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

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

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 1. GENERAL PROCEDURES

SUBCHAPTER E. ADVISORY COMMITTEES

4 TAC §1.221

The Texas Department of Agriculture (Department) proposes new Texas Administrative Code, Title 4, Part 1, §1.221, regarding the Texas Food System Security and Resiliency Planning Council. The purposes of the Council are to provide guidance to the Department to fulfill its responsibilities under Texas Agriculture Code (Code), Chapter 23 and review the food system security plan developed under Code, Section 23.003.

Proposed §1.221 addresses the Texas Food System Security and Resiliency Planning Council and describes the Council's purposes, composition, and terms of office for members. In addition, it prescribes meeting requirements and procedures. The proposed rule also creates requirements for member conduct and training, addresses conflicts of interests, and provides for the duration of the Council.

LOCAL EMPLOYMENT IMPACT STATEMENT: The Department has determined that the proposed rule will not affect a local economy, so the Department is not required to prepare a local employment impact statement under Texas Government Code, §2001.022.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT: Karen Reichek, Administrator for Trade and Business Development, 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.

PUBLIC BENEFITS AND PROBABLE ECONOMIC COST: Ms. Reichek has determined that for each year of the first five-year period the proposed rule is in effect, the public benefit will be creation of a Council that will assist the Department in discharging its duties under Chapter 23 of the Texas Agriculture Code. Ms. Reichek has also determined that for each year of the first five-year period the proposed rule is in effect, there will be no cost to persons who are required to comply with the proposed rule.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES: The Department has determined there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed rule; therefore, preparation of an economic impact statement and a regulatory flexibility analysis, as detailed under Texas Government Code, §2006.002, is not required.

GOVERNMENT GROWTH IMPACT STATEMENT: Pursuant to Texas Government Code, §2001.0221, the Department provides the following Government Growth Impact Statement for the proposed rule. For each year of the first five years the proposed rule will be in effect, the Department has determined the following:

1. the proposed rule does not create or eliminate a government program;

2. implementation of the proposed rule does not require the creation or elimination of employee positions;

3. implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the Department;

4. the proposed rule does not require an increase or decrease in fees paid to the Department;

5. the proposed rule does create a new regulation;

6. the proposed rule will not repeal an existing regulation;

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

8. the proposed rule does not positively or adversely affect this state's economy.

Written comments on the proposed rule may be submitted to Karen Reichek, Administrator for Trade and Business Development, P.O. Box 12847, Austin, Texas 78711, or by email to Karen.Reichek@TexasAgriculture.gov. The deadline for comments is 30 days after publication in the *Texas Register.*

The new rule is proposed under Code, Section 23.006, which provides the Department shall adopt rules to administer Code, Chapter 23, including the Texas Food System Security and Resiliency Planning Council.

Texas Agriculture Code, Chapter 23 is affected by the proposed rule.

§1.221. Texas Food System Security and Resiliency Planning Council.

(a) Statutory authority. Texas Food System Security and Resiliency Planning Council (Council) is established pursuant to Texas Agriculture Code, §23.002.

(b) Definitions. In additional to the general definitions contained within Title 4, Part 1, Chapter 1, §1.1, the following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) "Council" means the Texas food system security and resiliency planning council; and

(2) "Office" means the food and nutrition division or other division within the department responsible for food assistance programs, established pursuant to Texas Agriculture Code, §23.001(2).

(c) Purpose. The Council shall provide guidance to the Department in the administration of Texas Agriculture Code, Chapter 23 and the development of a state food system security plan.

(d) Composition. The Council is composed of members in accordance with Texas Agriculture Code, §23.002(a).

(e) A person appointed to the Council must have experience in an industry or economic sector involving food production or food sales or in a related industry or economic sector.

(f) Terms of Service for Council Membership.

(1) Each Council member serves at the pleasure of the appointing official.

(2) Any vacancy occurring on the Council shall be filled by the appropriate appointing official as soon as practicable.

(3) Appointments to the Council shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

(g) Presiding officers, including a chair and vice-chair, shall be designated in accordance with Texas Agriculture Code, Section 23.002.

(h) Meetings.

(1) Meetings shall be held at regular intervals, as directed by Texas Agriculture Code, Section 23.002

(2) A simple majority of the voting members of the Council shall constitute a quorum for the purpose of transacting business.

(3) The Council may only meet with a quorum present.

(i) Procedures.

(1) Any action taken by the Council must be approved by a majority vote of the members present once a quorum is established.

(2) Each voting member shall have one vote.

(3) The Council shall make decisions in the discharge of its duties without discrimination based on any person's race, creed, gender, religion, national origin, age, physical condition, or economic status.

(4) Minutes of each Council meeting shall be taken by department staff.

(j) Conduct By Members.

(1) Members of the Council shall not be entitled to compensation or reimbursement from the Department or the Council for expenses incurred in performing Council duties unless otherwise required under Texas Agriculture Code, Chapter 23.

(2) The Commissioner, the department, and the Council shall not be bound in any way by any statement or action on the part of any Council member except when a statement or action is specifically authorized by the Commissioner, department, or Council.

(3) The Council and its members may not participate in an official capacity in legislative activities in the name of the department or the Council except with approval of the department. Council members are not prohibited from representing themselves or other entities in the legislative process.

(4) A Council member should not accept or solicit any benefit that might reasonably tend to influence the member in the discharge of the member's duties.

(5) A Council member should not disclose confidential information acquired through his or her Council membership.

(6) A Council member should not knowingly solicit, accept, or agree to accept any benefit for having exercised the member's powers or duties in favor of another person.

(7) A Council member who has a personal or private interest in a matter pending before the Council shall publicly disclose the fact in a Council meeting and may not vote or otherwise participate in the matter. The phrase "personal or private interest" means the Council member has a direct pecuniary interest in the matter but does not include the Council member's engagement in a profession, trade, or occupation when the member's interest is the same as all others similarly engaged in the profession, trade, or occupation.

(8) A person may not serve as a member of Council if the person is required to register as a lobbyist under Chapter 305, Government Code because of the person's activities for compensation on a matter related to the Council.

(k) Council members must complete required Open Meetings Training in accordance with Texas Government Code, Chapter 551.

(l) Staff. Staff support for the Council shall be provided by 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.

Filed with the Office of the Secretary of State on August 21, 2023.

TRD-202303075
Susan Maldonado
General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: October 1, 2023
For further information, please call: (512) 463-6591

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PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 32. HEARING AND APPEAL PROCEDURES

4 TAC §§32.1 - 32.5

The Texas Animal Health Commission (Commission) proposes amendments and additions to Title 4, Texas Administrative Code, Chapter 32 titled "Hearing and Appeal Procedures." Specifically, amendments are proposed to §32.1 Definitions, §32.2 Appeal of a Decision or Order by the Executive Director, §32.5 Decisions and Orders, and new additions are proposed for §32.3 Appeals of Other Orders and Decisions, and §32.4 Hearing Procedures. The proposed amendments are the result of rule review prescribed by §2001.039 Government Code. Notice of the Commission's intention to review this chapter was published in the May 12, 2023, issue of the *Texas Register* (48 TexReg 2511).

BACKGROUND AND PURPOSE

Chapter 32, concerning Hearing and Appeal Procedures, sets forth the process by which an individual may appeal an order or decision of the Commission. The Commission proposes amendments and new sections to this chapter to provide clearer guidance on the existing appeal process and to better align the appeal requirements with the statutory requirements set forth in the Texas Agriculture Code and the Administrative Procedure Act.

SECTION-BY-SECTION DISCUSSION

Section 32.1 defines terms used within the chapter. The proposed amendments add definitions for "Commissioner," "Contested case," and "Final order." The amendments clarify the definitions of "Executive director" and "Party," and replace "Hearing officer" with "Administrative Law Judge."

Section 32.2 outlines procedures for appeals of a monetary penalty for a violation. The proposed amendments clarify the process by which an individual may appeal an administrative penalty and clarify the steps the Commission must take if a notice of violation does not receive a timely response. The amendments bring the section requirements into alignment with the statutory requirements of the Texas Agriculture Code, §161.148.

Section 32.3 outlines procedures for appeals of other orders and decisions. The proposed new section clarifies the process by which an individual may appeal orders and decisions of the Commission that do not involve administrative penalties. The amendments direct readers to other locations within the rules that provide specific appeal provisions.

Section 32.4 specifies hearing procedures. The proposed new section provides guidance to parties and administrative law judges about how contested case hearings referred to the State Office of Administrative Hearings (SOAH) must be conducted. The amendments outline the procedures required by the Texas Agriculture Code, the Administrative Procedure Act, and the rules of SOAH.

Section 32.5 outlines procedures for the disposition of contested cases. The proposed amendments clarify already existing procedures following the conclusion of a contested case hearing. The amendments detail how the Commission must adopt final orders in a contested case, disposition of a case by default, and a party's opportunity to file a motion for rehearing upon the rendition of a final order.

SUMMARY OF COMMENTS RECEIVED DURING RULE REVIEW AND COMMISSION RESPONSE

During the 30-day comment period of the proposed rule review, the Commission received no comments.

FISCAL NOTE

Ms. Jeanine Coggeshall, General Counsel for the Texas Animal Health Commission, determined that for each year of the first five years that the rule is in effect, enforcing or administering the proposed rules does not have foreseeable implications relating to costs or revenues of state or local governments. Commission employees will administer and enforce these rules as part of their current job duties and resources. Ms. Coggeshall also determined for the same period that there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed amendments.

PUBLIC BENEFIT NOTE

Ms. Coggeshall determined that for each year of the first five years the rule is in effect, the anticipated public benefits are to provide clarity and guidance on how an individual may appeal Commission orders and to better align the current rules with statutory requirements.

TAKINGS IMPACT ASSESSMENT

The Commission determined that the proposal does 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. Therefore, the proposed rules are compliant with the Private Real Property Preservation Act in Texas Government Code §2007.043 and do not constitute a taking.

LOCAL EMPLOYMENT IMPACT STATEMENT

The Commission determined that the proposed rules would not impact local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission pursuant to Texas Government Code §2001.022.

REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

The Commission determined that this proposal is not a "major environmental rule" as defined by Government Code §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

GOVERNMENT GROWTH IMPACT STATEMENT

In compliance with the requirements of Texas Government Code §2001.0221, the Commission prepared the following Government Growth Impact Statement. For each year of the first five years the proposed rules would be in effect, the Commission determined the following:

1. The amendments and new sections will not create or eliminate a government program;

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

3. Implementation of the amendments and new sections will result in no assumed change in future legislative appropriations;

4. The amendments and new sections will not affect fees paid to the Commission;

5. Although the amendments create new rule sections, the newly proposed sections merely clarify existing procedures;

6. The amendments and new sections expand existing rules for clarity and do not create any new or additional duties or rights but will not otherwise limit or repeal an existing regulation;

7. The amendments and new sections will not change the number of individuals subject to the rule; and

8. The amendments and new sections will not affect the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Ms. Coggeshall also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities pursuant to Texas Government Code, Chapter 2006. The rules do not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rules.

COSTS TO REGULATED PERSONS

The proposed amendments and new sections in Chapter 32 do not impose additional costs on regulated persons and are designed to provide clarity to already existing appeal procedures and to bring the rules into compliance with statutory requirements. The proposed rules do not otherwise impose a direct cost on a regulated person, state agency, a special district, or a local government within the state.

PUBLIC COMMENT

Written comments regarding the proposed amendments and new sections may be submitted to Amanda Bernhard, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0719 or by e-mail to comments@tahc.texas.gov. To be considered, comments must be received no later than thirty (30) days from the date of publication of this proposal in the *Texas Register.* When faxing or emailing comments, please indicate "Comments on Proposed Rule-Chapter 32, Hearing and Appeal Procedures " in the subject line.

STATUTORY AUTHORITY

The amendments and newly proposed rules are authorized by Texas Government Code, §2001.004(1), which requires all administrative agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

Pursuant to §161.038 of the Texas Agriculture Code, titled "Administrative Procedure Act Applicable," the Commission is subject to the administrative procedure law set forth in Chapter 2001 of the Texas Government Code.

Pursuant to §161.046 of the Texas Agriculture Code, titled "Rules," the Commission may adopt rules as necessary for the administration of enforcement of this chapter.

Pursuant to §161.148 of the Texas Agriculture Code, titled "Administrative Penalty," the Commission may impose an administrative penalty on a person who violates a statute, rule, or order of the Commission. Section 161.148 outlines the procedure for appeal from such notice of violation.

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

§32.1. Definitions.

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

(1) Act--The Administrative Procedure Act, Texas Government Code, Chapter 2001.

(2) Administrative Law Judge (ALJ)--A person designated by the State Office of Administrative Hearings (SOAH) to conduct proceedings pursuant to the Act.

(3) [~~(2)~~] Commission--The Texas Animal Health Commission.

(4) Commissioner--A member of the commission appointed by the Governor.

[~~(4) Hearing officer--An administrative law judge designated by the State Office of Administrative Hearings to conduct proceedings pursuant to the Act.~~]

(5) Contested case--A proceeding in which the legal rights, duties, or privileges of a party are to be determined by the commission pursuant to the Act after an opportunity for an adjudicative hearing.

(6) [~~(3)~~] Executive director--The Executive Director [~~chief executive officer~~] of the Texas Animal Health Commission [~~commission appointed by the commissioners~~].

(7) Final order--The commission's final written disposition of a contested case, whether affirmative, negative, injunctive, or declaratory.

(8) [~~(5)~~] Party--A person or agency named or admitted [~~by the executive director~~] as an applicant, complainant, petitioner, intervenor, protestant, or respondent in [~~a party to~~] a proceeding before the commission.

(9) [~~(6)~~] Person--An individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character.

§32.2. Appeal of a Monetary Penalty for a Violation[~~Decision or Order by the Executive Director~~].

(a) Purpose. The purpose of this section is to provide a process by which an individual may appeal a notice of violation that includes an assessment of a monetary penalty for violation of law, rule of the commission, or order of the commission. This section does not apply to other orders or decisions issued by the commission or by the executive director. Nor does this section create a right to a contested case hearing not already conferred by statute.

(b) A person receiving written notice from the commission of a monetary penalty for a violation may appeal by requesting a contested case hearing no later than 20 days from receipt of the notice. The request must comply with the following requirements: [~~of an order by the executive director has 15 days from receipt of the notice to file notice of appeal. The notice of appeal must be in writing and filed with the executive director at the commission's office in Austin. The notice must specifically state the issues for consideration on appeal. The administrative hearing on the specific issues appealed will be held in Austin, pursuant to provisions of the Act, this Chapter, and the rules of the State Office of Administrative Hearings (Title 1, Texas Administrative Code, Chapters 155-157).~~]

(1) be in writing;

(2) state whether the request challenges the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; and

(3) be submitted to the executive director at the commission's office in Austin at the address provided in the notice of violation.

(c) If a timely request is made, the commission shall determine if a contested hearing is authorized under the relevant statutory provisions and rules. If so, the commission shall refer the matter to SOAH for a hearing.

(d) The commission's complaint shall serve as the list of issues that must be addressed. Only those issues referred by the commission may be considered in the hearing. After the conclusion of a contested case hearing, the ALJ shall make findings of fact and conclusions of law and promptly issue to the commission a proposal for decision about the occurrence of the violation and the amount of the proposed penalty in accordance with §2001.062 of the Texas Government Code and SOAH rules.

(e) If a person receiving written notice of violation from the commission fails to timely respond to the notice, the commission shall refer the matter to SOAH for a hearing. The commission's complaint shall serve as the list of issues that must be addressed. Only those issues referred by the commission may be considered in the hearing. After the conclusion of a contested case hearing, the ALJ shall make findings of fact and conclusions of law and promptly issue to the commission a proposal for decision about the occurrence of the violation and the amount of the proposed penalty in accordance with §2001.062 of the Texas Government Code and SOAH rules.

§32.3. Appeal of Other Orders and Decisions.

(a) For appeals of orders and decisions of the executive director concerning brucellosis see §35.2(l) and §35.2(p) of this title (relating to General Requirements).

(b) For appeals of orders and decisions of the executive director concerning CWD Herd Certification Program see §40.3(h) of this title (relating to CWD Herd Certification Program).

(c) For appeals of orders and decisions of the executive director concerning fever ticks see §41.8(3) and §41.11 of this title (Protest of designation of area or premise).

(d) For appeals of orders and decisions of the executive director concerning tuberculosis see §43.2(k) of this title (relating to General Requirements).

(e) For appeals of orders and decisions of the executive director concerning authorized personnel see §47.7 of this title (relating to Procedure for Suspension or Revocation).

(f) For appeals of orders and decisions of the executive director concerning piroplasmosis see §49.6(g) of this title (relating to Piroplasmosis: Area or County Test).

(g) For appeals of executive declarations of high risk disease movement restriction zones see §59.11(g) of this title (relating to Executive Declaration of a High Risk Disease Movement Restriction Zone).

(h) For appeals of all other orders and decisions of the executive director not enumerated above, the following procedure applies:

(1) A person receiving a written order or decision from the commission or executive director must file a notice of appeal no later than 15 days from receipt of the decision. The notice of appeal must be filed in writing with the executive director at the commission's office in Austin. The notice of appeal must attach copy of the order or decision being appealed and specifically state the issues for consideration on appeal.

(2) If a timely request is made, the commission shall determine if a contested hearing is authorized under the relevant statutory provisions and rules. If so, the commission shall refer the matter to SOAH for a hearing.

(3) After the conclusion of the hearing, the ALJ shall make findings of fact and conclusions of law and promptly issue to the commission a proposal for a decision about the issues appealed in accordance with §2001.062 of Texas Government Code and SOAH rules.

§32.4. Hearing Procedures.

(a) Hearings of contested cases referred to SOAH shall be conducted by an administrative law judge assigned by SOAH and in accordance with the Act, the rules of SOAH, and this chapter. SOAH shall acquire jurisdiction over a case when the commission completes and files a Request to Docket Case form, together with other pertinent documents giving rise to the contested case.

(b) Discovery. The scope and form of discovery in a contested case shall be the same as provided by the Texas Rules of Civil Procedure and shall be subject to the constraints provided therein for privileges, objections, protective orders, and duty to supplement as well as the constraints provided in the Act and rules of SOAH.

(c) Evidence. The Texas Rules of Evidence as applied in a nonjury civil case in district court shall govern contested case hearings. The admissibility of evidence in a contested case shall be governed by the Act and by the rules of SOAH.

(d) Burden of proof. A party seeking monetary damages or penalties shall bear the burden of proof. In all other instances, the party challenging a commission decision or action shall bear the burden of proof.

(e) Transcript. Proceedings shall be recorded when requested by the ALJ, the commission, or by any party. The cost of preparing the transcript shall be assessed against and is to be paid by the party or parties requesting the transcription.

§32.5. Disposition of Contested Cases [~~Decisions and Orders~~].

(a) In all cases referred to SOAH, the commission retains the right to make the final decision in a contested case. After the conclusion of a contested case hearing, the ALJ shall prepare and serve on the parties a proposal for decision that includes findings of fact and conclusions of law, modified as necessary by the ALJ to address any exceptions and replies timely filed in accordance with §2001.062 of the Texas Government Code and SOAH rules.

(b) The executive director shall place the proposal for decision and a proposed final order on the commission's agenda for discussion and possible action at a subsequent meeting of the commission.

(c) [~~(a)~~] At a meeting of the commission where the proposed final order is set for discussion and possible action, public testimony is allowed. However, [~~After the completion of the hearing,~~] no further evidence shall be received or considered. The commission may, in its discretion, allow oral arguments.

(d) [~~(b)~~] The commission may, on its own motion, remand to SOAH for any additional fact finding it determines is necessary, or the commission may change a finding of fact or conclusion of law made by the ALJ for any reason enumerated in §2001.058(e) of the Texas Government Code. If the commission determines that the findings of fact and conclusions of law are supported by the evidence, the commission shall issue a final order by [~~Seven commission members shall constitute a quorum. By~~] a majority of those present or by a majority of the quorum, whichever is greater. The[~~, the~~] commission shall [~~will~~] adopt findings of fact and conclusions of law which shall be part of the commission's final [~~decision or~~] order. Findings of fact shall be based exclusively on the evidence or on matters officially noticed.

(e) Disposition by Default.

(1) In contested cases where the party not bearing the burden of proof at the hearing fails to appear, the ALJ may issue an order finding that adequate notice has been given, deeming factual allegations in the notice of hearing admitted, conditionally dismissing the case from the SOAH docket, and conditionally remanding the case to the commission for disposition by default as permitted by Texas Government Code, §2001.056 and §2001.058(d-1).

(2) Pursuant to 1 TAC §155.501(e), the defaulting party shall be provided with adequate notice of the conditional order and an opportunity to set aside the default. If no motion to set aside is granted, the conditional order of dismissal and remand becomes final.

(3) When the order of dismissal and remand is final, the executive director shall prepare a proposed order for the commission's action containing findings of fact as set forth in the notice of hearing, conclusions of law, and granting the relief requested. The matter shall

be placed on the commission's agenda for discussion and possible action at a subsequent meeting. Although public testimony is allowed, no further evidence shall be received or considered. The commission may, in its discretion, allow oral arguments.

(f) [~~(c)~~] Upon rendition of the commission's final order [~~decision~~], parties adversely affected may file a motion for rehearing in accordance with the Act and the rules of SOAH. Judicial review will be by district court in Travis County, in accordance with the Act.

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

Filed with the Office of the Secretary of State on August 16, 2023.

TRD-202302986
Jeanine Coggeshall
General Counsel
Texas Animal Health Commission
Earliest possible date of adoption: October 1, 2023
For further information, please call: (512) 719-0718

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4 TAC §32.6

The Texas Animal Health Commission (Commission) proposes the repeal of existing §32.6, concerning Transcript of the Hearing in the Texas Administrative Code, Title 4, Part 2, Chapter 32. Notice of the Commission's intention to review this chapter was published in the May 12, 2023, issue of the *Texas Register* (48 TexReg 2511).

BACKGROUND AND PURPOSE

Chapter 32, concerning Hearing and Appeal Procedures, sets forth the process by which an individual may appeal an order or decision of the Commission. The Commission proposes the repeal of §32.6, concerning Transcript of the Hearing, because the contents of the rule have been moved to §32.4, Hearing Procedures. This change is proposed to provide clearer guidance on the existing appeal process and to better align the appeal requirements with the statutory requirements set forth in the Texas Agriculture Code and the Administrative Procedure Act.

SECTION-BY-SECTION DISCUSSION

The proposed repeal will repeal the existing §32.6, the contents of which have been moved to §32.4, Hearing Procedures, in a concurrent submission.

SUMMARY OF COMMENTS RECEIVED DURING RULE REVIEW AND COMMISSION RESPONSE

During the 30-day comment period of the proposed rule review, the Commission received no comments.

FISCAL NOTE

Ms. Jeanine Coggeshall, General Counsel for the Texas Animal Health Commission, determined that for each year of the first five years that the rule is in effect, enforcing or administering the proposed repeal does not have foreseeable implications relating to costs or revenues of state or local governments. Commission employees will administer and enforce the repeal as part of their current job duties and resources. Ms. Coggeshall also determined for the same period that there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed repeal.

PUBLIC BENEFIT NOTE

Ms. Coggeshall determined that for each year of the first five years the repeal is in effect, the anticipated public benefits are to provide clarity and guidance on how an individual may appeal Commission orders and to better align the current rules with statutory requirements.

TAKINGS IMPACT ASSESSMENT

The Commission determined that the proposal does 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. Therefore, the proposed rules are compliant with the Private Real Property Preservation Act in Texas Government Code §2007.043 and do not constitute a taking.

LOCAL EMPLOYMENT IMPACT STATEMENT

The Commission determined that the proposed repeal would not impact local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission pursuant to Texas Government Code §2001.022.

REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

The Commission determined that this proposal is not a "major environmental rule" as defined by Government Code §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

GOVERNMENT GROWTH IMPACT STATEMENT

In compliance with the requirements of Texas Government Code §2001.0221, the Commission prepared the following Government Growth Impact Statement. For each year of the first five years the proposed repeal would be in effect, the Commission determined the following:

1. The repeal will not create or eliminate a government program;

2. Implementation of the proposed repeal will not require the creation of new employee positions or the elimination of existing employee positions;

3. Implementation of the repeal will result in no assumed change in future legislative appropriations;

4. The repeal will not affect fees paid to the Commission;

5. The repeal will not create new regulation;

6. The repeal will repeal an existing regulation, but the repealed regulation has been moved to another rule section for readability;

7. The repeal will not change the number of individuals subject to the rule; and

8. The repeal will not affect the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Ms. Coggeshall also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities pursuant to Texas Government Code, Chapter

2006. The repeal does not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rules.

COSTS TO REGULATED PERSONS

The proposed repeal to Chapter 32 does not impose additional costs on regulated persons and are designed to provide clarity to already existing appeal procedures and to bring the rules into compliance with statutory requirements. The proposed repeal does not otherwise impose a direct cost on a regulated person, state agency, a special district, or a local government within the state.

PUBLIC COMMENT

Written comments regarding the proposed repeal may be submitted to Amanda Bernhard, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0719 or by e-mail to comments@tahc.texas.gov. To be considered, comments must be received no later than thirty (30) days from the date of publication of this proposal in the *Texas Register.* When faxing or emailing comments, please indicate "Comments on Proposed Rule-Chapter 32, Hearing and Appeal Procedures " in the subject line.

STATUTORY AUTHORITY

The proposed repeal is authorized by Texas Government Code, §2001.004(1), which requires all administrative agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

Pursuant to §161.038 of the Texas Agriculture Code, titled "Administrative Procedure Act Applicable," the Commission is subject to the administrative procedure law set forth in Chapter 2001 of the Texas Government Code.

Pursuant to §161.046 of the Texas Agriculture Code, titled "Rules," the Commission may adopt rules as necessary for the administration of enforcement of this chapter.

Pursuant to §161.148 of the Texas Agriculture Code, titled "Administrative Penalty," the Commission may impose an administrative penalty on a person who violates a statute, rule, or order of the Commission. Section 161.148 outlines the procedure for appeal from such notice of violation.

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

§32.6. Transcript of the Hearing.

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

Filed with the Office of the Secretary of State on August 16, 2023.

TRD-202302985
Jeanine Coggeshall
General Counsel
Texas Animal Health Commission
Earliest possible date of adoption: October 1, 2023
For further information, please call: (512) 719-0718

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CHAPTER 56. GRANTS, GIFTS AND DONATIONS

4 TAC §§56.1 - 56.7

The Texas Animal Health Commission (Commission) proposes amendments to Title 4, Texas Administrative Code, Chapter 56 titled "Grants, Gifts and Donations." Specifically, amendments are proposed to §56.1 Purpose, §56.2 Definitions, §56.3 Acceptance of Grants, Gifts and Donations, §56.4 Solicitation, §56.5 Restricted/Unrestricted, §56.6 Standards of Conduct between Employees and Officers and Private Donors, and §56.7 Acceptance of Gift From Party to Contested Case Prohibited. The proposed amendments are the result of rule review prescribed by §2001.039 Government Code. Notice of the Commission's intention to review this chapter was published in the May 12, 2023, issue of the *Texas Register* (48 TexReg 2512).

BACKGROUND AND PURPOSE

Chapter 56 sets forth rules and guidelines by which the Commission may accept and solicit gifts. The chapter also includes standards of conduct on how commissioners and employees must conduct themselves when dealing with private donors. The Commission proposes amendments to this chapter to update the rule language to reflect the current preferred terminology, for ease of use and readability, and to bring the requirements of gift acceptance in better alignment with statutory requirements.

SECTION-BY-SECTION DISCUSSION

Section 56.1 states the purpose of Chapter 56 is to establish rules for accepting gifts and for governing conduct between private donors and the Commission. The proposed amendments update rule language to reflect current preferred Commission terminology.

Section 56.2 defines terms used within the chapter. The proposed amendments add definitions for "Commissioner" and "Executive director." The amendments clarify the definition of "Private donor" and remove the definition of "Officer."

Section 56.3 outlines rules for accepting donations. The proposed amendments clarify the responsibilities of the executive director and when donations must be acknowledged by a majority of the commissioners in an open meeting. The proposed amendments are designed to bring this section into better alignment with Chapter 575 of the Texas Government Code.

Section 56.4 specifies when the Commission may solicit gifts. The proposed amendments move the reporting requirement to Section 56.3 to clarify that the requirement applies to all accepted grants, gifts, or donations.

Section 56.5 details what type of donations may be made to the Commission. The proposed amendments update rule language for readability and clarifies that donations may be for any amount and with or without restrictions.

Section 56.6 outlines standards of conduct between commissioners, employees, and private donors. The proposed amendments update rule language to reflect current preferred Commission terminology.

Finally, Section 56.7 prohibits acceptance of gifts from a party in a contested case. The proposed amendments update rule language for readability.

SUMMARY OF COMMENTS RECEIVED AND COMMISSION RESPONSE

During the 30-day comment period of the proposed rule review, the Commission received one comment from an individual.

The commenter explained that funding is available through USDA APHIS Veterinary Services Strategy & Policy for state

entities to collaborate with private entities for programs related to the control or prevention of chronic wasting disease. The commenter offered the commenter's expertise to assist with collaborations on chronic wasting disease.

Response: The Commission thanks the commenter for information provided. No changes to Chapter 56 were made as a result of this comment.

FISCAL NOTE

Ms. Jeanine Coggeshall, General Counsel for the Texas Animal Health Commission, determined that for each year of the first five years that the rule is in effect, enforcing or administering the proposed rules does not have foreseeable implications relating to costs or revenues of state or local governments. Commission employees will administer and enforce these rules as part of their current job duties and resources. Ms. Coggeshall also determined for the same period that there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed amendments.

PUBLIC BENEFIT NOTE

Ms. Coggeshall determined that for each year of the first five years the rule is in effect, the anticipated public benefits are improved readability from updates to terminology and style, and better alignment of the rules governing gift acceptance with Chapter 575 of the Texas Government Code.

TAKINGS IMPACT ASSESSMENT

The Commission determined that the proposal does 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. Therefore, the proposed rules are compliant with the Private Real Property Preservation Act in Texas Government Code §2007.043 and do not constitute a taking.

LOCAL EMPLOYMENT IMPACT STATEMENT

The Commission determined that the proposed rules would not impact local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission pursuant to Texas Government Code §2001.022.

REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

The Commission determined that this proposal is not a "major environmental rule" as defined by Government Code §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

GOVERNMENT GROWTH IMPACT STATEMENT

In compliance with the requirements of Texas Government Code §2001.0221, the Commission prepared the following Government Growth Impact Statement. For each year of the first five years the proposed rules would be in effect, the Commission determined the following:

1. The amendment will not create or eliminate a government program;

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

3. Implementation of the amendment will result in no assumed change in future legislative appropriations;

4. The amendment will not affect fees paid to the Commission;

5. The amendment does not create new regulation;

6. The amendment does not expand, limit, or repeal existing regulations;

7. The amendment will not change the number of individuals subject to the rule; and

8. The amendment will not affect the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Ms. Coggeshall also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities pursuant to Texas Government Code, Chapter 2006. The rules do not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rules.

COSTS TO REGULATED PERSONS

The proposed amendments to Chapter 56 do not impose additional costs on regulated persons and are designed to update terminology and style, and better align the rules governing gift acceptance with Chapter 575 of the Texas Government Code. The proposed rules do not otherwise impose a direct cost on a regulated person, state agency, a special district, or a local government within the state.

PUBLIC COMMENT

Written comments regarding the proposed amendments may be submitted to Amanda Bernhard, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0719 or by e-mail to comments@tahc.texas.gov. To be considered, comments must be received no later than thirty (30) days from the date of publication of this proposal in the *Texas Register.* When faxing or emailing comments, please indicate " Comments on Proposed Rule-Chapter 56, Grants, Gifts, and Donations " in the subject line.

STATUTORY AUTHORITY

The amendments are proposed under §161.0311 of the Texas Agriculture Code which provides that the Commission may solicit and accept gifts, grants, and donations for purposes consistent with Chapter 161.

The amendments are proposed under the Texas Agriculture Code, Chapter 161, §161.046 which authorizes the Commission to promulgate rules in accordance with the Texas Agriculture Code.

The amendments conform to the requirements contained in Chapter 575 of the Texas Government Code, relating to Acceptance of Gift by State Agency. The amendments conform to the requirements contained in §2204.002 of the Texas Government Code, relating to restrictions on real property gifts.

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

§56.1. Purpose.

The purpose of this chapter [these sections] is to establish rules for acceptance of private donations and to establish standards of conduct to govern the relationships between commissioners [officers] and employees of the Texas Animal Health Commission and private donors.

§56.2. Definitions.

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

(1) Commission--The [the] Texas Animal Health Commission.

(2) Commissioner--A member of the commission appointed by the Governor.

(3) [(2)] Employee--A regular, acting, or exempt, full- or part-time employee of the commission [Commission].

(4) Executive director--The Executive Director of the Texas Animal Health Commission.

[(3) Officer--A member of the Commission's governing board.]

(5) [(4)] Private donor--One or more individuals or organizations that offer and/or [to] give gifts or donations, in whatever form, [nonpublic financial assistance] to the commission [Commission].

§56.3. Acceptance of Grants, Gifts, and Donations.

(a) The executive director, on behalf of the commission, may accept gifts, grants, and donations upon a determination [Donations in the amount of less than five hundred dollars may be accepted upon determination of the Commission's executive director] that the donation is for purposes consistent with Texas Agriculture Code, Chapter 161.

(1) The executive director shall report all accepted gifts and donations to the commissioners.

(2) If the value of the donation is $500 or more, the commissioners must, by a majority vote during an open meeting, acknowledge the donation, no later than the 90th day after the date it is accepted. The minutes of the open meeting will reflect the acknowledgement by recording the name of the donor, a description of the gift, and a general statement of the purpose for which the gift will be used.

[(b) Gifts, grants and donations valued at five hundred dollars ($500.00) or more must be accepted by a majority of the board, in an open meeting not later than the 90th day after the date the gift is received by the Commission. The Commission, when it accepts the gifts in open meeting, will record the name of the donor, a description of the gift, and a statement of the purpose of the gift in the minutes of the Commission's meeting.]

