT IMPACT STATEMENT

As Mr. Couvillon has determined that the proposed rules will not affect a local economy, so the agency is not required to prepare a local employment impact statement under Government Code §2001.022.

PUBLIC BENEFITS

Mr. Couvillon also has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be clarification of regulatory requirements, removal of obsolete or confusing language from the rules, and consumer protection.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed rules. Because the agency has determined that the proposed rules will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, are not required.

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

The proposed rules do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed rules. For each year of the first five years the proposed rules will be in effect, the agency has determined the following:

1. The proposed rules do not create or eliminate a government program.

2. Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions.

3. Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency.

4. The proposed rules do not require an increase or decrease in fees paid to the agency.

5. The proposed rules do not create a new regulation.

6. The proposed rules expand, limit, or repeal an existing regulation. The proposed rules expand an existing regulation by adding clarifying language regarding justification for the department to

deny or refuse to renew a registration or to require another authorized form of financial security. The proposed rules repeal an existing regulation referencing a repealed statute, and re-adopt the substance of this requirement with updated statutory references.

7. The proposed rules do not increase or decrease the number of individuals subject to the rules' applicability.

8. The proposed rules do not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

The department has determined that no private real property interests are affected by the proposed rules and the proposed rules do not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed rules do not constitute a taking or require a takings impact assessment under Government Code §2007.043.

PUBLIC COMMENTS

Comments on the proposed rules may be submitted electronically on the department's website at *https://ga.tdlr.texas.gov:1443/form/gcerules;* by facsimile to (512) 475-3032; or by mail to Monica Nuñez, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711. The deadline for comments is 30 days after publication in the *Texas Register.*

16 TAC §§77.40 - 77.42, 77.70

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51 and 1304, which authorize the Texas Commission of Licensing and Regulation, the department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the department.

The legislation that enacted the statutory authority under which the proposed rules are proposed to be adopted is House Bill 1560, 87th Legislature, Regular Session (2021) and House Bill 4316, 88th Legislature, Regular Session (2023).

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51 and 1304. No other statutes, articles, or codes are affected by the proposed rules.

§77.40. Financial Security--General Requirements.

(a) (No change.)

(b) A provider must submit in a manner prescribed by the department proof of one of the [~~following~~ ~~three~~] forms of financial security that meets the requirements of Texas Occupations Code §1304.151 and/or §1304.152:

(1) - (3) (No change.)

(c) A provider of a residential service contract electing to provide financial security with a reimbursement insurance policy may use a policy issued by a captive insurance company in accordance with Texas Occupations Code §1304.157(c). A provider so electing must also maintain the funded reserve required by that section.

(d) [~~(c)~~] Whichever form of financial security the provider uses must be maintained by the provider during the entire time the provider continues to do business in this state or is registered to do business in this state and until the provider has performed or otherwise satisfied all liabilities and obligations to its service contract holders in this state.

(e) [~~(d)~~] If any form of financial security is canceled or lapses during the term of the provider's registration, the provider may not sell or issue a new service contract after the effective date of the cancellation or lapse, unless and until the provider files with the executive director a new form of financial security that meets the financial security requirements provided by Texas Occupations Code, Chapter 1304 and this chapter.

(f) [~~(e)~~] Cancellation or lapse of the financial security does not affect the provider's liability for a service contract sold or issued by the provider before or after the effective date of the cancellation or lapse.

§77.41. Financial Security--Reimbursement Insurance Policy.

(a) - (b) (No change.)

(c) A provider of a residential service contract may use a reimbursement insurance policy and maintain a funded reserve account as described in Texas Occupations Code §1304.157(c).

§77.42. Financial Security--Funded Reserve Account and Security Deposit.

(a) - (e) (No change.)

(f) In accordance with Occupations Code §1304.1025(b)(2), if the department determines that the amount of security deposit and funded reserve balance are insufficient to evidence that the provider can meet its obligations under service contracts and Occupations Code, Chapter 1304, the department may deny or refuse to renew a registration, or may require another of the authorized forms of financial security.

§77.70. Responsibilities of Providers and Administrators.

(a) - (c) (No change.)

(d) The provider and/or any administrator appointed by the provider must disclose the following information to service contract holders:

(1) the specific contract provisions and required disclosures in accordance with Texas Occupations Code §§1304.156 and 1304.157 [~~§1304.156~~];

(2) the procedures and timeframes for a service contract holder to cancel a service contract in accordance with Texas Occupations Code §1304.1581;

(3) the procedures and timeframes for a provider to refund the purchase price of the service contract and pay any applicable penalty to the service contract holder in accordance with Texas Occupations Code §1304.1581; and

(4) the conditions in which the provider may cancel a service contract and issue a refund in accordance with Texas Occupations Code §1304.159.

(e) - (k) (No change.)

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 February 9, 2024.

TRD-202400522

Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
Earliest possible date of adoption: March 24, 2024
For further information, please call: (512) 475-4879

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16 TAC §77.93

STATUTORY AUTHORITY

The proposed repeal is proposed under Texas Occupations Code, Chapters 51 and 1304, which authorize the Texas Commission of Licensing and Regulation, the department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the department.

The legislation that enacted the statutory authority under which the rule is proposed to be repealed is House Bill 1560, 87th Legislature, Regular Session (2021) and House Bill 4316, 88th Legislature, Regular Session (2023).

The statutory provisions affected by the proposed repeal are those set forth in Texas Occupations Code, Chapters 51 and 1304. No other statutes, articles, or codes are affected by the proposed repeal.

§77.93. Disclosures.

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 February 9, 2024.

TRD-202400523
Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
Earliest possible date of adoption: March 24, 2024
For further information, please call: (512) 475-4879

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 74. CURRICULUM REQUIREMENTS

SUBCHAPTER DD. COMMISSIONER'S RULES CONCERNING MATHEMATICS INSTRUCTION

19 TAC §74.2101

The Texas Education Agency (TEA) proposes new §74.2101, concerning the middle school advanced mathematics program. The proposed new rule would implement Senate Bill (SB) 2124, 88th Texas Legislature, Regular Session, 2023, by establishing requirements related to automatic enrollment of certain middle school students into an advanced mathematics program designed to prepare students to enroll in Algebra I in Grade 8.

BACKGROUND INFORMATION AND JUSTIFICATION: SB 2124, passed by the 88th Texas Legislature, Regular Session, 2023, established Texas Education Code (TEC), §28.029, requiring each school district and open-enrollment charter school to automatically enroll in an advanced mathematics course all Grade 6 students who performed in the top 40% on either the Grade 5 mathematics assessment instrument administered under TEC, §39.023(a), or on a local measure that includes the student's Grade 5 class ranking or a demonstrated proficiency in the student's Grade 5 mathematics coursework. The statute includes an opt-out provision for parents or guardians who wish to remove their child from automatic enrollment in the advanced mathematics course.

The new rule would require each school district and open-enrollment charter school to develop a middle school advanced mathematics program for students in Grades 6-8 to enable students to enroll in Algebra I in Grade 8. The new rule would include requirements for enrollment criteria and parent notification.

FISCAL IMPACT: Monica Martinez, associate commissioner for standards and program, has determined that for the first five-year period the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would create a new regulation by establishing a rule related to automatic enrollment of certain middle school students into an advanced mathematics program designed to prepare students to enroll in Algebra I in Grade 8, in accordance with SB 2124, 88th Texas Legislature, Regular Session, 2023.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not expand, limit, or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Martinez has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be to provide school districts and open-enrollment charter schools with clarification regarding automatic

enrollment in middle school advanced mathematics programs. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no data and reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins February 23, 2024, and ends March 25, 2024. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on February 23, 2024. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/.

STATUTORY AUTHORITY. The new section is proposed under Texas Education Code (TEC), §28.029, as added by Senate Bill 2124, 88th Texas Legislature, Regular Session, 2023, which requires a school district or open-enrollment charter school to automatically enroll in an advanced mathematics course each Grade 6 student who performed in the top 40% on either the Grade 5 mathematics assessment instrument administered under TEC, §39.023(a), or on a local measure that includes the student's Grade 5 class ranking or a demonstrated proficiency in the student's Grade 5 mathematics coursework.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §28.029, as added by Senate Bill 2124, 88th Texas Legislature, Regular Session, 2023.

§74.2101. Middle School Advanced Mathematics Program.

(a) Each school district and open-enrollment charter school shall develop a middle school advanced mathematics program for students in Grades 6-8 to enable students to enroll in Algebra I in Grade 8.

(b) Each school district and open-enrollment charter school shall develop a local measure for use in determining student eligibility for automatic enrollment in a middle school advanced mathematics program.

(c) School districts and open-enrollment charter schools shall automatically enroll in a middle school advanced mathematics program each Grade 6 student whose performance was:

(1) in the 60th percentile or higher on statewide scores for the Grade 5 mathematics assessment instrument administered under Texas Education Code, §39.023(a); or

(2) in the top 40% on a local measure that includes the student's Grade 5 class ranking or a demonstrated proficiency in the student's Grade 5 mathematics coursework.

(d) A local measure shall be used to determine enrollment of Grade 6 students for whom there are no results on the state Grade 5 mathematics assessment.

(e) A school district or open-enrollment charter school shall make public the criteria for automatic enrollment in a middle school advanced mathematics program, including any criteria for a local measure, before the start of each school year.

(f) The parent or guardian of a student who will be automatically enrolled in a middle school advanced mathematics program may opt the student out of automatic enrollment in an advanced mathematics program.

(g) Each school district and open-enrollment charter school shall provide a written notice to the parent or guardian of each student entering Grade 6 who will be automatically enrolled in a middle school advanced mathematics program. The written notification shall be provided no later than 14 days before the first day of instruction for the school year. The required notice shall include a description of:

(1) the purpose of the program;

(2) the middle school advanced mathematics program offered by the school district or open-enrollment charter school, including an overview of the content addressed at each grade level;

(3) resources offered to support student success;

(4) the right of the parent or guardian to opt their child out of the middle school advanced mathematics program; and

(5) the process for a parent or guardian to opt their child out of the program and any associated deadlines.

(h) This section does not prohibit a school district or open-enrollment charter school from establishing a process to initially enroll Grade 7 or 8 students in a middle school advanced mathematics program.

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 February 12, 2024.

TRD-202400554
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: March 24, 2024
For further information, please call: (512) 475-1497

CHAPTER 97. PLANNING AND ACCOUNTABILITY

SUBCHAPTER AA. ACCOUNTABILITY AND PERFORMANCE MONITORING

19 TAC §97.1001

(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 figure in 19 TAC §97.1001 is not included in the print version of the Texas Register. The figure is available in the on-line version of the February 23, 2024, issue of the Texas Register.)

The Texas Education Agency (TEA) proposes an amendment to §97.1001, concerning the accountability rating system. The proposed amendment would adopt in rule applicable excerpts of the *2024 Accountability Manual.* Earlier versions of the manuals will remain in effect with respect to the school years for which they were developed.

BACKGROUND INFORMATION AND JUSTIFICATION: TEA has adopted its academic accountability manual in rule since 2000 under §97.1001. The accountability system evolves from year to year, so the criteria and standards for rating and acknowledging schools in the most current year differ to some degree from those applied in the prior year.

The proposed amendment to §97.1001 would adopt excerpts of the *2024 Accountability Manual* into rule as a figure. The excerpts, Chapters 1-12 of the *2024 Accountability Manual,* specify the indicators, standards, and procedures used by the commissioner of education to determine accountability ratings for districts, campuses, and charter schools. These chapters also specify indicators, standards, and procedures used to determine distinction designations on additional indicators for Texas public school campuses and districts. Chapter 12 describes the specific criteria and calculations that will be used to assign 2024 Results Driven Accountability (RDA) performance levels. Ratings may be revised as a result of investigative activities by the commissioner as authorized under Texas Education Code (TEC), §39.056 and §39.003.

Following is a chapter-by-chapter summary of the changes for this year's manual. In every chapter, dates and years for which data are considered would be updated to align with 2024 accountability and RDA. Edits for clarity regarding consistent language and terminology throughout each chapter are embedded within the proposed *2024 Accountability Manual.*

Chapter 1 gives an overview of the entire accountability system. Dates and years for which data are considered would be updated. Edits for clarity regarding consistent language and terminology would be made. Language would be adjusted to clarify the existing processes and implications of data compliance reviews and special investigations related to data concerns. Detailed language would be added to clarify compliance reviews, results, and special investigations.

Chapter 2 describes the "Student Achievement" domain. Dates and years for which data are considered would be updated. Edits for clarity regarding consistent language and terminology would be made. Detailed language on the phase-in timeline for approved industry-based certifications (IBCs) and their aligned programs of study would be added. The updated IBC list revision cycle timeline would be added. Detailed language clarifying the expectations and future process for approving college prep courses would be added. Detailed language regarding the purpose and requirements of individual graduation committees would be added. Language describing the Military Enlistment Data Collection process would be added. Language describing the alignment of college, career, and military readiness to the Texas Success Initiative Assessment exemption criteria benchmarks for ACT would be added.

Chapter 3 describes the "School Progress" domain. Dates and years for which data are considered would be updated. Edits for clarity regarding consistent language and terminology would be made.

Chapter 4 describes the "Closing the Gaps" domain. Dates and years for which data are considered would be updated. Edits for clarity regarding consistent language and terminology would be made. The language for methodology for English language proficiency would be updated.

Chapter 5 describes how the overall ratings are calculated. Dates and years for which data are considered would be updated. Edits for clarity regarding consistent language and terminology would be made.

Chapter 6 describes distinction designations. Dates and years for which data are considered would be updated. Edits for clarity regarding consistent language and terminology would be made.

Chapter 7 describes the pairing process and the alternative education accountability provisions. Dates and years for which data are considered would be updated. Edits for clarity regarding consistent language and terminology would be made.

Chapter 8 describes the process for appealing ratings. Dates and years for which data are considered would be updated. Edits for clarity regarding consistent language and terminology would be made.

Chapter 9 describes the responsibilities of TEA, the responsibilities of school districts and open-enrollment charter schools, and the consequences to school districts and open-enrollment charter schools related to accountability and interventions. Dates and years for which data are considered would be updated. Edits for clarity regarding consistent language and terminology would be made.

Chapter 10 provides information on the federally required identification of schools for improvement. Dates and years for which data are considered would be updated. Edits for clarity regarding consistent language and terminology would be made.

Chapter 11 describes the local accountability system. The changes to this chapter would be restricted to updating date and year references.

Chapter 12 describes the RDA system. Dates and years for which data are considered would be updated. Edits for clarity regarding consistent language and terminology would be made. Detailed language regarding the change of report only to performance level assignment indicators for Bilingual Education/ English as a Second Language/ Emergent Bilingual would be added.

FISCAL IMPACT: Iris Tian, deputy commissioner for analytics, assessment, and reporting, has determined that for the first five-year period the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would limit an existing regulation due to its effect on school accountability for 2024.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not expand or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Tian has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be to continue to inform the public of the existence of annual manuals specifying rating procedures for public schools by including this rule in the *Texas Administrative Code.* There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no data and reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins February 23, 2024, and ends March 25, 2024. A public hearing to solicit testimony and input on the proposed amendment will be held at 1:00 p.m. on March 5, 2024. The public may participate in the hearing virtually by registering for the meeting at https://zoom.us/meeting/register/tJUvfu2oqjgsE9yZsXlsxJTMlSvF3z7JexAI. Parties interested in testifying must register online by 12:00 p.m. on the day of the hearing and are encouraged to also send written testimony to performance.reporting@tea.texas.gov. The hearing will conclude once all who have registered have been given the opportunity to comment. Questions about the hearing should be directed to the TEA Division of Performance Reporting at (512) 463-9704 or performance.reporting@tea.texas.gov. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/.

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §7.021(b)(1), which authorizes the Texas Education Agency (TEA) to administer and monitor compliance with education programs required by federal or state law, including federal funding and state funding for those programs; TEC, §7.028, which authorizes TEA to monitor as necessary to ensure school district and charter school compliance with federal law and regulations, financial integrity, and data integrity and authorizes the agency to monitor school district and charter schools through its investigative process. TEC, §7.028(a), authorizes TEA to monitor special education programs for compliance with state and federal laws; TEC, §12.056, which requires that a campus or program for which a charter is granted under TEC, Chapter 12, Subchapter C, is subject to any prohibition relating to the Public Education Information Management System (PEIMS) to the extent necessary to monitor compliance with TEC, Chapter 12, Subchapter C, as determined by the commissioner; high school graduation under TEC, §28.025; special education programs under TEC, Chapter 29, Subchapter A; bilingual education under TEC, Chapter 29, Subchapter B; and public school accountability under TEC, Chapter 39, Subchapters B, C, D, F, and J, and Chapter 39A; TEC, §12.104, which states that a charter granted under TEC, Chapter 12, Subchapter D, is subject to a prohibition, restriction, or requirement, as applicable, imposed by TEC, Title 2, or a rule adopted under TEC, Title 2, relating to PEIMS to the extent necessary to monitor compliance with TEC, Chapter 12, Subchapter D, as determined by the commissioner; high school graduation requirements under TEC, §28.025; special education programs under TEC, Chapter 29, Subchapter A; bilingual education under TEC, Chapter 29, Subchapter B; discipline management practices or behavior management techniques under TEC, §37.0021; public school accountability under TEC, Chapter 39, Subchapters B, C, D, F, G, and J, and Chapter 39A; and intensive programs of instruction under TEC, §28.0213; TEC, §29.001, which authorizes TEA to effectively monitor all local educational agencies (LEAs) to ensure that rules relating to the delivery of services to children with disabilities are applied in a consistent and uniform manner, to ensure that LEAs are complying with those rules, and to ensure that specific reports filed by LEAs are accurate and complete; TEC, §29.0011(b), which authorizes TEA to meet the requirements under (1) 20 U.S.C. Section 1418(d) and its implementing regulations to collect and examine data to determine whether significant disproportionality based on race or ethnicity is occurring in the state and in the school districts and open-enrollment charter schools in the state with respect to the (a) identification of children as children with disabilities, including the identification of children as children with particular impairments; (b) placement of children with disabilities in particular educational settings; and (c) incidence, duration, and type of disciplinary actions taken against children with disabilities including suspensions or expulsions; or (2) 20 U.S.C. Section 1416(a)(3)(C) and its implementing regulations to address in the statewide plan the percentage of schools with disproportionate representation of racial and ethnic groups in special education and related services and in specific disability categories that results from inappropriate identification; TEC, §29.010(a), which authorizes TEA to adopt and implement a comprehensive system for monitoring LEA compliance with federal and state laws relating to special education, including ongoing analysis of LEA special education data; TEC, §29.062, which authorizes TEA to evaluate and monitor the effectiveness of LEA programs and apply sanctions concerning emergent bilingual students; TEC, §29.066, which authorizes PEIMS reporting requirements for school districts that are required to offer bilingual education or special language programs to include the following information in the district's PEIMS report: (1) demographic information, as determined by the commissioner, on students enrolled in district bilingual education or special language programs; (2) the number and percentage of students enrolled in each instructional model of a bilingual education or special language program offered by the district; and (3) the number and percentage of emergent bilingual students who do not receive specialized instruction; TEC, §29.081(e), (e-1), and (e-2), which define criteria for alternative education programs for students at risk of dropping out of school and subjects those campuses to the performance indicators and accountability standards adopted for alternative education programs; TEC, §29.201 and §29.202, which describe the Public Education Grant program and eligibility requirements; TEC, §39.003 and §39.004, which authorize the commissioner to adopt procedures relating to special investigations. TEC, §39.003(d), allows the commissioner to take appropriate action under Chapter 39A, to lower the district's accreditation status

or the district's or campus's accountability rating based on the results of the special investigation; TEC, §39.051 and §39.052, which authorize the commissioner to determine criteria for accreditation statuses and to determine the accreditation status of each school district and open-enrollment charter school; TEC, §39.053, which authorizes the commissioner to adopt a set of indicators of the quality of learning and achievement and requires the commissioner to periodically review the indicators for consideration of appropriate revisions; TEC, §39.054, which requires the commissioner to adopt rules to evaluate school district and campus performance and to assign a performance rating; TEC, §39.0541, which authorizes the commissioner to adopt indicators and standards under TEC, Chapter 39, Subchapter C, at any time during a school year before the evaluation of a school district or campus; TEC, §39.0543, which describes acceptable and unacceptable performance as referenced in law; TEC, §39.0546, which requires the commissioner to assign a school district or campus a rating of "Not Rated" for the 2021-2022 school year, unless, after reviewing the district or campus under the methods and standards adopted under Section 39.054, the commissioner determines the district or campus should be assigned an overall performance rating of C or higher; TEC, §39.0548, which requires the commissioner to designate campuses that meet specific criteria as dropout recovery schools and to use specific indicators to evaluate them; TEC, §39.055, which prohibits the use of assessment results and other performance indicators of students in a residential facility in state accountability; TEC, §39.056,which authorizes the commissioner to adopt procedures relating to monitoring reviews and special investigations; TEC, §39.151, which provides a process for a school district or an open-enrollment charter school to challenge an academic or financial accountability rating; TEC, §39.201, which requires the commissioner to award distinction designations to a campus or district for outstanding performance; TEC, §39.2011,which makes open-enrollment charter schools and campuses that earn an acceptable rating eligible for distinction designations; TEC, §39.202 and §39.203, which authorize the commissioner to establish criteria for distinction designations for campuses and districts; TEC, §39A.001, which authorizes the commissioner to take any of the actions authorized by TEC, Chapter 39, Subchapter A, to the extent the commissioner determines necessary if a school does not satisfy the academic performance standards under TEC, §39.053 or §39.054, or based upon a special investigation; TEC, §39A.002, which authorizes the commissioner to take certain actions if a school district becomes subject to commissioner action under TEC, §39A.001; TEC, §39A.004, which authorizes the commissioner to appoint a board of managers to exercise the powers and duties of a school district's board of trustees if the district is subject to commissioner action under TEC, §39A.001, and has a current accreditation status of accredited-warned or accredited-probation; or fails to satisfy any standard under TEC, §39.054(e); or fails to satisfy any financial accountability standard; TEC, §39A.005, which authorizes the commissioner to revoke school accreditation if the district is subject to TEC, §39A.001, and for two consecutive school years has received an accreditation status of accredited-warned or accredited-probation, failed to satisfy any standard under TEC, §39.054(e), or failed to satisfy a financial performance standard; TEC, §39A.007, which authorizes the commissioner to impose a sanction designed to improve high school completion rates if the district has failed to satisfy any standard under TEC, §39.054(e), due to high school completion rates; and TEC, §39A.051, which authorizes the commissioner to take action based on campus performance that is below any standard under TEC, §39.054(e).

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§7.021(b)(1); 7.028; 12.056; 12.104; 29.001; 29.0011(b); 29.010(a); 29.062; 29.066; 29.081(e), (e-1), and (e-2); 29.201; 29.202; 39.003; 39.004; 39.051; 39.052; 39.053; 39.054; 39.0541; 39.0543; 39.0546; 39.0548; 39.055; 39.056; 39.151; 39.201; 39.2011; 39.202; 39.203; 39A.001; 39A.002; 39A.004; 39A.005; 39A.007; 39A.051; and 39A.063.

§97.1001. Accountability Rating System.

(a) The rating standards established by the commissioner of education under Texas Education Code (TEC), §§39.052(a) and (b)(1)(A); 39.053, 39.054, 39.0541, 39.0548, 39.055, 39.151, 39.201, 39.2011, 39.202, 39.203, 29.081(e), (e-1), and (e-2), and 12.104(b)(2)(L), shall be used to evaluate the performance of districts, campuses, and charter schools. The indicators, standards, and procedures used to determine ratings will be annually published in official Texas Education Agency publications. These publications will be widely disseminated and cover the following:

(1) indicators, standards, and procedures used to determine district ratings;

(2) indicators, standards, and procedures used to determine campus ratings;

(3) indicators, standards, and procedures used to determine distinction designations; and

(4) procedures for submitting a rating appeal.

(b) The procedures by which districts, campuses, and charter schools are rated and acknowledged for 2024 [~~2023~~] are based upon specific criteria and calculations, which are described in excerpted sections of the *2024* [~~*2023*~~] *Accountability Manual* provided in this subsection.

Figure: 19 TAC §97.1001(b)

[~~Figure: 19 TAC §97.1001(b)~~]

(c) Ratings may be revised as a result of investigative activities by the commissioner as authorized under TEC, §39.057.

(d) The specific criteria and calculations used in the accountability manual are established annually by the commissioner and communicated to all school districts and charter schools.

(e) The specific criteria and calculations used in the annual accountability manual adopted for prior school years remain in effect for all purposes, including accountability, data standards, and audits, with respect to those school years.

(f) In accordance with TEC, §7.028(a), the purpose of the Results Driven Accountability (RDA) framework is to evaluate and report annually on the performance of school districts and charter schools for certain populations of students included in selected program areas. The performance of a school district or charter school is included in the RDA report through indicators of student performance and program effectiveness and corresponding performance levels established by the commissioner.

(g) The assignment of performance levels for school districts and charter schools in the 2024 [~~2023~~] RDA report is based on specific criteria and calculations, which are described in the *2024* [~~*2023*~~] *Accountability Manual* provided in subsection (b) of this section.

(h) The specific criteria and calculations used in the RDA framework are established annually by the commissioner and communicated to all school districts and charter schools.

(i) The specific criteria and calculations used in the annual RDA manual adopted for prior school years remain in effect for all purposes, including accountability and performance monitoring, data standards, and audits, with respect to those school years.

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 February 12, 2024.

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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For further information, please call: (512) 475-1497

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CHAPTER 102. EDUCATIONAL PROGRAMS
SUBCHAPTER MM. COMMISSIONER'S RULES CONCERNING SUPPLEMENTAL SPECIAL EDUCATION SERVICES PROGRAM

19 TAC §102.1601

The Texas Education Agency (TEA) proposes an amendment to §102.1601, concerning the supplemental special education services (SSES) and instructional materials program for certain public school students receiving special education services. The proposed amendment would implement House Bill (HB) 1926, 88th Texas Legislature, Regular Session, 2023, which removed the expiration date of the program and removed a limit on the maximum amount of funds that can be spent on the program. Instead, the program will be limited only to the appropriation set aside by the legislature. The proposed amendment would also modify eligibility criteria, establish an annual application window and procedures for families who miss the window, and remove program notification requirements in certain circumstances.

BACKGROUND INFORMATION AND JUSTIFICATION: Section 102.1601 defines the eligibility criteria, application process, and use of funds for the SSES program and clarifies restrictions on the program.

The proposed amendment to §102.1601 would add new subsection (a) to reflect that TEA will administer the program under the name Parent-Directed Special Education Services to better signal to parents the intended scope of the program. Proposed changes throughout the section would align with this program name change.

The proposed amendment to relettered subsection (c) would clarify that only students served by special education under an individualized education program, as opposed to a services plan as part of a proportionate share responsibility, would be eligible for the program. In subsection (c)(2), a reference to the program's launch in the 2020-2021 school year would be added to clarify that students who have already received this grant are no longer eligible.

Relettered subsection (d)(1) would identify the specific grant amount, noting that the grants are subject to state appropriations. The proposed amendment to relettered subsection (d)(2) would clarify that TEA will use the fall data submission deadline to verify student eligibility for the program. Language would be removed that references prioritization based on eligibility for the National School Lunch Program. This prioritization is already included in subsection (d)(1), which states that accounts are prioritized for students who are eligible for the compensatory education allotment.

Relettered subsection (e) would be amended to delete an operational requirement for the education service center to increase the number of qualified service providers, as there is a continuous process for providers who wish to be considered.

New subsection (f)(3) would be added to establish an annual application window. For applicants who would not show as eligible under the fall Public Education Information Management System (PEIMS) data collection used by TEA, a parent would need to submit evidence of eligibility when submitting the application. New subsection (f)(6) would add a requirement for a parent or guardian of a student who is deemed not eligible through PEIMS verification or did not submit the necessary paperwork during the application window when applicable to wait until the following school year's application window to reapply.

Relettered subsection (j) would be amended to remove the program notification requirement if a school district or open-enrollment charter school has verified that a parent has already received or applied for a program grant.

FISCAL IMPACT: Justin Porter, associate commissioner and chief program officer for special populations, has determined that for the first five years the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand an existing regulation, which is necessary to align with HB 1926 and current program practices.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not limit or repeal an existing regulation; would not

increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Mr. Porter has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be clarification on how TEA implements the SSES program. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no data and reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins February 23, 2024, and ends March 25, 2024. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/. Public hearings will be conducted to solicit testimony and input on the proposed amendment at 9:30 a.m. on February 28, 2024, and March 8, 2024. The public may participate in either hearing virtually by linking to the hearing at https://zoom.us/j/93841733293. Anyone wishing to testify must be present at 9:30 a.m. and indicate to TEA staff their intent to comment and are encouraged to also send written testimony to sped@tea.texas.gov. The hearing will conclude once all who have signed in have been given the opportunity to comment. Questions about the hearing should be directed to Derek Hollingsworth, Special Populations Policy, Reporting, and Technical Assistance Division, at Derek.Hollingsworth@tea.texas.gov.

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §29.041, which establishes requirements for providing a supplemental special education services (SSES) and instructional materials program for certain public school students receiving special education services and requires the commissioner by rule to determine, in accordance with TEC, Chapter 29, Subchapter A-1, the criteria for providing a program to provide supplemental special education services and instructional materials for eligible public school students; TEC, §29.042, as amended by House Bill 1926, 88th Texas Legislature, Regular Session, 2023, which requires the commissioner to determine requirements related to the establishment and administration of the SSES program; TEC, §29.043, which requires the commissioner to establish an application process for the SSES program; TEC, §29.044, which requires the commissioner to determine eligibility criteria for the approval of an application submitted under TEC, §29.043; TEC, §29.045, which requires the commissioner to determine requirements for students meeting eligibility criteria and requirements for assigning and maintaining accounts under TEC, §29.042(b); TEC, §29.046, which requires the commissioner to determine requirements and restrictions related to account use for accounts assigned to students under TEC, §29.045; TEC, §29.047, which requires the commissioner to determine requirements related to criteria and application for agency-approved providers and vendors; TEC, §29.048, which requires the commissioner to determine responsibilities for the admission, review, and dismissal committee; and TEC, §29.049, which requires that the commissioner adopt rules as necessary to establish and administer the SSES and instructional materials program.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §29.041; §29.042, as amended by House Bill 1926, 88th Texas Legislature, Regular Session, 2023; and §§29.043-29.049.

§102.1601. Supplemental Special Education Services and Instructional Materials Program for Certain Public School Students Receiving Special Education Services.

(a) The Texas Education Agency (TEA) will administer the Supplemental Special Education Services Program described in Texas Education Code (TEC), Chapter 29, Subchapter A-1, under the name Parent-Directed Special Education Services (PDSES). Any reference to the Supplemental Special Education Services Program, supplemental special education services, supplemental special education instructional materials, or SSES in state law and TEA materials is to be considered synonymous with the PDSES program.

(b) [~~(a)~~] Definitions. For the purposes of this section, the following definitions apply.

(1) Eligible student--A student who meets all program eligibility criteria under TEC [~~Texas Education Code (TEC)~~], §29.044, and this section.

(2) Management system--The online system provided by the marketplace vendor to allow for account creation, management of funds, and access to the marketplace.

(3) Marketplace--The virtual platform where parents and guardians with [~~Supplemental Special Education Services (SSES)~~] program funds may purchase goods and services.

(4) Marketplace vendor--The vendor chosen by TEA [~~the Texas Education Agency (TEA)~~] to create an online marketplace for the use of [~~SSES~~] program funds.

(5) Parent-directed [~~Supplemental~~] special education instructional materials (materials)--This term has the meaning defined in TEC, §29.041, and specifically excludes materials that are provided as compensatory services or as a means of providing a student with a free appropriate public education.

(6) Parent-directed [~~Supplemental~~] special education services (services)--This term has the meaning defined in TEC, §29.041, and specifically excludes services that are provided as compensatory services or as a means of providing a student with a free appropriate public education or an independent educational evaluation.

(7) Program--This term has the meaning in TEC, Chapter 29, Subchapter A-1, as well as the PDSES program.

(c) [~~(b)~~] Eligibility criteria. All students currently enrolled in a Texas public school district or open-enrollment charter school who are served under an individualized education program (IEP) in a special education program [~~during the 2021-2022 or 2022-2023 school year~~], including, but not limited to, students in early childhood special education, prekindergarten, Kindergarten-Grade 12, and 18-and-over transition programs, are eligible for the [~~SSES~~] program with the following exclusions:

(1) students who do not reside in Texas or move out of the state, not including military-connected students entitled to enroll or remain enrolled while outside the state; or

(2) students who previously received a program grant, beginning with the program's launch in the 2020-2021 school year [~~an SSES grant~~].

(d) [~~(c)~~] Awards.

(1) Parents and guardians of eligible students will [~~may~~] receive grants [~~as long as funds are available~~] of [~~up to~~] $1,500 as long as funds are available [~~in state funds and may receive additional federal funds, depending on eligibility and availability,~~] for use in the purchasing of [~~supplemental special education instructional~~] materials and [~~supplemental special education~~] services through the curated marketplace of educational goods and services. Parents and guardians may receive only one grant for each eligible student. A student [~~Students~~] enrolled in a school district or open-enrollment charter school that is eligible for a compensatory education allotment under TEC, §48.104, will be prioritized to receive a grant award.

(2) TEA will use Public Education Information Management System (PEIMS) codes submitted by school districts and open-enrollment charter schools by each school year's TEA-established fall data submission deadline to verify eligibility in order to award accounts for the [~~SSES~~] program.

[~~(3) TEA will prioritize the awarding of applicant accounts based on applicants qualifying for the National School Lunch Program and available funds.~~]

(e) [~~(d)~~] Establishment of the marketplace.

(1) In accordance with TEC, §29.042(d), TEA shall award an education service center (ESC) with an operational and school district support grant, which may include, but is not limited to, the following operational requirements:

(A) writing and administering a contract for a vendor for the program [~~SSES~~] marketplace that curates the content in its marketplace for educational relevancy. In accordance with the Family Educational Rights and Privacy Act, the contract must require the vendor for the marketplace to protect and keep confidential students' personally identifiable information, which may not be sold or monetized;

(B) providing technical assistance to parents and guardians throughout the [~~SSES~~] program process;

(C) serving as the main point of contact for the selected marketplace vendor to ensure eligible student accounts are appropriately spent down;

(D) approving or denying all purchases from the program [~~SSES~~] marketplace, including communication with parents and guardians about purchase order requests; and

[~~(E) increasing the number of qualified service providers in the marketplace; and~~]

(E) [~~(F)~~] approving or denying all potential service providers.

(2) Providers of [~~supplemental special education instructional~~] materials and services may apply to be listed in the marketplace. To become an approved marketplace service provider, an applicant must sign a service provider agreement and comply with licensing, safety, and employee background checks.

(A) Organization service providers are required to provide their Texas Tax ID for TEA to verify the validity of the organization.

(B) Individual service providers are required to provide proof of credentials and licensing in accordance with the individual service provider categories established by TEA.

(3) TEA shall provide a process for the application and approval of vendors to the marketplace.

(4) TEA and the marketplace vendor shall provide a curated list of vendors through which parents and guardians can purchase educationally relevant [~~supplemental special education instructional~~] materials. The established marketplace vendor shall be responsible for ensuring the vendors comply with [~~SSES~~] program parameters as they relate to the marketplace and be responsible for all communications with marketplace vendors.

(f) [~~(e)~~] Application process for grant on behalf of a student.

(1) TEA is responsible for the application process and the determination of which applicants are approved for [~~SSES~~] program grants.

(2) Parents and guardians who would like to apply on behalf of their eligible students must complete the online application.

(3) TEA will establish an annual application window. If applications are submitted during the window for students who would not show as eligible under the fall PEIMS data collection used by TEA under subsection (d)(2) of this section, a parent must submit evidence of eligibility when submitting the application.

(4) [~~(3)~~] Upon approval of the application:

(A) TEA shall send contact information for parents and guardians of eligible students in a secure manner to the online marketplace vendor for account creation and distribution;

(B) parents and guardians of eligible students will receive an email to the same email address provided during application from the marketplace vendor with information on how to access their accounts; and

(C) parents and guardians will be awarded an account of [~~up to~~] $1,500 [~~in state funds and may be awarded in the account additional federal funds~~], depending on [~~eligibility and~~] availability of funds, per eligible student to be used to purchase [~~supplemental special education~~] services and [~~supplemental special education instructional~~] materials.

(5) [~~(4)~~] Parents and guardians of students who are deemed not eligible or who are determined to have violated account use restrictions under subsection (i) [~~(h)~~] of this section will receive notification from TEA and be provided an opportunity to appeal the denial or account use determination. TEA shall exercise its discretion to determine the validity of any such appeal.

(6) A parent or guardian of a student who is deemed not eligible because the student cannot be verified through the PEIMS process described under subsection (d)(2) of this section or because the parent or guardian did not submit the necessary documentation during the designated application window for a student who became eligible after the timeline described in subsection (d)(2) of this section but before the end of the application window must wait until the following school year's application window to reapply.

(7) [~~(5)~~] If necessary, eligible students will be placed on a waitlist and parents and guardians will be notified. When [~~Should~~] additional funds become available, priority will be given in the order established by the waitlist and in accordance with subsection (d) [~~(c)~~] of this section.

(8) [~~(6)~~] TEA shall maintain confidentiality of students' personally identifiable information in accordance with the Family Educational Rights and Privacy Act and, to the extent applicable, the Health Insurance Portability and Accountability Act.

(g) [~~(f)~~] Approval of application; assignment of account.

(1) TEA shall set aside funds for a pre-determined number of accounts of [~~up to~~] $1,500 [~~in state funds with additional federal funds set aside, depending on eligibility and availability, per account~~] to be awarded to parents and guardians of eligible students.

(2) Parents and guardians with more than one eligible student may apply and receive a grant for each eligible student.

(3) Approved parents and guardians will receive an award notification email from the marketplace vendor and may begin spending account funds upon completion of account setup.

(4) Parents and guardians who receive an award notification but whose student no longer qualifies under subsection (c) [~~(b)~~] of this section shall notify TEA of their student's change in eligibility status.

(5) Within 30 calendar days from receiving an award notification email, parents and guardians must:

(A) access or log in to their account or the account may be subject to reclamation; and

(B) agree to and sign the [~~SSES~~] parental agreement [~~acknowledgement affidavit~~].

(h) [~~(g)~~] Use of funds. Use of [~~SSES~~] program funds provided to parents and guardians are limited as follows.

(1) Only [~~supplemental special education instructional~~] materials and [~~supplemental special education~~] services available through the marketplace of approved providers and vendors may be purchased with [~~SSES~~] program funds.

(2) Materials [~~Supplemental special education instructional materials~~] and services must directly benefit the eligible student's educational needs.

(3) Materials [~~Supplemental special education instructional materials~~] shall be used in compliance with TEA purchasing guidelines.

(4) If TEA approves vendors for a category of [~~instructional~~] material under subsection (e) [~~(d)~~] of this section, [~~supplemental special education instructional~~] materials must be purchased from the TEA-approved vendor for that category of [~~supplemental special education instructional~~] material. If TEA does not establish criteria for a category of [~~supplemental special education instructional~~] materials, funds in a student's account may be used to purchase the [~~supplemental special education instructional~~] materials from any vendor.

(5) The contracted ESC has full authority to reject or deny any purchase.

(6) Parents and guardians may not use [~~SSES~~] program funds for reimbursement of goods or services obtained outside of the marketplace. Program [~~SSES program~~] funds shall not be paid directly to parents or guardians of eligible students.

(i) [~~(h)~~] Account use restrictions. TEA may, subject to the appeal process referenced in subsection (f)(5) [~~(e)(4)~~] of this section, close or suspend accounts and reclaim a portion or all of the funds from accounts in the marketplace if:

(1) the [~~supplemental special education~~] materials or services that parents or guardians attempt to purchase are not educational in nature or are deemed to be in violation of the purchasing guidelines set forth by TEA;

(2) it is determined that the [~~supplemental special education~~] materials or services purchased do not meet the definitions in subsection (b)(5) [~~(a)(5)~~] and (6) of this section;

(3) the [~~SSES~~] program parental agreement [~~acknowledgement affidavit~~] is not signed within 30 calendar days of receipt of account email from the marketplace vendor; or

(4) a student no longer meets the eligibility criteria set out in subsection (c) [~~(b)~~] of this section.

(j) [~~(i)~~] Requirements to provide information. School districts and open-enrollment charter schools shall notify families of [~~their eligibility for~~] the [~~SSES~~] program and, unless the school district or charter school has verified that a parent has already received or applied for a program grant, shall provide the following at the student's admission, review, and dismissal (ARD) committee meeting:

(1) instructions on applying and resources on accessing the online accounts, including the application window established by TEA; and

(2) information about the types of goods and services that are available through the program [~~SSES~~] grant.

(k) [~~(j)~~] Restrictions. A student's ARD committee may not consider a student's current or anticipated eligibility for any [~~supplemental special education instructional~~] materials or services that may be provided under this section when developing or revising a student's IEP [~~individualized education program~~], when determining a student's educational setting, or in the provision of a free appropriate public education.

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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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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For further information, please call: (512) 475-1497

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CHAPTER 109. BUDGETING, ACCOUNTING, AND AUDITING

SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING FINANCIAL ACCOUNTABILITY

19 TAC §109.1001

The Texas Education Agency (TEA) proposes an amendment to §109.1001, concerning financial accountability ratings. The proposed amendment would update financial accountability rating information and rating worksheets for school districts and open-enrollment charter schools.

BACKGROUND INFORMATION AND JUSTIFICATION: Section 109.1001 includes the financial accountability rating system and rating worksheets that explain the indicators that TEA will analyze to assign financial accountability ratings for school districts

and open-enrollment charter schools. The rule also specifies the minimum financial accountability rating information that a school district or an open-enrollment charter school is to report to parents and taxpayers in the district.

The proposed amendment would clarify the financial accountability rating indicators terminology used to determine each school district's and charter school's rating for the 2023-2024 rating year and subsequent years. The proposed amendment would also include some pandemic-related adjustments applicable to 2023 data, as required by TEC, §39.087, as that section existed before expiration on September 1, 2023, to the Financial Integrity Rating System of Texas (FIRST) based on TEC, §39.082(b) and (d), which require that the FIRST system include uniform indicators that measure the financial management performance and future financial solvency of a school district or open-enrollment charter school.

Proposed new subsection (e)(8) would be added, including new Figure: 19 TAC §109.1001(e)(8) that would clarify terminology and calculations for School FIRST indicators for years subsequent to the 2022-2023 rating year.

Proposed new subsection (f)(8) would be added, including new Figure: 19 TAC §109.1001(f)(8) that would clarify terminology and calculations for Charter FIRST indicators for years subsequent to the 2022-2023 rating year.

The worksheets dated June 2024 differ from the worksheets dated June 2023 as follows.

Figure: 19 TAC §109.1001(e)(8)

The calculation for indicator 13 would be revised to compare administrative costs to total costs instead of instructional costs. The thresholds for indicator 13 have been adjusted to reflect the revised administrative cost ratio calculation so that school districts with lower administrative costs ratios, which suggest they are effectively managing their administrative expenses, receive the maximum points for this indicator.

A new indicator 21 would be added to read, "Did the school district receive an adjusted repayment schedule for more than one fiscal year for an over-allocation of Foundation School Program (FSP) funds because of a financial hardship?"

Figure: 19 TAC §109.1001(f)(8)

The calculation for indicator 14 would be revised to compare administrative costs to total costs instead of instructional costs. The thresholds for indicator 14 would be adjusted to reflect the revised administrative cost ratio calculation so that charter schools with lower administrative costs ratios, which suggest they are effectively managing their administrative expenses, receive the maximum points for this indicator.

A new indicator 21 would be added to read, "Did the charter school receive an adjusted repayment schedule for more than one fiscal year for an over-allocation of Foundation School Program (FSP) funds because of a financial hardship?"

FISCAL IMPACT: Mike Meyer, deputy commissioner for finance, has determined that for the first five-year period the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand an existing regulation by clarifying terminology used to define FIRST indicators.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not limit or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Mr. Meyer has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be to ensure that the provisions of the financial accountability rating system align to make the indicators uniform for all school districts and charter schools and would provide a fair and equitable rating system for all school districts and charter schools. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no data and reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins February 23, 2024, and ends March 25, 2024. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on February 23, 2024. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/.

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §12.104, which subjects open-enrollment charter schools to the prohibitions, restrictions, or requirements relating to public school accountability and special investigations under TEC, Chapter 39, Subchapters A, B, C, D, F, G, and J, and TEC, Chapter 39A; §39.082, which requires the commissioner to develop and implement a financial accountabil-

ity rating system for public schools and establishes certain minimum requirements for the system, including an appeals process; §39.083, which requires the commissioner to include in the financial accountability system procedures for public schools to report and receive public comment on an annual financial management report; §39.085, which requires the commissioner to adopt rules to implement TEC, Chapter 39, Subchapter D, which addresses financial accountability for public schools; §39.087, as added by House Bill 1525, 87th Texas Legislature, Regular Session, 2021, and as that section existed before expiration on September 1, 2023, which required the commissioner to adjust the financial accountability rating system under TEC, §39.082, to account for the impact of financial practices necessary as a response to the coronavirus disease (COVID-19) pandemic, including adjustments required to account for federal funding and funding adjustments under TEC, Chapter 48, Subchapter F; and §39.151, which requires the commissioner to provide a process by which a school district or an open-enrollment charter school can challenge an agency decision related to academic or financial accountability under TEC, Chapter 39, including a determination of consecutive school years of unacceptable performance ratings. This process must include a committee to make recommendations to the commissioner. These provisions collectively authorize and require the commissioner to adopt the financial accountability system rules, which implement each requirement of statute applicable to school districts and open-enrollment charter schools.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§12.104; 39.082; 39.083; 39.085; 39.087, as added by House Bill 1525, 87th Texas Legislature, Regular Session, 2021, and as that section existed before expiration on September 1, 2023; and 39.151.

§109.1001. Financial Accountability Ratings.

(a) - (d) (No change.)

(e) The TEA will base the financial accountability rating of a school district on its overall performance on the financial measurements, ratios, and other indicators established by the commissioner, as shown in the figures provided in this subsection. Financial accountability ratings for a rating year are based on the data from the immediate prior fiscal year.

(1) - (7) (No change.)

(8) The financial accountability rating indicators for rating year 2023-2024 are based on fiscal year 2023 financial data and are provided in the figure in this paragraph entitled "School FIRST - Rating Worksheet Dated June 2024 for Rating Years 2023-2024+." The financial accountability rating indicators for rating years after 2023-2024 will use the same calculations and scoring method provided in the figure in this paragraph.

Figure: 19 TAC §109.1001(e)(8)

(9) [~~(8)~~] The specific calculations and scoring methods used in the financial accountability rating worksheets for school districts for rating years prior to 2014-2015 remain in effect for all purposes with respect to those rating years.

(f) The TEA will base the financial accountability rating of an open-enrollment charter school on its overall performance on the financial measurements, ratios, and other indicators established by the commissioner, as shown in the figures provided in this subsection. Financial accountability ratings for a rating year are based on the data from the immediate prior fiscal year.

(1) - (7) (No change.)

(8) The financial accountability rating indicators for rating year 2023-2024 are based on fiscal year 2022 financial data and are provided in the figure in this paragraph entitled "Charter FIRST - Rating Worksheet Dated June 2024 for Rating Years 2023-2024+." The financial accountability rating indicators for rating years after 2023-2024 will use the same calculations and scoring method provided in the figure in this paragraph.

Figure: 19 TAC §109.1001(f)(8)

(9) [~~(8)~~] The specific calculations and scoring methods used in the financial accountability rating worksheets for open-enrollment charter schools for rating years prior to 2014-2015 remain in effect for all purposes with respect to those rating years.

(g) - (q) (No change.)

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 28. INSURANCE

PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 166. ACCIDENT PREVENTION SERVICES

28 TAC §§166.1 - 166.3, 166.5

INTRODUCTION. The Texas Department of Insurance, Division of Workers' Compensation (DWC) proposes to amend 28 TAC §§166.1 - 166.3, and 166.5, concerning certain submission requirements for insurance companies (companies) about their accident prevention services (APS). The proposed amendments implement Texas Labor Code §§411.061, 411.064, 411.065, and 411.066.

EXPLANATION. The amendments to §§166.1 - 166.3, and 166.5 are necessary to eliminate overly burdensome administrative regulations that go beyond statutory requirements, that companies must adhere to in order to demonstrate the sufficiency of their APS to DWC. Removing some of these additional requirements will allow companies to streamline their services and focus on their APS by not having to track and submit as much additional information to DWC. Also, these amendments will allow DWC to direct our attention and resources on services that have proven to be more effective in providing occupational safety assistance to Texas employees and employers.

The amended rules still require companies to submit information on their APS, in compliance with Labor Code § 411.065, and DWC still maintains the right to inspect any company at any time.

With these changes, the statutes and amended rules are sufficient to ensure companies are maintaining proper APS, and the benefit of reducing overly burdensome requirements outweighs the benefit the current rules provide to oversee APS for policyholders.

Section 166.1 defines terms about APS used in the chapter. The amendments will apply nonsubstantive editorial and formatting changes to conform the section to the agency's current style and improve the rule's clarity.

Section 166.2 concerns what companies must include in maintaining APS, including written procedures and records. This section also requires companies to evaluate a policyholder's need for services in accordance with the company's written procedures. The amendments will remove the requirement that companies must maintain written procedures and remove the requirement that a company must evaluate a policyholder's needs according to those written procedures. Because these requirements will be removed, the requirement that companies must, after evaluating and determining the policyholder's need for services, render all offers of services and the provision of services to the policyholder within a reasonable period of time, will also be removed. The Labor Code does not mandate these requirements. Also, DWC will amend §166.2(b)(1) to update DWC's new mailing address.

DWC is not amending §166.2(b)(2), which requires companies, in the event of a work-related fatality, to contact the policyholder within seven working days and offer a survey. It is in the interest of the state for companies to reach out to a policyholder if a work-related death occurs. Companies are not required to complete the survey within seven days. They are required to contact the policyholder within seven days and offer a survey.

DWC is not amending the rule that requires companies to provide APS within 15 days from the date the policyholder requests the service. The rule allows the parties to extend this time period if they mutually agree.

Section 166.3 concerns annual information that companies must send DWC regarding their APS. The amendments align the rule with statutory requirements. They remove the requirement that companies must file an initial annual report on their APS, but still requires companies to file an annual report with DWC. The information required in the annual report will be revised to reflect what is required under Labor Code §411.065. DWC will update its forms to incorporate the amendments regarding annual reports. The revised annual report form will be used beginning with 2024 reporting data and due by April 1, 2025.

Section 166.5 concerns inspections of the adequacy of a company's APS. The amendments remove the requirement that DWC must conduct an initial inspection of each company and remove the requirement that a company must provide a copy of all APS procedures 60 days before an inspection. The amendments also remove the requirements that, for each policy selected by DWC for inspection, the company must provide the primary North American Industry Classification System NAICS code, the A.M. Best Hazard index number, and certain service and loss information. The amendments remove the requirements that DWC must issue a certificate to each company if the inspection is deemed adequate and withhold the certificate if a company's APS are inadequate. DWC is not amending the rule to place a time limit on its post inspection letter. The statute does not require a time limit. DWC is not amending the rule to define that a survey is an on-site visit because the term, "survey" includes "on-site" as part of its definition in §166.1(a)(4).

In addition, the proposed amendments include nonsubstantive editorial and formatting changes to conform the sections to the agency's current style and improve the rule's clarity.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Deputy Commissioner of Health and Safety Mary Landrum has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the sections, other than that imposed by the statute. This determination was made because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Deputy Commissioner Landrum does not anticipate a measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Deputy Commissioner Landrum expects that enforcing and administering the proposed amendments will have the public benefits of ensuring that DWC's rules conform to Labor Code §§411.061, 411.064, 411.065, and 411.066 and are current, accurate, and readable, which promotes transparent and efficient regulation. The proposed amendments will also have the public benefit of companies being able to focus on their APS instead of filling out and submitting paperwork to DWC.