(b) [(c)] Donations of real property (real estate) shall be accepted by the commission [Commission] only upon authorization of the legislature.

[(d) Donations to the Commission may be for any amount and for specified or unspecified purposes.]

(c) The commission shall report to the legislature by December 31 of each year the source and amount of each grant, gift, and donation received under this section.

§56.4. Solicitation.

[(a)] The commission may solicit [The solicitation of] grants, gifts, and donations [by the Commission shall be] limited to purposes consistent with Chapter 161 of the Texas Agriculture Code and in accordance with §56.6 of this chapter.

[(b) The Commission shall report to the legislature by December 31 of each year the source and amount of each grant, gift, and donation received under this section.]

§56.5. Restricted/Unrestricted Donations.

(a) Donations to the commission may be for any amount and for specified or unspecified purposes.

(b) [(a)] Conditional or restricted [restrictive] donations for purposes specified by the donor may be accepted only if the specified purpose is [conditions are] consistent with the mission, purpose, legal authority, and goals [approved purposes] of the commission [Commission and consistent with state laws and these rules]. Upon acceptance, restricted [restrictive] donations shall be used only for purposes specified by the donor.

(c) [(b)] Unconditional donations shall be used to carry out the approved purposes of the commission [Commission], consistent with state laws and these rules.

§56.6. Standards of Conduct Between [between] Commissioners and Employees [and Officers] and Private Donors.

(a) A commissioner [An officer] or employee shall not accept or solicit any gift, favor, or service from a private donor that might reasonably tend to influence the commissioner's or employee's [his/her] official conduct.

(b) A commissioner [An officer] or employee shall not accept employment or engage in any business or professional activity with a private donor that [which] the commissioner [officer] or employee might reasonably expect would require or induce the commissioner or employee [him/her] to disclose confidential information acquired by reason of the commissioner's or employee's [his/her] official position.

(c) A commissioner [An officer] or employee shall not accept other employment or compensation from a private donor that [which] could reasonably be expected to impair the commissioner's [officer's] or employee's independence of judgment in the performance of the commissioner's or employee's [his/her] official duties.

(d) A commissioner [An officer] or employee shall not make personal investments in association with a private donor that [which] could reasonably be expected to create a substantial conflict between the commissioner's [officer's] or employee's private interest and the interest of the commission [Commission].

(e) A commissioner [An officer] or employee shall not solicit, accept, or agree to accept any benefit for having exercised the commissioner's or employee's [his/her] official powers on behalf of a private donor or performed [his] official duties in favor of a private donor.

(f) A commissioner [An officer] or employee who has policy direction over the commission [Commission] and who serves as an officer or director of a private donor shall not vote on or otherwise participate in any measure, proposal, or decision pending before the private donor if the commission [Commission] might reasonably be expected to have an interest in such measure, proposal, or decision.

(g) A commissioner [An officer] or employee shall not authorize a private donor to use property of the commission [Commission] unless the property is used in accordance with a contract between the commission [Commission] and the private donor, or the commission [Commission] is otherwise compensated for the use of the property.

§56.7. Acceptance of Gift From Party to Contested Case Prohibited.

The commission may [Commission will] not accept a gift from a person who is a party to a contested case pending before the commission [agency] from the inception of the case until the 30th day after the date

the decision in the case becomes final under §2001.144 of the Texas Government Code. In this section, "contested case" has the meaning assigned by Texas Government Code, §2001.003.

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

Filed with the Office of the Secretary of State on August 16, 2023.

TRD-202302987
Jeanine Coggeshall
General Counsel
Texas Animal Health Commission
Earliest possible date of adoption: October 1, 2023
For further information, please call: (512) 719-0718

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PART 4. OFFICE OF THE CHIEF APIARY INSPECTOR

CHAPTER 71. BEES

The Texas Apiary Inspection Service (TAIS) proposes amendments to 4 TAC §71.1 and §71.9, the repeal of 4 TAC §71.23, and new 4 TAC §71.24. TAIS proposes the repeal of 4 TAC §71.23 due to the intrastate permit requirement being repealed by Chapter 131 updates. TAIS proposes new 4 TAC §71.24 in order to add the new requirements for beekeeper registration, and proposes amending 4 TAC §71.9 as a new interstate permit will replace exportation and intrastate permits. The intrastate permit will be repealed by Chapter 131 updates. These changes are necessary to meet changes in Chapter 131 "The Bee Laws".

Comments on the proposal may be submitted in writing to Angela Thomas, Chief Apiary Inspector, 2475 TAMU, College Station, Texas 77843-2475. Comments may also be submitted electronically to angela.thomas@ag.tamu.edu or faxed to (979) 845-0983. The deadline for comments is September 30, 2023.

SUBCHAPTER A. GENERAL PROVISIONS

4 TAC §71.1, §71.9

The amendments are proposed under the Texas Agriculture Code Chapter 131.021, which authorizes the Chief Apiary Inspector to adopt rules with the goal of treating, eradicating and suppressing infectious diseases of honey bees.

Texas Agriculture Code, Chapter 71, Subchapter A and C, are affected by the proposal.

§71.1. Definitions.

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

(1) (No change.)

(2) Apiary--A place where [~~six or more~~] colonies of bees or nuclei of bees are kept.

(3) - (4) (No change.)

(5) Colony--means a distinguishable localized population of bees in which one or more life stages may be present [~~The hive and it's equipment and appurtenances, including bees, comb, honey, pollen and brood~~].

(6) - (15) (No change.)

(16) Beekeeper--a person who owns, leases, possesses, controls, or manages one or more colonies of bees for any personal or commercial purpose.

(17) "Package Bees" means live bees in cages without comb.

(18) "Hive" means a box or other shelter containing a colony of bees.

§71.9. Permits for Shipment.

[~~(a)~~] Permits authorizing a shipment or shipments [~~exportation~~] of bees or equipment into or out of [~~from~~] Texas [~~to another state~~] may be issued as provided in §131.041 [~~§131.042~~] of the Act. An affidavit provided under subsection (e)(1) [~~(b)(2)~~] of that section shall be filed with the office of the Chief Apiary Inspector and shall be valid only for a period of one year from the date of filing.

[~~(b) Permits authorizing intrastate shipments of bees or equipment may be issued as provided in §131.043 of the Act.~~]

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

Filed with the Office of the Secretary of State on August 16, 2023.

TRD-202302989
Angela Thomas
Chief Apiary Inspector
Office of the Chief Apiary Inspector
Earliest possible date of adoption: October 1, 2023
For further information, please call: (979) 845-9714

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SUBCHAPTER C. PERMITS AND REGISTRATION

4 TAC §71.23

The repeal of §71.23 is proposed to reflect changes in Chapter 131.01-131.122. The repeal is proposed under the Texas Agriculture Code Chapter 131.021, which authorizes the Chief Apiary Inspector to adopt rules with the goal of treating, eradicating and suppressing infectious diseases of honey bees.

Texas Agriculture Code, Chapter 71, Subchapter A and C, are affected by the proposal.

§71.23. Exemption from Fees.

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

Filed with the Office of the Secretary of State on August 16, 2023.

TRD-202303082
Angela Thomas
Chief Apiary Inspector
Office of the Chief Apiary Inspector
Earliest possible date of adoption: October 1, 2023
For further information, please call: (979) 845-9714

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4 TAC §71.24

New §71.24 is proposed to reflect changes in Chapter 131.01-131.122. The new rule is proposed under the Texas Agriculture

Code Chapter 131.021, which authorizes the Chief Apiary Inspector to adopt rules with the goal of treating, eradicating and suppressing infectious diseases of honey bees.

Texas Agriculture Code, Chapter 71, Subchapter A and C, are affected by the proposal.

§71.24. Beekeeper Registration.

(a) Each beekeeper in this state may register on an annual basis with the chief apiary inspector. Registration under this section expires August 31 following the date the registration is issued.

(b) A registration must include:

(1) information required by the chief apiary inspector; and

(2) the county or counties in which the beekeeper operates.

(c) The inspector may require a beekeeper to submit a map showing the exact location of each of the beekeeper's apiaries. A map submitted under this section is a trade secret under Ch. 552, Government Code, and may not be disclosed.

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

Filed with the Office of the Secretary of State on August 16, 2023.

TRD-202303083
Angela Thomas
Chief Apiary Inspector
Office of the Chief Apiary Inspector
Earliest possible date of adoption: October 1, 2023
For further information, please call: (979) 845-9714

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TITLE 7. BANKING AND SECURITIES

PART 1. FINANCE COMMISSION OF TEXAS

CHAPTER 2. RESIDENTIAL MORTGAGE LOAN ORIGINATORS REGULATED BY THE OFFICE OF CONSUMER CREDIT COMMISSIONER

SUBCHAPTER A. APPLICATION PROCEDURES

7 TAC §2.108

The Finance Commission of Texas (commission) proposes amendments to §2.108 (relating to Military Licensing) in 7 TAC Chapter 2, concerning Residential Mortgage Loan Originators Regulated by the Office of Consumer Credit Commissioner.

The rules in 7 TAC Chapter 2 govern residential mortgage loan originators (RMLOs) licensed by the Office of Consumer Credit Commissioner (OCCC) under Texas Finance Code, Chapter 180. In general, the purpose of the proposed rule changes is to specify RMLO licensing requirements for military service members, military veterans, and military spouses, in accordance with Chapter 55 of the Texas Occupations Code, as amended by SB 422 (2023).

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review, and then held a stakeholder meeting and webinar regarding the rule changes. The OCCC did not receive any informal precomments on the rule text draft.

Chapter 55 of the Texas Occupations Code describes licensing requirements for military service members, military veterans, and military spouses. Chapter 55 applies to licenses that "must be obtained by an individual to engage in a particular business." Tex. Occ. Code §55.001(3). Chapter 55 includes an expedited license application procedure for certain previously licensed individuals, and authorizes certain individuals licensed in other jurisdictions to engage in licensed occupations in Texas. SB 422, which the Texas Legislature passed in 2023, amends various provisions in Chapter 55. Specifically, SB 422 amends Texas Occupations Code, §55.0041 to extend recognition of licenses in other jurisdictions to military service members, and to specify a 30-day period for an agency to verify that a qualifying military service member or spouse is licensed in good standing with another jurisdiction. SB 422 also amends Texas Occupations Code, §55.005 to specify that agencies will review certain license applications from qualifying military service members, veterans, and spouses within 30 days after the agency received a complete application. SB 422 has been signed by the governor and will be effective September 1, 2023.

Proposed amendments to §2.108 would implement SB 422's statutory amendments for RMLOs licensed by the OCCC. Proposed amendments to §2.108(d) would specify that the OCCC will process an RMLO license application no later than 30 days after receiving a complete license application from a qualifying applicant who is a military service member, military veteran, or military spouse. These changes would implement SB 422's amendments to Texas Occupations Code, §55.005(a). Proposed amendments throughout §2.108(e) would specify that the authorization to engage in business in Texas applies to military service members, and that the OCCC will review information in NMLS (the nationwide system for licensing RMLOs) no later than the 30th day after the military service member or military spouse submits required information. These changes would implement SB 422's amendments to Texas Occupations Code, §55.0041.

Mirand Diamond, Director of Licensing, Finance and Human Resources, has determined that for the first five-year period the proposed rule changes are in effect, there will be no fiscal implications for state or local government as a result of administering the rule changes.

Huffman Lewis, Director of Consumer Protection, has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of the changes will be that the commission's rules will ensure that the OCCC can effectively administer military licensing requirements under Texas Occupations Code, Chapter 55.

The OCCC does not anticipate economic costs to persons who are required to comply with the rule changes as proposed.

The OCCC is not aware of any adverse economic effect on small businesses, micro-businesses, or rural communities resulting from this proposal. But in order to obtain more complete information concerning the economic effect of these rule changes, the OCCC invites comments from interested stakeholders and the public on any economic impacts on small businesses, as well as any alternative methods of achieving the purpose of the pro-

posal while minimizing adverse impacts on small businesses, micro-businesses, and rural communities.

During the first five years the proposed rule changes will be in effect, the rules will not create or eliminate a government program. Implementation of the rule changes will not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the rule changes will not require an increase or decrease in future legislative appropriations to the OCCC, because the OCCC is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposal does not require an increase or decrease in fees paid to the OCCC. The proposal would not create a new regulation. The proposal would expand current §2.108 in accordance with SB 422. The proposal would not limit or repeal an existing regulation. The proposed rule changes do not increase or decrease the number of individuals subject to the rule's applicability. The agency does not anticipate that the proposed rule changes will have an effect on the state's economy.

Comments on the proposal may be submitted in writing to Matthew Nance, General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705 or by email to rule.comments@occc.texas.gov. To be considered, a written comment must be received on or before the 30th day after the date the proposal is published in the *Texas Register.* After the 30th day after the proposal is published in the *Texas Register,* no further written comments will be considered or accepted by the commission.

The rule amendments are proposed under Texas Occupations Code, §55.004 and §55.0041 (as amended by SB 422), which authorize a state agency to adopt rules implementing requirements of Chapter 55 of the Texas Occupations Code. In addition, Texas Finance Code, §180.004 authorizes the commission to implement rules to comply with Texas Finance Code, Chapter 180.

The statutory provisions affected by the proposal are contained in Texas Occupations Code, Chapter 55 and Texas Finance Code, Chapter 180.

§2.108. Military Licensing.

(a) Purpose. The purpose of this section is to specify residential mortgage loan originator licensing requirements for military service members, military veterans, and military spouses, in accordance with Texas Occupations Code, Chapter 55.

(b) Definitions. In this section, the terms "military service member," "military spouse," and "military veteran" have the meanings provided by Texas Occupations Code, §55.001.

(c) Late renewal. As provided by Texas Occupations Code, §55.002, an individual is exempt from any increased fee or other penalty for failing to renew a residential mortgage loan originator license in a timely manner, if the individual establishes to the satisfaction of the OCCC that the individual failed to renew the license in a timely manner because the individual was serving as a military service member.

(d) Expedited license procedure. As provided by Texas Occupations Code, §55.004 and §55.005, no later than the 30th day after the OCCC receives a complete residential mortgage loan originator license application from a qualifying applicant who is a military service member, military veteran, or military spouse, the OCCC will process the [~~a license~~] application [~~as soon as practicable~~] and issue a license to the [~~a qualifying~~] applicant [~~who is a military service member, military veteran, or military spouse~~], if the applicant:

(1) holds a current license in another jurisdiction as a residential mortgage loan originator in accordance with the S.A.F.E. Mortgage Licensing Act, 12 U.S.C. §§5101-5117; or

(2) held a residential mortgage loan originator license in Texas within the five years preceding the application date.

(e) Authorization for military service members and military spouses [~~spouse~~].

(1) As provided by Texas Occupations Code, §55.0041, a military service member or military spouse may engage in business as a residential mortgage loan originator if the member or spouse is currently licensed in good standing in another jurisdiction as a residential mortgage loan originator in accordance with the S.A.F.E. Mortgage Licensing Act, 12 U.S.C. §§5101-5117.

(2) Before engaging in business in Texas, the military service member or military spouse must comply with the notification requirements described by Texas Occupations Code, §55.0041(b). If the member or [~~military~~] spouse does not obtain a residential mortgage loan originator license in Texas, then the member or [~~military~~] spouse is limited to the time period described by Texas Occupations Code, §55.0041(d)-(d-1) [~~§55.0041(d)~~].

(3) For purposes of this subsection and Texas Occupations Code, §55.0041, a residential mortgage loan originator license issued in another jurisdiction is substantially equivalent to a Texas residential mortgage loan originator license if it is issued in accordance with the S.A.F.E. Mortgage Licensing Act, 12 U.S.C. §§5101-5117. The OCCC will verify a license issued in another jurisdiction through NMLS. The OCCC will review available information in NMLS no later than the 30th day after the military service member or military spouse submits the information required by Texas Occupations Code, §55.0041(b)(1)-(2).

(f) Credit toward licensing requirements. As provided by Texas Occupations Code, §55.007, with respect to an applicant who is a military service member or military veteran, the OCCC will credit verified military service, training, or education toward the licensing requirements, other than an examination requirement, for a residential mortgage loan originator license, by considering the service, training, or education as part of the applicant's employment history.

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

Filed with the Office of the Secretary of State on August 18, 2023.

TRD-202303043
Matthew Nance
General Counsel
Finance Commission of Texas
Earliest possible date of adoption: October 1, 2023
For further information, please call: (512) 936-7660

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PART 2. TEXAS DEPARTMENT OF BANKING

CHAPTER 33. MONEY SERVICES BUSINESSES

7 TAC §§33.3, 33.4, 33.13, 33.23, 33.37, 33.54

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes to repeal §33.3, concerning how to claim an exclusion from licensing as an agent for a federally insured financial institution or a foreign bank branch or agency; §33.4 concerning payment processors; §33.13, concerning how to obtain a new license and what deadlines are associated with applications; §33.23, concerning additional provisions that apply to permissible investments; §33.37, concerning receipts issued relating to money transmission transactions; and §33.54, concerning an exemption from licensure for securities dealers and agents.

The proposed repeals arise from the passage of Senate Bill 895, sponsored by Senator Nathan Johnson, during the 88th legislative session and are proposed to provide clarity and update statutory citations. Effective September 1, 2023, Senate Bill 895 repeals Chapter 151 of the Texas Finance Code (Finance Code) and adds Chapter 152 relating to the regulation of money services businesses.

Section 33.3 is proposed to be repealed because it is as an outdated guideline for claiming an exclusion from licensing that is defined in statute. The department does not require a person to seek a determination that the exclusion applies. Under Finance Code, Chapter 152, the banking commissioner has the express authority to require any person claiming a statutory exemption to demonstrate that they qualify for such exemption, however this would be done on a case-by-case basis.

Sections 33.4, 33.13, 33.23, 33.37, and 33.54 are proposed to be repealed as the provisions of the rules were incorporated in the statutory language of Finance Code, Chapter 152 and are therefore redundant.

Jesus Saucillo, Director of Non-Depository Supervision, Texas Department of Banking, has determined that for the first five-year period the proposed rules are in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering the proposed rules.

Director Saucillo also has determined that, for each year of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing the rules is greater clarity of the rules to which money services businesses are subject.

For each year of the first five years that the rules will be in effect, the economic costs to persons required to comply with the rules as proposed will be unchanged from the costs required under these rules as they currently exist.

For each year of the first five years that the rules will be in effect, the rules will not:

-- create or eliminate a government program;

-- require the creation of new employee positions or the elimination of existing employee positions;

-- require an increase or decrease in future legislative appropriations to the agency;

-- require an increase or decrease in fees paid to the agency;

-- create a new regulation;

-- expand, limit or repeal an existing regulation;

-- increase or decrease the number of individuals subject to the rule's applicability; and

-- positively or adversely affect this state's economy.

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities. There will be no difference in the cost of compliance for these entities.

To be considered, comments on the proposals must be submitted no later than 5:00 p.m. on October 2, 2023. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

The repeals are proposed under Finance Code, §151.102, which authorizes the commission to adopt rules to administer and enforce Finance Code, Chapter 151. As noted above, pursuant to Senate Bill 895, Chapter 151 will be repealed and replaced by Chapter 152 as of September 1, 2023. Therefore, the authority to adopt the proposed repeals will be replaced with §152.052 which similarly authorizes the commission to adopt rules to administer and enforce Finance Code, Chapter 152.

No statutes are affected by the proposed repeals.

§33.3. How Do I Claim an Exclusion from Licensing because I Am an Agent for a Federally Insured Financial Institution or a Foreign Bank Branch or Agency?

§33.4. Payment Processors.

§33.13. How Do I Obtain a New License and What are the Deadlines Associated with Applications?

§33.23. What Additional Provisions Apply to Permissible Investments?

§33.37. What Receipts Must I Issue Related to Money Transmission Transactions?

§33.54. Exemption for Registered Securities Dealers and Agents.

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

Filed with the Office of the Secretary of State on August 18, 2023.

TRD-202303046
Marcus Adams
Acting General Counsel
Texas Department of Banking
Earliest possible date of adoption: October 1, 2023
For further information, please call: (512) 475-1382

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7 TAC §§33.7, 33.15, 33.27, 33.30, 33.31, 33.33, 33.35, 33.51 - 33.53

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes to amend §33.7, concerning how to obtain an exemption from licensing related to exchanging currency in connection with retail, wholesale or service transactions; §33.15, concerning the options available when the department does not comply with new license application processing times; §33.27, concerning fees to obtain and maintain a license; §33.30, concerning a notice of cybersecurity incident; §33.31, concerning records relating to currency exchange transactions; §33.33, concerning

receipts issued relating to currency exchange transactions; §33.35, concerning records relating to money transmission transactions; §33.51, concerning providing information to customers on how to file a complaint; §33.52, concerning notice relating to authorized delegates; and §33.53, concerning an exemption from licensure for debt management service providers.

The proposed amendments arise from the passage of Senate Bill 895, sponsored by Senator Nathan Johnson, during the 88th legislative session and are proposed to provide clarity and update statutory citations. Effective September 1, 2023, Senate Bill 895 repeals Chapter 151 of the Texas Finance Code (Finance Code) and adds Chapter 152 relating to the regulation of money services businesses.

The proposed amendments to §§33.7, 33.15, 33.27, 33.30, 33.31, 33.33, 33.35, 33.51, 33.52, and 33.53 update existing citations to reference Chapter 152 of the Finance Code.

Jesus Saucillo, Director of Non-Depository Supervision, Texas Department of Banking, has determined that for the first five-year period the proposed rules are in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering the proposed rules.

Director Saucillo also has determined that, for each year of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing the rules is greater clarity of the rules to which money services businesses are subject.

For each year of the first five years that the rules will be in effect, the economic costs to persons required to comply with the rules as proposed will be unchanged from the costs required under these rules as they currently exist.

For each year of the first five years that the rules will be in effect, the rules will not:

--create or eliminate a government program;

--require the creation of new employee positions or the elimination of existing employee positions;

--require an increase or decrease in future legislative appropriations to the agency;

--require an increase or decrease in fees paid to the agency;

--create a new regulation;

--expand, limit or repeal an existing regulation;

--increase or decrease the number of individuals subject to the rule's applicability; and

--positively or adversely affect this state's economy.

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities. There will be no difference in the cost of compliance for these entities.

To be considered, comments on the proposals must be submitted no later than 5:00 p.m. on October 2, 2023. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

The amendments are proposed under Finance Code, §151.102, which authorizes the commission to adopt rules to administer and enforce Finance Code, Chapter 151. As noted above, pursuant to Senate Bill 895, Chapter 151 will be repealed and replaced by Chapter 152 as of September 1, 2023. Therefore, the authority to adopt the proposed amendments will be replaced with §152.052 which similarly authorizes the commission to adopt rules to administer and enforce Finance Code, Chapter 152.

Finance Code §§ 152.003, 152.056, 152.057, 152.102, 152.106, 152.107, 152.207, 152.253, and 152.303 are affected by the proposed amended sections.

§33.7. How Do I Obtain an Exemption from Licensing Because I Exchange Currency in Connection with Retail, Wholesale or Service Transactions?

(a) Does this section apply to me?

(1) This section applies if you are a retailer, wholesaler, or service provider and in the ordinary course of business:

(A) accept the currency of a foreign country or government as payment for your goods or services;

(B) in connection with the transaction, make or give change in the currency of a different foreign country or government; and

(C) qualify for an exemption under Finance Code, §152.102(e). [~~§151.502(d).~~]

(2) This section does not apply, and you do not conduct currency exchange within the meaning of Finance Code, Chapter 152 [~~151~~], or need a currency exchange license under the Act, if you accept payment for your goods or services in a foreign currency or a check denominated in a foreign currency and any change you make or give in connection with the transaction is in the same foreign currency as the payment you receive.

(b) To request an exemption, you must submit a letter to the commissioner that fully explains your business and is accompanied by a statement, signed and sworn to before a notary, affirming that none of the disqualifying conditions set out in Finance Code, §152.102(e)(1) - (5), [~~§151.502(d)(1) - (5),~~] apply to you. For purposes of the subsection (e)(4) [~~(d)(4) of this section~~] disqualification, you are considered to be engaged in the "business of cashing checks, drafts or other payment instruments" if, in the 12 month period immediately preceding the filing of the application for exemption, you derived more than 1.00% of your gross receipts, directly or indirectly, from fees or other consideration you charged, earned, or imputed from cashing checks, drafts or other monetary instruments.

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

§33.15. What May I Do If the Department Does Not Comply with the New License Application Processing Times?

(a) Does this section apply to me? This section applies if you applied for a new money transmission or currency exchange license under Finance Code, Chapter 152 [~~151~~], and you believe that the department failed to comply with the application processing times specified in Finance Code, §152.106. [~~§33.13(e) or (h) of this title (relating to Application for New License).~~]

(b) What does "promptly" mean for purposes of Finance Code, §152.106(a) and this rule? "Promptly" means on or before the 30th day after the date the department receives your application.

(c) [~~(b)~~] May I file a complaint? Yes. If the department does not process your application for a new money transmission or currency exchange license within the time periods specified in Finance Code, 152.106 [~~§33.13(e) or (h) of this title (relating to Application for New License)~~], you may file a written complaint with the banking commissioner. The complaint must set out the facts regarding the delay and the specific relief you seek. The department must receive your complaint

on or before the 30th day after the date the commissioner approves or denies your license application.

(d) [~~(c)~~] How will the banking commissioner evaluate my complaint?

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

(e) [~~(d)~~] When will the banking commissioner notify me of the decision? The banking commissioner will notify you of the decision regarding your complaint on or before the 60th day after the date the commissioner receives your written complaint. The commissioner's decision is final and may not be appealed.

(f) [~~(e)~~] What happens if the banking commissioner decides in my favor? If the banking commissioner decides that the department exceeded the applicable time period without good cause, the department will reimburse you all of your application fees.

(g) [~~(f)~~] Does the banking commissioner's decision regarding my complaint affect the decision on my application? No. A decision in your favor under this section does not affect any decision by the banking commissioner to grant or deny your license application. The decision to grant or deny your license application is based upon applicable substantive law without regard to whether the department timely processed your application.

§33.27. What Fees Must I Pay to Get and Maintain a License?

(a) Does this section apply to me? This section applies if you hold a money transmission or currency exchange license issued under Finance Code, Chapter 152 [~~151~~], or are an applicant for a new money transmission or currency exchange license, as applicable. This section also applies if you are a person other than a license holder or applicant and are investigated under the authority of Finance Code, §152.056. [~~§151.104.~~]

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

(1) "Annual Assessment" means the fee assessed annually to pay the costs incurred by the department to examine a license holder and administer Finance Code, Chapter 152 [~~151~~], including the annual license fee required by Finance Code, §152.107(d)(1). [~~§151.207(b)(1).~~]

(2) "Examination" means the process, either by on-site or off-site review, of evaluating the books and records of a license holder under the authority of Finance Code, §152.057 [~~§151.601~~], relating to its money services activities. For purposes of this section, the term does not include an investigation conducted under the authority of Finance Code, §§152.056 or 152.106. [~~§151.104, §151.305, or §151.505.~~]

(c) What provisions of Finance Code, Chapter 152 [~~151~~], authorize the fees, assessments, and reimbursements required under this section? The fees, assessments, and reimbursements established by or required under this section are authorized by one or more of the following provisions of Finance Code, Chapter 152 [~~151~~]: §§152.052(b)(1), 152.056(e), 152.107(d)(1), 152.104(d), and 152.151(b)(2). [~~§§151.102(a)(5), 151.104(e), 151.207(b)(1), 151.304(b)(1), 151.306(a)(5), 151.504(b)(1), 151.605(c)(3) and 151.605(i).~~]

(d) What fees must I pay to obtain a new license?

(1) You must pay a [~~non-refundable~~] $10,000 application fee to obtain a new money transmission license or a [~~non-refundable~~] $5,000 application fee to obtain a currency exchange license. If your application is accepted for processing pursuant to Finance Code, §152.106, your application fee will be nonrefundable. You may also be required to pay the following additional fees:

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

[~~(2) To apply for a temporary money transmission license authorized under Finance Code, §151.306, you must pay a non-refundable $2,500 temporary license application fee in addition to the fees required under paragraph (1) of this subsection.~~]

(2) [~~(3)~~] The commissioner may reduce the fees required under paragraph (1) [~~or (2)~~] of this subsection, if the commissioner determines that a lesser amount than would otherwise be collected is necessary to administer and enforce Finance Code, Chapter 152 [~~151~~], and this chapter.

(e) What fees must I pay to maintain my money transmission or currency exchange license? You must pay your annual assessment. Subject to paragraph (3) of this subsection, the amount of your annual assessment is determined based on the total annual dollar amount of your Texas money transmission and or currency exchange transactions, as applicable, as reflected on your most recent annual report filed with the department under Finance Code, §152.107(d)(2). [~~§151.207(b)(2).~~]

(1) If you hold a currency exchange license, you must pay the annual assessment specified in the following table:
Figure: 7 TAC §33.27(e)(1) (No change.)

(2) If you hold a money transmission license, you must pay the annual assessment specified in the following table:
Figure: 7 TAC §33.27(e)(2) (No change.)

(3) If you are a new license holder and have not yet filed your first annual report under Finance Code, §152.107(d)(2) [~~§151.207(b)(2)~~], you must pay an examination fee of $75 per hour for each examiner and all associated travel expenses for an examination.

(f) What fees must I pay in connection with a department investigation?

(1) If the commissioner considers it necessary or appropriate to investigate you or another person in order to administer and enforce Finance Code, Chapter 152 [~~151~~], as authorized under §152.056 [~~§151.104~~], you or the investigated person must pay the department an investigation fee calculated at a rate of $75.00 per employee hour for the investigation and all associated travel expenses.

(2) - (3) (No change.)

(g) What fees must I pay in connection with a proposed change of control of my money transmission or currency exchange business?

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

(4) The commissioner may reduce the filing fees described in paragraph (1) or (2) of this subsection, if the commissioner determines that a lesser amount than would otherwise be collected is necessary to administer and enforce Finance Code, Chapter 152 [~~151~~], and this chapter.

(h) What other fees must I pay?

(1) If the department does not receive your completed annual report on or before the due date prescribed by the commissioner under Finance Code, §152.107 [~~§151.207~~], you must pay a late fee of $100 per day for each business day after the due date that the department does not receive your completed annual report.

(2) If more than one examination is required in the same fiscal year because of your failure to comply with Finance Code, Chapter 152 [~~151~~], this chapter, or a department directive, you must pay for the additional examination at a rate of $75 per hour for each examiner re-

quired to conduct the additional examination and all associated travel expenses. A fiscal year is the 12-month period from September 1st of one year to August 31st of the following year.

(3) (No change.)

(4) If the commissioner determines it is necessary to conduct an on-site examination of your authorized delegate to ensure your compliance with Finance Code, Chapter 152 [~~151~~], you must pay an examination fee of $75 per hour for each examiner and any associated travel expenses.

(i) How and when do I need to pay for the fees required by this section?

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

(3) Your annual assessment required under subsection (e) of this section may be billed in quarterly or fewer installments in such periodically adjusted amounts as reasonably necessary to pay for the costs of examination and to administer Finance Code, Chapter 152. [~~151.~~] You must pay the annual assessment fee by ACH debit, or by another method if directed to do so by the department. At least 15 days prior to the scheduled ACH transfer, the department will send you a notice specifying the amount of the payment due and the date the department will initiate payment by ACH debit. The commissioner may decrease your annual assessment if it is determined that a lesser amount than would otherwise be collected is necessary to administer the Act.

(4) - (8) (No change.)

(j) (No change.)

§33.30. Notice of Cybersecurity Incident.

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

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

(3) "You" means a holder of a money transmission or currency exchange license issued under Finance Code, Chapter 152. [~~151.~~]

(b) - (e) (No change.)

§33.31. What Records Must I Keep Related to Currency Exchange Transactions?

(a) Does this section apply to me? This section applies if you hold a license issued by the department under Finance Code, Chapter 152 [~~151 (Money Services Act)~~], or are the authorized delegate of a license holder, as applicable, and you conduct currency exchange transactions.

(b) What are the general recordkeeping requirements?

(1) As a general matter, you must maintain:

(A) records of all filings made, and that contain all information required, under applicable federal laws and regulations, including the BSA and 31 CFR Chapter X;

(B) in addition to the records required under Finance Code, Chapter 152 [~~151~~], the records required under this section related specifically to currency exchange transactions; and

(C) records sufficient to enable you to file accurate and complete reports with the commissioner or department in accordance with Finance Code, Chapter 152 [~~151~~] and Chapter 33 of this title (relating to Money Services Businesses).

(2) (No change.)

(c) (No change.)

(d) May I obtain a waiver of the recordkeeping requirements? The commissioner may waive any requirement of this section upon a showing of good cause if the commissioner determines that:

(1) you maintain records sufficient for the department to examine your currency exchange business; and

(2) the imposition of the requirement would cause an undue burden on you and conformity with the requirement would not significantly advance the state's interest under Finance Code, Chapter 152. [~~151.~~]

§33.33. What Receipts Must I Issue Related to Currency Exchange Transactions?

(a) Does this section apply to me? This section applies if you hold a license issued by the department under Finance Code, Chapter 152 [~~151 (Money Services Act)~~], or are the authorized delegate of a license holder, as applicable, and you conduct currency exchange transactions.

(b) (No change.)

§33.35. What Records Must I Keep Related to Money Transmission Transactions?

(a) Does this section apply to me? This section applies to you if you hold a money transmission license issued by the department under Finance Code, Chapter 152 [~~151 (Money Services Act)~~], or are the authorized delegate of a license holder, as applicable.

(b) What are the general recordkeeping requirements?

(1) As a general matter, you must maintain:

(A) records of all filings made, and that contain all information required, under applicable federal laws and regulations, including the Bank Secrecy Act and 31 CFR Chapter X (collectively BSA);

(B) in addition to the records required under Finance Code, Chapter 152 [~~151~~], the records required in this section related to specific types of money transmission transactions; and

(C) records sufficient to enable you to file accurate and complete reports with the commissioner or department in accordance with Finance Code, Chapter 152 [~~151~~] and Chapter 33 of this title (relating to Money Services Businesses).

(2) - (4) (No change.)

(c) - (f) (No change.)

(g) May I obtain a waiver of the recordkeeping requirements? The commissioner may waive any requirement of this section upon a showing of good cause if the commissioner determines that:

(1) you maintain records sufficient for the department to examine your money transmission business; and

(2) the imposition of the requirement would cause an undue burden on you and conformity with the requirement would not significantly advance the state's interest under Finance Code, Chapter 152. [~~151.~~]

§33.51. How do I Provide Information to My Customers about How to File a Complaint?

(a) Does this section apply to me? This section applies if you hold a money transmission or currency exchange license issued by the department under Finance Code, Chapter 152. [~~151.~~]

(b) Definitions. Words used in this section that are defined in Finance Code, Chapter 152 [~~151~~], have the same meaning as defined

in the Finance Code. The following words and terms, when used in this section, shall have the following meanings unless the text clearly indicates otherwise.

(1) - (4) (No change.)

(c) - (e) (No change.)

(f) How do I provide the required notice if I conduct business through authorized delegates?

(1) If you conduct business through one or more authorized delegates, each authorized delegate must provide the required notice by one or more of the methods described in subsection (e)(3) of this section. You must specify the method or methods to be used by your authorized delegate and provide your authorized delegate with the means by which to give the notice you select.

(2) If your authorized delegate personally receives all funds paid by your customers and you require your authorized delegate to post the required notice described in subsection (e)(3)(B) of this section, you may use one posted notice to provide the required notice and the authorized delegate designation required under §33.52 of this title. [~~Finance Code, §151.403(a)(6).~~]

(g) Am I subject to an enforcement action if I do not provide the required notice? Yes. You are subject to enforcement sanctions under Finance Code, Chapter 152 [~~151~~], Subchapter I [~~H~~], if you:

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

(h) (No change.)

§33.52. Authorized Delegate Notice.

(a) In addition to the complaint notice required by §33.51(f) of this title, an authorized delegate of a money transmission license holder appointed in accordance with Texas Finance Code, Chapter 152, Subchapter F, [~~§151.402~~] must provide each of its Texas customers with notice that:

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

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

§33.53. Exemption for Debt Management Service Providers.

(a) (No change.)

(b) A debt management service provider who, in the course of conducting its debt management services, receives money from consumers for distribution to the consumer's creditors need not obtain a money transmission license if that provider:

(1) is registered and in good standing with the Office of Consumer Credit Commissioner as a debt management service provider under Finance Code Chapter 394;

(2) is in compliance with all requirements of Finance Code Chapter 394 and 7 TAC Chapter 88 (relating to Consumer Debt Management Services); and

(3) conducts no money transmission as defined by Finance Code §152.003 [~~§151.301~~], except as necessary to provide debt management services to contractual customers.

(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 August 18, 2023.

TRD-202303048

Marcus Adams
Acting General Counsel
Texas Department of Banking
Earliest possible date of adoption: October 1, 2023
For further information, please call: (512) 475-1382

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PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 81. MORTGAGE BANKERS AND RESIDENTIAL MORTGAGE LOAN ORIGINATORS

SUBCHAPTER B. LICENSING OF INDIVIDUAL ORIGINATORS

7 TAC §81.103

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes to amend 7 TAC Chapter 81, §81.103, concerning Licensing of Military Service Members, Military Veterans, and Military Spouses. This proposal and the rule as amended by this proposal are referred to collectively as the "proposed rule."

Explanation of and Justification for the Rule

Existing §81.103 specifies licensing requirements for military service members, military veterans, and military spouses applying for an individual residential mortgage loan originator (RMLO) license, in accordance with Occupations Code Chapter 55.

Changes Concerning Implementation of SB422

Senate Bill 422 (SB422) was enacted during the 88th Legislature, Regular Session (2023) and becomes effective September 1, 2023. SB422 amended Occupations Code Chapter 55. The rule changes are designed to implement the requirements of SB422, and if adopted, would: (i) amend existing §81.103(d) to specify that the department will process an RMLO application from a military service member, military veteran, or military spouse on or before 30 days after the date the license application and request for expedited review are received; and (ii) amend existing §81.103(e) to specify that the subsection applies to military service members.

Changes Concerning Request for Expedited Review

In order for the department to have notice of an applicant's military-related status and for the department to receive documentation to verify such status, the rule changes, if adopted, would amend existing §81.103(d) to specify that a military service member, military veteran, or military spouse seeking expedited review of his or her application must make a written request on the appropriate form and provide supporting documentation concerning his or her status as a military service member, military veteran, or military spouse.

Other Modernization and Update Changes

The rule changes, if adopted, would modernize and update the rule, including: adding and replacing language for clarity and improve readability; removing unnecessary or duplicative provisions; and updating terminology.

Fiscal Impact on State and Local Government

Antonia Antov, Director of Operations for the department, has determined that for the first five-year period the proposed rule is in effect there are no foreseeable increases or reductions in costs to local governments as a result of enforcing or administering the proposed rule. Antonia Antov has further determined that for the first five-year period the proposed rule is in effect there are no foreseeable losses or increases in revenue to local governments as a result of enforcing or administering the proposed rule. Antonia Antov has further determined that for the first five-year period the proposed rule is in effect there are no foreseeable increases or reductions in costs, or losses or increases in revenue to the state overall and that would impact the state's general revenue fund as a result of enforcing or administering the proposed rule. Implementation of the proposed rule will not require an increase or decrease in future legislative appropriations to the department because the department is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposed rule will not result in losses or increases in revenue to the state because the department does not contribute to the state's general revenue fund.

Public Benefits

William Purce, Director of Mortgage Regulation for the department, has determined that for each of the first five years the proposed rule is in effect the public benefit anticipated as a result of enforcing or administering the proposed rule will be for the public, particularly military-related members of the public, to have notice of the licensing requirements for a military service member, military veteran, or military spouse applying for an RMLO license.

Probable Economic Costs to Persons Required to Comply with the Proposed Rule

William Purce has determined that for the first five years the proposed rule is in effect there are no probable economic costs to persons required to comply with the proposed rule that are directly attributable to the proposed rule for purposes of the cost note required by Government Code §2001.024(a)(5) (direct costs).

One-for-One Rule Analysis

Pursuant to Finance Code §16.002, the department is a self-directed semi-independent agency not subject to the requirements of Government Code §2001.0045.

Government Growth Impact Statement

For each of the first five years the proposed rule is in effect, the department has determined the following: (1) the proposed rule does not create or eliminate a government program; (2) implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency; (4) the proposed rule does not require an increase or decrease in fees paid to the agency; (5) the proposed rule creates a new regulation (rule requirement), as discussed in the Changes Concerning Request for Expedited Review section above (incorporated by reference herein); (6) the proposed rule expands an existing rule requirement, as discussed in the Changes Concerning Implementation of SB422 section above (incorporated by reference herein), and does not limit or repeal an existing rule requirement; (7) the proposed rule increases the number of individuals subject to the rule's applicability, as discussed in the Changes Concerning Implementation of SB422 section above (incorporated by reference herein), and does not decrease the number of individuals subject to the rule's applicability; and (8) the proposed rule does not positively or adversely affect this state's economy.

Local Employment Impact Statement

No local economies are substantially affected by the proposed rule. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

The proposed rule will not have an adverse effect on small or micro-businesses, or rural communities because there are no probable economic costs to persons required to comply with the proposed rule. As a result, preparation of an economic impact statement and a regulatory flexibility analysis as provided by Government Code §2006.002 are not required.

Takings Impact Assessment

There are no private real property interests affected by the proposed rule. As a result, preparation of a takings impact assessment as provided by Government Code §2007.043 is not required.

Public Comments

Written comments regarding the proposed rule may be submitted by mail to Iain A. Berry, General Counsel, at 2601 North Lamar Blvd., Suite 201, Austin, Texas 78705-4294, or by email to rules.comments@sml.texas.gov. All comments must be received on or before 30 days after the date this notice is published.

Statutory Authority

This proposal is made under the authority of Finance Code §157.0023, authorizing the commission to adopt rules necessary to implement or fulfill the purposes of Finance Code Chapter 157 and as required to carry out the intentions of the Federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. §§5101-5117; federal SAFE Act). This proposal is also made under authority of Finance Code § 180.004(b), authorizing the commission to adopt rules necessary to implement Finance Code Chapter 180 and as required to carry out the intentions of the federal SAFE Act. This proposal is also made under the authority of, and to implement, Occupations Code Chapter 55. This proposal is also made under the authority of, and to implement, Finance Code: §§157.0132, 157.016, 180.0511, 180.056, 180.057, and 180.060.

This proposal affects the statutes contained in Finance Code Chapter 157, the Mortgage Banker Registration and Residential Mortgage Loan Originator Act, and Chapter 180, the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009.

§81.103. Licensing of Military Service Members, Military Veterans, and Military Spouses.

(a) Purpose [~~and Applicability~~]. This [~~The purpose of this~~] section specifies [~~is to specify~~] licensing requirements for military service members, military veterans, and military spouses, in accordance with Occupations Code Chapter 55.

(b) (No change.)

(c) Late Renewal (Reinstatement). As provided by Tex. Occ. Code §55.002, an individual is exempt from any increased fee or other penalty for failing to renew his or her originator license in a timely

manner if the individual establishes to the satisfaction of the Commissioner that he or she [~~the individual~~] failed to timely renew the license because the individual was serving as a military service member. A military service member who fails to timely renew his or her originator license must seek reinstatement of the license within the time period prescribed by Tex. Fin. Code §157.016; otherwise, the individual must obtain a new license, including complying with the requirements and procedures then in existence for obtaining an original license.

(d) Expedited Review and Processing [~~License Procedure~~]. [~~As provided by~~] Tex. Occ. Code [~~§55.004 and~~] §55.005[~~,~~] provides that a military service member, military veteran, or military spouse is entitled to expedited review and processing of his or her application for an originator license. A military service member, military veteran, or military spouse seeking expedited review of his or her application must, after applying for the license in NMLS, make a written request for expedited review using the form prescribed by the Commissioner and posted on the Department's website (sml.texas.gov), including providing the supporting documentation specified by the form, to enable the Department to verify the individual's status as a military service member, military veteran, or military spouse. The [~~the~~] Department, on or before 30 days after the date it receives a complete application and request for expedited review from a qualifying applicant who is a military service member, military veteran, or military spouse, will process the [~~a license~~] application [~~as soon as practicable~~] and, provided the applicant is otherwise eligible to receive the license, issue a license to the [~~a qualifying~~] applicant [~~who is a military service member, military veteran, or military spouse~~], if the applicant:

(1) is licensed as an originator in another jurisdiction with substantially equivalent licensing requirements [~~holds a current license in another jurisdiction as a residential mortgage loan originator in accordance with the S.A.F.E. Mortgage Licensing Act, 12 U.S.C. §§5101-5117~~]; or

(2) was licensed as an originator [~~held a residential mortgage loan originator license~~] in Texas within the 5 [~~five~~] years preceding the date of the application.

(e) Temporary Authority for Military Service Member or Military Spouse. Tex. Occ. Code §55.0041 provides that a military service member or military spouse may engage in a business or occupation for which a license is required without obtaining the applicable license if the member or spouse is currently licensed in good standing in another jurisdiction with substantially equivalent [~~similar~~] licensing requirements. However, federal law imposes specific, comprehensive requirements governing when and under what circumstances an individual licensed [~~sanctioned~~] to act as an originator in another jurisdiction may act under temporary authority in this state (12 U.S.C. §5117 (relating to Employment Transition of Loan Originators)). Tex. Occ. Code §55.0041(c) further requires that a military service member or military spouse "comply with all other laws and regulations applicable to the business or occupation." As a result, a military service member or military spouse seeking to avail himself or herself of the temporary authority conferred by Tex. Occ. Code §55.0041 must apply for and seek temporary authority in accordance with Tex. Fin. Code §180.0511 and §81.102 of this title (relating to Temporary Authority).

(f) Substantial Equivalency. For purposes of this section and Tex. Occ. Code §55.004, an originator [~~a residential mortgage loan originator~~] license issued in another jurisdiction is substantially equivalent to a Texas [~~residential mortgage loan~~] originator license if it is issued in accordance with the requirements of the S.A.F.E Mortgage Licensing Act, 12 U.S.C. §§5501-5117. The Department will verify a license issued in another jurisdiction through NMLS.

(g) Credit for Military Experience. As provided by Tex. Occ. Code §55.007, with respect to an applicant who is a military service member or military veteran, the Department will credit verified military service, training, or education toward the requirements for an originator license by considering the service, training, or education as part of the applicant's employment history. The following items cannot be substituted for military service, training, or education:

(1) the pre-licensing examination, as provided by Tex. Fin. Code §180.057;

(2) the required pre-licensing education [~~training~~] and coursework, as provided by Tex. Fin. Code §180.056 and §81.104 of this title (relating to Required Education); and

(3) continuing education [~~training~~] and coursework, as provided by Tex. Fin. Code §180.060 and §81.104 of this title [~~(relating to Required 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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TRD-202303074
Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending
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For further information, please call: (512) 475-1535

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PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 85. PAWNSHOPS AND CRAFTED PRECIOUS METAL DEALERS

SUBCHAPTER A. RULES OF OPERATION FOR PAWNSHOPS

DIVISION 3. PAWNSHOP EMPLOYEE LICENSE

7 TAC §85.309

The Finance Commission of Texas (commission) proposes amendments to §85.309 (relating to Military Licensing) in 7 TAC Chapter 85, Subchapter A, concerning Rules of Operation for Pawnshops.

The rules in 7 TAC Chapter 85, Subchapter A govern pawnshops and pawnshop employees licensed by the Office of Consumer Credit Commissioner (OCCC) under Texas Finance Code, Chapter 371. In general, the purpose of the proposed rule changes is to specify pawnshop employee licensing requirements for military service members, military veterans, and military spouses, in accordance with Chapter 55 of the Texas Occupations Code, as amended by SB 422 (2023).

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review, and then held a stakeholder meeting and webinar regarding the rule changes. The OCCC did not receive any informal precomments on the rule text draft.

Chapter 55 of the Texas Occupations Code describes licensing requirements for military service members, military veterans, and military spouses. Chapter 55 applies to licenses that "must be obtained by an individual to engage in a particular business." Tex. Occ. Code §55.001(3). Chapter 55 includes an expedited license application procedure for certain previously licensed individuals, and authorizes certain individuals licensed in other jurisdictions to engage in licensed occupations in Texas. SB 422, which the Texas Legislature passed in 2023, amends various provisions in Chapter 55. Specifically, SB 422 amends Texas Occupations Code, §55.0041 to extend recognition of licenses in other jurisdictions to military service members, and to specify a 30-day period for an agency to verify that a qualifying military service member or spouse is licensed in good standing with another jurisdiction. SB 422 also amends Texas Occupations Code, §55.005 to specify that agencies will review certain license applications from qualifying military service members, veterans, and spouses within 30 days after the agency received a complete application. SB 422 has been signed by the governor and will be effective September 1, 2023.

Proposed amendments to §85.309 would implement SB 422's statutory amendments for pawnshop employees licensed by the OCCC. Proposed amendments to §85.309(d) would specify that the OCCC will process a pawnshop employee license application no later than 30 days after receiving a complete license application from a qualifying applicant who is a military service member, military veteran, or military spouse. These changes would implement SB 422's amendments to Texas Occupations Code, §55.005(a). Proposed amendments throughout §85.309(e) would specify that the authorization to engage in business in Texas applies to military service members, and that the OCCC will send a request for records to the appropriate licensing authority no later than the 30th day after the military service member or military spouse submits required information. These changes would implement SB 422's amendments to Texas Occupations Code, §55.0041.

Mirand Diamond, Director of Licensing, Finance and Human Resources, has determined that for the first five-year period the proposed rule changes are in effect, there will be no fiscal implications for state or local government as a result of administering the rule changes.

Huffman Lewis, Director of Consumer Protection, has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of the changes will be that the commission's rules will ensure that the OCCC can effectively administer military licensing requirements under Texas Occupations Code, Chapter 55.

The OCCC does not anticipate economic costs to persons who are required to comply with the rule changes as proposed.

The OCCC is not aware of any adverse economic effect on small businesses, micro-businesses, or rural communities resulting from this proposal. But in order to obtain more complete information concerning the economic effect of these rule changes, the OCCC invites comments from interested stakeholders and the public on any economic impacts on small businesses, as well as any alternative methods of achieving the purpose of the proposal while minimizing adverse impacts on small businesses, micro-businesses, and rural communities.

During the first five years the proposed rule changes will be in effect, the rules will not create or eliminate a government program. Implementation of the rule changes will not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the rule changes will not require an increase or decrease in future legislative appropriations to the OCCC, because the OCCC is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposal does not require an increase or decrease in fees paid to the OCCC. The proposal would not create a new regulation. The proposal would expand current §85.309 in accordance with SB 422. The proposal would not limit or repeal an existing regulation. The proposed rule changes do not increase or decrease the number of individuals subject to the rule's applicability. The agency does not anticipate that the proposed rule changes will have an effect on the state's economy.

Comments on the proposal may be submitted in writing to Matthew Nance, General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705 or by email to rule.comments@occc.texas.gov. To be considered, a written comment must be received on or before the 30th day after the date the proposal is published in the *Texas Register.* After the 30th day after the proposal is published in the *Texas Register,* no further written comments will be considered or accepted by the commission.

The rule amendments are proposed under Texas Occupations Code, §55.004 and §55.0041 (as amended by SB 422), which authorize a state agency to adopt rules implementing requirements of Chapter 55 of the Texas Occupations Code. The rule amendments are also proposed under Texas Finance Code, §371.006, which authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 371. In addition, Texas Finance Code, §11.304 authorizes the commission to adopt rules necessary to supervise the OCCC and ensure compliance with Texas Finance Code, Chapter 14 and Title 4.

The statutory provisions affected by the proposal are contained in Texas Occupations Code, Chapter 55 and Texas Finance Code, Chapter 371.

§85.309. Military Licensing.

(a) Purpose and scope. The purpose of this section is to specify pawnshop employee licensing requirements for military service members, military veterans, and military spouses, in accordance with Texas Occupations Code, Chapter 55. This section applies only to employees of pawnbrokers that participate in the pawnshop employee license program.

(b) Definitions. In this section, the terms "military service member," "military spouse," and "military veteran" have the meanings provided by Texas Occupations Code, §55.001.

(c) Late renewal. As provided by Texas Occupations Code, §55.002, an individual is exempt from any increased fee or other penalty for failing to renew a pawnshop employee in a timely manner, if the individual establishes to the satisfaction of the OCCC that the individual failed to renew the license in a timely manner because the individual was serving as a military service member.

(d) Expedited license procedure. As provided by Texas Occupations Code, §55.004 and §55.005, no later than the 30th day after the OCCC receives a complete pawnshop employee license application from a qualifying applicant who is a military service member, military veteran, or military spouse, the OCCC will process the [~~a license~~] application [~~as soon as practicable~~] and issue a license to the [~~a qualifying~~] applicant [~~who is a military service member, military veteran, or military spouse~~], if the applicant:

(1) holds a current license in another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for a pawnshop employee license in Texas; or

(2) held a pawnshop employee license in Texas within the five years preceding the application date.

(e) Authorization for military service members and military spouses [~~spouse~~].

(1) As provided by Texas Occupations Code, §55.0041, a military service member or military spouse may engage in business as a pawnshop employee if the member or spouse is currently licensed in good standing in another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for a pawnshop employee license in Texas.

(2) Before engaging in business in Texas, the military service member or military spouse must comply with the notification requirements described by Texas Occupations Code, §55.0041(b), and must notify the OCCC of the jurisdiction where the military spouse is licensed and how the license can be verified. If the member or [~~military~~] spouse does not obtain a pawnshop employee license in Texas, then the member or [~~military~~] spouse is limited to the time period described by Texas Occupations Code, §55.0041(d)-(d-1) [~~§55.0041(d)~~].

(3) For purposes of this section and Texas Occupations Code, §55.0041, the OCCC will determine whether the other jurisdiction's licensing requirements are substantially similar to Texas's by reviewing the applicable legal requirements that a license holder must comply with in the other jurisdiction, as well as the application review process in the other jurisdiction. The OCCC will verify a license issued in another jurisdiction by requesting records from the appropriate licensing authority. The OCCC will send a request for records to the appropriate licensing authority no later than the 30th day after the military service member or military spouse submits the information required by Texas Occupations Code, §55.0041(b)(1)-(2).

(f) Credit toward licensing requirements. As provided by Texas Occupations Code, §55.007, with respect to an applicant who is a military service member or military veteran, the OCCC will credit verified military service, training, or education toward the licensing requirements for a pawnshop employee license, by considering the service, training, or education as part of the applicant's employment history.

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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Matthew Nance
General Counsel
Office of Consumer Credit Commissioner
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For further information, please call: (512) 936-7660

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TITLE 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 3. STATE PUBLICATIONS DEPOSITORY PROGRAM

13 TAC §§3.1 - 3.3, 3.7

The Texas State Library and Archives Commission (commission) proposes amendments to §3.1, Definitions; §3.2, Standard Requirements for State Publications in All Formats; and §3.7, State Publications Contact Person; and new §3.3, Standard Deposit and Reporting Requirements for State Publications in All Formats.

BACKGROUND. Section 441.104 of the Government Code establishes the commission's duties under the State Publications Depository Program (program), under which the commission acquires, organizes, retains, and provides access to state publications. Under section 441.103 of the Government Code, state agencies are required to designate one or more staff persons as agency publications liaisons, who are required to maintain a record of the agency's state publications. State agencies must furnish copies of their state publications to the commission in the number specified by commission rules.

The commission recently concluded its quadrennial review of 13 TAC Chapter 3 as required by Government Code, §2001.039. While the commission found that the reasons for initially adopting the rules continue to exist, the commission did note the need for multiple amendments to update and improve the rules. The proposed amendments and new section are necessary to streamline, simplify, update, and clarify the existing rules.

ANALYSIS OF PROPOSED AMENDMENTS AND NEW SECTION. Multiple proposed amendments to §3.1 improve existing definitions and delete unnecessary definitions. The definition of "Texas State Library and Archives Commission" is proposed to be deleted and moved, with minor modifications, to the definition of "Commission." The definitions for "depository library," "state agency," and "state publication" are amended to refer to the existing statutory definitions. The following definitions are proposed for deletion, as they are not necessary, either because the terms are not used within the chapter or, when used, they are clearly defined as necessary, or because the terms have commonly accepted definitions that do not require any additional specificity within the rules: "depository publication," "electronic external storage devices," "internet connection," "on-line," "print publication," "report," "Texas Records and Information Locator (TRAIL)," "Uniform Resource Locators," and "website." A proposed amendment to the definition of "physical format" simplifies the definition to mean a transportable medium in which analog or digital information is published, such as print, microform, magnetic disk, or optical disk. An amendment to the definition of "internet publication" updates the term to "online publication." An amendment adds a new defined term, "removable electronic media," to replace the deleted term "electronic external storage devices." Other amendments make minor grammar and punctuation corrections and renumber the definitions as appropriate.

Proposed amendments to §3.2 clarify and improve the rule language and delete unnecessary language. A proposed amendment in subsection (a) corrects the references to the commission's rules regarding exemptions. Subsection (b) is proposed for deletion as it merely restates a statutory requirement and is therefore not necessary in the rule. Subsection (f) is proposed for deletion as the archival code "A" was removed from the archival state publications series on the State Records Retention Schedule to clarify that those publications are not transferred to the

Archives but deposited to the program. Therefore, existing subsection (f) is unnecessary and inapplicable to state publications.

Proposed new §3.3 replaces existing §3.3, currently proposed for repeal in the same issue of the *Texas Register,* but does not make any major substantive changes to the rule. Rather, new §3.3 provides clearer guidance to state agencies regarding their duties with respect to certain types of state publications. Subsection (a) establishes the general requirement for the number of copies of state publications that must be deposited, which is four copies for most state publications except for annual financial reports and annual operating budgets (three copies) and requests for legislative appropriations, quarterly and annual reports of measures, and state or strategic plans (two copies). These numbers are consistent with the previous requirement in rule with the exception of state or strategic plans. The new rule would require two copies of state or strategic plans as opposed to three copies as currently required in rule. This change is necessary to comply with Government Code, §2056.002, which requires that two copies be provided to the commission.

Proposed new subsection (b) applies to state publications in electronic format, noting that the number and method of submission differs depending on whether the publication is available online and also that specific instructions may apply to the preparation and distribution of the publication. State agencies should comply with specific instructions in statute, administrative rule, or promulgated by other state agencies regarding state publications. However, in the absence of specific instructions, proposed subsection (b) would require either online access to the publication or the submission of one copy on removable electronic media or other method approved by the Director and Librarian. The commission will maintain information about state publications that may have specific instructions regarding distribution on its website for state agencies to reference.

Proposed subsection (c) establishes minimum requirements for electronic submissions, including file type, the requirement that state agencies include a publication reporting form, submission by the designated state agency publication liaison, and required descriptive information.

Proposed subsection (d) clarifies that a publication reporting form must be included with each submission to the program, whether the submission is in print or electronic format.

Proposed subsection (e) addresses the Texas Records and Information Locator (TRAIL), authorized by Government Code, §441.102, and notes that a state agency is not required to submit copies of its agency websites to the program. The subsection also establishes minimum technical requirements to which a state agency website should adhere to enable the commission to harvest information from the website through TRAIL.

Finally, proposed amendments to §3.7 clarify the language and improve readability and add one new requirement to the duties of state agency publications liaisons--identifying and depositing historical publications that may be discovered that should have been provided to the program but were not. This requirement will ensure the commission is able to fulfill its statutory duties under Government Code, §441.104 and that the public has access to state publications.

FISCAL IMPACT. Jelain Chubb, State Archivist and Director, Archives and Information Services, has determined that for each of the first five years the proposed amendments and new section are in effect, there are no reasonably foreseeable fiscal implications for the state or local governments as a result of enforcing or administering the rules, as proposed.

PUBLIC BENEFIT AND COSTS. Ms. Chubb has determined that for each of the first five years the proposed amendments and new section are in effect, the anticipated public benefit will be increased clarity in the commission's requirements pertaining to the State Publications Depository Program, which should improve state agencies' ability to comply, ultimately improving the commission's ability to acquire, organize, retain, and provide access to state publications. There are no anticipated economic costs to persons required to comply with the proposed amendments or new section.

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

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT STATEMENT. There will be no adverse economic effect on small businesses, micro-businesses, or rural communities; therefore, a regulatory flexibility analysis under Government Code, §2006.002 is not required.

COST INCREASE TO REGULATED PERSONS. The proposed amendments do not impose or increase a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the commission is not required to take any further action under Government Code, §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT. In compliance with Government Code, §2001.0221, the commission provides the following government growth impact statement. For each year of the first five years the proposed amendments and new section will be in effect, the commission has determined the following:

1. The proposed amendments and new section will not create or eliminate a government program;

2. Implementation of the proposed amendments and new section will not require the creation of new employee positions or the elimination of existing employee positions;

3. Implementation of the proposed amendments and new section will not require an increase or decrease in future legislative appropriations to the commission;

4. The proposed amendments and new section will not require an increase or decrease in fees paid to the commission;

5. The proposal will not create a new regulation, as the new sections are proposed to replace repealed sections due to the nature and complexity of the amendments;

6. The proposal will not expand or repeal an existing regulation;

7. The proposed amendments and new section will not increase the number of individuals subject to the proposal's applicability; and

8. The proposed amendments and new section will not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT. No private real property interests are affected by this proposal, and the proposal does not restrict or limit an owner's right to their property that would otherwise exist in the absence of government action. Therefore, the proposed amendments and new section do not constitute a taking under Government Code, §2007.043.

REQUEST FOR PUBLIC COMMENT. Written comments on the proposed amendments and new section may be submitted to Jelain Chubb, State Archivist and Director, Archives and Information Services, Texas State Library and Archives Commission, P.O. Box 12927, Austin, Texas 78711, or via email at rules@tsl.texas.gov. To be considered, a written comment must be received no later than 30 days from the date of publication in the *Texas Register.*

STATUTORY AUTHORITY. The new rule and amendments are proposed under Government Code, §441.102, which requires the commission by rule to establish procedures for the distribution of state publications to depository libraries and for the retention of those publications; Government Code, §441.103, which requires a state agency to furnish copies of its state publications that exist in a physical format to the Texas State Library in the number specified by commission rules; and Government Code, §441.104, which directs the commission to establish a program for the preservation and management of state publications.

CROSS REFERENCE TO STATUTE. Government Code, Chapter 441.

§3.1. Definitions.

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

(1) Born digital publication--A state publication that originates in electronic format.

(2) Commission--The Texas State Library and Archives Commission as an agency of the state of Texas, including the staff, collections, archives, operations, programs, and property of the Texas State Library and Archives Commission. [~~The Texas State Library and Archives Commission.~~]

(3) Complex relational database--A database comprised of multiple inter-related tables that is dynamically updated, that contains only minimal narrative text, and that cannot be accurately represented as a set of static HTML pages or a spreadsheet.

(4) Depository library--A depository library as defined by Government Code, §441.101(2). [~~Any library that the Director and Librarian or the commission designates as a depository library for state publications.~~]

[~~(5) Depository publication--A state publication in any format distributed from or on behalf of the Texas State Library and Archives Commission to a depository library.~~]

(5) [~~(6)~~] Director and Librarian--Chief executive and administrative officer of the Texas State Library and Archives Commission.

[~~(7) Electronic external storage devices--Removable electronic media used to store and transfer electronic information.~~]

(6) [~~(8)~~] Electronic format--A form of recorded information that can be processed by a computer.

[~~(9) Internet connection--A combination of hardware, software and telecommunications services that allows a computer to communicate with any other computer on the worldwide network of networks known as the Internet, and that adheres to the standard protocols listed in Internet standards documents of the Internet Engineering Steering Group, Internet Architecture Board, and Internet community.~~]

(7) [~~(10)~~] Online [~~Internet~~] publication--A publication that is published on the Internet as a file or files [~~accessible by Internet connection~~].

[~~(11) On-line--Accessible via a computer or terminal, rather than on paper or other medium.~~]

(8) [~~(12)~~] Physical format--A transportable medium in which analog or digital information is published, such as print, microform, magnetic disk, or optical disk. [~~A tangible system for the compilation and presentation of information, including print publications and electronic external storage devices as defined in this chapter.~~]

[~~(13) Print publication--A publication:~~]

[~~(A) that is published in a format that is accessible without the use of a computer, including information published on paper, in microformat, on audio tapes, vinyl discs or audio compact discs, on videotape or film, or on any other media that are not specifically cited in this definition; and~~]

[~~(B) that is not an Internet publication as defined in this section.~~]

(9) [~~(14)~~] Publicly distributed--Provided to persons outside of the agency, in print or other physical medium, or by an Internet connection, or from a limited local area network on agency premises, or at another location on behalf of the agency. Information that is made accessible only through an authentication process, such as a username [~~user name~~] and password, or upon request via open records laws, is not deemed publicly distributed.

(10) Removable electronic media--Devices used to store and transfer electronic information.

[~~(15) Report--A report:~~]

[~~(A) that is not confidential, prepared by a state agency in any format and is required by statute, rule, or rider in the General Appropriations Act to be submitted to: the governor, a member, agency, or committee of the legislature, another state agency, and is publicly distributed; and~~]

[~~(B) that is prepared by a state agency in electronic or online format and is determined appropriate for submission through the Texas Digital Archive by Director and Librarian~~]

[~~(16) Serial--Issued in successive parts bearing numerical or chronological designations and intended to be continued indefinitely. The term includes, but is not limited to: periodicals, newspapers, reports, yearbooks, journals, minutes, proceedings, transactions.~~]

(11) [~~(17)~~] Site map--An HTML page providing links to all materials available to the public on a Web site. A site map can provide links to sections or categories within a Web site rather than to each individual document if all documents within each section are inter-linked.

(12) [~~(18)~~] State agency--A state agency as defined by Government Code, §441.101(3). [~~State agency--Any entity established or authorized by law to govern operations of the state such as a state office, department, division, bureau, board, commission, legislative committee, authority, institution, regional planning council, university system, institution of higher education as defined by Texas Education Code, §61.003, or a subdivision of one of those entities.~~]

(13) [~~(19)~~] State publication--A state publication as defined by Government Code, §441.101(4). [~~State publication--Information in any format that is produced by the authority of or at the total or partial expense of a state agency or is required to be distributed under law by the agency and is publicly distributed by or for the agency. The term does not include information the distribution of which is limited to contractors with or grantees of the agency, persons within the agency or within other government agencies, or members of the public under a~~

request made under the open records law, Government Code, Chapter 552 if it does not otherwise meet the definition of a state publication.]

(14) [(20)] State Publications Depository Program--A program of the Texas State Library and Archives Commission designed to collect, preserve, and distribute state publications, and promote their use by the citizens of Texas and the United States.

(15) [(21)] Substantive change--A modification of a state publication in any format that represents a fundamental alteration in the information content of a publication. Examples of a substantive change include but are not limited to:

(A) changes to publicly distributed agency information based on the installation of new leadership in a state agency;

(B) amendments to agency policies (such as reversals of former policies; expansions of authority via statutory means, rule-making authority, or judicial process; or clarifications of existing policies);

(C) provision of new information, such as information reports; and

(D) revisions to previously issued information, such as documents describing the financial status, providing statistical data, or reporting on matters within the agency's area of authority.

(16) [(22)] Texas Digital Archive--The digital repository maintained and operated by the Texas State Library and Archives Commission for the preservation of and access to permanently valuable copies of archival state records, reports, and publications.

[(23) Texas Records and Information Locator (TRAIL)--A program of the Texas State Library and Archives Commission designed to locate, index, and make available state publications in electronic format.]

[(24) Texas State Library and Archives Commission--The staff, collections, archives, and property of the Texas State Library and Archives Commission organized to carry out the commission's responsibilities.]