Deputy Commissioner Landrum expects that the proposed amendments will impose an economic cost on persons required to comply with the amendments. Companies may incur some reprogramming costs, but they will save money by the reduced administrative reporting requirements. The amendments will not increase the cost to comply with Labor Code §§411.061, 411.064, 411.065, and 411.066. These amendments will remove rules that require more than the statutes require.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. DWC has determined that the proposed amendments will not have an adverse economic effect or a disproportionate economic impact on small or micro businesses, or on rural communities. They are intended to eliminate unnecessarily burdensome requirements regarding information companies must submit on their APS. They also make editorial changes, changes to update obsolete references, and updates for plain language and agency style. The proposed amendments do not change the people the rule affects, but they do impose additional costs. Companies will need to update their systems, but any reprogramming cost will be offset by the time and expenses that companies will save with the streamlined requirements. As a result, and in accordance with Government Code §2006.002(c), DWC is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. DWC has determined that this proposal may impose a possible cost on regulated persons. However, no additional rule amendments are required under Government Code §2001.0045 because, although companies may incur some reprogramming costs, the rule will reduce the burdens imposed on these companies, and therefore the exception in Government Code §2001.0045(c)(2)(A) applies.

GOVERNMENT GROWTH IMPACT STATEMENT. DWC has determined that for each year of the first five years that the proposed amendments are in effect, the proposed rule:

- will not create or eliminate a government program;

- will not require the creation of new employee positions or the elimination of existing employee positions;

- will not require an increase or decrease in future legislative appropriations to the agency;

- will not require an increase or decrease in fees paid to the agency;

- will not create a new regulation;

- will expand, limit, or repeal an existing regulation;

- will not increase or decrease the number of individuals subject to the rule's applicability; and

- will not positively or adversely affect the Texas economy.

The proposed amendments will remove certain existing regulations that require companies to report information about their APS. They are intended to eliminate unnecessarily burdensome requirements regarding information companies must submit on their APS.

TAKINGS IMPACT ASSESSMENT. DWC has determined that no private real property interests are affected by this proposal, and this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. DWC will consider any written comments on the proposal that DWC receives no later than 5:00 p.m., Central time, on March 25, 2024. Send your comments to RuleComments@tdi.texas.gov; or to Texas Department of Insurance, Division of Workers' Compensation, Legal Services, MC-LS, P.O. Box 12050, Austin, Texas 78711-2050.

To request a public hearing on the proposal, submit a request before the end of the comment period to RuleComments@tdi.texas.gov; or to Texas Department of Insurance, Division of Workers' Compensation, Legal Services, MC-LS, P.O. Box 12050, Austin, Texas 78711-2050. The request for a public hearing must be separate from any comments. If DWC holds a public hearing, it will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. DWC proposes §§166.1, 166.2, 166.3, and 166.5 under Labor Code §§411.061, 411.064, 411.065, 411.066, 402.00111, 402.00116, and 402.061.

Labor Code §411.061 provides that a company must maintain adequate APS as a prerequisite for writing workers' compensation insurance in Texas.

Labor Code §411.064 provides that DWC may conduct inspections of a company to determine the adequacy of that company's APS.

Labor Code §411.065 provides that every company writing workers' compensation insurance in Texas must submit, at least annually, to DWC detailed information on the type of accident prevention facilities offered to the company's policyholders.

Labor Code §411.066 requires that the front of each workers' compensation insurance policy delivered or issued for delivery in this state contain notice that accident prevention services are available to the policyholder from the insurance company to appear in at least 10-point bold type.

Labor Code §402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code.

Labor Code §402.00116 provides that the commissioner of workers' compensation shall administer and enforce this title, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to DWC or the commissioner.

Labor Code §402.061 provides that the commissioner of workers' compensation shall adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

CROSS-REFERENCE TO STATUTE. Section 166.1 implements Labor Code §411.061, enacted by House Bill (HB) 752, 73rd Legislature, Regular Session (1993) and amended by HB 7, 79th Legislature, Regular Session (2005). Section 166.2 implements Labor Code §§411.061 and 411.066. Section 411.061 was enacted by HB 752, 73rd Legislature, Regular Session (1993) and amended by HB 7, 79th Legislature, Regular Session (2005). Section 411.066 was enacted by HB 752, 73rd Legislature, Regular Session (1993). Section 166.3 implements Labor Code §411.065, enacted by HB 752, 73rd Legislature, Regular Session (1993) and amended by HB 7, 79th Legislature, Regular Session (2005). Section 166.5 implements Labor Code §411.064 enacted by HB 752, 73rd Legislature, Regular Session (1993) and amended by HB 2514, 76th Legislature, Regular Session (1999) and HB 7, 79th Legislature, Regular Session (2005).

§166.1. Definition of Terms.

(a) The following words and terms, when used in this chapter, [~~shall~~] have the following meanings, unless the context clearly indicates otherwise.

(1) Accident prevention facilities--All personnel, procedures, equipment, materials, documents, buildings, programs, and information necessary to maintain or provide accident prevention services to the policyholder.

(2) Nature of the policyholders' operations--Type of business or industry with specific reference to potential for accident, injury, or disease determined by the standard hazards associated with the most hazardous industrial operations in which the policyholder is engaged.

(3) Premium--The amount charged for a workers' compensation insurance policy, including any endorsements, after the application of individual risk variations based on loss or expense considerations as defined by Insurance Code §2053.001(2-a).

(4) Survey--An on-site visit to a policyholder's worksite in Texas where the risk exists or the loss occurred and during which the insurance company's accident prevention personnel performs a hazard assessment of the worksite, reviews safety and health programs, and makes recommendations to assist in mitigating risks and preventing injuries and illnesses.

(b) This section is effective July 1, 2024 [~~October 1, 2013~~].

§166.2. Adequacy of Accident Prevention Services.

(a) Under [~~Pursuant to~~] Labor Code §§411.061, 411.063, and 411.068(a)(1) [~~§411.061 and §411.068(a)(1)~~], an insurance company

writing workers' compensation insurance in Texas must [~~shall~~] maintain or provide accident prevention facilities that are adequate to provide accident prevention services required by the nature of its policyholders' operations, and must include:

(1) surveys;

(2) recommendations;

(3) training programs;

(4) consultations;

(5) analyses of accident causes;

(6) industrial hygiene;

(7) industrial health services;

(8) qualified accident prevention personnel. To provide qualified accident prevention personnel and services, an insurance company may:

(A) employ qualified personnel;

(B) retain qualified independent contractors;

(C) contract with the policyholder to provide personnel and services; or

(D) use a combination of the methods provided in this paragraph; and

[~~(9) written procedures. An insurance company shall maintain written procedures for:~~]

[~~(A) notifying policyholders of the availability of accident prevention services;~~]

[~~(B) determining the appropriate accident prevention services for a policyholder;~~]

[~~(C) the specific time frame and manner in which the services will be delivered to a policyholder as required by subsection (b) of this section;~~]

[~~(D) providing training programs to policyholders;~~]

[~~(E) providing written recommendations to the policyholders, which identify hazardous conditions and work practices on the policyholder's premises if the insurance company provides accident prevention services;~~]

[~~(F) providing written reports to the insurance company and policyholders, which identify hazardous conditions and work practices on the policyholder's premises if the insurance company contracts out the accident prevention services or retains qualified independent contractors; and~~]

[~~(G) items set forth in §166.3(a)(2)(G) of this title (relating to Annual Information Submitted by Insurance Companies); and~~]

(9) [~~(10)~~] written records, reports, and evidence of all accident prevention services provided to each policyholder.

(b) Under [~~Pursuant to~~] Labor Code §411.068(a)(2), an insurance company must use [~~shall utilize~~] accident prevention services to prevent injuries to employees of its policyholders in a reasonable manner, which at a minimum, include:

(1) Notice of availability of accident prevention services and return-to-work coordination services. Under Labor Code §411.066, an [~~An~~] insurance company must [~~shall~~] include a notice on the information page or on the front of the policy containing text identical to the following in at least 10-point bold type for each workers' compensation insurance policy delivered or issued for delivery in Texas: Pursuant to Texas Labor Code §411.066, (name of company) is required to notify its policyholders that accident prevention services are available from (name of company) at no additional charge. These services may include surveys, recommendations, training programs, consultations, analyses of accident causes, industrial hygiene, and industrial health services. (Name of company) is also required to provide return-to-work coordination services as required by Texas Labor Code §413.021 and to notify you of the availability of the return-to-work reimbursement program for employers under Texas Labor Code §413.022. If you would like more information, contact (name of company) at (telephone number) and (email address) for accident prevention services or (telephone number) and (email address) for return-to-work coordination services. For information about these requirements, call the Texas Department of Insurance, Division of Workers' Compensation (TDI-DWC) at 1-800-687-7080 or for information about the return-to-work reimbursement program for employers, call the TDI-DWC at (512) 804-5000. If (name of company) fails to respond to your request for accident prevention services or return-to-work coordination services, you may file a complaint with the TDI-DWC in writing at http://www.tdi.texas.gov or by mail to Texas Department of Insurance, Division of Workers' Compensation, P.O. Box 12050, HS-WS, Austin, Texas 78711-2050 [~~MS-8, at 7551 Metro Center Drive, Austin, Texas 78744-1645~~];

(2) Contact and surveys following fatalities. An insurance company must [~~shall~~] contact the policyholder within seven working days of knowledge of a work-related fatality and offer a survey. Survey offers accepted by the policyholder must [~~shall~~] be initiated by the insurance company within 60 days of policyholder acceptance of the survey offer. No offer of a survey is required if the fatality occurred outside of Texas or was the result of an accident on a common carrier, unless the fatality involves an employee of the common carrier during the course and scope of normal job duties; and

[~~(3) Insurance company evaluation of need for service. An insurance company shall evaluate a policyholder's need for services in accordance with the procedures required by subsection (a)(9) of this section taking into consideration the following criteria:~~]

[~~(A) generally accepted industry standards and practices governing occupational safety and health, such as: A.M. Best, North American Industry Classification System (NAICS), Bureau of Labor Statistics data, workers' compensation classification codes, occupational safety and health standards, and underwriting requests;~~]

[~~(B) nature of losses;~~]

[~~(C) frequency of claims;~~]

[~~(D) loss ratio;~~]

[~~(E) severity of claims;~~]

[~~(F) risk exposure;~~]

[~~(G) experience modifier;~~]

[~~(H) premium; and~~]

[~~(I) any other information relevant under the circumstances;~~]

[~~(4) Services offered and provided by an insurance company. After evaluating and determining the policyholder's need for services, all offers of services and the provision of services shall be rendered to a policyholder within a reasonable period of time and in accordance with the insurance company's written procedures under this section and their annual information submitted under §166.3(a)(2)(G) of this title; and~~]

(3) [(5)] Services requested by a policyholder. An [Notwithstanding any other provision of this section, an] insurance company must [shall] provide to each policyholder accident prevention services required by the nature of their policyholders' operations within 15 days from the date of a policyholder request for services, if appropriate services can be provided without conducting a survey; and within 60 days from the date of a policyholder request, if a survey is required regardless of any provision of this section. Services can be provided at a later date if circumstances require, and the policyholder agrees to the later date [is agreed upon by the policyholder].

(c) The division may determine adequacy of an insurance company's accident prevention services in accordance with the requirements of this chapter and generally accepted tools and guidelines of loss control provision and through:

(1) review of [the initial and subsequent] reports of annual information, as required by §166.3 of this title; and

(2) inspections, as specified in §166.5 of this title (relating to Inspections of Adequacy of Accident Prevention Facilities and Services).

(d) Accident prevention services must [shall] be provided to policyholders at no additional charge.

(e) An insurance company must [shall] not solicit or [nor] obtain from its policyholders a prospective waiver declining all accident prevention services. Under Labor Code §411.063(a)(3), if [If] an insurance company[, pursuant to Labor Code §411.063(a)(3),] contracts with a policyholder to provide accident prevention personnel or services, this contract does not limit in any way the insurance company's authority or responsibility to comply with any statutory or regulatory requirement contained in this chapter. Insurance companies are responsible for maintaining or providing all services, including contracted services, in accordance with this chapter.

(f) This section is effective July 1, 2024 [October 1, 2013].

§166.3. Annual Information Submitted by Insurance Companies.

[(a) Initial annual report by insurance company.]

[(1) Not later than April 1, 2014, each insurance company writing workers' compensation insurance in Texas as of the effective date of this section shall file with the division an initial annual report on its accident prevention services. An insurance company that writes its first workers' compensation insurance policy after the effective date of this section shall file with the division an initial annual report on its accident prevention services not later than the effective date of its first workers' compensation insurance policy.]

[(2) An initial annual report required by this subsection shall be filed in the format and manner prescribed by the division and shall include:]

[(A) insurance company's name;]

[(B) group name;]

[(C) name, email, phone number, and mailing address of the primary loss control contact for Texas;]

[(D) National Association of Insurance Commissioners (NAIC) number;]

[(E) company's A.M. Best rating;]

[(F) changes in ownership, organizational structure, or management of the insurance company since the last annual report that affect the provision of accident prevention services;]

[(G) for each of the accident prevention services listed in §166.2(a)(1) - (7) of this title (relating to Adequacy of Accident Prevention Services):]

[(i) criteria, including the specific time frame and manner, that the insurance company will use to evaluate and determine a policyholder's need for accident prevention services required by the nature of its policyholder's operations based on frequency and severity of claims and risk exposures, including how the insurance company will ascertain the date of the final determination;]

[(ii) the specific time frame and manner in which an insurance company will make an offer of accident prevention services to policyholders once a determination has been made;]

[(iii) the specific time frame and manner in which services will be provided to policyholders;]

[(iv) specify each entity that will provide the services, such as the insurance company, contracted provider, or contracted policyholder; and]

[(v) how the provision of services to policyholders will be documented;]

[(H) the manner in which an insurance company determines a loss ratio;]

[(I) insurance company qualification requirements for employing or contracting with accident prevention personnel;]

[(J) method for assuring that the accident prevention personnel provide the requisite level of service to the insurance company's policyholders;]

[(K) total number of workers' compensation policies in effect as of December 31 of the report year;]

[(L) number of policies in the following premium groups that received any type of workers' compensation accident prevention services:]

[(i) less than $25,000;]

[(ii) $25,000 - $100,000; and]

[(iii) more than $100,000;]

[(M) total dollar amount spent for accident prevention services for Texas workers' compensation policyholders;]

[(N) number of policyholder requests for service;]

[(O) number of policyholder requests for service fulfilled;]

[(P) number of surveys performed;]

[(Q) number of work-related fatalities incurred by policyholders;]

[(R) evidence of the effectiveness of and accomplishments in accident prevention; and]

[(S) contact information of and certification by an insurance company representative that the information submitted under this subsection is correct and complete.]

[(b) Subsequent annual reports by insurance company.]

(a) [(1)] An [Subsequent to an insurance company's initial annual report under subsection (a) of this section, an] insurance company writing workers' compensation insurance in Texas must [shall] file with the division an annual report on its accident prevention services no [not] later than April 1 of each calendar year.

(b) [(2)] An annual report required by this subsection must [shall] be filed with the division in the format and manner prescribed by the division. [and shall include the:]

[(A) insurance company's name;]

[(B) group name;]

[(C) name, email, phone number, and mailing address of the primary loss control contact for Texas;]

[(D) NAIC number;]

[(E) information in subsection (a)(2)(E) - (R) of this section that has changed since the last annual report; and]

[(F) contact information of and certification by an insurance company representative that the information submitted under this subsection is correct and complete.]

(c) The [initial and subsequent] annual reports must [shall] not include the expenses or the costs of underwriting visits to a policyholder's premises unless accident prevention services are provided during the visit. In that case, the proportionate costs of the accident prevention services may be included in the report.

[(d) When resuming writing workers' compensation insurance in Texas, any insurance company that has not written workers' compensation insurance with exposures in Texas for 12 months or more shall submit, not later than the effective date of its first workers' compensation policy, the initial annual report required under this section.]

(d) [(e)] Insurance companies are responsible for timely and accurate reporting under this section. A report required by this section is considered filed with the division only when it accurately contains all of the required data elements and is received by the division.

(e) [(f)] This section is effective July 1, 2024 [October 1, 2013].

§166.5. Inspections of Adequacy of Accident Prevention Facilities and Services.

(a) Inspections. The division may conduct inspections to determine the adequacy of an insurance company's accident prevention services.

[(1) The division will conduct an initial inspection of each insurance company's accident prevention facilities and the company's use of accident prevention services after the effective date of this section. After the initial inspection, the division may conduct an inspection of an insurance company's accident prevention facilities and the company's use of accident prevention services as often as the division considers necessary to determine compliance with this chapter.]

(1) [(2)] Affiliated companies of an insurer may be inspected together if the same facilities, programs, and personnel are used by each of the companies.

(2) [(3)] At least 90 days before [prior to] an inspection, the division must [shall] notify the insurance company in writing of the inspection. The notice must [shall] specify the location and date of the inspection [and the date on which the inspection will occur].

(3) [(4) Notwithstanding the provisions of this section, the] The division may conduct unannounced on-site visits to determine compliance with the Labor Code [Act] and division rules in accordance with the procedures governing on-site visits in Chapter 180 of this title (relating to Monitoring and Enforcement) regardless of the provisions of this section.

(b) Site of inspection. The inspection of the insurance company's accident prevention services must [shall] take place as determined by the division [at]:

(1) at the insurance company's [company] office in Texas; [or]

(2) at the division; or [division's Austin headquarters]

(3) electronically.

(c) Pre-inspection exchange of information.

(1) At least 60 days before [prior to] the date set for inspection, in the format and manner specified by the division, the insurance company must [shall] provide to the division a list of policyholders. [:]

(A) For the period of time determined by the division, the list must be organized by:

(i) policyholder name;

(ii) policy number;

(iii) effective date or expiration date of the policy;

(iv) premium;

(v) number of fatalities;

(vi) principal Texas location;

(vii) indication of whether the insurance company has contracted with the policyholder for accident prevention services; and

(viii) indication of whether that policyholder has requested accident prevention services.

(B) The list must also:

(i) be taken from the insurance company's most current records;

(ii) be separated by affiliated companies;

(iii) be arranged in descending order by premium; and

(iv) include all policies.

[(A) a list of policyholders, for the period of time determined by the division, by policyholder name, policy number, effective date or expiration date of the policy, premium, number of fatalities, principal Texas location, indication of whether the insurance company has contracted with the policyholder for accident prevention services, and indication of whether that policyholder has requested accident prevention services. The list shall be taken from the insurance company's most current records, separated by affiliated companies, arranged in descending order by premium, and include all policies; and]

[(B) a copy of all accident prevention services procedures, including any changes since the insurance company's last annual report.]

(2) Within 10 days of receipt of the policyholder list, the division must [shall] select the specific policyholder files to be evaluated and notify the insurance company of those selected files.

(3) For each policy selected by the division, the insurance company must [shall] prepare an accident prevention services worksheet in the format and manner prescribed by the division. The worksheet must [shall] include the:

(A) policyholder name;

(B) policy number;

(C) number of employees;

(D) principal Texas office address or principal corporate office address if there is no principal Texas office address;

[(E) primary NAICS code;]

[(F) A. M. Best Hazard index number;]

(E) [(G)] policyholder contact person's name, phone number, and email address;

(F) [(H)] insurance company name;

(G) [(I)] effective date of the policy; and

(H) [(J)] name of person completing the form and date completed.[;]

[(K) service and loss information for policy years as requested by the division, including:]

[(i) total premium;]

[(ii) number of claims;]

[(iii) number of and dates of fatalities;]

[(iv) loss ratio;]

[(v) experience modifier;]

[(vi) surveys (list all dates);]

[(vii) recommendation letters (list all dates);]

[(viii) training programs (list all dates);]

[(ix) consultations (list all dates);]

[(x) analyses of accident causes (list all dates);]

[(xi) industrial hygiene services (list all dates);]

[(xii) industrial health services (list all dates);]

[(xiii) policyholder requests (list all dates requested and dates provided);]

[(xiv) underwriting requests (list all dates requested and dates provided);]

[(xv) insurance company determinations in accordance with §166.2(b)(4) of this title (relating to Adequacy of Accident Prevention Services) (list all dates need for services were determined and dates offered);]

[(xvi) description of policyholder operations; and]

[(xvii) comments.]

(4) At least 10 days before [prior to] the date of the inspection, the insurance company must [shall] file the completed worksheets with the division.

(d) Information to be made available at or before the inspection. The insurance company must [shall] make available for the time frame specified by the division:

(1) the loss control files corresponding to the requested worksheets;

(2) a sample policy declaratory page as evidence that each policyholder has been provided the notice required by §166.2(b)(1) of this title;

[(3) a copy of loss runs for each selected policyholder that includes:]

[(A) number of injuries;]

[(B) accident or illness types;]

[(C) body parts involved;]

[(D) injury causes; and]

[(E) fatalities;]

(3) [(4)] a copy of all documentation of accident prevention services provided in accordance with [§166.2(b)(2) - (5) of] this title;

(4) [(5)] samples of policyholder training materials, audio-visual aids, and training programs; and

(5) [(6)] other information requested by the division [which is] necessary to complete the inspection. Information requested may include, but is not limited to:

(A) records of surveys;

(B) consultations;

(C) recommendations;

(D) training provided;

(E) loss analyses;

(F) industrial health and hygiene services;

(G) return-to-work coordination services information; and

(H) the name, location, status (whether employee or contractor), and qualifications of each person that provided accident prevention services in the loss control files being reviewed during the inspection.

(e) Insurance company policyholder visits and contacts. The division may conduct scheduled visits of the jobsite of an insurance company's policyholder and make other off-site contacts with a policyholder to obtain information about the insurance company's accident prevention facilities and use of services.

(f) Written report of inspection.

(1) The division must [shall] prepare a written report of the inspection and must [shall] provide a copy to the insurance company's executive management and to the Texas Department of Insurance, Loss Control Regulation Division.

(2) The inspection report must [shall] contain the division's determination of adequacy in accordance with Labor Code §411.061 and §166.2 of this title, and include specific findings and required corrective actions. The inspection report will indicate whether the division has issued a final determination of adequacy, a final determination of inadequacy, or an initial determination of inadequacy with regard to an insurance company's accident prevention services.

(3) The division will provide written notification to the insurance company of specific deficiencies and recommendations for corrective action if it assigns an initial determination of inadequacy. Not later than the 60th day after the date of the initial inspection report, the insurance company must [shall] provide written documentation evidencing its compliance with the division's recommendations contained in the initial inspection report. The written documentation must [shall] detail the corrective actions [being] taken to address each specific finding. If the insurance company believes that it will take more than 60 days to implement the recommendations listed in the initial inspection report, it must [shall] request an extension from the division. After the end of the correction period, a final determination of adequacy or inadequacy will be assigned. The division must [shall] provide the insurance company with notification of this final determination.

[(4) The division shall issue a certificate of inspection to each insurance company after completion of an inspection in which the accident prevention services are deemed adequate.]

[(5) In addition to any sanction authorized by law, a final determination of inadequacy may be cause for withholding a certificate of inspection or reinspection.]

(g) Reinspection.

(1) After an inspection and a final determination of inadequacy of an insurance company's accident prevention services, the division will [shall] reinspect the accident prevention services of the insurance company not earlier than the 180th day or later than the 270th day after the date the accident prevention services were determined by the division to be inadequate.

(2) Information required under this section to be provided at the time of initial inspection is required to again be provided at the time of reinspection in accordance with the time frames established within this section.

(h) This section is effective July 1, 2024 [October 1, 2013].

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 February 9, 2024.

TRD-202400513
Kara Mace
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Earliest possible date of adoption: March 24, 2024
For further information, please call: (512) 804-4703

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 53. FINANCE

SUBCHAPTER A. FEES

DIVISION 1. LICENSE, PERMIT, AND BOAT AND MOTOR FEES

31 TAC §§53.2, 53.3, 53.6, 53.18

The Texas Parks and Wildlife Department (the department) proposes amendments to 31 TAC §§53.2, 53.3, 53.6, and 53.18, concerning License, Permit, and Boat and Motor Fees. The proposed amendments would provide for the issuance of the Exempt Angler Spotted Seatrout Tag, the Bonus Spotted Seatrout Tag, and duplicates of those tags, and establish the fee associated with the various versions of the tag.

In another rulemaking published elsewhere in this issue of the *Texas Register,* the department is proposing an annual retention limit of one spotted seatrout of 30 inches or greater ("oversized" spotted seatrout) per appropriately licensed saltwater angler per year. The rules would allow retention of the oversized fish via a spotted seatrout tag, which would be included at no cost with the purchase of an appropriate saltwater license or saltwater endorsement. Those rules also would provide for an Exempt Angler Spotted Seatrout Tag and Bonus Spotted Seatrout Tag, which could be purchased separately from the department. As explained in the preamble to that proposal, the department is attempting to facilitate the recovery of spotted seatrout populations from extreme population impacts resulting from Winter Storm Uri in February, 2021, while still providing some opportunity for the public to harvest "trophy" spotted seatrout.

The amendments proposed in this rulemaking would make changes necessary to include the spotted seatrout tag in the various licenses and license packages, provide for a Bonus Spotted Seatrout Tag, provide for issuance of duplicate tags for lost or destroyed tags, provide a mechanism for persons who are exempt by statute or rule from license requirements to obtain tags, provide for the use of digital versions of the tags, and establish the tag fee ($3.00).

If adopted, the proposed amendments would take effect for the next license year, which begins September 1, 2024.

Dakus Geeslin, Deputy Director, Coastal Fisheries Division, has determined that for each of the first five years that the rules as proposed are in effect, there will be fiscal implications to state government as a result of administering or enforcing the rules in the form of revenues realized as a result of the sales of the Exempt Angler Spotted Seatrout Tag and the Bonus Spotted Seatrout Tag. The department estimates that the sales of various forms of spotted seatrout tags could reach volumes similar to those of red drum tags. On average for the past five license years, the department sold a mean of approximately 27,900 bonus red drum tags per year and a mean of approximately 7,100 exempt angler red drum tags per year. The department believes that because of the more limited abundance of oversized seatrout and different life history characteristics of the species, fewer people will buy the spotted seatrout tag than the red drum tag, but if an equivalent number of people purchased seatrout tags, then the maximum revenue increase per year would be approximately $105,000.

There will be no fiscal implications for other units of state or local government.

Mr. Geeslin also has determined that for each of the first five years that the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the proposed rules will be the establishment of fees necessary to provide anglers with the opportunity to retain oversized spotted seatrout consistent with the discharge of the agency's statutory duty to protect and conserve the fisheries resources of this state.

There will be no effect on persons required to comply with the rules as proposed, as the decision to retain an oversized spotted seatrout in addition to the oversized spotted seatrout retention opportunity afforded via a license tag is voluntary; however, for persons choosing to retain oversized spotted seatrout under the rules as proposed there will be a cost in the form of a $3.00 fee for a Bonus Spotted Seatrout Tag. Anglers exempt from fishing license requirements who desire to retain a spotted seatrout of 30 inches or greater in length would have to purchase an Exempt Angler Spotted Seatrout Tag at a cost of $3.00 to do so.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses, micro-businesses, or rural communities. As required by Government Code, §2006.002(g),

the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impacts to small businesses, micro-businesses, or rural communities. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that the proposed rules will not result in direct adverse impacts on small businesses, micro-businesses, or rural communities because spotted seatrout, by statute, cannot be harvested for commercial purposes and because the proposed rules regulate recreational license privileges that allow individual persons to pursue and harvest wildlife resources in this state and therefore does not directly affect small businesses, micro-businesses, or rural communities. Therefore, neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not directly impact local economies, as the rules affect only personal license privileges attached to the purchase of a saltwater fishing license or saltwater endorsement.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rules as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; affect the amount of any fee (by implementing a fee for the Exempt Angler Tag and the Bonus Tag); not create a new regulation per se, but will modify an existing regulation; not repeal, limit, or expand a regulation; neither increase nor decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

The department has determined that the proposed rules are in compliance with Government Code, §505.11 (Actions and Rule Amendments Subject to the Coastal Management Program).

Comments on the proposed amendment may be submitted to Michaela Cowan, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-8734; e-mail: cfish@tpwd.texas.gov or via the department's website at http://www.tpwd.texas.gov/.

The amendments are proposed under the authority of Parks and Wildlife Code, Chapter 46 which authorizes the commission to prescribe fees for initial and duplicate tags for the take of finfish and to prescribe tagging requirements for the take of finfish; and authorizes the department to issue tags for finfish species allowed by law to be taken during each year or season from coastal waters of the state to holders of licenses authorizing the taking of finfish species

The proposed amendments affect Parks and Wildlife Code, Chapter 46.

§53.2. License Issuance Procedures, Fees, Possession, and Exemption Rules.

(a) (No change.)

(b) Fishing license possession.

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

(3) No person may catch and retain a spotted seatrout 30 inches or greater in length in the coastal waters of this state without having a valid fishing license, saltwater sportfishing stamp (unless exempt), and valid Spotted Seatrout tag in immediate possession, unless the person has purchased a valid digital license described in §53.3(a)(12) of this title or a valid license with digital tags under §53.4(a)(1) of this title.

(c) - (h) (No change.)

§53.3. Combination Hunting and Fishing License Packages.

(a) Combination hunting and fishing license packages may be priced at an amount less than the sum of the license and stamp prices of the individual licenses and stamps included in the package.

(1) (No change.)

(2) Resident combination hunting and saltwater fishing package--$55. Package consists of a resident hunting license, a resident fishing license, a saltwater sportfishing stamp, a spotted seatrout tag, and a red drum tag;

(3) Resident combination hunting and "all water" fishing package--$60. Package consists of a resident hunting license, a resident fishing license, a freshwater fish stamp, a saltwater sportfishing stamp, a spotted seatrout tag, and a red drum tag;

(4) (No change.)

(5) Resident senior combination hunting and saltwater fishing package--$21. Package consists of a senior resident hunting license, a senior resident fishing license, a saltwater sportfishing stamp, a spotted seatrout tag, and a red drum tag;

(6) Resident senior combination hunting and "all water" fishing package--$26. Package consists of a senior resident hunting license, a senior resident fishing license, a freshwater fish stamp, a saltwater sportfishing stamp, a spotted seatrout tag, and a red drum tag;

(7) Resident super combination hunting and "all water" fishing package--$68. Package consists of a resident hunting license, a migratory game bird stamp, an upland game bird stamp, an archery stamp, a resident fishing license, a freshwater fish stamp, [~~and~~] a saltwater sportfishing stamp, a spotted seatrout tag, and [~~with~~] a red drum tag;

(8) Resident senior super combination hunting and "all water" fishing package--$32. Package consists of a senior resident hunting license, a migratory game bird stamp, an upland game bird stamp, an archery stamp, a senior resident fishing license, a freshwater fish stamp, [~~and~~] a saltwater sportfishing stamp, a spotted seatrout tag, and [~~with~~] a red drum tag;

(9) Resident disabled veteran super combination hunting and "all water" fishing package--$0. Package consists of a resident

hunting license, a migratory game bird stamp, an upland game bird stamp, an archery stamp, a resident fishing license, a freshwater fish stamp, [and] a saltwater sportfishing stamp, a spotted seatrout tag, and [with] a red drum tag;

(10) Nonresident disabled veteran super combination hunting and "all water" fishing package--$0. Package consists of a resident hunting license, a migratory game bird stamp, an upland game bird stamp, an archery stamp, a resident fishing license, a freshwater fish stamp, [and] a saltwater sportfishing stamp, a spotted seatrout tag, and [with] a red drum tag. For purposes of this paragraph, a nonresident disabled veteran is a resident for the purpose of obtaining a super combination hunting and "all water" fishing package.

(11) Texas resident active duty military super combination hunting and "all water" fishing package--$0. Package consists of a resident hunting license, an upland game bird stamp, a migratory game bird stamp, an archery stamp, a resident fishing license, a freshwater fish stamp, [and] a saltwater sportfishing stamp, a spotted seatrout tag, and [with] a red drum tag; and

(12) - (13) (No change.)

(b) (No change.)

§53.6. Recreational Fishing Licenses, Stamps, and Tags.

(a) The items listed in this subsection are sold only as part of a package. The price and terms of these items are as follows:

(1) (No change.)

(2) special resident fishing license (valid for residents who are legally blind as described in Parks and Wildlife Code, §46.004)--$7 (one red drum and one spotted seatrout tag shall be available at no additional charge with the purchase of a special resident fishing license);

(3) - (5) (No change.)

(6) Texas resident active duty military "all water" fishing package--$0. Package consists of a resident fishing license, a freshwater fish stamp, and a saltwater sportfishing stamp with a red drum and a spotted seatrout tag.

(b) The items listed in this subsection may be sold individually or as part of a package. Stamps sold individually shall be valid from the date of purchase or the start date of the license year, whichever is later, through the last day of the license year. Stamps sold as part of a fishing package shall be valid for the same time period as the license included in the package as specified in this rule. The price of these stamps is as follows:

(1) (No change.)

(2) saltwater sportfishing stamp--$7 plus a saltwater sportfishing stamp surcharge of $3. A red drum tag and a spotted seatrout tag shall be issued at no additional charge with each saltwater sportfishing stamp.

(c) Fishing packages and licenses. The price of any fishing package shall be the sum of the price of the individual items included in the package:

(1) (No change.)

(2) resident saltwater fishing package--$35. Package consists of a resident fishing license and a saltwater sportfishing stamp with a red drum tag and a spotted seatrout tag;

(3) resident "all water" fishing package--$40. Package consists of a resident fishing license, a freshwater fishing stamp, and a saltwater sportfishing stamp with a red drum tag and a spotted seatrout tag;

(4) (No change.)

(5) senior resident saltwater fishing package--$17. Package consists of a senior resident fishing license and a saltwater sportfishing stamp with a red drum tag and a spotted seatrout tag;

(6) senior resident "all water" fishing package--$22. Package consists of a senior resident fishing license, a freshwater fishing stamp, and a saltwater sportfishing stamp with a red drum tag and a spotted seatrout tag;

(7) "year-from-purchase" resident "all water" fishing package--$47. Package consists of a "year-from-purchase" resident fishing license, a freshwater fishing stamp, and a saltwater sportfishing stamp with a red drum tag and a spotted seatrout tag;

(8) resident one-day "all water" fishing license--$11. One red drum tag and one spotted seatrout tag shall be available at no additional charge with the purchase of the first one-day license only;

(9) (No change.)

(10) non-resident saltwater fishing package--$63. Package consists of a non-resident fishing license and a saltwater sportfishing stamp with a red drum tag and a spotted seatrout tag;

(11) non-resident "all water" fishing package--$68. Package consists of a non-resident fishing license, a freshwater fishing stamp, and a saltwater sportfishing stamp with a red drum tag and a spotted seatrout tag;

(12) non-resident one-day "all water" fishing license--$16. One red drum tag and one spotted seatrout tagshall be available at no additional charge with the purchase of the first one-day license only; and

(13) (No change.)

(d) (No change.)

(e) Fishing tags:

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

(3) exempt angler spotted seatrout tag--$3;

(A) provides a spotted seatrout tag for persons that are exempt from the purchase of a resident or non-resident fishing license of any type or duration.

(B) this tag is available in a digital version. At the time of execution, the user must be in possession of a smart phone, computer, tablet, or similar device indicating acquisition of the digital tag.

(4) bonus spotted seatrout tag - provides a second spotted seatrout tag to persons that have previously received a spotted seatrout tag--$3. This tag is available in a digital version. At the time of execution, the user must be in possession of a smart phone, computer, tablet, or similar device indicating acquisition of the digital tag;

(5) [(3)] individual bait-shrimp trawl tag--$37; and

(6) [(4)] saltwater trotline tag--$5.

§53.18. License Issuance Procedures, Fees, Possession, and Exemption Rules - Provisions for Digital Products.

(a) - (b) (No change.)

(c) Fishing license possession.

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

(3) A person may catch and retain a spotted seatrout 30 inches or greater in length in the coastal waters of this state without

having a valid fishing license, saltwater sportfishing stamp, and valid spotted seatrout tag in immediate possession, if the person has:

(A) obtained a valid digital exempt angler spotted seatrout tag; or

(B) purchased a valid digital license described in §53.3(a)(12) of this title or a valid license with digital tags under §53.4 of this title.

(d) (No change.)

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 February 12, 2024.

TRD-202400538
James Murphy
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: March 24, 2024
For further information, please call: (512) 389-4775

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CHAPTER 57. FISHERIES
SUBCHAPTER N. STATEWIDE RECREATIONAL AND COMMERCIAL FISHING PROCLAMATION

The Texas Parks and Wildlife Department (the department) proposes amendments to 31 TAC §57.972 and §57.984, and new §57.985, concerning the Statewide Recreational and Commercial Fishing Proclamation.

The proposed amendments and new section would replace the current daily oversized-fish retention limit provisions of §57.981(c)(5)(O)(iv) and replace them with an annual limit of one spotted seatrout of 30 inches or greater, which would be administered under a tagging system similar to that currently in effect for red drum. If adopted, the proposed amendments and new section would eliminate the current provision regarding the retention of oversized spotted seatrout (as part of the daily bag limit) as soon as practicable and implement an annual limit for the retention of oversize spotted seatrout under a tagging system, which would take effect September 1, 2024. The department notes that between the time the proposed amendments take effect (if adopted) and September 1, 2024, the retention of spotted seatrout of 20 inches or greater would be prohibited.

In February of 2021 Winter Storm Uri resulted in the largest freeze-related fish kill on the Texas Gulf coast since the 1980's, severely impacting spotted seatrout populations coastwide. In an effort to accelerate recovery of the spotted seatrout population, the department promulgated an emergency rule (subsequently replaced via the normal rulemaking process) that implemented reduced bag and slot (a mechanism to protect certain age classes) limits. Those provisions included an automatic expiration date of August 31, 2023, at which time the harvest regulations reverted to provisions that were in effect before the freeze event. Department monitoring has continuously indicated lower post-freeze catch rates (compared to the previous ten-year average), and the commission accordingly recently acted to implement continued measures to enhance and accelerate population recovery, adopting rules (yet to take effect) that reduced the bag limit and narrowed the slot limit for spotted seatrout. As a result of deliberations at the January 24, 2024, meeting of the commission, the commission directed staff to develop a mechanism that would allow the retention of "oversized" fish (fish in excess of the maximum length established by rule) at a level not likely to compromise or defeat recovery measures.

The proposed amendments and new section would negate the oversized fish exemption adopted at the January 24, 2024 commission meeting (allowing the retention of one spotted seatrout of 30 inches or more per day) and replace it with an annual limit of one spotted seatrout of 30 inches or greater per angler per year, which would be administered by a tagging system similar to that currently in effect for oversized red drum. A spotted seatrout tag would be included at no additional cost with the purchase of a saltwater fishing endorsement or any license type that includes the saltwater fishing endorsement. The proposed rules would additionally allow anglers who are exempt by statute or rule of the commission from fishing license requirements to purchase an Exempt Angler Tag for $3.00. Additionally, the proposed rules would allow anglers to harvest a second spotted seatrout of 30 inches or greater per year by creating a bonus tag for that purpose, obtained by paying a fee of $3.00.

The rules as proposed will not interfere with or confound the intent of the harvest rules adopted in January 2024, which are intended to increase the overall spawning stock biomass by reducing the bag limit and protecting spotted seatrout between 15 inches and 20 inches in length (which represents the overwhelming majority of reproductive potential) while providing anglers the continued opportunity to harvest a limited number of "trophy" spotted seatrout, as spotted seatrout of 30 inches or greater are not numerous.

Dakus Geeslin, Deputy Director, Coastal Fisheries Division, has determined that for each of the first five years that the rules as proposed are in effect, there will be fiscal implications to state government as a result of administering or enforcing the rules as proposed in the form of revenues realized as a result of the fees for the Exempt Angler Spotted Seatrout Tag and the Bonus Spotted Seatrout Tag, which are addressed in the proposed amendments to Chapter 53, regarding Fees, published elsewhere in this issue of the *Texas Register.*

There will be no fiscal implications for other units of state or local government.

Mr. Geeslin also has determined that for each of the first five years that the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the proposed rules will be the dispensation of the agency's statutory duty to protect and conserve the fisheries resources of this state by protecting fisheries resources from depletion. In addition, the rules will increase the long-term sustainability of the resource, based on projected future impacts and expected changes to the fishery based on fishing pressure. This is accomplished while still maintaining opportunities for angling and retention of large spotted seatrout, and will increases the likelihood and opportunity for spotted seatrout to reach larger size classes.

There will be no effect on persons required to comply with the rules as proposed, as the decision to retain an oversized spotted seatrout in addition to the oversized spotted seatrout retention opportunity afforded via a license tag is voluntary; however, for

persons choosing to retain oversized spotted seatrout under the rules as proposed there will be a cost in the form of a $3.00 fee for a Bonus Spotted Seatrout Tag. Anglers exempt from fishing license requirements who desire to retain a spotted seatrout 30 inches or greater in length would have to purchase an Exempt Angler Spotted Seatrout Tag at a cost of $3.00 to do so.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses, micro-businesses, or rural communities. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impacts to small businesses, micro-businesses, or rural communities. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that the proposed rules will not result in direct adverse impacts on small businesses, micro-businesses, or rural communities because spotted seatrout, by statute, cannot be harvested for commercial purposes and because the proposed rules regulate recreational license privileges that allow individual persons to pursue and harvest wildlife resources in this state and therefore does not directly affect small businesses, micro-businesses, or rural communities. Therefore, neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not directly impact local economies, as the rules affect only personal license privileges attached to the purchase of a saltwater fishing license or saltwater endorsement.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rules as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; affect the amount of any fee (by implementing a fee for the Exempt Angler Tag and the Bonus Tag); not create a new regulation per se, but will modify an existing regulation; not repeal or limit a regulation, but will expand an existing regulation (by creating a tag requirement for oversized spotted seatrout); neither increase nor decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

The department has determined that the proposed rules are in compliance with Government Code, §505.11 (Actions and Rule Amendments Subject to the Coastal Management Program).

Comments on the proposed amendment may be submitted to Michaela Cowan, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-8734; email: cfish@tpwd.texas.gov or via the department's website at http://www.tpwd.texas.gov/.

DIVISION 1. GENERAL PROVISIONS

31 TAC §57.972

The amendment is proposed under the authority of Parks and Wildlife Code, Chapter 46 which authorizes the commission to prescribe fees for initial and duplicate tags for the take of finfish and to prescribe tagging requirements for the take of finfish; and authorizes the department to issue tags for finfish species allowed by law to be taken during each year or season from coastal waters of the state to holders of licenses authorizing the taking of finfish species; and Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; and to specify the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

The proposed amendment affects Parks and Wildlife Code, Chapters 46 and 61.

§57.972. General Rules.

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

(g) It is unlawful:

(1) - (13) (No change.)

(14) for any person to:

(A) - (G) (No change.)

(H) have in possession:

(i) both a Spotted Seatrout Tag and a Duplicate Spotted Seatrout Tag issued to the same license or saltwater stamp holder;

(ii) both an Exempt Angler Spotted Seatrout Tag and a Duplicate Exempt Angler Spotted Seatrout Tag issued to the same license holder; or

(iii) both a Bonus Spotted Seatrout Tag and a Duplicate Spotted Seatrout Tag issued to the same license or saltwater stamp holder.

(h) Harvest Log.

(1) (No change.)

(2) A person who takes a red drum or spotted seatrout in excess of the maximum length limit established in this chapter for those species shall complete, in ink, the harvest log on the back of the hunting or fishing license, as applicable, immediately upon kill, or, in the case of fish, upon retention.

(i) Alternative Licensing System.

(1) The requirements of this title that require the attachment of license tags to wildlife resources do not apply to any person

in lawful possession of a license that was sold by the department without tags for red drum or spotted seatrout. A properly executed wildlife resource document must accompany any red drum or spotted seatrout in excess of maximum size limits established in this chapter for those species until the provisions of this title and Parks and Wildlife Code governing the possession of the particular wildlife resource cease to apply.

(2) (No change.)

(j) (No change.)

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 February 12, 2024.

TRD-202400539
James Murphy
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: March 24, 2024
For further information, please call: (512) 389-4775

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DIVISION 2. STATEWIDE RECREATIONAL FISHING PROCLAMATION

31 TAC §57.984, §57.985

The amendment and new section are proposed under the authority of Parks and Wildlife Code, Chapter 46 which authorizes the commission to prescribe fees for initial and duplicate tags for the take of finfish and to prescribe tagging requirements for the take of finfish; and authorizes the department to issue tags for finfish species allowed by law to be taken during each year or season from coastal waters of the state to holders of licenses authorizing the taking of finfish species; and Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; and to specify the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

The proposed amendment and new section affect Parks and Wildlife Code, Chapters 46 and 61.

§57.984. Special Provisions - Digital Exempt Angler Tags [~~Tag~~].

(a) - (b) (No change.)

(c) One spotted seatrout exceeding the length limit established by §57.985(a) of this title (relating to Spotted Seatrout - Special Provisions) may be retained by a person who is by statute or rule exempt from fishing license possession requirements, provided the person has obtained a digital exempt angler spotted seatrout tag. A fish retained under the provisions of this section may be retained in addition to the daily bag and possession limit provided under §57.981(c)(5)(O) of this title.

(d) A person who lawfully takes a spotted seatrout under the provisions of subsection (c) of this section is exempt from any requirement of Parks and Wildlife Code or this subchapter regarding the use of license tags for that species; however, that person shall immediately upon take ensure that a harvest report is created and submitted via a mobile or web application provided by the department for that purpose. If the absence of data connectivity prevents the receipt of a confirmation number from the department following the report required by this subparagraph, the person who took the spotted seatrout is responsible for ensuring that the report required by this subparagraph is uploaded to the department immediately upon the availability of network connectivity.

§57.985. Spotted Seatrout - Special Provisions.

(a) On the effective date of this section, the provisions of §57.981(c)(5)(O)(iv) of this title (relating to Bag, Possession, and Length Limits) cease effect and no person may retain a spotted seatrout of 30 inches in length or greater except as provided in this section. To the extent that any provision of this section conflicts with any provision of §57.981(c)(5)(O) of this title, this section controls.

(b) The provisions of subsections (c) - (f) of this section take effect September 1, 2024.

(c) During a license year, a person may retain one spotted seatrout of greater than 30 inches in length, provided:

(1) a properly executed Spotted Seatrout Tag, a properly executed Exempt Angler Spotted Seatrout Tag, or properly executed Duplicate Exempt Spotted Seatrout Tag has been affixed to the fish; and

(2) one spotted seatrout exceeding the length limit established by subsection (a) of this section in addition to a spotted seatrout retained under the provisions of paragraph (1) of this section, provided a properly executed Bonus Spotted Seatrout Tag or properly executed Duplicate Bonus Spotted Seatrout Tag has been affixed to the fish.

(3) A spotted seatrout retained under a Spotted Seatrout Tag, an Exempt Angler Spotted Seatrout Tag, a Duplicate Exempt Spotted Seatrout Tag, or a Bonus Spotted Seatrout Tag may be retained in addition to the daily bag and possession limit as provided in §57.981(c)(5)(O) of this title.

(d) A person who lawfully takes a spotted seatrout under a digital license issued under the provisions of §53.3(a)(12) this title (relating to Super Combination Hunting and Fishing License Packages) or under a lifetime license with the digital tagging option provided by §53.4(a)(1) of this title (relating to Lifetime Licenses) that exceeds the maximum length limit established in §57.981(c)(5)(O) of this title is exempt from any requirement of Parks and Wildlife Code or this subchapter regarding the use of license tags for that species; however, that person shall immediately upon take ensure that a harvest report is created and submitted via a mobile or web application provided by the department for that purpose. If the absence of data connectivity prevents the receipt of a confirmation number from the department following the report required by this subparagraph, the person who took the spotted seatrout is responsible for ensuring that the report required by this subsection is uploaded to the department immediately upon the availability of network connectivity.

(e) It is an offense for any person to possess a spotted seatrout exceeding the maximum length established by this section under a digital license or digital tagging option without being in immediate physical possession of an electronic device that is:

(1) loaded with the mobile or web application designated by the department for harvest reporting under this section; and

(2) capable of uploading the harvest report required by this section.

(f) A person who is fishing under a license identified in §53.4(a)(1) of this title and selected the fulfilment of physical tags must comply with the tagging requirements of this chapter that are applicable to the tagging of spotted seatrout under a license that is not a digital license.

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 February 12, 2024.

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James Murphy
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: March 24, 2024
For further information, please call: (512) 389-4775

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CHAPTER 65. WILDLIFE
SUBCHAPTER A. STATEWIDE HUNTING PROCLAMATION

The Texas Parks and Wildlife Department proposes amendments to §§65.10, 65.11, 65.24, 65.29, 65.33, 65.40, 65.42, 65.46, 65.48, and 65.64, concerning the Statewide Hunting Proclamation.

The proposed amendment to §65.10, concerning Possession of Wildlife Resources, would implement conforming changes to terminology with respect to references to pronghorn. In 2022, the department amended to §65.3, concerning Definitions, to define "pronghorn" as "pronghorn antelope (*Antilocarpa americana*)." Although Parks and Wildlife Code, Chapter 63, designates the "pronghorn antelope" as a game species, the animal is not in fact a true antelope. Additionally, it is less cumbersome to simply refer to the animal as a pronghorn. Therefore, the definition was changed and the rules are being modified to "pronghorn" throughout the subchapter. The proposed amendments to §65.11, 65.24, 65.33, and 65.40 would also implement the change.

The proposed amendment to §65.29, concerning Managed Lands Deer Program (MLDP), would allow youth hunters on properties enrolled in the Harvest Option to harvest buck deer during the time period corresponding to the early youth-only hunting season established in the county regulations under §65.42. During the current early youth-only hunting season, licensed hunters 16 years old and younger are allowed to take buck deer by firearm during the weekend preceding the first Saturday in November as provided under the provisions of §65.42 for the county where the hunting takes place. On MLDP properties enrolled in the Conservation Option, MLDP permits are valid for the take of any deer by any lawful means (by any licensed hunter) from the Saturday closest to September 30 to the last day in February; however, on properties enrolled in the MLDP Harvest Option, only antlerless deer and unbranched antlered bucks can be taken by firearm between the Saturday closest to September 30 and the first Saturday in November. Therefore, during the weekend preceding the first Saturday in November, the harvest of buck deer by youth by firearm is lawful on all properties except those enrolled in the Harvest Option of the MLDP. The department has determined that because the harvest of deer on MLDP is set by the department, there is no reason for a hunting opportunity available on all other properties to be unavailable on MLDP Harvest Option properties during that same time period. The department has also determined that because the total harvest on MLDP properties is established and controlled by the department, there will be no negative biological consequences of allowing buck harvest by firearm by youth hunters, as it is simply a matter of redistributing utilization of a fixed number of tags on any given property. The department also notes that because the proposed amendment to §65.42 would add a day to the early youth-only hunting season for deer, the proposed amendment would reflect that expanded harvest period length. The proposed amendment also modifies subsection (f) to eliminate a provision regarding the effective date of a prior amendment. The provision was promulgated to provide for a transition period while the department implemented web-based and application-based administrative and reporting functions.

The proposed amendment to 65.42, concerning Deer, consists of several components. The proposed change would insert the phrase "North Zone" at the beginning of paragraph (b)(2) in order to make clear to which counties and portions of counties that phrase refers.

The proposed amendment to §65.42 also would increase the number of "doe days" in 43 counties in the eastern half of the state. The department manages deer populations by the deer management unit (DMU) concept, which organizes the state into specific areas that share similar soil types, vegetative communities, wildlife ecology, and land-use practices. In this way, deer seasons, bag limits, and special provisions can be more effectively analyzed to monitor the efficacy of management strategies on deer populations within each DMU (although the familiar system of county boundaries and major highways to delineate various regulatory regimes continues to be employed). In some DMUs characterized by fragmented habitat, high hunting pressure, and large numbers of small acreages, the department protects the reproductive potential of the population by restricting the time during which antlerless deer may be taken, known colloquially as "doe days." Under current rule, there are five levels of doe harvest in Texas. In some counties, the harvest of does is by MLDP tag only during the general season. In other counties (except on properties enrolled in the MLDP), doe harvest is allowed for either four, 16, or 23-plus days (a variable structure that allows antlerless harvest from the opening day of the general season until the Sunday following Thanksgiving). The most liberal doe harvest allows doe to be taken at any time during an open season. The department has determined that the 23-plus doe days structure can be implemented in 43 counties that currently have 16 doe days. Department population and harvest data indicate that deer densities are increasing within the affected DMUs and that antlerless harvest is less than half of the total harvest, which is resulting in a skewed sex ratio that is undesirable. The proposed amendment is intended to provide additional hunting opportunity where possible within the tenets of sound biological management, address resource concerns such as increasing deer densities, habitat degradation, and simplify existing regulations.

Finally, the proposed amendment to §65.42 would add one day to the current early youth-only weekend season for deer. Based on harvest and population data, the department has determined

that because the hunting pressure represented by persons 16 years of age and younger is slight, even at high rates of hunter success, the change will result in an insignificant biological impact. In addition, the proposed amendment makes nonsubstantive grammatical corrections to improve readability.