(17) [(25)] Transitory or inconsequential change--A modification of a state publication in any format that represents a minor alteration of the publication and does not alter the essential content of the original publication. A transitory or inconsequential change includes but is not limited to[:] correction of misspellings or typographical errors and the alteration of an online [Internet] publication due to the expiration of textual information that is linked to time-dependent publications (such as press releases or announcements regarding the activities of an agency's programs).

[(26) Uniform Resource Locators--The syntax and semantics of formalized information for location and access of resources on the Internet, as specified in Internet standards documents of the Internet Engineering Steering Group, Internet Architecture Board, and Internet community.]

[(27) Website-- A state website maintained by or for a Texas state agency, including an institution of higher education, intended to provide access to state government information, including electronic format state publications. State agency websites, excluding institutions of higher education, are web harvested by the TRAIL service.]

§3.2. Standard Requirements for State Publications in All Formats.

(a) State agencies are required to furnish copies of state publications in physical format to the commission or provide the commission online access to [deposit or make accessible copies of all] state publications. A state agency is not required to furnish copies of or provide online access to state publications that are exempt [that have not been exempted] from the State Publications Depository Program under §3.5 of this title (relating to Standard Exemptions for State Publications in All Formats) or [in] §3.6 of this title (relating to Special Exemptions) [or under §3.7 of this title (relating to State Publications Contact Person)].

[(b) State agencies are required to display the date that each state publication is produced or distributed in a visible location at or near the beginning of the publication.]

(b) [(c)] When a state publication is distributed to the public in multiple formats, state agencies are required to provide access to or copies of that publication to the commission in all formats in which the publication is publicly distributed. State agencies are not required to provide copies to the commission of publications on removable electronic media [electronic external storage devices] if the state publications are made available to the commission under §3.3(e) of this title or other electronic submission agreed to by both agencies [by an Internet connection].

(c) [(d)] When a state publication changes frequently, as in the case of an online [Internet] publication that announces time-dependent information, state agencies are required to determine whether the alteration in the publication represents a substantive change or a transitory or inconsequential change. If the modification is a substantive change, the original version and the new version must be treated as separate publications and managed in accordance with §3.3 of this title [chapter] (relating to Standard Deposit and Reporting Requirements for State Publications in All Formats). If the modification is a transitory or inconsequential change, [or if the modification is due only to changes to information that is exempt under §3.6 of this chapter (relating to Special Exemptions),] the two versions are not deemed to be separate publications.

(d) [(e)] Submission of publications to the depository program does not fulfill a state agency's records retention requirements for those publications. [Records retention. State agencies are reminded that compliance with this chapter does not constitute compliance with records retention rules for state government records. See Texas State Records Retention Schedule (second edition or subsequent edition as applicable) and §§6.1 - 6.10 of this title for complete information about records retention requirements.]

[(f) Archival publications. For those publications defined as archival (see §6.1 of this title), one copy must be submitted to the Texas State Archives in accordance with §§6.91 - 6.99 of this title.]

§3.3. Standard Deposit and Reporting Requirements for State Publications in All Formats.

(a) State publications in physical format. State agencies must deposit four copies of state publications in physical format to the State Publications Depository Program except as follows:

(1) State agencies must deposit three copies of the following state publications:

(A) Annual financial reports; and

(B) Annual operating budgets.

(3) State agencies must deposit two copies of the following state publications:

(A) Requests for legislative appropriations;

(B) Quarterly and annual reports of measures; and

(C) State or strategic plans (for agency services, programs within its jurisdiction).

(b) State publications in electronic format. The number and method of submission of state publications in electronic format differs depending on whether the electronic state publication is available online and specific instructions that may apply to the preparation and distribution of the publication. Unless specific instructions require otherwise:

(1) If a state publication is available online, a state agency shall provide the commission online access to the publication. The state agency is not required to submit an electronic copy of the state publication on removable electronic storage media. If also available in print, the URL for the online publication must be included on the cover or title page of the printed publication submitted in accordance with subsection (a) of this section;

(2) If a state publication is not available online, the state agency must submit one copy of each state publication on removable electronic storage media or other method approved by the Director and Librarian. Files must be formatted in a readily accessible format or other file type accessible via software provided to the commission or that is in the public domain. If the file is compressed, it must be compressed using lossless compression techniques.

(c) Minimum requirements for electronic submissions. All submissions of state publications in electronic format for the State Publications Depository Program must:

(1) Consist of an Adobe Portable Document File (PDF) or other secure file type accepted at the determination of the Director and Librarian;

(2) Include a publication reporting form;

(3) Be submitted by the designated state agency publications liaison(s); and

(4) Include the following descriptive information at a minimum:

(A) a title tag;

(B) an author meta tag that includes the name of the state agency responsible for creating the state publication;

(C) a description meta tag that includes a narrative description of the publication; and

(D) a keyword or subject meta tag that includes selected terms from within the publication.

(d) Publication reporting form. A state agency must include a completed publication reporting form with each submission of a publication in either print or electronic format. If a state publication is made available to the commission online in compliance with subsection (b)(1) of this section, the state agency must provide a completed publication reporting form to the commission when the agency notifies the commission that the publication is available.

(e) The Texas Records and Information Locator (TRAIL). TRAIL provides access to state publications that are made available to the public by state agencies online. A state agency is not required to submit copies of its state agency websites to the commission for the State Publications Depository Program. State agencies should ensure their websites adhere to the following minimum technical requirements to enable the commission to harvest the website through TRAIL:

(1) Guaranteed access, at no charge, to the state agency's online state publications. If a "robots.txt" file is used to prevent harvesting of a State Agency website, then that file must include an exception for TSLAC's designated harvesting system;

(2) State publications must be accessible:

(A) by anonymous File Transfer Protocol (FTP), Hyper Text Transfer Protocol (HTTP) or other electronic means as defined in Internet standards documents of the Internet Engineering Steering Group, Internet Architecture Board, and Internet community; and

(B) by following a link or series of links from the Agency's primary URL. For publications accessible only by database searching or similar means, an alternative path such as a hidden link to a comprehensive site map must be provided except as exempted in §3.5 of this title (relating to Standard Exemptions for State Publications in All Formats); or

(C) on alternative electronic formats and interfaces consistent with requirements of the Americans with Disabilities Act of 1990 and as amended.

(3) Each original state publication and subsequent versions as described in §3.2(c) of this title (relating to Standard Requirements for State Publications in All Formats) must remain available on the agency website for a minimum of nine months to ensure that the publication has been collected by the commission and made available in TRAIL. Agencies may confirm that a version of an online publication has been added to the TRAIL archive by searching at www.tsl.texas.gov/trail/index.html.

§3.7. State Publications Contact Person.

Each state agency must provide notice to the commission in writing of [~~designate in writing or via the Internet~~] one person to act as liaison with the State Publications Depository Program for state publications in physical formats and one person to act as liaison with the State Publications Depository Program for online or electronic [~~Internet~~] publications. An[~~, an~~] agency may [~~elect to~~] designate the same person to fulfill the liaison duties for both types of publications. Agencies may request in writing[~~, by writing to the Program,~~] to designate additional liaisons in cases where the size and complexity of the agency's publishing activities merit additional coverage. A liaison's duties include:

(1) Depositing [~~Each liaison must deposit~~] all state publications within the scope of their [~~his or her~~] designated responsibility;[~~,~~]

(2) Providing [~~provide~~] information to the commission and coordinating with commission staff to resolve problems regarding publications; [~~resolve problems about them,~~]

(3) Maintaining [~~maintain~~] records of the agency's state publications;[~~,~~]

(4) Negotiating [~~negotiate~~] exemptions from deposit requirements;[~~,~~]

(5) Maintaining and submitting [~~and submit~~] publication reporting forms; and[~~.~~]

(6) Identifying and depositing historical publications that may be discovered in the regular course of business that should have been furnished to the commission for inclusion in the State Publications Depository Program but were not.

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

Filed with the Office of the Secretary of State on August 16, 2023.

TRD-202303009

Sarah Swanson
General Counsel
Texas State Library and Archives Commission
Earliest possible date of adoption: October 1, 2023
For further information, please call: (512) 463-5460

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13 TAC §3.3

The Texas State Library and Archives Commission (commission) proposes the repeal of §3.3, Standard Deposit and Reporting Requirements for State Publications in All Formats.

The proposed repeal of §3.3 corresponds with multiple improvements to the rules in 13 Texas Administrative Code, Chapter 3, State Publications Depository Program, including proposed new §3.3, also in this issue of the *Texas Register.* Due to the nature and number of amendments to §3.3, the commission finds it is simpler to repeal existing §3.3 and propose new §3.3.

FISCAL NOTE. Jelain Chubb, State Archivist and Director, Archives and Information Services, has determined that for each of the first five years the proposed repeal is in effect, there will not be a fiscal impact on state or local government.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT STATEMENT. There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed repeal; therefore, a regulatory flexibility analysis under Government Code, §2006.002 is not required.

PUBLIC BENEFIT/COST NOTE. Ms. Chubb has also determined that for the first five-year period the repeal is in effect, the public benefit will be consistency and clarity in the commission's rules related to the State Publications Depository Program.

GOVERNMENT GROWTH IMPACT STATEMENT. Pursuant to Government Code, §2001.0221, the commission provides the following Government Growth Impact Statement for the proposed repeal.

During the first five years that the proposed repeal would be in effect, the proposed repeal: will not create or eliminate a government program; will not result in the addition or reduction of employees; will not require an increase or decrease in future legislative appropriations; will not lead to an increase or decrease in fees paid to a state agency; will repeal an existing regulation; and will not result in an increase or decrease in the number of individuals subject to the rule. During the first five years that the proposed repeal will be in effect, the proposed repeal will not positively or adversely affect the Texas economy.

REQUEST FOR PUBLIC COMMENT. Written comments on the proposed repeal may be directed to Jelain Chubb, State Archivist and Director, Archives and Information Services, via email rules@tsl.texas.gov, or mail, P.O. Box 12927, Austin, Texas 78711-2927. Comments will be accepted for 30 days after publication in the *Texas Register.*

STATUTORY AUTHORITY. The repeal is proposed under Government Code, §441.102, which requires the commission by rule to establish procedures for the distribution of state publications to depository libraries and for the retention of those publications; Government Code, §441.103, which requires a state agency to furnish copies of its state publications that exist in a physical format to the Texas State Library in the number specified by commission rules; and Government Code, §441.104, which directs the commission to establish a program for the preservation and management of state publications.

CROSS REFERENCE TO STATUTE. Government Code, Chapter 441.

§3.3. Standard Deposit and Reporting Requirements for State Publications in All Formats.

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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Sarah Swanson
General Counsel
Texas State Library and Archives Commission
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TITLE 16. ECONOMIC REGULATION

PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 401. ADMINISTRATION OF STATE LOTTERY ACT

The Texas Lottery Commission (Commission) proposes amendments to 16 TAC §401.152 (Application for License), §401.302 (Scratch Ticket Game Rules), §401.362 (Retailer's Financial Responsibility for Lottery Tickets Received and Subsequently Damaged or Rendered Unsaleable, for Winning Lottery Tickets Paid and for Lottery-Related Property), and §401.370 (Retailer's Financial Responsibility for Lottery Tickets Received and Subsequently Stolen or Lost).

The proposed amendment to §401.152 defines the term "director" throughout the rules to mean the lottery operations director.

The proposed amendment to §401.302 eliminates a redundant word related to the payment of scratch ticket prizes and makes the terms identical to those of draw games.

The proposed amendments to §401.362 provide for an additional documentation option other than a Fire Marshal's report for reporting fire damaged or destroyed lottery tickets and eliminate the $25 administrative fee for a pack of unactivated tickets that is unsaleable due to damage or destruction.

The proposed amendments to §401.370 eliminate the $25 administrative fee for each unactivated pack of stolen or lost tickets and update the requirement for reporting lost or stolen tickets to the Commission's enforcement division through the lottery operator hotline.

Robert Tirloni, Lottery Operations Director, has determined that for each year of the first five years the proposed amendments will be in effect, the public benefit expected is more clarity in the rules, the elimination of certain fees for retailers, and a more efficient process for reporting damaged or destroyed lottery tickets.

Kelly Stuckey, Controller, has determined that for each year of the first five years the amendments will be in effect, there will be no significant fiscal impact for state or local governments as

a result of the proposed amendments. There will be no adverse effect on small businesses or rural communities, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the amendments, as proposed. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Pursuant to Texas Government Code §2001.0221, the Commission provides the following Government Growth Impact Statement for the proposed amendments. For each year of the first five years the proposed amendments will be in effect, Kelly Stuckey, Controller, has determined the following:

(1) The proposed amendments do not create or eliminate a government program.

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

(3) Implementation of the proposed amendments does not require an increase or decrease in future legislative appropriations to the Commission.

(4) The proposed amendments require a decrease in fees paid to the Commission as a result of the elimination of a $25 administrative fee for each unactivated pack of stolen or lost tickets or unactivated tickets that are unsaleable due to damage or destruction. This reduction in fees does not have a material impact.

(5) The proposed amendments do not create a new regulation.

(6) The proposed amendments do not expand or limit an existing regulation.

(7) The proposed amendments do not increase or decrease the number of individuals subject to the rule's applicability.

(8) The proposed amendments do not positively or adversely affect this state's economy.

The Commission requests comments on the proposed amendments from any interested person. Comments on the proposed amendments may be submitted to Tyler Vance, Assistant General Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at *legal.input@lottery.state.tx.us.* Comments must be received within 30 days after publication of this proposal in the *Texas Register* to be considered.

SUBCHAPTER B. LICENSING OF SALES AGENTS

16 TAC §401.152

These amendments are proposed under Texas Government Code §466.015(c), which authorizes the Commission to adopt rules governing the operation of the lottery, and §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

This proposal is intended to implement Texas Government Code Chapter 466.

§401.152. Application for License.

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

(c) An applicant shall, under penalty of perjury, complete, sign, date, and submit all forms and related information and documents required. By signing and submitting the application form, the applicant agrees to allow the director of the Lottery Operations Division (hereinafter "director") to investigate the credit, criminal, and tax background of the applicant and other matters as authorized under the State Lottery Act, Government Code, Chapter 466.

(d) - (f) (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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TRD-202303037
Bob Biard
General Counsel
Texas Lottery Commission
Earliest possible date of adoption: October 1, 2023
For further information, please call: (512) 344-5392

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SUBCHAPTER D. LOTTERY GAME RULES

16 TAC §401.302

These amendments are proposed under Texas Government Code §466.015(c), which authorizes the Commission to adopt rules governing the operation of the lottery, and §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

This proposal is intended to implement Texas Government Code Chapter 466.

§401.302. Scratch Ticket Game Rules.

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

(e) Payment of low-tier and mid-tier prizes.

(1) (No change.)

(2) Retailers may pay [~~cash~~] prizes in cash. If acceptable to the claimant, retailers may also pay cash prizes by business check, certified check, cashier's check, money order, gift card, stored-value card, or store merchandise. If a retailer decides to pay with anything other than cash, it is the responsibility of the retailer to ensure the claimant has voluntarily agreed to the non-cash prize payment.

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

(f) - (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.

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Bob Biard
General Counsel
Texas Lottery Commission
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For further information, please call: (512) 344-5392

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SUBCHAPTER E. RETAILER RULES

16 TAC §401.362, §401.370

These amendments are proposed under Texas Government Code §466.015(c), which authorizes the Commission to adopt rules governing the operation of the lottery, and §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

This proposal is intended to implement Texas Government Code Chapter 466.

§401.362. Retailer's Financial Responsibility for Lottery Tickets Received and Subsequently Damaged or Rendered Unsaleable, for Winning Lottery Tickets Paid and for Lottery-Related Property.

(a) Responsibility for Lottery Tickets Received.

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

(4) Under the circumstances set out in this paragraph, the director may credit a retailer for activated tickets that are damaged or destroyed.

(A) The director may credit a retailer's account for a range of activated tickets in a pack reported as damaged or destroyed providing:

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

(iii) if the tickets were damaged or destroyed by fire, the retailer made a formal report of the fire to appropriate fire department authorities within 24 hours of the discovery of the fire, and has provided to the commission's lottery operations division a copy of a report by a Fire Marshal [~~Marshall~~] that identifies the location and the cause of the fire or the commission's lottery operations division has obtained written documentation from lottery operator field staff verifying the reported fire damage; or

(iv) (No change.)

(B) (No change.)

[~~(5) There is an administrative fee of $25 for a pack of unactivated tickets that is unsaleable. The director may waive the administrative fee of $25 if the tickets are unsaleable because of damage or destruction caused by an overwhelming, unpreventable event caused exclusively by forces of nature and the retailer complied with the reporting requirements under paragraph (4)(A) of this subsection, as applicable.~~]

(b) - (d) (No change.)

§401.370. Retailer's Financial Responsibility for Lottery Tickets Received and Subsequently Stolen or Lost.

(a) (No change.)

(b) Responsibility for Lottery Tickets Received and Subsequently Stolen or Lost.

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

(3) Notwithstanding paragraph (1) of this subsection, the director may charge a retailer full face value of an activated pack of tickets if prizes have been paid from the pack. The director may credit a retailer's account for a range of activated tickets in a pack reported as stolen or lost provided that no validations have occurred on tickets in the range reported as stolen or lost if:

(A) the pack has been stolen and the retailer, within 24 hours of the discovery of the theft, has made a formal report of such theft to both:

(i) appropriate local law enforcement authorities; and

(ii) the commission's enforcement [~~security~~] division through the lottery operator [~~retailer~~] hotline;

(B) the pack has been lost and cannot be located by the retailer and the retailer, within 24 hours of discovery of the loss, has made a formal report of the loss to the commission's enforcement [~~security~~] division through the lottery operator hotline [~~retailer hotline; or~~]

[~~(4) Notwithstanding paragraph (1) of this subsection, the director may charge a retailer an administrative fee of $25 for each unactivated pack of tickets if:~~]

[~~(A) the pack has been stolen and the retailer, within 24 hours of the discovery of the theft, has made a formal report of such theft to both:~~]

[~~*(i)* appropriate local law enforcement authorities; and~~]

[~~*(ii)* the commission's security division through the retailer hotline;~~]

[~~(B) the pack has been lost and cannot be located by the retailer and the retailer, within 24 hours of discovery of the loss, has made a formal report of the loss to the commission's security division through the retailer hotline.~~]

(4) [~~(5)~~] A retailer shall report each stolen or lost pack of tickets to the commission's enforcement [~~security~~] division through the lottery operator [~~retailer~~] hotline within 24 hours of the discovery of the theft or loss.

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

Filed with the Office of the Secretary of State on August 17, 2023.

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Bob Biard
General Counsel
Texas Lottery Commission
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For further information, please call: (512) 344-5392

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TITLE 22. EXAMINING BOARDS

PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 72. BOARD FEES, LICENSE APPLICATIONS, AND RENEWALS

22 TAC §72.5

The Texas Board of Chiropractic Examiners (Board) proposes repealing 22 TAC §72.5 (Approved Schools and Colleges). The Board will propose a new §72.5 in a separate rulemaking. This rulemaking action will remove typographical errors in the current rule.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government.

There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the repeal as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis are not required because the proposed repeal will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed repeal will be in effect the public benefit is to remove typographical errors in the current rule.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed repeal of 22 TAC §72.5. For each year of the first five years the proposed repeal is in effect, Mr. Fortner has determined:

(1) The proposed repeal does not create or eliminate a government program.

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

(3) Implementation of the proposed repeal does not require an increase or decrease in future legislative appropriations to the Board.

(4) The proposed repeal does not require a decrease or increase in fees paid to the Board.

(5) The proposed repeal does not create a new regulation.

(6) The proposal repeals existing Board rules for an administrative process.

(7) The proposed repeal does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed repeal does not positively or adversely affect the state economy.

This proposed rulemaking will not impact private real property as defined by Texas Government Code §2007.003, so a takings impact assessment under Government Code §2001.043 is not required. Additionally, Government Code §2001.0045 (Requirement for Rule Increasing Costs to Regulated Persons) does not apply to this rulemaking as it will not increase costs to regulated persons.

Comments on the proposed repeal or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 1801 North Congress Avenue, Suite 10.500, Austin, Texas 78701-1319, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed repeal is published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

The repeal is proposed under Texas Occupations Code §201.152 (which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic), and 201.302 (which requires license applicants to present evidence to the Board of attendance at a recognized chiropractic school).

No other statutes or rules are affected by this proposed repeal.

§72.5. Approved Schools and Colleges.

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

Filed with the Office of the Secretary of State on August 17, 2023.

TRD-202303019
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: October 1, 2023
For further information, please call: (512) 305-6700

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22 TAC §72.5

The Texas Board of Chiropractic Examiners (Board) proposes new 22 TAC §72.5 (Approved Schools and Colleges). The current §72.5 is being repealed in a separate rulemaking action. This rulemaking action will correct typographical errors in the current rule; there are no substantive changes to the existing text proposed.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed rule is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the rule as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis are not required because the proposed rule will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed rule will be in effect the public benefit is to correct typographical errors in the current rule with no substantive changes to the text.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed new 22 TAC §72.5. For each year of the first five years the proposed rule is in effect, Mr. Fortner has determined:

(1) The proposed rule does not create or eliminate a government program.

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

(3) Implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the Board.

(4) The proposed rule does not require a decrease or increase in fees paid to the Board.

(5) The proposed rule does not create a new regulation.

(6) The proposal does repeal existing Board rules for an administrative process.

(7) The proposed rule does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed rule does not positively or adversely affect the state economy.

This proposed rulemaking will not impact private real property as defined by Texas Government Code §2007.003, so a takings impact assessment under §2001.043 is not required. Additionally, Government Code §2001.0045 (Requirement for Rule Increasing Costs to Regulated Persons) does not apply to this rulemaking as it will not increase costs to regulated persons.

Comments on the proposed rule or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 1801 North Congress Avenue, Suite 10.500, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed rule is published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

The rule is proposed under Texas Occupations Code §201.152 (which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic), and 201.302 (which requires license applicants to present evidence to the Board of attendance at a recognized chiropractic school).

No other statutes or rules are affected by this proposed rule.

§72.5. Approved Schools and Colleges.

(a) A "chiropractic school" means a school accredited by an educational accrediting body that is a member of the Council on Chiropractic Education (CCE) or the Council on Chiropractic Education International (CCEI).

(b) The Board may annually review and approve chiropractic schools whose graduates are eligible for examination.

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

Filed with the Office of the Secretary of State on August 17, 2023.

TRD-202303020
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: October 1, 2023
For further information, please call: (512) 305-6700

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CHAPTER 73. CONTINUING EDUCATION

22 TAC §73.1

The Texas Board of Chiropractic Examiners (Board) proposes repealing 22 TAC §73.1 (Continuing Education Requirements for Licensees). The Board will propose a new §73.1 in a separate rulemaking. This rulemaking action will change incorrect references in subsection (d) to other subsections of the rule relating to exemptions; there are no substantive changes to the current text.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the repeal as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed repeal will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed repeal will be in effect the public benefit is to change incorrect references in subsection (d) to other subsections of the rule relating to exemptions with no substantive changes to the current text.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed repeal of 22 TAC §73.1. For each year of the first five years the proposed repeal is in effect, Mr. Fortner has determined:

(1) The proposed repeal does not create or eliminate a government program.

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

(3) Implementation of the proposed repeal does not require an increase or decrease in future legislative appropriations to the Board.

(4) The proposed repeal does not require a decrease or increase in fees paid to the Board.

(5) The proposed repeal does not create a new regulation.

(6) The proposal repeals existing Board rules for an administrative process.

(7) The proposed repeal does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed repeal does not positively or adversely affect the state economy.

This proposed rulemaking will not impact private real property as defined by Texas Government Code §2007.003, so a takings impact assessment under §2001.043 is not required. Additionally, Government Code §2001.0045 (Requirement for Rule Increasing Costs to Regulated Persons) does not apply to this rulemaking as it will not increase costs to regulated persons.

Comments on the proposed repeal or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 1801 North Congress Avenue, Suite 10.500, Austin, Texas 78701-1319, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed repeal is published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

The repeal is proposed under Texas Occupations Code §201.152 (which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic), and 201.356 (which authorizes the Board to adopt requirements for continuing education).

No other statutes or rules are affected by this proposed repeal.

§73.1. Continuing Education Requirements for Licensees.

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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Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: October 1, 2023
For further information, please call: (512) 305-6700

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22 TAC §73.1

The Texas Board of Chiropractic Examiners (Board) proposes new 22 TAC §73.1 (Continuing Education Requirements for Licensees). The current §73.1 is being repealed in a separate rulemaking action. This rulemaking action will change incorrect references in subsection (d) to other subsections of the rule relating to exemptions; there are no substantive changes to the current text.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed rule is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the rule as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed rule will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed rule will be in effect the public benefit is to change incorrect references in subsection (d) to other subsections of the rule relating to exemptions with no substantive changes to the current text.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed new 22 TAC §73.1. For each year of the first five years the proposed rule is in effect, Mr. Fortner has determined:

(1) The proposed rule does not create or eliminate a government program.

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

(3) Implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the Board.

(4) The proposed rule does not require a decrease or increase in fees paid to the Board.

(5) The proposed rule does not create a new regulation.

(6) The proposal does repeal existing Board rules for an administrative process.

(7) The proposed rule does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed rule does not positively or adversely affect the state economy.

This proposed rulemaking will not impact private real property as defined by Texas Government Code §2007.003, so a takings impact assessment under §2001.043 is not required. Additionally, Government Code §2001.0045 (Requirement for Rule Increasing Costs to Regulated Persons) does not apply to this rulemaking as it will not increase costs to regulated persons.

Comments on the proposed rule or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 1801 North Congress Avenue, Suite 10.500, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed rule is published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

The rule is proposed under Texas Occupations Code §201.152 (which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic), and 201.356 (which authorizes the Board to adopt requirements for continuing education).

No other statutes or rules are affected by this proposed rule.

§73.1. Continuing Education Requirements for Licensees.

(a) "Live format" means any education course that is not pre-recorded and is presented in real time through an interactive medium such as a live webinar, an in-person training event, or telephone conference.

(b) "Online course" means any pre-recorded or live format education course that is delivered through the internet.

(c) A licensee may only take up to 10 hours of online courses that are not live format each year.

(d) A licensee shall complete 16 hours of continuing education each year unless a licensee is exempt under subsections (o) and (p) of this section.

(e) A licensee's reporting year shall begin on the first day of the month in which the licensee's birthday occurs.

(f) A licensee shall complete the 16 hours of continuing education through any Board-approved course or seminar elected by the licensee.

(g) A licensee shall attend any course designated as a "Board Required Course" in a live format.

(h) As part of the 16 annual required hours of continuing education, a licensee shall complete a minimum of 4 hours of Board-required courses, which include 3 hours relating to the Board's rules, code of ethics, and documenting.

(i) A licensee shall complete a minimum of 1 hour of the 16 annual required hours on chiropractic practice risk management.

(j) A licensee who was first licensed on or after September 1, 2012, shall complete at least 8 hours of continuing education in coding and documentation for Medicare claims no later than the licensee's second renewal period.

(k) A licensee may count the 8 hours in coding and documentation for Medicare claims as part of the 16 continuing education hours required during the year in which the 8 hours were completed.

(l) If a licensee is unable to take an online course, the licensee shall submit a request to the Board for special accommodations.

(m) At the Board's request, a licensee shall submit written verification from each continuing education course sponsor of the licensee's completion of each course used to fulfill the required hours for all years requested.

(n) The Board shall consider the failure to submit verification under subsection (n) of this section as failing to meet continuing education requirements.

(o) The following are exempt from the requirements of this section:

(1) a licensee who holds an inactive license;

(2) a licensee who is a military member or military spouse during part of the 12 months immediately preceding the annual license renewal date;

(3) a licensee who submits satisfactory proof that the licensee suffered an illness or disability which prevented the licensee from complying with this section during the 12 months immediately preceding the annual license renewal date; or

(4) a licensee who is in his first renewal period.

(p) A licensee who is a member of the military is entitled to two years of additional time to complete any continuing education requirements and any other requirement related to license renewal.

(q) A licensee who also holds a Board-issued permit to perform specialized techniques or procedures shall complete any continuing education required by the Board to obtain and maintain the permit.

(r) The Board shall make available a list of approved courses on the Board's website.

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

Filed with the Office of the Secretary of State on August 17, 2023.

TRD-202303022
Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: October 1, 2023
For further information, please call: (512) 305-6700

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CHAPTER 78. SCOPE OF PRACTICE AND DELEGATION

22 TAC §78.4

The Texas Board of Chiropractic Examiners (Board) proposes repealing 22 TAC §78.4 (Delegation to Chiropractic Students and Recent Graduates). The Board will propose a new §78.4 (Delegation to Chiropractic Students) and a new §78.7 (Delegation to Recent Graduates) in separate rulemakings.

The overall purpose of these rulemakings is to split the current §78.4 into two separate rules. Licensees have suggested this to the Board because some have found the current rule confusing due to the slightly differing requirements for delegating to chiropractic students and recent graduates. The Board agrees that creating separate rules for students and graduates will make it easier for licensees to comply with the requirements. Therefore, the Board will also propose a new §78.7 (Delegation to Recent Graduates. There will be no substantive changes to the current requirements for delegating to chiropractic students and recent graduates.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the repeal as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed repeal will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed repeal will be in effect the public benefit is to make the requirements for licensees delegating to chiropractic students and recent graduates easier to follow by putting those requirements into separate rules.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed repeal of 22 TAC §78.4. For each year of the first five years the proposed repeal is in effect, Mr. Fortner has determined:

(1) The proposed repeal does not create or eliminate a government program.

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

(3) Implementation of the proposed repeal does not require an increase or decrease in future legislative appropriations to the Board.

(4) The proposed repeal does not require a decrease or increase in fees paid to the Board.

(5) The proposed repeal does not create a new regulation.

(6) The proposal repeals existing Board rules for an administrative process.

(7) The proposed repeal does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed repeal does not positively or adversely affect the state economy.

This proposed rulemaking will not impact private real property as defined by Texas Government Code §2007.003, so a takings impact assessment under §2001.043 is not required. Additionally, Government Code §2001.0045 (Requirement for Rule Increasing Costs to Regulated Persons) does not apply to this rulemaking as it will not increase costs to regulated persons.

Comments on the proposed repeal or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 1801 North Congress Avenue, Suite 10.500, Austin, Texas 78701-1319, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed repeal is published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

The repeal is proposed under Texas Occupations Code §201.152 (which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic), and 201.451 (which authorizes the Board to adopt rules relating to delegating chiropractic tasks to assistants).

No other statutes or rules are affected by this proposed repeal.

§78.4. Delegation to Chiropractic Students and Recent Graduates.

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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Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
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For further information, please call: (512) 305-6700

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22 TAC §78.4

The Texas Board of Chiropractic Examiners (Board) proposes new 22 TAC §78.4 (Delegation to Chiropractic Students). The Board will propose the repeal of the current §78.4 (Delegation to Chiropractic Students and Recent Graduates) and propose a new §78.7 (Delegation to Recent Graduates) in separate rulemakings.

The overall purpose of these rulemakings is to split the current §78.4 into two separate rules. Licensees have suggested this to the Board because some have found the current rule confusing due to the slightly differing requirements for delegating to chiropractic students and recent graduates. The Board agrees that creating separate rules for students and graduates will make it easier for licensees to comply with the requirements. Therefore, the Board will also propose a new §78.7 (Delegation to Recent Graduates). There will be no substantive changes to the current requirements for delegating to chiropractic students and recent graduates.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed rule is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the rule as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed rule will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed rule will be in effect the public benefit is to make the requirements for licensees delegating to chiropractic students and recent graduates easier to follow by putting those requirements into separate rules.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed new 22 TAC §78.4. For each year of the first five years the proposed rule is in effect, Mr. Fortner has determined:

(1) The proposed rule does not create or eliminate a government program.

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

(3) Implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the Board.

(4) The proposed rule does not require a decrease or increase in fees paid to the Board.

(5) The proposed rule does not create a new regulation.

(6) The proposal does repeal existing Board rules for an administrative process.

(7) The proposed rule does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed rule does not positively or adversely affect the state economy.

This proposed rulemaking will not impact private real property as defined by Texas Government Code §2007.003, so a takings impact assessment under §2001.043 is not required. Additionally, Government Code §2001.0045 (Requirement for Rule Increasing Costs to Regulated Persons) does not apply to this rulemaking as it will not increase costs to regulated persons.

Comments on the proposed rule or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 1801 North Congress Avenue, Suite 10.500, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed rule is published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

The rule is proposed under Texas Occupations Code §201.152 (which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic), and 201.451 (which authorizes the Board to adopt rules relating to delegating chiropractic tasks to assistants).

No other statutes or rules are affected by this proposed rule.

§78.4. Delegation to Chiropractic Students.

(a) A licensee may delegate responsibility to a chiropractic student under this section if:

(1) the licensee has held an active chiropractic license in good standing in Texas or another jurisdiction for five years; and

(2) the licensee has been licensed by the Board for at least one year.

(b) A licensee may delegate to a student currently enrolled in an accredited chiropractic college the performance of adjustments or manipulations if the student has qualified for admission to the college's outpatient clinic.

(c) A licensee shall be physically on-site, but need not be present, when a student performs an adjustment or manipulation.

(d) A chiropractic student performing adjustments or manipulations under this section may not represent to the public that the student is a licensed chiropractor.

(e) A licensee may not delegate responsibility to render a diagnosis or prescribe a treatment plan to a chiropractic student under this section.

(f) A licensee or chiropractic student who violates this section is subject to 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.

Filed with the Office of the Secretary of State on August 17, 2023.

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Christopher Burnett
General Counsel
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: October 1, 2023
For further information, please call: (512) 305-6700

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22 TAC §78.7

The Texas Board of Chiropractic Examiners (Board) proposes new 22 TAC §78.7 (Delegation to Recent Graduates). The Board will propose the repeal of the current §78.4 (Delegation to Chiropractic Students and Recent Graduates) and propose a new §78.4 (Delegation to Chiropractic Students) in separate rulemakings.

The overall purpose of these rulemakings is to split the current §78.4 into two separate rules (§78.4 for chiropractic students only and new §78.7 for recent graduates only). Licensees have suggested this to the Board because some have found the current rule confusing due to the slightly differing requirements for delegating to chiropractic students and recent graduates contained in the rule. The Board agrees that creating separate stand-alone rules for students and graduates will make it easier for licensees to comply with the requirements. There will be no substantive changes to the current requirements for delegating to chiropractic students and recent graduates.

The Board's Executive Director, Patrick Fortner, has determined that for the first five-year period the proposed rule is in effect there will be no fiscal implications for state or local government. There will be no adverse effect on small businesses or rural communities, micro-businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the rule as proposed. An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed rule will not have an adverse economic effect on small businesses or rural communities as defined in Texas Government Code §2006.001(1-a) and (2).

Mr. Fortner has determined that for each year of the first five years the proposed rule will be in effect the public benefit is to make the requirements for licensees delegating to chiropractic students and recent graduates easier to follow by putting those requirements into separate rules.

The Board provides this Government Growth Impact Statement, pursuant to Texas Government Code §2001.0221, for the proposed new 22 TAC §78.7. For each year of the first five years the proposed rule is in effect, Mr. Fortner has determined:

(1) The proposed rule does not create or eliminate a government program.

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

(3) Implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the Board.

(4) The proposed rule does not require a decrease or increase in fees paid to the Board.

(5) The proposed rule does not create a new regulation.

(6) The proposal does repeal existing Board rules for an administrative process.

(7) The proposed rule does not decrease the number of individuals subject to the rule's applicability.

(8) The proposed rule does not positively or adversely affect the state economy.

This proposed rulemaking will not impact private real property as defined by Texas Government Code §2007.003, so a takings impact assessment under §2001.043 is not required. Additionally, Government Code §2001.0045 (Requirement for Rule Increasing Costs to Regulated Persons) does not apply to this rulemaking as it will not increase costs to regulated persons.

Comments on the proposed rule or a request for a public hearing may be submitted to Christopher Burnett, General Counsel, Texas Board of Chiropractic Examiners, 1801 North Congress Avenue, Suite 10.500, Austin, Texas 78701, via email: rules@tbce.state.tx.us; or fax: (512) 305-6705, no later than 30 days from the date that this proposed rule is published in the *Texas Register.* Please include the rule name and number in the subject line of any comments submitted by email.

The rule is proposed under Texas Occupations Code §201.152 (which authorizes the Board to adopt rules necessary to perform the Board's duties and to regulate the practice of chiropractic), and 201.451 (which authorizes the Board to adopt rules relating to delegating chiropractic tasks to assistants).

No other statutes or rules are affected by this proposed rule.

§78.7. Delegation to Recent Graduates.

(a) "Recent graduate" is an individual who has graduated within the previous 12 months from an accredited chiropractic college.

(b) A licensee may delegate responsibility to a recent graduate under this section if:

(1) the licensee has held an active chiropractic license in good standing in Texas or another jurisdiction for five years; and

(2) the licensee has been licensed by the Board for at least one year.

(c) A licensee may delegate to a recent graduate of an accredited chiropractic college the performance of adjustments or manipulations.

(d) A licensee shall be on-call and be available for voice consultation within 15 minutes from when a recent graduate performs an adjustment or manipulation.

(e) A licensee delegating responsibility to a recent graduate under subsection (c) of this section shall submit to the Board in writing the following within ten days of hiring the recent graduate:

(1) the graduate's name;

(2) the graduate's employment date;

(3) the name of the graduate's chiropractic college;

(4) the date of graduation;

(5) a copy of the graduate's diploma; and

(6) the name and license number of the licensee supervising the graduate.

(f) A licensee may not delegate the performance of adjustments or manipulations to a recent graduate under this section after the one year anniversary of the individual's graduation from a chiropractic college.

(g) A recent graduate performing adjustments or manipulations under this section may not represent to the public that the recent graduate is a licensed chiropractor.

(h) A licensee may not delegate responsibility to render a diagnosis or prescribe a treatment plan to a recent graduate under this section.

(i) A licensee or recent graduate who violates this section is subject to 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.

Filed with the Office of the Secretary of State on August 17, 2023.

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Christopher Burnett
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Texas Board of Chiropractic Examiners
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PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

CHAPTER 153. RULES RELATING TO PROVISIONS OF THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT

22 TAC §§153.1, 153.5, 153.6, 153.9, 153.15, 153.20, 153.21, 153.24, 153.28, 153.241

The Texas Appraiser Licensing and Certification Board (TALCB) proposes new and amendments to 22 TAC §153.1, Definitions; §153.5, Fees; §153.6, Military Service Member, Veteran, or Military Spouse Applications; §153.9, Applications; §153.15, Experience Required for Licensing; §153.20, Guidelines for Disciplinary Action, Denial of License; Probationary License; §153.21, Appraiser Trainees and Supervisory Appraisers; §153.24, Complaint Processing; §153.28, Peer Investigative Committee Review; and §153.241, Sanctions Guidelines.

The proposed amendments to §§153.1, 153.5, 153.9, 153.24 and 153.28 implement statutory changes enacted by the 88th Legislature in SB 1577, which becomes effective on January 1, 2024, and which changes the title of the TALCB "Commissioner" to "Executive Director."

Proposed new §153.6 and amendments to §153.9 implement statutory changes enacted by the 88th Legislature in SB 422 and become effective on September 1, 2023. SB 422 expands out-of-state occupational license recognition to include military service members, as long as certain criteria are met. SB 422 also modifies the time period within which verification of good standing occurs, as well as issuance of a license after certain conditions are satisfied, from "as soon as practicable" to no later than 30 days. The bill also addresses the term of the license in situations of divorce or other events impacting the military spouse's status. The amendments reflect these statutory changes. Specifically, new rule 153.6 is intended to replace and consolidated language struck from §153.9 related specifically to applicants who are military service members, veterans, and military spouses for greater clarity and organization, in unison with the reciprocity process in Occupations Code 1103, requirements established by the Appraisal Qualifications Board, and Appraisal Subcommittee. The amendments eliminate references to a residency requirement and references to alternative methods of demonstrating competency inapplicable to appraiser applicants. Finally, a statement of purpose is being added to the rule to make clear that this rule addresses the requirements provided under Chapter 55, Occupations Code, and is not intended to alter or modify licensure requirements governed by federal law.

The proposed amendments to §§153.15, 153.20 and 153.21 implement statutory changes enacted by the 88th Legislature in SB 1222, which becomes effective on September 1, 2023, and which eliminates the requirement that experience required for licensing be submitted on an affidavit. As a result, references to this requirement are removed from TALCB rules and replaced by a certification.

The proposed amendments to §153.241 allow for greater flexibility in sanctions.

Kathleen Santos, General Counsel, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for the state or units of local government as a result of enforcing or administering the proposed amendments. There is no adverse economic impact anticipated for local or state employment, rural communities, small businesses, or micro businesses as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments. Accordingly, no Economic Impact statement or Regulatory Flexibility Analysis is required.

Ms. Santos has also determined that for each year of the first five years the proposed amendments and rules are in effect the public benefits anticipated as a result of enforcing the proposed amendments will be requirements that are consistent with statutes and easier to understand, apply, and process.

Growth Impact Statement:

For each year of the first five years the proposed amendments and rules are in effect the amendments and rules will not:

--create or eliminate a government program;

--require the creation of new employee positions or the elimination of existing employee positions;

--require an increase or decrease in future legislative appropriations to the agency;

--require an increase or decrease in fees paid to the agency;

--create a new regulation;

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

--increase the number of individuals subject to the rule's applicability.

For each year of the first five years the proposed amendments are in effect, there is no anticipated impact on the state's economy.

Comments on the proposed amendments may be submitted to Kathleen Santos, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to general.counsel@talcb.texas.gov. Comments may also be submitted electronically at https://www.talcb.texas.gov/agency-information/rules-and-laws/comment-on-proposed-rules. The deadline for comments is 30 days after publication in the *Texas Register.*

The amendments and new rule are proposed under Texas Occupations Code §1103.151, which authorizes TALCB to adopt rules related to certificates and licenses that are consistent with applicable federal law and guidelines adopted by the AQB; §1103.152, which authorizes TALCB to prescribe qualifications for appraisers that are consistent with the qualifications established by the Appraiser Qualifications Board; §1103.154, which authorizes TALCB to adopt rules relating to professional conduct; and §1103.156 which authorizes TALCB to establish reasonable fees to administer Chapter 1103, Texas Occupations Code.

The statute affected by these amendments is Chapter 1103, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

§153.1. Definitions.

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

(1) ACE--Appraiser Continuing Education.

(2) Act--The Texas Appraiser Licensing and Certification Act.

(3) Administrative Law Judge--A judge employed by the State Office of Administrative Hearings (SOAH).

(4) Analysis--The act or process of providing information, recommendations or conclusions on diversified problems in real estate other than estimating value.

(5) Applicant--A person seeking a certification, license, approval as an appraiser trainee, or registration as a temporary out-of-state appraiser from the Board.

(6) Appraisal practice--Valuation services performed by an individual acting as an appraiser, including but not limited to appraisal and appraisal review.

(7) Appraisal report--A report as defined by and prepared under the USPAP.

(8) Appraisal Standards Board--The Appraisal Standards Board (ASB) of the Appraisal Foundation, or its successor.

(9) Appraisal Subcommittee--The Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council or its successor.

(10) Appraiser Qualifications Board--The Appraiser Qualifications Board (AQB) of the Appraisal Foundation, or its successor.

(11) Appraiser trainee--A person approved by the Board to perform appraisals or appraiser services under the active, personal and diligent supervision and direction of the supervisory appraiser.

(12) Board--The Texas Appraiser Licensing and Certification Board.

(13) Certified General Appraiser--A certified appraiser who is authorized to appraise all types of real property.

(14) Certified Residential Appraiser--A certified appraiser who is authorized to appraise one-to-four unit residential properties without regard to value or complexity.

(15) Classroom course--A course in which the instructor and students interact face to face, in real time and in the same physical location.

(16) Classroom hour--Fifty minutes of instruction out of each sixty-minute segment of actual classroom session time.

(17) Client--Any party for whom an appraiser performs an assignment.

(18) College--Junior or community college, senior college, university, or any other postsecondary educational institution established by the Texas Legislature, which is accredited by the Commission on Colleges of the Southern Association of Colleges and Schools or like commissions of other regional accrediting associations, or is a candidate for such accreditation.

(19) Executive Director [~~Commissioner~~]--The Executive Director [~~commissioner~~] of the Texas Appraiser Licensing and Certification Board.

(20) Complainant--Any person who has made a written complaint to the Board against any person subject to the jurisdiction of the Board.

(21) Complex appraisal--An appraisal in which the property to be appraised, the form of ownership, market conditions, or any combination thereof are atypical.

(22) Continuing education cycle--the period in which a license holder must complete continuing education as required by the AQB.

(23) Council--The Federal Financial Institutions Examination Council (FFIEC) or its successor.

(24) Day--A calendar day unless clearly indicated otherwise.

(25) Distance education--Any educational process based on the geographical separation of student and instructor, as defined by the AQB. Distance education includes synchronous delivery, when the instructor and student interact simultaneously online; asynchronous delivery, when the instructor and student interaction is non-simultaneous; and hybrid or blended course delivery that allows for both in-person and online interaction, either synchronous or asynchronous.

(26) Feasibility analysis--A study of the cost-benefit relationship of an economic endeavor.

(27) Federal financial institution regulatory agency--The Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, or the successors of any of those agencies.

(28) Federally related transaction--Any real estate-related transaction that requires the services of an appraiser and that is engaged in, contracted for, or regulated by a federal financial institution regulatory agency.

(29) Foundation--The Appraisal Foundation (TAF) or its successor.

(30) Inactive certificate or license--A general certification, residential certification, or state license which has been placed on inactive status by the Board.

(31) License--The whole or a part of any Board permit, certificate, approval, registration or similar form of permission required by law.

(32) License holder--A person certified, licensed, approved, authorized or registered by the Board under the Texas Appraiser Licensing and Certification Act.

(33) Licensed Residential Appraiser--A licensed appraiser who is authorized to appraise non-complex one-to-four residential units having a transaction value less than $1 million and complex one-to-four residential units having a transaction value less than $400,000.

(34) Licensing--Includes the Board processes respecting the granting, disapproval, denial, renewal, certification, revocation, suspension, annulment, withdrawal or amendment of a license.

(35) Market analysis--A study of market conditions for a specific type of property.

(36) Nonresidential real estate appraisal course--A course with emphasis on the appraisal of nonresidential real estate properties which include, but are not limited to, income capitalization, income property, commercial appraisal, rural appraisal, agricultural property appraisal, discounted cash flow analysis, subdivision analysis and valuation, or other courses specifically determined by the Board.

(37) Nonresidential property--A property which does not conform to the definition of residential property.

(38) Party--The Board and each person or other entity named or admitted as a party.

(39) Person--Any individual, partnership, corporation, or other legal entity.

(40) Personal property--Identifiable tangible objects and chattels that are considered by the general public as being "personal," for example, furnishings, artwork, antiques, gems and jewelry collectibles, machinery and equipment; all tangible property that is not classified as real estate.

(41) Petitioner--The person or other entity seeking an advisory ruling, the person petitioning for the adoption of a rule, or the party seeking affirmative relief in a proceeding before the Board.

(42) Pleading--A written document, submitted by a party or a person seeking to participate in a case as a party, that requests procedural or substantive relief, makes claims, alleges facts, makes a legal argument, or otherwise addresses matters involved in the case.

(43) Practical Applications of Real Estate Appraisal (PAREA)--Training Programs approved by the AQB that utilize simulated experience training and serve as an alternative to the traditional Supervisor/Trainee experience model.

(44) Qualifying real estate appraisal course--Those courses approved by the Appraiser Qualifications Board as qualifying education.

(45) Real estate--An identified parcel or tract of land, including improvements, if any.

(46) Real estate appraisal experience--Valuation services performed as an appraiser or appraiser trainee by the person claiming experience credit. Significant real property appraisal experience requires active participation; mere observation of another appraiser's work is not real estate appraisal experience.

(47) Real estate-related financial transaction--Any transaction involving: the sale, lease, purchase, investment in, or exchange of real property, including an interest in property or the financing of property; the financing of real property or an interest in real property; or the use of real property or an interest in real property as security for a loan or investment including a mortgage-backed security.

(48) Real property--The interests, benefits, and rights inherent in the ownership of real estate.

(49) Record--All notices, pleadings, motions and intermediate orders; questions and offers of proof; objections and rulings on them; any decision, opinion or report by the Board; and all staff memoranda submitted to or considered by the Board.

(50) Report--Any communication, written or oral, of an appraisal, review, or analysis; the document that is transmitted to the client upon completion of an assignment.

(51) Residential property--Property that consists of at least one but not more than four residential units.

(52) Respondent--Any person subject to the jurisdiction of the Board, licensed or unlicensed, against whom any complaint has been made.

(53) Supervisory Appraiser--A certified general or residential appraiser who is designated as a supervisory appraiser, as defined by the AQB, for an appraiser trainee. The supervisory appraiser is responsible for providing active, personal and diligent supervision and direction of the appraiser trainee.

(54) Trade Association--A nonprofit voluntary member association or organization:

(A) whose membership consists primarily of persons who are licensed as appraisers and pay membership dues to the association or organization;

(B) that is governed by a board of directors elected by the members; and

(C) that subscribes to a written code of professional conduct or ethics.

(55) USPAP--Uniform Standards of Professional Appraisal Practice adopted by the Appraisal Standards Board of the Appraisal Foundation.

(56) Workfile--Documentation necessary to support an appraiser's analysis, opinions, and conclusions, and in compliance with the record keeping provisions of USPAP.

§153.5. Fees.

(a) The Board shall charge and the Executive Director [~~Commissioner~~] shall collect the following fees:

(1) Effective January 1, 2022:

(A) a fee of $560 for an application, reinstatement, or timely renewal of a certified general appraiser license;

(B) a fee of $460 for an application, reinstatement, or timely renewal of a certified residential appraiser license;

(C) a fee of $400 for an application, reinstatement, or timely renewal of a licensed residential appraiser license; and

(D) a fee of $250 for an application, reinstatement, or timely renewal of an appraiser trainee license;

(2) a fee equal to 1-1/2 times the timely renewal fee for the late renewal of a license within 90 days of expiration;

(3) a fee equal to two times the timely renewal fee for the late renewal of a license more than 90 days but less than six months after expiration;

(4) a fee of $250 for nonresident license;

(5) the national registry fee in the amount charged by the Appraisal Subcommittee;

(6) an application fee for licensure by reciprocity in the same amount as the fee charged for a similar license issued to a Texas resident;

(7) a fee of $200 for an extension of time to complete required continuing education;

(8) a fee of $50 to request a return to active status;

(9) a fee of $50 for evaluation of an applicant's fitness;

(10) an examination fee as provided in the Board's current examination administration agreement;

(11) a fee of $100 to request a voluntary appraiser experience review;

(12) the fee charged by the Federal Bureau of Investigation, the Texas Department of Public Safety or other authorized entity for fingerprinting or other service for a national or state criminal history check in connection with a license application;

(13) a base fee of $50 for approval of an ACE course;

(14) a content review fee of $5 per classroom hour for approval of an ACE course;

(15) a course approval fee of $50 for approval of an ACE course currently approved by the AQB or another state appraiser regulatory agency;

(16) a one-time offering course approval fee of $25 for approval of a 2-hour ACE course to be offered in-person only one time;

(17) a fee of $200 for an application for an ACE provider approval or subsequent approval; and

(18) any fee required by the Department of Information Resources for establishing and maintaining online applications or as a subscription or convenience fee for use of an online payment system.

(b) Fees must be submitted in U.S. funds payable to the order of the Texas Appraiser Licensing and Certification Board. Fees are not refundable once an application has been accepted for filing. Persons who have submitted a payment that has been dishonored, and who have not made good on that payment within 30 days, for whatever reason, must submit all replacement fees in the form of a cashier's check, money order, or online credit card payment.

(c) Licensing fees are waived for members of the Board staff who must maintain a license for employment with the Board only and are not also using the license for outside employment.

§153.6. Military Service Member, Veteran, or Military Spouse Applications.

(a) Definitions.

(1) "Military service member" means a person who is on current full-time military service in the armed forces of the United States or active duty military service as a member of the Texas military forces, as defined by Section 437.001, Government Code, or similar military service of another state.

(2) "Military spouse" means a person who is married to a military service member.

(3) "Veteran" means a person who has served as a military service member and who was discharged or released from active duty.

(b) The purpose of this section is to establish procedures authorized or required by Texas Occupations Code Chapter 55 and is not intended to modify or alter rights or legal requirements that may be provided under federal law, Chapter 1103 of the Occupations Code, or requirements established by the AQB.

(c) Expedited application.

(1) The Board will process an application for a military service member, veteran, or military spouse on an expedited basis.

(2) If an applicant under this section holds a current license issued by another state or jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license or certification issued in this state, the Board will issue the license not later than the 30th day after receipt of the application.

(d) Waiver of fees.

(1) The Board will waive the license application fee and examination fees for an applicant who is:

(A) a military service member or veteran whose military service, training, or education substantially meets all of the requirements for a license; and

(B) a military service member, veteran, or military spouse who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the same license in this state.

(2) The executive director or his or her designee may waive the application fee of a military service member, veteran, or military spouse who is not currently licensed, but within the five years preceding the application date held a license in this state and applies for reinstatement in accordance with subsection (f)(2) of this section.

(e) Credit for military experience.

(1) For an applicant who is a military service member or veteran, the Board shall credit any verifiable military service, training, or education toward the licensing requirements, other than an examination requirement.

(2) The Board shall award credit under this subsection consistent with the criteria adopted by the AQB and any exceptions to those criteria as authorized by the AQB.

(3) This subsection does not apply to an applicant who holds a restricted license issued by another jurisdiction

(f) Reciprocity and reinstatement.

(1) For a military service member, veteran, or military spouse who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license in this state may apply by submitting an application for license by reciprocity and any required supplemental documents for military service members, military veterans, or military spouses.

(2) For a military service member, veteran, or military spouse who is not currently licensed, but within the five years preceding the application date held a license in this state may submit an application for reinstatement and any required supplemental documents for military service members, military veterans, or military spouses.

(3) For a military service member and military spouse who wants to practice in Texas in accordance with 55.0041, Occupations Code:

(A) the Board will issue a license by reciprocity if:

(i) the applicant submits:

(I) notice to the Board of the applicant's intent to practice in Texas by submitting an application for reciprocity and any supplemental document for military service members or military spouses; and

(II) a copy of the member's military identification card; and

(ii) no later than 30 days upon receipt of the documents required under subparagraph (A) of this paragraph, the Board verifies that the member or spouse is currently licensed and in good standing with the other state or jurisdiction.

(B) a person authorized to practice in this state under this subsection must comply with all other laws and regulations applicable to the license.

(C) The event of a divorce or similar event that affects a person's status as a military spouse shall not affect the validity of a license issued under this subsection.

§153.9. Applications.

(a) A person desiring to be licensed as an appraiser or appraiser trainee shall file an application using forms prescribed by the Board or the Board's online application system, if available. The Board may decline to accept for filing an application that is materially incomplete or that is not accompanied by the appropriate fee. Except as provided by the Act, the Board may not grant a license to an applicant who has not:

(1) paid the required fees;

(2) submitted a complete and legible set of fingerprints as required in §153.12 of this title (relating to Criminal History Checks);

(3) satisfied any experience and education requirements established by the Act, Board rules, and the AQB;

(4) successfully completed any qualifying examination prescribed by the Board;

(5) provided all supporting documentation or information requested by the Board in connection with the application;

(6) satisfied all unresolved enforcement matters and requirements with the Board; and

(7) met any additional or superseding requirements established by the Appraisal Qualifications Board.

(b) Termination of application. An application is subject to no further evaluation or processing if within one year from the date an application is filed, an applicant fails to satisfy:

(1) a current education, experience or exam requirement; or

(2) the fingerprint and criminal history check requirements in §153.12 of this title.

(c) A license is valid for the term for which it is issued by the Board unless suspended or revoked for cause and unless revoked, may be renewed in accordance with the requirements of §153.17 of this title (relating to License Renewal).

(d) The Board may deny a license to an applicant who fails to satisfy the Board as to the applicant's honesty, trustworthiness, and integrity.

(e) The Board may deny a license to an applicant who submits incomplete, false, or misleading information on the application or supporting documentation.

(f) When an application is denied by the Board, no subsequent application will be accepted within two years after the date of the Board's notice of denial as required in §157.7 of this title (Denial of a License, Renewal or Reinstatement; Adverse Action Against a License Holder).

~~[(g) The following terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:]~~

~~[(1) "Military service member" means a person who is on current full-time military service in the armed forces of the United States or active duty military service as a member of the Texas military forces, as defined by Section 437.001, Government Code, or similar military service of another state.]~~

~~[(2) "Military spouse" means a person who is married to a military service member.]~~

~~[(3) "Veteran" means a person who has served as a military service member and who was discharged or released from active duty.]~~

~~[(h) This subsection applies to an applicant who is a military service member, veteran, or military spouse.]~~

~~[(1) The Board will process an application under this subsection on an expedited basis.]~~

~~[(2) If an applicant under this subsection holds a current license issued by another state or jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license issued in this state, the Board will:]~~

~~[(A) Waive the license application and examination fees; and]~~

~~[(B) Issue the license as soon as practicable after receipt of the application.]~~

~~[(3) The Board may reinstate a license previously held by an applicant, if the applicant satisfies the requirements in §153.16 of this chapter (relating to License Reinstatement).]~~

~~[(4) The Board may allow an applicant to demonstrate competency by alternative methods in order to meet the requirements for obtaining a particular license issued by the Board. For purposes of this subsection, the standard method of demonstrating competency is the specific examination, education, and/or experience required to obtain a particular license.]~~

~~[(5) In lieu of the standard method(s) of demonstrating competency for a particular license and based on the applicant's circumstances, the alternative methods for demonstrating competency may include any combination of the following as determined by the Board:]~~

~~[(A) education;]~~

~~[(B) continuing education;]~~

~~[(C) examinations (written and/or practical);]~~

~~[(D) letters of good standing;]~~

~~[(E) letters of recommendation;]~~

~~[(F) work experience; or]~~

~~[(G) other methods required by the commissioner.]~~

~~[(i) This subsection applies to an applicant who is a military service member or veteran.]~~

~~[(1) The Board will waive the license application and examination fees for an applicant under this subsection whose military~~

service, training or education substantially meets all of the requirements for a license.]

[(2) The Board will credit any verifiable military service, training or education obtained by an applicant that is relevant to a license toward the requirements of a license.]

[(3) This subsection does not apply to an applicant who holds a restricted license issued by another jurisdiction.]

[(4) The applicant must pass the qualifying examination, if any, for the type of license sought.]

[(5) The Board will evaluate applications filed under this subsection consistent with the criteria adopted by the AQB and any exceptions to those criteria as authorized by the AQB.]

[(j) This subsection applies to an applicant who is a military spouse. The Board will waive the license application fee and issue a license by reciprocity to an applicant who wants to practice in Texas in accordance with 55.0041, Occupations Code, if:]

[(1) the applicant submits:]

[(A) an application to practice in Texas on a form approved by the Board;]

[(B) proof of the applicant's Texas residency; and]

[(C) a copy of the applicant's military identification card; and]

[(2) the Board verifies that the military spouse is currently licensed and in good standing with the other state or jurisdiction.]

[(k) Except as otherwise provided in this section, a person applying for license under subsection (h), (i) or (j) of this section must also:]

[(1) submit the Board's approved application form for the type of license sought;]

[(2) pay the required fee for that application; and]

[(3) submit the supplemental form approved by the Board applicable to subsection (h), (i) or (j) of this section.]

[(l) The commissioner may waive any prerequisite to obtaining a license for an applicant as allowed by the AQB.]

§153.15. Experience Required for Licensing.

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

(d) Public Information Act. All information and documentation submitted to the Board in support of an application for license or application to upgrade an existing license, including an applicant's experience log, experience certification [affidavit], copies of appraisals and work files, may be subject to disclosure under the Public Information Act, Chapter 552, Texas Government Code, unless an exception to disclosure applies.

(e) Applicants claiming experience credit under subsection (b)(1) - (4) of this section must submit a Board-approved Appraisal Experience Log that lists each appraisal assignment or other work for which the applicant is seeking credit and an Appraisal Experience Certification [Affidavit]. The Experience Log must include:

[(1) The Experience Log must include:]

(1) [(A)] the full amount of experience hours required for the license type sought, as required by the AQB;

(2) [(B)] the required number of hours of experience required for each property type as required by the AQB; and

(3) [(C)] the minimum length of time over which the experience is claimed, as required by the AQB.

[(2) The Experience Log must also include Recent Experience.]

[(A) The Log must include a minimum of 10 appraisal reports representing at least 10 percent of the hours and property type of experience required for each license category and for which an applicant seeks experience credit that have been performed within 5 years before the date an application is accepted for filing by the Board.]

[(B) This requirement does not eliminate an applicant's responsibility to comply with the 5-year records retention requirement in USPAP.]

(f) The Board may grant experience credit for work listed on an applicant's Appraisal Experience Log that:

(1) complies with the USPAP edition in effect at the time of the appraisal;

(2) is verifiable and supported by:

(A) work files in which the applicant is identified as participating in the appraisal process; or

(B) appraisal reports that:

(i) name the applicant in the certification as providing significant real property appraisal assistance; or

(ii) the applicant has signed;

(3) was performed when the applicant had legal authority to do so; and

(4) complies with the acceptable categories of experience established by the AQB and stated in subsection (b) of this section.

(g) Consistent with this chapter, upon review of the applicant's real estate appraisal experience, the Board may grant a license or certification contingent upon completion of additional education, experience or mentorship.

(h) Upon review of an applicant's Appraisal Experience Log, the Board may, at its sole discretion, grant experience credit for the hours shown on an applicant's log even if some work files have been destroyed because of the 5-year records retention period in USPAP has passed.

(i) The Board may grant experience credit for applicants claiming experience credit under subsection (b)(5) of this section that submit a valid certificate of completion from an AQB approved PAREA program.

(j) The Board may, at its sole discretion, accept evidence other than an applicant's Appraisal Experience Log and Appraisal Experience Certification [Affidavit] to demonstrate experience claimed by an applicant.

(k) The Board must verify the experience claimed by each applicant generally complies with USPAP.

(1) Verification may be obtained by:

(A) requesting copies of appraisals and all supporting documentation, including the work files; and

(B) engaging in other investigative research determined to be appropriate by the Board.

(2) If the Board requests documentation from an applicant to verify experience claimed by an applicant, the applicant has 60 days to provide the requested documentation to the Board.

(A) In response to an initial request for documentation to verify experience, an applicant must submit a copy of the relevant appraisals, but is not required to submit the associated work files at that time.

(B) If in the course of reviewing the submitted appraisals, the Board determines additional documentation is necessary to verify general compliance with USPAP, the Board may make additional requests for supporting documentation.

(3) Experience involved in pending litigation.

(A) The Board will not request work files from an applicant to verify claimed experience if the appraisal assignments are identified on the experience log submitted to the Board as being involved in pending litigation.

(B) If all appraisal assignments listed on an applicant's experience log are identified as being involved in pending litigation, the Board may audit any of the appraisal assignments on the applicant's experience log, regardless of litigation status, with the written consent of the applicant and the applicant's supervisory appraiser.

(4) Failure to comply with a request for documentation to verify experience, or submission of experience that is found not to comply with the requirements for experience credit, may result in denial of a license application.

(5) A license holder who applies to upgrade an existing license and submits experience that does not comply with USPAP may also be subject to disciplinary action up to and including revocation.

(l) Unless prohibited by Tex. Occ. Code §1103.460, applicable confidentiality statutes, privacy laws, or other legal requirements, or in matters involving alleged fraud, Board staff shall use reasonable means to inform supervisory appraisers of Board communications with their respective trainees.

§153.20. Guidelines for Disciplinary Action, Denial of License; Probationary License.

(a) The Board may take disciplinary action or deny issuing a license to an applicant at any time the Board determines that the applicant or license holder:

(1) disregards or violates a provision of the Act or the Board rules;

(2) is convicted of a felony;

(3) fails to notify the Board not later than the 30th day after the date of the final conviction if the person, in a court of this or another state or in a federal court, has been convicted of or entered a plea of guilty or nolo contendere to a felony or a criminal offense involving fraud or moral turpitude;

(4) fails to notify the Board not later than the 30th day after the date of incarceration if the person, in this or another state, has been incarcerated for a criminal offense involving fraud or moral turpitude;

(5) fails to notify the Board not later than the 30th day after the date disciplinary action becomes final against the person with regard to any occupational license the person holds in Texas or any other jurisdiction;

(6) fails to comply with the USPAP edition in effect at the time of the appraiser service;

(7) acts or holds himself or herself or any other person out as a person licensed under the Act or by another jurisdiction when not so licensed;

(8) accepts payment for appraiser services but fails to deliver the agreed service in the agreed upon manner;

(9) refuses to refund payment received for appraiser services when he or she has failed to deliver the appraiser service in the agreed upon manner;

(10) accepts payment for services contingent upon a minimum, maximum, or pre-agreed value estimate except when such action would not interfere with the appraiser's obligation to provide an independent and impartial opinion of value and full disclosure of the contingency is made in writing to the client;

(11) offers to perform appraiser services or agrees to perform such services when employment to perform such services is contingent upon a minimum, maximum, or pre-agreed value estimate except when such action would not interfere with the appraiser's obligation to provide an independent and impartial opinion of value and full disclosure of the contingency is made in writing to the client;

(12) makes a material misrepresentation or omission of material fact;

(13) has had a license as an appraiser revoked, suspended, or otherwise acted against by any other jurisdiction for an act which is a crime under Texas law;

(14) procures, or attempts to procure, a license by making false, misleading, or fraudulent representation;

(15) fails to actively, personally, and diligently supervise an appraiser trainee or any person not licensed under the Act who assists the license holder in performing real estate appraiser services;

(16) has had a final civil judgment entered against him or her on any one of the following grounds:

(A) fraud;

(B) intentional or knowing misrepresentation;

(C) grossly negligent misrepresentation in the performance of appraiser services;

(17) fails to make good on a payment issued to the Board within thirty days after the Board has mailed a request for payment by certified mail to the license holder's last known business address as reflected by the Board's records;

(18) knowingly or willfully engages in false or misleading conduct or advertising with respect to client solicitation;

(19) misuses or misrepresents the type of classification or category of license number;

(20) engages in any other act relating to the business of appraising that the Board, in its discretion, believes warrants a suspension or revocation;

(21) uses any title, designation, initial or other insignia or identification that would mislead the public as to that person's credentials, qualifications, competency, or ability to perform licensed appraisal services;

(22) fails to comply with an agreed order or a final order of the Board;

(23) fails to answer all inquiries concerning matters under the jurisdiction of the Board within 20 days of notice to said individual's address of record, or within the time period allowed if granted a written extension by the Board; or

(24) after conducting reasonable due diligence, knowingly accepts an assignment from an appraisal management company that is not exempt from registration under the Act which:

(A) has not registered with the Board; or

(B) is registered with the Board but has not placed the appraiser on its panel of appraisers maintained with the Board; or

(25) fails to approve, sign, and deliver to their appraiser trainee the appraisal experience log and certification [~~affidavit~~] required by §153.15[~~§153.15(f)(1) and §153.17(c)(1)~~] of this title for all experience actually and lawfully acquired by the trainee while under the appraiser's sponsorship.

(b) - (k) (No change.)

§153.21. Appraiser Trainee and Supervisory Appraisers.

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

(d) Maintaining eligibility to act as an appraiser trainee.

(1) Appraiser trainees must maintain an appraisal log and appraisal experience certifications [~~affidavits~~] on forms approved by the Board, for the license period being renewed. It is the responsibility of both the appraiser trainee and the supervisory appraiser to ensure the appraisal log is accurate, complete and signed by both parties at least quarterly or upon change in supervisory appraiser. The appraiser trainee will promptly provide copies of the experience logs and certifications [~~affidavits~~] to the Board upon request.