The proposed amendment to §65.46, concerning Squirrel: Open Season, Bag, and Possession Limits, would add one day to the current early youth-only weekend season for squirrel. Based on harvest and population data, the department has determined that because the hunting pressure represented by persons 16 years of age and younger is slight, even at high rates of hunter success, the change will result in an insignificant biological impact.

The proposed amendment to §65.48, concerning Desert Bighorn Sheep: Open Season and Annual Bag Limit, would modify the open season. Under current rule, the season runs from September 1 through July 31. The season is closed in August as a precautionary measure because department biologists historically have conducted aerial surveys of bighorn populations at that time. However, the department has revised its aerial survey protocol for safety reasons, shifting the survey period to October through November when flight conditions are more favorable due to cooler temperatures. The proposed amendment would establish an open season to run from November 15 - September 30.

The proposed amendment to §65.64, concerning Turkey, would consist of several actions. First, the proposed amendment would eliminate regulatory distinctions regarding identification of subspecies of turkeys, which the department has determined is unnecessary, as the distribution of the various subspecies on the landscape is conducive to the aggregate bag limits currently in effect. The proposed amendment will simplify regulations, enhance administration and enforcement, and will not result in depletion or waste. Therefore, current subsection (c), which is specific to Eastern turkey (for which there is no fall season), is no longer necessary and the appropriate components can be relocated into the portion of subsection (b) addressing spring turkey seasons.

The proposed amendment to §65.64 also would close the Fall season, shorten the spring season, and reduce the bag limit east of Interstate Highway 35 in Comal, Hays, Guadalupe (north of I-10),Hill, McLennan, and Travis counties. The current spring season runs from the Saturday closest to April 1 for 44 days and the bag limit is four turkeys, gobblers or bearded hens. The proposed amendment would implement a season to run from April 1 - 30 and implement a bag limit of one turkey, gobblers only. Urban and suburban development, along with agricultural practices common along and east of Interstate 35, have resulted in habit loss and fragmentation to the extent that the turkey populations in those areas are no longer capable of sustaining potential harvest at the levels allowed under current rule. Moreover, hen harvest should be eliminated to maximize reproductive potential for the populations that do remain, which will allow for viable turkey populations in those remaining areas of suitable habitat. Similarly, the proposed amendment would close the Fall season and alter the spring season in Brewster, Jeff Davis, Pecos, and Terrell counties, by implementing a shorter season, reducing the bag limit, and restricting the bag composition to gobblers only. The current spring season in those counties runs from the Saturday closest to April 1 for 44 days and the bag limit is four turkeys, gobblers or bearded hens. Department monitoring efforts continue to indicate significant population declines in those counties and the department has determined that populations in those areas are no longer capable of sustaining potential harvest at the levels allowed under current rule. Moreover, hen harvest should be eliminated to maximize reproductive potential for the populations that do remain, which will allow for viable turkey populations in those remaining areas of suitable habitat.

The proposed amendment to §65.64 also would close the spring season south of U.S. Highway 82 in Bowie, Fannin, Lamar, and Red River counties to protect turkeys being stocked in neighboring counties while viable populations are being established. Similarly, the proposed amendment would close the spring season in Milam County and east of Interstate Highway 35 in Bell and Williamson counties to protect stocked turkeys as part of a restoration effort, which is expected to take up to five years to complete.

The proposed amendment to §65.64 also would implement a statewide mandatory harvest reporting requirement for all harvested wild turkeys. The department has historically utilized data obtained from mail-in surveys of turkey hunters to inform management decisions; however, response rates to the surveys have declined to a level that severely reduces the statistical reliability and usefulness of that data. Harvest data is an important component of turkey population management and recent research in Texas has recommended the implementation of mandatory harvest reporting to better monitor wild turkey populations. The department currently requires the electronic reporting of all turkey harvest in counties with a one-gobbler bag limit, and that data is invaluable to the long-term monitoring and management of wild turkey populations in Texas. The department notes that the department will recommend the implementation of mandatory electronic harvest reporting in the counties affected by the proposal (Bell (east of Interstate Highway 35), Brewster, Comal (east of Interstate Highway 35), Guadalupe (north of I-10), Hays (east of Interstate Highway 35), Jeff Davis, McLennan (east of Interstate Highway 35), Pecos, Terrell, Travis (east of Interstate Highway 35), and Williamson (east of Interstate Highway 35) in the event that the commission determines that statewide mandatory reporting isn't appropriate at this time. Additionally, the proposed amendment adds nonsubstantive language where necessary to clarify that the rules apply to counties and portions of counties.

The proposed amendment to §65.64 also would add one day to the current early youth-only weekend season for turkey. Based on harvest and population data, the department has determined that because the hunting pressure represented by persons 16 years of age and younger is slight, even at high rates of hunter success, the change will result in an insignificant biological impact.

Robert Macdonald, Regulations Coordinator, has determined that for each of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state or local governments as a result of administering or enforcing the rules.

Mr. Macdonald also has determined that for each of the first five years that the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the proposed rules will be the dispensation of the agency's statutory duty to protect and conserve the resources of this state, the duty to equitably distribute opportunity for the enjoyment of those resources among the citizens, and the execution of the commission's policy to maximize recreational opportunity within the precepts of sound biological management practices.

There will be no adverse economic effect on persons required to comply with the rules as proposed.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses, micro-businesses, or rural communities. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small and microbusinesses and rural communities. Those guidelines state that an agency need only consider a proposed rule's direct adverse economic impacts to determine if any further analysis is required. The department considers "direct economic impact "to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that the proposed rules regulate various aspects of recreational license privileges that allow individual persons to pursue and harvest wildlife resources in this state and therefore do not directly affect small businesses, micro-businesses, or rural communities. Therefore, neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The ruled as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of any fee; not create a new regulation; not limit an existing regulation, and will expand an existing regulation (by requiring statewide reporting of all turkey harvest); neither increase nor decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments concerning the proposed game bird rules may be submitted to Shaun Oldenburger at (512) 757-6067, email: shaun.oldenburger@tpwd.texas.gov. Comments concerning proposed rules for big game species may be submitted to Blaise Korzekwa at (512) 415-8459, e-mail: blaise.korzekwa@tpwd.texas.gov. Comments also may be submitted via the department's website at https://tpwd.texas.gov/business/feedback/public_comment/.

DIVISION 1. GENERAL PROVISIONS

31 TAC §§65.10, 65.11, 65.24, 65.29, 65.33

The amendments are proposed under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

The proposed amendments affect Parks and Wildlife Code, Chapter 61.

§65.10. Possession of Wildlife Resources.

(a) - (i) (No change.)

(j) In lieu of proof of sex, the person who killed the wildlife resource may:

(1) obtain a receipt from a taxidermist or a signed statement from the landowner, containing the following information:

(A) - (B) (No change.)

(C) one of the following, as applicable:

(i) (No change.)

(ii) the sex of the pronghorn [~~antelope~~];

(iii) - (iv) (No change.)

(2) (No change.)

(k) A person may give, leave, receive, or possess any species of legally taken wildlife resource, or a part of the resource, that is required to have a tag or permit attached or is protected by a bag or possession limit, if the wildlife resource is accompanied by a wildlife resource document from the person who killed or caught the wildlife resource. A wildlife resource may be possessed without a WRD by the person who took the wildlife resource, provided the person is in compliance with all other applicable provisions of this subchapter and the Parks and Wildlife Code.

(1) For deer and pronghorn [~~antelope~~], a properly executed wildlife resource document shall accompany the carcass or part of a carcass until tagging requirements cease.

(2) - (5) (No change.)

(l) - (m) (No change.)

§65.11. Lawful Means.

It is unlawful to hunt alligators, game animals or game birds except by the means authorized by this section, and as provided in §65.19 of this title (relating to Hunting Deer with Dogs).

(1) - (3) (No change.)

(4) Air guns. Except as otherwise specifically provided elsewhere in this chapter, it is lawful to hunt alligators, game animals, and non-migratory game birds with an air gun; provided:

(A) when used to hunt alligator, deer, pronghorn [~~antelope~~], bighorn sheep, javelina, or turkey, the air gun:

(i) - (iii) (No change.)

(B) - (E) (No change.)

(5) - (9) (No change.)

§65.24. Permits.

(a) (No change.)

(b) Except as provided in §65.29 of this title (relating to Managed Lands Deer Program or §65.30 of this title (relating to Pronghorn [~~Antelope~~] Permits), no person may hunt white-tailed deer, mule deer, desert bighorn sheep, or pronghorn [~~antelope~~] when a permit or tag is required unless that person has received from the landowner and has in possession a valid permit or tag issued by the department.

(c) - (g) (No change.)

§65.29. Managed Lands Deer Program (MLDP).

(a) - (b) (No change.)

(c) MLDP--White-tailed Deer. The provisions of this subsection shall govern the authorization and conduct of MLDP participation with respect to white-tailed deer.

(1) Harvest Option (HO).

(A) - (C) (No change.)

(D) On a tract of land enrolled under this subsection:

(i) (No change.)

(ii) MLDP tags for buck deer are valid:

(I) from the Saturday closest to September 30 for 35 consecutive days during which time buck deer may be taken only by means of lawful archery equipment; [~~and~~]

(II) from the first Saturday in November until the last day of February, during which time buck deer may be taken by any lawful means; and [~~.~~]

(III) for the take of buck deer by licensed hunters 16 years of age and younger on the Friday, Saturday and Sunday immediately preceding the first Saturday in November.

(E) (No change.)

(2) (No change.)

(d) - (e) (No change.)

(f) Special Provisions.

(1) The annual bag limit established under §65.42 of this title does not apply to deer lawfully taken and tagged under the provisions of this section. [~~On September 1, 2017:~~]

[~~(A) the provisions of this section take effect;~~]

[~~(B) the annual bag limit established under §65.42 of this title does not apply to deer lawfully taken and tagged under the provisions of this section;~~]

[~~(C) the tagging requirements of Parks and Wildlife Code, §42.018, do not apply to deer lawfully taken under the provisions of this section;~~]

[~~(D) completion of the harvest log required under §65.7 of this title (relating to Harvest Log) is not required for deer lawfully tagged under the provisions of this section; and~~]

[~~(E) the provisions of §65.10 of this title (relating to Possession of Wildlife Resources) apply to deer lawfully taken under this section.~~]

(2) The tagging requirements of Parks and Wildlife Code, §42.018, do not apply to deer lawfully taken under the provisions of this section.

(3) Completion of the harvest log required under §65.7 of this title (relating to Harvest Log) is not required for deer lawfully tagged under the provisions of this section.

(4) The provisions of §65.10 of this title (relating to Possession of Wildlife Resources) apply to deer lawfully taken under this section.

(5) [~~(2)~~] To the extent that any provision of this subchapter conflicts with the provisions of this section, the provisions of this section prevail.

(6) [~~(3)~~] In the event that the department's web-based application is unavailable or inoperable, the department may specify manual procedures for compliance with the requirements of this section.

§65.33. Mandatory Check Stations.

(a) (No change.)

(b) Except as required under §65.40 of this title (relating to Pronghorn [~~Antelope~~]: Open Seasons and Bag Limits) or Subchapter B of this chapter, the entire wildlife resource, with head and hide/plumage attached, except that internal and sexual organs may be removed (field-dressed), of any designated wildlife resource taken in a county in which mandatory check stations have been established must be presented:

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

(c) - (d) (No change.)

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 February 12, 2024.

TRD-202400535
James Murphy
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: March 24, 2024
For further information, please call: (512) 389-4775

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DIVISION 2. OPEN SEASONS AND BAG LIMITS

31 TAC §§65.40, 65.42, 65.46, 65.48, 65.64

The amendments are proposed under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

The proposed amendments affect Parks and Wildlife Code, Chapter 61.

§65.40. Pronghorn [~~Antelope~~]: Open Seasons and Bag Limits.

(a) - (b) (No change.)

§65.42. Deer.

(a) General.

(1) - (3) (No change.)

(4) Except as provided in Subchapter H of this chapter and subsections (b)(2)(E) and (b)(4) and (5) [~~(b)(4)~~ - ~~(6)~~] of this section, the take of antlerless deer is prohibited on USFS lands.

(5) In the counties or portions of counties listed in subsection (b)(2)(G) [~~(b)(2)(H)~~] of this section, antlerless deer harvested on properties not subject to the provisions of §65.29 of this title (relating to Managed Lands Deer (MLD) Programs) must be reported via the department's internet or mobile application within 24 hours of the time of kill, including antlerless deer harvested during the special seasons established by subsection (b)(4) and (5) [~~(b)(5)~~ - ~~(7)~~] of this section. This paragraph does not apply to antlerless deer harvested under a digital license issued by the department pursuant to §53.3(a)(12) of this title (relating to Super Combination Hunting and Fishing Packages), a valid license with digital tags issued under §53.4 of this title (relating to Lifetime Licenses), or a valid digital license issued under §53.5(a)(3) of this title (relating to Recreational Hunting License, Stamps, and Tags), which must be reported as required under §65.10 of this title (relating to Possession of Wildlife Resources).

(b) White-tailed deer. The open seasons and bag limits for white-tailed deer shall be as follows.

(1) (No change.)

(2) North Zone. The general open season for the counties listed in this paragraph [~~subparagraph~~] is from the first Saturday in November through the first Sunday in January.

(A) - (E) (No change.)

(F) In Anderson, Angelina, Bell (East of IH 35), Bowie, Brazoria, Burleson, Brazos, Camp, Cass, Chambers, Cherokee, Delta, Ellis, Falls, Fannin, Fort Bend, Franklin, Freestone, Galveston, Goliad (south of U.S. Highway 59), Gregg, Grimes, Hardin, Harris, Harrison, Henderson, Hopkins, Houston, Hunt, Jackson (south of U.S. Highway 59), Jasper, Jefferson, Kauffman, Lamar, Leon, Liberty, Limestone, Madison, Marion, Matagorda, Milam, Montgomery, Morris, Nacogdoches, Navarro, Newton, Orange, Panola, Polk, Rains, Red River, Robertson, Rusk, Sabine, San Augustine, San Jacinto, Shelby, Smith, Titus, Trinity, Tyler, Upshur, Van Zandt, Victoria (south of U.S. Highway 59), Walker, [~~and~~] Wharton (south of U.S. Highway 59), Williamson (east of IH 35), and Wood counties:

(i) - (iii) (No change.)

~~[(G) In Anderson, Bell (East of IH 35), Bowie, Burleson, Brazos, Camp, Cass, Delta, Ellis, Falls, Fannin, Franklin, Freestone, Gregg, Grimes, Harrison, Henderson, Hopkins, Hunt, Kauffman, Lamar, Leon, Limestone, Madison, Marion, Milam, Morris, Nacogdoches, Navarro, Panola, Rains, Red River, Robertson, Rusk, Sabine, San Augustine, Shelby, Smith, Titus, Upshur, Van Zandt, Williamson (east of IH 35), and Wood counties:~~

~~*[(i)* the bag limit is four deer, no more than two bucks and no more than two antlerless;~~

~~*[(ii)* the antler restrictions described in paragraph (3) of this subsection apply; and~~

~~*[(iii)* antlerless deer may be taken during the first 16 days of the season.~~

(G) [~~(H)~~] In Austin, Bastrop, Caldwell, Colorado, Comal (east of IH 35), DeWitt, Fayette, Goliad (north of U.S. Highway 59), Gonzales, Guadalupe, Hays (east of IH 35), Jackson (north of U.S. Highway 59), Karnes, Lavaca, Lee, Travis (east of IH 35), Victoria (north of U.S. Highway 59), Waller, Washington, Wharton (north of U.S. Highway 59), and Wilson counties:

(i) - (iv) (No change.)

(H) [~~(I)~~] In Collin, Dallas, Grayson, and Rockwall counties there is a general open season:

(i) - (iv) (No change.)

(I) [~~(J)~~] In Andrews, Bailey Castro, Cochran, Dallam, Dawson, Deaf Smith, Gaines, Hale, Hansford, Hartley, Hockley, Lamb, Lubbock, Lynn, Martin, Moore, Oldham, Parmer, Potter, Randall, Sherman, Swisher, Terry, and Yoakum counties, the bag limit is three deer, no more than one buck and no more than two antlerless.

(J) [~~(K)~~] In Crane, Ector, Loving, Midland, Ward, and Winkler counties:

(i) - (ii) (No change.)

(K) [~~(L)~~] In all other counties, there is no General Season.

(3) - (6) (No change.)

(7) Special Youth-Only Seasons. There shall be special youth-only general hunting seasons in all counties where there is a general open season for white-tailed deer.

(A) The early open season is the Friday, Saturday, and Sunday immediately before the first Saturday in November.

(B) (No change.)

(C) Bag limits, provisions for the take of antlerless deer, and special requirements in the individual counties listed in paragraph (2)(A) - (G) [~~(H)~~] of this subsection shall be as specified for the first two days of the general open season in those counties, except as provided in subparagraph (D) of this paragraph.

(D) Provisions for the take of antlerless deer in the individual counties listed in paragraph (2)(G) [~~(2)(H)~~] of this subsection shall be as specified in those counties for the period of time from Thanksgiving Day through the Sunday immediately following Thanksgiving Day.

(E) Other than on properties where MLDP tags have been issued under the provisions of §65.29(c)(2) of this title, only licensed hunters 16 years of age or younger may hunt deer during the seasons established by this paragraph, and any lawful means may be used.

(F) - (G) (No change.)

(c) (No change.)

§65.46. Squirrel: Open Seasons, Bag, and Possession Limits.

(a) - (b) (No change.)

(c) In the counties listed in subsection (a) of this section, there shall be a special youth-only general hunting season during which only licensed hunters 16 years of age or younger may hunt.

(1) open season: the Friday, Saturday, and Sunday immediately preceding October 1.

(2) (No change.)

§65.48. Desert Bighorn Sheep: Open Season and Annual Bag Limit.

(a) (No change.)

(b) Open Season: From November 15 of any year to September 30 of the immediately following year[~~September Ber 1 through July 31~~].

(c) - (d) (No change.)

§65.64. Turkey.

(a) The annual bag limit for [~~Rio Grande and Eastern~~] turkey (all subspecies), in the aggregate, is four, only one of which may be from a county listed in subsection (b)(3)(D) of this section [~~, no more than one of which may be an Eastern turkey~~].

(b) [~~Rio Grande Turkey.~~] The open seasons and bag limits for [~~Rio Grande~~] turkey shall be as follows.

(1) Fall seasons and bag limits:

(A) - (B) (No change.)

(C) The counties and portions of counties listed in this subparagraph are in the Fall North Zone. In Archer, Armstrong, Bandera, Baylor, Bell (west of Interstate Highway 35), Bexar, Blanco, Borden, Bosque, Briscoe, Brown, Burnet, Callahan, Carson, Childress, Clay, Coke, Coleman, Collingsworth, Comal (west of Interstate Highway 35), Comanche, Concho, Cooke, Coryell, Cottle, Crane, Crockett, Crosby, Dawson, Denton, Dickens, Donley, Eastland, Ector, Edwards, Erath, Fisher, Floyd, Foard, Garza, Gillespie, Glasscock, Gray, Hall, Hamilton, Hardeman, Hartley, Haskell, Hays (west of Interstate Highway 35), Hemphill, Hill (west of Interstate Highway 35), Hood, Howard, Hutchinson, Irion, Jack, Johnson, Jones, Kendall, Kent, Kerr, Kimble, King, Kinney (north of U.S. Highway 90), Knox, Lipscomb, Lampasas, Llano, Lynn, Martin, Mason, McCulloch, McLennan (west of Interstate Highway 35), Medina (north of U.S. Highway 90), Menard, Midland, Mills, Mitchell, Montague, Moore, Motley, Nolan, Ochiltree, Oldham, Palo Pinto, Parker, [~~Pecos,~~] Potter, Randall, Reagan, Real, Roberts, Runnels, Sutton, San Saba, Schleicher, Scurry, Shackelford, Somervell, Stephens, Sterling, Stonewall, Swisher, Tarrant, Taylor, [~~Terrell,~~] Throckmorton, Tom Green, Travis (west of Interstate Highway 35), Upton, Uvalde (north of U.S. Highway 90), Ward, Wheeler, Wichita, Wilbarger, Williamson (west of Interstate Highway 35), Wise, Val Verde (north of a line beginning at the International Bridge and proceeding along Spur 239 to U.S. Hwy. 90 and thence to the Kinney County line), and Young counties, there is a fall general open season.

(i) - (ii) (No change.)

(2) (No change.)

(3) Spring season and bag limits.

(A) The counties and portions of counties listed in this subparagraph are in the Spring North Zone. In Archer, Armstrong, Bandera, Baylor, Bell (west of Interstate Highway 35), Bexar, Blanco, Borden, Bosque, [~~Brewster,~~] Briscoe, Brown, Burnet, Callahan, Carson, Childress, Clay, Coke, Coleman, Collingsworth, Comal (west of Interstate Highway 35), Comanche, Concho, Cooke, Coryell, Cottle, Crane, Crockett, Crosby, Dawson, Denton, Dickens, Donley, Eastland, Ector, Edwards, Ellis (west of Interstate Hwy. 35), Erath, Fisher, Floyd, Foard, Garza, Gillespie, Glasscock, Gray, Guadalupe (south of Interstate Highway 10), Hall, Hamilton, Hardeman, Hartley, Haskell, Hays (west of Interstate Highway 35), Hemphill, Hill (west of Interstate Highway 35), Hood, Howard, Hutchinson, Irion, Jack, [~~Jeff Davis,~~] Johnson, Jones, Kendall, Kent, Kerr, Kimble, King, Kinney (north of U.S. Hwy. 90), Knox, Lampasas, Lipscomb, Llano, Lynn, Martin, Mason, McCulloch, McLennan (west of Interstate Highway 35), Medina (north of U.S. Hwy. 90), Menard, Midland, Mills, Mitchell, Montague, Moore, Motley, Nolan, Ochiltree, Oldham, Palo Pinto, Parker, [~~Pecos,~~] Potter, Randall, Reagan, Real, Roberts, Runnels, San Saba, Schleicher, Scurry, Shackelford, Somervell, Stephens, Sterling, Stonewall, Sutton, Swisher, Tarrant, Taylor, [~~Terrell,~~] Throckmorton, Tom Green, Travis (west of Interstate Highway 35), Upton, Uvalde (north of U.S. Hwy. 90), Val Verde (north of a line beginning at the International Bridge and proceeding along Spur 239 to U.S. Hwy. 90 and thence to the Kinney County line), Ward, Wheeler, Wichita, Wilbarger, Williamson (west of Interstate Highway 35), Wise, and Young counties, there is a spring general open season.

(i) - (ii) (No change.)

(B) The counties and portions of counties listed in this subparagraph are in the Spring South Zone. In Aransas, Atascosa, Bee, Brooks, Calhoun, Cameron, DeWitt, Dimmit, Duval, Frio, Goliad, Gonzales, Hidalgo, Jim Hogg, Jim Wells, Karnes, Kenedy, Kinney (south of U.S. Hwy. 90), Kleberg, LaSalle, Live Oak, Maverick, McMullen, Medina (south of U.S. Hwy. 90), Nueces, Refugio, San Patricio, Starr, Uvalde (south of U.S. Hwy. 90), Val Verde (south of a line beginning at the International Bridge and proceeding along Spur 239 to U.S. Hwy. 90 and thence to the Kinney County line), Victoria, Webb, Willacy, Wilson, Zapata, and Zavala counties, there is a spring general open season.

(i) - (ii) (No change.)

(C) In Bastrop, Brewster, Caldwell, Colorado, Comal (east of Interstate Highway 35), Fayette, Guadalupe (north of I-10), Hays (east of Interstate Highway 35), Hill (east of Interstate Highway 35), Jackson, Jeff Davis, Lavaca, Lee, Matagorda, McLennan (east of Interstate Highway 35), Pecos, Terrell, Travis (east of Interstate Highway 35), [~~Milam, and~~] Wharton and Williamson (east of Interstate Highway 35) counties, there is a spring general open season.

(i) - (ii) (No change.)

[(iii) ~~Except as provided by §65.10 of this title (relating to Possession of Wildlife Resources) for turkeys harvested under a digital license issued by the department pursuant to §53.3(a)(12) of this title (relating to Combination Hunting and Fishing License Packages), a valid license with digital tags under §53.4 of this title (relating to Lifetime Licenses), or a valid digital license under §53.5 of this title (relating to Recreational Hunting Licenses, Tags, and Stamps, all turkeys harvested during the open season established under this subparagraph must be reported within 24 hours of the time of kill via an internet or mobile application designated by the department for that purpose.]~~

(D) In Bowie (north of U.S. 82), Cass, Fannin (north of U.S. 82), Grayson, Jasper (other than the Angelina National Forest), Lamar (north of U.S. 82), Marion, Nacogdoches, Newton, Polk, Red River (north of U.S. 82), and Sabine counties, there is a spring general open season.

(i) Open season: from April 22 through May 14.

(ii) Bag limit: one turkey, gobbler only.

(iii) In the counties listed in this subsection:

(I) it is unlawful to hunt turkey by any means other than a shotgun or lawful archery equipment; and

(II) it is unlawful for any person to take or attempt to take turkeys by the aid of baiting, or on or over a baited area.

(4) Special Youth-Only Seasons. Only licensed hunters 16 years of age or younger may hunt during the seasons established by this subsection.

(A) There shall be a special youth-only fall general hunting season in all counties where there is a fall general open season.

(i) open season: the Friday, Saturday, and Sunday [~~weekend (Saturday and Sunday)~~] immediately preceding the first Saturday in November and from the Monday immediately following the close of the general open season for 14 consecutive days.

(ii) (No change.)

(B) There shall be special youth-only spring general open hunting seasons for [~~Rio Grande~~] turkey in the counties listed in paragraph (3)(A) and (B) of this subsection.

(i) - (ii) (No change.)

(c) Except as provided by §65.10 of this title for turkeys harvested under a digital license issued pursuant to §53.3(a)(12) of this title, a valid license with digital tags under §53.4 of this title, or a valid digital license under §53.5(a)(3) of this title, all harvested turkeys must be registered via the department's internet or mobile application within 24 hours of the time of kill.

[~~(c) Eastern turkey. The open seasons and bag limits for Eastern turkey shall be as follows. In Bowie, Cass, Fannin, Grayson, Jasper (other than the Angelina National Forest), Lamar, Marion, Nacogdoches, Newton, Polk, Red River, and Sabine counties, there is a spring season during which both Rio Grande and Eastern turkey may be lawfully hunted.~~]

[~~(1) Open season: from April 22 through May 14.~~]

[~~(2) Bag limit (both species combined): one turkey, gobbler only.~~]

[~~(3) In the counties listed in this subsection:~~]

[~~(A) it is unlawful to hunt turkey by any means other than a shotgun or lawful archery equipment;~~]

[~~(B) it is unlawful for any person to take or attempt to take turkeys by the aid of baiting, or on or over a baited area; and~~]

[~~(C) except as provided by §65.10 of this title for turkeys harvested under a digital license issued pursuant to §53.3(a)(12) of this title, a valid license with digital tags under §53.4 of this title, or a valid digital license under §53.5(a)(3) of this title, all turkeys harvested during the open season must be registered via the department's internet or mobile application within 24 hours of the time of kill. The department will publish the internet address and information on obtaining the mobile application in generally accessible locations, including the department internet web site (www.tpwd.texas.gov). Harvested turkeys may be field dressed but must otherwise remain intact.~~]

(d) In all counties or portions of counties for which an open season is not provided under subsection (b) [~~not listed in subsection (b) or (c)~~] of this section, the season is closed for hunting turkey.

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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James Murphy
General Counsel
Texas Parks and Wildlife Department
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For further information, please call: (512) 389-4775

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SUBCHAPTER N. MIGRATORY GAME BIRD PROCLAMATION

31 TAC §§65.314 - 65.320

The Texas Parks and Wildlife Department (the department) proposes amendments to 31 TAC §§65.314 - 65.320, concerning the Migratory Game Bird Proclamation.

The United States Fish and Wildlife Service (Service) issues annual frameworks for the hunting of migratory game birds in the United States. Regulations adopted by individual states may be more restrictive than the federal frameworks but may not be less restrictive. Responsibility for establishing seasons, bag limits, means, methods, and devices for harvesting migratory game birds within Service frameworks is delegated to the Texas Parks and Wildlife Commission (Commission) under Parks and Wildlife Code, Chapter 64, Subchapter C.

With exceptions as noted, the proposed amendments specify the season dates for hunting the various species of migratory game birds for 2024-2025 seasons. The proposed rules (except as noted in the discussion of the proposal for season dates in the Special White-winged Dove Area, the bag limits for greater white-fronted geese, and the elimination of the Light Goose Conservation Order) retain the season structure and bag limits for all species of migratory game birds from last year while adjusting the season dates to allow for calendar shift (i.e., to ensure that seasons open on the desired day of the week), since dates from a previous year do not fall on the same days in following years.

The proposed amendment to §65.314, concerning Doves (Mourning, White-Winged, White-Tipped, White-Fronted Doves), would implement a slightly different structure for the Special White-winged Dove Area (SWWDA) season than in years past. Under the federal frameworks, Texas is allowed 90 total days of dove hunting opportunity in the South Zone (which is also designated as a special management area for white-winged doves). Under the frameworks, the earliest possible date for full-day dove hunting in the South Dove Zone is September 14; however, Texas is also authorized to have up to six half-days of hunting opportunity between September 1 and September 19. Department survey data have consistently indicated strong hunter and landowner preference for the earliest possible hunting opportunity available under the federal frameworks, as well as for maximal weekend hunting opportunity during the SWWDA season. In a typical year, this would take the form of two three-day weekends of half-day special white-winged opportunity beginning on the earliest day possible under the frameworks. The 2024-25 calendar, however, presents a challenge because September 1, 2024 (the earliest possible day for SWWDA hunting) falls on a Sunday. The department has determined that in keeping with hunter and landowner preference, this year's SWWDA dates would be best employed by implementing a season structure of September 1-2 (Sunday and Monday, which is also Labor Day), September 6-8 (a traditional three-day weekend), and September 13, which is a Friday and the last day before the earliest possible date that full-day dove hunting can be provided under the federal frameworks (September 14).

The proposed amendment to §65.314 would also move the winter segment in North Zone to occur one week later compared to last year. The department believes that additional hunting opportunity can be generated by encompassing the holiday period when children are out of school and hunters have more time to be in the field. The department does not expect the shift to result in negative impacts to dove populations.

Finally, the proposed amendment to §65.314 would nonsubstantively restructure subsection (b)(3) to more clearly establish the

bag composition differential in the South Zone during the season in the Special White-winged Dove Area.

The proposed amendment to §65.315, concerning Ducks, Coots, Mergansers, and Teal, would alter subsection (c) to reflect recent taxonomic changes to species composition. The bag limits currently refer to "Mexican-like" ducks. The Service recently recognized "Mexican ducks" as a protected species. The department therefore proposes to make regulatory provisions consistent with that determination.

The proposed amendment to §65.316, concerning Geese, would alter the current bag composition for dark geese in the Western Zone by removing the two-bird bag limit for white-fronted geese, thus creating a five-bird aggregate bag limit for all species of dark geese. The aggregate bag limit is recommended by the new mid-continent management plan for greater white-fronted geese (approved by the Service, the Canadian Wildlife Service, and the Central and Mississippi Flyway Councils in March of 2023), which allows the department to align the Western Zone in Texas with the rest of the states in the west tier of the Central Flyway.

The proposed amendment to §65.316 would also eliminate the Light Goose Conservation Order (LGCO) in Texas. Historically, Texas coastal prairies and marshes were home to one of North America's largest wintering population of light geese (snow geese, Ross's geese). Due to a variety of reasons, including habitat loss, changes in agricultural practices, and increases in hunting pressure, the Texas Gulf Coast no longer winters a significant number of light geese. In the last year, department data indicate an all-time low population estimate and a 90% decline in abundance since the implementation of the LGCO. Department data indicate that participation levels and harvest associated with the LGCO has declined by over 90% since its inception. The LGCO was implemented in 1999 as a management tool intended to reduce habitat degradation and destruction of light goose breeding grounds in Canada. It was never intended to function as a hunting season or to increase hunting opportunity, although it did provide the latter. The department has determined that continued participation in the LGCO is now incompatible with light goose management priorities in Texas, as Texas populations continue to exhibit troubling downward trends. Elimination of the LGCO is expected to stabilize and possibly reverse those trends in coastal populations of light geese in Texas. The elimination of the LGCO would make it possible to provide the full 107 days of hunting opportunity for light geese afforded the department under the federal frameworks; therefore, if the LGCO is eliminated, the department would implement a light goose season to run from November 2, 2024 to February 14, 2025. If the commission decides to retain the LGCO, the department will recommend a closing date of January 26, 2025, which would be necessary because the federal frameworks require all other migratory bird seasons to be closed during the LGCO; however, in either case the department proposes to implement a five-bird bag limit with a possession limit of three times the daily bag limit, which is necessary to address concerns over declining light geese populations. The proposed amendment to 65.316 also would reduce the current statewide bag limit for light geese, from ten geese to five geese, and implement a possession limit of three times the daily bag limit. There is currently no possession limit; however, the department has determined that the lower bag limit and standard possession limit, which are consistent with current standards in effect for dark geese, should be implemented in order to determine the impacts of the new season structure on geese populations.

Shaun Oldenburger, Wildlife Division Small Game Program Director, has determined that for the first five years that the amendments as proposed are in effect, there will be no additional fiscal implications to state or local governments of enforcing or administering the rules as proposed.

Mr. Oldenburger also has determined that for each of the first five years the proposed rules are in effect, the public benefit anticipated as a result of enforcing the rules as proposed will be the department's discharge of its statutory obligation to manage and conserve the state's populations of migratory game birds for the use and enjoyment of the public, consistent with the principles of sound biological management.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses, micro-businesses, or rural communities. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small and microbusinesses and rural communities. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to determine if any further analysis is required. The department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that the proposed rules regulate various aspects of recreational license privileges that allow individual persons to pursue and harvest migratory game bird resources in this state and therefore do not directly affect small businesses, micro-businesses, or rural communities. Therefore, neither the economic impact statement nor the regulatory flexibility analysis described in Government Code, Chapter 2006, is required.

There also will be no adverse economic effect on persons required to comply with the rules as proposed.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

In compliance with the requirements of Government Code, §2001.0221, the department has prepared the following Government Growth Impact Statement (GGIS). The rules as proposed, if adopted, will neither create nor eliminate a government program; not result in an increase or decrease in the number of full-time equivalent employee needs; not result in a need for additional General Revenue funding; not affect the amount of any fee; not create a new regulation, or expand an existing regulation, but will limit an existing regulation (by eliminating the LGCO); neither increase nor decrease the number of individuals subject to regulation; and not positively or adversely affect the state's economy.

Comments on the proposed rules may be submitted to Shaun Oldenburger (Small Game Program Director) at (512) 389-4778, email: shaun.oldenburger@tpwd.texas.gov or via the department website at www.tpwd.texas.gov.

The amendments are proposed under Parks and Wildlife Code, Chapter 64, which authorizes the Commission and the Executive Director to provide the open season and means, methods, and devices for the hunting and possessing of migratory game birds.

The proposed amendments affect Parks and Wildlife Code, Chapter 64.

§65.314. Doves (Mourning, White-Winged, White-Tipped, White-Fronted Doves).

(a) (No change.)

(b) Seasons; Daily Bag Limits.

(1) North Zone.

(A) Dates: September 1 - November 10, 2024 and December 20, 2024 - January 7, 2025 [~~September 1 - November 12, 2023 and December 15-31, 2023~~].

(B) (No change.)

(2) Central Zone.

(A) Dates: September 1 - October 27, 2024 and December 13, 2024 - January 14, 2025. [~~September 1 - October 29, 2023 and December 15, 2023 - January 14, 2024~~]

(B) (No change.)

(3) South Zone and Special White-winged Dove Area.

(A) Special White-winged Dove Area Season.

(i) Dates: September 1-2, 6-8, 13, 2024. [~~September 1-3 and 8-10, 2023; September 14 - October 29, 2023; and December 15, 2023 - January 21, 2024.~~]

(ii) [~~(B)~~] Daily bag limit:

[(i)] [~~from September 2-4 and 9-11, 2022;~~] 15 white-winged doves, mourning doves, and white-tipped (white-fronted) doves, in the aggregate to include no more than two mourning doves and two white-tipped (white-fronted) doves per day.

(B) South Zone Season.

(i) Dates: September 14 - October 27, 2024 and December 13, 2024 - January 21, 2025.

(ii) Daily bag limit [~~from September 14 - October 30, 2022 and December 17, 2022 - January 22, 2023;~~] 15 mourning doves, white-winged doves, and white-tipped (white-fronted) doves in the aggregate, including no more than two white-tipped (white-fronted) doves per day.

§65.315. Ducks, Coots, Mergansers, and Teal.

(a) (No change.)

(b) Season dates and bag limits.

(1) HPMMU.

(A) For all species other than "dusky ducks": October 26-27, 2024 and November 1, 2024 - January 26, 2025 [~~October 28-29, 2023 and November 3, 2023 - January 28, 2024~~]; and

(B) "dusky ducks": November 4, 2024 - January 26, 2025 [~~November 6, 2023 - January 28, 2024~~].

(2) North Zone.

(A) For all species other than "dusky ducks": November 9 - December 1, 2024 and December 7, 2024 - January 26, 2025 [~~November 11-26, 2023 and December 2, 2023 - January 28, 2024~~]; and

(B) "dusky ducks": November 14, 2024 - December 1, 2024 and December 7, 2024 - January 26, 2025 [~~November 16-26, 2023 and December 2, 2023 - January 28, 2024~~].

(3) South Zone.

(A) For all species other than "dusky ducks": November 2 - December 1, 2024 and December 14 - January 26, 2025 [~~November 4-26, 2023 and December 9, 2023 - January 28, 2024~~]; and

(B) "dusky ducks": November 7 - December 1, 2024 and December 14, 2024 - January 26, 2025 [~~November 9-26, 2023 and December 9, 2023 - January 28, 2024~~].

(4) September teal-only season.

(A) (No change.)

(B) Dates: September 14-29, 2024 [~~September 9-24, 2023~~].

(c) Bag limits.

(1) The daily bag limit for ducks and mergansers is six in the aggregate, which may include no more than five mallards (only two of which may be hens); three wood ducks; one scaup (lesser scaup or greater scaup); two redheads; two canvasbacks; one pintail; and one "dusky" duck (mottled duck, Mexican [~~like~~] duck, black duck and their hybrids) during the seasons established for those species in this section. For all species not listed, the daily bag limit shall be six. The daily bag limit for coots is 15.

(2) (No change.)

§65.316. Geese.

(a) Zone boundaries.

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

(b) Season dates and bag limits.

(1) Western Zone.

(A) Light geese: November 2, 2024 - February 2, 2025 [~~November 4, 2023 - February 4, 2024~~]. The daily bag limit for light geese is five [~~10, and there is no possession limit~~].

(B) Dark geese: November 2, 2024 - February 2, 2025 [~~November 4, 2023 - February 4, 2024~~]. The daily bag limit for dark geese is five[~~, to include no more than two white-fronted geese~~].

(2) Eastern Zone.

(A) Light geese: November 2, 2024 - February 14, 2025 [~~November 4, 2023 - January 28, 2024~~]. The daily bag limit for light geese is five [~~10, and there is no possession limit~~].

(B) Dark geese:

(i) Season: November 2, 2024 - January 26, 2025 [~~November 4, 2023 - January 28, 2024~~];

(ii) Bag limit: The daily bag limit for dark geese is five, to include no more than two white-fronted geese.

(c) September Canada goose season. Canada geese may be hunted in the Eastern Zone during the season established by this subsection. The season is closed for all other species of geese during the season established by this subsection.

(1) Season dates: September 14-29, 2024 [~~September 9-24, 2023~~].

(2) The daily bag limit is five.

[~~(d) Light Goose Conservation Order. The provisions of paragraphs (1) - (3) of this subsection apply only to the hunting of light geese. All provisions of this subchapter continue in effect unless specifically provided otherwise in this section; however, where this section conflicts with the provisions of this subchapter, this section prevails.~~]

[~~(1) Means and methods. The following means and methods are lawful during the time periods set forth in paragraph (4) of this subsection:~~]

[~~(A) shotguns capable of holding more than three shells; and~~]

[~~(B) electronic calling devices.~~]

[~~(2) Possession. During the time periods set forth in paragraph (4) of this subsection:~~]

[~~(A) there shall be no bag or possession limits; and~~]

[~~(B) the provisions of §65.312 of this title (relating to Possession of Migratory Game Birds) do not apply.~~]

[~~(3) Shooting hours. During the time periods set forth in paragraph (4) of this subsection, shooting hours are from one half-hour before sunrise until one half-hour after sunset.~~]

[~~(4) Season dates.~~]

[~~(A) From January 29 - March 10, 2024, the take of light geese is lawful in the Eastern Zone.~~]

[~~(B) From February 5 - March 10, 2024, the take of light geese is lawful in the Western Zone.~~]

§65.317. Special Youth, Active-Duty Military, and Military Veteran Seasons.

(a) Special Youth Waterfowl Season. There shall be a Special Youth Season for waterfowl, during which the hunting, taking, and possession of geese, ducks, mergansers, and coots is restricted to licensed hunters 16 years of age and younger accompanied by a person 18 years of age or older, except for persons hunting by means of falconry under the provisions of §65.320 of this title (relating to Extended Falconry Seasons).

(1) HPMMU:

(A) season dates: October 19-20, 2024 [~~October 21-22, 2023~~];

(B) (No change.)

(2) North Duck Zone:

(A) season dates: November 2-3, 2024 [~~November 4-5, 2023~~];

(B) (No change.)

(3) South Duck Zone:

(A) season dates: October 26-27, 2024 [~~October 28-29, 2023~~];

(B) (No change.)

(b) Special Active-Duty Military and Military Veteran Migratory Game Bird Season.

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

(3) Season Dates and Bag Limits.

(A) HPMMU:

(i) season dates: October 19-20, 2024 [~~October 21-22, 2023~~];

(ii) (No change.)

(B) North Duck Zone:

(i) season dates: November 2-3, 2024 [~~November 4-5, 2023~~];

(ii) (No change.)

(C) South Duck Zone:

(i) season dates: October 26-27, 2024 [~~October 28-29, 2023~~];

(ii) (No change.)

(4) (No change.)

§65.318. Sandhill Crane.

(a) (No change.)

(b) Season dates and bag limits.

(1) Zone A: October 26, 2024 - January 26, 2025 [~~October 28, 2023 - January 28, 2024~~]. The daily bag limit is three.

(2) Zone B: November 22, 2024 - January 26, 2025 [~~November 24, 2023 - January 28, 2024~~]. The daily bag limit is three.

(3) Zone C: December 14, 2024 - January 19, 2025 [~~December 16, 2023 - January 21, 2024~~]. The daily bag limit is two.

(c) (No change.)

§65.319. Gallinules, Rails, Snipe, Woodcock.

(a) Gallinules (moorhen or common gallinule and purple gallinule) may be taken in any county of this state during the season established in this subsection.

(1) Season dates: September 14-29 and November 2 - December 25, 2024 [~~September 9-24 and November 4 - December 27, 2023~~].

(2) (No change.)

(b) Rails may be taken in any county of this state during the season established by this subsection.

(1) Season dates: September 14-29 and November 2 - December 25, 2024 [~~September 9-24 and November 4 - December 27, 2023~~].

(2) (No change.)

(c) Snipe may be taken in any county of this state during the season established by this subsection.

(1) Season dates: November 2, 2024 - February 16, 2025 [~~November 4, 2023 - February 18, 2024~~].

(2) (No change.)

(d) Woodcock may be taken in any county of this state during the season established by this subsection.

(1) Season dates: December 18, 2024 - January 31, 2025 [~~December 18, 2023 - January 31, 2024~~].

(2) (No change.)

§65.320. Extended Falconry Seasons.

It is lawful to take the species of migratory birds listed in this section by means of falconry during the seasons established by this section.

(1) Mourning doves, white-winged doves and white-tipped doves: November 15 - December 1, 2024 [~~November 17 - December 3, 2023~~].

(2) Duck, gallinule, moorhen, rail, and woodcock: January 27 - February 10, 2025 [~~January 29 - February 12, 2024~~].

(3) - (4) (No change.)

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 February 12, 2024.

TRD-202400537
James Murphy
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: March 24, 2024
For further information, please call: (512) 389-4775

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PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 357. REGIONAL WATER PLANNING

SUBCHAPTER C. PLANNING ACTIVITIES FOR NEEDS ANALYSIS AND STRATEGY RECOMMENDATIONS

31 TAC §357.34

The Texas Water Development Board (TWDB) proposes an amendment to 31 Texas Administrative Code (TAC) §357.34(g).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED AMENDMENT.

House Bill 1565, 88th R.S. (2023), added a requirement for regional water plans to include information on implementation of large projects, including reservoirs, interstate water transfers, innovative technology projects, desalination plants, and other large projects as determined by the board. Information about the large projects includes expenditures of sponsor money, permit applications and status updates on the phase of construction of a project. This rulemaking implements the requirements of HB 1565.

SECTION BY SECTION DISCUSSION OF PROPOSED AMENDMENTS.

§357.34 Identification and Evaluation of Potentially Feasible Water Management Strategies and Water Management Strategy Projects.

Subsection 357.34(g) is added to require that the regional water planning groups provide data related to recommended large water management strategies and associated projects in order to comply with HB 1565, 88th R.S. (2023). The proposed rule lists the information needed and the types of strategies and projects that fall under the rule. More exact thresholds of what constitutes "large" will be provided in regional water planning contract technical guidance.

Remaining subsections are renumbered to accommodate the new provision.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS (Texas Government Code §2001.024(a)(4))

Ms. Rebecca Trevino, Chief Financial Officer, has determined that there will be no fiscal implications for state or local governments as a result of the proposed rulemaking. For the first five years these rules are in effect, there is no expected additional cost to state or local governments resulting from their administration.

This rule is not expected to result in reductions in costs to either state or local governments. There is no net change in costs for state and local government. This rule is not expected to have any impact on state or local revenues. The rule may require an increase in expenditures for state or local governments as a result of administering it, but grant funding for the regional water planning groups will increase to cover the additional cost. Additionally, there are no foreseeable implications relating to state or local governments' costs or revenue resulting from this rule.

Because this rule will not impose a cost on regulated persons, the requirement included in Texas Government Code, §2001.0045 to repeal a rule does not apply. Furthermore, the requirement in §2001.0045 does not apply because this rule is amended to implement legislation.

The TWDB invites public comment regarding this fiscal note. Written comments on the fiscal note may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

PUBLIC BENEFITS AND COSTS (Texas Government Code §2001.024(a)(5))

Ms. Rebecca Trevino also has determined that for each year of the first five years the proposed rulemaking is in effect, the public will benefit from the rulemaking as it will require the regional water plans to include additional information related to large water supply projects. Ms. Rebecca Trevino also has determined that for each year of the first five years the proposed rulemaking is in effect, the rule will not impose an economic cost on persons required to comply with the rule as the regional water planning groups will receive grant funding for the task.

ECONOMIC AND LOCAL EMPLOYMENT IMPACT STATEMENT (Texas Government Code §§2001.022, 2006.002); REGULATORY FLEXIBILITY ANALYSIS (Texas Government Code §2006.002)

The TWDB has determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect because it will impose no new requirements on local economies. The TWDB also has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of enforcing this rulemaking. The TWDB also has determined that there is no anticipated economic cost to persons who are required to comply with the rulemaking as proposed. Therefore, no regulatory flexibility analysis is necessary.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION (Texas Government Code §2001.0225)

The TWDB 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 the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to require additional information related to large water supply projects in the regional water plans.

Even if the proposed rule were a major environmental rule, Texas Government Code §2001.0225 still would not apply to this rulemaking because Texas Government Code §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) 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 (4) 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: (1) does not exceed any federal law; (2) does not exceed an express requirement of state law; (3) 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 (4) is not proposed solely under the general powers of the agency, but rather Texas Water Code §§6.101 and 16.053. Therefore, this proposed rule does not fall under any of the applicability criteria in Texas Government Code §2001.0225.

The TWDB 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 Submission of Comments section of this preamble.

TAKINGS IMPACT ASSESSMENT (Texas Government Code §2007.043)

The TWDB evaluated this proposed rule and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rule is to require additional information related to large water supply projects in the regional water plans. The proposed rule will substantially advance this stated purpose by requiring the regional water planning groups to include new information related to the implementation status of large water management strategies that are listed in the regional water plan.

The TWDB's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this proposed rule because this is an action that is reasonably taken to fulfill an obligation as required by state law, which is exempt under Texas Government Code §2007.003(b)(4). The TWDB is the agency that collects, analyzes, and disseminates water-related data and provides other services necessary to aid in planning and managing the state's water resources.

Nevertheless, the TWDB further evaluated this proposed rule and performed an assessment of whether it constitutes a taking under Texas Government Code Chapter 2007. Promulgation and enforcement of this proposed rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulation does not affect a landowner's rights in private real property because this rulemaking does not burden, restrict, or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. Therefore, the proposed rule does not constitute a taking under Texas Government Code, Chapter 2007.

GOVERNMENT GROWTH IMPACT STATEMENT (Texas Government Code §2001.0221)

The TWDB reviewed the proposed rulemaking in light of the government growth impact statement requirements of Texas Government Code §2001.0221 and has determined, for the first five years the proposed rule would be in effect, the proposed rule will not: (1) create or eliminate a government program; (2) require the creation of new employee positions or the elimination of existing employee positions; (3) require an increase or decrease in future legislative appropriations to the agency; (4) require an increase or decrease in fees paid to the agency; (5) create a new regulation; (6) expand, limit, or repeal an existing regulation; (7) increase or decrease the number of individuals subject to the rule's applicability; or (8) positively or adversely affect this state's economy.

SUBMISSION OF COMMENTS (Texas Government Code §2001.024(a)(7))

Written comments on the proposed rulemaking may be submitted by mail to Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by email to rulescomments@twdb.texas.gov, or by fax to (512) 475-2053. Comments will be accepted until 5:00 p.m. of the 31st day following publication the *Texas Register.* Include §357.34 in the subject line of any comments submitted.

STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

The amendment is proposed under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Texas Water Code § 16.053. This amendment is proposed under the authority of House Bill 1565, passed during the 88th Texas Legislative Regular Session.

§357.34. Identification and Evaluation of Potentially Feasible Water Management Strategies and Water Management Strategy Projects.

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

(g) Implementation of large recommended WMSs and associated WMSPs.

(1) For large recommended WMSs and associated WMSPs, RWPGs must include the following information:

(A) expenditures of sponsor money;

(B) permit applications, including the status of a permit application; and

(C) status updates on the phase of construction of a project.

(2) For purposes of this subchapter, large WMSs include:

(A) any reservoir

(B) any seawater desalination

(C) large direct potable reuse strategies

(D) large brackish groundwater strategies

(E) large aquifer storage and recovery strategies

(F) all water transfers to or from out of state

(G) any other innovative technology strategies the Executive Administrator considers appropriate

(h) [~~(g)~~] If an RWPG does not recommend aquifer storage and recovery strategies, seawater desalination strategies, or brackish groundwater desalination strategies it must document the reason(s) in the RWP.

(i) [~~(h)~~] In instances where an RWPG has determined there are significant identified Water Needs in the RWPA, the RWP shall include an assessment of the potential for aquifer storage and recovery to meet those Water Needs. Each RWPG shall define the threshold to determine whether it has significant identified Water Needs. Each RWP shall include, at a minimum, a description of the methodology used to determine the threshold of significant needs. If a specific assessment is conducted, the assessment may be based on information from existing studies and shall include minimum parameters as defined in contract guidance.

(j) [~~(i)~~] Conservation, Drought Management Measures, and Drought Contingency Plans shall be considered by RWPGs when developing the regional plans, particularly during the process of identifying, evaluating, and recommending WMSs. RWPs shall incorporate water conservation planning and drought contingency planning in the RWPA.

(1) Drought Management Measures including water demand management. RWPGs shall consider Drought Management Measures for each need identified in §357.33 of this title and shall include such measures for each user group to which Texas Water Code §11.1272 (relating to Drought Contingency Plans for Certain Applicants and Water Right Holders) applies. Impacts of the Drought Management Measures on Water Needs must be consistent with guidance provided by the Commission in its administrative rules implementing Texas Water Code §11.1272. If an RWPG does not adopt a drought management strategy for a need it must document the reason in the RWP. Nothing in this paragraph shall be construed as limiting the use of voluntary arrangements by water users to forgo water usage during drought periods.