(2) An appraiser trainee must complete an approved Appraiser Trainee/Supervisory Appraiser course within four years before the expiration date of the appraiser trainee's current license and provide proof of completion to the Board.

(3) If an appraiser trainee has not provided proof of course completion at the time of renewal, but has met all other requirements for renewing the license:

(A) the Board will renew the appraiser trainee's license on inactive status;

(B) the appraiser trainee will no longer be eligible to perform appraisals or appraisal services; and

(C) the appraiser trainee's relationship with any supervisory appraiser will be terminated.

(4) An appraiser trainee may return the appraiser trainee's license to active status by:

(A) completing the course required by this section;

(B) submitting proof of course completion to the Board;

(C) submitting an application to return to active status, including an application to add a supervisory appraiser; and

(D) paying any required fees.

(e) Duties of the supervisory appraiser.

(1) Supervisory appraisers are responsible to the public and to the Board for the conduct of the appraiser trainee under the Act.

(2) The supervisory appraiser assumes all the duties, responsibilities, and obligations of a supervisory appraiser as specified in these rules and must diligently supervise the appraiser trainee. Diligent supervision includes, but is not limited to, the following:

(A) direct supervision and training as necessary;

(B) ongoing training and supervision as necessary after the supervisory appraiser determines that the appraiser trainee no longer requires direct supervision;

(C) communication with and accessibility to the appraiser trainee; and

(D) review and quality control of the appraiser trainee's work.

(3) Supervisory appraisers must approve and sign the appraiser trainee's appraisal log [~~and experience affidavit~~] at least quarterly and provide appraiser trainees with access to any appraisals and work files completed under the supervisory appraiser.

(4) After notice and hearing, the Board may reprimand a supervisory appraiser or may suspend or revoke a supervisory appraiser's license based on conduct by the appraiser trainee constituting a violation of the Act or Board rules.

(f) Termination of supervision.

(1) Supervision may be terminated by the supervisory appraiser or the appraiser trainee.

(2) If supervision is terminated, the terminating party must:

(A) immediately notify the Board on a form approved by the Board; and

(B) notify the non-terminating party in writing no later than the 10th day after the date of termination; and

(C) pay any applicable fees no later than the 10th day after the date of termination.

(3) If an appraiser trainee is no longer under the supervision of a supervisory appraiser:

(A) the appraiser trainee may no longer perform the duties of an appraiser trainee; and

(B) is not eligible to perform those duties until:

(i) an application to supervise the trainee has been filed;

(ii) any required fees have been paid; and

(iii) the Board has approved the application.

(g) Course approval.

(1) To obtain Board approval of an Appraiser Trainee/Supervisory Appraiser course, a course provider must:

(A) submit form ATS-0, Appraiser Trainee/Supervisory Appraiser Course Approval, adopted herein by reference; and

(B) satisfy the Board that all required content set out in form ATS-0 is adequately covered.

(2) Approval of an Appraiser Trainee/Supervisory Appraiser course shall expire two years from the date of Board approval.

(3) An Appraiser Trainee/Supervisory Appraiser course may be delivered through:

(A) classroom delivery; or

(B) synchronous, asynchronous or hybrid distance education delivery. The course design and delivery mechanism for asynchronous distance education courses, including the asynchronous portion of hybrid courses must be approved by an AQB approved organization.

(h) ACE credit.

(1) Supervisory appraisers who complete the Appraiser Trainee/Supervisory Appraiser course may receive ACE credit for the course.

(2) Appraiser Trainees may not receive qualifying or ACE credit for completing the Appraiser Trainee/Supervisory Appraiser course.

§153.24. Complaint Processing.

(a) Receipt of a Complaint Intake Form by the Board does not constitute the filing of a formal complaint by the Board against the individual named on the Complaint Intake Form. Upon receipt of a signed Complaint Intake Form, staff shall:

(1) assign the complaint a case number in the complaint tracking system; and

(2) send written acknowledgement of receipt to the Complainant.

(b) Priority of complaint investigations. The Board prioritizes and investigates complaints based on the risk of harm each complaint poses to the public. Complaints that pose a high risk of public harm include violations of the Act, Board rules, or USPAP that:

(1) evidence serious deficiencies, including:

(A) Fraud;

(B) Identity theft;

(C) Unlicensed activity;

(D) Ethical violations;

(E) Failure to properly supervise an appraiser trainee; or

(F) Other conduct determined by the Board that poses a significant risk of public harm; and

(2) were done:

(A) with knowledge;

(B) deliberately;

(C) willfully; or

(D) with gross negligence.

(c) The Board or the Executive Director [~~Commissioner~~] may delegate to staff the duty to dismiss complaints. The complaint shall be dismissed with no further processing if the staff determines at any time that:

(1) the complaint is not within the Board's jurisdiction;

(2) no violation exists; or

(3) an allegation or formal complaint is inappropriate or without merit.

(d) A determination that an allegation or complaint is inappropriate or without merit includes a determination that the allegation or complaint:

(1) was made in bad faith;

(2) filed for the purpose of harassment;

(3) to gain a competitive or economic advantage; or

(4) lacks sufficient basis in fact or evidence.

(e) Staff shall conduct a preliminary inquiry to determine if dismissal is required under subsection (d) of this section.

(f) A complaint alleging mortgage fraud or in which mortgage fraud is suspected:

(1) may be investigated covertly; and

(2) shall be referred to the appropriate prosecutorial authorities.

(g) Staff may request additional information from any person, if necessary, to determine how to proceed with the complaint.

(h) As part of a preliminary investigative review, a copy of the Complaint Intake Form and all supporting documentation shall be sent to the Respondent unless the complaint qualifies for covert investigation and the TALCB Division deems covert investigation appropriate.

(i) The Board will:

(1) protect the complainant's identity to the extent possible by excluding the complainant's identifying information from a complaint notice sent to a respondent.

(2) periodically send written notice to the complainant and each respondent of the status of the complaint until final disposition. For purposes of this subsection, "periodically" means at least once every 90 days.

(j) The Respondent shall submit a response within 20 days of receiving a copy of the Complaint Intake Form. The 20-day period may be extended for good cause upon request in writing or by e-mail. The response shall include the following:

(1) a copy of the appraisal report that is the subject of the complaint;

(2) a copy of the Respondent's work file associated with the appraisal(s) listed in the complaint, with the following signed statement attached to the work file(s): I SWEAR AND AFFIRM THAT EXCEPT AS SPECIFICALLY SET FORTH HEREIN, THE COPY OF EACH AND EVERY APPRAISAL WORK FILE ACCOMPANYING THIS RESPONSE IS A TRUE AND CORRECT COPY OF THE ACTUAL WORK FILE, AND NOTHING HAS BEEN ADDED TO OR REMOVED FROM THIS WORK FILE OR ALTERED AFTER PLACEMENT IN THE WORK FILE.(SIGNATURE OF RESPONDENT);

(3) a narrative response to the complaint, addressing each and every item in the complaint;

(4) a list of any and all persons known to the Respondent to have actual knowledge of any of the matters made the subject of the complaint and, if in the Respondent's possession, contact information;

(5) any documentation that supports Respondent's position that was not in the work file, as long as it is conspicuously labeled as non-work file documentation and kept separate from the work file. The Respondent may also address other matters not raised in the complaint that the Respondent believes need explanation; and

(6) a signed, dated and completed copy of any questionnaire sent by Board staff.

(k) Staff will evaluate the complaint within three months after receipt of the response from Respondent to determine whether sufficient evidence of a potential violation of the Act, Board rules, or the USPAP exists to pursue investigation and possible formal disciplinary action. If the staff determines that there is no jurisdiction, no violation exists, there is insufficient evidence to prove a violation, or the complaint warrants dismissal, including contingent dismissal, under subsection (m) of this section, the complaint shall be dismissed with no further processing.

(l) A formal complaint will be opened and investigated by a staff investigator or peer investigative committee, as appropriate, if:

(1) the informal complaint is not dismissed under subsection (i) of this section; or

(2) staff opens a formal complaint on its own motion.

(m) Written notice that a formal complaint has been opened will be sent to the Complainant and Respondent.

(n) The staff investigator assigned to investigate a formal complaint shall prepare a report detailing its findings on a form approved by the Board.

(o) The Board may order a person regulated by the Board to refund the amount paid by a consumer to the person for a service regulated by the Board.

(p) Agreed resolutions of complaint matters pursuant to Texas Occupations Code §1103.458 or §1103.459 must be signed by:

(1) the Board Chair or if the Board Chair is unavailable or must recuse him or herself, the Board Chair's designee, whom shall be (in priority order) the Board Vice Chair, the Board Secretary, or another Board member;

(2) Respondent;

(3) a representative of the TALCB Division; and

(4) the Executive Director [~~Commissioner~~] or his or her designee.

§153.28. Peer Investigative Committee Review.

(a) - (g) (No change.)

(h) The Board delegates its authority to receive the written findings or determination of the Peer Investigative Committee to the Executive Director [~~Commissioner~~].

(i) No more than five business days after the review of the investigator's findings, the Board members of Committee shall render a determination agreeing or disagreeing with the investigator's finding of alleged violations and submit a copy of their determination to the Executive Director [~~Commissioner~~] or his or her designee on behalf of the Board. The determination shall serve as a recommendation to the TALCB Division as to whether to pursue adverse action against a respondent. A copy of the Board members' determination shall be included in the complaint file. The Board Chair may request statistical data related to the investigator's recommendations, Board members' determination, and adverse action pursued by the Division.

(j) Board members who participate in the Peer Investigative Committee Review of a complaint are disqualified from participating in any future adjudication of the same complaint.

§153.241. Sanctions Guidelines.

In determining the proper disposition of a formal complaint pending as of or filed after the effective date of this rule, and subject to the maximum penalties authorized under Texas Occupations Code §1103.552, staff, the administrative law judge in a contested case hearing, and the Board shall consider the following sanctions guidelines and list of non-exclusive factors as demonstrated by the evidence in the record of a contested case proceeding.

(1) For the purposes of these sanctions guidelines:

(A) A person will not be considered to have had a prior warning letter, contingent dismissal or discipline if that prior warning letter, contingent dismissal or discipline was issued by the Board more than seven years before the current alleged violation occurred;

(B) Prior discipline is defined as any sanction (including administrative penalty) received under a Board final or agreed order;

(C) A violation refers to a violation of any provision of the Act, Board rules or USPAP;

(D) "Minor deficiencies" is defined as violations of the Act, Board rules or USPAP which do not impact the credibility of the appraisal assignment results, the assignment results themselves and do not impact the license holder's honesty, integrity, or trustworthiness to the Board, the license holder's clients, or intended users of the appraisal service provided;

(E) "Serious deficiencies" is defined as violations of the Act, Board rules or USPAP that:

(i) impact the credibility of the appraisal assignment results, the assignment results themselves or do impact the license holder's honesty, trustworthiness or integrity to the Board, the license holder's clients, or intended users of the appraisal service provided; or

(ii) are deficiencies done with knowledge, deliberate or willful disregard, or gross negligence that would otherwise be classified as "minor deficiencies";

(F) "Remedial measures" include, but are not limited to, training, mentorship, education, reexamination, or any combination thereof; and

(G) The terms of a contingent dismissal agreement will be in writing and agreed to by all parties. Staff may dismiss the complaint with a non-disciplinary warning upon written agreement that the Respondent will complete all remedial measures within the agreed-upon timeframe. If the Respondent fails to meet the deadlines in the agreement, the Respondent's license or certification will be automatically set to inactive status until the Respondent completes the remedial measures set forth in the agreement.

(2) List of factors to consider in determining proper disposition of a formal complaint:

(A) Whether the Respondent has previously received a warning letter or contingent dismissal and, if so, the similarity of facts or violations in that previous complaint to the facts or violations in the instant complaint matter;

(B) Whether the Respondent has previously been disciplined;

(C) If previously disciplined, the nature of the prior discipline, including:

(i) Whether prior discipline concerned the same or similar violations or facts;

(ii) The nature of the disciplinary sanctions previously imposed; and

(iii) The length of time since the prior discipline;

(D) The difficulty or complexity of the appraisal assignment(s) at issue;

(E) Whether the violations found were of a negligent, grossly negligent or a knowing or intentional nature;

(F) Whether the violations found involved a single appraisal/instance of conduct or multiple appraisals/instances of conduct;

(G) To whom were the appraisal report(s) or the conduct directed, with greater weight placed upon appraisal report(s) or conduct directed at:

(i) A financial institution or their agent, contemplating a lending decision based, in part, on the appraisal report(s) or conduct at issue;

(ii) The Board;

(iii) A matter which is actively being litigated in a state or federal court or before a regulatory body of a state or the federal government;

(iv) Another government agency or government sponsored entity, including, but not limited to, the United States Department of Veteran's Administration, the United States Department of Housing and Urban Development, the State of Texas, Fannie Mae, and Freddie Mac; or

(v) A consumer contemplating a real property transaction involving the consumer's principal residence;

(H) Whether Respondent's violations caused any harm, including financial harm, and the extent or amount of such harm;

(I) Whether Respondent acknowledged or admitted to violations and cooperated with the Board's investigation prior to any contested case hearing;

(J) The level of experience Respondent had in the appraisal profession at the time of the violations, including:

(i) The level of appraisal credential Respondent held;

(ii) The length of time Respondent had been an appraiser;

(iii) The nature and extent of any education Respondent had received related to the areas in which violations were found; and

(iv) Any other real estate or appraisal related background or experience Respondent had;

(K) Whether Respondent can improve appraisal skills and reports through the use of remedial measures;

(3) The following sanctions guidelines shall be employed in conjunction with the factors listed in paragraph (2) of this rule to assist in reaching the proper disposition of a formal complaint:

(A) 1st Time Discipline Level 1--violations of the Act, Board rules, or USPAP which evidence minor deficiencies will result in one of the following outcomes:

(i) Dismissal;

(ii) Dismissal with non-disciplinary warning letter; or

(iii) Contingent dismissal with remedial measures.

(B) 1st Time Discipline Level 2--violations of the Act, Board rules, or USPAP which evidence serious deficiencies will result in one of the following outcomes:

(i) Contingent dismissal with remedial measures; or

(ii) A final order which imposes one or more of the following:

(I) Remedial measures;

(II) Required promulgation, adoption and implementation of written, preventative policies or procedures addressing specific areas of professional practice;

(III) A probationary period with provisions for monitoring the Respondent's practice;

(IV) Restrictions on the Respondent's ability to sponsor any appraiser trainees;

(V) Restrictions on the scope of practice the Respondent is allowed to engage in for a specified time period or until specified conditions are satisfied; or

(VI) Up to $250 in administrative penalties per act or omission which constitutes a violation(s) of the Act, Board rules, or USPAP, not to exceed $3,000 in the aggregate.

(C) 1st Time Discipline Level 3--violations of the Act, Board rules, or USPAP which evidence serious deficiencies and were done with knowledge, deliberately, willfully, or with gross negligence will result in a final order which imposes one or more of the following:

(i) A period of suspension;

(ii) A revocation;

(iii) Remedial measures;

(iv) Required promulgation, adoption and implementation of written, preventative policies or procedures addressing specific areas of professional practice;

(v) A probationary period with provisions for monitoring the Respondent's practice;

(vi) Restrictions on the Respondent's ability to sponsor any appraiser trainees;

(vii) Restrictions on the scope of practice the Respondent is allowed to engage in for a specified time period or until specified conditions are satisfied; or

(viii) Up to $1,500 in administrative penalties per act or omission which constitutes a violation(s) of the Act, Board rules, or USPAP, up to the maximum $5,000 statutory limit per complaint matter.

(D) 2nd Time Discipline Level 1--violations of the Act, Board rules, or USPAP which evidence minor deficiencies will result in one of the following outcomes:

(i) Dismissal;

(ii) Dismissal with non-disciplinary warning letter;

(iii) Contingent dismissal with remedial measures; or

(iv) A final order which imposes one or more of the following:

(I) Remedial measures;

(II) Required promulgation, adoption and implementation of written, preventative policies or procedures addressing specific areas of professional practice;

(III) A probationary period with provisions for monitoring the Respondent's practice;

(IV) Restrictions on the Respondent's ability to sponsor any appraiser trainees;

(V) Restrictions on the scope of practice the Respondent is allowed to engage in for a specified time period or until specified conditions are satisfied; or

(VI) Up to $250 in administrative penalties per act or omission which constitutes a violation(s) of the Act, Board rules,

or USPAP, up to the maximum $5,000 statutory limit per complaint matter.

(E) 2nd Time Discipline Level 2--violations of the Act, Board rules, or USPAP which evidence serious deficiencies will result in a final order which imposes one or more of the following:

(i) A period of suspension;

(ii) A revocation;

(iii) Remedial measures;

(iv) Required promulgation, adoption and implementation of written, preventative policies or procedures addressing specific areas of professional practice;

(v) A probationary period with provisions for monitoring the Respondent's practice;

(vi) Restrictions on the Respondent's ability to sponsor any appraiser trainees;

(vii) Restrictions on the scope of practice the Respondent is allowed to engage in for a specified time period or until specified conditions are satisfied; or

(viii) Up to $1,500 in administrative penalties per act or omission which constitutes a violation(s) of the Act, Board rules, or USPAP, up to the maximum $5,000 statutory limit per complaint matter.

(F) 2nd Time Discipline Level 3--violations of the Act, Board rules, or USPAP which evidence serious deficiencies and were done with knowledge, deliberately, willfully, or with gross negligence will result in a final order which imposes one or more of the following:

(i) A period of suspension;

(ii) A revocation;

(iii) Remedial measures;

(iv) Required promulgation, adoption and implementation of written, preventative policies or procedures addressing specific areas of professional practice;

(v) A probationary period with provisions for monitoring the Respondent's practice;

(vi) Restrictions on the Respondent's ability to sponsor any appraiser trainees;

(vii) Restrictions on the scope of practice the Respondent is allowed to engage in for a specified time period or until specified conditions are satisfied; or

(viii) Up to $1,500 in administrative penalties per act or omission which constitutes a violation(s) of the Act, Board rules, or USPAP, up to the maximum $5,000 statutory limit per complaint matter.

(G) 3rd Time Discipline Level 1--violations of the Act, Board rules, or USPAP which evidence minor deficiencies will result in a final order which imposes one or more of the following:

(i) A period of suspension;

(ii) A revocation;

(iii) Remedial measures;

(iv) Required promulgation, adoption and implementation of written, preventative policies or procedures addressing specific areas of professional practice;

(v) A probationary period with provisions for monitoring the Respondent's practice;

(vi) Restrictions on the Respondent's ability to sponsor any appraiser trainees;

(vii) Restrictions on the scope of practice the Respondent is allowed to engage in for a specified time period or until specified conditions are satisfied; or

(viii) $1,000 to $1,500 in administrative penalties per act or omission which constitutes a violation(s) of the Act, Board rules, or USPAP, up to the maximum $5,000 statutory limit per complaint matter.

(H) 3rd Time Discipline Level 2--violations of the Act, Board rules, or USPAP which evidence serious deficiencies will result in a final order which imposes one or more of the following:

(i) A period of suspension;

(ii) A revocation;

(iii) Remedial measures;

(iv) Required promulgation, adoption and implementation of written, preventative policies or procedures addressing specific areas of professional practice;

(v) A probationary period with provisions for monitoring the Respondent's practice;

(vi) Restrictions on the Respondent's ability to sponsor any appraiser trainees;

(vii) Restrictions on the scope of practice the Respondent is allowed to engage in for a specified time period or until specified conditions are satisfied; or

(viii) $1,500 in administrative penalties per act or omission which constitutes a violation(s) of the Act, Board rules, or USPAP, up to the maximum $5,000 statutory limit per complaint matter.

(I) 3rd Time Discipline Level 3--violations of the Act, Board Rules, or USPAP which evidence serious deficiencies and were done with knowledge, deliberately, willfully, or with gross negligence will result in a final order which imposes one or more of the following:

(i) A revocation; or

(ii) $1,500 in administrative penalties per act or omission which constitutes a violation(s) of the Act, Board rules, or USPAP, up to the maximum $5,000 statutory limit per complaint matter.

(J) 4th Time Discipline--violations of the Act, Board rules, or USPAP will result in a final order which imposes one or more of the following:

(i) A revocation; and

(ii) $1,500 in administrative penalties per act or omission which constitutes a violation(s) of USPAP, Board rules, or the Act, up to the maximum $5,000 statutory limit per complaint matter.

(K) Unlicensed appraisal activity will result in a final order which imposes a $1,500 in administrative penalties per unlicensed appraisal activity, up to the maximum $5,000 statutory limit per complaint matter.

(4) In addition, staff may recommend any or all of the following:

(A) reducing or increasing the recommended sanction or administrative penalty for a complaint based on documented factors that support the deviation, including but not limited to those factors articulated under paragraph (2) of this subsection [~~rule~~];

(B) probating all or a portion of any sanction or administrative penalty for a period not to exceed five years;

(C) requiring additional reporting requirements; and

(D) such other recommendations, with documented support, as will achieve the purposes of the Act, Board rules, or USPAP.

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

Filed with the Office of the Secretary of State on August 21, 2023.

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Kathleen Santos
General Counsel
Texas Appraiser Licensing and Certification Board
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For further information, please call: (512) 936-3652

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CHAPTER 157. RULES RELATING TO PRACTICE AND PROCEDURE
SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §157.6

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to 22 TAC §157.6, Request for Advisory Opinions.

The proposed amendments to §157.6 add language to the rule to reflect a process for Advisory Opinions issued by TALCB to be reviewed and determine whether to be withdrawn or superseded.

Kathleen Santos, General Counsel, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for the state or units of local government as a result of enforcing or administering the proposed amendments. There is no adverse economic impact anticipated for local or state employment, rural communities, small businesses, or micro businesses as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments. Accordingly, no Economic Impact statement or Regulatory Flexibility Analysis is required.

Ms. Santos has also determined that for each year of the first five years the proposed amendments and rules are in effect the public benefits anticipated as a result of enforcing the proposed amendments will be requirements that are consistent with statutes and easier to understand, apply, and process.

Growth Impact Statement:

For each year of the first five years the proposed amendments and rules are in effect the amendments and rules will not:

- create or eliminate a government program;

- require the creation of new employee positions or the elimination of existing employee positions;

- require an increase or decrease in future legislative appropriations to the agency;

- require an increase or decrease in fees paid to the agency;

- create a new regulation;

- expand, limit or repeal an existing regulation; and

- increase the number of individuals subject to the rule's applicability.

For each year of the first five years the proposed amendments are in effect, there is no anticipated impact on the state's economy.

Comments on the proposed amendments may be submitted to Kathleen Santos, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to general.counsel@talcb.texas.gov. Comments may also be submitted electronically at https://www.talcb.texas.gov/agency-information/rules-and-laws/comment-on-proposed-rules. The deadline for comments is 30 days after publication in the *Texas Register.*

The amendments are proposed under Texas Occupations Code 1103.151, Rules Relating to Certificates and Licenses and §1103.154, which authorizes TALCB to adopt rules related to professional conduct.

The statute affected by these amendments is Chapter 1103, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

§157.6. Request for Advisory Opinions.

Upon written request and in accordance with the Texas Open Meetings Act, the Board may issue advisory opinions. Such opinions are not binding on the Board or on the person making the request, and may not be relied upon as an official Board ruling. The Board shall maintain a record of each advisory opinion, identifying the person to whom it was issued. The Board shall review issued opinions on a periodic basis to determine whether they should be withdrawn or superseded.

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 F. RULEMAKING

22 TAC §157.50

The Texas Appraiser Licensing and Certification Board (TALCB) proposes amendments to 22 TAC §157.50, Negotiated Rulemaking.

The proposed amendments to §157.50 implement statutory changes enacted by the 88th Legislature in SB 1577, which becomes effective on January 1, 2024, and which changes the title of the TALCB "Commissioner" to "Executive Director."

Kathleen Santos, General Counsel, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for the state or units of local government as a result of enforcing or administering the proposed amendments. There is no adverse economic impact anticipated for local or state employment, rural communities, small businesses, or micro businesses as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments. Accordingly, no Economic Impact statement or Regulatory Flexibility Analysis is required.

Ms. Santos has also determined that for each year of the first five years the proposed amendments and rules are in effect the public benefits anticipated as a result of enforcing the proposed amendments will be requirements that are consistent with statutes and easier to understand, apply, and process.

Growth Impact Statement:

For each year of the first five years the proposed amendments and rules are in effect the amendments and rules will not:

--create or eliminate a government program;

--require the creation of new employee positions or the elimination of existing employee positions;

--require an increase or decrease in future legislative appropriations to the agency;

--require an increase or decrease in fees paid to the agency;

--create a new regulation;

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

--increase the number of individuals subject to the rule's applicability.

For each year of the first five years the proposed amendments are in effect, there is no anticipated impact on the state's economy.

Comments on the proposed amendments may be submitted to Kathleen Santos, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to general.counsel@talcb.texas.gov. Comments may also be submitted electronically at https://www.talcb.texas.gov/agency-information/rules-and-laws/comment-on-proposed-rules. The deadline for comments is 30 days after publication in the *Texas Register.*

The amendments are proposed under Texas Occupations Code §1103.162, which required the Board to develop a policy to encourage the use of negotiated rulemaking.

The statute affected by these amendments is Chapter 1103, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

§157.50. Negotiated Rulemaking.

(a) It is the Board's policy to employ negotiated rulemaking procedures when appropriate. When the Board is of the opinion that proposed rules are likely to be complex, or controversial, or to affect disparate groups, negotiated rulemaking will be considered.

(b) When negotiated rulemaking is to be considered, the Board will appoint a convener to assist it in determining whether it is advisable to proceed. The convener shall have the duties described in Government Code §2008.052 and shall make a recommendation to the Executive Director [~~Commissioner~~] to proceed or to defer negotiated rulemaking. The recommendation shall be made after the convener, at a minimum, has considered all of the items enumerated in Government Code §2008.052(c).

(c) Upon the convener's recommendation to proceed, the Board shall initiate negotiated rulemaking according to the provisions of Chapter 2008, Government 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.

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CHAPTER 159. RULES RELATING TO THE PROVISIONS OF THE TEXAS APPRAISAL MANAGEMENT COMPANY REGISTRATION AND REGULATION ACT

22 TAC §§159.1, 159.52, 159.104, 159.105, 159.155, 159.201, 159.202, 159.204

The Texas Appraiser Licensing and Certification Board (TALCB) proposes new and amendments to 22 TAC §159.1, Definitions; §159.52, Fees; §159.104, Primary Contact; Appraiser Contact; Controlling Person; Contact Information; §159.105, Denial of Registration or Renewal of Registration; §159.155, Periodic Review of Appraisals; §159.201, Guidelines for Disciplinary Action; §159.202, AMC Investigative Committee; and §159.204, Complaint Processing.

The proposed amendments to §§159.1, 159.52, 159.104, 159.105 and 159.204 implement statutory changes enacted by the 88th Legislature in SB 1577, which becomes effective on January 1, 2024, and which changes the title of the TALCB "Commissioner" to "Executive Director."

The proposed new rule 159.202, AMC Investigative Committee is proposed to implement statutory changes enacted by the 88th Legislature in SB 1222, which becomes effective on September 1, 2023, and which authorizes a process for a committee to review of complaints received under chapter 1104 of the Occupations Code, involving AMCs. The proposed new rule identifies who may serve on the committee, delineates functions of the committee members and TALCB staff in the review process, and establishes process deadlines. The proposed rule also specifies the types of complaints that are subject or not subject to the review of the AMC Investigative Committee, and the manner committee members and staff may communicate during the review process. The process outlined in the proposed rule is modeled after an existing process on governing the committee review of complaints under 1103 of the Occupations Code, involving appraisers.

The proposed amendments to §159.155 remove a specified percentage requirement for the periodic review of appraisal that AMCs perform on appraisers performing appraisal services. The proposed amendments would require AMCs to have a written

policy in place for conducting periodic reviews and make the policy and documentation demonstrating compliance with the policy available upon request by the Board.

The proposed amendments to §159.201 and §159.204 clarify the applicability of USPAP as it relates to AMCs and the obligation to submit certain information to the ASC. The proposed amendments to §159.204 also update language related to the statute of limitations to align with statute and allow greater flexibility in sanctions.

Kathleen Santos, General Counsel, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for the state or units of local government as a result of enforcing or administering the proposed amendments. There is no adverse economic impact anticipated for local or state employment, rural communities, small businesses, or micro businesses as a result of implementing the proposed amendments. There is no significant economic cost anticipated for persons who are required to comply with the proposed amendments. Accordingly, no Economic Impact statement or Regulatory Flexibility Analysis is required.

Ms. Santos has also determined that for each year of the first five years the proposed amendments and rules are in effect the public benefits anticipated as a result of enforcing the proposed amendments will be requirements that are consistent with statutes and easier to understand, apply, and process.

Growth Impact Statement:

For each year of the first five years the proposed amendments and rules are in effect the amendments and rules will not:

--create or eliminate a government program;

--require the creation of new employee positions or the elimination of existing employee positions;

--require an increase or decrease in future legislative appropriations to the agency;

--require an increase or decrease in fees paid to the agency;

--create a new regulation;

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

--increase the number of individuals subject to the rule's applicability.

For each year of the first five years the proposed amendments are in effect, there is no anticipated impact on the state's economy.

Comments on the proposed amendments may be submitted to Kathleen Santos, General Counsel, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188 or emailed to general.counsel@talcb.texas.gov. Comments may also be submitted electronically at https://www.talcb.texas.gov/agency-information/rules-and-laws/comment-on-proposed-rules. The deadline for comments is 30 days after publication in the *Texas Register.*

The new rule and amendments are proposed under Texas Occupations Code §1104.151, which authorizes TALCB to adopt rules necessary to administer the provisions of Chapter 1104, Texas Occupations Code.

The statute affected by the new rule and amendments is Chapter 1104, Texas Occupations Code. No other statute, code or article is affected by the proposed new rule and amendments.

§159.1. Definitions.

(a) - (h) (No change.)

(i) Executive Director [~~Commissioner~~]--The Executive Director [~~Commissioner~~] of the Board.

(j) - (s) (No change.)

§159.52. Fees.

(a) The Board will charge and the Executive Director [~~Commissioner~~] will collect the following fees:

(1) a fee of $3,300 for an application for a two-year registration;

(2) a fee of $3,000 for a timely renewal of a two-year registration;

(3) a fee equal to 1-1/2 times the timely renewal fee for the late renewal of a registration within 90 days of expiration; a fee equal to two times the timely renewal fee for the late renewal of a registration more than 90 days but less than six months after expiration;

(4) the national registry fee in the amount charged by the Appraisal Subcommittee for the AMC registry;

(5) a fee of $500 for untimely payment of the AMC national registry fee;

(6) a fee of $10 for each appraiser on a panel at the time of renewal of a registration;

(7) a fee of $5 to add an appraiser to a panel in the Board's records;

(8) a fee of $5 for the termination of an appraiser from a panel;

(9) a fee of $50 to return to active status;

(10) a fee of $50 for evaluation of an owner or primary contact's background history not submitted with an original application or renewal;

(11) any fee required by the Department of Information Resources for establishing and maintaining online applications or as a subscription or convenience fee for use of an online payment system; and

(12) a fee in the amount necessary to administer section 1104.052(c) of the AMC Act.

(b) Fees must be submitted in U.S. funds payable to the order of the Texas Appraiser Licensing and Certification Board. Fees are not refundable once an application has been accepted for filing. Persons who have submitted a payment that has been dishonored, and who have not made good on that payment within 30 days, for whatever reason, must submit all replacement fees in the form of a cashier's check, money order, or online credit card payment.

(c) AMCs registered with the Board must pay any annual registry fee as required under federal law. All registry fees collected by the Board will be deposited to the credit of the appraiser registry account in the general revenue fund. The Board will send the fees to the Appraisal Subcommittee as required by federal law.

§159.104. Primary Contact; Appraiser Contact; Controlling Person; Contact Information.

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

(f) A primary contact who assumes that role during the term of the registration must provide the Board written consent to a criminal history background check, as required by §1104.102 of the AMC Act.

If the person does not satisfy the Board's moral character requirements, the Board will remove the person from its records and the license holder will be placed on inactive status. Such a decision by the Board may be reviewed and reconsidered by the Executive Director [~~Commissioner~~] if the license holder submits a written request for reconsideration within 10 days of notice that the person does not qualify to serve as primary contact. The license holder will remain on inactive status while the request for reconsideration is pending.

(g) - (i) (No change.)

§159.105. Denial of Registration or Renewal of Registration.

(a) - (j) (No change.)

(k) An application for registration or renewal of registration that is denied by TALCB Division staff may be reviewed and reconsidered by the Executive Director [~~Commissioner~~] if the applicant submits a written request for reconsideration within 10 days of notice of the denial. The right to request reconsideration is distinct from, and in addition to, an applicant's right to appeal an application denial before SOAH.

§159.155. Periodic Review of Appraisals.

(a) A license holder must have a written policy reflecting a process and controls in place to periodically review the work of appraisers performing appraisal services on 1-4 family unit properties collateralizing mortgage obligations by performing a review in accordance with Standards 3 and 4 of USPAP. [~~of:~~]

[~~(1) one of the first five appraisals performed for the license holder by each appraiser, prior to making a sixth assignment; and~~]

[~~(2) a total of two percent, randomly selected, of the appraisals performed for the AMC for each twelve-month period following the date of the AMC's registration.~~]

[~~(b) Appraisal reviews performed pursuant to subsection (a)(1) of this section will be counted toward the calculation of two percent for the purposes of subsection (a)(2) of this section.~~]

[~~(c) An appraisal review pursuant to subsection (a)(1) of this section is not required if the first five appraisals by an appraiser were completed before the AMC was required by the AMC Act to be registered with the Board.~~]

(b) In accordance with 1104.156 of the Occupations Code, upon request by the Board, a license holder shall produce a copy of the written policy and information demonstrating compliance with the policy.

(c) [~~(d)~~] An appraiser is qualified to perform an appraisal review within the meaning of §1104.153 of the AMC Act if the appraiser conducting the review:

(1) is licensed or certified to act as an appraiser in Texas or another jurisdiction;

(2) holds the appropriate credential to have performed the appraisal being reviewed; and

(3) does not develop an opinion of value. If the reviewer elects to develop an opinion of value within the review, the reviewer must be licensed or certified to act as an appraiser in Texas.

(d) [~~(e)~~] To satisfy the requirements of the AMC Act and this rule, a license holder performing an appraisal review must perform a scope of work that is sufficient to ensure that methods, assumptions, data sources, and conclusions of the appraisal subject to review comply with USPAP.

[~~(f) If the reviewer elects to develop an opinion of value or review opinion, the review must comply with the additional provisions of Standards 3 and 4 of USPAP governing the development of an opinion of value or review opinion.~~]

§159.201. Guidelines for Disciplinary Action.

(a) The Board may take disciplinary action, or deny issuing or renewing a license to an applicant, any time it is determined that the person applying for, renewing, or holding the license or the AMC's primary contact:

(1) disregards or violates a provision of the AMC Act or Board rules;

(2) is convicted of a felony;

(3) fails to notify the Board not later than the 30th day after the date of the final conviction if the person, in a court of this or another state or in a federal court, has been convicted of or entered a plea of guilty or nolo contendere to a felony or a criminal offense involving fraud or moral turpitude;

(4) fails to notify the Board not later than the 30th day after the date of incarceration if the person, in this or another state, has been incarcerated for a criminal offense involving fraud or moral turpitude;

(5) fails to notify the Board of the following with regard to any professional or occupational license held by the person in Texas or another jurisdiction not later than the 30th day after the date:

(A) disciplinary action becomes final against the person; or

(B) the person voluntarily surrenders any professional or occupational license;

(6) fails to require appraisal assignments be completed in compliance [~~comply~~] with the USPAP edition in effect at the time of the appraisal or appraisal practice;

(7) acts or holds any person out as a registered AMC under the AMC Act or another state's act when not so licensed or certified;

(8) accepts payment for appraisal management services but fails to deliver the agreed service in the agreed upon manner;

(9) refuses to refund payment received for appraisal management services when he or she has failed to deliver the appraiser service in the agreed upon manner;

(10) accepts payment for services contingent upon a minimum, maximum, or pre-agreed value estimate;

(11) offers to perform appraisal management services or agrees to perform such services when employment to perform such services is contingent upon a minimum, maximum, or pre-agreed value estimate;

(12) makes a material misrepresentation or omission of material fact;

(13) has had a registration as an AMC revoked, suspended, or otherwise acted against by any other jurisdiction for an act which is an offense under Texas law;

(14) procures a registration pursuant to the AMC Act by making false, misleading, or fraudulent representation;

(15) has had a final civil judgment entered against him or her on any one of the following grounds:

(A) fraud;

(B) intentional or knowing misrepresentation; or

(C) grossly negligent misrepresentation in the making of real estate appraiser services;

(16) fails to make good on a payment issued to the Board within 30 days after the Board has mailed a request for payment by certified mail to the license holder's primary contact as reflected in the Board's records;

(17) knowingly or willfully engages in false or misleading conduct or advertising with respect to client solicitation;

(18) uses any title, designation, initial or other insignia or identification that would mislead the public as to that person's credentials, qualifications, competency, or ability to provide appraisal management services;

(19) requires an appraiser to pay for or reimburse the AMC for a criminal history check;

(20) fails to comply with a final order of the Board; or

(21) fails to answer all inquiries concerning matters under the jurisdiction of the Board within 20 days of notice to said person's or primary contact's address of record, or within the time period allowed if granted a written extension by the Board.

(b) The Board has discretion in determining the appropriate penalty for any violation under subsection (a) of this section.

(c) The Board may probate a penalty or sanction, and may impose conditions of the probation, including, but not limited to:

(1) the type and scope of appraisal management practice;

(2) requirements for additional education by the AMC's controlling persons;

(3) monetary administrative penalties; and

(4) requirements for reporting appraisal management activity to the Board.

(d) A person applying for reinstatement after revocation or surrender of a registration must comply with all requirements that would apply if the registration had instead expired.

(e) The provisions of this section do not relieve a person from civil liability or from criminal prosecution under the AMC Act or under the laws of this State.

(f) The Board may not investigate under this section a complaint submitted [~~either~~] more than four [~~two~~] years after the date on which the alleged violation occurred [~~of discovery or more than two years after the completion of any litigation involving the incident, whichever event occurs later,~~] involving the AMC that is the subject of the complaint.

(g) Except as provided by Texas Penal Code §32.32(d), there will be no undercover or covert investigations conducted by authority of the AMC Act.

(h) The Board reports [~~may report~~] to the Appraisal Subcommittee any disciplinary action taken by the Board against an AMC required to register under the AMC Act.

§159.202. AMC Investigative Committee.

(a) The Board Chair, with the advice and consent of the Executive Committee, may appoint an Investigative Committee pool at least every two years.

(b) A panel of the Investigative Committee shall consist of:

(1) one or two Board members;

(2) a member of the AMC Advisory Committee; and

(3) a TALCB Investigator.

(c) During complaint intake, the TALCB Director or his or her designee shall assign a TALCB Investigator to investigate the complaint.

(d) Complaints in which adverse action or contingent dismissals is recommended by an investigator are subject to review by the Investigative Committee. Complaints that result in dismissals, defaults, or warning letters are not subject to review by the Investigative Committee.

(e) No more than 7 days following the investigator's completion of an investigative report, the investigator shall provide his or her findings, including the investigative report and the complaint file, to the members of the Investigative Committee. The investigative report must include:

(1) a statement of facts;

(2) the investigator's recommendations; and

(3) the position or defense of the respondent.

(f) the Investigative Committee and staff may elect to confer in person, via e-mail, or video conference prior to the members' determination.

(g) The Board delegates its authority to receive the written findings or determination of the Investigative Committee to the Executive Director.

(h) No more than five business days after the review of the investigator's findings, the committee shall render a determination agreeing or disagreeing with the investigator's finding of alleged violations and submit a copy of their determination to the Executive Director or his or her designee on behalf of the Board. The determination shall serve as a recommendation to the TALCB Division as to whether to pursue adverse action against a respondent. A copy of the determination shall be included in the complaint file. The Board Chair may request statistical data related to the investigator's recommendations, members' determination, and adverse action pursued by the Division.

(i) Board members who participate in the Investigative Committee Review of a complaint are disqualified from participating in any future adjudication of the same complaint.

§159.204. Complaint Processing.

(a) Receipt of a Complaint Intake Form by the Board does not constitute the filing of a formal complaint by the Board against the AMC named on the Complaint Intake Form. Upon receipt of a signed Complaint Intake Form, staff will:

(1) assign the complaint a case number in the complaint tracking system; and

(2) send written acknowledgement of receipt to the complainant.

(b) Priority of complaint investigations. The Board prioritizes and investigates complaints based on the risk of harm each complaint poses to the public. Complaints that pose a high risk of public harm include violations of the AMC Act or Board rules that:

(1) evidence serious deficiencies, including:

(A) Fraud;

(B) Identity theft;

(C) Unlicensed activity;

(D) Ethical violations;

(E) Violations of appraiser independence; or

(F) Other conduct determined by the Board that poses a significant risk of public harm; and

(2) were done:

(A) with knowledge;

(B) deliberately;

(C) willfully; or

(D) with gross negligence.

(c) If the staff determines at any time that the complaint is not within the Board's jurisdiction, or that no violation exists, the complaint will be dismissed with no further processing. The Board or the Executive Director [~~Commissioner~~] may delegate to staff the duty to dismiss complaints.

(d) A complaint alleging mortgage fraud or in which mortgage fraud is suspected:

(1) may be investigated covertly; and

(2) will be referred to the appropriate prosecutorial authorities.

(e) Staff may request additional information necessary to determine how to proceed with the complaint from any person.

(f) As part of a preliminary investigative review, a copy of the Complaint Intake Form and all supporting documentation will be sent to the Respondent unless the complaint qualifies for covert investigation and the TALCB Division deems covert investigation appropriate.

(g) The Board will:

(1) protect the complainant's identity to the extent possible by excluding the complainant's identifying information from a complaint notice sent to a respondent.

(2) periodically send written notice to the complainant and each respondent of the status of the complaint until final disposition. For purposes of this subsection, "periodically" means at least once every 90 days.

(h) The Respondent must submit a response within 20 days of receiving a copy of the Complaint Intake Form. The 20-day period may be extended for good cause upon request in writing or by e-mail. The response must include the following:

(1) A copy of the appraisal report(s), if any, that is (are) the subject of the complaint;

(2) A copy of the documents or other business records associated with the appraisal report(s), incident(s), or conduct listed in the complaint, with the following signed statement attached to the response: I SWEAR AND AFFIRM THAT EXCEPT AS SPECIFICALLY SET FORTH HEREIN, THE COPY OF EACH AND EVERY BUSINESS RECORD ACCOMPANYING THIS RESPONSE IS A TRUE AND CORRECT COPY OF THE ACTUAL BUSINESS RECORD, AND NOTHING HAS BEEN ADDED TO OR REMOVED FROM THIS BUSINESS RECORD OR ALTERED. (SIGNATURE OF RESPONDENT);

(3) A narrative response to the complaint, addressing each and every item in the complaint;

(4) A list of any and all persons known to the Respondent to have actual knowledge of any of the matters made the subject of the complaint and, if in the Respondent's possession, contact information;

(5) Any documentation that supports Respondent's position that was not in the original documentation, as long as it is conspicuously labeled as additional documentation and kept separate from the original documentation. The Respondent may also address other matters not raised in the complaint that the Respondent believes need explanation; and

(6) a signed, dated and completed copy of any questionnaire sent by Board staff.

(i) Staff will evaluate the complaint within three months of receipt of the response from Respondent to determine whether sufficient evidence of a potential violation of the AMC Act or[,] Board rules [~~or USPAP~~] exists to pursue investigation and possible formal disciplinary action. If staff determines there is no jurisdiction, no violation exists, or there is insufficient evidence to prove a violation, or the complaint warrants dismissal, including contingent dismissal, under subsection (m) of this section, the complaint will be dismissed with no further processing.

(j) A formal complaint will be opened and investigated by a staff investigator or [~~peer~~] investigative committee if:

(1) the informal complaint is not dismissed under subsection (i) of this section; or

(2) staff opens a formal complaint on its own motion.

(k) Written notice that a formal complaint has been opened will be sent to the Complainant and Respondent.

(l) The staff investigator or [~~peer~~] investigative committee assigned to investigate a formal complaint will prepare a report detailing all findings.

(m) In determining the proper disposition of a formal complaint pending as of or filed after the effective date of this subsection, and subject to the maximum penalties authorized under Chapter 1104, Texas Occupations Code, staff, the administrative law judge in a contested case hearing and the Board shall consider the following sanctions guidelines and list of non-exclusive factors as demonstrated by the evidence in the record of a contested case proceeding.

(1) For the purposes of these sanctions guidelines:

(A) An AMC will not be considered to have had a prior warning letter, contingent dismissal or discipline if that prior warning letter, contingent dismissal or discipline occurred more than ten years ago;

(B) A prior warning letter, contingent dismissal or discipline given less than ten years ago will not be considered unless the Board took final action against the AMC before the date of the incident that led to the subsequent disciplinary action;

(C) Prior discipline is defined as any sanction, including an administrative penalty, received under a Board final or agreed order;

(D) A violation refers to a violation of any provision of the AMC Act or[,] Board rules[, ~~or USPAP~~];

(E) "Minor deficiencies" is defined as violations of the AMC Act or[,] Board rules[, ~~or USPAP~~] which do not call into question the qualification of the AMC for licensure in Texas;

(F) "Serious deficiencies" is defined as violations of the Act or[,] Board rules [~~or USPAP~~]which do call into question the qualification of the AMC for licensure in Texas;

(G) "Remedial measures" include training, auditing, or any combination thereof; and

(H) The terms of a contingent dismissal agreement will be in writing and agreed to by all parties. Staff may dismiss the complaint with a non-disciplinary warning upon written agreement that the

Respondent will complete all remedial measures within the agreed-upon timeframe. If the Respondent fails to meet the deadlines in the agreement, the Respondent's license or certification will be automatically set to inactive status until the Respondent completes the remedial measures set forth in the agreement.

(2) List of factors to consider in determining proper disposition of a formal complaint:

(A) Whether the Respondent has previously received a warning letter or contingent dismissal, and if so, the similarity of facts or violations in that previous complaint to the facts or violations in the instant complaint matter;

(B) Whether the Respondent has previously been disciplined;

(C) If previously disciplined, the nature of the discipline, including:

(i) Whether it concerned the same or similar violations or facts;

(ii) The nature of the disciplinary sanctions imposed;

(iii) The length of time since the previous discipline;

(D) The difficulty or complexity of the incident at issue;

(E) Whether the violations found were of a negligent, grossly negligent or a knowing or intentional nature;

(F) Whether the violations found involved a single appraisal or instance of conduct or multiple appraisals or instances of conduct;

(G) To whom were the appraisal report(s) or the conduct directed, with greater weight placed upon appraisal report(s) or conduct directed at:

(i) A financial institution or their agent, contemplating a lending decision based, in part, on the appraisal report(s) or conduct at issue;

(ii) The Board;

(iii) A matter which is actively being litigated in a state or federal court or before a regulatory body of a state or the federal government;

(iv) Another government agency or government sponsored entity, including, but not limited to, the United States Department of Veteran's Administration, the United States Department of Housing and Urban Development, the State of Texas, Fannie Mae, and Freddie Mac;

(v) A consumer contemplating a real property transaction involving the consumer's principal residence;

(H) Whether Respondent's violations caused any harm, including financial harm, and the amount of such harm;

(I) Whether Respondent acknowledged or admitted to violations and cooperated with the Board's investigation prior to any contested case hearing;

(J) The business operating history of the AMC, including:

(i) The size of the AMC's appraiser panel;

(ii) The length of time Respondent has been licensed as an AMC in Texas;

(iii) The length of time the AMC has been conducting business operations, in any jurisdiction;

(iv) The nature and extent of any remedial measures and sanctions the Respondent had received related to the areas in which violations were found; and

(v) Respondent's affiliation with other business entities;

(K) Whether Respondent can improve the AMC's practice through the use of remedial measures; and

(L) Whether Respondent has voluntarily completed remedial measures prior to the resolution of the complaint.

(3) The sanctions guidelines contained herein shall be employed in conjunction with the factors listed in paragraph (2) of this subsection to assist in reaching the proper disposition of a formal complaint:

(A) 1st Time Discipline Level 1--violations of the AMC Act or[,] Board rules[, ~~or~~ ~~USPAP~~] which evidence minor deficiencies will result in one of the following outcomes:

(i) Dismissal;

(ii) Dismissal with non-disciplinary warning letter;

(iii) Contingent dismissal with remedial measures.

(B) 1st Time Discipline Level 2--violations of the AMC Act or[,] Board rules[, ~~or~~ ~~USPAP~~] which evidence serious deficiencies will result in one of the following outcomes:

(i) Contingent dismissal with remedial measures;

(ii) A final order which imposes one or more of the following:

(I) Remedial measures;

(II) Required adoption and implementation of written, preventative policies or procedures;

(III) A probationary period with provisions for monitoring the AMC;

(IV) Monitoring and/or preapproval of AMC panel removals for a specified period of time;

(V) Monitoring and/or preapproval of the licensed activities of the AMC for a specified time period or until specified conditions are satisfied;

(VI) Minimum of $1,000 in administrative penalties per act or omission which constitutes a violation(s) of the AMC Act or[,] Board rules[, ~~or~~ ~~USPAP~~]; each day of a continuing violation is a separate violation.

(C) 1st Time Discipline Level 3--violations of the AMC Act or[,] Board rules[, ~~or~~ ~~USPAP~~] which evidence serious deficiencies and were done with knowledge, deliberately, willfully, or with gross negligence will result in a final order which imposes one or more of the following:

(i) A period of suspension;

(ii) A revocation;

(iii) Remedial measures;

(iv) Required adoption and implementation of written, preventative policies or procedures;

(v) A probationary period with provisions for monitoring the AMC;

(vi) Monitoring and/or preapproval of AMC panel removals for a specified period of time;

(vii) Monitoring and/or preapproval of the licensed activities of the AMC for a specified time period or until specified conditions are satisfied;

(viii) Minimum of $2,500 in administrative penalties per act or omission which constitutes a violation(s) of the AMC Act or[,] Board rules[, ~~or~~ ~~USPAP~~]; each day of a continuing violation is a separate violation.

(D) 2nd Time Discipline Level 1--violations of the AMC Act or[,] Board rules[, ~~or~~ ~~USPAP~~] which evidence minor deficiencies will result in one of the following outcomes:

(i) Dismissal;

(ii) Dismissal with non-disciplinary warning letter;

(iii) Contingent dismissal with remedial measures;

(iv) A final order which imposes one or more of the following:

(I) Remedial measures;

(II) Required adoption and implementation of written, preventative policies or procedures;

(III) A probationary period with provisions for monitoring the AMC;

(IV) Monitoring and/or preapproval of AMC panel removals for a specified period of time;

(V) Monitoring and/or preapproval of the licensed activities of the AMC for a specified time period or until specified conditions are satisfied;

(VI) Minimum of $1,000 in administrative penalties per act or omission which constitutes a violation(s) of the AMC Act or[,] Board rules[, ~~or~~ ~~USPAP~~]; each day of a continuing violation is a separate violation.

(E) 2nd Time Discipline Level 2--violations of the AMC Act or[,] Board rules[, ~~or~~ ~~USPAP~~] which evidence serious deficiencies will result in a final order which imposes one or more of the following:

(i) A period of suspension;

(ii) A revocation;

(iii) Remedial measures;

(iv) Required adoption and implementation of written, preventative policies or procedures;

(v) A probationary period with provisions for monitoring the AMC;

(vi) Monitoring and/or preapproval of AMC panel removals for a specified period of time;

(vii) Monitoring and/or preapproval of the licensed activities of the AMC for a specified time period or until specified conditions are satisfied;

(viii) Minimum of $2,500 in administrative penalties per act or omission which constitutes a violation(s) of AMC Act or[,] Board rules[, ~~or~~ ~~USPAP~~]; each day of a continuing violation is a separate violation.

(F) 2nd Time Discipline Level 3--violations of the AMC Act or[,] Board rules[, ~~or~~ ~~USPAP~~] which evidence serious deficiencies and were done with knowledge, deliberately, willfully, or with gross negligence will result in a final order which imposes one or more of the following:

(i) A period of suspension;

(ii) A revocation;

(iii) Remedial measures;

(iv) Required adoption and implementation of written, preventative policies or procedures;

(v) A probationary period with provisions for monitoring the AMC;

(vi) Monitoring and/or preapproval of AMC panel removals for a specified period of time;

(vii) Monitoring and/or preapproval of the licensed activities of the AMC for a specified time period or until specified conditions are satisfied;

(viii) Minimum of $4,000 in administrative penalties per act or omission which constitutes a violation(s) of the AMC Act or[,] Board rules[, ~~or~~ ~~USPAP~~]; each day of a continuing violation is a separate violation.

(G) 3rd Time Discipline Level 1--violations of the AMC Act or[,] Board rules[, ~~or~~ ~~USPAP~~] which evidence minor deficiencies will result in a final order which imposes one or more of the following:

(i) A period of suspension;

(ii) A revocation;

(iii) Remedial measures;

(iv) Required adoption and implementation of written, preventative policies or procedures;

(v) A probationary period with provisions for monitoring the AMC;

(vi) Monitoring and/or preapproval of AMC panel removals for a specified period of time;

(vii) Monitoring and/or preapproval of the licensed activities of the AMC for a specified time period or until specified conditions are satisfied;

(viii) Minimum of $2,500 in administrative penalties per act or omission which constitutes a violation(s) of the AMC Act or[,] Board rules[, ~~or~~ ~~USPAP~~]; each day of a continuing violation is a separate violation.

(H) 3rd Time Discipline Level 2--violations of the AMC Act or[,] Board rules[, ~~or~~ ~~USPAP~~] which evidence serious deficiencies will result in a final order which imposes one or more of the following:

(i) A period of suspension;

(ii) A revocation;

(iii) Remedial measures;

(iv) Required adoption and implementation of written, preventative policies or procedures;

(v) A probationary period with provisions for monitoring the AMC;

(vi) Monitoring and/or preapproval of AMC panel removals for a specified period of time;

(vii) Monitoring and/or preapproval of the licensed activities of the AMC for a specified time period or until specified conditions are satisfied;

(viii) Minimum of $4,000 in administrative penalties per act or omission which constitutes a violation(s) of the AMC Act or[,] Board rules[, ~~or USPAP~~]; each day of a continuing violation is a separate violation.

(I) 3rd Time Discipline Level 3--violations of the AMC Act or[,] Board rules[, ~~or USPAP~~] which evidence serious deficiencies and were done with knowledge, deliberately, willfully, or with gross negligence will result in a final order which imposes one or more of the following:

(i) A revocation; and

(ii) Minimum of $7,000 in administrative penalties per act or omission which constitutes a violation(s) of [~~USPAP,~~] Board Rules, or the AMC Act; each day of a continuing violation is a separate violation.

(J) 4th Time Discipline--violations of the AMC Act or[,] Board rules [~~or USPAP~~] will result in a final order which imposes one or more of the following:

(i) A revocation; and

(ii) $10,000 in administrative penalties per act or omission which constitutes a violation(s) of the AMC Act or[,] Board rules[, ~~or USPAP~~]; each day of a continuing violation is a separate violation.

(K) Unlicensed AMC activity will result in a final order which imposes a $10,000 in administrative penalties per unlicensed AMC activity; each day of a continuing violation is a separate violation.

(4) In addition, staff may recommend any or all of the following:

(A) Reducing or increasing the recommended sanction or administrative penalty for a complaint based on documented factors that support the deviation, including but not limited to those factors articulated under paragraph (2) of this subsection;

(B) Probating all or a portion of any remedial measure, sanction, or administrative penalty for a period not to exceed three years;

(C) Requiring additional reporting requirements;

(D) Payment of costs expended by the Board associated with the investigation, and if applicable, a contested case, including legal fees and administrative costs; and

(E) Such other recommendations, with documented support, as will achieve the purposes of the AMC Act or[,] Board rules[, ~~or USPAP~~].

(n) The Board may order a person regulated by the Board to refund the amount paid by a consumer to the person for a service regulated by the Board.

(o) Agreed resolutions of complaint matters pursuant to Texas Occupations Code §1104.2081 must be signed by:

(1) The Board Chair or if the Board Chair is unavailable or must recuse him or herself, the Board Chair's designee, whom shall be (in priority order) the Board Vice Chair, the Board Secretary, or another Board member;

(2) Respondent;

(3) A representative of the TALCB Division; and

(4) The Executive Director [~~Commissioner~~] or his or her designee.

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

Filed with the Office of the Secretary of State on August 21, 2023.

TRD-202303062
Kathleen Santos
General Counsel
Texas Appraiser Licensing and Certification Board
Earliest possible date of adoption: October 1, 2023
For further information, please call: (512) 936-3652

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TITLE 25. HEALTH SERVICES

PART 11. CANCER PREVENTION AND RESEARCH INSTITUTE OF TEXAS

CHAPTER 701. POLICIES AND PROCEDURES

25 TAC §701.25

The Cancer Prevention and Research Institute of Texas ("CPRIT" or "the Institute") proposes amending 25 Texas Administrative Code §701.25 relating to the applicability of CPRIT's electronic signature policy.

Background and Justification

CPRIT's electronic policy explicitly applies to Grant Recipients that use the Institute's electronic Grant Managements System (CGMS). The policy allows CPRIT to rely on information submitted by a Grant Recipient's Authorized Signing Official (ASO) as legally binding. An ASO is the designated representative of the applicant and/or grant organization with the authority to act on the organization's behalf in matters related to the application for and administration of a CPRIT grant award.

The proposed amendment expands the electronic signature policy to explicitly include Grant Applicants and ASOs who submit applications through CPRIT's electronic Application Receipt System (CARS). A Grant Applicant must create a user account in CARS before an application may be submitted to the Institute. As part of the registration process, a Grant Applicant is required to designate an ASO individual at the institution or organization with the authority to approve the submission of the grant application.

Fiscal Note

Kristen Pauling Doyle, Deputy Executive Officer and General Counsel for the Cancer Prevention and Research Institute of Texas, has determined that for the first five-year period the rule change is in effect, there will be no foreseeable implications relating to costs or revenues for state or local government due to enforcing or administering the rules.

Public Benefit and Costs

Ms. Doyle has determined that for each year of the first five years the rule change is in effect the public benefit anticipated due to

enforcing the rule will be clarifying grantee reporting obligations and consequences.

Small Business, Micro-Business, and Rural Communities Impact Analysis

Ms. Doyle has determined that the rule change will not affect small businesses, micro businesses, or rural communities.

Government Growth Impact Statement

The Institute, in accordance with 34 Texas Administrative Code §11.1, has determined that during the first five years that the proposed rule change will be in effect:

(1) the proposed rule change will not create or eliminate a government program;

(2) implementation of the proposed rule change will not affect the number of employee positions;

(3) implementation of the proposed rule change will not require an increase or decrease in future legislative appropriations;

(4) the proposed rule change will not affect fees paid to the agency;

(5) the proposed rule change will not create new rule;

(6) the proposed rule change will not expand existing rule;

(7) the proposed rule change will not change the number of individuals subject to the rule; and

(8) The rule change is unlikely to have an impact on the state's economy. Although the change is likely to have a neutral impact on the state's economy, the Institute lacks enough data to predict the impact with certainty.

Submit written comments on the proposed rule changes to Ms. Kristen Pauling Doyle, General Counsel, Cancer Prevention and Research Institute of Texas, P.O. Box 12097, Austin, Texas 78711, no later than October 2, 2023. The Institute asks parties filing comments to indicate whether they support the rule revision proposed by the Institute and, if the party requests a change, to provide specific text for the proposed change. Parties may submit comments electronically to kdoyle@cprit.texas.gov or by facsimile transmission to (512) 475-2563.

Statutory Authority

The Institute proposes the rule change under the authority of the Texas Health and Safety Code Annotated, §102.108, which provides the Institute with broad rule-making authority to administer the chapter. Ms. Doyle has reviewed the proposed amendment and certifies the proposal to be within the Institute's authority to adopt.

There is no other statute, article, or code affected by these rules.

§701.25. Electronic Signature Policy.

A Grant Recipient's use of the Institute's electronic Grant Management System or a Grant Applicant's use of the Institute's electronic Application Receipt System to create, exchange, execute, submit, and verify legally binding Grant Contract documents and Grant Award reports or a Grant Application shall be pursuant to an agreement between the Institute and the Grant Recipient or Grant Applicant regarding the use of binding electronic signatures. Such agreement shall include at least the following minimum standards:

(1) The Grant Recipient or Grant Applicant agrees that by entering the Authorized Signing Official's password in the electronic Grant Management System or Application Receipt System at certain specified points, the Grant Recipient or Grant Applicant electronically signs the Grant Contract document or related form or Grant Application. The Grant Recipient or Grant Applicant further agrees that the electronic signature is the legal equivalent of the Authorized Signing Official's manual signature.

(2) The Institute may rely upon the electronic signature rendered by entering the Authorized Signing Official's password as evidence that the Grant Recipient or Grant Applicant consents to be legally bound by the terms and conditions of the Grant Contract or related form or Grant Application as if the document was manually signed.

(3) The Grant Recipient or Grant Applicant shall provide prompt written notification to the Institute of any changes regarding the status or authority of the individual(s) designated by the Grant Recipient or Grant Applicant to be the Grant Recipient's or Grant Applicant's Authorized Signing Official. The notice must be provided to an individual designated by the Institute.

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

Filed with the Office of the Secretary of State on August 18, 2023.

TRD-202303047
Heidi McConnell
Chief Operating Officer
Cancer Prevention and Research Institute of Texas
Earliest possible date of adoption: October 1, 2023
For further information, please call: (512) 305-8487

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 21. TRADE PRACTICES

The Texas Department of Insurance proposes amendments to 28 TAC §§21.4902, 21.5002, 21.5003, and 21.5040, concerning the independent dispute resolution (IDR) process, and new §§21.5060, 21.5070, and 21.5071, concerning submission requirements for certain entities. Amendments to §§21.4902, 21.5002, 21.5003, and 21.5040, and new §21.5060 implement House Bill 1592, 88th Legislature, 2023. Amendments to §21.5040, and new §21.5070 and §21.5071 implement Senate Bill 2476, 88th Legislature, 2023. Amendments to §21.5040 implement House Bill 3924, 87th Legislature, 2021.

EXPLANATION. Amendments to §§21.4902, 21.5002, 21.5003, and 21.5040, and new §21.5060 are necessary to implement HB 1592 and Insurance Code Chapter 1275. Insurance Code §1275.002 as amended by HB 1592 permits a plan sponsor of a self-insured or self-funded plan established by an employer under the Employee Retirement Income Security Act of 1974 (ERISA) (29 USC §1001 et seq.) to opt in to the Texas IDR process under Insurance Code Chapter 1467 by electing to apply Insurance Code Chapter 1275 to the plan during the relevant plan year. Insurance Code Chapter 1275 creates similar requirements for out-of-network billing that already exist for HMOs and preferred provider benefit plans, as well as for health benefit plans administered by the Employees Retirement Systems

of Texas and Teacher Retirement System of Texas plans under Insurance Code Chapters 1551, 1575, and 1579.

The amendments to §§21.4902, 21.5002, and 21.5003 clarify that a plan sponsor may elect to apply Insurance Code Chapter 1275 to its self-insured or self-funded plan. Under Insurance Code §1275.004, Insurance Code Chapter 1467 applies to a health benefit plan to which Insurance Code Chapter 1275 applies.

The amendments to §21.5040 require health benefit plans offered by nonprofit agricultural organizations and ERISA plans to include additional information in the explanation of benefits provided to physicians or providers. Proposed additional information includes a disclaimer that the plan opted in to the Texas IDR process for the relevant plan year and that claims after the effective date must proceed through the Texas IDR process. Amendments to §21.5040 also require health benefit plans offered by nonprofit agricultural organizations and ERISA plans to display "TXIDR" on the ID card issued to enrollees. The proposed ID card requirement will apply to plans delivered, issued for delivery, and renewed on or after 90 days of the effective date of the section. Additional amendments to this section are discussed below as they relate to the implementation of SB 2476.

The proposal also adds new Division 7 and new §21.5060 to prescribe the form and manner of identifying information that plan sponsors must include to make an election for the relevant plan year under Insurance Code §1275.002. The identifying information must be submitted to TDI as specified on TDI's website at www.tdi.texas.gov.

Amendments to §21.5040 and new §21.5070 and §21.5071 are necessary to implement SB 2476. This bill authorizes political subdivisions to submit rates for emergency medical services (EMS) to TDI for use in payment by health benefit plans. SB 2476 requires health benefit plans to cover ground emergency medical services at (1) the rates submitted to TDI by a political subdivision; or (2) if no rates have been submitted, the lesser of either the EMS provider's billed charge or 325% of the current Medicare rate.

Additional amendments to §21.5040 require the explanation of benefits to include transport as added by SB 2476 and clarify that the right to pursue mediation or arbitration applies only to out-of-network claims subject to Insurance Code Chapter 1467.

The proposal also adds new Division 8, consisting of new §21.5070 and §21.5071, to prescribe the form and manner that political subdivisions must use if they wish to submit rates to TDI for use in EMS billing, and the EMS payment standards that apply for an applicable health benefit plan issuer or administrator. The rate submission must be submitted to TDI as specified on TDI's website at www.tdi.texas.gov.

New §21.5070 and §21.5071 propose a quarterly rate publication schedule. The publication schedule states when TDI will update rates on the publicly available database. The publication schedule will not affect the ability of a political subdivision to submit rates to TDI at any time until the final submission deadline of September 1, 2024. However, for a rate to be reflected in the updated rate publication, a political subdivision must submit a rate by the submission deadline.

A rate submitted after the submission date will be reflected in the rate publication the following quarter. Health benefit plans must apply the rates, as reflected in the published rate database, to claims on or after the implementation dates proposed in new Division 8. A table of the proposed quarterly deadlines for submission, publication, and implementation is included as Figure: 28 TAC §21.5070(h).

The proposal permits a political subdivision to submit EMS rates until the final submission deadline of September 1, 2024. The final submission deadline reflects the drafting of SB 2476, which requires health benefit plans to increase the submitted rates once in a calendar year. Figure: 28 TAC §21.5071(d)(2) provides illustrative examples of which final published rates apply to claims for emergency medical services provided on or after September 1, 2024, depending on the health benefit plan renewal date.

New Division 8 also proposes December 15, 2023, as the first deadline by which political subdivisions must submit rates to be used in the first quarter. Rates submitted to TDI on or before December 15, 2023, will apply to claims made on or after January 1, 2024. TDI anticipates publishing the submitted rates no later than January 1, 2024. Health benefit plans must apply rates to those claims beginning January 1, 2024.

The publication and implementation deadline for the first quarter are identical and will require health benefit plans to quickly update software and internal databases to reflect the published rates. SB 2476 applies to emergency medical services provided on or after January 1, 2024, and requires TDI to establish the publicly accessible database by January 1, 2024.

SB 2476 requires health benefit plans to make the payment using the submitted rate, if applicable, and the bill provides 30 or 45 days for payment of the claim, depending on whether the claim is electronic or not. This will provide health benefit plans with some lead time to update internal systems. TDI recognizes the challenges of quickly implementing the published rates but seeks to comply with the statutory deadlines in SB 2476.

The proposed amended and new sections are described in the following paragraphs.

Section 21.4902. An amendment clarifies that the section provides definitions for use in Subchapter OO. The amendments to §21.4902 clarify that an administrator as defined in Insurance Code §1467.001 may also include an administrator of a self-insured or self-funded plan under Insurance Code Chapter 1275 when election by a plan sponsor has occurred. The amendments expand the definition of "health benefit plan" to include a self-insured or self-funded plan for which the plan sponsor has elected to apply Insurance Code Chapter 1275. The amendments also add a definition of "ERISA" to reflect agency drafting style and plain language preferences.