(2) Water conservation practices. RWPGs must consider water conservation practices, including potentially applicable best management practices, for each identified Water Need.

(A) RWPGs shall include water conservation practices for each user group to which Texas Water Code §11.1271 and §13.146 (relating to Water Conservation Plans) apply. The impact of these water conservation practices on Water Needs must be consistent with requirements in appropriate Commission administrative rules related to Texas Water Code §11.1271 and §13.146.

(B) RWPGs shall consider water conservation practices for each WUG beyond the minimum requirements of subparagraph (A) of this paragraph, whether or not the WUG is subject to Texas Water Code §11.1271 and §13.146. If RWPGs do not adopt a Water Conservation Strategy to meet an identified need, they shall document the reason in the RWP.

(C) For each WUG or WWP that is to obtain water from a proposed interbasin transfer to which Texas Water Code §11.085 (relating to Interbasin Transfers) applies, RWPGs shall include a Water Conservation Strategy, pursuant to Texas Water Code §11.085(l), that will result in the highest practicable level of water conservation and efficiency achievable. For these strategies, RWPGs shall determine, and report projected water use savings in gallons per capita per day based on its determination of the highest practicable level of water conservation and efficiency achievable. RWPGs shall develop conservation strategies based on this determination. In preparing this evaluation, RWPGs shall seek the input of WUGs and WWPs as to what is the highest practicable level of conservation and efficiency achievable, in their opinion, and take that input into consideration. RWPGs shall develop water conservation strategies consistent with guidance provided by the Commission in its administrative rules that implement Texas Water Code §11.085. When developing water conservation strategies, the RWPGs must consider potentially applicable best management practices. Strategy evaluation in accordance with this section shall include a quantitative description of the quantity, cost, and reliability of the water estimated to be conserved under the highest practicable level of water conservation and efficiency achievable.

(D) RWPGs shall consider strategies to address any issues identified in the information compiled by the Board from the water loss audits performed by Retail Public Utilities pursuant to §358.6 of this title (relating to Water Loss Audits).

(3) RWPGs shall recommend Gallons Per Capita Per Day goal(s) for each municipal WUG or specified groupings of municipal WUGs. Goals must be recommended for each planning decade and may be a specific goal or a range of values. At a minimum, the RWPs shall include Gallons Per Capita Per Day goals based on drought conditions to align with guidance principles in §358.3 of this title (relating to Guidance Principles).

(k) [~~(j)~~] RWPs shall include a subchapter consolidating the RWPG's recommendations regarding water conservation. RWPGs shall include in the RWPs model Water Conservation Plans pursuant to Texas Water Code §11.1271.

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 February 9, 2024.

TRD-202400509
Ashley Harden
General Counsel
Texas Water Development Board
Earliest possible date of adoption: March 24, 2024
For further information, please call: (512) 463-7686

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER JJ. CIGARETTE, E-CIGARETTE, AND TOBACCO PRODUCTS REGULATION

34 TAC §3.1207

The Comptroller of Public Accounts proposes new §3.1207, concerning e-cigarette retailer permits. The comptroller creates this rule to implement portions of Senate Bill 248, 87th Legislature, 2021, relating to regulating permits for the sale or delivery of e-cigarettes.

This section provides guidance on the permitting of the retail sale of e-cigarettes as provided in new Health and Safety Code, Chapter 147 (E-cigarette Retailer Permits).

In subsection (a), the comptroller defines commercial business location, e-cigarette retailer, permit holder, and place of business as found in Health and Safety Code, §147.0001 (Definitions); e-cigarette as found in Health and Safety Code, §161.081 (Definitions); and marketplace, marketplace provider and marketplace seller as found in Tax Code, §151.0242 (Marketplace Providers and Marketplace Sellers).

In subsection (b), the comptroller states that this section does not apply to a product that is approved for use in the treatment of nicotine or smoking addiction and is labeled with a "Drug Facts" panel.

The comptroller provides the permitting requirements and application process in subsection (c), effective January 1, 2022, for a person engaging in business as an e-cigarette retailer in Texas.

In subsection (d), the comptroller provides information on permit periods and applicable permit fees for new permits and renewals.

The comptroller provides payment requirements for obtaining an e-cigarette retailer permit in subsection (e).

In subsection (f), the comptroller includes qualification guidelines regarding the issuance of an e-cigarette retailer permit.

The comptroller lists requirements for the display of an e-cigarette retailer permit in subsection (g).

In subsection (h), the comptroller provides the conditions under which the comptroller may deny an application for an e-cigarette retailer permit.

The comptroller provides information related to the summary suspension of an e-cigarette retailer permit in subsection (i).

In subsection (j), the comptroller provides information relating to the final revocation or suspension of an e-cigarette retailer permit.

The comptroller addresses administrative penalties in subsection (k) for a person who violates provisions of this section.

In subsection (l), the comptroller provides the applicable offenses that may be committed by a person who engages in e-cigarette retailer related business without an e-cigarette retailer permit.

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed new rule is in effect, the rule: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rule's applicability; and will not positively or adversely affect this state's economy.

Mr. Reynolds also has determined that the proposed new rule would benefit the public by providing guidance on e-cigarette retailer permits. There would be no anticipated significant economic cost to the public. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses or rural communities. The proposed new rule would have no significant fiscal impact on the state government, units of local government, or individuals.

You may submit comments on the proposal to Jenny Burleson, Director, Tax Policy Division, P.O. Box 13528 Austin, Texas 78711 or to the email address: tp.rule.comments@cpa.texas.gov. The comptroller must receive your comments no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The new section is proposed under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture) and §111.0022 (Application to Other Laws Administered by Comptroller) which provide the comptroller with authority to prescribe, adopt, and enforce rules relating to the administration and enforcement provisions of Tax Code, Title 2, and taxes, fees, or other charges which the comptroller administers under other law.

The new rule implements Health and Safety Code, Chapter 147 (E-cigarette Retailer Permits).

§3.1207. E-cigarette Retailer Permits.

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

(1) Commercial business location--The entire premises occupied by a permit applicant or a person required to hold a permit under Health and Safety Code, §147.0051 (E-cigarette Retailer Permit Required).

(2) E-cigarette--An electronic cigarette or any other device that simulates smoking by using a mechanical heating element, battery, or electronic circuit to deliver nicotine or other substances to the individual inhaling from the device; or a consumable liquid solution or other material aerosolized or vaporized during the use of an electronic cigarette or other device described by this paragraph.

(A) The term "e-cigarette" includes:

(i) a device described by this paragraph regardless of whether the device is manufactured, distributed, or sold as an e-cigarette, e-cigar, or e-pipe or under another product name or description; and

(ii) a component, part, or accessory for the device, regardless of whether the component, part, or accessory is sold separately from the device.

(B) The term "e-cigarette" does not include a prescription medical device unrelated to the cessation of smoking.

(3) E-cigarette retailer--A person who engages in the business of selling e-cigarettes to consumers, including a person who sells e-cigarettes to consumers through a marketplace.

(4) Marketplace--A physical or electronic medium through which persons other than the owner or operator of the medium make sales of taxable items. The term includes a store, Internet website, software application, or catalog.

(5) Marketplace provider--A person who owns or operates a marketplace and directly or indirectly processes sales or payments for marketplace sellers.

(6) Marketplace seller--A seller, other than the marketplace provider, who makes a sale of a taxable item through a marketplace.

(7) Permit holder--A person who obtains a permit under Health and Safety Code, §147.0052 (Issuance of Permit).

(8) Place of business--

(A) a commercial business location where e-cigarettes are sold;

(B) a commercial business location where e-cigarettes are kept for sale or consumption or otherwise stored; or

(C) a vehicle from which e-cigarettes are sold.

(b) Inapplicability. This section does not apply to a product that is:

(1) approved by the United States Food and Drug Administration for use in the treatment of nicotine or smoking addiction; and

(2) labeled with a "Drug Facts" panel in accordance with regulations of the United States Food and Drug Administration.

(c) E-cigarette retailer permits.

(1) Requirements.

(A) Beginning January 1, 2022, a person may not engage in business as an e-cigarette retailer in Texas without a permit issued by the comptroller.

(B) An e-cigarette retailer shall obtain a permit for each place of business owned or operated by the e-cigarette retailer.

(C) The comptroller may not issue a permit for a place of business that is a residence or a unit in a public storage facility.

(D) A marketplace seller shall obtain a permit for each marketplace where the seller makes sales of e-cigarettes.

(E) A marketplace provider shall obtain a permit when selling e-cigarettes on behalf of marketplace sellers.

(2) Application.

(A) The applicant shall complete Form AP-242, Texas Application for E-Cigarette Retailer Permit, or any successor to that form promulgated by the comptroller.

(B) The applicant shall accurately complete all information required by the application and provide the comptroller with any additional information the comptroller considers necessary.

(C) Each applicant that applies for a permit to sell e-cigarettes from a vehicle shall provide the make, model, vehicle identification number, registration number, and any other information concerning the vehicle the comptroller requires.

(D) All financial information provided under this section is confidential and not subject to Government Code, Chapter 552 (Public Information).

(d) Permit period; fees.

(1) An initial application and a renewal of an existing permit shall be accompanied by the permit fee.

(A) A permit issued under this section expires on the last day of May of each even-numbered year.

(B) The permit fee for the full two years is $180. A new applicant permit fee is prorated according to the number of months remaining during the period that the permit is to be in effect.

(C) A person who holds an active cigarette or tobacco product permit under Tax Code, §§154.101 (Permits), 154.102 (Combination Permit) or 155.041 (Permits), for the same business location at the time of an application or renewal of an application, pays a reduced amount of one-half the retailer permit fee.

(2) A person who does not renew an e-cigarette retailer permit by the expiration of a current permit shall pay a late fee of $50 in addition to the application fee for the permit.

(3) If a permit expires within three months from the date of issuance, the comptroller may collect the prorated permit fee amount for the remaining months of the current period and, with the consent of the permit holder, may collect the permit fee amount for the next permit period and issue permits for both periods.

(4) A person issued a permit for a place of business that permanently closes before the permit expiration date is not entitled to a refund of the permit fee.

(e) Payment for e-cigarette retailer permit.

(1) An applicant for a permit shall remit the required fee with the application.

(2) The payment shall be made in cash or by money order, check, or credit card.

(3) The comptroller may not issue a permit in exchange for a check until after the comptroller receives full payment on the check.

(f) Issuance of an e-cigarette retailer permit.

(1) The comptroller will issue a permit to an applicant if the comptroller:

(A) has received an application and fee;

(B) does not reject the application and deny the permit under subsection (h) of this section; and

(C) determines that issuing the permit will not jeopardize the administration and enforcement of Health and Safety Code, Chapter 147 (E-cigarette Retailer Permits).

(2) The permit will be issued for a designated place of business, except as provided by subsection (h) of this section.

(3) Permits for engaging in business as an e-cigarette retailer are non-assignable.

(g) Display of an e-cigarette retailer permit.

(1) A permit holder shall keep the permit on public display at the place of business for which the permit was issued.

(2) A permit holder who has a permit assigned to a vehicle shall post the permit in a conspicuous place on the vehicle.

(h) Denial of e-cigarette retailer permit. The comptroller may reject an application and deny a permit if the comptroller finds, after notice and opportunity for hearing:

(1) the premises where business will be conducted are not adequate to protect the e-cigarettes; or

(2) the applicant or managing employee, or if the applicant is a corporation, an officer, director, manager, or any stockholder who holds directly or through family or partner relationship 10% or more of the corporation's stock, or, if the applicant is a partnership, a partner or manager:

(A) has failed to disclose any of the information required by subsection (c)(2) of this section; or

(B) has previously violated provisions of Health and Safety Code, Chapter 147.

(i) Summary suspension of permit.

(1) The comptroller may suspend a permit holder's permit without notice or a hearing for the permit holder's failure to comply with this section if the permit holder's continued operation constitutes an immediate and substantial threat.

(2) If the comptroller summarily suspends a permit holder's permit, proceedings for a preliminary hearing before the comptroller or the comptroller's representative must be initiated simultaneously with the summary suspension. The preliminary hearing shall be set for a date not later than the 10th day after the date of the summary suspension, unless the parties agree to a later date.

(3) To initiate a proceeding to summarily suspend a permit holder's permit, the comptroller shall serve notice on the permit holder informing the permit holder of the right to a preliminary hearing before the comptroller or the comptroller's representative and of the time and place of the preliminary hearing. The notice must be personally served on the permit holder or an officer, employee, or agent of the permit holder or sent by certified or registered mail, return receipt requested, to the permit holder's mailing address as it appears in the comptroller's records. The notice must state the alleged violations that constitute the grounds for summary suspension. The suspension is effective at the time the notice is served. If notice is served in person, the permit holder shall immediately surrender the permit to the comptroller. If notice is served by mail, the permit holder shall immediately return the permit to the comptroller upon receipt of the notice.

(4) At the preliminary hearing, the permit holder must show cause why the permit should not remain suspended pending a final hearing on suspension or revocation.

(5) Government Code, Chapter 2001, (Administrative Procedure), does not apply to a summary suspension under this section.

(6) Subsection (j) of this section governs the hearing for final suspension or revocation of a permit under this section.

(j) Final suspension or revocation of permit.

(1) The comptroller may revoke or suspend a permit holder's permit if the comptroller finds, after notice and the opportunity for a hearing, that the permit holder violated a provision of this section.

(2) If the comptroller intends to suspend or revoke a permit, the comptroller shall provide the permit holder with written notice that includes a statement:

(A) of the reason for the intended revocation or suspension; and

(B) that the permit holder is entitled to a hearing by the comptroller on the proposed suspension or revocation.

(3) The comptroller shall deliver the written notice by personal service or by mail to the permit holder's mailing address as it appears in the comptroller's records. Service by mail is complete when the notice is deposited with the United States Postal Service.

(4) If the permit holder requests a hearing, the comptroller will set a hearing date. The hearing on the revocation or suspension of the permit holder's permit is treated in the same manner as a hearing on the imposition of an administrative penalty for a violation of Health and Safety Code, §161.0901 (Disciplinary Action Against Cigarette, E-Cigarette, and Tobacco Product Retailers) and is governed by §1.21 of this title (relating to Cigarette, E-cigarette, Cigar, and Tobacco Tax Hearings).

(5) A permit holder may appeal the comptroller's decision to a district court in Travis County not later than the 30th day after the date the comptroller's decision becomes final.

(6) A person whose permit is suspended or revoked may not sell, offer for sale, or distribute e-cigarettes from the place of business to which the permit applied until a new permit is granted or the suspension is removed.

(k) Penalties.

(1) A person violates the provisions in this section if the person:

(A) engages in the business of an e-cigarette retailer without a permit; or

(B) is a person who is subject to a provision of this section and who violates the provision.

(2) A person who violates a provision of this section shall pay to the state a penalty set by the comptroller of not more than $2,000 for each violation.

(3) Each day on which a violation occurs is a separate violation.

(4) The attorney general shall bring suit to recover penalties under this subsection.

(5) A suit under this subsection may be brought in Travis County or another county having jurisdiction.

(l) Failure to have a permit; offense.

(1) A person commits an offense if the person acts as an e-cigarette retailer; and:

(A) receives or possesses e-cigarettes without having a permit;

(B) receives or possesses e-cigarettes without having a permit posted where it can be easily seen by the public; or

(C) sells e-cigarettes without a permit.

(2) An offense under this subsection is a Class A misdemeanor.

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 February 12, 2024.

TRD-202400547
Jenny Burleson
Director, Tax Policy Division
Comptroller of Public Accounts
Earliest possible date of adoption: March 24, 2024
For further information, please call: (512) 475-2220

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 151. GENERAL PROVISIONS

37 TAC §151.8

The Texas Board of Criminal Justice (board) proposes amendments to §151.8, concerning Advisory Committees. The proposed amendments continue the existence of the Judicial Advisory Committee (JAC) and the Advisory Committee to the Texas Board of Criminal Justice on Offenders with Medical or Mental Impairments (ACOOMMI) to September 1, 2035, and make other minor clarifications.

Ron Steffa, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five years the proposed amendments will be in effect, enforcing or administering the proposed amendments will not have foreseeable implications related to costs or revenues for state or local government because the proposed amendments merely clarify existing procedures.

Mr. Steffa has also determined that for each year of the first five-year period, there will not be an economic impact on persons required to comply with the rules because the proposed amendments merely clarify existing procedures. There will not be an adverse economic impact on small or micro businesses or on rural communities. Therefore, no regulatory flexibility analysis is required.

The anticipated public benefit, as a result of enforcing the proposed amendments, will be to continue the existence of specified advisory committees and enhance clarity and public understanding. No cost will be imposed on regulated persons.

The proposed amendments will have no impact on government growth; no impact on local employment; no creation or elimination of a government program; no creation or elimination of employee positions; no increase or decrease in future legislative appropriations to the TDCJ; no increase or decrease in fees paid to the TDCJ; no new regulation and no effect on an existing regulation; no increase or decrease in the number of individuals subject to the rule; and no effect upon the economy. The proposed amendments will not constitute a taking.

Comments should be directed to the Office of the General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, ogccomments@tdcj.texas.gov. Written comments from the general public must be received within 30 days of the publication of this rule in the *Texas Register.*

The amendments are proposed under Texas Government Code §492.006, which establishes guidelines for board meetings and requires that the board shall allow the JAC chairman to present items relating to the operation of the community justice system that require the board's consideration at each meeting; §492.013, which authorizes the board to adopt rules; §493.003, which establishes the TDCJ Community Justice Assistance Division; §§510.011-.014, which establishes the Texas State Council for Interstate Adult Offender Supervision and establishes the composition, terms, and duties of the executive director and council; Chapter 2110, which establishes guidelines for state agency advisory committees; Texas Health and Safety Code §614.002, which establishes the composition and duties of the ACOOMMI; and §614.009, which establishes requirements for a biennial report providing details of ACOOMMI activities to the board.

Cross Reference to Statutes: None.

§151.8. Advisory Committees.

(a) General. This section identifies advisory committees related to the Texas Department of Criminal Justice (TDCJ) and established by or under state law. The TDCJ Business and Finance Division shall annually evaluate each committee's work, usefulness, and costs of existence, and report that information biennially to the Legislative Budget Board.

(b) Judicial Advisory Council (JAC). The JAC exists pursuant to Texas Government Code §493.003(b). The purpose, tasks, and reporting procedures for the JAC are described in 37 Texas Administrative Code §161.21 relating to the Role of the Judicial Advisory Council. The JAC is abolished on September 1, 2035 [~~2025~~].

(c) Texas State Council for Interstate Adult Offender Supervision (council). Pursuant to Chapter 510 of the Texas Government Code, the council shall advise the administrator for the Interstate Compact for Adult Offender Supervision and the state's commissioner to the Interstate Commission for Adult Offender Supervision, on the state's participation in commission activities and the administration of the compact. Periodic reporting takes place through meetings held prior to or following a National Commission meeting. Through these meetings, the administrator can discuss issues on a national scope with the national commissioner and the council can provide verbal feedback and direction.

(d) Advisory Committee to the Texas Board of Criminal Justice on Offenders with Medical or Mental Impairments (ACOOMMI). Pursuant to Chapter 614 of the Texas Health and Safety Code, the ACOOMMI shall advise the Texas Board of Criminal Justice (TBCJ) and the director of the Texas Correctional Office on Offenders with Medical or Mental Impairments on matters related to offenders with medical or mental impairments. The ACOOMMI shall be given the opportunity to report to the TBCJ at each regularly scheduled TBCJ meeting. The ACOOMMI is abolished on September 1, 2035 [~~2025~~].

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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Kristen Worman
General Counsel
Texas Department of Criminal Justice
Earliest possible date of adoption: March 24, 2024
For further information, please call: (936) 437-6700

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37 TAC §151.73

The Texas Board of Criminal Justice (board) proposes amendments to §151.73, concerning Texas Department of Criminal Justice Vehicle Assignments. The proposed amendments remove redundant language stating TDCJ vehicles shall not be used to transport employee pets.

Ron Steffa, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five years the proposed amendments will be in effect, enforcing or administering the proposed amendments will not have foreseeable implications related to costs or revenues for state or lo-

cal government because the proposed amendments merely clarify existing procedures.

Mr. Steffa has also determined that for each year of the first five-year period, there will not be an economic impact on persons required to comply with the rules because the proposed amendments merely clarify existing procedures. There will not be an adverse economic impact on small or micro businesses or on rural communities. Therefore, no regulatory flexibility analysis is required.

The anticipated public benefit, as a result of enforcing the proposed amendments, will be to enhance clarity and public understanding. No cost will be imposed on regulated persons.

The proposed amendments will have no impact on government growth; no impact on local employment; no creation or elimination of a government program; no creation or elimination of employee positions; no increase or decrease in future legislative appropriations to the TDCJ; no increase or decrease in fees paid to the TDCJ; no new regulation and no effect on an existing regulation; no increase or decrease in the number of individuals subject to the rule; and no effect upon the economy. The proposed amendments will not constitute a taking.

Comments should be directed to the Office of the General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, ogccomments@tdcj.texas.gov. Written comments from the general public must be received within 30 days of the publication of this rule in the *Texas Register.*

The amendments are proposed under Texas Government Code §492.013, which authorizes the board to adopt rules; §2113.013, which establishes guidelines for the use of state-owned vehicles; §2101.0115, which establishes requirements of the annual financial report, to include information related to state-owned vehicles; §2171.1045, which establishes restrictions on the assignment of vehicles; and §2203.004; which establishes that state property may be used only for state purposes.

Cross Reference to Statutes: None.

§151.73. Texas Department of Criminal Justice Vehicle Assignments.

(a) It is the policy of the Texas Board of Criminal Justice (TBCJ) that each Texas Department of Criminal Justice (TDCJ) vehicle, with the exception of any vehicle assigned to a field employee, the Office of the Inspector General (OIG), and as noted in subsection (c) of this section [~~rule~~], be assigned to the TDCJ motor pool and be available for check out.

(b) TDCJ vehicles shall only be used on official state business. [~~TDCJ vehicles shall not be used to transport employee pets.~~]

(c) The TDCJ may assign a vehicle to an individual administrative or executive employee on a regular or everyday basis, if the TDCJ determines the assignment of the vehicle is critical to the needs and mission of the TDCJ. Such vehicle assignments may include vehicles used for law enforcement purposes and vehicles assigned to positions that are required to respond to emergency situations.

(d) The executive director may authorize an employee to use a TDCJ vehicle to commute to and from work when it is determined the use of the vehicle may be necessary to ensure that vital TDCJ functions are performed. The name and job title of each employee authorized for such use and the reasons for the authorization must be included in the TDCJ annual report required by Texas Government Code §2101.0115.

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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Kristen Worman
General Counsel
Texas Department of Criminal Justice
Earliest possible date of adoption: March 24, 2024
For further information, please call: (936) 437-6700

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CHAPTER 156. INVESTIGATIONS

37 TAC §156.1

The Texas Board of Criminal Justice (board) proposes amendments to §156.1, concerning Investigations of Allegations of Abuse, Neglect, or Exploitation of an Elderly or Disabled Offender. The proposed amendments update language from "offender" to "inmate" and "allegations" to "complaints" throughout the rule, including the title, and updated references to agency directives.

Ron Steffa, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five years the proposed amendments will be in effect, enforcing or administering the proposed amendments will not have foreseeable implications related to costs or revenues for state or local government because the proposed amendments merely clarify existing procedures.

Mr. Steffa has also determined that for each year of the first five-year period, there will not be an economic impact on persons required to comply with the rules because the proposed amendments merely clarify existing procedures. There will not be an adverse economic impact on small or micro businesses or on rural communities. Therefore, no regulatory flexibility analysis is required.

The anticipated public benefit, as a result of enforcing the proposed amendments, will be to enhance clarity and public understanding. No cost will be imposed on regulated persons.

The proposed amendments will have no impact on government growth; no impact on local employment; no creation or elimination of a government program; no creation or elimination of employee positions; no increase or decrease in future legislative appropriations to the TDCJ; no increase or decrease in fees paid to the TDCJ; no new regulation and no effect on an existing regulation; no increase or decrease in the number of individuals subject to the rule; and no effect upon the economy. The proposed amendments will not constitute a taking.

Comments should be directed to the Office of the General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, ogccomments@tdcj.texas.gov. Written comments from the general public must be received within 30 days of the publication of this rule in the *Texas Register.*

The amendments are proposed under Texas Government Code §492.013, which authorizes the board to adopt rules; and Texas Human Resources Code §48.301, which establishes guidelines related to reports of suspected abuse, neglect, or exploitation of an elderly person or a person with a disability.

Cross Reference to Statutes: None.

§156.1. Investigations of Complaints [~~Allegations~~] of Abuse, Neglect, or Exploitation of an Elderly or Disabled Inmate [~~Offender~~].

The Texas Department of Criminal Justice (TDCJ) shall investigate all complaints [~~allegations~~] of abuse, neglect, or exploitation of an elderly or disabled inmate [~~offender~~] received from the Texas Department of Family and Protective Services in accordance with BP-01.08, "Independent Ombudsman Policy Statement," [~~ED-02.03, "Ombudsman Program,"~~] ED-03.03, "Safe Prisons [~~/PREA~~] Program," and AD-16.20, "Reporting Incidents/Crimes to the Office of the Inspector 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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Kristen Worman
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CHAPTER 163. COMMUNITY JUSTICE ASSISTANCE DIVISION STANDARDS

37 TAC §163.34

The Texas Board of Criminal Justice (board) proposes amendments to §163.34, concerning Carrying of Weapons. The proposed amendments clarify the authority for community supervision officers (CSOs) to carry handguns while engaged in the actual discharge of their duties; remove requirements for community supervision and corrections department (CSCD) policies authorizing CSOs to carry less than lethal equipment to be reviewed by the Community Justice Assistance Division (CJAD) director; remove a reference to the CJAD Weapons Procedures Guidebook; clarify notification procedures for certain incidents; and update other language and make organizational changes for clarity.

Ron Steffa, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five years the proposed amendments will be in effect, enforcing or administering the proposed amendments will not have foreseeable implications related to costs or revenues for state or local government because the proposed amendments merely clarify existing procedures.

Mr. Steffa has also determined that for each year of the first five-year period, there will not be an economic impact on persons required to comply with the rules because the proposed amendments merely clarify existing procedures. There will not be an adverse economic impact on small or micro businesses or on rural communities. Therefore, no regulatory flexibility analysis is required.

The anticipated public benefit, as a result of enforcing the proposed amendments, will be to enhance clarity and public understanding. No cost will be imposed on regulated persons.

The proposed amendments will have no impact on government growth; no impact on local employment; no creation or elimination of a government program; no creation or elimination of employee positions; no increase or decrease in future legislative appropriations to the TDCJ; no increase or decrease in fees paid to the TDCJ; no new regulation and no effect on an existing regulation; no increase or decrease in the number of individuals subject to the rule; and no effect upon the economy. The proposed amendments will not constitute a taking.

Comments should be directed to the Office of the General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, ogccomments@tdcj.texas.gov. Written comments from the general public must be received within 30 days of the publication of this rule in the *Texas Register.*

The amendments are proposed under Texas Government Code §492.013, which authorizes the board to adopt rules; §509.003, which establishes standards and procedures that must be proposed by CJAD and adopted by the board, and Texas Occupations Code §1701.257, which establishes guidelines related to firearms training for supervision officers.

Cross Reference to Statutes: None.

§163.34. Carrying of Weapons.

(a) In accordance with Texas Government Code §76.0051, a community supervision officer (CSO) is authorized to carry a handgun [~~or other firearm~~] while engaged in the actual discharge of the officer's duties if:

(1) The CSO possesses a current certificate of firearms proficiency issued by the Texas Commission on Law Enforcement (TCOLE) [~~Officer Standards and Education (TCLEOSE)~~]; and

(2) The community supervision and corrections department (CSCD) director grants the authorization to CSOs to carry a handgun while engaged in the actual discharge of the officer's duties.

(b) This section does not authorize a CSO to carry a handgun [~~firearm~~] while off-duty.

(c) The carrying of a handgun [~~or other firearm~~] by a CSO [~~CSOs~~] shall be done strictly in accordance with Texas Government Code §76.0051 and the authorization, policy, and procedures promulgated by the CSCD director as set forth in subsection (e) of this section [~~rule~~].

(d) Prior to undergoing training to carry a handgun [~~firearm~~], a CSO shall meet the following qualifications:[~~.~~]

(1) Using TCOLE approved standards and the required forms, [~~The CSO shall be examined by~~] a psychologist or psychiatrist licensed in the state of Texas shall examine the CSO and determine if the CSO possesses the [~~and declared in writing by the psychologist or psychiatrist, using TCLEOSE approved forms, to be in satisfactory~~] psychological and emotional health to carry [~~for the carrying of~~] a handgun [~~weapon~~] in the performance of the CSO's duties; the determinations shall be reduced to writing [~~for which a certificate of firearms proficiency is sought~~].

(2) The CSO shall sign an acknowledgement confirming [~~execute an instrument wherein the CSO acknowledges~~]:

(A) The CSO has never been convicted of a crime punishable by imprisonment for a term exceeding one year; has never been convicted of any misdemeanor or felony domestic violence crime; and has never been discharged from the armed forces under dishonorable conditions; and [~~It is unlawful for any person to possess any firearm or ammunition who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year; or who has been convicted of any domestic violence crime, misdemeanor, or felony; or who~~

has been discharged from the armed forces under dishonorable conditions;]

(B) The CSO will [It is the CSOs' responsibility to] immediately inform their supervisor and the CSCD director of any arrest, charges, or conviction related to such crimes or conditions.[; and]

[(C) The CSO has never been convicted in any court of a crime punishable by imprisonment for a term exceeding one year; has never been convicted of any domestic violence crime, misdemeanor, or felony; or has never been discharged from the armed forces under dishonorable conditions.]

(e) Each CSCD that elects to authorize any [certain, or all,] of its CSOs to carry a handgun [firearms] in accordance with these [the foregoing] requirements shall adopt written policies and procedures defining which of its CSOs have authority to carry a handgun [firearms] and the limitations that apply to the [their] carrying and use of a handgun [firearms]. Each [The] CSCD shall submit written policies and procedures for review by the Texas Department of Criminal Justice Community Justice Assistance Division (TDCJ CJAD) director. The policies and procedures shall specify:

(1) The handgun [firearm] training and qualification requirements;

(2) The handling, use, and storage of a handgun [firearms];

(3) The types of handguns [firearms] authorized; and

(4) The process for reporting and investigating incidents related to the possession or use of a handgun [firearms] by the CSOs.

(f) Each CSCD that elects to authorize CSOs to carry [or use] less than lethal equipment [weapons], such as aerosol sprays, chemical agents, restraining devices, or stun guns, shall adopt written policies and procedures defining which of its CSOs have authority to carry such equipment [weapons] and the limitations that apply to their carrying and use. [The CSCDs shall submit written policies and procedures for review by the TDCJ CJAD director.] The policies and procedures shall specify:

(1) The equipment training, qualification, and certification requirements;

(2) The handling, use, and storage of the equipment [particular weapons and devices involved];

(3) The types and relevant specifications that apply to the less than lethal equipment [weapons] that is [are] authorized; and

(4) The process for reporting and investigating incidents related to the possession or use of less than lethal equipment [weapons, such as aerosol sprays, restraining devices, or stun guns].

(g) Each CSCD [CSCDs] that elects [elect] not to authorize CSOs to carry a handgun [firearms] or [use] less than lethal equipment [weapons] in the performance of their duties shall adopt a written policy statement disallowing such practices, as applicable. Each new CSO shall be notified of these policies prior to an offer of employment by the CSCD.

(h) Requirements of the TCOLE [Texas Commission on Law Enforcement Officer Standards and Education].

(1) The CSOs authorized by the CSCD to make application to the TCOLE [TCLEOSE] for certification in firearms proficiency in accordance with the above provisions shall use TCOLE [TCLEOSE] approved forms and provide copies to the [TDCJ CJAD and the] CSCD.

(2) Each CSCD [CSCDs] shall:

(A) conduct a comprehensive background check on all CSOs seeking firearms certification;[.]

(B) [(3) CSCDs shall] maintain records of background information obtained on all CSOs seeking firearms certification;[.]

(C) [(4) CSCDs shall] maintain records of annually required requalification on all CSOs obtaining firearms certification;[.]

(D) [(5) CSCDs shall] notify the TCOLE [TCLEOSE] if a CSO's authority to carry a handgun [firearm] is rescinded;[.]

(E) [(6) CSCDs authorizing CSOs to carry firearms shall] notify the TCOLE [TCLEOSE] of the name, address, telephone, and fax numbers of the CSCD director of all CSOs authorized to carry a handgun; and[.]

(F) [(7) Each CSCD shall] allow the TCOLE [TCLEOSE] and other law enforcement agencies access to records pertaining to firearms for auditing and investigation purposes.

(i) CSO [Community Supervision Officer] Training and Qualification Requirements.

(1) CSOs shall not be granted permission to carry a handgun [firearm] in the performance of their duties unless that CSO has completed a firearms training program approved by the TCOLE [TCLEOSE] and has been issued a certificate of firearms proficiency by the TCOLE [TCLEOSE] as provided in subsection (a) of this section [rule]. The firearms training program shall be completed within six months after obtaining the TCOLE [TCLEOSE] psychological release as required in paragraph (1) of subsection (d) [(1)] of this section [rule].

(2) Firearms training provided to CSOs shall be designed to prepare the CSOs to carry such weapons while conducting field visits, participating in community based criminal justice initiatives with law enforcement agencies, and in dealing with the safety and self-defense considerations related to such activities.

(3) CSO qualification of weapons usage, a periodic proficiency test, and documentation of training shall be completed in the presence of a TCOLE [TCLEOSE] approved instructor on a yearly basis in addition to the required TCOLE [TCLEOSE] certificate of firearms proficiency.

[(4) Specific firearms and other weapons training course guidelines and recommendations shall be published in the TDCJ CJAD Weapons Procedures Guidebook.]

(j) Ownership, Inspection, and Maintenance.

(1) CSOs authorized to carry handguns [weapons] shall provide their own handguns [weapons].

(2) CSCDs shall appoint an individual within the department to be responsible for yearly inspection and maintenance programs for handguns [firearms] used by CSOs.

(k) Types of Handguns [Firearms] Authorized.

(1) CSOs are authorized to carry the following handguns [weapons]:

(A) Double action revolvers; or

(B) Semi-automatic pistols.

(2) Barrel length of handguns [weapon] shall be between two and five inches.

(3) Approved cartridges shall be:

(A) 9mm caliber;

(B) .38 Special;

(C) .357 Magnum;

(D) .357 Sig;

(E) .40 caliber;

(F) 10mm caliber;

(G) .45 caliber; or

(H) .380 caliber.

(4) Ammunition. All carried ammunition shall be factory original loads of bullet weight between 85 and 230 grains, per Sporting Arms Ammunition Manufacturer Institute [~~(SAAMI)~~] Guidelines.

(l) Reports to the Texas Department of Criminal Justice Community Justice Assistance Division.

(1) Each CSCD shall have a written Use of Force policy and a written procedure for reporting and investigating each incident where a handgun [~~firearm~~] or less than lethal equipment [~~weapon~~] is discharged, used, or drawn on an individual. Such incidents shall be reported to the division director of the TDCJ CJAD within 24 hours of the incident. TDCJ CJAD management staff will, in turn, notify the TDCJ Emergency Action Center. The term "to draw" means to unholster a handgun [~~firearm~~] in preparation for use in self-defense against a perceived threat.

(2) Such procedure shall include:

(A) Notification of incidents;

(B) Procedures for interaction with outside entities, such as local law enforcement and media;

(C) Internal investigation procedures; and

(D) Employee support components.

~~[(3) Notification of Incidents to the Texas Department of Criminal Justice Emergency Action Center (EAC). Serious incidents, such as a CSO's drawing of a firearm on an individual or the unauthorized use of a less than lethal weapon by a CSO, shall be promptly reported to the EAC (936) 437-6600 and in all events within 24 hours of the incident. Incidents involving the discharge of a firearm shall be reported to the EAC immediately, if possible, and in all circumstances within three hours of occurrence. A preliminary written report of each of the above-described incidents shall be sent to the TDCJ CJAD within ten days of the occurrence.]~~

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 February 12, 2024.

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Kristen Worman
General Counsel
Texas Department of Criminal Justice
Earliest possible date of adoption: March 24, 2024
For further information, please call: (936) 437-6700

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37 TAC §163.43

The Texas Board of Criminal Justice (board) proposes amendments to §163.43, concerning Funding and Financial Management. The proposed amendments add language to address the allocation formula and distribution of community corrections program funding and make other language updates and organizational changes for clarity.

Ron Steffa, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five years the proposed amendments will be in effect, enforcing or administering the proposed amendments will not have foreseeable implications related to costs or revenues for state or local government because the proposed amendments merely clarify existing procedures.

Mr. Steffa has also determined that for each year of the first five-year period, there will not be an economic impact on persons required to comply with the rules because the proposed amendments merely clarify existing procedures. There will not be an adverse economic impact on small or micro businesses or on rural communities. Therefore, no regulatory flexibility analysis is required.

The anticipated public benefit, as a result of enforcing the proposed amendments, will be to enhance clarity and public understanding. No cost will be imposed on regulated persons.

The proposed amendments will have no impact on government growth; no impact on local employment; no creation or elimination of a government program; no creation or elimination of employee positions; no increase or decrease in future legislative appropriations to the TDCJ; no increase or decrease in fees paid to the TDCJ; no new regulation and no effect on an existing regulation; no increase or decrease in the number of individuals subject to the rule; and no effect upon the economy. The proposed amendments will not constitute a taking.

Comments should be directed to the Office of the General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, ogccomments@tdcj.texas.gov. Written comments from the general public must be received within 30 days of the publication of this rule in the *Texas Register.*

The amendments are proposed under Texas Government Code §492.013, which authorizes the board to adopt rules; §493.003, which establishes the TDCJ Community Justice Assistance Division (CJAD); and §509.003, which establishes standards and procedures that must be proposed by CJAD and adopted by the board.

Cross Reference to Statutes: None.

§163.43. Funding and Financial Management.

(a) Funding.

(1) Community Supervision and Corrections Departments (CSCDs) qualifying for Texas Department of Criminal Justice Community Justice Assistance Division (TDCJ CJAD) Formula and Grant Funding. [~~Community supervision and corrections departments (~~]CSCDs [~~or departments)~~] qualify for TDCJ CJAD state aid and grant funding by:

(A) being [~~Being~~] in substantial compliance with TDCJ CJAD standards;

~~[(B) Having a community justice council that serves the jurisdiction as required by law;]~~

(B) [~~(C)~~] having [~~Having~~] a TDCJ CJAD approved strategic [~~community justice~~] plan in accordance with Texas Government Code § 509.007 [~~with related budgets~~];

(C) [~~(D)~~] having [~~Having~~] a director [~~,~~] appointed in accordance with [~~as described in~~] Texas Government Code §76.004 [~~, to~~] administer all CSCD funds;

(D) [~~(E)~~] having [~~Having~~] a fiscal officer appointed by the district judge(s) manage the CSCD as set forth in subsection (b) of this section [~~rule~~]; and

(E) [~~(F)~~] following [~~Complying with the Open Meetings Act, Texas Government Code Chapter 551 when meeting to finalize the CSCD budget as required by~~] Texas Local Government Code § 140.004 when meeting to finalize the CSCD's budget.

[~~(2) Other Entities Qualifying for TDCJ CJAD Grant Funding. In addition to CSCDs, counties, municipalities and nonprofit organizations qualify for TDCJ CJAD grant funding by:~~]

[~~(A) Being in substantial compliance with TDCJ CJAD grant conditions;~~]

[~~(B) Having budgets related to the program proposal; and~~]

[~~(C) Designating a chief fiscal officer to account for, protect, disburse, and report on all TDCJ CJAD grant funding, and to prescribe the accounting procedures related thereto.~~]

(2) [~~(3)~~] Allocating State Aid. State aid shall be made available to eligible funding recipients in accordance with the applicable statutory requirements and [~~items set forth in~~] the Financial Management Manual for TDCJ CJAD Funding issued by the TDCJ CJAD.

(3) Other Entities Qualifying for TDCJ CJAD Grant Funding. Counties, municipalities, and nonprofit organizations qualify for TDCJ CJAD grant funding by:

(A) being in substantial compliance with TDCJ CJAD grant conditions;

(B) having budgets related to the program proposal; and

(C) designating a chief fiscal officer who shall:

(i) account for, protect, disburse, and report on all TDCJ CJAD grant funding; and

(ii) prescribe the accounting procedures related to the grant funding.

(4) Awarding TDCJ CJAD Grant Funding. CSCDs, counties, municipalities, and nonprofit organizations that are eligible to receive grant funding shall meet requirements as set forth in the Financial Management Manual for TDCJ CJAD Funding and be approved by the TDCJ CJAD director to receive such funds. Grant funding shall be made available in accordance with statutory requirements and [~~items as set forth in~~] the Financial Management Manual for TDCJ CJAD Funding.

(5) Community Corrections Funding. Community corrections funding shall be distributed in accordance with applicable law and TDCJ rules and policies.

(A) assuming sufficient appropriations, no CSCD may incur a funding decrease of more than 5.0% from the previous fiscal year for community corrections program funding. An upper change limit shall be determined based upon available funding and the size and number of CSCDs that reach the loss limit.

(B) If appropriations are insufficient, so that the 5.0% loss limit must be increased, all CSCD allocations shall be reduced proportionately from the previous year's allocations.

(b) Financial Procedures.

(1) Submission of [~~Requested~~] Information from CSCDs and Other Potentially Eligible TDCJ CJAD Funding Recipients. Each funding recipient shall present data, documents, and information requested by the TDCJ CJAD as necessary to determine the amount of state [~~financial~~] aid and grant funding to be allocated to the recipient. A funding recipient receiving TDCJ CJAD funding shall submit such reports, records, and other documentation as required by the TDCJ CJAD.

(2) Deposit of TDCJ CJAD Funding. In accordance with Texas Local Government Code § 140.003, each CSCD, county, or municipality shall deposit all TDCJ CJAD funding received in the county treasury or municipal treasury, as appropriate, to be used on behalf of the CSCD [~~department~~] and as the CSCD directs. Nonprofit organizations shall deposit all TDCJ CJAD funding received in a separate fund, to be used solely for the provision of services, programs, and facilities approved by the TDCJ CJAD.

(3) Fee Deposit. Community supervision fees paid [~~and payments~~] by offenders shall be deposited into the same special fund of the county treasury receiving state [~~financial~~] aid or grant funding, to be used for community supervision and correction services.

(4) Restrictions on CSCD Generated Revenue. CSCD generated revenue shall be used in accordance with statutory requirements and [~~items set forth in~~] the Financial Management Manual for TDCJ CJAD Funding.

(5) Available Records. The funding recipient and the fiscal officer accounting for, disbursing, and reporting on the TDCJ CJAD funding shall make [~~financial, transaction, contract, computer, and other records~~] available to the TDCJ CJAD all records related to use of TDCJ CJAD funding. Funding recipients shall provide financial reports and other records to TDCJ CJAD as set forth in the Financial Management Manual for TDCJ CJAD Funding.

(6) Budgets. Funding recipients shall prepare and operate from a budget(s) developed and approved in accordance with [~~within the guidelines set forth in~~] the Financial Management Manual for TDCJ CJAD Funding.

(7) Funding Recipient Obligations. Funding recipients shall comply with all funding provisions as set forth in the Financial Management Manual for TDCJ CJAD Funding and any special conditions associated with the respective funding awards.

(8) Honesty Bond. Each CSCD directors shall ensure that all public monies are protected by requiring that all employees with access to monies are covered by honesty bonds and all funds maintained on CSCD premises are protected by appropriate insurance or bonding.

(9) Travel Reimbursements. Mileage and per diem reimbursements to CSCD employees shall comply [~~be in accordance~~] with the Financial Management Manual for TDCJ CJAD Funding.

(c) Determination and Recovery of Unexpended Monies. A CSCD's determination and return [~~by the CSCD~~] of unexpended funds shall comply [~~be in accordance~~] with the Financial Management Manual for TDCJ CJAD Funding.

(d) Facilities, Utilities, and Equipment.

(1) [~~CSCDs.~~] In accordance with Texas Government Code § 76.008, the county or counties served by a CSCD shall provide, at a minimum, facilities, equipment, and utilities for the CSCD [~~department~~] as follows:

(A) Minimum Facilities for CSCDs. CSCDs shall provide each community supervision officer [~~(CSO) shall be provided~~] a

private office with the [. ~~Each office shall have the necessary~~] lighting, air conditioning, equipment, privacy, and environment necessary to conduct [~~provide and promote the delivery of~~] professional community corrections services. Facilities, including equipment, shall be appropriately maintained, repaired, and insured.

[~~(B) Minimum Utilities for CSCDs. Each CSCD office shall be provided adequate utilities necessary to provide efficient and professional community corrections services.~~]

[~~(C) Minimum Equipment for CSCDs. Each CSO shall be furnished adequate furniture, telephone, and other equipment as necessary and consistent with efficient office operations. Adequate insurance, maintenance, and repair of the CSCD's equipment shall be maintained.~~]

(B) [~~(D)~~] Location. Each CSCD office providing direct court services shall be located in the courthouse or as near to the courthouse as practicable in order [~~practically possible~~] to provide [~~promote~~] prompt and efficient services to the court.

(C) [~~(E)~~] Satellite Offices. In order to provide efficient supervision of and services to offenders, satellite CSCD offices shall be established in [~~the appropriate areas of~~] the judicial district based on a judicial district's [~~to provide efficient supervision of and service to offenders as dictated by~~] population, caseload [~~size~~], or geographical distance.

(2) Inventory. Inventory and disposal of equipment, furniture, and vehicles purchased with program funds shall comply with [~~follow the guidelines in~~] the Financial Management Manual for TDCJ CJAD Funding. [~~In addition:~~]

[~~(A) All equipment, furniture, and vehicles purchased with program funds shall be inventoried with TDCJ CJAD in accordance with procedures set forth in the Financial Management Manual for TDCJ CJAD Funding.~~]

[~~(B) Any CSCD or other entity wanting to dispose of equipment, furniture, and vehicles purchased with program funds shall adhere to procedures set forth in the Financial Management Manual for TDCJ CJAD Funding.~~]

(e) Certification of Facilities, Utilities, and Equipment for CSCDS. Certification of facilities, utilities, and equipment for CSCDs shall comply [~~be in accordance~~] with Texas Government Code § 76.009 [,] and [~~as provided in~~] the Financial Management Manual for TDCJ CJAD Funding.

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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Kristen Worman
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Texas Department of Criminal Justice
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For further information, please call: (936) 437-6700

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37 TAC §163.45

The Texas Board of Criminal Justice (board) files this notice of intent to repeal 37 Texas Administrative Code, Part 6 §163.45 concerning Distribution of Community Corrections Funding. The repeal eliminates a rule whose language is being incorporated in §163.43, Funding and Financial Management.

Ron Steffa, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five years the repeal will be in effect, the rule will not have foreseeable implications related to costs or revenues for state or local government.

Mr. Steffa has also determined that for each year of the first five-year period the repeal will be in effect, there will not be an economic impact on persons as a result of the repeal. There will not be an adverse economic impact on small or micro businesses or on rural communities as a result of the repeal. Therefore, no regulatory flexibility analysis is required.

The anticipated public benefit, as a result of the repeal, will be to eliminate an unnecessary rule as the language is being incorporated in another section. No cost will be imposed on regulated persons.

The repeal will have no impact on government growth; no impact on local employment; no creation or elimination of a government program; no creation or elimination of employee positions; no increase or decrease in future legislative appropriations to the TDCJ; no increase or decrease in fees paid to the TDCJ; no new regulation and no effect on an existing regulation; no increase or decrease in the number of individuals subject to the rule; and no effect upon the economy. The repeal will not constitute a taking.

Comments should be directed to the Office of the General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, ogccomments@tdcj.texas.gov. Written comments from the general public must be received within 30 days of the publication of this rule in the *Texas Register.*

The repeal is proposed under Texas Government Code §492.013, which authorizes the board to adopt rules; §493.003, which establishes the TDCJ Community Justice Assistance Division (CJAD); and §509.003, which establishes standards and procedures that must be proposed by CJAD and adopted by the board.

Cross Reference to Statutes: None.

§163.45. Distribution of Community Corrections Funding.

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 February 12, 2024.

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Kristen Worman
General Counsel
Texas Department of Criminal Justice
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For further information, please call: (936) 437-6700

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37 TAC §163.46

The Texas Board of Criminal Justice (board) files this notice of intent to repeal 37 Texas Administrative Code, Part 6 §163.46 concerning Allocation Formula for Community Corrections Program. The repeal eliminates a rule whose language is being incorporated in §163.43, Funding and Financial Management.

Ron Steffa, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five years the repeal will be in effect, the rule will not have foreseeable implications related to costs or revenues for state or local government.

Mr. Steffa has also determined that for each year of the first five-year period the repeal will be in effect, there will not be an economic impact on persons as a result of the repeal. There will not be an adverse economic impact on small or micro businesses or on rural communities as a result of the repeal. Therefore, no regulatory flexibility analysis is required.

The anticipated public benefit, as a result of the repeal, will be to eliminate an unnecessary rule as the language is being incorporated in another section. No cost will be imposed on regulated persons.

The repeal will have no impact on government growth; no impact on local employment; no creation or elimination of a government program; no creation or elimination of employee positions; no increase or decrease in future legislative appropriations to the TDCJ; no increase or decrease in fees paid to the TDCJ; no new regulation and no effect on an existing regulation; no increase or decrease in the number of individuals subject to the rule; and no effect upon the economy. The repeal will not constitute a taking.

Comments should be directed to the Office of the General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, ogccomments@tdcj.texas.gov. Written comments from the general public must be received within 30 days of the publication of this rule in the *Texas Register.*

The repeal is proposed under Texas Government Code §492.013, which authorizes the board to adopt rules; §493.003, which establishes the TDCJ Community Justice Assistance Division (CJAD); and §509.003, which establishes standards and procedures that must be proposed by CJAD and adopted by the board.

Cross Reference to Statutes: None.

§163.46. Allocation Formula for Community Corrections Program.

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 Criminal Justice
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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 12. TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS

CHAPTER 367. CONTINUING EDUCATION

40 TAC §§367.1 - 367.3

The Texas Board of Occupational Therapy Examiners proposes amendments to 40 Texas Administrative Code §367.1, Continuing Education; §367.2, Categories of Education; and §367.3, Continuing Education Audit. The amendments are proposed to revise current continuing education requirements, including to update requirements and assist the board in ensuring that continuing education activities taken for license renewal ensure the health, safety, and welfare of the public and directly concern occupational therapy. The amendments are also proposed to enhance the clarity of the requirements contained in and the general consistency of the chapter, to further refine the requirements for continuing education activities to ensure that relevant documentation is required and that licensees have complied with continuing education requirements, and to ensure that continuing education documentation is adequately retained. In tandem with the changes, the general structure of the sections has been reorganized for clarity.

The amendments to the sections include changes to redefine acceptable continuing education activities. The revisions enumerate two general types of acceptable activities, which are eligible for continuing education credit: those that are pre-approved for continuing education credit and other activities that meet further requirements in Chapter 367, Continuing Education, of the board rules. These two types of activities generally correspond to those that are currently eligible for continuing education credit.

The amendments to §367.1, Continuing Education, relocate and centralize general continuing education requirements in the section for the two subtypes of pre-approved continuing education activities, which include up to two hours of a human trafficking training course approved by the Texas Health and Human Services Commission (HHSC) and activities approved or offered by the American Occupational Therapy Association (AOTA) or the Texas Occupational Therapy Association (TOTA). These preapproved activities are those that currently exist in the chapter. For clarification, the amendments also add information that addresses the conversion of AOTA continuing education units to hours or contact hours, as licensees attest to their continuing education in terms of hours or contact hours when renewing, and add clarifying information concerning documentation requirements for a required human trafficking training course. The amendments also relocate information from §367.3, Continuing Education Audit, concerning general documentation requirements to §367.1 so such is collocated with the requirements for the preapproved activities described therein. Furthermore, the amendments include the addition of a provision noting that a human trafficking training course approved or offered by AOTA or TOTA may not be used to satisfy the human trafficking training requirement unless it is also approved by the Texas Health and Human Services Commission, as described under that subsection. This addition reinforces requirements concerning the human trafficking training requirements in the current section.

The amendments to the chapter, concomitantly include revisions that revise the requirements for those activities that fall under this second type of acceptable continuing education, namely, other acceptable activities, which are not preapproved, but that meet further requirements of the chapter and may be counted for continuing education. The amendments concentrate the requirements specific to this type of continuing education in the renamed §367.2, Other Acceptable Activities, and the opening provision of the amended §367.2 clarifies that activities that are

pre-approved do not need to meet the additional requirements contained in in the section.

The amendments to §367.2 revise the criteria for the content that these other acceptable activities must concern and revise the activities considered unacceptable for continuing education. Such changes will help to ensure that professional development activities taken for license renewal ensure the health, safety, and welfare of the public and directly concern occupational therapy.

The amendments to the section also clarify that these activities must fall under the acceptable categories of continuing education, which include varied categories such as those related to courses, the supervision of students completing their occupational therapy education, the publication of materials, and other activity types.

The revised §367.2 contains the same categories of continuing education as currently contained in the section. The current board rules, likewise, include that such activities must concern acceptable content, described in the current rules under the definition of continuing education, not be an unacceptable activity, and fall under such categories of activities, though related revisions have been made to these requirements in the amendments.

The requirements for the categories of education in §367.2 have also been revised for clarification and to clean up the text and increase its consistency.

The amendments to §367.2, for example, include the restructuring of the category concerning the supervision of students to clarify the requirements of the category, in general, and to include an hourly breakdown of possible CE credit for certain types of supervision, rather than just expressing such in terms of weeks.

Like the amendments to §367.1, Continuing Education, the amendments to §367.2 also include for clarification the relocation of certain information concerning documentation from §367.3, Continuing Education, to those areas of the section that concern the corresponding activity types.

The amendments to §367.2 include further changes to certain categories to ensure that relevant documentation is required and contains necessary identifying information, such as that related to names of licensees and information concerning providers, and that licensees have complied with requirements. Such changes, for example, include adding language that ensures that the section articulates that documentation of fieldwork supervision identify the licensee by name and include information concerning the authorized signer, information that already typically appears on such documentation, and that when a supervisor shares a student with another individual, the supervisor include an attestation addressing the dates of supervision provided.

The amendments to the section also include the removal of the category concerning the AOTA Benchmark as access to the activity has been indefinitely suspended by AOTA.

The amendments to §367.3, Continuing Education, in addition to, as noted, relocating for clarity certain information from the section to other sections of the chapter, also include further changes to increase the retention period for continuing education documentation. Increasing the retention period will help ensure that licensees are required to retain documentation for a sufficient period of time that may substantiate, when applicable, that specific activities were not counted more frequently than allowed by board rules.

FISCAL NOTE ON STATE AND LOCAL GOVERNMENTS

Ralph A. Harper, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal impact to state or local governments as a result of enforcing or administering these amendments as proposed under Texas Government Code §2001.024(a)(4) because the amendments do not impose a cost on state or local governments.

LOCAL EMPLOYMENT IMPACT

Mr. Harper has determined that the proposed amendments would not impact a local economy. Therefore, a local employment impact statement is not required under Texas Government Code §2001.022 and §2001.024(a)(6).

PUBLIC BENEFIT AND COST NOTE

Mr. Harper has determined under Texas Government Code §2001.024(a)(5) that for each of the first five years the proposed amendments would be in effect, the public benefit will be the cleanup, clarification, and refinement of continuing education requirements and the enhanced alignment of continuing education activities with content that directly concerns occupational therapy and ensures the health, safety, and welfare of the public. There would not be an additional anticipated economic cost to persons required to comply with the proposed amendments.

ECONOMIC IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

Mr. Harper has determined there would be no costs or adverse economic effects on small businesses, micro-businesses, or rural communities. Therefore, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002.

TAKINGS IMPACT ASSESSMENT

Mr. Harper has determined that no private real property interests are affected by these proposed amendments and that these amendments do not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, these amendments do not constitute a taking under Texas Government Code §2007.043.

GOVERNMENT GROWTH IMPACT STATEMENT

Mr. Harper has determined under Texas Government Code §2001.0221 that during the first five years the rules would be in effect:

(1) the rules will not create or eliminate a government program;

(2) the rules will not require the creation of new employee positions or the elimination of existing employee positions;

(3) the rules will not require an increase or decrease in future legislative appropriations to the agency;

(4) the rules will not require an increase or decrease in fees paid to the agency;

(5) the rules will not create a new regulation or repeal a regulation;

(6) the rules will expand certain existing regulations and limit certain existing regulations;

(7) the rules will not increase or decrease the number of individuals subject to the rule's applicability; and

(8) the rules will neither positively nor adversely affect this state's economy.

COSTS TO REGULATED PERSONS

Mr. Harper has determined that the rules are not subject to Texas Government Code §2001.0045 as the rules do not impose a cost on regulated persons. In addition, the rules do not impose a cost on another state agency, a special district, or a local government.

ENVIRONMENTAL IMPACT STATEMENT

Mr. Harper has determined that the proposed amendments do not require an environmental impact analysis because the amendments are not major environmental rules under Texas Government Code §2001.0225.

PUBLIC COMMENT

Comments on the proposed amendments may be submitted in writing to Lea Weiss, Occupational Therapy Coordinator, Texas Board of Occupational Therapy Examiners, 1801 Congress Ave Ste 10.900, Austin, Texas 78701 or to lea@ptot.texas.gov within 30 days following the publication of this notice in the *Texas Register.* It is requested when sending a comment that individuals include the rule section to which the comment refers and that comments sent by email include 'Public Comment' in the email's subject line.

STATUTORY AUTHORITY

The amendments are proposed under Texas Occupations Code §454.102, Rules, which authorizes the Board to adopt rules to carry out its duties under Chapter 454, and proposed under Texas Occupations Code §454.254, Mandatory Continuing Education, which authorizes the Board to assess the continuing education needs of license holders, establish a minimum number of hours of continuing education required to renew a license, and develop a process to evaluate and approve continuing education courses.

CROSS REFERENCE TO STATUTE

No other statutes, articles, or codes are affected by these amendments.

§367.1. Continuing Education.

(a) The Act mandates licensee participation in a continuing education program for license renewal. Continuing education (CE) is defined as activities that meet the requirements of this chapter. The licensee is solely responsible for keeping accurate documentation of all continuing education and for selecting continuing education that meets the requirements in this chapter.

[(a) The Act mandates licensee participation in a continuing education program for license renewal. All activities taken to complete this requirement must meet the definition of continuing education as outlined in this section. The licensee is solely responsible for keeping accurate documentation of all continuing education activities and for selecting continuing education as per the requirements in this chapter.]

[(1) Definition of Continuing Education; also known as CE. Continuing Education - Professional development activities that meet the requirements in this chapter and directly concern one or more of the following:]

[(A) occupational therapy practice as defined in §362.1 of this title (relating to Definitions);]

[(B) health conditions treated by occupational therapy;]

[(C) ethical or regulatory matters in occupational therapy; or]

[(D) occupational therapy documentation or reimbursement for occupational therapy services.]

[(2) Unacceptable Activities. Unacceptable professional development activities not eligible for continuing education include but are not limited to:]

[(A) Any non-instructional time frames such as breaks, meals, introductions, and pre/post testing.]

[(B) Business meetings.]

[(C) Exhibit hall attendance.]

[(D) Courses that provide information about the work setting's philosophy, policies, or procedures or designed to educate employees about a specific work setting.]

[(E) Courses in topics concerning professionalism or customer service.]

[(F) Courses such as: social work; defensive driving; water safety; team building; GRE, GMAT, MCAT preparation; general foreign languages; disposal of hazardous waste; patient privacy; CPR; First Aid; HIPAA; and FERPA.]

(b) Required Continuing Education Hours.

(1) Unless otherwise specified in this chapter, 1 hour of continuing education is equal to 1 contact hour.

(2) All licensees must complete a minimum of 24 contact hours every two years during the period of time the license is current in order to renew the license. Licensees must provide proof of completion of contact hours at the Board's request.

(3) Training on Human Trafficking. As part of the minimum hours of required continuing education for each renewal, licensees must complete a training course on human trafficking that is approved by the Texas Health and Human Services Commission. Documentation of completion of a training course is a certificate of completion or letter of verification indicating credit awarded. Documentation must identify the licensee by name and include the date and title of the activity; the name of the authorized signer; either the signature of the authorized signer or the official seal, letterhead, or logo of the authorized signer if an area designated for a signature is not included; and the number of hours or contact hours awarded for the activity. When the documentation lists a unit of credit other than hours or contact hours, such as continuing education units (CEUs), professional development units (PDUs), or other units or credits, it must be accompanied by documentation from the continuing education provider or a copy of the Texas Health and Human Services Commission's list of approved human trafficking courses noting the equivalence of the units or credits in terms of hours or contact hours.

(A) Pre-Approved Credit and Additional Credit. The completion of one training course per renewal period to meet the training requirement is pre-approved for CE [continuing education] credit up to a maximum of 2 contact hours. Additional CE [continuing education] credit may be earned for a training course exceeding 2 hours if the additional hours meet the requirements of this chapter.

(B) Repeated Course. A specific training course completed during one renewal period to meet the training requirement may be completed again during the next renewal period to meet the training requirement for that next renewal. Up to a maximum of 2 contact

hours from the repeated course are exempt from subsection (c) of this section and may be applied toward license renewal.

(4) Licensees who submit their renewal with all required items prior to the month when their license expires may count CE completed during their license's expiration month for their next renewal period.

(c) Each continuing education activity may be counted only one time in two renewal cycles.

(d) Acceptable Activities. In order to be eligible for continuing education, activities must either be pre-approved activities or meet the requirements for other acceptable activities. [~~Activities approved or offered by the American Occupational Therapy Association or the Texas Occupational Therapy Association are pre-approved for CE credit for license renewal. The Board will review its approval process and continuation thereof for educational activities at least every five years.~~]

(1) Pre-Approved Activities.

(A) Course Approved by the Texas Health and Human Services Commission on Human Trafficking. Up to a maximum of two hours of CE credit are pre-approved for a training course on human trafficking as provided under subsection (b)(3)(A) of this section (relating to Pre-Approved Credit and Additional Credit).

(B) Activities Approved or Offered by the American Occupational Therapy Association (AOTA) or the Texas Occupational Therapy Association (TOTA).

(i) Professional development activities approved or offered by AOTA or TOTA are preapproved for CE credit for license renewal. However, a human trafficking training course approved or offered by AOTA or TOTA may not be used to satisfy the requirements of subsection (b)(3) of this section (relating to Training on Human Trafficking) unless it is also approved by the Texas Health and Human Services Commission, as described under that subsection.

(ii) Documentation shall include a certificate of completion, letter of verification, or transcript. Documentation must identify the licensee by name and include the date and title of the activity; the name of the authorized signer; either the signature of the authorized signer or the official seal, letterhead, or logo of the authorized signer if an area designated for a signature is not included; and the number of hours or contact hours awarded for the activity. Documentation for activities approved or offered by AOTA may include AOTA CEUs on the documentation instead of hours or contact hours; for such documentation, a licensee shall multiply the AOTA CEUs by ten in order to determine the equivalence in terms of contact hours. Examples: .1 AOTA CEU equals 1 contact hour and .25 AOTA CEUs equals 2.5 contact hours. When the documentation lists a unit of credit other than hours, contact hours, or AOTA CEUs, such as other continuing education units (CEUs), professional development units (PDUs), or other units or credits, it must be accompanied by documentation from the continuing education provider noting the equivalence of the units or credits in terms of hours or contact hours.

(iii) The Board will evaluate the continuation of its approval of AOTA's and TOTA's educational activities at least every five years.

(2) Other Acceptable Activities. In order to be eligible for CE, activities that are not pre-approved must meet further requirements in §367.2 of this title (relating to Other Acceptable Activities).

[~~(e) Program providers are prohibited from self-promotion of programs, products, and/or services during the presentation of the program.~~]

§367.2. Other Acceptable Activities. *[~~Categories of Education.~~]*

(a) Except for the pre-approved activities described under §367.1(d)(1) of this title (relating to Continuing Education), in order to be eligible for continuing education, activities must meet the following requirements.

(1) Acceptable Content. Activities must be professional development activities that ensure the health, safety, and welfare of the public and directly concern the maintenance or enhancement of knowledge and proficiencies relevant to occupational therapy practice or the pedagogy, education, ethics, or theory development of occupational therapy.

(2) Categories of Activities. Activities must fall under one or more of the categories described under subsection (b) of this section (relating to Categories of Other Acceptable Activities).

(3) Unacceptable Activities. Activities may not be unacceptable activities. Unacceptable professional development activities not eligible for continuing education include but are not limited to:

(A) Any non-instructional time frames such as breaks, meals, introductions, and pre/post testing.

(B) Business meetings.

(C) Exhibit hall attendance.

(D) Activities that provide information about the work setting's philosophy, policies, or procedures or educate employees about a specific work setting.

(E) Activities that concern business development, general professional behaviors/standards, or customer service.

(F) Activities that concern the self-promotion of the provider's or licensee's programs, products, or services.

(G) Activities that concern general topics such as social work; defensive driving; water safety; team building; Graduate Record Examinations (GRE)®, Graduate Management Admissions Test™ (GMAT), and Medical College Admission Test® (MCAT) preparation; general foreign languages; disposal of hazardous waste; patient privacy/rights or abuse of patients; cardiopulmonary resuscitation (CPR); First Aid; Health Insurance Portability and Accountability Act (HIPAA); and Family Educational Rights and Privacy Act (FERPA).

(b) Categories of Other Acceptable Activities. [~~Continuing education activities completed by the licensee for license renewal shall be acceptable if falling under one or more of the following categories and meeting further requirements in this chapter.~~]

(1) Formal Academic Courses from an Occupational Therapy Program [~~academic courses from an occupational therapy program~~].

(A) Completion of course work at or through an accredited college or university. No maximum. 3 contact hours for each credit hour of a course with a grade of A, B, C, or P (Pass). Examples: A 3 credit course counts for 9 contact hours and a 4 credit course counts for 12 contact hours. Documentation shall include a transcript from the accredited college or university. Documentation must include the name of the licensee, accredited college or university, and program and the titles, number of credit hours, and dates of the courses. When semesters are listed on the documentation instead of dates, it must be accompanied by documentation from the accredited college or university showing the dates of the semesters.

[~~(A) Completion of course work at or through an accredited college or university shall be counted as follows: 3 contact hours for each credit hour of a course with a grade of A, B, C, and/or~~

P (Pass). Thus a 3 credit course counts for 9 contact hours. No maximum. Documentation shall include a transcript from the accredited college or university.]

(B) Development of a course or courses at or through an accredited college or university may be counted for up to a maximum of 10 contact hours. Documentation shall include [be] a letter from the Program Director that attests to the licensee's development of the course and includes the name of the school, academic program, and course and the name and signature of the Program Director, and an attestation by the licensee of the dates and duration of the development activities completed.

(2) Courses or Training Programs. CE credit may be earned for in-service [In-service] educational programs, training programs, institutes, seminars, workshops, facility-based courses, internet-based courses, conference sessions [conferences], and home-study courses with specified learning objectives. Hour for hour credit on program content only, no maximum. Documentation shall include a certificate of completion, [or] letter of verification, transcript, or sign-in/attendance sheet. Documentation must identify the licensee by name and include the date and title of the activity; the name of the authorized signer; either the signature of the authorized signer or the official seal, letterhead, or logo of the authorized signer if an area designated for a signature is not included; and the number of hours or contact hours awarded for the activity. When the documentation lists a unit of credit other than hours or contact hours, such as continuing education units (CEUs), professional development units (PDUs), or other units or credits, it must be accompanied by documentation from the continuing education provider noting the equivalence of the units or credits in terms of hours or contact hours.

(3) Development of Publications or Software, or Grant/Research Activities [publications or software, or grant/research activities]. Documentation shall include an attestation by the licensee of the dates and duration of the development or grant/research [research/grant] activities completed. For publications/software, documentation shall also include a copy of the actual publication/software or a letter of verification documenting acceptance for publication or distribution. For grant/research proposals, documentation shall also include the title page and receipt of proposal.

(A) Scholarly [Published scholarly] Works [work] in Peer-Reviewed Journals [a peer-review journal].

(i) Primary or second author, up to a maximum of 15 contact hours.

(ii) Other author, consultant, reviewer, or editor, up to a maximum of 5 contact hours.

(B) Grant or Research Proposals Accepted for Consideration [research proposals accepted for consideration].

(i) Principal investigator or co-principal investigator, up to a maximum of 10 contact hours.

(ii) Consultant or reviewer, up to a maximum of 4 contact hours.

(C) Books [Published book].

(i) Primary author or book editor, up to a maximum of 15 contact hours.

(ii) Second or other author, up to a maximum of 7 contact hours.

(iii) Consultant or reviewer, up to a maximum of 5 contact hours.

(D) Book Chapters or Monographs [Published book chapter or monograph].

(i) Primary author, up to a maximum of 7 contact hours.

(ii) Second or other author, consultant, reviewer, or editor, up to a maximum of 2 contact hours.

(E) Author, Consultant, Reviewer, or Editor of other Practice Related Publications such as Newsletters, Blogs, and Trade Magazines. Up [consultant, reviewer, or editor of other practice related publications such as newsletters, blogs, and trade magazines, up] to a maximum of 2 contact hours.

(F) Developer of Practice Related or Instructional Software Designed to Advance the Professional Skills of Others [practice-related or instructional software designed to advance the professional skills of others] (not for proprietary use). Up [up] to a maximum of 15 contact hours.

(4) Presentations by Licensee [licensee]. Documentation shall include verification of presentation and must identify the presenter by name and include the date, title, and number of hours of the presentation; the type of presentation (e.g., 2 hour poster, 3 hour workshop); the name of the authorized signer; and either the signature of the authorized signer or the official seal, letterhead, or logo of the authorized signer if an area designated for a signature is not included. [Documentation shall include verification of presentation noting the date, title, and number of contact hours of the presentation, presenter(s), and type of presentation (i.e., 2 hour poster, 3 hour workshop).] Any presentation may be counted only once.

(A) Professional Presentations [presentation], e.g. in-services, workshops, institutes. Hour for hour credit. Up to a maximum of 10 contact hours.

(B) Community/Service Organization Presentations [organization presentation]. Hour for hour credit. Up to a maximum of 10 contact hours.

(C) The [A licensee may count the] development of [a] professional presentations and [presentation or a] community/service organization presentations [presentation] may be counted toward the maximum credit available for the presentation type. Documentation shall include an attestation by the licensee of the development activities completed, including the date and duration of each. The development of any presentation may be counted only once.

(5) Supervision of Students completing an Accredited Educational Program or Re-Entry Course. Up to a maximum of 10 contact hours may be earned for student supervision per renewal period.

(A) Fieldwork Level 1 and 2 Supervision.

(i) Supervision of Level 1 Fieldwork Students. Up to a maximum of .025 contact hours may be earned for each hour of supervision provided to a student. Examples: A licensee may earn up to a maximum of 1 contact hour for 40 hours or 2 contact hours for 80 hours of supervision provided to a student.

(ii) Supervision of Level 2 Fieldwork Students.

(I) Up to a maximum of .75 contact hours may be earned for each week of supervision provided to a student. Examples: A licensee may earn up to a maximum of 6 contact hours for 8 weeks or 9 contact hours for 12 weeks of supervision provided to a student.

(II) Licensees may divide credit for a fieldwork rotation with another supervisor based on the supervision provided by each.

(iii) Documentation shall include verification provided by the school and must identify the licensee by name and include the name of the student and school; level of fieldwork; dates of fieldwork, in addition to total hours for Level 1 students; the name of the authorized signer; and either the signature of the authorized signer or the official seal, letterhead, or logo of the authorized signer if an area designated for a signature is not included. Documentation for a licensee who divides a fieldwork rotation shall also include an attestation by the licensee of the dates of supervision.

(B) Student Project Supervision.

(i) Up to a maximum of .025 contact hours may be earned each hour of supervision provided to a student completing a supervised project for the accredited educational program. Examples: A licensee may earn up to a maximum of 1 contact hour for 40 hours or 2 contact hours for 80 hours of supervision provided to a student.

(ii) Documentation shall include the following:

(I) verification provided by the school. The documentation must identify the licensee by name and include the name of the student, school, and academic program; dates of the semester for which the project was completed; the name of the authorized signer; and either the signature of the authorized signer or the official seal, letterhead, or logo of the authorized signer if an area designated for a signature is not included; and

(II) an attestation signed by the licensee and the student or school attesting to the dates and hours of supervision and the activities completed.

(C) Supervision of Students completing Fieldwork for a Re-Entry Course through an Accredited College or University.

(i) Up to a maximum of .75 contact hours may be earned for each week of supervision provided to a student. Examples: A licensee may earn up to a maximum of 3 contact hours for 4 weeks or 6 contact hours for 8 weeks of supervision provided to a student.

(ii) Licensees may divide credit for a fieldwork rotation with another supervisor based on the supervision provided by each.

(iii) Documentation shall include verification provided by the school and must identify the licensee by name and include the name of the student, school, and re-entry program; the dates and total hours of the fieldwork; the name of the authorized signer; and either the signature of the authorized signer or the official seal, letterhead, or logo of the authorized signer if an area designated for a signature is not included. Documentation for a licensee who divides a fieldwork rotation shall also include an attestation by the licensee of the dates of supervision.

~~[(5) Supervision of students completing an accredited educational program or re-entry course.]~~

~~[(A) A licensee may earn up to a maximum of 10 contact hours for student supervision per renewal period.]~~

~~[(B) Fieldwork Supervision.]~~

~~*[(i)* Fieldwork Level 1: A licensee may earn .025 contact hours for each hour of supervision provided to a student.]~~

~~*[(ii)* Fieldwork Level 2:]~~

~~*[(I)* A licensee may earn 6 contact hours for 8 weeks of supervision provided to a student.]~~

~~*[(II)* A licensee may earn 9 contact hours for 12 weeks of supervision provided to a student.]~~

~~*[(III)* Licensees may divide fieldwork supervision hours based on the supervision provided.]~~

~~*[(iii)* Documentation shall include verification provided by the school to the fieldwork educator(s) with the name of the student, level of fieldwork, school, and dates or hours of fieldwork or the signature page of the completed evaluation form. Evaluation scores and comments should be deleted or blocked out.]~~

~~[(C) Student Project Supervision.]~~

~~*[(i)* A licensee may earn .025 contact hours for each hour of supervision provided to a student completing a supervised project for the accredited educational program.]~~

~~*[(ii)* Documentation shall include the following:]~~

~~*[(I)* verification provided by the school to the supervisor with the name of the student, school and academic program, and dates of the semester for which the project was completed; and]~~

~~*[(II)* an attestation signed by the licensee and the student or school attesting to the dates and hours of supervision and the activities completed.]~~

~~[(D) Supervision of a Re-Entry Student.]~~

~~*[(i)* A licensee may earn CE for the supervision of a student completing a re-entry course through an accredited college or university.]~~

~~*[(ii)* A licensee may earn 3 contact hours for 4 weeks of supervision.]~~

~~*[(iii)* A licensee may earn 6 contact hours for 8 weeks of supervision.]~~

~~*[(iv)* Licensees may divide fieldwork supervision hours based on the supervision provided.]~~

~~*[(v)* Documentation shall include verification provided by the school to the supervisor(s) with the name of the student, school and re-entry program, and dates of the supervision rotation or the signature page of the completed evaluation form. Evaluation scores and comments should be deleted or blocked out.]~~

(6) Mentorship.

(A) Participation as a mentor or mentee for the purpose of the development of occupational therapy skills by a mentee under the guidance of a mentor skilled in a particular occupational therapy area. Both the mentor and mentee must hold a regular OT or OTA license in a state or territory of the U.S.

(B) Documentation shall include a signed mentorship agreement between a mentor and mentee that outlines specific goals and objectives and designates the plan of activities that are to be met by the mentee; the names of both mentor and mentee and their license numbers and issuing states; an activity log that corresponds to the mentorship agreement and lists dates and hours spent on each objective-based activity; a final evaluation of the outcomes of the mentorship agreement completed by the mentor; and a final evaluation of the outcomes of the mentorship agreement completed by the mentee.

(C) Participation as a Mentee. 1 [~~: A licensee may earn one~~] contact hour may be earned for each 3 hours spent on [~~in~~] activities as a mentee directly related to the achievement of goals and objectives up to a maximum of 15 contact hours.

(D) Participation as Mentor. 1 [~~: A licensee may earn one~~] contact hour may be earned for each 5 hours spent on [~~in~~] activities as a mentor up to a maximum of 10 contact hours.

(7) Volunteer Activities for Published Outcomes. CE credit may be earned for participation [~~Participation~~] in volunteer activities related to occupational therapy, including service on a committee, board, or commission of a state occupational therapy association, AOTA, or NBCOT, for the purpose of tangible, published outcomes, not for proprietary use, such as official documents, publications, and official reports. Up to a maximum of 10 contact hours. Documentation shall include an attestation by the licensee of the activities, including the date and duration of each, in addition to a copy of the actual publication or official document/report that reflects the licensee's name or verification from the entity attesting to the individual's contribution. A verification must include the name of the authorized signer and either the signature of the authorized signer or the official seal, letterhead, or logo of the authorized signer if an area designated for a signature is not included. [~~Up to a maximum of 10 contact hours.~~]

(8) NBCOT Navigator® Activities. [~~Licensees may earn~~] CE credit may be earned for the completion of NBCOT Navigator activities. For such activities, 1 NBCOT CAU is the equivalent of 1 contact hour. No maximum. Documentation is a certificate of completion or letter of verification. Documentation must identify the licensee by name and include the date and title of the activity; the name of the authorized signer; either the signature of the authorized signer or the official seal, letterhead, or logo of the authorized signer if an area designated for a signature is not included; and the number of hours, contact hours, or CAUs awarded for the activity. When the documentation lists a unit of credit other than hours, contact hours, or CAUs, such as continuing education units (CEUs), professional development units (PDUs), or other units or credits, it must be accompanied by documentation from NBCOT noting the equivalence of the units or credits in terms of hours or contact hours. Self-reflections and self-assessments, reading list and research portal activities, professional development plans, or similar activities are not eligible for CE credit.

[~~(9) AOTA Benchmark. Licensees may earn CE for the completion of the AOTA Benchmark. Documentation is a certificate of completion or letter of verification indicating credit awarded. No maximum.~~]

(9) [~~(10)~~] Independent Studies [~~Study~~]. Up [~~Licensees may earn up~~] to a maximum of 10 contact hours may be earned for the completion of independent studies [~~the independent study~~] of published materials. Hour for hour credit on the completion of objective-based activities comprised of the listening to or the reading or viewing of materials. Documentation shall include a study plan outlining the specific goals and objectives of the study and an activity log corresponding to such with the dates and hours spent on each objective-based activity; the titles, publication dates, and media types (ex: journal article, book, video) of the materials; a synopsis of the materials and their implications for occupational therapy; and a final evaluation of the outcomes of the study.

(10) [~~(11)~~] Any deviation from the continuing education categories will be reviewed on a case by case basis by the Coordinator of Occupational Therapy or by the Continuing Education Committee. A request for special consideration must be submitted in writing a minimum of 60, though no more than 270, days prior to expiration of the license.

§367.3. Continuing Education Audit.

(a) The Board shall select for audit a random sample of licensees. The audit will cover a period for which the licensee has already completed the continuing education requirement.

(b) Licensees randomly selected for the audit must provide to the Board [~~TBOTE~~] appropriate documentation within 30 days of notification.

(c) The licensee is solely responsible for keeping accurate documentation of all continuing education requirements. Continuing education documentation must be maintained for auditing purposes for four years from the end of expiration month of the corresponding renewal period [~~two years from the date of the last renewal for auditing purposes~~] or for a late renewal or a restoration, for four years from the end of the month when the late renewal or restoration was completed.

[~~(d) Continuing education documentation includes, but is not limited to: transcripts, AOTA self-study completion certificates, copies of official sign-in or attendance sheets, course certificates of attendance, certificates of completion, and letters of verification.~~]

[~~(e) Documentation must identify the licensee by name, and must include the date and title of the course; the name of the authorized signer and either the signature of the authorized signer or the official seal, letterhead, or logo of the authorized signer if an area designated for a signature is not included; and the number of hours or contact hours awarded for the course. When continuing education units (CEUs), professional development units (PDUs), or other units or credits are listed on the documentation, such must be accompanied by documentation from the continuing education provider noting the equivalence of the units or credits in terms of hours or contact hours.~~]

(d) [~~(f)~~] Knowingly providing false information or failure to respond during the audit process or the renewal process is grounds for disciplinary action.

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 Board of Occupational Therapy Examiners
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For further information, please call: (512) 305-6900

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TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 219. OVERSIZE AND OVERWEIGHT VEHICLES AND LOADS

INTRODUCTION. The Texas Department of Motor Vehicles (department) proposes amendments to 43 Texas Administrative Code (TAC) Chapter 219, Oversize and Overweight Vehicles and Loads, Subchapter A, General Provisions, §219.1 and §219.2; Subchapter B, General Permits, §§219.11 - 219.15; Subchapter C, Permits for Over Axle and Over Gross Weight Tolerances, §§219.30 - 219.32 and §§219.34 - 219.36; Subchapter D, Permits for Oversize and Overweight Oil Well Related Vehicles, §§219.41 - 219.45; Subchapter E, Permits for Oversize and Overweight Unladen Lift Equipment Motor Vehi-

cles, §§219.60 - 219.64; Subchapter F, Compliance, §219.81; and Subchapter G, Records and Inspections, §219.102. The department also proposes new Subchapter A, §§219.5, 219.7 and 219.9. In addition, the department proposes the repeal of §§219.84, 219.86, and 219.123.

The department proposes amendments to document the department's processes and requirements in rule, to update the language to remove unnecessary or obsolete requirements, to delete language that is contained in statute, to delete repetitive language, to clarify the language, to update the language to be consistent with statutory changes and guidance from the Federal Highway Administration (FHWA), and to begin to organize the general provisions in Subchapter A of Chapter 219. The department also proposes to delete language for which the department does not have rulemaking authority. In addition, the department proposes amendments that would renumber, re-letter, or remove subdivisions within the rules due to the deletion of one or more subdivisions within the rules.

EXPLANATION.

The department is conducting a review of its rules under Chapter 219 in compliance with Government Code, §2001.039. Notice of the department's plan to review is also published in this issue of the *Texas Register.* As a part of the review, the department is proposing necessary amendments and repeals, as detailed in the following paragraphs.

Proposed amendments to §219.1 would clarify that Chapter 219 includes permits that authorize travel on certain public roadways in addition to the state highway system. For example, Transportation Code, §623.402 provides for the issuance of an overweight permit that authorizes the permittee to travel on certain county roads, municipal streets, and the state highway system to the extent the Texas Department of Transportation (TxDOT) approves such roads, streets, and state highways under Transportation Code, §623.405. A proposed amendment to §219.1 would also clarify that Chapter 219 includes the policies and procedures for filing surety bonds, including surety bonds that are required before an operator of certain vehicles that exceed certain axle weight limits is allowed to travel on municipal streets, county roads, or the state highway system. A proposed amendment to §219.1 would also correct an error by changing the word "insure" to "ensure."

Proposed amendments to §219.2 would add a definition for the word "day" to define it as a calendar day for clarity; change the word "daylight" to "daytime" and modify the definition by referring to the definition in Transportation Code, §541.401 and deleting the current definition, which was derived from §541.401; modify the definition for "hubometer" to replace the word "crane" with the term "unladen lift equipment motor vehicle" because that is the term used in Transportation Code, Chapter 623, Subchapter J; add the word "label" to "HUD number" so the term is consistent with the term used in §219.14 and Transportation Code, §623.093; amend the definition of "nighttime" to remove the portion of the definition contained in Transportation Code, §541.401 because the definition of "nighttime" refers to the definition in §541.401; amend the definition of "nondivisible load or vehicle" to be consistent with FHWA's interpretation of the term by adding language regarding properly secured components and adding the example from §219.61(g) for a crane traveling with properly secured components and adding an example of a dozer traveling with the blade detached; amend the definition for "nondivisible load or vehicle" by adding a missing period at the end of the language regarding spent nuclear materials and re-lettering the subdivisions accordingly; amend the definition for "permit plate" to reference the definition for "oil well servicing, cleanout, or drilling machinery" as defined in Transportation Code, §502.001(29); add a hyphen between the words "trailer" and "mounted" because these words are compound modifiers for the term "trailer-mounted unit"; and add examples to the definition of "unladen lift equipment motor vehicle."

Proposed amendments to §219.2 would also modify the definition for surety bond because the current definition for surety bond only references the payment to TxDOT for damage to a highway and is therefore in conflict with Transportation Code, §622.134, which also requires payment to a county for damage to a county road and to a municipality for damage to a municipal street caused by the operation of the vehicle, and Transportation Code, §623.163, which also requires payment to a municipality for damage to a municipal street caused by the operation of the vehicle. In addition, a proposed amendment to the definition of surety bond in §219.2 would remove language that says the surety bond expires at the end of the state fiscal year because current §219.3(b) and §219.11(n) already include this language.

In addition, proposed amendments to §219.2 would delete the following defined terms because the department proposes amendments that would remove the defined terms from where they are currently used in Chapter 219: board, one-trip registration, temporary vehicle registration, 72-hour temporary vehicle registration, and 144-hour temporary vehicle registration.

Further, proposed amendments to §219.2 would delete the following terms, which do not appear in Chapter 219: credit card, district, district engineer, machinery plate, motor carrier registration (MCR), traffic control device, trunnion axle group, and variable load suspension axles. Lastly, proposed amendments to §219.2 would delete the following terms, which are defined in Transportation Code, Chapter 621, 622, or 623: department and director. Section 219.2 says that the definitions contained in Transportation Code, Chapter 621, 622, and 623 apply to Chapter 219. The proposed amendments would renumber the paragraphs within §219.2 to accommodate the proposed deletions and additions to the rule.

Proposed new §219.5 would describe the department's current general application requirements to obtain an oversize or overweight permit, including the requirements to provide the required information, submit the required documents, pay the required fees, and submit the application in the form and by the method prescribed by the department on its website. The department's website lists the methods by which an applicant can apply for each type of permit. For example, the department's webpage for 30/60/90-day permits under Transportation Code, Chapter 623, Subchapter D says the applicant can apply via the Texas Permitting and Routing Optimization System (TxPROS) or submit the Time Permit Application (Form MCD-302) by mail to the address listed on the application form. TxPROS is the department's designated permitting system.

Proposed new §219.5 would also refer to the application requirements under Chapter 219; Transportation Code, Chapters 621, 622, and 623; and other applicable law. For example, to qualify for certain permits, Transportation Code, §§623.011(b)(1), 623.079, and 623.194 require the vehicle to be registered under Transportation Code, Chapter 502 for the maximum gross weight applicable to the vehicle under Transportation Code, §621.101, not to exceed 80,000 pounds. Proposed new §219.5 would also describe the process for an applicant to obtain a customer identification number by setting up an account in

TxPROS, as well as the process to authorize the department to obtain a customer identification number for the applicant via TxPROS.

Proposed new §219.7 would expressly authorize certain amendments to permits to be consistent with current practice. Proposed new §219.7(a) provides general amendment guidelines, which would be subject to the specific provisions in proposed new §219.7(b). The proposed new rule would allow amendments necessary to correct errors made by department staff or the department's permitting system, and as necessary to keep the contact information up to date. Proposed new §219.7 would expressly authorize certain amendments to permits even though other sections in Chapter 219 limit the types of amendments that are allowed to certain types of permits.

Proposed new §219.9 would clarify that the provisions in Chapter 219 do not authorize the operation of a vehicle or vehicle combination on the following roadways in this state to the extent FHWA determines the vehicle or vehicle combination exceeds the applicable weight or size for such roadway under 23 U.S.C. §127, 49 U.S.C. §§31111 through 31114, or federal regulations prescribed under 23 U.S.C. §127 or 49 U.S.C. §§31111 through 31114: the federal-aid primary system, the federal-aid urban system, and the federal-aid secondary system, including the national system of interstate and defense highways. Although these federal laws and regulations don't directly apply to the vehicle operator, Texas complies with such federal laws and regulations through Texas laws and rules regarding maximum vehicle size and weight for the following reasons under the following authority: 1) 23 U.S.C. §127, 23 U.S.C. §141, 49 U.S.C. §31112, and the regulations prescribed under 23 U.S.C. §127, 23 U.S.C. §141, and 49 U.S.C. §31112, which enables Texas to avoid the risk of losing a portion of federal highway funding; and 2) 49 U.S.C. §§31111 through 31114, which enables Texas to avoid a civil action by the U.S. Attorney General for injunctive relief under 49 U.S.C. §31115.

Proposed new §219.9 would also require the department to post a notice on its website and to possibly send notice to permittees through the applicable email addresses on file with the department to the extent the department learns that FHWA generally determines a vehicle or vehicle combination exceeds the applicable weight or size for such roadway under 23 U.S.C. §127, 49 U.S.C. §§31111 through 31114, or federal regulations prescribed under 23 U.S.C. §127 or 49 U.S.C. §§31111 through 31114 in a way that may conflict with a provision in this chapter. This provision is not based on FHWA finding that a specific permittee has exceeded the applicable weight or size; it is based on FHWA's general interpretation of federal law. For example, a proposed amendment to the definition of "nondivisible load or a vehicle" in §219.2 would make the definition consistent with FHWA's current interpretation of this term. If a vehicle already exceeds legal weight without including the weight of the properly secured components, FHWA said the vehicle is considered to be nondivisible even if properly secured components are being transported with the vehicle. To the extent the department learns that FHWA changed its interpretation of the definition of a "nondivisible load or vehicle" under 23 C.F.R. §658.5 in a way that conflicts with the proposed amended definition in §219.2, the department will post a notice on its website regarding FHWA's interpretation and may provide notice to permittees through the applicable email addresses on file with the department.

A proposed amendment to §219.11(b) would remove the vehicle registration requirements because the applicable vehicle registration requirements under Transportation Code, §623.079 do not apply to the permits under the following sections in Subchapter B of Chapter 219: §219.13(e)(5) through (7), §219.14, and §219.15. Also, it is not necessary to repeat the statutory requirements in rule. A proposed amendment to §219.11(b) would also remove the word "commercial" from the term "commercial motor carrier" to be consistent with the terminology in Transportation Code, Chapter 643 and Chapter 218 of this title (relating to Motor Carriers).

A proposed amendment to §219.11(d)(1), (d)(1)(D), and (d)(1)(E) would change the term "non-TxDOT engineer" to "non-TxDOT licensed professional engineer" to be consistent with existing terminology in §219.11(d), which refers to a "TxDOT approved licensed professional engineer."

A proposed amendment to §219.11(d)(1)(F) and (d)(3)(H) would restructure the sentence to clarify that the maximum permit weight on the axle groups would be reduced by 2.5 percent for each foot less than 12 feet. Proposed amendments to §219.11(d)(2) and (3) would add hyphens to the compound modifiers regarding the axle groups and make the terms consistent with the terms in the text in §219.2. A proposed amendment to §219.11(e)(2)(A)(i) would change the word "weak" to "reduced capacity" to describe certain bridges more accurately. A proposed amendment to §219.11(f) would delete paragraph (1) because the language regarding the payment of fees would be added to proposed new §219.5 in Subchapter A, which applies to all permit applications under Chapter 219. A proposed amendment to §219.11(f) would also remove the paragraph number and catch line for paragraph (2) because there would only be one paragraph in subsection (f) due to the proposed deletion of paragraph (1). A proposed amendment to the following sections would remove the cross-reference to §219.11(f) regarding the payment of fees due to the proposed deletion of this language from §219.11(f), and renumber or re-letter accordingly as necessary: §§219.13, 219.14, 219.15, 219.30, 219.31, 219.32, 219.34, 219.35, 219.36, 219.41, 219.45, and 219.61.

A proposed amendment to §219.11(k)(7) would delete subparagraph (E) because it conflicts with Transportation Code, §547.382.

Proposed amendments to §219.11(l)(1) would change the word "daylight" to "daytime" and would change the term "daylight hours" to "the daytime" because a proposed amendment to §219.2 would change the word "daylight" to "daytime." For this reason, the department also proposes similar amendments to the following sections: §§219.12, 219.13, 219.15, 219.41, and 219.61. A proposed amendment to §219.13 would also delete reference to Transportation Code, §541.401 for the definition of "daytime" because a proposed amendment to §219.2 would define "daytime" by referencing the definition in Transportation Code, §541.401. Proposed amendments to §219.11(l)(1) would change the word "night" to "nighttime" to provide clarity because "nighttime" is defined in §219.2. For this reason, the department also proposes amendments to the following sections to change the word "night" to "nighttime": §§219.13, 219.34, 219.35, 219.36, and 219.44.

A proposed amendment to §219.11(l)(2) would clarify the department's authority regarding the maximum size limits for a permit issued under Transportation Code, Chapter 623, Subchapter D for holiday movement. The Texas Transportation Commission, rather than the department, has rulemaking authority under Transportation Code, §621.006 to impose restrictions on the weight and size of vehicles to be operated on state highways

on certain holidays. A proposed amendment to §219.11(l)(2) would clarify that the department applies restrictions imposed by TxDOT. A proposed amendment to §219.11(l)(3) would clarify that the curfew movement restrictions of a city or county do not apply unless the department publishes the curfew movement restrictions. The department only publishes the curfew movement restrictions if TxDOT approves the restrictions. Currently, the department publishes the curfew movement restrictions on the department's website. A proposed amendment to §219.11(l)(3) would also delete language regarding the curfew restrictions listed on the permit to make the language consistent throughout Chapter 219 regarding published curfew restrictions.

A proposed amendment to §219.11(m)(1) would delete subparagraph (B) because the department does not have statutory authority for the language in subparagraph (B). Also, a proposed amendment to §219.11(m)(1) would delete a reference in subparagraph (A) to subparagraph (B) and re-letter subparagraph (C) due to the deletion of subparagraph (B). In addition, a proposed amendment to re-lettered §219.11(m)(1)(B) would clarify that the restrictions in §219.11(m)(1)(A) and the definition of a "nondivisible load or vehicle" in §219.2 apply to a permit to haul a dozer and its detached blade. Further, a proposed amendment to re-lettered §219.11(m)(1)(B) would replace the word "non-dismantable" with "nondivisible" because "nondivisible load" is a defined term in §219.2, but "non-dismantable" is not defined in Chapter 219.

A proposed amendment to §219.12(b)(3)(C) would clarify that TxDOT, rather than the department, incurs a cost for analyses performed prior to issuing a superheavy permit under §219.12. A proposed amendment to §219.12(b)(6) would delete reference to an intermodal container because Transportation Code, §623.070 says that Subchapter D of Transportation Code, Chapter 623 does not apply to the transportation of an intermodal shipping container.

Proposed amendments to §219.12(b)(7) through (b)(9) would combine the paragraphs into revised §219.12(b)(7) because the current and revised text cover a specific type of single-trip permit called a superheavy permit. Revised §219.12(b)(7) would include the requirements in existing §219.12(b)(7) through (b)(9) for the department to provide the applicant with a tentative route based on the physical size of the overdimension load excluding weight, as well as the requirement for the applicant to investigate the tentative route and acknowledge in writing to the department that the route is capable of accommodating the overdimension load. The revised §219.12(b)(7) would also describe the current process, including the requirement for the department to consult with TxDOT and the applicant as necessary to attempt to determine a tentative route that the applicant can acknowledge is capable of accommodating the overdimension load; the department's obligation to provide the tentative route to the applicant's TxDOT-certified, licensed professional engineering firm once the applicant acknowledges to the department that the tentative route is capable of accommodating the overdimension load; and the requirement under Chapter 28, Subchapter G of this title (relating to Oversize and Overweight Vehicles and Loads) for the applicant's TxDOT-certified, licensed professional engineering firm to provide TxDOT with a report that TxDOT uses to approve the department's tentative route for the movement of a superheavy load under Transportation Code, §623.071 as required by Transportation Code, §623.003. TxDOT relies on outside engineering firms to provide the initial review and analysis for the superheavy permit application prior to providing the department with approval for the tentative route, which the department provides to the applicant for superheavy loads.

The applicant for a superheavy permit must provide the TxDOT-certified, licensed professional engineering firm with the information and documents the engineering firm needs to provide TxDOT with a written report under §28.86 of this title (relating to Bridge Report). Revised §219.12(b)(7) would delete text found in current §219.12(b)(7)(A) through (B) because the information and documents that the TxDOT-certified, licensed professional engineering firm needs to create a written report could vary, depending on the load and the processes of each firm. Before TxDOT will provide the department with approval for the department's tentative route for the superheavy load, TxDOT must receive from the applicant's TxDOT-certified, licensed professional engineering firm a written report that includes a detailed structural analysis of the bridges on the proposed route demonstrating that the bridges and culverts on the route are capable of sustaining the load. The department will not issue a superheavy permit unless TxDOT provides the department with approval for the tentative route proposed by the department and acknowledged by the applicant as capable of accommodating the overdimension load.

Revised §219.12(b)(7) would also clarify that the term "total weight" in existing rule text for the overdimension load that is between 200,001 and 254,300 pounds is a reference to gross weight, which is defined in §219.2. In addition, revised §219.12(b)(7) would delete text found in current §219.12(b)(7)(C) through (D) because the department no longer needs the referenced form and because the vehicle supervision fee is already addressed in §219.12(b)(3). Further, revised §219.12(b)(7) would modify the existing text in §219.12(b)(7)(E) to require the applicant to provide the department with the TxDOT-certified licensed, professional engineering firm's email address, instead of the firm's phone number and fax number.

Proposed amendments to §219.12(d) would delete references to storage tanks, including the entire subparagraph (3), to be consistent with the department's current practice. A proposed amendment to §219.12(d) would also delete paragraph (1) because there are no statutory limits on the size of a house under a permit to move a house. In addition, proposed amendments to §219.12(d) would add hyphens between the words "two" and "axle" because these words are compound modifiers for the word "group." Further, proposed amendments to §219.12(d) and (e) would delete the requirement for a permit applicant to provide a loading diagram to the department because the applicant must enter weight information into the department's designated permitting system, rather than providing the loading diagram. A proposed amendment to §219.12(d) would require the applicant to provide the department with the requested information regarding weights. Due to proposed deletions of subdivisions within §219.12(d), the remaining subdivisions would be renumbered accordingly. With the proposed deletion of §219.12(e), subsection (f) would be re-lettered accordingly.

A proposed amendment to §219.13(a) would add a citation to Transportation Code, Chapter 622 because permits for transporting poles required for the maintenance of electric power transmission and distribution lines (power line poles) are authorized under Transportation Code, Chapter 622, Subchapter E. Section 219.13(e)(6) provides the requirements regarding a permit for power line poles.

A proposed amendment to §219.13(b)(1) would delete the permit fee amounts because the fees are listed in Transportation

Code, §623.076. A proposed amendment to §219.13(b)(4) would delete the language that says time permits will not be issued to a vehicle or vehicle combination that is registered with temporary vehicle registration. Transportation Code, §623.079 says a permit issued under Subchapter D of Chapter 623 of the Transportation Code may only be issued if the vehicle is registered under Transportation Code, Chapter 502 for the maximum gross weight applicable to the vehicle under Transportation Code, §621.101 that is not heavier than 80,000 pounds overall gross weight. The vehicle registration requirements under Transportation Code, §623.079 do not apply to the permits under §219.13(e)(5) through (7). Also, for permits under §219.13 for which vehicle registration is required, temporary vehicle registration under Transportation Code, Chapter 502 qualifies as vehicle registration under Transportation Code, §623.079. With the proposed deletion of §219.13(b)(1) and (4), the subsequent subsections of §219.13(b) are proposed to be renumbered accordingly.

Proposed amendments to §219.13(e)(4) would delete references to an intermodal container because Transportation Code, §623.070 says that Subchapter D of Transportation Code, Chapter 623 does not apply to the transportation of an intermodal shipping container. A proposed amendment to §219.13(e)(4) would also correct an error by replacing the word "principle" with "principal."

A proposed amendment to §219.13(e)(5) would delete reference to §219.13(e)(1)(E) because a proposed amendment to §219.13(e)(1) would delete subparagraph (A) and re-letter the subsequent subparagraphs. A proposed amendment to §219.13(e)(5) would also delete reference to §219.13(e)(1)(G) because paragraph (1) does not contain a subparagraph (G). In addition, a proposed amendment to §219.13(e)(5) would delete subparagraph (E) because Transportation Code, Chapter 623 does not require the vehicle to be registered under Transportation Code, Chapter 502. Also, to the extent the permitted vehicle under §219.13(e)(5) falls within the definition of "manufactured housing" under Occupations Code, §1201.003, the vehicle is not subject to vehicle registration under Transportation Code, Chapter 502 according to Transportation Code, §502.142. Further, a proposed amendment to §219.13(e)(5) would delete subparagraph (G) because the escort requirements are contained in statute. Lastly, proposed amendments to §219.13(e)(5) would re-letter subsequent subdivisions within the rule text due to deletions.

A proposed amendment to §219.13(e)(6) would delete subparagraph (F) because Transportation Code, Chapter 623 does not require the vehicle to be registered under Transportation Code, Chapter 502. A proposed amendment to §219.13(e)(6) would re-letter subsequent subdivisions within the rule text due to the deletion of subparagraph (F).

A proposed amendment to §219.13(e)(7) would delete subparagraph (F) because Transportation Code, Chapter 623 does not require the vehicle to be registered under Transportation Code, Chapter 502.

A proposed amendment to §219.13(e)(8) would remove reference to the fee under subsection (b) of §219.13 because a proposed amendment would delete the fee language in subsection (b).

A proposed amendment to §219.14(d) would delete the permit fee amount because the fee is listed in Transportation Code, §623.096. A proposed amendment to §219.14(e)(9) would add the title for §219.11 for clarity. A proposed amendment to §219.14(e)(5) would delete the paragraph because the language duplicates language found in Transportation Code, §623.100, and does not list all national holidays. A proposed amendment to §219.14(e)(7) would delete the clause "listed in this subsection" because a proposed amendment to §219.14(e)(5) would delete the paragraph in which some of the national holidays are listed. A proposed amendment to §219.14(e)(10) would delete the paragraph because Transportation Code, §623.099 requires TxDOT, rather than the department, to annually publish a map or list of all bridges or overpasses which, due to height or width, require an escort flag vehicle to stop oncoming traffic while the manufactured home crosses the bridge or overpass. Proposed amendments to §219.14(f) would delete language that is contained in statute. Proposed amendments to §219.14 would re-letter and renumber the subdivisions within the section due to proposed deletions.

A proposed amendment to §219.15(a)(2) would delete reference to the fee required by subsection (d) and replace the language with a reference to the fee required by statute because a proposed amendment to subsection (d) would remove fee language that duplicates language found in statute. A proposed amendment to §219.15(c) would delete reference to §219.11(b)(2) because the vehicle registration requirements under Transportation Code, §623.079 do not apply to a permit under §219.15 and the department proposes to delete the vehicle registration requirements under §219.11(b). Proposed amendments to §219.15(f) would delete language that is contained in statute.

A proposed amendment to §219.30(a) would remove an unnecessary sentence, which incorrectly references the requirements in Subchapter C of Chapter 219. A proposed amendment to §219.30(b) would replace the word "subchapter" with "section" because §219.30 is the only section in Subchapter C of Chapter 219 that provides for the issuance of a permit under Transportation Code, §623.011. A proposed amendment to §219.30(d)(3) would remove reference to the vehicle's inspection sticker because vehicle inspection stickers are no longer issued in Texas. The vehicle inspection requirements in Texas are enforced through vehicle registration under Transportation Code, §502.047 and §548.256. A proposed amendment to §219.30(d)(5) would delete language that is inconsistent with Transportation Code, §623.013, which was amended by Senate Bill 1814, 87th Legislature, Regular Session (2021). A proposed amendment to §219.30 would delete subsection (g) because most of the language is contained in Transportation Code, §621.508, which provides an affirmative defense to prosecution of, or an action under Transportation Code, Chapter 623, Subchapter F for the offense of operating a vehicle with a single axle weight or tandem axle weight heavier than the axle weight authorized by law. The proposed amendments would re-letter the remaining subsection to accommodate the removal of §219.30(g).

A proposed amendment to §219.32(k) would delete language that is contained in Transportation Code, §623.0171 because it is not necessary to repeat statutory language in rule. A proposed amendment to §219.32(k) would also restructure the language due to the deletion of the paragraph numbers.

A proposed amendment to §219.35(a) would update the citation to the subchapter under which the fluid milk permit is located in Transportation Code, Chapter 623. The legislature redesignated

the statutes for the fluid milk permit from Subchapter U to Subchapter V.

A proposed amendment to §219.36(a) would delete reference to the bill under which Transportation Code, §623.401, *et seq.* became law because Transportation Code, Chapter 623 currently only contains one Subchapter U. The legislature redesignated the statutes for the fluid milk permit from Subchapter U to Subchapter V.

Proposed amendments to §219.42(d) would add a hyphen between the words "trailer" and "mounted" because these words are compound modifiers for the term "trailer-mounted unit." A proposed amendment to §219.42(d)(3) would also remove outdated language regarding the calculation of the fee for a single-trip permit for the movement of a trailer-mounted oil well servicing unit. Axles are no longer temporarily disregarded for the purposes of calculating fees for this single-trip permit. In addition, a proposed amendment to §219.42(d)(3) would remove the subparagraph letter for current subparagraph (A) because there would only be one subparagraph if subparagraph (B) is deleted.

Proposed amendments to §219.43(e) would add a hyphen between the words "trailer" and "mounted" because these words are compound modifiers for the term "trailer-mounted unit." A proposed amendment to §219.43(e)(4) would also remove outdated language regarding the calculation of the fee for a quarterly hubometer permit for the movement of an oil well servicing unit. Axles are no longer temporarily disregarded for the purposes of calculating the fees for this quarterly hubometer permit.

A proposed amendment to §219.44(a)(1) would delete subparagraph (A) because Transportation Code, §502.146(b)(3) requires the applicant for a permit plate for oil well servicing or drilling machinery to submit proof that the applicant has a permit under Transportation Code, §623.142 before they can obtain a permit plate under Transportation Code, §502.146(b)(3). A proposed amendment to §219.44(a)(1) would also remove the subparagraph letter for current subparagraph (B) because there would only be one subparagraph if subparagraph (A) is deleted.

A proposed amendment to §219.45(a) would replace the word "fracing" with "fracking," which is defined as "the injection of fluid into shale beds at high pressure in order to free up petroleum resources (such as oil or natural gas)." *See Fracking,* Merriam-Webster Online Dictionary (www.merriam-webster.com/dictionary/fracking) (last visited January 18, 2024). A proposed amendment to §219.45(c) would delete paragraph (2) because the vehicle registration requirements are specified in statute and are not required as part of the application process for a permit for a vehicle transporting liquid products related to oil well production. A proposed amendment to §219.45(c) would renumber the remaining paragraphs due to the deletion of paragraph (2). A proposed amendment to §219.45(c)(4)(C) would insert the word "plate" before the word "number" to clarify that the permittee must provide the department with the "license plate number" for the new trailer.

A proposed amendment to §219.60 would replace the word "cranes" with "unladen lift equipment motor vehicles" to be consistent with the terminology in Transportation Code, Chapter 623, Subchapters I and J. The department also proposes amendments to the following sections to replace terminology regarding a crane with terminology regarding an unladen lift equipment motor vehicle to be consistent with the terminology in Transportation Code, Chapter 623, Subchapter I and/or Subchapter J: §§219.61, 219.62, 219.63, and 219.64.

A proposed amendment to §219.61(a) would delete paragraph (4) regarding a trailer-mounted crane, and a proposed amendment to §219.62(d)(2)(B) would delete the mileage rate for a trailer-mounted crane because Transportation Code, §623.181 and §623.191 say the permits are for an "unladen lift equipment motor vehicle," rather than for a trailer-mounted crane. A proposed amendment to §219.61 would delete the language from subsection (g) and move it to the definition of "nondivisible load or vehicle" in §219.2.

A proposed amendment to the title for §219.62 would replace the term "Single Trip" with "Single-Trip" to be consistent with the term used in the text of §219.62. A proposed amendment to §219.62(b) would add a space between the colon and title 43 as follows: Figure 1: 43 TAC §219.62(f). A proposed amendment to §219.62(d) would delete paragraph (3) to remove outdated language regarding the calculation of the fee for a single-trip permit for the movement of an unladen lift equipment motor vehicle. Axles are no longer temporarily disregarded for the purposes of calculating fees for this single-trip permit. A proposed amendment to §219.62(d) would also renumber paragraph (4) due to the deletion of paragraph (3).

Proposed amendments to §219.63(b) would delete the space between "1" and the colon, and would add a space between the colon and title 43 as follows: Figure 1: 43 TAC §219.62(f). A proposed amendment to §219.63(e) would delete paragraph (4) to remove outdated language regarding the calculation of the fee for a hubometer permit for the movement of an unladen lift equipment motor vehicle. Axles are no longer temporarily disregarded for the purposes of calculating fees for this hubometer permit.

A proposed amendment to §219.81 would delete subsection (c) because the department does not have rulemaking authority under Transportation Code, Chapters 621 through 623 to prohibit a person from operating a vehicle on a highway or public road if the vehicle exceeds its gross weight registration. The vehicle registration weight requirements are enforced by law enforcement officers under statutes, such as Transportation Code, §§502.472, 621.002, 621.406, and 621.501.

The department proposes the repeal of §219.84 because the department replaced the remote permit system with TxPROS and the department does not require applicants to sign a contract to use TxPROS. The department proposes the repeal of §219.86 because it exceeds the scope of the department's rulemaking authority. Although Transportation Code, §623.146 and §623.196 contain language that is similar to the language in §219.86 for certain permits, the language in §219.86 applies to all permits. Not all permits under Chapter 219 are governed by Transportation Code, §623.146 and §623.196.

A proposed amendment to §219.102(b)(2) would delete language that says the display of an image that includes permit information on a wireless communication device does not constitute effective consent for a law enforcement officer or any other person to access the contents of the wireless communication device except to view the permit information. The department does not have the statutory authority for this language in §219.102(b)(2)(B). However, the person who chooses to display an image of a permit on a wireless communication device can discuss the extent of their consent with the law enforcement officer or any other person prior to displaying an image of a permit on a wireless communication device. Another proposed amendment to §219.102(b)(2) would delete language that says a telecommunications provider may not be held liable to the operator of the motor vehicle for the failure of

a wireless communication device to display permit information. The department does not have the statutory authority for this language §219.102(b)(2)(D).

The department proposes the repeal of §219.123 because it repeats the language found in Transportation Code, §623.271(e). It is not necessary to repeat statutory language in rule.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Glenna Bowman, Chief Financial Officer, has determined that for each year of the first five years the new sections, amendments, and repeals will be in effect, there will be no significant fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. Jimmy Archer, Director of the Motor Carrier Division (MCD), has determined that there will be no significant impact on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT AND COST NOTE. Mr. Archer has also determined that, for each year of the first five years the new, amended, and repealed sections are in effect, there are several public benefits anticipated.

Anticipated Public Benefits. The public benefits anticipated as a result of the proposal include updated rules that provide the public with the department's processes and requirements regarding permits, as well as the deletion of unnecessary language, unnecessary requirements, and language for which the department does not have rulemaking authority.

Anticipated Costs To Comply With The Proposal. Mr. Archer anticipates that there will be no new costs to comply with these rules. The cost to persons required to comply with the proposal are the costs that currently exist under the provisions in Chapter 219 for which the department has rulemaking authority, as well as the costs under Transportation Code, Chapters 621, 622, and 623.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. As required by Government Code, §2006.002, the department has determined that the proposed new sections, amendments, and repeals will not have an adverse economic effect on small businesses, micro-businesses, and rural communities because the proposal does not increase current costs under Chapter 219 for which the department has rulemaking authority. Proposed new §219.5 documents the department's current process for permit applications, including the requirement for the applicant to obtain a customer identification number at no cost to the applicant. Therefore, the department is not required to prepare a regulatory flexibility analysis under Government Code, §2006.002.

TAKINGS IMPACT ASSESSMENT. The department has determined that no private real property interests are affected by this proposal 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, therefore, does not constitute a taking or require a takings impact assessment under Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT STATEMENT. The department has determined that each year of the first five years the proposed new sections, amendments, and repeals are in effect, no government program would be created or eliminated. Implementation of the proposed new sections, amendments, and repeals would not require the creation of new employee positions or elimination of existing employee positions. Implementation would not require an increase or decrease in future legislative appropriations to the department or an increase or decrease of fees paid to the department. The proposed new sections, amendments, and repeals do not create a new regulation, or expand or limit an existing regulation; however, the repeals and deletions would remove certain existing regulations, such as vehicle registration requirements that exceed the scope of the department's rulemaking authority and unnecessary requirements that do not apply to permit applications submitted through the department's designated permitting system. Also, the proposed new sections document current processes. Lastly, the proposed new sections, amendments, and repeals do not affect the number of individuals subject to each rule's applicability and will not affect this state's economy.

REQUEST FOR PUBLIC COMMENT.

If you want to comment on the proposal, submit your written comments by 5:00 p.m. CDT on March 25, 2024. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to *rules@txdmv.gov* or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

SUBCHAPTER A. GENERAL PROVISIONS

43 TAC §§219.1, 219.2, 219.5, 219.7, 219.9

STATUTORY AUTHORITY. The department proposes new sections and amendments under Transportation Code, §621.008, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 621; Transportation Code, §622.002, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 622, including Transportation Code, §622.051, *et seq.* which authorize the department to issue a permit for transporting poles required for the maintenance of electric power transmission and distribution lines; Transportation Code, §623.002, which authorizes the board to adopt rules as necessary to implement Transportation Code, Chapter 623; Transportation Code, §623.070, *et seq.* which authorize the department to issue a permit to an applicant to move certain equipment or commodities and prescribe the application requirements for such permits; Transportation Code, §623.074(d), which authorizes the department to adopt a rule to authorize an applicant to submit an application electronically; Transportation Code, §623.095(c), which authorizes the department to adopt rules concerning the requirements for a permit under §623.095(c) regarding an annual permit for a person authorized to be issued permits under Transportation Code, §623.094 for the transportation of new manufactured homes from a manufacturing facility to a temporary storage location not to exceed 20 miles from the point of manufacture; Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; and the statutory authority referenced throughout the preamble and in the rule text.

CROSS REFERENCE TO STATUTE. The proposed new sections and amendments would implement Transportation Code, Chapters 621, 622, and 623; and Government Code, Chapter 2001.

§219.1. Purpose and Scope.

The department is responsible for regulating the movement of oversize and overweight vehicles and loads on certain public roadways in this [~~the~~] state [~~highway system~~], in order to ensure [~~insure~~] the safety of the traveling public, and to protect the integrity of the public roadways [~~highways~~] and the bridges. This responsibility is accomplished through the issuance of permits for the movement of oversize and overweight vehicles and loads. The sections under this chapter prescribe the policies and procedures for the issuance of permits and the filing of surety bonds. All applications for permits and all questions regarding the permits should be directed to the department, even though TxDOT is responsible for certain issues regarding permits.

§219.2. Definitions.

(a) The definitions contained in Transportation Code, Chapters 621, 622, and 623 apply to this chapter. In the event of a conflict with this chapter, the definitions contained in Transportation Code, Chapters 621, 622, and 623 control.

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

(1) Annual permit--A permit that authorizes movement of an oversize and/or overweight load for one year commencing with the effective date.

(2) Applicant--Any person, firm, or corporation requesting a permit.

(3) Axle--The common axis of rotation of one or more wheels whether power-driven or freely rotating, and whether in one or more segments.

(4) Axle group--An assemblage of two or more consecutive axles, with two or more wheels per axle, spaced at least 40 inches from center of axle to center of axle, equipped with a weight-equalizing suspension system that will not allow more than a 10% weight difference between any two axles in the group.

[~~(5) Board--The Board of the Texas Department of Motor Vehicles.~~]

(5) [~~(6)~~] Closeout--The procedure used by the department to terminate a permit, issued under Transportation Code, §623.142 or §623.192 that will not be renewed by the applicant.

(6) [~~(7)~~] Complete identification number--A unique and distinguishing number assigned to equipment or a commodity for purposes of identification.

(7) [~~(8)~~] Concrete pump truck--A self-propelled vehicle designed to pump the concrete product from a ready mix truck to the point of construction.

(8) [~~(9)~~] Crane--Any unladen lift equipment motor vehicle designed for the sole purpose of raising, shifting, or lowering heavy weights by means of a projecting, swinging mast with an engine for power on a chassis permanently constructed or assembled for such purpose.

[~~(10) Credit card--A credit card approved by the department.~~]

(9) Day--A calendar day.

(10) Daytime--As defined in Transportation Code, §541.401.

[~~(11) Daylight--The period beginning one-half hour before sunrise and ending one-half hour after sunset.~~]

[~~(12) Department--The Texas Department of Motor Vehicles.~~]

(11) [~~(13)~~] Digital signature--An electronic identifier intended by the person using it to have the same force and effect as a manual signature. The digital signature shall be unique to the person using it.

[~~(14) Director--The Executive Director of the Texas Department of Motor Vehicles or a designee not below the level of division director.~~]

[~~(15) District--One of the 25 geographical areas, managed by a district engineer of the Texas Department of Transportation, in which the Texas Department of Transportation conducts its primary work activities.~~]

[~~(16) District engineer--The chief executive officer in charge of a district of the Texas Department of Transportation.~~]

(12) [~~(17)~~] Electronic identifier--A unique identifier which is distinctive to the person using it, is independently verifiable, is under the sole control of the person using it, and is transmitted in a manner that makes it infeasible to change the data in the communication or digital signature without invalidating the digital signature.

(13) [~~(18)~~] Escort flag vehicle--A vehicle that precedes or follows an oversize or overweight vehicle to facilitate the safe movement of the oversize or overweight vehicle over roads.

(14) [~~(19)~~] Four-axle group--Any four consecutive axles, having at least 40 inches from center of axle to center of axle, whose extreme centers are not more than 192 inches apart and are individually attached to or articulated from, or both, to the vehicle by a weight equalizing suspension system.

(15) [~~(20)~~] Gauge--The transverse spacing distance between tires on an axle, expressed in feet and measured to the nearest inch, from center-of-tire to center-of-tire on an axle equipped with only two tires, or measured to the nearest inch from the center of the dual wheels on one side of the axle to the center of the dual wheels on the opposite side of the axle.

(16) [~~(21)~~] Gross weight--The unladen weight of a vehicle or combination of vehicles plus the weight of the load being transported.

(17) [~~(22)~~] Height pole--A device made of a non-conductive material, used to measure the height of overhead obstructions.

(18) [~~(23)~~] Highway maintenance fee--A fee established by Transportation Code, §623.077, based on gross weight, and paid by the permittee when the permit is issued.

(19) [~~(24)~~] Highway use factor--A mileage reduction figure used in the calculation of a permit fee for a permit issued under Transportation Code, §623.142 and §623.192.

(20) [~~(25)~~] Hubometer--A mechanical device attached to an axle on a unit or an unladen lift equipment motor vehicle [~~a crane~~] for recording mileage traveled.

(21) [~~(26)~~] HUD label number--A unique number assigned to a manufactured home by the U.S. Department of Housing and Urban Development.

(22) [~~(27)~~] Indirect cost share--A prorated share of administering department activities, other than the direct cost of the activities, including the cost of providing statewide support services.

(23) [~~(28)~~] Load-restricted bridge--A bridge that is restricted by the Texas Department of Transportation, under the provi-

sions of Transportation Code, §621.102, to a weight limit less than the maximum amount allowed by Transportation Code, §621.101.

(24) [~~(29)~~] Load-restricted road--A road that is restricted by the Texas Department of Transportation, under the provisions of Transportation Code, §621.102, to a weight limit less than the maximum amount allowed by Transportation Code, §621.101.

[~~(30) Machinery plate--A license plate issued under Transportation Code, §502.146.~~]

(25) [~~(31)~~] Manufactured home--Manufactured housing, as defined in Occupations Code, Chapter 1201, and industrialized housing and buildings, as defined in Occupations Code, §1202.002, and temporary chassis systems, and returnable undercarriages used for the transportation of manufactured housing and industrialized housing and buildings, and a transportable section which is transported on a chassis system or returnable undercarriage that is constructed so that it cannot, without dismantling or destruction, be transported within legal size limits for motor vehicles.

(26) [~~(32)~~] Motor carrier--A person that controls, operates, or directs the operation of one or more vehicles that transport persons or cargo over a public highway in this state, as defined by Transportation Code, §643.001.

[~~(33) Motor carrier registration (MCR)--The registration issued by the department to motor carriers moving intrastate, under authority of Transportation Code, Chapter 643.~~]

(27) [~~(34)~~] Nighttime--As defined in [~~The period beginning one-half hour after sunset and ending one-half hour before sunrise, as defined by~~] Transportation Code, §541.401.

(28) [~~(35)~~] Nondivisible load or vehicle--

(A) A nondivisible load or vehicle is defined as follows:

(i) Any load or vehicle exceeding applicable length or weight limits which, if separated into smaller loads or vehicles, would:

(I) [~~(i)~~] compromise the intended use of the vehicle, i.e., make it unable to perform the function for which it was intended;

(II) [~~(ii)~~] destroy the value of the load or vehicle, i.e., make it unusable for its intended purpose; or

(III) [~~(iii)~~] require more than eight workhours to dismantle using appropriate equipment. The applicant for a nondivisible load permit has the burden of proof as to the number of workhours required to dismantle the load.

(ii) [~~(B)~~] Emergency response vehicles, including those loaded with salt, sand, chemicals or a combination thereof, with or without a plow or blade attached in front, and being used for the purpose of spreading the material on highways that are or may become slick or icy.

(iii) [~~(C)~~] Casks designed for the transport of spent nuclear materials.

(iv) [~~(D)~~] Military vehicles transporting marked military equipment or materiel.

(B) A vehicle or load that exceeds legal weight (without the properly secured components) and for which an appropriate permit is obtained from the department under this chapter may travel as a mobile vehicle or as a load, as applicable, with properly secured components in accordance with the manufacturer's specifications to the extent the components are necessary for the vehicle or load to perform its intended function or purpose, provided the axle weights, axle group weights, and gross weight do not exceed the maximum applicable permit weights listed in this chapter. For example, a crane permitted under Subchapter E of this chapter that exceeds legal weight without the properly secured components may travel with properly secured components, such as outriggers, booms, counterweights, jibs, blocks, balls, cribbing, outrigger pads, and outrigger mats, in accordance with the manufacturer's specifications to the extent the components are necessary for the crane to perform its intended function, provided the axle weights, axle group weights, and gross weight do not exceed the maximum permit weights listed in Subchapter E of this chapter. An example of a load being transported is a dozer with the blade detached that is permitted under §219.12 of this title (relating to Single-Trip Permits Issued under Transportation Code, Chapter 623, Subchapter D) when both are being transported on a trailer or semitrailer if the dozer without the blade is overweight, provided the axle weights, axle group weights, and gross weight do not exceed the maximum permit weights listed in §219.12.

(29) [~~(36)~~] Oil field rig-up truck--An unladen vehicle with an overweight single steering axle, equipped with a winch and set of gin poles used for lifting, erecting, and moving oil well equipment and machinery.

(30) [~~(37)~~] Oil well servicing unit--An oil well clean-out unit, oil well drilling unit, or oil well swabbing unit, which is mobile equipment, either self-propelled or trailer-mounted, constructed as a machine used solely for cleaning-out, drilling, servicing, or swabbing oil wells, and consisting in general of, but not limited to, a mast, an engine for power, a draw works, and a chassis permanently constructed or assembled for this purpose.

[~~(38) One trip registration--Temporary vehicle registration issued under Transportation Code, §502.095.~~]

(31) [~~(39)~~] Overdimension load--A vehicle, combination of vehicles, or vehicle and its load that exceeds maximum legal width, height, length, overhang, or weight as set forth by Transportation Code, Chapter 621, Subchapters B and C.

(32) [~~(40)~~] Overhang--The portion of a load extending beyond the front or rear of a vehicle or combination of vehicles.

(33) [~~(41)~~] Overheight--A vehicle or load that exceeds the maximum height specified in Transportation Code, §621.207.

(34) [~~(42)~~] Overlength--A vehicle, combination of vehicles, or a vehicle or vehicle combination and its load that exceed(s) the maximum length specified in Transportation Code, §§621.203, 621.204, 621.205, and 621.206.

(35) [~~(43)~~] Oversize load--A vehicle, combination of vehicles, or a vehicle or vehicle combination and its load that exceed(s) maximum legal width, height, length, or overhang, as set forth by Transportation Code, Chapter 621, Subchapter C.

(36) [~~(44)~~] Overweight--A vehicle, combination of vehicles, or a vehicle or vehicle combination and its load that exceed(s) the maximum weight specified in Transportation Code, §621.101.

(37) [~~(45)~~] Overwidth--A vehicle or load that exceeds the maximum width specified in Transportation Code, §621.201.

(38) [~~(46)~~] Permit--Authority for the movement of an oversize and/or overweight vehicle, combination of vehicles, or a vehicle or vehicle combination and its load, issued by the department under Transportation Code, Chapter 623.

(39) [~~(47)~~] Permit officer--An employee of the department who is authorized to issue an oversize/overweight permit.

(40) [~~(48)~~] Permit plate--A license plate issued under Transportation Code, §502.146, to oil well servicing, cleanout, or drilling machinery as defined in Transportation Code, §502.001(29). [~~a crane or an oil well servicing vehicle.~~]

(41) [~~(49)~~] Permitted vehicle--A vehicle, combination of vehicles, or vehicle and its load operating under the provisions of a permit.

(42) [~~(50)~~] Permittee--Any person, firm, or corporation that is issued an oversize/overweight permit by the department.

(43) [~~(51)~~] Pipe box--A container specifically constructed to safely transport and handle oil field drill pipe and drill collars.

(44) [~~(52)~~] Portable building compatible cargo--Cargo, other than a portable building unit, that is manufactured, assembled, or distributed by a portable building unit manufacturer and is transported in combination with a portable building unit.

(45) [~~(53)~~] Portable building unit--The pre-fabricated structural and other components incorporated and delivered by the manufacturer as a complete inspected unit with a distinct serial number whether in fully assembled, partially assembled, or kit (unassembled) configuration when loaded for transport.

(46) [~~(54)~~] Principal--The person, firm, or corporation that is insured by a surety bond company.

(47) [~~(55)~~] Roll stability support safety system--An electronic system that monitors vehicle dynamics and estimates the stability of a vehicle based on its mass and velocity, and actively adjusts vehicle systems including the throttle and/or brake(s) to maintain stability when a rollover risk is detected.

(48) [~~(56)~~] Shipper's certificate of weight--A form approved by the department in which the shipper certifies to the maximum weight of the shipment being transported.

(49) [~~(57)~~] Single axle--An assembly of two or more wheels whose centers are in one transverse vertical plane or may be included between two parallel transverse planes 40 inches apart extending across the full width of the vehicle.

(50) [~~(58)~~] Single-trip permit--A permit issued for an overdimension load for a single continuous movement over a specific route for an amount of time necessary to make the movement.

(51) [~~(59)~~] State highway--A highway or road under the jurisdiction of the Texas Department of Transportation.

(52) [~~(60)~~] State highway system--A network of roads and highways as defined by Transportation Code, §221.001.

(53) [~~(61)~~] Surety bond--An agreement issued by a surety bond company to a principal that pledges to compensate the obligee as required under Transportation Code, Chapters 622 and 623. [~~Texas Department of Transportation for any damage that might be sustained to the highways and bridges by virtue of the operation of the equipment for which a permit was issued. A surety bond is effective the day it is issued and expires at the end of the state fiscal year, which is August 31st. For example, if you obtain a surety bond on August 30th, it will expire the next day at midnight.~~]

(54) [~~(62)~~] Tare weight--The empty weight of any vehicle transporting an overdimension load.

[~~(63) Temporary vehicle registration--A 72-hour temporary vehicle registration, 144-hour temporary vehicle registration, or one-trip registration.~~]

(55) [~~(64)~~] Three-axle group--Any three consecutive axles, having at least 40 inches from center of axle to center of axle, whose extreme centers are not more than 144 inches apart, and are individually attached to or articulated from, or both, to the vehicle by a weight equalizing suspension system.

(56) [~~(65)~~] Time permit--A permit issued for a specified period of time under §219.13 of this title (relating to Time Permits).

(57) [~~(66)~~] Tire size--The inches of lateral tread width.

[~~(67) Traffic control device--All traffic signals, signs, and markings, including their supports, used to regulate, warn, or control traffic.~~]

(58) [~~(68)~~] Trailer-mounted [~~Trailer mounted~~] unit--An oil well clean-out, drilling, servicing, or swabbing unit mounted on a trailer, constructed as a machine used for cleaning out, drilling, servicing, or swabbing oil wells, and consisting in general of, but not limited to, a mast, an engine for power, a draw works, and a chassis permanently constructed or assembled for this purpose.

(59) [~~(69)~~] Truck--A motor vehicle designed, used, or maintained primarily for the transportation of property.

(60) [~~(70)~~] Truck blind spot systems--Vehicle-based sensor devices that detect other vehicles or objects located in the vehicle's adjacent lanes. Warnings can be visual, audible, vibrating, or tactile.

(61) [~~(71)~~] Trunnion axle--Two individual axles mounted in the same transverse plane, with four tires on each axle, that are connected to a pivoting wrist pin that allows each individual axle to oscillate in a vertical plane to provide for constant and equal weight distribution on each individual axle at all times during movement.

[~~(72) Trunnion axle group--Two or more consecutive trunnion axles whose centers are at least 40 inches apart and which are individually attached to or articulated from, or both, to the vehicle by a weight equalizing suspension system.~~]

(62) [~~(73)~~] Two-axle group--Any two consecutive axles whose centers are at least 40 inches but not more than 96 inches apart and are individually attached to or articulated from, or both, to the vehicle by a weight equalizing suspension system.

(63) [~~(74)~~] TxDOT--Texas Department of Transportation.

(64) [~~(75)~~] Unit--Oil well clean-out unit, oil well drilling unit, oil well servicing unit, and/or oil well swabbing unit.

(65) [~~(76)~~] Unladen lift equipment motor vehicle--A motor vehicle, such as a crane or a concrete pump truck, designed for use as lift equipment used solely to raise, shift, or lower heavy weights by means of a projecting, swinging mast with an engine for power on a chassis permanently constructed or assembled for such purpose.

(66) [~~(77)~~] USDOT Number--The United States Department of Transportation number.

[~~(78) Variable load suspension axles--Axles, whose controls must be located outside of and be inaccessible from the driver's compartment, that can be regulated, through the use of hydraulic and air suspension systems, mechanical systems, or a combination of these systems, for the purpose of adding or decreasing the amount of weight to be carried by each axle during the movement of the vehicle.~~]

(67) [~~(79)~~] Vehicle identification number--A unique and distinguishing number assigned to a vehicle by the manufacturer or by the department in accordance with Transportation Code, §501.032 and §501.033.

(68) [~~(80)~~] Water Well Drilling Machinery--Machinery used exclusively for the purpose of drilling water wells, including machinery that is a unit or a unit mounted on a conventional vehicle or chassis.

(69) [~~(81)~~] Weight-equalizing suspension system--An arrangement of parts designed to attach two or more consecutive axles to the frame of a vehicle in a manner that will equalize the load between the axles.

(70) [~~(82)~~] Windshield sticker--Identifying insignia indicating that a permit has been issued in accordance with Subchapter C of this chapter.

(71) [~~(83)~~] Year--A time period consisting of 12 consecutive months that commences with the effective date stated in the permit.

~~[(84) 72-hour temporary vehicle registration--Temporary vehicle registration issued by the department authorizing a vehicle to operate at maximum legal weight on a state highway for a period not longer than 72 consecutive hours, as prescribed by Transportation Code, §502.094.]~~

~~[(85) 144-hour temporary vehicle registration--Temporary vehicle registration issued by the department authorizing a vehicle to operate at maximum legal weight on a state highway for a period not longer than 144 consecutive hours, as prescribed by Transportation Code, §502.094.]~~

§219.5. Application Requirements.

(a) An application for a permit under this chapter must be filed with the department and must be:

(1) made in a form and filed by the method prescribed by the department on its website;

(2) completed by the applicant or an authorized representative of the applicant; and

(3) accompanied by the required fee, which shall be payable as provided by §209.23 of this title (relating to Methods of Payment).

(b) An authorized representative of the applicant who files an application with the department on behalf of the applicant may be required to provide written proof of authority to act on behalf of the applicant.

(c) The department will not approve an application for a permit unless the applicant:

(1) provides all information and documents required by the department; and

(2) complies with all application requirements under this chapter; Transportation Code, Chapters 621, 622, and 623; and other applicable law.

(d) An applicant must register for an account in the department's designated permitting system prior to using the system to apply for or amend a permit. Once the applicant registers for an account in the department's designated permitting system, the system will generate a customer identification number for the applicant to use when applying for a permit. To register for an account, the applicant must provide the following information via the department's designated permitting system, which is accessible on the department's website:

(1) the applicant's company name, phone number, email address, permit delivery method, physical address, and mailing address;

(2) first name, last name, and phone number for an emergency contact for the applicant; and

(3) the requested login information, including a unique username and password.

(e) If the department authorizes an application for a permit to be submitted by mail and the applicant does not have a customer identification number, the applicant must authorize the department to set up an account for the applicant in the department's designated permitting system for the purposes of obtaining a customer identification number for the applicant based on information the department obtains from the applicant's permit application and information the department obtains from the Federal Motor Carrier Safety Administration's system.

§219.7. Amendments to Permits.

(a) General amendment guidelines. Except as provided by subsection (b) of this section, any part of a permit may be amended under the guidelines in this subsection, notwithstanding any other sections in this chapter regarding limitations on amending a permit.

(1) Any amendment that is necessary to correct an error made by department staff or the department's designated permitting system may be made provided the price of the permit or the permit type does not change.

(2) An expired permit may only be amended if it expired on a day on which the department was closed or the department's designated permitting system was not operational.

(b) Specific amendment authority and restrictions. Notwithstanding any other section in this chapter regarding limitations on amending a permit, a permit issued under this chapter may be amended as authorized by this subsection.

(1) The permittee's name can be amended on any permit type to correct a spelling error.

(2) The permittee's contact information may be amended on any permit type.

§219.9. Federal Highway Administration Interpretation of Federal Law.

Notwithstanding any provisions in this chapter, this chapter does not authorize the operation of a vehicle or vehicle combination on the following roadways in this state to the extent the Federal Highway Administration determines the vehicle or vehicle combination exceeds the applicable weight or size for such roadway under 23 U.S.C. §127, 49 U.S.C. §§31111 through 31114, or federal regulations prescribed under 23 U.S.C. §127 or 49 U.S.C. §§31111 through 31114: the federal-aid primary system, the federal-aid urban system, and the federal-aid secondary system, including the national system of interstate and defense highways. To the extent the department learns that the Federal Highway Administration generally determines a vehicle or vehicle combination exceeds the applicable weight or size for such roadway under 23 U.S.C. §127, 49 U.S.C. §§31111 through 31114, or federal regulations prescribed under 23 U.S.C. §127 or 49 U.S.C. §§31111 through 31114 in a way that may conflict with a provision in this chapter, the department will post a notice on its website and may provide notice to permittees through the applicable email addresses on file with the department.

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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Laura Moriaty
General Counsel
Texas Department of Motor Vehicles
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For further information, please call: (512) 465-4160

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SUBCHAPTER B. GENERAL PERMITS

43 TAC §§219.11 - 219.15

STATUTORY AUTHORITY. The department proposes amendments under Transportation Code, §621.008, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 621; Transportation Code, §622.002, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 622, including Transportation Code, §622.051, *et seq.* which authorize the department to issue a permit for transporting poles required for the maintenance of electric power transmission and distribution lines; Transportation Code, §623.002, which authorizes the board to adopt rules as necessary to implement Transportation Code, Chapter 623; Transportation Code, §623.070, *et seq.* which authorize the department to issue a permit to an applicant to move certain equipment or commodities and prescribe the application requirements for such permits; Transportation Code, §623.074(d), which authorizes the department to adopt a rule to authorize an applicant to submit an application electronically; Transportation Code, §623.095(c), which authorizes the department to adopt rules concerning the requirements for a permit under §623.095(c) regarding an annual permit for a person authorized to be issued permits under Transportation Code, §623.094 for the transportation of new manufactured homes from a manufacturing facility to a temporary storage location not to exceed 20 miles from the point of manufacture; Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; and the statutory authority referenced throughout the preamble and in the rule text.

CROSS REFERENCE TO STATUTE. The proposed amendments would implement Transportation Code, Chapters 621, 622, and 623; and Government Code, Chapter 2001.

§219.11. General Oversize/Overweight Permit Requirements and Procedures.

(a) Purpose and scope. This section contains general requirements relating to oversize/overweight permits, including single-trip permits. Specific requirements for each type of specialty permit are provided for in this chapter.

(b) Motor carrier registration or surety bond. [~~Prerequisites to obtaining an oversize/overweight permit.~~] Unless exempted by law, prior [~~or this chapter, the following requirements must be met prior to the issuance of an oversize/overweight permit.~~]

[~~(1)~~] [~~Commercial motor carrier registration or surety bond. Prior~~] to obtaining an oversize/overweight permit, an applicant permitted under the provisions of Transportation Code, Chapter 623, Subchapter D, must be registered as a [~~commercial~~] motor carrier under Chapter 218 of this title (relating to Motor Carriers) or, if not required to obtain a motor carrier registration, file a surety bond with the department as described in subsection (n) of this section.

[~~(2) Vehicle registration. A vehicle registered with a permit plate will not be issued an oversize/overweight permit under this subchapter. A permitted vehicle operating under this subchapter must be registered with one of the following types of vehicle registration:~~]

[~~(A) current Texas license plates that indicate the permitted vehicle is registered for maximum legal gross weight or the maximum weight the vehicle can transport;~~]

[~~(B) Texas temporary vehicle registration;~~]

[~~(C) current out of state license plates that are apportioned for travel in Texas; or~~]

[~~(D) foreign commercial vehicles registered under Texas annual registration.~~]

(c) Permit application.

(1) An application for a permit shall be made in a form and by the method prescribed by the department, and at a minimum shall include the following, unless stated otherwise in this subchapter:

(A) name, customer identification number, and address of the applicant;

(B) name, telephone number, and email address of contact person;

(C) applicant's USDOT Number if applicant is required by law to have a USDOT Number;

(D) complete load description, including maximum width, height, length, overhang, and gross weight;

(E) complete description of vehicle, including truck year, make, license plate number and state of issuance, and vehicle identification number, if required;

(F) vehicle axle and tire information including number of axles, distance between axles, axle weights, number of tires, and tire size for overweight permit applications; and

(G) any other information required by law.

(2) Applications transmitted electronically are considered signed if a digital signature is transmitted with the application and intended by the applicant to authenticate the application.

(A) The department may only accept a digital signature used to authenticate an application under procedures that comply with any applicable rules adopted by the Department of Information Resources regarding department use or acceptance of a digital signature.

(B) The department may only accept a digital signature to authenticate an application if the digital signature is:

(i) unique to the person using it;

(ii) capable of independent verification;

(iii) under the sole control of the person using it; and

(iv) transmitted in a manner that will make it infeasible to change the data in the communication or digital signature without invalidating the digital signature.

(d) Maximum permit weight limits.

(1) General. An overweight permitted vehicle will not be routed over a load-restricted bridge when exceeding the posted capacity of the bridge, unless a special exception is granted by TxDOT, based on an analysis of the bridge performed by a TxDOT approved licensed

professional engineer or by TxDOT. Any analysis by a non-TxDOT licensed professional engineer must have final approval from TxDOT.

(A) An axle group must have a minimum spacing of four feet, measured from center of axle to center of axle, between each axle in the group to achieve the maximum permit weight for the group.

(B) The maximum permit weight for an axle group with spacing of five or more feet between each axle will be based on an engineering study of the equipment conducted by TxDOT.

(C) A permitted vehicle will be allowed to have air suspension, hydraulic suspension, and mechanical suspension axles in a common weight equalizing suspension system for any axle group.

(D) The department may permit axle weights greater than those specified in this section, for a specific individual permit request, based on an engineering study of the route and hauling equipment performed by a TxDOT approved licensed professional engineer or by TxDOT. Any analysis by a non-TxDOT licensed professional engineer must have final approval from TxDOT.

(E) A permitted vehicle or combination of vehicles may not exceed the manufacturer's rated tire carrying capacity, unless expressly authorized in the language on the permit based on an analysis performed by a TxDOT approved licensed professional engineer or by TxDOT. Any analysis by a non-TxDOT licensed professional engineer must have final approval from TxDOT.

(F) If two or more consecutive axle groups have [~~Two or more consecutive axle groups having~~] an axle spacing of less than 12 feet, measured from the center of the last axle of the preceding group to the center of the first axle of the following group, the maximum permit weight on the axle groups will be reduced by 2.5% for each foot less than 12 feet.

(2) Maximum axle weight limits. Maximum permit weight for an axle or axle group is based on 650 pounds per inch of tire width or the following axle or axle group weights, whichever is the lesser amount:

(A) single axle--25,000 pounds;

(B) two-axle [~~two axle~~] group--46,000 pounds;

(C) three-axle [~~three axle~~] group--60,000 pounds;

(D) four-axle [~~four axle~~] group--70,000 pounds;

(E) five-axle [~~five axle~~] group--81,400 pounds;

(F) axle group with six or more axles--determined by TxDOT based on an engineering study of the equipment, which will include the type of steering system used, the type of axle suspension, the spacing distance between each axle, the number of tires per axle, and the tire size on each axle; or

(G) trunnion axles--30,000 pounds per axle if the trunnion configuration has:

(i) two axles;

(ii) eight tires per axle;

(iii) axles a minimum of 10 feet in width; and

(iv) at least five feet of spacing between the axles, not to exceed six feet.

(3) Weight limits for load restricted roads. Maximum permit weight for an axle or axle group, when traveling on a load restricted road, will be based on 650 pounds per inch of tire width or the following axle or axle group weights, whichever is the lesser amount:

(A) single axle--22,500 pounds;

(B) two-axle [~~two axle~~] group--41,400 pounds;

(C) three-axle [~~three axle~~] group--54,000 pounds;

(D) four-axle [~~four axle~~] group--63,000 pounds;

(E) five-axle [~~five axle~~] group--73,260 pounds;

(F) axle group with six or more axles--determined by TxDOT based on an engineering study of the equipment, which will include the type of steering system used, the type of axle suspension, the spacing distance between each axle, the number of tires per axle, and the tire size on each axle;

(G) trunnion axles--54,000 pounds; and

(H) if two or more consecutive axle groups have [~~two or more consecutive axle groups having~~] an axle spacing of less than 12 feet, measured from the center of the last axle of the preceding group to the center of the first axle of the following group, the maximum permit weight on the axle groups will be reduced by 2.5% for each foot less than 12 feet.

(e) Permit issuance.

(1) General. Upon receiving an application in the form prescribed by the department, the department will review the permit application for the appropriate information and will then determine the most practical route based on information provided by TxDOT.

(2) Routing.

(A) A permitted vehicle will be routed over the most practical route available taking into consideration:

(i) the size and weight of the overdimension load in relation to vertical clearances, width restrictions, steep grades, and reduced capacity [~~weak~~] or load restricted bridges;

(ii) the geometrics of the roadway in comparison to the overdimension load;

(iii) sections of highways restricted to specific load sizes and weights due to construction, maintenance, and hazardous conditions;

(iv) traffic conditions, including traffic volume;

(v) route designations by municipalities in accordance with Transportation Code, §623.072;

(vi) load restricted roads; and

(vii) other considerations for the safe transportation of the load.

(B) When a permit applicant desires a route other than the most practical, more than one permit will be required for the trip unless an exception is granted by the department.

(3) Movement to and from point of origin or place of business. A permitted vehicle will be allowed to:

(A) move empty oversize and overweight hauling equipment to and from the job site; and

(B) move oversize and overweight hauling equipment with a load from the permitted vehicle's point of origin to pick up a permitted load, and to the permitted vehicle's point of origin or the permittee's place of business after dropping off a permitted load, as long as:

(i) the load does not exceed legal size and weight limits under Transportation Code, Chapters 621 and 622; and

(ii) the transport complies with the permit, including the time period stated on the permit.

(f) Refund [~~Payment~~] of permit fees. [~~, refunds.~~]

[~~(1) Payment methods. All permit applications must be accompanied by the proper fee, which shall be payable as provided by §209.23 of this title (relating to Methods of Payment).~~]

[~~(2)~~] [~~Refunds.~~] A permit fee will not be refunded after the permit number has been issued unless such refund is necessary to correct an error made by the permit officer.

(g) Amendments. A permit may be amended for the following reasons:

(1) vehicle breakdown;

(2) changing the intermediate points in an approved permit route;

(3) extending the expiration date due to conditions which would cause the move to be delayed;

(4) changing route origin or route destination prior to the start date as listed on the permit;

(5) changing vehicle size limits prior to the permit start date as listed on the permit, provided that changing the vehicle size limit does not necessitate a change in the approved route; and

(6) correcting any mistake that is made due to permit officer error.

(h) Requirements for overwidth loads.

(1) Unless stated otherwise on the permit, an overwidth load must travel in the outside traffic lane on multi-lane highways, when the width of the load exceeds 12 feet.

(2) Overwidth loads are subject to the escort requirements of subsection (k) of this section.

(3) A permitted vehicle exceeding 16 feet in width will not be routed on the main lanes of a controlled access highway, unless an exception is granted by TxDOT, based on a route and traffic study. The load may be permitted on the frontage roads when available, if the movement will not pose a safety hazard to other highway users.

(4) An applicant requesting a permit to move a load exceeding 20 feet wide will be furnished with a proposed route. The applicant must physically inspect the proposed route to determine if the vehicle and load can safely negotiate it, unless an exception is granted based on a route and traffic study conducted by TxDOT. A permit application and the appropriate fee are required for every route inspection.

(A) The applicant must notify the department in writing whether the vehicle and load can or cannot safely negotiate the proposed route.

(B) If any section of the proposed route is unacceptable, the applicant shall provide the department with an alternate route around the unacceptable section.

(C) Once a route is decided upon and a permit issued, the permit may not be amended unless an exception is granted by the department.

(i) Requirements for overlength loads.

(1) Overlength loads are subject to the escort requirements stated in subsection (k) of this section.

(2) A single vehicle, such as a motor crane, that has a permanently mounted boom is not considered as having either front or rear overhang as a result of the boom because the boom is an integral part of the vehicle.

(3) When a single vehicle with a permanently attached boom exceeds the maximum legal length of 45 feet, a permit will not be issued if the boom projects more than 25 feet beyond the front bumper of the vehicle, or when the boom projects more than 30 feet beyond the rear bumper of the vehicle, unless an exception is granted by TxDOT, based on a route and traffic study.

(4) Maximum permit length for a single vehicle is 75 feet.

(5) A load extending more than 20 feet beyond the front or rearmost portion of the load carrying surface of the permitted vehicle must have a rear escort flag vehicle, unless an exception is granted by TxDOT, based on a route and traffic study.

(6) A permit will not be issued for an oversize vehicle and load with:

(A) more than 25 feet front overhang; or

(B) more than 30 feet rear overhang, unless an exception is granted by TxDOT, based on a route and traffic study.

(7) An applicant requesting a permit to move an oversize vehicle and load exceeding 125 feet overall length will be furnished with a proposed route. The applicant must physically inspect the proposed route to determine if the oversize vehicle and load can safely negotiate it, unless an exception is granted based on a route and traffic study conducted by TxDOT. A permit application and the appropriate fee are required for every route inspection.

(A) The applicant must notify the department in writing whether the oversize vehicle and load can or cannot safely negotiate the proposed route.

(B) If any section of the proposed route is unacceptable, the applicant shall provide the department with an alternate route around the unacceptable section.

(C) Once a route is decided upon and a permit issued, the permit may not be amended unless an exception is granted by the department.

(8) A permitted vehicle that is not overwidth or overheight, and does not exceed 150 feet overall length, may be moved in a convoy consisting of not more than four overlength permitted vehicles. A permitted vehicle that is not overwidth or overheight that exceeds 150 feet, but does not exceed 180 feet overall length, may be moved in a convoy consisting of not more than two overlength permitted vehicles. Convoys are subject to the requirements of subsection (k) of this section. Each permitted vehicle in the convoy must:

(A) be spaced at least 1,000 feet, but not more than 2,000 feet, from any other permitted vehicle in the convoy; and

(B) have a rotating amber beacon or an amber pulsating light, not less than eight inches in diameter, mounted at the rear top of the load being transported.

(j) Requirements for overheight loads.

(1) Overheight loads are subject to the escort requirements stated in subsection (k) of this section.

(2) An applicant requesting a permit to move an oversize vehicle and load with an overall height of 19 feet or greater will be furnished with a proposed route. The applicant must physically inspect the proposed route to determine if the oversize vehicle and load can safely negotiate it, unless an exception is granted based on a route and

traffic study conducted by TxDOT. A permit application and the appropriate fee are required for every route inspection.

(A) The applicant must notify the department in writing whether the oversize vehicle and load can or cannot safely negotiate the proposed route.

(B) If any section of the proposed route is unacceptable, the applicant shall provide the department with an alternate route around the unacceptable section.

(C) Once a route is decided upon and a permit issued, the permit may not be amended unless an exception is granted by the department.

(k) Escort flag vehicle requirements. Escort flag vehicle requirements are provided to facilitate the safe movement of permitted vehicles and to protect the traveling public during the movement of permitted vehicles. A permittee must provide for escort flag vehicles and law enforcement assistance when required by TxDOT. The requirements in this subsection do not apply to the movement of manufactured housing, portable building units, or portable building compatible cargo, unless stated otherwise in this chapter.

(1) General.

(A) Applicability. The operator of an escort flag vehicle shall, consistent with applicable law, warn the traveling public when:

(i) a permitted vehicle must travel over the center line of a narrow bridge or roadway;

(ii) a permitted vehicle makes any turning movement that will require the permitted vehicle to travel in the opposing traffic lanes;

(iii) a permitted vehicle reduces speed to cross under a low overhead obstruction or over a bridge;

(iv) a permitted vehicle creates an abnormal and unusual traffic flow pattern; or

(v) in the opinion of TxDOT, warning is required to ensure the safety of the traveling public or safe movement of the permitted vehicle.

(B) Law enforcement assistance. Law enforcement assistance may be required by TxDOT to control traffic when a permitted vehicle is being moved within the corporate limits of a city, or at such times when law enforcement assistance would provide for the safe movement of the permitted vehicle and the traveling public.

(C) Obstructions. It is the responsibility of the permittee to contact utility companies, telephone companies, television cable companies, or other entities as they may require, when it is necessary to raise or lower any overhead wire, traffic signal, street light, television cable, sign, or other overhead obstruction. The permittee is responsible for providing the appropriate advance notice as required by each entity.

(2) Escort requirements for overwidth loads. Unless an exception is granted based on a route and traffic study conducted by TxDOT, an overwidth load must:

(A) have a front escort flag vehicle if the width of the load exceeds 14 feet, but does not exceed 16 feet, when traveling on a two lane roadway;

(B) have a rear escort flag vehicle if the width of the load exceeds 14 feet, but does not exceed 16 feet, when traveling on a roadway of four or more lanes; and

(C) have a front and a rear escort flag vehicle for all roads, when the width of the load exceeds 16 feet.

(3) Escort requirements for overlength loads. Unless an exception is granted by TxDOT, based on a route and traffic study, overlength loads must have:

(A) a front escort flag vehicle when traveling on a two lane roadway if the vehicle exceeds 110 feet overall length, but does not exceed 125 feet overall length;

(B) a rear escort flag vehicle when traveling on a multilane highway if the vehicle exceeds 110 feet overall length, but does not exceed 125 feet overall length; and

(C) a front and rear escort flag vehicle at all times if the permitted vehicle exceeds 125 feet overall length.

(4) Escort requirements for overheight loads. Unless an exception is granted by TxDOT, based on a route and traffic study, overheight loads must have:

(A) a front escort flag vehicle equipped with a height pole to ensure the vehicle and load can clear all overhead obstructions for any permitted vehicle that exceeds 17 feet in height; and

(B) a front and rear escort flag vehicle for any permitted vehicle exceeding 18 feet in height.

(5) Escort requirements for permitted vehicles exceeding legal limits in more than one dimension. When a load exceeds more than one dimension that requires an escort under this subsection, front and rear escort flag vehicles will be required unless an exception is granted by TxDOT.

(6) Escort requirements for convoys. Convoys must have a front escort flag vehicle and a rear escort flag vehicle on all highways at all times.

(7) General equipment requirements. The following special equipment requirements apply to permitted vehicles and escort flag vehicles that are not motorcycles.

(A) An escort flag vehicle must be a single unit with a gross vehicle weight (GVW) of not less than 1,000 pounds nor more than 10,000 pounds.

(B) An escort flag vehicle must be equipped with two flashing amber lights; one rotating amber beacon of not less than eight inches in diameter; or alternating or flashing blue and amber lights, each of which must be visible from all directions while actively engaged in escort duties for the permitted vehicle.

(C) An escort flag vehicle must display a sign, on either the roof of the vehicle, or the front and rear of the vehicle, with the words "OVERSIZE LOAD" or "WIDE LOAD." The sign must be visible from the front and rear of the vehicle while escorting the permitted load. The sign must meet the following specifications:

(i) at least five feet, but not more than seven feet in length, and at least 12 inches, but not more than 18 inches in height;

(ii) the sign must have a yellow background with black lettering;

(iii) letters must be at least eight inches, but not more than 10 inches high with a brush stroke at least 1.41 inches wide; and

(iv) the sign must be visible from the front or rear of the vehicle while escorting the permitted vehicle, and the signs must not be used at any other time.

(D) An escort flag vehicle must maintain two-way communications with the permitted vehicle and other escort flag vehicles involved with the movement of the permitted vehicle.

[(E) Warning flags must be either red or orange fluorescent material, at least 12 inches square, securely mounted on a staff or securely fastened by at least one corner to the widest extremities of an overwidth permitted vehicle, and at the rear of an overlength permitted vehicle or a permitted vehicle with a rear overhang in excess of four feet.]

(8) Equipment requirements for motorcycles.

(A) An official law enforcement motorcycle may be used as a primary escort flag vehicle for a permitted vehicle traveling within the limits of an incorporated city, if the motorcycle is operated by a highway patrol officer, sheriff, or duly authorized deputy, or municipal police officer.

(B) An escort flag vehicle must maintain two-way communications with the permitted vehicle and other escort flag vehicles involved with the movement of the permitted vehicle.

(l) Restrictions.

(1) Daytime [Daylight] and nighttime [night] movement restrictions.

(A) A permitted vehicle may be moved only during the daytime [daylight hours] unless:

(i) the permitted vehicle is overweight only;

(ii) the permitted vehicle is traveling on an interstate highway and does not exceed 10 feet wide and 100 feet long, with front and rear overhang that complies with legal standards; or

(iii) the permitted vehicle meets the criteria of clause (ii) of this subparagraph and is overweight.

(B) An exception may be granted allowing nighttime [night] movement, based on a route and traffic study conducted by TxDOT. Escort flag vehicles may be required when an exception allowing nighttime [night] movement is granted.

(2) Holiday restrictions. [The maximum size limits for a permit issued under Transportation Code, Chapter 623, Subchapter D, for holiday movement is 14 feet wide, 16 feet high, and 110 feet long, unless an exception is granted based on a route and traffic study conducted by TxDOT.] The department may restrict holiday movement of specific loads based on TxDOT's [a] determination that the load could pose a hazard for the traveling public due to local road or traffic conditions.

(3) Curfew restrictions. The operator of a permitted vehicle must observe the curfew movement restrictions published by the department. [of any city or county in which the vehicle is operated. However, only the curfew restrictions listed on the permit apply to the permit.]

(m) General provisions.

(1) Multiple commodities.

(A) When [Except as provided in subparagraph (B) of this paragraph, when] a permitted commodity creates a single overdimension, two or more commodities may be hauled as one permit load, provided legal axle weight and gross weight are not exceeded, and provided an overdimension of width, length or height is not created or made greater by the additional commodities. For example, a permit issued for the movement of a 12 foot wide storage tank may also include a 10 foot wide storage tank loaded behind the 12 foot wide tank provided that legal axle weight and gross weight are not exceeded, and provided an overdimension of width, length or height is not created.

[(B) When the transport of more than one commodity in a single load creates or makes greater an illegal dimension of length, width, or height the department may issue an oversize permit for such load subject to each of the following conditions.]

[(i) The permit applicant or the shipper of the commodities files with the department a written certification by the Texas Economic Development and Tourism Office, attesting that issuing the permit will have a significant positive impact on the economy of Texas and that the proposed load of multiple commodities therefore cannot be reasonably dismantled. As used in this clause the term significant positive impact means the creation of not less than 100 new full-time jobs, the preservation of not less than 100 existing full-time jobs, that would otherwise be eliminated if the permit is not issued, or creates or retains not less than one percent of the employment base in the affected economic sector identified in the certification.]

[(ii) Transport of the commodities does not exceed legal axle and gross load limits.]

[(iii) The permit is issued in the same manner and under the same provisions as would be applicable to the transport of a single oversize commodity under this section; provided, however, that the shipper and the permittee also must indemnify and hold harmless the department, its board members, officers, and employees from any and all liability for damages or claims of damages including court costs and attorney fees, if any, which may arise from the transport of an oversized load under a permit issued pursuant to this subparagraph.]

[(iv) The shipper and the permittee must file with the department a certificate of insurance on a form prescribed by the department, or otherwise acceptable to the department, naming the department, its board members, officers, and employees as named or additional insurers on its comprehensive general liability insurance policy for coverage in the amount of $5 million per occurrence, including court costs and attorney fees, if any, which may arise from the transport of an oversized load under a permit issued pursuant to this subparagraph. The insurance policy is to be procured from a company licensed to transact insurance business in the State of Texas.]

[(v) The shipper and the permittee must file with the department, in addition to all insurance provided in clause (iv) of this subparagraph, a certificate of insurance on a form prescribed by the department, or otherwise acceptable to the department, naming the department, its board members, officers, and employees as insurers under an auto liability insurance policy for the benefit of said insurers in an amount of $5 million per accident. The insurance policy is to be procured from a company licensed to transact insurance business in the State of Texas. If the shipper or the permittee is self-insured with regard to automobile liability then that party must take all steps and perform all acts necessary under the law to indemnify the department, its board members, officers, and employees as if the party had contracted for insurance pursuant to, and in the amount set forth in, the preceding sentence and shall agree to so indemnify the department, its board members, officers, and employees in a manner acceptable to the department.]

[(vi) Issuance of the permit is approved by written order of the board which written order may be, among other things, specific as to duration and routes.]

(B) [(C)] Subject to the restrictions in subparagraph (A) of this paragraph and the definition of a "nondivisible load or vehicle" in §219.2 of this title (relating to Definitions), an [An] applicant requesting a permit to haul a dozer and its detached blade may be issued a permit, as a nondivisible [non-dismantable] load, if removal of the blade will decrease the overall width of the load, thereby reducing the hazard to the traveling public.

(2) Oversize hauling equipment. A vehicle that exceeds the legal size limits, as set forth by Transportation Code, Chapter 621, Subchapter C, may only haul a load that exceeds legal size limits unless otherwise noted in this subchapter, but such vehicle may haul an overweight load that does not exceed legal size limits, except for the special exception granted in §219.13(c)(3) of this title (relating to Time Permits).

(n) Surety bonds under Transportation Code, §623.075.

(1) General requirements. The surety bond must comply with the following requirements:

(A) be in the amount of $10,000;

(B) be filed on a form and in a manner prescribed by the department;

(C) be effective the day it is issued and expire at the end of the state fiscal year;

(D) include the primary mailing address and zip code of the principal;

(E) be signed by the principal; and

(F) have a single entity as principal with no other principal names listed.

(2) Non-resident agent. A non-resident agent with a valid Texas insurance license may issue a surety bond on behalf of an authorized insurance company when in compliance with Insurance Code, Chapter 4056.

(3) Certificate of continuation. A certificate of continuation will not be accepted.

(4) Electronic copy of surety bond. The department will accept an electronic copy of the surety bond in lieu of the original surety bond.

§219.12. Single-Trip Permits Issued Under Transportation Code, Chapter 623, Subchapter D.

(a) General. The information in this section applies to single-trip permits issued under Transportation Code, Chapter 623, Subchapter D. The department will issue permits under this section in accordance with the requirements of §219.11 of this title (relating to General Oversize/Overweight Permit Requirements and Procedures).

(b) Overweight loads.

(1) The maximum weight limits for an overweight permit are specified in §219.11(d).

(2) The applicant shall pay, in addition to the single-trip permit fee of $60, the applicable highway maintenance fee.

(3) The applicant must also pay the vehicle supervision fee (VSF) for a permit issued for an overweight vehicle and load exceeding 200,000 pounds gross weight.

(A) The VSF is $35 if:

(i) the vehicle and load do not exceed 254,300 pounds gross weight;

(ii) there is at least 95 feet of overall axle spacing; and

(iii) the vehicle and load do not exceed maximum permit weight on any axle or axle group, as described in §219.11(d).

(B) The VSF is $500 if:

(i) there is less than 95 feet of overall axle spacing;

(ii) the vehicle and load exceed maximum permit weight on any axle or axle group, as described in §219.11(d); or

(iii) the vehicle and load exceed 254,300 pounds gross weight. However, for a vehicle and load described in this subparagraph, the VSF is reduced from $500 to $100 if no bridges are crossed, and the VSF is reduced from $500 to $35 for an additional identical load that is to be moved over the same route within 30 days of the movement date of the original permit.

(C) An applicant must pay the VSF at the time of permit application in order to offset TxDOT's [~~department~~] costs for analyses performed in advance of issuing the permit. A request for cancellation must be in writing and received by the department prior to collection of the structural information associated with the permit application. If the application is canceled, the department will return the vehicle supervision fee.

(4) An applicant applying for a permit to move a load that is required for the fulfillment of a fixed price public works contract that was entered into prior to the effective date of this section, and administered by federal, state, or local governmental entities, will not be required to pay the vehicle supervision fee, provided the applicant presents proof of the contract to the department prior to permit issuance.

(5) When the department has determined that a permit can be issued for an overdimension load exceeding 200,000 pounds gross weight, all remaining fees are due at the time the permit is issued.

(6) Unless the permit is issued for a load under subsection (c) of this section, this permit may not be used for a container, including a trailer [~~or an intermodal container~~], loaded with divisible cargo.

(7) The following provisions apply to an application for a superheavy permit to move an overdimension load that is over 254,300 pounds gross weight, between 200,001 and 254,300 pounds gross weight with less than 95 feet overall axle spacing, or over the maximum permitted weight on any axle or axle group described in §219.11(d) of this title.

(A) In consultation with TxDOT and the applicant as necessary, the department will determine a tentative route based on the physical size of the overdimension load excluding the weight. After the department provides the tentative route to the applicant, the applicant must investigate the tentative route and acknowledge in writing to the department that the tentative route is capable of accommodating the overdimension load. If the applicant tells the department that the tentative route is not capable of accommodating the overdimension load, the department will consult with TxDOT and the applicant as necessary to attempt to create a tentative route that the applicant can acknowledge is capable of accommodating the overdimension load.

(B) The applicant must provide the department with the name and email address of the applicant's TxDOT-certified, licensed professional engineering firm, which TxDOT certifies under Chapter 28, Subchapter G of this title (relating to Oversize and Overweight Vehicles and Loads). Once the applicant provides the department with the name and email address of the applicant's TxDOT-certified, licensed professional engineering firm and acknowledges to the department that the tentative route is capable of accommodating the overdimension load, the department will provide the tentative route and the applicant's application information to the applicant's TxDOT-certified, licensed professional engineering firm.

(C) The applicant must provide information and documents, as requested, to the applicant's TxDOT-certified, licensed professional engineering firm to enable the engineering firm to provide TxDOT with a written report under §28.86 of this title (relating to Bridge Report).

(D) Before the superheavy permit may be issued, the applicant's TxDOT-certified, licensed professional engineering firm must provide TxDOT with a written report that includes a detailed structural analysis of the bridges on the tentative route, demonstrating that the bridges and culverts on the tentative route are capable of sustaining the load. The department will not issue a superheavy permit unless TxDOT provides the department with approval for the tentative route proposed by the department and acknowledged by the applicant as capable of accommodating the overdimension load.

[~~(7) An applicant requesting a permit to move an overdimension load that is between 200,001 and 254,300 pounds total with less than 95 feet overall axle spacing, or is over the maximum permitted weight on any axle or axle group, or is over 254,300 pounds gross weight, or the weight limits described in §219.11(d), must submit the following items to the department to determine if the permit can be issued:~~]

[~~(A) a detailed loading diagram which indicates the number of axles, the number of tires on each axle, the tire size on each axle, the distance between each axle, the tare and gross weight on each axle, the transverse spacing of each set of dual wheels, the distance between each set of dual wheels, the load's center of gravity, the distance from the center of gravity to the center of the front bolster, the distance from the center of gravity to the center of the rear bolster, the distance from the center of the front bolster to the center of the fifth wheel of the truck, the distance from the center of the rear bolster to the center of the closest axle, and any other measurements as may be needed to verify that the weight of the overdimension load is adequately distributed among the various axle groups in the amounts indicated by the loading diagram;~~]

[~~(B) a map indicating the exact beginning and ending points relative to a state highway;~~]

[~~(C) a completed form prescribed by the department, attesting to the facts regarding the applicant's agreement to transport the shipment;~~]

[~~(D) the vehicle supervision fee as specified in paragraph (3) of this subsection; and~~]

[~~(E) the name, phone number, and fax number of the applicant's licensed professional engineer who has been approved by the department.~~]

[~~(8) The department will select a tentative route based on the physical size of the overdimension load excluding the weight. The tentative route must be investigated by the applicant, and the department must be advised, in writing, that the route is capable of accommodating the overdimension load.~~]

[~~(9) Before the permit is issued, the applicant's TxDOT approved licensed professional engineer shall submit to the department and TxDOT a written certification that includes a detailed structural analysis of the bridges on the proposed route demonstrating that the bridges and culverts on the travel route are capable of sustaining the load. The certification must be approved by TxDOT and submitted to the department before the permit will be issued.~~]

(c) Drill pipe and drill collars hauled in a pipe box.

(1) A vehicle or combination of vehicles may be issued a permit under Transportation Code, §623.071, to haul drill pipe and drill collars in a pipe box.

(2) The maximum width must not exceed 10 feet.

(3) The axle weight limits must not exceed the maximum weight limits as specified in §219.11(d)(3).

(4) The height and length must not exceed the legal limits specified in Transportation Code, Chapter 621, Subchapter C.

(5) The permit will be issued for a single-trip only. For loads over 80,000 pounds, the applicant must pay the single-trip permit fee, in addition to the highway maintenance fee specified in Transportation Code, §623.077.

(6) The permit is valid only for travel on any farm-to-market and ranch-to-market road, and such road will be specified on the permit; however, the permitted vehicle will not be allowed to cross any load restricted bridge when exceeding the posted capacity of the bridge.

(7) Movement will be restricted to daytime [~~daylight hours~~] only.

(d) Houses [~~and storage tanks~~].

[~~(1) Unless an exception is granted by TxDOT, the department will not issue a permit for a house or storage tank exceeding 20 feet in width.~~]

(1) [~~(2)~~] The issuance of a permit for a house [~~or storage tank~~] exceeding 20 feet in width will be based on:

(A) the amount of inconvenience and hazard to the traveling public, based on traffic volume;

(B) highway geometrics and time of movement; and

(C) the overall width, measured to the nearest inch, of the house, including the eaves or porches.

[~~(3) A storage tank must be empty.~~]

(2) [~~(4)~~] The proposed route must include the beginning and ending points on a state highway.

(3) [~~(5)~~] A permit may be issued for the movement of an overweight house provided:

(A) the applicant provides [~~completes and submits to~~] the department with the requested information regarding weights [~~a copy of a diagram for moving overweight houses, as shown in Figure: 43 TAC §219.12(e) of this section~~];

(B) each support beam, parallel to the centerline of the highway, is equipped with an identical number of two-axle [~~two axle~~] groups which may be placed directly in line and across from the other corresponding two-axle [~~two axle~~] group or may be placed in a staggered offset arrangement to provide for proper weight distribution;

(C) that, when a support beam is equipped with two or more two-axle [~~two axle~~] groups, each two-axle [~~two axle~~] group is connected to a common mechanical or hydraulic system to ensure that each two-axle [~~two axle~~] group shares equally in the weight distribution at all times during the movement; and when the spacing between the two-axle [~~two axle~~] groups, measured from the center of the last axle of the front group to the center of the first axle of the following group, is eight feet or more, the front two-axle [~~two axle~~] group is equipped for self-steering in a manner that will guide or direct the axle group in turning movements without tire scrubbing or pavement scuffing; and

(D) the department conducts a detailed analysis of each structure on the proposed route and determines the load can be moved without damaging the roads and bridges.

[~~(6) The department may waive the requirement that a loading diagram be submitted for the movement of an overweight house if the total weight of all axle groups located in the same transverse plane across the house does not exceed the maximum weight limits specified in §219.11(d)(2).~~]

[(e) Diagram for moving overweight houses. The following Figure: 43 TAC §219.12(e) indicates the type of diagram that is to be completed by the permit applicant for moving an overweight house. All measurements must be stated to the nearest inch.]
[Figure: 43 TAC §219.12(e)]

(e) [(f)] Self-propelled off-road equipment. A permit may be issued for the movement of oversize and overweight self-propelled off-road equipment under the following conditions.

(1) The weight per inch of tire width must not exceed 650 pounds.

(2) The rim diameter of each wheel must be a minimum of 25 inches.

(3) The maximum weight per axle must not exceed 45,000 pounds.

(4) The minimum spacing between axles, measured from center of axle to center of axle, must not be less than 12 feet.

(5) The equipment must be moved empty.

(6) The route will not include any controlled access highway, unless an exception is granted based on a route and traffic study conducted by TxDOT.

§219.13. Time Permits.

(a) General information. Applications for time permits issued under Transportation Code, Chapter 622 and Chapter 623, and this section shall be made in accordance with §219.11(b) and (c) of this title (relating to General Oversize/Overweight Permit Requirements and Procedures). Permits issued under this section are governed by the requirements of §219.11(e)(1) of this title.

(b) 30, 60, and 90 day permits. The following conditions apply to time permits issued for overwidth or overlength loads, or overlength vehicles, under this section.

[(1) Fees. The fee for a 30-day permit is $120; the fee for a 60-day permit is $180; and the fee for a 90-day permit is $240. All fees are payable in accordance with §219.11(f) of this title. All fees are non-refundable.]

(1) [(2)] Validity of Permit. Time permits are valid for a period of 30, 60, or 90 calendar days, based on the request of the applicant, and will begin on the effective date stated on the permit.

(2) [(3)] Weight/height limits. The permitted vehicle may not exceed the weight or height limits set forth by Transportation Code, Chapter 621, Subchapters B and C.

[(4) Registration requirements for permitted vehicles. Time permits will not be issued to a vehicle or vehicle combination that is registered with temporary vehicle registration.]

(3) [(5)] Vehicle indicated on permit. The permit will indicate only the truck or truck-tractor transporting the load; however, any properly registered trailer or semi-trailer is covered by the permit.

(4) [(6)] Permit routes. The permit will allow travel on a statewide basis.

(5) [(7)] Restrictions.

(A) The permitted vehicle must not cross a load restricted bridge or load restricted road when exceeding the posted capacity of the road or bridge.

(B) The permitted vehicle may travel through highway construction or maintenance areas if the dimensions do not exceed the construction restrictions as published by the department.

(C) The permitted vehicle is subject to the restrictions specified in §219.11(l) of this title, and the permittee is responsible for obtaining from the department information concerning current restrictions.

(6) [(8)] Escort requirements. Permitted vehicles are subject to the escort requirements specified in §219.11(k) of this title.

(7) [(9)] Transfer of time permits. Time permits issued under this subsection are non-transferable between permittees or vehicles.

(8) [(10)] Amendments. With the exception of time permits issued under subsection (e)(4) of this section, time permits issued under this subsection will not be amended except in the case of permit officer error.

(c) Overwidth loads. An overwidth time permit may be issued for the movement of any load or overwidth trailer, subject to subsection (a) of this section and the following conditions:

(1) Width requirements.

(A) A time permit will not be issued for a vehicle with a width exceeding 13 feet.

(B) When multiple items are hauled at the same time, the items may not be loaded in a manner that creates a width greater than the width of the widest item being hauled.

(2) Weight, height, and length requirements.

(A) The permitted vehicle shall not exceed legal weight, height, or length according to Transportation Code, Chapter 621, Subchapters B and C.

(B) When multiple items are hauled at the same time, the items may not be loaded in a manner that creates:

(i) a height greater than 14 feet;

(ii) an overlength load; or

(iii) a gross weight exceeding the legal gross or axle weight of the vehicle hauling the load.

(3) Movement of overwidth trailers. When the permitted vehicle is an overwidth trailer, it will be allowed to:

(A) move empty to and from the job site; and

(B) haul a load from the permitted vehicle's point of origin to pick up a permitted load, and to the permitted vehicle's point of origin or the permittee's place of business after dropping off a permitted load, as long as:

(i) the load does not exceed legal size and weight limits under Transportation Code, Chapters 621 and 622; and

(ii) the transport complies with the permit, including the time period stated on the permit.

(4) Use in conjunction with other permits. An overwidth time permit may be used in conjunction with an overlength time permit.

(d) Overlength loads. An overlength time permit may be issued for the transportation of overlength loads or the movement of an overlength self-propelled vehicle, subject to subsection (a) of this section and the following conditions:

(1) Length requirements.

(A) The maximum overall length for the permitted vehicle may not exceed 110 feet.

(B) The department may issue a permit under Transportation Code, §623.071(a) for an overlength load or an overlength

self-propelled vehicle that falls within the definition of a nondivisible load or vehicle.

(2) Weight, height and width requirements.

(A) The permitted vehicle may not exceed legal weight, height, or width according to Transportation Code, Chapter 621, Subchapters B and C.

(B) A permit will not be issued when the load has more than 25 feet front overhang, or more than 30 feet rear overhang.

(3) Use in conjunction with other permits. An overlength time permit may be used in conjunction with an overwidth time permit.

(4) Emergency movement. A permitted vehicle transporting utility poles will be allowed emergency nighttime [~~night~~] movement for restoring electrical utility service, provided the permitted vehicle is accompanied by a rear escort flag vehicle.

(e) Annual permits.

(1) General information. All permits issued under this subsection are subject to the following conditions.

[~~(A) Fees for permits issued under this subsection are payable as described in §219.11(f) of this title.~~]

(A) [~~(B)~~] Permits issued under this subsection are not transferable.

(B) [~~(C)~~] Vehicles permitted under this subsection shall be operated according to the restrictions described in §219.11(l) of this title. The permittee is responsible for obtaining information concerning current restrictions from the department.

(C) [~~(D)~~] Vehicles permitted under this subsection may not travel over a load restricted bridge or load restricted road when exceeding the posted capacity of the road or bridge.

(D) [~~(E)~~] Vehicles permitted under this subsection may travel through any highway construction or maintenance area provided the dimensions do not exceed the construction restrictions as published by the department.

(E) [~~(F)~~] With the exception of permits issued under paragraph (5) of this subsection, vehicles permitted under this subsection shall be operated according to the escort requirements described in §219.11(k) of this title.

(2) Implements of husbandry. An annual permit may be issued for an implement of husbandry being moved by a dealer in those implements, and for harvesting equipment being moved as part of an agricultural operation. Permits issued under this paragraph are subject to the conditions described in paragraph (1) of this subsection.

(A) The fee for a permit issued under this paragraph is $270, plus the highway maintenance fee specified in Transportation Code, §623.077.

(B) The time period will be for one year and will start on the effective date stated on the permit.

(C) The maximum width may not exceed 16 feet; maximum height may not exceed 16 feet; maximum length may not exceed 110 feet; and maximum weight may not exceed the limits stated in §219.11(d) of this title.

(D) Unless stated otherwise on the permit, the permitted vehicle must travel in the outside traffic lane on multi-lane highways, when the width of the load exceeds 12 feet.

(E) The permitted vehicle must be registered in accordance with Transportation Code, Chapter 502, for maximum weight for the vehicle or vehicle combination, as set forth by Transportation Code, Chapter 621.

(3) Water well drilling machinery. The department may issue annual permits under Transportation Code, §623.071, for water well drilling machinery and equipment that fall within the definition of a nondivisible load or vehicle. Permits issued under this paragraph are subject to the conditions described in paragraph (1) of this subsection.

(A) The fee for a permit issued under this paragraph is $270, plus the highway maintenance fee specified in Transportation Code, §623.077 for an overweight load.

(B) A water well drilling machinery permit is valid for one year from the effective date stated on the permit.

(C) The maximum dimensions may not exceed 16 feet wide, 14 feet 6 inches high, 110 feet long, and maximum weight may not exceed the limits stated in §219.11(d) of this title.

(D) The permitted vehicle must be registered in accordance with Transportation Code, Chapter 502, for the maximum weight of the vehicle, as set forth by Transportation Code, Chapter 621.

(E) A permit issued under this section authorizes a permitted vehicle to operate only on the state highway system.

(4) Envelope vehicle permits.

(A) The department may issue an annual permit under Transportation Code, §623.071(c), to a specific vehicle, for the movement of superheavy or oversize equipment that falls within the definition of a nondivisible load. This permit may not be used for a container, including a trailer [~~or an intermodal container~~], loaded with divisible cargo. Unless otherwise noted, permits issued under this paragraph are subject to the conditions described in paragraph (1) of this subsection.

(i) Superheavy or oversize equipment operating under an annual envelope vehicle permit may not exceed:

(I) 12 feet in width;

(II) 14 feet in height;

(III) 110 feet in length; or

(IV) 120,000 pounds gross weight.

(ii) Superheavy or oversize equipment operating under an annual envelope vehicle permit may not transport a load that has more than 25 feet front overhang, or more than 30 feet rear overhang.

(iii) The fee for an annual envelope vehicle permit is $4,000, and is non-refundable.

(iv) The time period will be for one year and will start on the effective date stated on the permit.

(v) This permit authorizes operation of the permitted vehicle only on the state highway system.

(vi) The permitted vehicle must comply with §219.11(d)(2) and (3) of this title.

(vii) The permitted vehicle or vehicle combination must be registered in accordance with Transportation Code, Chapter 502, for maximum weight as set forth by Transportation Code, Chapter 621.

(viii) A permit issued under this paragraph is nontransferable between permittees.

(ix) A permit issued under this paragraph may be transferred from one vehicle to another vehicle in the permittee's fleet provided:

(I) the permitted vehicle is destroyed or otherwise becomes permanently inoperable, to an extent that it will no longer be utilized, and the permittee presents proof that the negotiable certificate of title or other qualifying documentation has been surrendered to the department; or

(II) the certificate of title to the permitted vehicle is transferred to someone other than the permittee, and the permittee presents proof that the negotiable certificate of title or other qualifying documentation has been transferred from the permittee.

(x) A single-trip permit, as described in §219.12 of this title (relating to Single-Trip Permits Issued Under Transportation Code, Chapter 623, Subchapter D), may be used in conjunction with an annual permit issued under this paragraph for the movement of vehicles or loads exceeding the height or width limits established in subparagraph (A) of this paragraph. The department will indicate the annual permit number on any single-trip permit to be used in conjunction with a permit issued under this paragraph, and permittees will be assessed a fee of $60 for the single-trip permit.

(B) The department may issue an annual permit under Transportation Code, §623.071(d), to a specific motor carrier, for the movement of superheavy or oversize equipment that falls within the definition of a nondivisible load. This permit may not be used for a container, including a trailer [~~or an intermodal container~~], loaded with divisible cargo. Unless otherwise noted, permits issued under this paragraph are subject to the conditions described in paragraph (1) of this subsection and subparagraphs (A)(i)-(viii) of this paragraph. A permit issued under this paragraph may be transferred from one vehicle to another vehicle in the permittee's fleet provided:

(i) that no more than one vehicle is operated at a time; and

(ii) the original certified permit is carried in the vehicle that is being operated under the terms of the permit.

(C) An annual envelope permit issued under subparagraph (B) of this paragraph will be sent to the permittee via registered mail, or at the permittee's request and expense overnight delivery service. This permit may not be duplicated. This permit will be replaced only if:

(i) the permittee did not receive the original permit within seven business days after its date of issuance;

(ii) a request for replacement is submitted to the department within 10 business days after the original permit's date of issuance; and

(iii) the request for replacement is accompanied by a notarized statement signed by a principal [~~principle~~] or officer of the permittee acknowledging that the permittee understands the permit may not be duplicated and that if the original permit is located, the permittee must return either the original or replacement permit to the department.

(D) A request for replacement of a permit issued under subparagraph (B) of this paragraph will be denied if the department can verify that the permittee received the original.

(E) Lost, misplaced, damaged, destroyed, or otherwise unusable permits will not be replaced. A new permit will be required.

(5) Annual manufactured housing permit. The department may issue an annual permit for the transportation of new manufactured homes from a manufacturing facility to a temporary storage location, not to exceed 20 miles from the point of manufacture, in accordance with Transportation Code, §623.094. Permits issued under this paragraph are subject to the requirements of paragraph (1), subparagraphs (A), (B), (C), and (D)[~~, (E), and (G),~~] of this subsection.

(A) A permit shall contain the name of the company or person authorized to be issued permits by Transportation Code, Chapter 623, Subchapter E.

(B) The fee for a permit issued under this paragraph is $1,500. Fees are non-refundable [~~, and shall be paid in accordance with §219.11(f) of this title~~].

(C) The time period will be for one year from the effective date stated on the permit.

(D) The permitted vehicle must travel in the outside traffic lane on multi-lane highways when the width of the load exceeds 12 feet.

[~~(E) The permitted vehicle must be registered in accordance with Transportation Code, Chapter 502.~~]

(E) [~~(F)~~] Authorized movement for a vehicle permitted under this section shall be valid during daytime [~~daylight hours~~] only [~~as defined by Transportation Code, §541.401~~].

[~~(G) The permitted vehicle must be operated in accordance with the escort requirements described in §219.14(f) of this title (relating to Manufactured Housing, and Industrialized Housing and Building Permits).~~]

(F) [~~(H)~~] Permits issued under this section are non-transferable between permittees.

(6) Power line poles. An annual permit will be issued under Transportation Code, Chapter 622, Subchapter E, for the movement of poles required for the maintenance of electric power transmission and distribution lines. Permits issued under this paragraph are subject to the conditions described in paragraph (1) of this subsection.

(A) The fee for the permit is $120.

(B) The time period will be for one year and will start on the effective date stated on the permit.

(C) The maximum length of the permitted vehicle may not exceed 75 feet.

(D) The width, height and gross weight of the permitted vehicle may not exceed the limits set forth by Transportation Code, Chapter 621.

(E) Vehicles permitted under this paragraph may not travel over a load restricted bridge or load zoned road when exceeding posted limits.

[~~(F) The permitted vehicle must be registered in accordance with Transportation Code, Chapter 502, for maximum weight as set forth by Transportation Code, Chapter 621.~~]

(F) [~~(G)~~] Movement will be between the hours of sunrise and sunset; however, the limitation on hours of operation does not apply to a vehicle being operated to prevent interruption or impairment of electric service, or to restore electric service that has been interrupted. When operated at nighttime [~~night~~], a vehicle permitted under this subsection must be accompanied by a rear escort flag vehicle.

(G) [~~(H)~~] The speed of the permitted vehicle may not exceed 50 miles per hour.

(H) [(I)] The permitted vehicle must display on the extreme end of the load:

(i) two red lamps visible at a distance of at least 500 feet from the rear;

(ii) two red reflectors that indicate the maximum width and are visible, when light is insufficient or atmospheric conditions are unfavorable, at all distances from 100 to 600 feet from the rear when directly in front of lawful lower beams of headlamps; and

(iii) two red lamps, one on each side, that indicate the maximum overhang, and are visible at a distance of at least 500 feet from the side of the vehicle.

(7) Cylindrically shaped bales of hay. An annual permit may be issued under Transportation Code, §623.017, for the movement of vehicles transporting cylindrically shaped bales of hay. Permits issued under this paragraph are subject to the conditions described in paragraph (1) of this subsection.

(A) The permit fee is $10.

(B) The time period will be for one year, and will start on the effective date stated on the permit.

(C) The maximum width of the permitted vehicle may not exceed 12 feet.

(D) The length, height, and gross weight of the permitted vehicle may not exceed the limits set forth by Transportation Code, Chapter 621.

(E) Movement is restricted to daytime [daylight hours] only.

[(F) The permitted vehicle must be registered in accordance with Transportation Code, Chapter 502, for maximum weight, as set forth by Transportation Code, Chapter 621.]

(8) Overlength load or vehicles. An annual overlength permit may be issued for the transportation of a nondivisible overlength load or the movement of a nondivisible overlength vehicle or combination of vehicles under Transportation Code, §623.071(c-1). This permit is subject to the portions of subsections (a), (b), and (d) of this section that are not limited to the [fee or] duration for the 30, 60, and 90 day permits.

§219.14. Manufactured Housing, and Industrialized Housing and Building Permits.

(a) General Information.

(1) A manufactured home that exceeds size limits for motor vehicles as defined by Transportation Code, Chapter 621, Subchapters B and C, must obtain a permit from the department.

(2) Pursuant to Transportation Code, Chapter 623, Subchapter E, a permit may be issued to persons registered as manufacturers, installers, or retailers with the Texas Department of Housing and Community Affairs or motor carriers registered with the department under Transportation Code, Chapter 643.

(3) The department may issue a permit to the owner of a manufactured home provided that:

(A) the same owner is named on the title of the manufactured home and towing vehicle;

(B) or the owner presents a lease showing that the owner of the manufactured home is the lessee of the towing vehicle.

(b) Permit application.

(1) To qualify for a permit under this section, a person must submit an application to the department.

(2) All applications shall be made in a form and by the method prescribed by the department, and at a minimum shall include the following:

(A) name, customer identification number, and address of the applicant;

(B) name, telephone number, and email address of contact person;

(C) applicant's USDOT Number if applicant is required by law to have a USDOT Number;

(D) complete description of the manufactured home, including the year, make and one of the following:

(i) manufactured home's HUD label number;

(ii) Texas seal number; or

(iii) the complete identification number or serial number;

(E) the maximum width, height and length of the vehicle and manufactured home; and

(F) any other information required by law, including the information listed in Transportation Code §623.093(a).

(c) Amendments to permit. Amendments can only be made to change intermediate points between the origination and destination points listed on the permit.

[(d) Payment of permit fee. The cost of the permit is $40, payable in accordance with §219.11(f) of this title.]

(d) [(e)] Permit provisions and conditions.

(1) The overall combined length of the manufactured home and the towing vehicle includes the length of the hitch or towing device.

(2) The height is measured from the roadbed to the highest elevation of the manufactured home.

(3) The width of a manufactured home includes any roof or eaves extension or overhang on either side.

(4) A permit will be issued for a single continuous movement not to exceed five days.

[(5) Movement must be made during daylight hours only and may be made on any day except New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.]

(5) [(6)] The department may limit the hours for travel on certain routes because of heavy traffic conditions.

(6) [(7)] The department will publish any limitations on movements during the national holidays [listed in this subsection], or any limitations during certain hours of heavy traffic conditions, and will make such publications available to the public prior to the limitations becoming effective.

(7) [(8)] The permit will contain the route for the transportation of the manufactured home from the point of origin to the point of destination.

(8) [(9)] The route for the transportation must be the most practical route as described in §219.11(e) of this title (relating to General Oversize/Overweight Permit Requirements and Procedures), except where construction is in progress and the permitted vehicle's di-

mensions exceed the construction restrictions as published by the department, or where bridge or overpass width or height would create a safety hazard.

[(10) The department will publish annually a map or list of all bridges or overpasses which, due to height or width, require an escort flag vehicle to stop oncoming traffic while the manufactured home crosses the bridge or overpass.]

(9) [(11)] A permittee may not transport a manufactured home with a void permit; a new permit must be obtained.

[(f) Escort requirements.]

[(1) A manufactured home exceeding 12 feet in width must have a rotating amber beacon of not less than eight inches in diameter mounted somewhere on the roof at the rear of the manufactured home, or may have two five-inch flashing amber lights mounted approximately six feet from ground level at the rear corners of the manufactured home. The towing vehicle must have one rotating amber beacon of not less than eight inches in diameter mounted on top of the cab. These beacons or flashing lights must be operational and luminiferous during any permitted move over the highways, roads, and streets of this state.]

[(2) A manufactured home with a width exceeding 16 feet but not exceeding 18 feet must have a front escort flag vehicle on two-lane roadways and a rear escort flag vehicle on roadways of four or more lanes.]

[(3) A manufactured home exceeding 18 feet in width must have a front and a rear escort flag vehicle on all roadways at all times.]

[(4) The escort flag vehicle must:]

[(A) have one red 16 inch square flag mounted on each of the four corners of the vehicle;]

[(B) have a sign mounted on the front and rear of the vehicle displaying the words "WIDE LOAD" in black letters at least eight inches high with a brush stroke at least 1.41 inches wide against a yellow background;]

[(C) have mounted on top of the vehicle and visible from both the front and rear:]

[(i) two simultaneously flashing lights;]

[(ii) one rotating amber beacon of not less than eight inches in diameter; or]

[(iii) alternating or flashing blue and amber lights; and]

[(D) maintain two-way communications with the permitted vehicle and other escort flag vehicles involved with the movement of the permitted vehicle.]

[(5) Two transportable sections of a multi-section manufactured home, or two single section manufactured homes, when towed together in convoy, may be considered one home for purposes of the escort flag vehicle requirements, provided the distance between the two units does not exceed 1,000 feet.]

[(6) An escort flag vehicle must comply with the requirements in §219.11(k)(1) and §219.11(k)(7)(A) of this title.]

§219.15. Portable Building Unit Permits.

(a) General information.

(1) A vehicle or vehicle combination transporting one or more portable building units and portable building compatible cargo that exceed legal length or width limits set forth by Transportation Code, Chapter 621, Subchapters B and C, may obtain a permit under Transportation Code, Chapter 623, Subchapter F.

(2) In addition to the fee required by statute [subsection (d)], the department shall collect an amount equal to any fee that would apply to the movement of cargo exceeding any applicable width limits, if such cargo were moved in a manner not governed by this section.

(b) Application for permit. Applications shall be made in accordance with §219.11(c) of this title (relating to General Oversize/Overweight Permit Requirements and Procedures).

(c) Permit issuance. Permit issuance is subject to the requirements of §219.11[(b)(2),](e) and (g) of this title.

(d) Non-refundable [Payment of] permit fee. [The cost of the permit is $15, with all fees payable in accordance with §219.11(f) of this title.] All fees are non-refundable.

(e) Permit provisions and conditions.

(1) A portable building unit may only be issued a single-trip permit.

(2) Portable building units may be loaded end-to-end to create an overlength permit load, provided the overall length does not exceed 80 feet.

(3) Portable building units must not be loaded side-by-side to create an overwidth load, or loaded one on top of another to create an overheight load.

(4) Portable building units must be loaded in a manner that will create the narrowest width for permit purposes and provide for greater safety to the traveling public.

(5) The permit will be issued for a single continuous movement from the origin to the destination for an amount of time necessary to make the move, not to exceed 10 consecutive days.

(6) Movement of the permitted vehicle must be made during daytime [daylight hours] only.

(7) A permittee may not transport portable building units or portable building compatible cargo with a void permit; a new permit must be obtained.

[(f) Escort requirements.]

[(1) A portable building unit or portable building compatible cargo with a width exceeding 16 feet but not exceeding 18 feet must have a front escort flag vehicle on two-lane roadways and a rear escort flag vehicle on roadways of four or more lanes.]

[(2) A portable building unit or portable building compatible cargo exceeding 18 feet in width must have a front and a rear escort flag vehicle on all roadways at all times.]

[(3) The escort flag vehicle must:]

[(A) have one red 16 inch square flag mounted on each of the four corners of the vehicle;]

[(B) have a sign mounted on the front and rear of the vehicle displaying the words "WIDE LOAD" in black letters at least eight inches high with a brush stroke at least 1.41 inches wide against a yellow background;]

[(C) have mounted on top of the vehicle and visible from both front and rear, two simultaneously flashing lights, one rotating amber beacon of not less than eight inches in diameter, or alternating or flashing blue and amber lights; and]

[(D) maintain two-way communications with the permitted vehicle and other escort flag vehicles involved with the movement of the permitted vehicle.]

[(4) An escort flag vehicle must comply with the requirements in §219.11(k)(1) and §219.11(k)(7)(A) of this title.]

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. PERMITS FOR OVER AXLE AND OVER GROSS WEIGHT TOLERANCES

43 TAC §§219.30 - 219.32, 219.34 - 219.36

STATUTORY AUTHORITY. The department proposes amendments under Transportation Code, §621.008, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 621; Transportation Code, §622.002, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 622, including Transportation Code, §622.051, *et seq.* which authorize the department to issue a permit for transporting poles required for the maintenance of electric power transmission and distribution lines; Transportation Code, §623.002, which authorizes the board to adopt rules as necessary to implement Transportation Code, Chapter 623; Transportation Code, §623.070, *et seq.* which authorize the department to issue a permit to an applicant to move certain equipment or commodities and prescribe the application requirements for such permits; Transportation Code, §623.074(d), which authorizes the department to adopt a rule to authorize an applicant to submit an application electronically; Transportation Code, §623.095(c), which authorizes the department to adopt rules concerning the requirements for a permit under §623.095(c) regarding an annual permit for a person authorized to be issued permits under Transportation Code, §623.094 for the transportation of new manufactured homes from a manufacturing facility to a temporary storage location not to exceed 20 miles from the point of manufacture; Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; and the statutory authority referenced throughout the preamble and in the rule text.

CROSS REFERENCE TO STATUTE. The proposed amendments would implement Transportation Code, Chapters 621, 622, and 623; and Government Code, Chapter 2001.

§219.30. Permits for Over Axle and Over Gross Weight Tolerances.

(a) Purpose. In accordance with Transportation Code, §623.011, the department is authorized under certain conditions to issue an annual permit for the operation of a vehicle within certain tolerances above legal axle and gross weight limits, as provided in Transportation Code, Chapter 621. [The sections under this subchapter set forth the requirements and procedures to be used in issuing an annual permit.]

(b) Scope. A permit may be issued to an applicant under this section [subchapter] to operate a vehicle that exceeds the legal axle weight by a tolerance of 10% and the legal gross weight by a tolerance of 5.0% on any county road and on any road in the state highway system provided the vehicle:

(1) is not operated on the national system of interstate and defense highways at a weight greater than authorized by federal law; and

(2) is not operated on a bridge for which the maximum weight and load limit has been established and posted under Transportation Code, §621.102 or §621.301, if the gross weight of the vehicle and load or the axles and wheel loads are greater than the established and posted limits, unless the bridge provides the only public vehicular access to or from the permittee's origin or destination.

(c) Application for permit.

(1) To qualify for a permit under this section, a person must submit an application to the department.

(2) The application shall be in a form prescribed by the department and at a minimum will require the following:

(A) name, customer identification number, and address of the applicant;

(B) name, telephone number, and email address of contact person;

(C) vehicle information, including truck year, make, license plate number and state of issuance, and vehicle identification number;

(D) an indication as to whether the commodities to be transported will be agricultural or non-agricultural;

(E) a list of counties in which the vehicle will operate; and

(F) applicant's USDOT Number if applicant is required by law to have a USDOT Number.

(3) The application shall be accompanied by:

(A) the total permit fee, which includes an administrative fee of $5, the base fee, and the applicable annual fee based on the number of counties designated for travel; and

(B) an original bond or irrevocable letter of credit as required in Transportation Code §623.012.

[(4) Payment of fees. Fees for permits issued under this subchapter are payable as required by §219.11(f) of this title (relating to General Oversize/Overweight Permit Requirements and Procedures).]

(d) Issuance of permit and windshield sticker.

(1) A permit and a windshield sticker will be issued on the approval of the application and each will be mailed to the applicant at the address contained in the application.

(2) The permit shall be carried in the vehicle for which the permit is issued at all times.

(3) The windshield sticker shall be affixed to the inside of the windshield of the vehicle in accordance with the diagram printed on the back of the sticker [~~within six inches above the vehicle's inspection sticker~~] in a manner that will not obstruct the vision of the driver. Any attempt to remove the sticker from the windshield will render the sticker void, and will require a new permit and sticker. The windshield sticker must be removed from the vehicle upon expiration of the permit.

(4) A replacement sticker for a lost, stolen, or mutilated windshield sticker may be issued, provided that the permittee submits a request on a form approved by the department which shall include a statement, signed by the permittee, affirming that the sticker was lost, stolen, or mutilated. The replacement sticker shall only be valid for the permitted vehicle. The cost for a replacement sticker is $3.00.

[~~(5) Within 14 days of issuance of the permit, the department shall notify the county clerk of each county indicated on the application, and such notification shall contain or be accompanied by the following minimum information:~~]

[~~(A) the name and address of the person for whom a permit is issued; and~~]

[~~(B) the vehicle identification number, license plate number, and registration state of the vehicle, and the permit number.~~]

(e) Issuance of a credit. Upon written application on a form prescribed by the department, a prorated credit for the remaining time on the permit may be issued for a vehicle that is destroyed or otherwise becomes permanently inoperable to an extent that it will no longer be utilized. The date for computing a credit will be based on the date of receipt of the credit request. The fee for a credit will be $25, and will be issued on condition that the applicant provides to the department:

(1) the original permit; or

(2) if the original permit no longer exists, written evidence of the destruction or permanent incapacity from the insurance carrier of the vehicle.

(f) Use of credit. A credit issued under subsection (e) of this section may be used only towards the payment of permit fees under this section.

[~~(g) Exceptions. A vehicle carrying timber, wood chips, wood pulp, cotton, or other agricultural products in their natural state, may be allowed to exceed the maximum allowable axle weight by 12% without a permit; however, if such vehicle exceeds the maximum allowable gross weight by an amount of up to 5.0%, a permit issued in accordance with this section will be required.~~]

(g) [~~(h)~~] Lapse or termination of permit. A permit shall lapse or terminate and the windshield sticker must be removed from the vehicle:

(1) when the lease of the vehicle expires;

(2) on the sale of the vehicle for which the permit was issued;

(3) on the sale, takeover, or dissolution of the firm, partnership, or corporation to which a permit was issued; or

(4) if the permittee does not replace or replenish the letter of credit or bond as required by Transportation Code, §623.012.

§219.31. Timber Permits.

(a) Purpose. This section prescribes the requirements and procedures regarding the annual permit for the operation of a vehicle or combination of vehicles that will be used to transport unrefined timber, wood chips, woody biomass, or equipment used to load timber on a vehicle under the provisions of Transportation Code, Chapter 623, Subchapter Q.

(b) Application for permit.

(1) To qualify for a timber permit, a person must submit an application to the department.

(2) The application shall be in a form prescribed by the department and at a minimum, will require the following:

(A) name, customer identification number, and address of the applicant;

(B) name, telephone number, and email address of contact person;

(C) vehicle information, including vehicle year, make, license plate number and state of issuance, and vehicle identification number;

(D) a list of timber producing counties described in Transportation Code, §623.321(a), in which the vehicle or combination of vehicles will be operated; and

(E) applicant's USDOT Number if applicant is required by law to have a USDOT Number.

(3) The application shall be accompanied by:

(A) the total annual permit fee required by statute; and

(B) a blanket bond or irrevocable letter of credit as required by Transportation Code, §623.012, unless the applicant has a current blanket bond or irrevocable letter of credit on file with the department that complies with Transportation Code, §623.012.

[~~(4) Fees for permits issued under this section are payable as required by §219.11(f) of this title (relating to General Oversize/Overweight Permit Requirements and Procedures).~~]

(c) Issuance and placement of permit and windshield sticker; restrictions.

(1) A permit and a windshield sticker will be issued once the application is approved, and each will be mailed to the applicant at the address contained in the application.

(2) The windshield sticker shall be affixed to the inside of the windshield of the vehicle in accordance with the diagram printed on the back of the sticker and in a manner that will not obstruct the vision of the driver. Any attempt to remove the sticker from the windshield will render the sticker void and will require a new permit and sticker.

(3) A replacement sticker for a lost, stolen, or mutilated windshield sticker may be issued, provided that the permittee submits a request on a form approved by the department which shall include a statement, signed by the permittee, affirming that the sticker was lost, stolen, or mutilated. The replacement sticker shall only be valid for the permitted vehicle.

(d) Notification. The financially responsible party as defined in Transportation Code, §623.323(a), shall electronically file the notification document described by §623.323(b) with the department via the form on the department's website.

(e) Transfer of permit. An annual permit issued under this section is not transferable between vehicles.

(f) Amendments. An annual permit issued under this section will not be amended except in the case of department error.

(g) Termination of permit. An annual permit issued under this section will automatically terminate, and the windshield sticker must be removed from the vehicle:

(1) on the expiration of the permit;

(2) when the lease of the vehicle expires;

(3) on the sale or other transfer of ownership of the vehicle for which the permit was issued;

(4) on the dissolution or termination of the partnership, corporation, or other legal entity to which the permit was issued; or

(5) if the permittee fails to timely replenish the bond or letter of credit as required by Transportation Code, §623.012.

(h) Restrictions. Permits issued under this section are subject to the restrictions in §219.11(l) of this title.

§219.32. Ready-Mixed Concrete Truck Permits.

(a) Purpose. This section prescribes the requirements, restrictions, and procedures regarding the annual permit for a ready-mixed concrete truck, operating on three axles, under the provisions of Transportation Code, §623.0171 and Chapter 622, Subchapter B.

(b) Axles. To qualify for movement with a ready-mixed concrete truck permit, the truck may only operate on three axles, regardless of whether the truck actually has more than three axles.

(c) Application for permit.

(1) To qualify for a ready-mixed concrete truck permit, a person must submit an application to the department.

(2) The application shall be in a form prescribed by the department and at a minimum, will require the following:

(A) name, customer identification number, and address of the applicant;

(B) name, telephone number, and email address of contact person;

(C) vehicle information, including vehicle year, make, license plate number and state of issuance, and vehicle identification number;

(D) a list of counties in which the vehicle will be operated; and

(E) applicant's USDOT Number if applicant is required by law to have a USDOT Number.

(3) The application shall be accompanied by the total annual permit fee of $1,000.

~~[(4) Fees for permits issued under this section are payable as required by §219.11(f) of this title (relating to General Oversize/Overweight Permit Requirements and Procedures).]~~

(d) Issuance and placement of permit and windshield sticker; restrictions.

(1) A permit and a windshield sticker will be issued once the application is approved, and each will be mailed to the applicant at the address contained in the application.

(2) The windshield sticker shall be affixed to the inside of the windshield of the vehicle in accordance with the diagram printed on the back of the sticker and in a manner that will not obstruct the vision of the driver. Any attempt to remove the sticker from the windshield will render the sticker void and will require a new permit and sticker.

(3) A replacement sticker for a lost, stolen, or mutilated windshield sticker may be issued, provided that the permittee submits a request on a form approved by the department. The request shall include a statement, signed by the permittee, affirming that the sticker was lost, stolen, or mutilated. The replacement sticker shall only be valid for the permitted vehicle.

(e) Transfer of permit. An annual permit issued under this section is not transferable between vehicles.

(f) Amendments. An annual permit issued under this section will not be amended except in the case of department error.

(g) Termination of permit. An annual permit issued under this section will automatically terminate, and the windshield sticker must be removed from the vehicle:

(1) on the expiration of the permit;

(2) when the lease of the vehicle expires;

(3) on the sale or other transfer of ownership of the vehicle for which the permit was issued; or

(4) on the dissolution or termination of the partnership, corporation, or other legal entity to which the permit was issued.

(h) Curfew restrictions. The operator of a permitted vehicle must observe the curfew movement restrictions published by the department.

(i) Construction or maintenance areas.

(1) Permits issued under this section authorize the operator of the permitted vehicle to travel through any state highway construction or maintenance area, provided the size and weight of the vehicle do not exceed the construction restrictions that are available on the department's website. If a permitted vehicle is delivering concrete to a state highway construction or maintenance jobsite within a construction or maintenance area, the following may provide the permittee a written exception to operate the permitted vehicle in the construction or maintenance area at a size or weight that exceeds the size and weight listed on the department's website: the Texas Department of Transportation or a Texas Department of Transportation contractor that is authorized by the Texas Department of Transportation to issue permit exceptions. The written exception must be carried in the permitted vehicle when the vehicle is on a state highway and must be provided to the department or law enforcement upon request.

(2) The permittee is responsible for contacting the appropriate local jurisdiction for construction or maintenance restrictions on non-state maintained roadways.

(j) Manufacturer's tire load rating. Permits issued under this section do not authorize the vehicle to exceed the manufacturer's tire load rating.

(k) Distribution of fees. Fifty percent of the [~~The~~] fees collected for permits under Transportation Code, §623.0171 shall be divided equally among all counties designated in the permit application. [~~distributed as follows:~~]

~~[(1) 50 percent shall be deposited to the credit of the state highway fund; and]~~

~~[(2) 50 percent shall be divided equally among all counties designated in the permit application under Transportation Code, §623.0171.]~~

§219.34. North Texas Intermodal Permit.

(a) Purpose. This section prescribes the requirements, restrictions, and procedures regarding the annual permit for transporting an

intermodal shipping container under the provisions of Transportation Code, §623.0172.

(b) Application for permit.

(1) To qualify for a North Texas intermodal permit, a person must submit an application to the department.

(2) The application shall be in a form prescribed by the department and at a minimum, will require the following:

(A) name, customer identification number, and address of the applicant;

(B) name, telephone number, and email address of contact person;

(C) vehicle information, including vehicle year, make, license plate number and state of issuance, and vehicle identification number; and

(D) applicant's USDOT Number if applicant is required by law to have a USDOT Number.

(3) The application shall be accompanied by the total annual permit fee of $1,000.

[~~(4) Fees for permits issued under this section are payable as required by §219.11(f) of this title (relating to General Oversize/Overweight Permit Requirements and Procedures).~~]

(c) Amendments. An annual permit issued under this section will not be amended except in the case of department error.

(d) Transfer of permit. A permit issued under this section may only be transferred once during the term of the permit from one vehicle to another vehicle in the permittee's fleet provided:

(1) the permitted vehicle is destroyed or otherwise becomes permanently inoperable, to an extent that it will no longer be utilized, and the permittee presents proof that the negotiable title or other qualifying documentation, as determined by the department, has been surrendered to the department; or

(2) the title to the permitted vehicle is transferred to someone other than the permittee, and the permittee presents proof that the negotiable title or other qualifying documentation, as determined by the department, has been transferred from the permittee.

(e) Curfew restrictions. The operator of a permitted vehicle must observe the curfew movement restrictions published by the department.

(f) Construction or maintenance areas. The permitted vehicle may not travel through any state highway construction or maintenance area if prohibited by the construction restrictions published by the department.

(g) Nighttime [~~Night~~] movement. Nighttime [~~Night~~] movement is allowed under this permit, unless prohibited by the curfew movement restrictions published by the department.

(h) Manufacturer's tire load rating. Permits issued under this section do not authorize the vehicle to exceed the manufacturer's tire load rating.

(i) A truck-tractor and semitrailer combination is only eligible for a permit issued under this section if the truck-tractor is equipped with truck blind spot systems, and each vehicle in the combination is equipped with a roll stability support safety system.

(j) A truck-tractor and semitrailer combination is only eligible for a permit issued under this section if the distance between the front axle of the truck-tractor and the last axle of the semitrailer, measured longitudinally, is approximately 647 inches. For the purposes of this subsection, "approximately 647 inches" means the distance can be up to 15 percent above 647 inches for a total distance of 744.05 inches.

§219.35. Fluid Milk Transport Permit.

(a) Purpose. This section prescribes the requirements, restrictions, and procedures regarding the annual permit for transporting fluid milk under the provisions of Transportation Code, Chapter 623, Subchapter V. [~~U, as added by Chapter 750 (S.B. 1383), Acts of the 85th Legislature, Regular Session, 2017.~~]

(b) Application for permit.

(1) To qualify for a fluid milk transport permit, a person must submit an application to the department.

(2) The application shall be in a form prescribed by the department and at a minimum, will require the following:

(A) name, customer identification number, and address of the applicant;

(B) name, telephone number, and email address of contact person;

(C) vehicle information, including vehicle year, make, license plate number and state of issuance, and vehicle identification number;

(D) a list of counties in which the vehicle will be operated; and

(E) applicant's USDOT Number if applicant is required by law to have a USDOT Number.

(3) The application shall be accompanied by the total annual permit fee of $1,200.

[~~(4) Fees for permits issued under this section are payable as required by §219.11(f) of this title (relating to General Oversize/Overweight Permit Requirements and Procedures).~~]

(c) Issuance and placement of permit and windshield sticker; restrictions.

(1) A permit and a windshield sticker will be issued once the application is approved, and each will be mailed to the applicant at the address contained in the application.

(2) The windshield sticker shall be affixed to the inside of the windshield of the vehicle in accordance with the diagram printed on the back of the sticker and in a manner that will not obstruct the vision of the driver. Any attempt to remove the sticker from the windshield will render the sticker void and will require a new permit and sticker.

(3) A replacement sticker for a lost, stolen, or mutilated windshield sticker may be issued, provided that the permittee submits a request on a form approved by the department which shall include a statement, signed by the permittee, affirming that the sticker was lost, stolen, or mutilated. The replacement sticker shall only be valid for the permitted vehicle.

(d) Amendments. An annual permit issued under this section will not be amended except in the case of department error.

(e) Transfer of permit. A permit issued under this section may only be transferred once during the term of the permit from one vehicle to another vehicle in the permittee's fleet provided:

(1) the permitted vehicle is destroyed or otherwise becomes permanently inoperable, to an extent that it will no longer be utilized, and the permittee presents proof that the negotiable title or

other qualifying documentation, as determined by the department, has been surrendered to the department; or

(2) the title to the permitted vehicle is transferred to someone other than the permittee, and the permittee presents proof that the negotiable title or other qualifying documentation, as determined by the department, has been transferred from the permittee.

(f) Termination of permit. An annual permit issued under this section will automatically terminate, and the windshield sticker must be removed from the vehicle:

(1) on the expiration of the permit;

(2) when the lease of the vehicle expires;

(3) on the sale or other transfer of ownership of the vehicle for which the permit was issued; or

(4) on the dissolution or termination of the partnership, corporation, or other legal entity to which the permit was issued.

(g) Curfew restrictions. The operator of a permitted vehicle must observe the curfew movement restrictions published by the department.

(h) Construction or maintenance areas.

(1) The permitted vehicle may not travel through any state highway construction or maintenance area if prohibited by the construction restrictions published by the department.

(2) The permittee is responsible for contacting the appropriate local jurisdiction for construction or maintenance restrictions on non-state maintained roadways.

(i) Nighttime [~~Night~~] movement. Nighttime [~~Night~~] movement is allowed under this permit, unless prohibited by the curfew movement restrictions published by the department.

(j) Manufacturer's tire load rating. Permits issued under this section do not authorize the vehicle to exceed the manufacturer's tire load rating.

(k) A truck-tractor and semitrailer combination is only eligible for a permit issued under this section if the truck-tractor is equipped with truck blind spot systems, and each vehicle in the combination is equipped with a roll stability support safety system.

§219.36. Intermodal Shipping Container Port Permit.

(a) Purpose. This section prescribes the requirements, restrictions, and procedures regarding the annual permit for transporting an intermodal shipping container under the provisions of Transportation Code, Chapter 623, Subchapter U. [~~, as added by Chapter 108 (S.B. 1524), Acts of the 85th Legislature, Regular Session, 2017.~~]

(b) Application for permit.

(1) To qualify for an intermodal shipping container port permit, a person must submit an application to the department.

(2) The application shall be in a form prescribed by the department and at a minimum, will require the following:

(A) name, customer identification number, and address of the applicant;

(B) name, telephone number, and email address of contact person;

(C) vehicle information, including vehicle year, make, license plate number and state of issuance, and vehicle identification number;

(D) a list of counties in which the vehicle will be operated;

(E) a list of municipalities in which the vehicle will be operated; and

(F) applicant's USDOT Number if applicant is required by law to have a USDOT Number.

(3) The application shall be accompanied by the total annual permit fee of $6,000.

[~~(4) Fees for permits issued under this section are payable as required by §219.11(f) of this title (relating to General Oversize/Overweight Permit Requirements and Procedures).~~]

(c) Issuance and placement of permit and windshield sticker; restrictions.

(1) A permit and a windshield sticker will be issued once the application is approved, and each will be mailed to the applicant at the address contained in the application.

(2) The windshield sticker shall be affixed to the inside of the windshield of the vehicle in accordance with the diagram printed on the back of the sticker and in a manner that will not obstruct the vision of the driver. Any attempt to remove the sticker from the windshield will render the sticker void and will require a new permit and sticker.

(3) A replacement sticker for a lost, stolen, or mutilated windshield sticker may be issued, provided that the permittee submits a request on a form approved by the department which shall include a statement, signed by the permittee, affirming that the sticker was lost, stolen, or mutilated. The replacement sticker shall only be valid for the permitted vehicle.

(d) Amendments. An annual permit issued under this section will not be amended except in the case of department error.

(e) Transfer of permit. A permit issued under this section may only be transferred once during the term of the permit from one vehicle to another vehicle in the permittee's fleet provided:

(1) the permitted vehicle is destroyed or otherwise becomes permanently inoperable, to an extent that it will no longer be utilized, and the permittee presents proof that the negotiable title or other qualifying documentation, as determined by the department, has been surrendered to the department; or

(2) the title to the permitted vehicle is transferred to someone other than the permittee, and the permittee presents proof that the negotiable title or other qualifying documentation, as determined by the department, has been transferred from the permittee.

(f) Termination of permit. An annual permit issued under this section will automatically terminate, and the windshield sticker must be removed from the vehicle:

(1) on the expiration of the permit;

(2) when the lease of the vehicle expires;

(3) on the sale or other transfer of ownership of the vehicle for which the permit was issued; or

(4) on the dissolution or termination of the partnership, corporation, or other legal entity to which the permit was issued.

(g) Curfew restrictions. The operator of a permitted vehicle must observe the curfew movement restrictions published by the department.

(h) Construction or maintenance areas.

(1) The permitted vehicle may not travel through any state highway construction or maintenance area if prohibited by the construction restrictions published by the department.

(2) The permittee is responsible for contacting the appropriate local jurisdiction for construction or maintenance restrictions on non-state maintained roadways.

(i) Nighttime [~~Night~~] movement. Nighttime [~~Night~~] movement is allowed under this permit, unless prohibited by the curfew movement restrictions published by the department.

(j) Manufacturer's tire load rating. Permits issued under this section do not authorize the vehicle to exceed the manufacturer's tire load rating.

(k) A truck-tractor and semitrailer combination is only eligible for a permit issued under this section if the truck-tractor is equipped with truck blind spot systems, and each vehicle in the combination is equipped with a roll stability support safety system.

(l) A truck-tractor and semitrailer combination is only eligible for a permit issued under Transportation Code, §623.402(a) if the distance between the front axle of the truck-tractor and the last axle of the semitrailer, measured longitudinally, is approximately 647 inches. For the purposes of this subsection, "approximately 647 inches" means the distance can be up to 15 percent above 647 inches for a total distance of 744.05 inches.

(m) A truck-tractor and semitrailer combination is only eligible for a permit issued under Transportation Code, §623.402(b) if the distance between the front axle of the truck-tractor and the last axle of the semitrailer, measured longitudinally, is approximately 612 inches. For the purposes of this subsection, "approximately 612 inches" means the distance can be up to 15 percent above 612 inches for a total distance of 703.8 inches.

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 February 8, 2024.

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Laura Moriaty
General Counsel
Texas Department of Motor Vehicles
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For further information, please call: (512) 465-4160

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SUBCHAPTER D. PERMITS FOR OVERSIZE AND OVERWEIGHT OIL WELL RELATED VEHICLES

43 TAC §§219.41 - 219.45

STATUTORY AUTHORITY. The department proposes amendments under Transportation Code, §621.008, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 621; Transportation Code, §622.002, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 622, including Transportation Code, §622.051, *et seq.* which authorize the department to issue a permit for transporting poles required for the maintenance of electric power transmission and distribution lines; Transportation Code, §623.002, which authorizes the board to adopt rules as necessary to implement Transportation Code, Chapter 623; Transportation Code, §623.070, *et seq.* which authorize the department to issue a permit to an applicant to move certain equipment or commodities and prescribe the application requirements for such permits; Transportation Code, §623.074(d), which authorizes the department to adopt a rule to authorize an applicant to submit an application electronically; Transportation Code, §623.095(c), which authorizes the department to adopt rules concerning the requirements for a permit under §623.095(c) regarding an annual permit for a person authorized to be issued permits under Transportation Code, §623.094 for the transportation of new manufactured homes from a manufacturing facility to a temporary storage location not to exceed 20 miles from the point of manufacture; Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; and the statutory authority referenced throughout the preamble and in the rule text.

CROSS REFERENCE TO STATUTE. The proposed amendments would implement Transportation Code, Chapters 621, 622, and 623; and Government Code, Chapter 2001.

§219.41. General Requirements.

(a) General information.

(1) Permits issued under this subchapter, with the exception of permits issued under §219.45 of this title (relating to Permits for Vehicles Transporting Liquid Products Related to Oil Well Production), are subject to the requirements of this section.

(2) Oil well related vehicles are eligible for:

(A) single-trip mileage permits;

(B) quarterly hubometer permits; and

(C) annual permits.

(b) Permit application. All applications shall be made on a form and in a manner prescribed by the department. An applicant shall provide all applicable information, including:

(1) name, customer identification number, and address of the applicant;

(2) name, telephone number, and email address of contact person;

(3) year, make, and vehicle identification number of the unit;

(4) width, height, and length of the unit;

(5) unit axle and tire information, including number of axles, distance between axles, gauge per axle, axle weights, number of tires, and tire size;

(6) applicant's USDOT Number if applicant is required by law to have a USDOT Number; and

(7) any other information required by law.

[~~(c) Payment of permit fees. Fees for permits issued under this subchapter are payable as described in §219.11(f) of this title (relating to General Oversize/Overweight Permit Requirements and Procedures).~~]

(c) [~~(d)~~] Restrictions.

(1) A vehicle permitted under this subchapter is subject to the restrictions specified in §219.11(l)(2) and (3), and the permittee is responsible for obtaining information concerning current restrictions from the department.

(2) Vehicles permitted under this subchapter may not cross a load restricted bridge when exceeding the posted capacity of such. Vehicles permitted under this subchapter may travel on a load restricted road unless otherwise noted.

(3) A vehicle permitted under this subchapter may travel through highway construction or maintenance areas provided the dimensions do not exceed the construction restrictions as published by the department.

(4) A unit exceeding nine feet in width, 14 feet in height, or 65 feet in length is restricted to daytime [~~daylight~~] movement only.

(d) [~~(e)~~] Transferability. Unless otherwise noted, a permit issued under this subchapter may not be transferred between units or permittees.

(e) [~~(f)~~] Escort requirements. In addition to any other escort requirements specified in this subchapter, vehicles permitted under this subchapter are subject to the escort requirements specified in §219.11(k).

§219.42. Single-Trip Mileage Permits.

(a) General information.

(1) Permits issued under this section are subject to the requirements of §219.41 of this title (relating to General Requirements).

(2) A single-trip mileage permit:

(A) is limited to a maximum of seven consecutive days;

(B) routes the vehicle from the point of origin to the point of destination and has the route listed on the permit; and

(C) allows the unit to be returned to the point of origin on the same permit, provided the return trip is made within the time period stated in the permit.

(3) A unit exceeding 175,000 pounds gross weight must:

(A) have front and rear escort flag vehicles to prevent traffic from traveling beside the unit as it crosses a bridge;

(B) cross all multi-lane bridges by centering the unit on a lane line;

(C) cross all two-lane bridges in the center of the bridge; and

(D) cross each bridge at a speed not greater than 20 miles per hour.

(4) A unit exceeding 12 feet in width must be centered in the outside traffic lane of any highway that has paved shoulders.

(b) Maximum permit weight limits.

(1) The maximum permit weight for any single axle must not exceed 30,000 pounds or 850 pounds per inch of tire width, whichever is less.

(2) The maximum permit weight for any group of axles on a unit will be determined by calculating the "W" weight for the group, using the formulas shown in Figure 2: 43 TAC §219.42(f), titled "Maximum Permit Weight Formulas," and comparing the calculated "W" weight with the corresponding "W" weight that is established in Figure 1: 43 TAC §219.42(f), titled "Maximum Permit Weight Table."

(3) The maximum permit weight per inch of tire width for axles that are steerable must not exceed 950 pounds, and the maximum permit weight per inch of tire width for axles that are not steerable must not exceed 850 pounds.

(4) A unit that does not have any group of axles that exceeds the limits established in Figure 1: 43 TAC §219.42(f), "Maximum Permit Weight Table," and Figure 2: 43 TAC §219.42(f), "Maximum Permit Weight Formulas" will be permitted with a single-trip mileage or quarterly hubometer permit for travel on any route that does not include a load restricted bridge.

(5) A unit that has any group of axles that exceeds the limits established by Figure 1: 43 TAC §219.42(f), "Maximum Permit Weight Table," and Figure 2: 43 TAC §219.42(f), "Maximum Permit Weight Formulas" will be eligible, on an individual case-by-case basis, for a single-trip mileage permit only; permit approval or denial will be based on a detailed route study and an analysis conducted by TxDOT of each bridge on the proposed travel route to determine if the road(s) and bridge(s) are capable of sustaining the movement.

(6) A road or bridge that has been analyzed and determined to be incapable of sustaining the unit will be excluded from the permit route.

(c) Permit application and issuance.

(1) An application for a single-trip mileage permit under this section must be made in accordance with §219.41(b) of this title and shall also include the origin and destination points of the unit.

(2) Upon receipt of the application, the department will review and verify unit size and weight information, check route and mileage to be traveled, compute the permit fee, and advise the applicant of the permit fee.

(3) Upon receipt of the permit fee, the department will advise the applicant of the permit number, and will provide a copy of the permit to the applicant.

(d) Permit fees and refunds.

(1) Minimum fee. The minimum fee for a single-trip mileage permit is either the calculated permit fee or $31, whichever is the greater amount.

(2) Permit fee calculation. The fee for a single-trip mileage permit is calculated by multiplying the number of miles traveled, the highway use factor, and the total rate per mile, and then adding the indirect cost share to the product.

(A) Highway use factor. The highway use factor for a single trip mileage permit is 0.6.

(B) Total rate per mile. The total rate per mile is the combined mileage rates for width, height, and weight for the unit. For a trailer-mounted [~~trailer mounted~~] unit, the total rate per mile is based on the overall width, overall height, and all axle weights, including the truck-tractor axles.

(i) The mileage rate for width is $.06 per mile for each foot (or fraction thereof) above legal width.

(ii) The mileage rate for height is $.04 per mile for each foot (or fraction thereof) above legal height.

(iii) The mileage rate for a single axle or any axle within a group that exceeds 20,000 pounds, but is less than or equal to 25,000 pounds, is calculated by multiplying $.045 times the amount by which the axle or axle group weight exceeds the legal weight for the axle or axle group and dividing the resultant figure by 1,000 pounds.

(iv) The mileage rate for a single axle or any axle within a group that exceeds 25,000 pounds, but is less than or equal to 30,000 pounds, is calculated by multiplying $.055 times the amount by which the axle or axle group weight exceeds the legal weight for the axle or axle group and dividing the resultant figure by 1,000 pounds.

(3) Permit fees for trailer-mounted [~~trailer mounted~~] units.

[~~(A)~~] The permit fee for a trailer-mounted [~~trailer mounted~~] unit is based on the overall width, overall height, and all axle weights, including the truck-tractor axles.

[~~(B) A unit with two or more axle groups that do not have a spacing of at least 12 feet between the closest axles of the opposing groups must have the permit fee calculated by the following method.~~]

~~f(i)~~ ~~The axle group with the lowest weight will have the axle closest to the next axle group temporarily disregarded from its group in order to create a spacing of at least 12 feet between the two groups for fee calculation purposes.~~]

~~f(ii)~~ ~~An axle group will not have more than one axle disregarded.~~]

~~f(iii)~~ ~~The permit fee for the axle group with the temporarily disregarded axle must be based on the actual weight of the entire axle group minus the legal weight for the remaining axles of the group.~~]

(4) Refunds. Fees for permits issued under this section are non-refundable.

(e) Amendments. A single-trip mileage permit may not be amended unless an exception is granted by the department.

(f) Weight table and formulas. The following table entitled "Maximum Permit Weight Table" is Figure 1: 43 TAC §219.42(f), and the list of formulas entitled, "Maximum Permit Weight Formulas," is Figure 2: 43 TAC §219.42(f).
Figure 1: 43 TAC §219.42(f) (No change.)
Figure 2: 43 TAC §219.42(f) (No change.)

§219.43. Quarterly Hubometer Permits.

(a) General information.

(1) Permits issued under this section are subject to the requirements of §219.41 of this title (relating to General Requirements).

(2) A quarterly hubometer permit:

(A) is effective for three consecutive months;

(B) allows the unit to travel on all state-maintained highways; and

(C) allows the unit to travel on a state-wide basis.

(3) A unit permitted under this subsection must not exceed any of the following dimensions:

(A) 12 feet in width;

(B) 14 feet, 6 inches in height; and

(C) 95 feet in length.

(4) With the exception of units that are overlength only, a unit operated with a permit issued under this section must be equipped with a hubometer. The permittee must maintain the hubometer in good working condition.

(5) A unit exceeding 175,000 pounds gross weight must:

(A) have front and rear escort flag vehicles to prevent traffic from traveling beside the unit as it crosses a bridge;

(B) cross all multi-lane bridges by centering the unit on a lane line;

(C) cross all two-lane bridges in the center of the bridge; and

(D) cross each bridge at a speed not greater than 20 miles per hour.

(b) Maximum permit weight limits.

(1) The maximum permit weight for any single axle must not exceed 30,000 pounds or 850 pounds per inch of tire width, whichever is less.

(2) The maximum permit weight for any group of axles on a unit will be determined by calculating the "W" weight for the group, using the formulas in Figure 2: 43 TAC §219.42(f), "Maximum Permit Weight Formulas," and comparing the calculated "W" weight with the corresponding "W" weight that is established in Figure 1: 43 TAC §219.42(f), "Maximum Permit Weight Table."

(3) The maximum permit weight per inch of tire width for axles that are steerable must not exceed 950 pounds, and the maximum permit weight per inch of tire width for axles that are not steerable must not exceed 850 pounds.

(4) A unit that does not have any group of axles that exceeds the limits established in Figure 1: 43 TAC §219.42(f), "Maximum Permit Weight Table," and Figure 2: 43 TAC §219.42(f), "Maximum Permit Weight Formulas" will be permitted with a single-trip mileage or quarterly hubometer permit for travel on any route that does not include a load restricted bridge.

(5) A unit that has any group of axles that exceeds the limits established by Figure 1: 43 TAC §219.42(f), "Maximum Permit Weight Table," and Figure 2: 43 TAC §219.42(f), "Maximum Permit Weight Formulas" will be eligible, on an individual case-by-case basis, for a single-trip mileage permit only; permit approval or denial will be based on a detailed route study and an analysis conducted by TxDOT of each bridge on the proposed travel route to determine if the road(s) and bridge(s) are capable of sustaining the movement.

(6) A bridge that has been analyzed and determined to be incapable of sustaining the unit will be excluded from the permit route.

(c) Initial permit application and issuance.

(1) An application for an initial quarterly hubometer permit under this section must be made in accordance with §219.41(b) of this title. In addition, the applicant must provide the current hubometer mileage reading and an initial $31 processing fee.

(2) Upon verification of the unit information and receipt of the permit fee, the department will provide a copy of the permit to the applicant, as well as a renewal application.

(d) Permit renewals and closeouts.

(1) An application for a permit renewal or closeout must be made on a form and in the manner prescribed by the department.

(2) Upon receipt of the renewal application, the department will verify unit information, check mileage traveled on the last permit, calculate the new permit fee, and advise the applicant of the permit fee.

(e) Permit fees.

(1) Minimum fee. The minimum fee for a quarterly hubometer permit is either the calculated permit fee or $31, whichever is the greater amount.

(2) Fees for overlength units. A unit that is overlength only must obtain a quarterly hubometer permit with a fee of $31, but is not required to have a hubometer.

(3) Quarterly hubometer permit fee calculation. The permit fee for a quarterly hubometer permit is calculated by multiplying the hubometer mileage, the highway use factor, and the total rate per mile, and then adding the indirect cost share to the product.

(A) Hubometer mileage. Mileage for a quarterly hubometer permit is determined by the unit's current hubometer mileage reading minus the unit's hubometer mileage reading from the previous quarterly hubometer permit.

(B) Highway use factor. The highway use factor for a quarterly hubometer permit is 0.3.

(C) Total rate per mile. The total rate per mile is the combined mileage rates for width, height, and weight for the unit. The rate per mile for a trailer-mounted [~~trailer mounted~~] unit is based on the overall width, overall height, and all axle weights, including the truck-tractor axles.

(i) The mileage rate for width is $.06 per mile for each foot (or fraction thereof) above legal width.

(ii) The mileage rate for height is $.04 per mile for each foot (or fraction thereof) above legal height.

(iii) The mileage rate for a single axle or any axle within a group that exceeds 20,000 pounds, but is less than or equal to 25,000 pounds, is calculated by multiplying $.045 times the amount by which the axle or axle group weight exceeds the legal weight for the axle or axle group and dividing the resultant figure by 1,000 pounds.

(iv) The mileage rate for a single axle or any axle within a group that exceeds 25,000 pounds, but is less than or equal to 30,000 pounds, is calculated by multiplying $.055 times the amount by which the axle or axle group weight exceeds the legal weight for the axle or axle group and dividing the resultant figure by 1,000 pounds.

(4) Permit fees for trailer-mounted [~~trailer mounted~~] units.

[~~(A)~~] The permit fee for a trailer-mounted [~~trailer mounted~~] unit is based on the overall width, overall height, and all axle weights, including the truck-tractor axles.

[~~(B) A unit with two or more axle groups that does not have a spacing of at least 12 feet between the closest axles of the opposing groups must have the permit fee calculated by the following method.~~]

[~~*(i)* The axle group with the lowest weight will have the axle closest to the next axle group temporarily disregarded from its group in order to create a spacing of at least 12 feet between the two groups for fee calculation purposes.~~]

[~~*(ii)* An axle group will not have more than one axle disregarded.~~]

[~~*(iii)* The permit fee for the axle group with the temporarily disregarded axle must be based on the actual weight of the entire axle group minus the legal weight for the remaining axles of the group.~~]

(f) Amendments. A quarterly hubometer permit may be amended only to change the following:

(1) if listed on the permit, the hubometer serial number; or

(2) the license plate number.

§219.44. Annual Permits.

(a) General information. Permits issued under this section are subject to the requirements of §219.41 of this title (relating to General Requirements).

(1) Annual self-propelled oil well servicing unit permits.

[~~(A) A unit that does not exceed legal size and weight limits and is registered with a permit plate must purchase an annual permit issued under this section.~~]

[~~(B)~~] The fee for an annual self-propelled oil well servicing unit permit is $52 per axle. The indirect cost share is included in this fee.

(2) Annual oil field rig-up truck permits.

(A) An oil field rig-up truck permitted under this section must not exceed:

(i) legal height or length limits, as provided in Transportation Code, Chapter 621, Subchapter C;

(ii) 850 pounds per inch of tire width on the front axle;

(iii) 25,000 pounds on the front axle; or

(iv) legal weight on all other axles.

(B) An oil field rig-up truck, operating under an annual permit, must be registered in accordance with Transportation Code, Chapter 502.

(C) The annual permit fee for an oil field rig-up truck is $52. The indirect cost share is included in this fee.

(D) An annual permit for an oil field rig-up truck allows the unit to travel at nighttime [~~night~~], provided the unit does not exceed nine feet in width.

(3) A permit issued under this section may not be amended.

(4) A permit issued under this section allows travel on a statewide basis and on all state maintained highways.

(b) Permit application and issuance.

(1) An application for an annual permit under this section must be made in accordance with §219.41(b) of this title.

(2) Upon receipt of the application and the appropriate fees, the department will provide a copy of the permit to the applicant.

§219.45. Permits for Vehicles Transporting Liquid Products Related to Oil Well Production.

(a) General provisions. This section applies to the following vehicles which may secure an annual permit issued under provisions of Transportation Code, Chapter 623, Subchapter G, to haul liquid loads over all state-maintained highways.

(1) A vehicle combination consisting of a truck-tractor and semi-trailer specifically designed with a tank and pump unit for transporting:

(A) liquid fracking [~~fracing~~] products, liquid oil well waste products, or unrefined liquid petroleum products to an oil well; or

(B) unrefined liquid petroleum products or liquid oil well waste products from an oil well not connected to a pipeline.

(2) A permit issued under this section is effective for one year beginning on the effective date.

(b) Application for permit.

(1) An application for an annual permit under this section must be made in accordance with §219.41(b) of this title (relating to General Requirements).

(2) The permit request must be received by the department not more than 14 days prior to the date that the permit is to begin.

(c) Permit qualifications and requirements.

(1) The semi-trailer must be of legal size and weight.

[~~(2) The semi-trailer must be registered for the maximum legal gross weight.~~]

(2) [~~(3)~~] Only one semi-trailer will be listed on a permit.

(3) [~~(4)~~] The permit may be transferred from an existing trailer being removed from service and placed on a new trailer being added to the permittee's fleet, if the permittee supplies the department with:

(A) the existing valid permit number;

(B) the make and model of the new trailer;

(C) the license plate number of the new trailer; and

(D) a transfer fee of $31 per permit to cover administrative costs.

(d) Fees. [~~All fees associated with permits issued under this section are payable as described in §219.11(f) of this title (relating to General Oversize/Overweight Permit Requirements and Procedures).~~]

(1) The permit fee is based on the axles of the semi-trailer and the drive axles of the truck-tractor. The fee for the permit, which includes the indirect cost share, is determined as follows:

(A) $52 per axle--to haul liquid oil well waste products or unrefined liquid petroleum products from oil wells not connected by a pipeline and return empty;

(B) $52 per axle--to haul liquid products related to oil well production to an oil well and return empty; and

(C) $104 per axle--to haul liquid products related to oil well production to an oil well and return with liquid oil well waste products or unrefined liquid petroleum products from an oil well not connected to a pipeline.

(2) Each permittee will be charged a $20 issuance fee in addition to the permit fee.

(e) Permit movement conditions. The permit load must not cross any load-restricted bridge when exceeding the posted capacity of such.

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 February 8, 2024.

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Laura Moriaty
General Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: March 24, 2024
For further information, please call: (512) 465-4160

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SUBCHAPTER E. PERMITS FOR OVERSIZE AND OVERWEIGHT UNLADEN LIFT EQUIPMENT MOTOR VEHICLES

43 TAC §§219.60 - 219.64

STATUTORY AUTHORITY. The department proposes amendments under Transportation Code, §621.008, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 621; Transportation Code, §622.002, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 622, including Transportation Code, §622.051, *et seq.* which authorize the department to issue a permit for transporting poles required for the maintenance of electric power transmission and distribution lines; Transportation Code, §623.002, which authorizes the board to adopt rules as necessary to implement Transportation Code, Chapter 623; Transportation Code, §623.070, *et seq.* which authorize the department to issue a permit to an applicant to move certain equipment or commodities and prescribe the application requirements for such permits; Transportation Code, §623.074(d), which authorizes the department to adopt a rule to authorize an applicant to submit an application electronically; Transportation Code, §623.095(c), which authorizes the department to adopt rules concerning the requirements for a permit under §623.095(c) regarding an annual permit for a person authorized to be issued permits under Transportation Code, §623.094 for the transportation of new manufactured homes from a manufacturing facility to a temporary storage location not to exceed 20 miles from the point of manufacture; Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; and the statutory authority referenced throughout the preamble and in the rule text.

CROSS REFERENCE TO STATUTE. The proposed amendments would implement Transportation Code, Chapters 621, 622, and 623; and Government Code, Chapter 2001.

§219.60. Purpose.

The sections in this subchapter set forth the requirements and procedures applicable to permits issued for unladen lift equipment motor vehicles [~~cranes~~] under the provisions of Transportation Code, Chapter 623, Subchapters I and J.

§219.61. General Requirements for Permits for Oversize and Overweight Unladen Lift Equipment Motor Vehicles.

(a) General information.

(1) Unless otherwise noted, permits issued under this subchapter are subject to the requirements of this section.

(2) Unladen lift equipment motor vehicles [~~Cranes~~] are eligible for an annual permit under this subchapter.

(3) Unladen lift equipment motor vehicles [~~Cranes~~] are also eligible for the following permits under this subchapter at weights above those established by §219.11(d)(2) of this title (relating to General Oversize/Overweight Permit Requirements and Procedures):

(A) single-trip mileage permits; and

(B) quarterly hubometer permits.

[(4) If a truck-tractor is used to transport a trailer-mounted crane, the combination of vehicles is limited to the dimensions and weights listed in this subchapter.]

(b) Permit application. An application shall be made on a form and in a manner prescribed by the department. The applicant shall provide all applicable information, including:

(1) name, customer identification number, and address of the applicant;

(2) name, telephone number, and email address of contact person;

(3) year, make and vehicle identification number of the unladen lift equipment motor vehicle [crane];

(4) width, height, and length of the unladen lift equipment motor vehicle [crane];

(5) unladen lift equipment motor vehicle [crane] axle and tire information, including the number of axles, distance between axles, gauge per axle, axle weights, number of tires, and tire size;

(6) applicant's USDOT Number if applicant is required by law to have a USDOT Number; and

(7) any other information required by law.

[(c) Payment of permit fees. Fees for permits issued under this subchapter are payable as described in §219.11(f) of this title.]

(c) [(d)] Restrictions.

(1) An unladen lift equipment motor vehicle [A crane] permitted under this subchapter is subject to the restrictions specified in §219.11(l)(2) and (3) of this title, and the permittee is responsible for obtaining information concerning current restrictions from the department.

(2) An unladen lift equipment motor vehicle [A crane] permitted under this subchapter may travel through highway construction or maintenance areas provided the dimensions do not exceed the construction restrictions as published by the department.

(3) An unladen lift equipment motor vehicle [A crane] permitted under this subchapter may only be operated during daytime [daylight], unless:

(A) the unladen lift equipment motor vehicle [crane] is overweight only; or

(B) the unladen lift equipment motor vehicle [crane] complies with one of the following, regardless of whether the unladen lift equipment motor vehicle [crane] is overweight:

(i) the unladen lift equipment motor vehicle [crane] does not exceed nine feet in width, 14 feet in height, or 65 feet in length; or

(ii) the unladen lift equipment motor vehicle [crane] is accompanied by a front and rear escort flag vehicle and does not exceed:

(I) 10 feet, 6 inches in width;

(II) 14 feet in height; or

(III) 95 feet in length.

(d) [(e)] Transferability. Unless otherwise noted, a permit issued under this subchapter may not be transferred between unladen lift equipment motor vehicles [cranes] or between permittees.

(e) [(f)] Escort requirements. In addition to any other escort requirements specified in this subchapter, unladen lift equipment motor vehicles [cranes] permitted under this subchapter are subject to the escort requirements specified in §219.11(k) of this title.

[(g) Properly secured equipment. A crane permitted under this subchapter may travel with properly secured equipment, such as outriggers, booms, counterweights, jibs, blocks, balls, cribbing, outrigger pads, and outrigger mats, in accordance with the manufacturer's specifications to the extent the equipment is necessary for the crane to perform its intended function, provided the axle weights, axle group weights, and gross weight do not exceed the maximum permit weights listed in this subchapter.]

§219.62. Single-Trip [Single Trip] Mileage Permits.

(a) General information.

(1) Permits issued under this section are subject to the requirements of §219.61 of this title (relating to General Requirements for Permits for Oversize and Overweight Unladen Lift Equipment Motor Vehicles).

(2) A single-trip mileage permit:

(A) is limited to a maximum of seven consecutive days;

(B) is routed from the point of origin to the point of destination and has the route listed on the permit; and

(C) allows the unladen lift equipment motor vehicle [crane] to be returned to the point of origin on the same permit, provided the return trip is made within the time period stated in the permit.

(3) An unladen lift equipment motor vehicle [A crane] exceeding 175,000 pounds gross weight must:

(A) have front and rear escort flag vehicles to prevent traffic from traveling beside the unladen lift equipment motor vehicle [crane] as it crosses a bridge;

(B) cross all multi-lane bridges by centering the unladen lift equipment motor vehicle [crane] on a lane line;

(C) cross all two-lane bridges in the center of the bridge; and

(D) cross each bridge at a speed not greater than 20 miles per hour.

(4) An unladen lift equipment motor vehicle [A crane] exceeding 12 feet in width must be centered in the outside traffic lane of any highway that has paved shoulders.

(5) Except as otherwise provided in this section, the permitted unladen lift equipment motor vehicle [crane] must not cross a load-restricted bridge when exceeding the posted capacity of the bridge.

(b) Maximum permit weight limits.

(1) The maximum permit weight for any single axle must not exceed 30,000 pounds or 850 pounds per inch of tire width, whichever is less.

(2) The maximum permit weight for any group of axles on an unladen lift equipment motor vehicle [a crane] is determined by calculating the "W" weight for the group, using the formulas shown in Figure 2: 43 TAC §219.62(f), "Maximum Permit Weight Formulas," and comparing the calculated "W" weight with the corresponding "W" weight that is established in Figure 1: 43 TAC §219.62(f), "Maximum Permit Weight Table."

(3) The maximum permit weight per inch of tire width for axles that are steerable must not exceed 950 pounds, and the maximum permit weight per inch of tire width for axles that are not steerable must not exceed 850 pounds.

(4) An applicant with an unladen lift equipment motor vehicle [~~a crane~~] that has any group of axles that exceeds the limits established by Figure 1: 43 TAC §219.62(f),"Maximum Permit Weight Table," and Figure 2: 43 TAC §219.62(f), "Maximum Permit Weight Formulas," must comply with the following process and requirements:

(A) submit the following to the department to determine if a permit can be issued:

(i) a detailed diagram, on a form prescribed by the department, which illustrates the required information listed in §219.61(b)(5) of this title;

(ii) the exact beginning and ending points relative to a state highway; and

(iii) the name and contact information of the applicant's TxDOT-approved licensed professional engineer.

(B) The department will select and provide the applicant with a tentative route based on the size of the unladen lift equipment motor vehicle [~~crane~~], excluding the weight. The applicant must inspect the tentative route and advise the department, in writing, that the route is capable of accommodating the unladen lift equipment motor vehicle [~~crane~~].

(C) Before the department will issue a permit, the applicant's TxDOT-approved licensed professional engineer must submit to TxDOT a written certification that includes a detailed structural analysis of the bridges on the proposed route demonstrating that the bridges and culverts on the travel route are capable of sustaining the unladen lift equipment motor vehicle [~~crane~~]. The certification must be approved by TxDOT and submitted to the department before the department will issue the permit.

(c) Permit application and issuance.

(1) An application for a single-trip mileage permit under this section must be made in accordance with §219.61(b) of this title and must also include the origin and destination points of the unladen lift equipment motor vehicle [~~crane~~].

(2) Upon receipt of the application, the department will review and verify size and weight information, check the route and mileage to be traveled, compute the permit fee, and advise the applicant of the permit fee.

(3) Upon receipt of the permit fee, the department will advise the applicant of the permit number and will provide a copy of the permit to the applicant.

(d) Permit fees and refunds.

(1) Minimum fee. The minimum fee for a single-trip mileage permit is either the calculated permit fee or $31, whichever is the greater amount.

(2) Permit fee calculation. The permit fee for a single-trip mileage permit is calculated by multiplying the number of miles traveled, the highway use factor, and the total rate per mile, and then adding the indirect cost share to the product.

(A) Highway use factor. The highway use factor for a single-trip mileage permit is 0.6.

(B) Total rate per mile. The total rate per mile is the combined mileage rates for width, height, and weight for the unladen lift equipment motor vehicle. [~~crane. The rate per mile for a trailer-mounted crane is based on the overall width, overall height, and all axle weights, including the truck-tractor axles.~~]

(i) The mileage rate for width is $.06 per mile for each foot (or fraction thereof) above legal width.

(ii) The mileage rate for height is $.04 per mile for each foot (or fraction thereof) above legal height.

(iii) The mileage rate for a single axle or any axle within a group that exceeds 20,000 pounds, but is less than or equal to 25,000 pounds, is calculated by multiplying $.045 times the amount by which the axle or axle group weight exceeds the legal weight for the axle or axle group and dividing the resultant figure by 1,000 pounds.

(iv) The mileage rate for a single axle or any axle within a group that exceeds 25,000 pounds, but is less than or equal to 30,000 pounds, is calculated by multiplying $.055 times the amount by which the axle or axle group weight exceeds the legal weight for the axle or axle group and dividing the resultant figure by 1,000 pounds.

[~~(3) Exceptions to fee computations. A crane with two or more axle groups that does not have a spacing of at least 12 feet between the closest axles of the opposing groups must have the permit fee calculated by the following method.~~]

[~~(A) The axle group with the lowest weight will have the axle closest to the next axle group temporarily disregarded from its group in order to create a spacing of at least 12 feet between the two groups for fee calculation purposes.~~]

[~~(B) An axle group will not have more than one axle disregarded.~~]

[~~(C) The permit fee for the axle group with the temporarily disregarded axle must be based on the actual weight of the entire axle group minus the legal weight for the remaining axles of the group.~~]

(3) [~~(4)~~] Refunds. Fees for permits issued under this section are non-refundable.

(e) Amendments. A single-trip mileage permit issued under this section may not be amended unless an exception is granted by the department.

(f) Weight table and formulas. The following table entitled "Maximum Permit Weight Table" is Figure 1: 43 TAC §219.62(f), and the list of formulas entitled "Maximum Permit Weight Formulas," is Figure 2: 43 TAC §219.62(f).

Figure 1: 43 TAC §219.62(f) (No change.)

Figure 2: 43 TAC §219.62(f) (No change.)

§219.63. Quarterly Hubometer Permits.

(a) General information.

(1) Permits issued under this section are subject to the requirements of §219.61 of this title (relating to General Requirements for Permits for Oversize and Overweight Unladen Lift Equipment Motor Vehicles).

(2) A quarterly hubometer permit:

(A) is effective for three consecutive months;

(B) allows the unladen lift equipment motor vehicle [~~crane~~] to travel on all state-maintained highways; and

(C) allows the unladen lift equipment motor vehicle [~~crane~~] to travel on a state-wide basis.

(3) An unladen lift equipment motor vehicle [~~A crane~~] permitted under this section must not exceed any of the following dimensions:

(A) 12 feet in width;

(B) 14 feet, 6 inches in height; or

(C) 95 feet in length.

(4) With the exception of unladen lift equipment motor vehicles [~~cranes~~] that are overlength only, unladen lift equipment motor vehicles [~~cranes~~] operated with a quarterly hubometer permit must be equipped with a hubometer. The permittee must maintain the hubometer in good working condition.

(5) An unladen lift equipment motor vehicle [~~A crane~~] exceeding 175,000 pounds gross weight must:

(A) have front and rear escort flag vehicles to prevent traffic from traveling beside the unladen lift equipment motor vehicle [~~crane~~] as it crosses a bridge;

(B) cross all multi-lane bridges by centering the unladen lift equipment motor vehicle [~~crane~~] on a lane line;

(C) cross all two-lane bridges in the center of the bridge; and

(D) cross each bridge at a speed not greater than 20 miles per hour.

(6) The permitted unladen lift equipment motor vehicle [~~crane~~] must not cross a load-restricted bridge when exceeding the posted capacity of the bridge.

(7) The permit may be amended only to change the following:

(A) if listed on the permit, the hubometer serial number; or

(B) the license plate number.

(b) Maximum permit weight limits.

(1) The maximum permit weight for any single axle must not exceed 30,000 pounds or 850 pounds per inch of tire width, whichever is less.

(2) The maximum permit weight for any group of axles on an unladen lift equipment motor vehicle [~~a crane~~] will be determined by calculating the "W" weight for the group, using the formulas in Figure 2: 43 TAC §219.62(f), "Maximum Permit Weight Formulas," and comparing the calculated "W" weight with the corresponding "W" weight that is established in Figure 1: 43 TAC §219.62(f), "Maximum Permit Weight Table."

(3) The maximum permit weight per inch of tire width for axles that are steerable must not exceed 950 pounds, and the maximum permit weight per inch of tire width for axles that are not steerable must not exceed 850 pounds.

(4) An unladen lift equipment motor vehicle [~~A crane~~] that has any group of axles that exceeds the limits established by Figure 1: 43 TAC §219.62(f), "Maximum Permit Weight Table," and Figure 2: 43 TAC §219.62(f), "Maximum Permit Weight Formulas," is not eligible for a permit under this section; however, it is eligible for a permit under §219.62 of this title (relating to Single-Trip Mileage Permits).

(c) Initial permit application and issuance.

(1) An application for an initial quarterly hubometer permit must be made in accordance with §219.61(b) of this title. In addition, the applicant must provide the current hubometer mileage reading and an initial $31 processing fee.

(2) Upon verification of the unladen lift equipment motor vehicle [~~crane~~] information and receipt of the permit fee, the department will provide a copy of the permit to the applicant, and will also provide a renewal application form to the applicant.

(d) Permit renewals and closeouts.

(1) An application for a permit renewal or closeout must be made on a form and in a manner prescribed by the department.

(2) Upon receipt of the renewal application, the department will verify the unladen lift equipment motor vehicle [~~crane~~] information, check mileage traveled on the last permit, calculate the new permit fee, and advise the applicant of the permit fee.

(e) Permit fees.

(1) Minimum fee. The minimum fee for a quarterly hubometer permit is either the calculated permit fee or $31, whichever is the greater amount.

(2) Fees for overlength unladen lift equipment motor vehicles. An unladen lift equipment motor vehicle [~~cranes. A crane~~] that is overlength only is not required to have a hubometer. The fee for this permit is $31.

(3) Quarterly hubometer permit fee calculation. The permit fee for a quarterly hubometer permit is calculated by multiplying the hubometer mileage, the highway use factor, and the total rate per mile, and then adding the indirect cost share to the product.

(A) Hubometer mileage. Mileage for a quarterly hubometer permit is determined by the unladen lift equipment motor vehicle's [~~crane's~~] current hubometer mileage reading minus the unladen lift equipment motor vehicle's [~~crane's~~] hubometer mileage reading from the previous quarterly hubometer permit.

(B) Highway use factor. The highway use factor for a quarterly hubometer permit is 0.3.

(C) Total rate per mile. The total rate per mile is the combined mileage rates for width, height, and weight for the unladen lift equipment motor vehicle [~~crane~~].

(i) The mileage rate for width is $.06 per mile for each foot (or fraction thereof) above legal width.

(ii) The mileage rate for height is $.04 per mile for each foot (or fraction thereof) above legal height.

(iii) The mileage rate for a single axle or any axle within a group that exceeds 20,000 pounds, but is less than or equal to 25,000 pounds, is calculated by multiplying $.045 times the amount by which the axle or axle group weight exceeds the legal weight for the axle or axle group and dividing the resultant figure by 1,000 pounds.

(iv) The mileage rate for a single axle or any axle within a group that exceeds 25,000 pounds, but is less than or equal to 30,000 pounds, is calculated by multiplying $.055 times the amount by which the axle or axle group weight exceeds the legal weight for the axle or axle group and dividing the resultant figure by 1,000 pounds.

~~[(4) Special fee provisions. A crane with two or more axle groups that do not have a spacing of at least 12 feet between the closest axles of the opposing groups must have the permit fee calculated by the following method.]~~

~~[(A) The axle group with the lowest weight will have the axle closest to the next axle group temporarily disregarded from its~~

~~group in order to create a spacing of at least 12 feet between the two groups for fee calculation purposes.]~~

~~[(B) An axle group will not have more than one axle disregarded.]~~

~~[(C) The permit fee for the axle group with the temporarily disregarded axle must be based on the actual weight of the entire axle group minus the legal weight for the remaining axles of the group.]~~

§219.64. Annual Permits.

(a) General information. Permits issued under this section are subject to the requirements of §219.61 of this title (relating to General Requirements for Permits for Oversize and Overweight Unladen Lift Equipment Motor Vehicles).

(1) An unladen lift equipment motor vehicle [~~A crane~~] permitted under this section must not exceed:

(A) the weight limits established in §219.11(d)(1), (2), and (3) of this title (relating to General Oversize/Overweight Permit Requirements and Procedures);

(B) a gross weight of 120,000 pounds;

(C) legal length and height limits as specified in Transportation Code, Chapter 621, Subchapter C; and

(D) 10 feet in width.

(2) A permit issued under this section may not be amended.

(3) An unladen lift equipment motor vehicle [~~A crane~~] permitted under this section must not cross a load-restricted bridge or a load-restricted road when exceeding the posted capacity of such.

(b) Permit application and issuance.

(1) Initial permit application. An application for an annual permit under this section must be made in accordance with §219.61(b) of this title.

(2) Permit issuance. Upon receipt of the application and the appropriate permit fee, the department will verify the application information and provide the permit to the applicant.

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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Laura Moriaty
General Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: March 24, 2024
For further information, please call: (512) 465-4160

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SUBCHAPTER F. COMPLIANCE

43 TAC §219.81

STATUTORY AUTHORITY. The department proposes an amendment under Transportation Code, §621.008, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 621; Transportation Code, §622.002, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 622, including Transportation Code, §622.051, *et seq.* which authorize the department to issue a permit for transporting poles required for the maintenance of electric power transmission and distribution lines; Transportation Code, §623.002, which authorizes the board to adopt rules as necessary to implement Transportation Code, Chapter 623; Transportation Code, §623.070, *et seq.* which authorize the department to issue a permit to an applicant to move certain equipment or commodities and prescribe the application requirements for such permits; Transportation Code, §623.074(d), which authorizes the department to adopt a rule to authorize an applicant to submit an application electronically; Transportation Code, §623.095(c), which authorizes the department to adopt rules concerning the requirements for a permit under §623.095(c) regarding an annual permit for a person authorized to be issued permits under Transportation Code, §623.094 for the transportation of new manufactured homes from a manufacturing facility to a temporary storage location not to exceed 20 miles from the point of manufacture; Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; and the statutory authority referenced throughout the preamble and in the rule text.

CROSS REFERENCE TO STATUTE. The proposed amendment would implement Transportation Code, Chapters 621, 622, and 623; and Government Code, Chapter 2001.

§219.81. Applicability.

(a) A person operating or loading a vehicle for which a permit under this chapter is required shall comply with all applicable terms, conditions, and requirements of the permit, and with this chapter and Transportation Code, Chapters 621, 622, or 623 as applicable.

(b) A person loading a vehicle or operating on a public road or highway a vehicle for which a permit under this chapter is not required shall comply with the weight and size provisions of Transportation Code, Chapters 621, 622, or 623.

~~[(c) Gross weight registration. A person may not operate on a highway or public road a vehicle that exceeds its gross weight registration.]~~

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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Laura Moriaty
General Counsel
Texas Department of Motor Vehicles
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43 TAC §219.84, §219.86

STATUTORY AUTHORITY. The department proposes repeals under Transportation Code, §621.008, which authorizes the board to adopt rules that are necessary to implement and

enforce Transportation Code, Chapter 621; Transportation Code, §622.002, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 622, including Transportation Code, §622.051, *et seq.* which authorize the department to issue a permit for transporting poles required for the maintenance of electric power transmission and distribution lines; Transportation Code, §623.002, which authorizes the board to adopt rules as necessary to implement Transportation Code, Chapter 623; Transportation Code, §623.070, *et seq.* which authorize the department to issue a permit to an applicant to move certain equipment or commodities and prescribe the application requirements for such permits; Transportation Code, §623.074(d), which authorizes the department to adopt a rule to authorize an applicant to submit an application electronically; Transportation Code, §623.095(c), which authorizes the department to adopt rules concerning the requirements for a permit under §623.095(c) regarding an annual permit for a person authorized to be issued permits under Transportation Code, §623.094 for the transportation of new manufactured homes from a manufacturing facility to a temporary storage location not to exceed 20 miles from the point of manufacture; Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; and the statutory authority referenced throughout the preamble and in the rule text.

CROSS REFERENCE TO STATUTE. The proposed repeals would implement Transportation Code, Chapters 621, 622, and 623; and Government Code, Chapter 2001.

§219.84. Compliance with Remote Permit System.

§219.86. Permit Compliance.

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 G. RECORDS AND INSPECTIONS

43 TAC §219.102

STATUTORY AUTHORITY. The department proposes an amendment under Transportation Code, §621.008, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 621; Transportation Code, §622.002, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 622, including Transportation Code, §622.051, *et seq.* which authorize the department to issue a permit for transporting poles required for the maintenance of electric power transmission and distribution lines; Transportation Code, §623.002, which authorizes the board to adopt rules as necessary to implement Transportation Code, Chapter 623; Transportation Code, §623.070, *et seq.* which authorize the department to issue a permit to an applicant to move certain equipment or commodities and prescribe the application requirements for such permits; Transportation Code, §623.074(d), which authorizes the department to adopt a rule to authorize an applicant to submit an application electronically; Transportation Code, §623.095(c), which authorizes the department to adopt rules concerning the requirements for a permit under §623.095(c) regarding an annual permit for a person authorized to be issued permits under Transportation Code, §623.094 for the transportation of new manufactured homes from a manufacturing facility to a temporary storage location not to exceed 20 miles from the point of manufacture; Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; and the statutory authority referenced throughout the preamble and in the rule text.

CROSS REFERENCE TO STATUTE. The proposed amendment would implement Transportation Code, Chapters 621, 622, and 623; and Government Code, Chapter 2001.

§219.102. Records.

(a) General records to be maintained. Each person who is subject to this chapter shall maintain the following records if information in such a record is necessary to verify the person's operation:

(1) operational logs, insurance certificates, and documents to verify the person's operations;

(2) complete and accurate records of services performed; and

(3) all certificate of title documents, shipper's certificate of weight, including information used to support the shipper's certificate of weight, weight tickets, permits for oversize or overweight vehicles and loads, dispatch records, load tickets, waybill or any other document that verify the operations of the vehicle to determine the actual weight, insurance coverage, size or capacity of the vehicle, and the size or weight of the commodity being transported.

(b) Evidence of permits.

(1) Except as stated otherwise in §219.13(e)(4)(B)(ii) of this title (relating to Time Permits), the original permit, a print copy of the permit, or an electronic copy of the permit must be kept in the permitted vehicle until the permit terminates or expires.

(2) Except as stated otherwise in §219.13(e)(4)(B)(ii), an operator of a vehicle operating under a permit issued under Transportation Code, Subtitle E, shall, on request, provide the original permit, a print copy of the permit, or an electronic copy of the permit to a department inspector or to a peace officer, as defined by Code of Criminal Procedure, Article 2.12.

(A) If the department provides a permit electronically, the vehicle operator may provide a legible and accurate image of the permit displayed on a wireless communication device.

~~[(B) The display of an image that includes permit information on a wireless communication device under this paragraph does not constitute effective consent for a law enforcement officer, or any~~

~~other person, to access the contents of the wireless communication device except to view the permit information.~~]

(B) [~~(C)~~] The authorization of the use of a wireless communication device to display permit information under this paragraph does not prevent the State Office of Administrative Hearings or a court of competent jurisdiction from requiring a person to provide a paper copy of the person's evidence of permit in a hearing or trial or in connection with discovery proceedings.

[~~(D) A telecommunications provider, as defined by Utilities Code, §51.002, may not be held liable to the operator of the motor vehicle for the failure of a wireless communication device to display permit information under this paragraph.~~]

(c) Preservation and destruction of records. Records required under this section shall be maintained for not less than two years, except that drivers' time cards and logs shall be maintained for not less than six months.

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 H. ENFORCEMENT

43 TAC §219.123

STATUTORY AUTHORITY. The department proposes the repeal under Transportation Code, §621.008, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 621; Transportation Code, §622.002, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 622, including Transportation Code, §622.051, *et seq.* which authorize the department to issue a permit for transporting poles required for the maintenance of electric power transmission and distribution lines; Transportation Code, §623.002, which authorizes the board to adopt rules as necessary to implement Transportation Code, Chapter 623; Transportation Code, §623.070, *et seq.* which authorize the department to issue a permit to an applicant to move certain equipment or commodities and prescribe the application requirements for such permits; Transportation Code, §623.074(d), which authorizes the department to adopt a rule to authorize an applicant to submit an application electronically; Transportation Code, §623.095(c), which authorizes the department to adopt rules concerning the requirements for a permit under §623.095(c) regarding an annual permit for a person authorized to be issued permits under Transportation Code, §623.094 for the transportation of new manufactured homes from a manufacturing facility to a temporary storage location not to exceed 20 miles from the point of manufacture; Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; and the statutory authority referenced throughout the preamble and in the rule text.

CROSS REFERENCE TO STATUTE. The proposed repeal would implement Transportation Code, Chapters 621, 622, and 623; and Government Code, Chapter 2001.

§219.123. Implications for Nonpayment of Penalties; Grounds for Action.

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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