The proposal adds "Insurance Code" to a citation, adds "an administrator of" to a definition of "administrator" for consistency in §21.4902(1), renumbers paragraphs to reflect the expansion of definitions, and amends punctuation and grammar throughout.

Section 21.5002. This section describes the scope of Subchapter PP. The amendments to §21.5002 expand the applicability of Subchapter PP to a self-insured or self-funded plan if election by the plan sponsor is submitted according to the requirements in proposed new §21.5060. The proposal also amends punctuation and grammar to reflect the addition of new paragraph (4) and adds "Insurance Code" to an incomplete citation.

Section 21.5003. This section provides definitions for use in Subchapter PP. The amendments to §21.5003 clarify that an administrator as defined in Insurance Code §1467.001 may also include an administrator of a self-insured or self-funded plan un-

der Insurance Code Chapter 1275 when election by a plan sponsor has occurred. The amendments expand the definition of "health benefit plan" to include a self-insured or self-funded plan for which the plan sponsor has elected to apply Insurance Code Chapter 1275. The amendments also add a definition of ERISA to reflect agency drafting style and plain language preferences.

The proposal adds "Insurance Code" to a citation, adds "an administrator of" to a definition in "administrator" for consistency in §21.5003(1), renumbers paragraphs to reflect the expansion of definitions, and amends punctuation and grammar throughout.

Section 21.5040. This section provides the contents required in an explanation of benefits (EOB) provided to an enrollee, physician, and provider. The amendments to §21.5040 clarify that the EOB provided to both enrollees and physicians or providers must include transport as added by SB 2476. The amendments also clarify that the notice explaining that a physician or provider may request mediation or arbitration for a payment dispute should be included only for a claim that is subject to mediation or arbitration under Insurance Code Chapter 1467.

The amendments also add new subsection (b) and subsection (c). Section 21.5040(b) includes additional requirements for EOBs provided by certain health benefit plans. Section 21.5040(c) adds information that must be included in the ID card provided to enrollees. Because the addition of subsections (b) and (c) is proposed, the existing rule text is designated as subsection (a). Proposed new requirements in §21.5040(b) and (c) apply only to a health benefit plan offered by a nonprofit agricultural organization or a self-funded or self-insured plan under ERISA where a plan sponsor has elected to apply Insurance Code Chapter 1275.

Proposed new §21.5040(b)(1) requires a health benefit plan offered by a nonprofit agricultural organization under Insurance Code Chapter 1682 to include in the EOB to physicians and providers instructions to identify the plan type as "Ag Plan" when requesting mediation or arbitration. Similarly, new §21.5040(b)(2) proposes that health benefit plans offered by ERISA plans that have opted in to the Texas IDR process under Insurance Code Chapter 1275 must include in the EOB a statement about the opt-in, the effective date of the opt-in, a prohibition of using the federal IDR process, and instructions to physicians and providers to identify the plan type as "ERISA Opt-In" when requesting mediation or arbitration.

Proposed new §21.5040(c) requires a health benefit plan offered by a nonprofit agricultural organization or self-insured or self-funded ERISA plan to include the letters "TXIDR" on the ID cards issued to enrollees. This requirement applies to a plan that is delivered, issued for delivery, or renewed on or after 90 days of the effective date of the section.

The proposal also amends the titles of Division 5 and §21.5040 to expand the scope to include the ID card requirements.

Section 21.5060. The proposal adds new §21.5060 to new Division 7. Section 21.5060 provides submission requirements for a plan sponsor that elects to apply Insurance Code Chapter 1275 to a self-insured or self-funded plan for the relevant plan year. Proposed submission requirements include:

- the name and contact information of both the plan sponsor and, if applicable, the administrator;

- the health benefit plan year start and end date;

- the requested effective date of the election, which must be at least 30 days after the date the identifying information is submitted;

- the group number of the health benefit plan; and

- the number of enrollees covered under the health benefit plan.

Identifying information must be submitted to TDI as specified on TDI's website at www.tdi.texas.gov. TDI proposes this requirement to ensure a plan sponsor is able to successfully opt in to the Texas IDR process and IDR claims submitted by physicians or providers are correctly matched to the ERISA plan.

The proposal clarifies that a plan sponsor must renew election each plan year, update identifying information as proposed in the section, and make the election 30 days before the date the relevant plan year begins. The proposal also clarifies that once a plan sponsor opts in to the Texas IDR process for the relevant plan year, the plan sponsor may not opt out until the end of the relevant plan year.

Section 21.5070. The proposal adds new §21.5070 to new Division 8. Section 21.5070 provides the form and manner for a political subdivision to submit rates for emergency medical services. Political subdivisions that choose to submit rates to TDI must comply with the data submission requirements, including providing certain identifying information and submitting rate information using the method provided on TDI's website at www.tdi.texas.gov.

Proposed identifying information includes:

- the political subdivision's name and contact information;

- the National Provider Identification number of each EMS provider that is subject to the rates set by the political subdivision, if known;

- each ZIP code subject to the rates set, controlled, or regulated by the political subdivision; and

- applicable billing codes, code types, and dollar amounts for each health care service, supply, or transport rate that is set, controlled, or regulated by the political subdivision.

A claim submitted by an EMS provider or its designee must include the ZIP code in which the health care service, supply, or transport originated. A political subdivision or EMS provider subject to the rule may not issue a bill that exceeds the amount of the rate set, controlled, or regulated by the political subdivision.

Political subdivisions that choose to submit rates to TDI must comply with the proposed submission schedule in §21.5070(e). The first proposed submission deadline is December 15, 2023, effective for claims submitted on or after January 1, 2024. The submission deadline is the date that the rate must be submitted in order to be published by TDI for the following quarter.

Political subdivisions may submit updated rates at any time on or before the final deadline of September 1, 2024, but the updated rates will be published according to the publication schedule in §21.5070(e) and will be effective for claims according to the implementation schedule in §21.5071(c). These proposed schedules are illustrated in Figure: 28 TAC §21.5070(h).

Political subdivisions are not required to submit rates under SB 2476. However, if a political subdivision chooses not to submit rates by the submission deadline for a given quarter and has no published rates for a particular health care service, supply, or transport, then the health benefit plan must determine the ap-

plicable rate according to the formulas in SB 2476 and implemented in §21.5071(b). A political subdivision may also remove a submitted rate according to the submission and publication schedule in §21.5070(e) and require health benefit plans to determine rates according to the formulas.

Section 21.5071. The proposal adds new §21.5071 to new Division 8. Section 21.5071 clarifies that certain health benefit plans must pay EMS provider claims under SB 2476. Health benefit plan issuers and administrators must pay EMS provider claims at the rate submitted by a political subdivision or, if no rate has been submitted under proposed §21.5070, according to the formulas in SB 2476 and implemented in §21.5071(b).

Health benefit plan issuers and administrators must apply published rates by the proposed implementation schedule in §21.5071(c). For claims submitted on or after January 1, 2024, health benefit plans must apply the rate published on TDI's website. Health benefit plan issuers and administrators must update rates each quarter to reflect newly published rates, consistent with the implementation deadlines. These proposed schedules are illustrated in Figure: 28 TAC §21.5070(h).

SB 2476 uses the term "Medicare Inflation Index." TDI interprets the term to mean the Medicare Economic Index, a measure of inflation faced by physicians with respect to their practice costs and general wage levels that is updated on an annual basis. The Medicare Economic Index is available on the CMS website at www.cms.gov/research-statistics-data-and-systems/statistics-trends-and-reports/medicareprogramratesstats/marketbasketdata.

The proposal clarifies that a health benefit plan issuer or administrator must adjust a payment required by SB 2476 and implemented in §21.5071(d) by the lesser of either the Medicare Economic Index or 10% of the provider's previous calendar year rates. Proposed Figure: 28 TAC §21.5071(d)(2) provides examples of which published rates health benefit plans must use when adjusting a payment under SB 2476, depending on the renewal date of the health benefit plan.

The proposal defines "plan year" as a plan that starts on or after September 1, 2024, and "calendar year rate" as the most recently published rate available before the first day of the new plan year.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Rachel Bowden, director of Regulatory Initiatives, has determined that during each year of the first five years the proposed new and amended sections are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the proposed new and amended sections, other than those imposed by statute. Ms. Bowden made this determination because the proposed new and amended sections do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed new and amended sections. The rule applies to political subdivisions that choose to submit rates to TDI, but political subdivisions are not required to participate. Any measurable fiscal impact on a political subdivision that voluntarily submits rates to TDI are a result of those imposed by statute.

Ms. Bowden 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 new and amended sections are in effect, Ms. Bowden expects that administering them will have the public benefit of ensuring that TDI's rules conform with Insurance Code Chapters 1275 and 1467, and §§38.006, 1271.008, 1271.159, 1275.003, 1275.054, 1301.010, 1301.166, 1551.015, 1551.231, 1575.009, 1575.174, 1579.009, and 1579.112.

Ms. Bowden expects that the proposed new and amended sections that implement HB 1592 will not increase the cost of compliance with Insurance Code Chapter 1275 because the sections as proposed do not impose requirements beyond those in statute. Insurance Code §1275.002 permits a plan sponsor to elect to apply Insurance Code Chapter 1275 to self-insured or self-funded plans. Plan sponsors may submit identifying information to TDI for election under Insurance Code §1275.002, but plan sponsors are not required to opt in to the Texas Out-of-Network Independent Dispute Resolution process in Insurance Code Chapter 1467. Those plans may instead continue to use the Federal No Surprises Act Independent Dispute Resolution process for disputes. As a result, the cost associated with submitting identifying information to opt in to the Texas IDR process does not result from the enforcement or administration of the proposed sections.

Ms. Bowden expects that the proposed new and amended sections that implement SB 2476 will not increase the cost of compliance with Insurance Code §§38.006, 1271.008, 1271.159, 1275.003, 1275.054, 1301.010, 1301.166, 1551.015, 1551.231, 1575.009, 1575.174, 1579.009, and 1579.112 because they do not impose requirements beyond those in statute. Political subdivisions may submit EMS rates to TDI but are not required to submit rates under Insurance Code §38.006. Health benefit plan issuers and administrators are required by statute to cover certain EMS-related claims according to SB 2476. As a result, the cost associated with submitting rates or payment of EMS claims does not result from enforcement or administration of the proposed sections.

Ms. Bowden expects that the amendments to §21.5040 may result in an administrative cost to health benefit plan issuers and administrators who are subject to Insurance Code §1275.003. Amendments to §21.5040(b) and (c) apply only to:

- a health benefit plan offered by a nonprofit agricultural organization; or

- a self-funded or self-insured plan under ERISA when the plan sponsor opts in to the Texas IDR process through HB 1592.

Amendments to §21.5040(b) require these plans to include additional information in the explanation of benefits (EOB) on how a physician or provider should identify the plan type in the request for mediation or arbitration. A self-insured or self-funded plan under ERISA must also include in the EOB a statement that notifies the physician or provider that the plan sponsor opted in to the Texas IDR process and the effective date that the opt in begins to apply to claims under the ERISA plan.

Amendments to §21.5040(c) require these plans to add the signifier "TXIDR" to the ID card provided to enrollees. The ID card requirement will apply to these plans when the plan is delivered, issued for delivery, or renewed starting on or after 90 days of the effective date of the section. If the plan has been delivered, issued for delivery, or renewed before the effective date of the section or before the 90-day deadline triggered by the effective date, the plan must provide updated ID cards to enrollees at the time of plan renewal.

Ms. Bowden anticipates that health benefit plans offered by nonprofit agricultural organizations and self-insured or self-funded plans under ERISA may need to update programming or software to update the EOB and enrollee ID card, but that updates to the software will occur when updates to the EOB and ID cards are routinely made. Ms. Bowden estimates that updating software may require between zero and four hours of computer programming staff time. Staff costs may vary depending on the skill level required, the number of staff required, and the geographic location where work is done. The 2021 median hourly wage for this position in Texas was $37.16 as reported by the Texas Wages and Employment Projections database, which is developed and maintained by the Texas Workforce Commission and located at www.texaswages.com/WDAWages. Information on median wages in other states may be obtained directly from the federal Bureau of Labor Statistics website at www.bls.gov/oes/current/oes_nat.htm.

Ms. Bowden expects that the proposed amendments to §21.5040(b) and (c) will have the benefit of reducing enrollee and physician or provider confusion about which IDR process applies to claims arising under a health benefit plan offered by a nonprofit agricultural organization or a self-insured or self-funded plan under ERISA. Because there will be less confusion about which IDR process applies to those claims, Ms. Bowden anticipates those health benefit plans will have less cost in responding to ineligible IDR claims.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the amendments to §21.5040 may impose a cost on health benefit plan issuers or administrators that are subject to Insurance Code §1275.003, specifically health benefit plans offered by self-insured or self-funded plans under ERISA when the plan sponsor elects to apply Insurance Code Chapter 1275.

HB 1592 authorizes a plan sponsor of a self-insured or self-funded plan under ERISA to elect to apply Insurance Code Chapter 1275 to the plan for the relevant plan year. TDI is unable to estimate how many plan sponsors may make this election or how many plan sponsors that make the election will meet the definition of a small or micro business under Government Code §2006.001, because employers sponsoring a self-insured or self-funded plan are not limited to any particular industry. The rule will not apply to a plan sponsor that does not elect to apply Insurance Code Chapter 1275.

The primary purpose of the amendments to §21.5040 is to lessen enrollee, physician, and provider confusion about which IDR process applies to claims arising under the health benefit plan offered by self-funded or self-insured ERISA plans that opt in.

TDI considered the following alternatives to minimize any adverse effect on small and micro businesses while accomplishing the proposal's objectives:

(1) not proposing the explanation of benefits (EOB) or ID card requirements in §21.5040(b) and (c);

(2) proposing a different requirement for small and micro businesses required to comply with §21.5040; and

(3) extending the small and micro business deadline for compliance in §21.5040.

Not proposing the EOB or ID card requirements in §21.5040(b) and (c). As previously noted, the primary purpose of this amendment is to lessen confusion about which IDR process applies to claims that arise under the health benefit plan offered by self-insured or self-funded ERISA plans that opt in. Excluding the EOB or enrollee ID card requirements from the scope of the proposal would result in confusion about the eligibility of those claims.

HB 1592 authorizes self-insured and self-funded plans to elect to apply the Texas IDR process to claims that would otherwise only proceed through the federal IDR process under the No Surprises Act. Requiring self-funded and self-insured ERISA plans to signify that the Texas IDR process applies to claims arising under the plan may lessen the number of physicians or providers who submit ineligible claims to the federal IDR process. Failure to submit claims to the applicable IDR process may result in untimely requests. For these reasons, TDI has rejected this option.

Proposing a different requirement for small and micro businesses required to comply with §21.5040. TDI believes that proposing different standards based on the size of a business would not provide a better option. This requirement is proposed in order to lessen confusion about applicable IDR processes. Proposing separate standards based on employer size would likely cause further confusion. If the EOB or ID card requirements are based on employer size, only some of the ERISA plans that opt in would be required to comply, and physicians and providers might assume that plans with EOBs and enrollee ID cards that do not contain Texas IDR information have not opted in and are subject to the federal IDR process. For these reasons, TDI has rejected this option.

Extending the small and micro business deadline for compliance under §21.5040. TDI believes that the EOB and enrollee ID card requirement should apply consistently to all self-funded or self-insured ERISA plans that opt in to the Texas IDR process to promote clarity and consistency for providers, physicians, and enrollees. Extending the deadline by which small and micro businesses must provide the EOB and enrollee ID card does not meaningfully change the effect on small or micro businesses because the software updates will still exist. For these reasons, TDI has rejected this option.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined this proposal, as it relates to implementing HB 1592 and SB 2476, does not impose a cost on regulated persons. However, even if the proposal did impose a cost on regulated persons, the proposed new and amended sections are necessary to implement legislation.

The proposed amendments to §21.5040(b) and (c) may impose a cost on health benefit plans offered by nonprofit agricultural organizations and self-insured or self-funded plans under ERISA where the plan sponsor opts in to the Texas IDR process. However, even if the cost to these plans is not offset by updating the explanation of benefits and ID cards during the regular course of business, Insurance Code §1467.003(b), exempts a rule adopted under Insurance Code Chapter 1467 from Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT.

TDI has determined that for each year of the first five years that the proposed new and amended sections 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 create a new regulation;

- will expand an existing regulation;

- will increase the number of individuals subject to the rule's applicability; and

- will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. TDI 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. 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. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on October 2, 2023. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

The commissioner of insurance will also consider written and oral comments on the proposal in a public hearing under Docket No. 2840 at 2:00 p.m., central time, on September 26, 2023, in Room 2.029 of the Barbara Jordan State Office Building, 1601 Congress Avenue, Austin, Texas 78701.

SUBCHAPTER OO. DISCLOSURES BY OUT-OF-NETWORK PROVIDERS

28 TAC §21.4902

STATUTORY AUTHORITY.

TDI proposes amendments to §21.4902 under Insurance Code §§1275.002, 1275.004, 1467.003, and 36.001.

Insurance Code §1275.002 authorizes a plan sponsor to elect to apply Insurance Code Chapter 1275 to a self-insured or self-funded plan established by an employer for the benefit of the employer's employees in accordance with the Employee Retirement Income Security Act of 1974 (29 USC §1001 et seq.).

Insurance Code §1275.004 states that Insurance Code Chapter 1467 applies to a health benefit plan to which Insurance Code Chapter 1275 applies, and the administrator of a health benefit plan to which Insurance Code Chapter 1275 applies is an administrator for purposes of Insurance Code Chapter 1467.

Insurance Code §1467.003 requires the commissioner to adopt rules as necessary to implement the commissioner's powers and duties under Insurance Code Chapter 1467.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE.

Section 21.4902 implements Insurance Code §1275.002 and §1275.004, and HB 1592.

§21.4902. Definitions.

Words and terms defined in Insurance Code Chapter 1467, concerning Out-of-Network Claim Dispute Resolution, have the same meaning when used in this subchapter unless the context clearly indicates otherwise, and the following words and terms have the following meanings when used in this subchapter unless the context clearly indicates otherwise.

(1) Administrator--Has the meaning assigned by Insurance Code §1467.001, concerning Definitions. The term also includes an administrator of a nonprofit agricultural organization under Insurance Code Chapter 1682, concerning Health Benefits Provided by Certain Nonprofit Agricultural Organizations, and an administrator of a self-insured or self-funded ERISA plan under Insurance Code Chapter 1275, concerning Balance Billing Prohibitions and Out-of-Network Claim Dispute Resolution for Certain Plans, offering a health benefit plan.

(2) ERISA--The Employee Retirement Income Security Act of 1974 (29 USC §1001 et seq.).

(3) [~~(2)~~] Health benefit plan--A plan that provides coverage under:

(A) a health benefit plan offered by an HMO operating under Insurance Code Chapter 843, concerning Health Maintenance Organizations;

(B) a preferred provider benefit plan, including an exclusive provider benefit plan, offered by an insurer under Insurance Code Chapter 1301, concerning Preferred Provider Benefit Plans; [~~or~~]

(C) a plan, other than an HMO plan, under Insurance Code Chapters 1551, concerning Texas Employees Group Benefits Act; 1575, concerning Texas Public School Employees Group Benefits Program; 1579, concerning Texas School Employees Uniform Group Health Coverage; or 1682; or [~~,~~]

(D) a self-insured or self-funded plan established by an employer under ERISA (29 USC §1001 et seq.) for which the plan sponsor has elected to apply Insurance Code Chapter 1275 to the plan for the relevant plan year.

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

Filed with the Office of the Secretary of State on August 21, 2023.

TRD-202303063
Jessica Barta
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: October 1, 2023
For further information, please call: (512) 676-6555

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SUBCHAPTER PP. OUT-OF-NETWORK CLAIM DISPUTE RESOLUTION
DIVISION 1. GENERAL PROVISIONS

28 TAC §21.5002, §21.5003

STATUTORY AUTHORITY.

TDI proposes amendments to §21.5002 and §21.5003 under Insurance Code §§1275.002, 1275.004, 1467.003, and 36.001.

Insurance Code §1275.002 authorizes a plan sponsor to elect to apply Insurance Code Chapter 1275 to a self-insured or self-funded plan established by an employer for the benefit of the

employer's employees in accordance with the Employee Retirement Income Security Act of 1974 (29 USC §1001 et seq.).

Insurance Code §1275.004 states that Insurance Code Chapter 1467 applies to a health benefit plan to which Insurance Code Chapter 1275 applies, and the administrator of a health benefit plan to which Insurance Code Chapter 1275 applies is an administrator for purposes of Insurance Code Chapter 1467.

Insurance Code §1467.003 requires the commissioner to adopt rules as necessary to implement the commissioner's powers and duties under Insurance Code Chapter 1467.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE.

Section 21.5002 and §21.5003 implement Insurance Code §1275.002 and HB 1592.

§21.5002. Scope.

(a) This subchapter applies to a qualified mediation claim or qualified arbitration claim filed under health benefit plan coverage:

(1) issued by an insurer as a preferred provider benefit plan under Insurance Code Chapter 1301, concerning Preferred Provider Benefit Plans, including an exclusive provider benefit plan;

(2) administered by an administrator of a health benefit plan, other than a health maintenance organization (HMO) plan, under Insurance Code Chapters 1551, concerning Texas Employees Group Benefits Act; 1575, concerning Texas Public School Employees Group Benefits Program; 1579, concerning Texas School Employees Uniform Group Health Coverage; or 1682, concerning Health Benefits Provided by Certain Nonprofit Agricultural Organizations; [~~or~~]

(3) offered by an HMO operating under Insurance Code Chapter 843, concerning Health Maintenance Organizations; or[~~.~~]

(4) offered by a self-insured or self-funded plan established by an employer under ERISA if the plan sponsor submitted election according to §21.5060 of this title (relating to Election Submission Requirements).

(b) This subchapter does not apply to a claim for health benefits that is not a covered claim under the terms of the health benefit plan coverage.

(c) Except as provided in §21.5050 of this title (relating to Submission of Information), this subchapter applies to a claim for emergency care or health care or medical services or supplies, provided on or after January 1, 2020. A claim for health care or medical services or supplies provided before January 1, 2020, is governed by the rules in effect immediately before the effective date of this subsection, and those rules are continued in effect for that purpose. This subchapter applies to a claim filed for emergency care or health care or medical services or supplies by the administrator of a health benefit plan under Insurance Code Chapter 1682.

§21.5003. Definitions.

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

(1) Administrator--Has the meaning assigned by Insurance Code §1467.001, concerning Definitions. The term also includes an administrator of a nonprofit agricultural organization under Insurance Code Chapter 1682, concerning Health Benefits Provided by Certain Nonprofit Agricultural Organizations, and an administrator of a self-insured or self-funded ERISA plan under Insurance Code Chapter 1275, concerning Balance Billing Prohibitions and Out-of-Network Claim Dispute Resolution for Certain Plans, offering a health benefit plan.

(2) Arbitration--Has the meaning assigned by Insurance Code §1467.001.

(3) Claim--A request to a health benefit plan for payment for health benefits under the terms of the health benefit plan's coverage, including emergency care, or a health care or medical service or supply, or any combination of emergency care and health care or medical services and supplies, provided that the care, services, or supplies:

(A) are furnished for a single date of service; or

(B) if furnished for more than one date of service, are provided as a continuing or related course of treatment over a period of time for a specific medical problem or condition, or in response to the same initial patient complaint.

(4) Diagnostic imaging provider--Has the meaning assigned by Insurance Code §1467.001.

(5) Diagnostic imaging service--Has the meaning assigned by Insurance Code §1467.001.

(6) Emergency care--Has the meaning assigned by Insurance Code §1301.155, concerning Emergency Care.

(7) Emergency care provider--Has the meaning assigned by Insurance Code §1467.001.

(8) ERISA--The Employee Retirement Income Security Act of 1974 (29 USC §1001 et seq.).

(9) [~~(8)~~] Enrollee--Has the meaning assigned by Insurance Code §1467.001.

(10) [~~(9)~~] Facility--Has the meaning assigned by Health and Safety Code §324.001, concerning Definitions.

(11) [~~(10)~~] Health benefit plan--A plan that provides coverage under:

(A) a health benefit plan offered by an HMO operating under Insurance Code Chapter 843, concerning Health Maintenance Organizations;

(B) a preferred provider benefit plan, including an exclusive provider benefit plan, offered by an insurer under Insurance Code Chapter 1301, concerning Preferred Provider Benefit Plans; [~~or~~]

(C) a plan, other than an HMO plan, under Insurance Code Chapters 1551, concerning Texas Employees Group Benefits Act; 1575, concerning Texas Public School Employees Group Benefits Program; 1579, concerning Texas School Employees Uniform Group Health Coverage; or 1682; or[~~.~~]

(D) a self-insured or self-funded plan established by an employer under ERISA for which the plan sponsor has elected to apply Insurance Code Chapter 1275 to the plan for the relevant plan year.

(12) [~~(11)~~] Facility-based provider--Has the meaning assigned by Insurance Code §1467.001.

(13) [~~(12)~~] Insurer--A life, health, and accident insurance company; health insurance company; or other company operating under: Insurance Code Chapters 841, concerning Life, Health, or Accident Insurance Companies; 842, concerning Group Hospital Service Corporations; 884, concerning Stipulated Premium Insurance Companies; 885, concerning Fraternal Benefit Societies; 982, concerning Foreign and Alien Insurance Companies; or 1501, concerning Health

Insurance Portability and Availability Act, that is authorized to issue, deliver, or issue for delivery in this state a preferred provider benefit plan, including an exclusive provider benefit plan, under Insurance Code Chapter 1301.

(14) [~~(13)~~] Mediation--Has the meaning assigned by Insurance Code §1467.001.

(15) [~~(14)~~] Mediator--Has the meaning assigned by Insurance Code §1467.001.

(16) [~~(15)~~] Out-of-network claim--A claim for payment for medical or health care services or supplies or both furnished by an out-of-network provider or a non-network provider.

(17) [~~(16)~~] Out-of-network provider--Has the meaning assigned by Insurance Code §1467.001.

(18) [~~(17)~~] Party--Has the meaning assigned by Insurance Code §1467.001.

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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Jessica Barta
General Counsel
Texas Department of Insurance
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For further information, please call: (512) 676-6555

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DIVISION 5. EXPLANATION OF BENEFITS

28 TAC §21.5040

STATUTORY AUTHORITY.

TDI proposes amendments to §21.5040 under Insurance Code §§1275.004, 1301.007, 1467.003, and 36.001.

Insurance Code §1275.004 states that Insurance Code Chapter 1467 applies to a health benefit plan to which Insurance Code Chapter 1275 applies, and the administrator of a health benefit plan to which Insurance Code Chapter 1275 applies is an administrator for purposes of Insurance Code Chapter 1467.

Insurance Code §1301.007 authorizes the commissioner to adopt rules as necessary to implement Insurance Code Chapter 1301 and ensure reasonable accessibility and availability of preferred provider services to residents of this state.

Insurance Code §1467.003 requires the commissioner to adopt rules as necessary to implement the commissioner's powers and duties under Insurance Code Chapter 1467.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE.

Section 21.5040 implements Insurance Code Chapters 1467 and 1682; §§1271.008, 1275.003, 1301.010, 1551.015, 1575.009, and 1579.009; House Bills 3924 and 1592; and Senate Bills 1264 and 2476.

§21.5040. Required Explanation of Benefits and Enrollee Identification Card Information.

(a) General requirements for explanation of benefits. A health benefit plan issuer or administrator subject to Insurance Code §1271.008, concerning Balance Billing Prohibition Notice; §1275.003, concerning Balance Billing Prohibition Notice; §1301.010, concerning Balance Billing Prohibition Notice; §1551.015, concerning Balance Billing Prohibition Notice; §1575.009, concerning Balance Billing Prohibition Notice; or §1579.009, concerning Balance Billing Prohibition Notice, must provide written notice in accordance with this section in an explanation of benefits in connection with a health care or medical service or supply or transport provided by a non-network provider or an out-of-network provider:

(1) to the enrollee and physician or provider, which must include:

(A) a statement of the billing prohibition, as applicable; and

(B) the total amount the physician or provider may bill the enrollee under the health benefit plan and an itemization of in-network copayments, coinsurance, deductibles, and other amounts included in that total; and

(2) to the physician or provider, for a claim that is subject to mediation or arbitration under Insurance Code Chapter 1467, concerning Out-of-Network Claim Dispute Resolution, a conspicuous statement in not less than 10-point boldface type that is substantially similar to the following: "If you disagree with the payment amount, you can request mediation or arbitration. To learn more and submit a request, go to www.tdi.texas.gov. After you submit a complete request, you must notify {HEALTH BENEFIT PLAN ISSUER OR ADMINISTRATOR NAME} at {EMAIL}."

(b) Specific requirements for explanation of benefits provided by health benefit plans subject to Insurance Code Chapter 1275. In addition to the requirements in subsection (a) of this section, the following requirements apply.

(1) For a health benefit plan offered by a nonprofit agricultural organization under Insurance Code Chapter 1682, concerning Health Benefits Provided by Certain Nonprofit Agricultural Organizations, the notice to a physician or provider for a claim must also include the following instruction that is substantially similar to the following: "The request for mediation or arbitration must identify the plan type as 'Ag Plan.'"

(2) For a self-insured or self-funded plan under ERISA where the plan sponsor has elected to apply Insurance Code Chapter 1275, concerning Balance Billing Prohibitions and Out-Of-Network Claim Dispute Resolution for Certain Plans, to the plan for the relevant plan year, the notice to a physician or provider for a claim must also include a statement that is substantially similar to the following: "The plan sponsor of {THE HEALTH BENEFIT PLAN NAME} has opted in to the Texas Independent Dispute Resolution Process under Insurance Code Chapter 1275 for this plan year. Beginning on {EFFECTIVE DATE OF ELECTION}, a claim arising under this health benefit plan must proceed through the Texas process and may not proceed through the Federal No Surprises Act Independent Dispute Resolution Process. The request for mediation or arbitration must identify the plan type as 'ERISA Opt-In.'"

(c) Requirements for ID cards issued to enrollees of health benefit plans subject to Insurance Code Chapter 1275. For a plan that is delivered, issued for delivery, or renewed on or after 90 days of the effective date of this section, a health benefit plan issuer or administra-

tor that is subject to Insurance Code §1275.003 must include the letters TXIDR on the ID card issued to enrollees.

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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Jessica Barta
General Counsel
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DIVISION 7. SUBMISSION REQUIREMENTS FOR ELECTION BY ERISA PLANS

28 TAC §21.5060

STATUTORY AUTHORITY.

TDI proposes new §21.5060 under Insurance Code §§1275.002, 1275.004, 1467.003, and 36.001.

Insurance Code §1275.002 authorizes the commissioner to prescribe the form and manner in which a plan sponsor may elect to apply Insurance Code Chapter 1275 to a self-insured or self-funded plan established by an employer for the benefit of the employer's employees in accordance with the Employee Retirement Income Security Act of 1974 (29 USC §1001 et seq.).

Insurance Code §1275.004 states that Insurance Code Chapter 1467 applies to a health benefit plan to which Insurance Code Chapter 1275 applies, and the administrator of a health benefit plan to which Insurance Code Chapter 1275 applies is an administrator for purposes of Insurance Code Chapter 1467.

Insurance Code §1467.003 requires the commissioner to adopt rules as necessary to implement the commissioner's powers and duties under Insurance Code Chapter 1467.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE.

Section 21.5060 implements Insurance Code §1275.002 and HB 1592.

§21.5060. Election Submission Requirements.

(a) A plan sponsor of a self-insured or self-funded plan may elect to participate in out-of-network claim dispute resolution under Insurance Code Chapter 1275, concerning Balance Billing Prohibitions and Out-of-Network Claim Dispute Resolution for Certain Plans, by providing identifying information to the Texas Department of Insurance as specified on the department's website at www.tdi.texas.gov, including:

(1) the name and contact information of the plan sponsor;

(2) the name and contact information of the administrator of the health benefit plan, if applicable;

(3) the health benefit plan year start and end date;

(4) the requested effective date, which must be at least 30 days after the date the identifying information is submitted;

(5) the group number of the health benefit plan; and

(6) the number of enrollees covered under the health benefit plan.

(b) Election under subsection (a) of this section applies only to the relevant plan year. A plan sponsor must elect to participate in out-of-network claim dispute resolution each plan year and must provide or update identifying information required by this section. A plan sponsor that elects to apply Insurance Code Chapter 1275 to a plan for the relevant plan year may not opt out until the end of that relevant plan year.

(c) A plan sponsor or its authorized representative may provide the identifying information required by this section.

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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Jessica Barta
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DIVISION 8. EMERGENCY MEDICAL SERVICE RATE SUBMISSION AND PAYMENT REQUIREMENTS

28 TAC §21.5070, §21.5071

STATUTORY AUTHORITY.

TDI proposes new §21.5070 and §21.5071 under Insurance Code §§38.006, 1301.007, and 36.001.

Insurance Code §38.006 authorizes the commissioner to prescribe the form and manner by which political subdivisions may submit rates for ground ambulance services.

Insurance Code §1301.007 directs the commissioner to adopt rules as necessary to implement Insurance Code Chapter 1301 and ensure reasonable accessibility and availability of preferred provider services to residents of Texas.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE.

Section 21.5070 and §21.5071 implement Insurance Code §§38.006, 1271.159, 1275.054, 1301.166, 1551.231, 1575.174, and 1579.112, and SB 2476.

§21.5070. Rate Database for Emergency Medical Services Providers.

(a) Consistent with Insurance Code §38.006, concerning Emergency Medical Services Provider Balance Billing Rate Database, this section applies to:

(1) a political subdivision that sets, controls, or regulates a rate charged for a health care service, supply, or transport provided by an emergency medical services (EMS) provider, other than an air ambulance; and

(2) an EMS provider or its designee that provides a health care service, supply, or transport on behalf of a political subdivision that sets, controls, or regulates a rate.

(b) A political subdivision or EMS provider subject to this section may not issue a bill for a health care service, supply, or transport that exceeds the amount of the rate set, controlled, or regulated by the political subdivision.

(c) A political subdivision that chooses to submit data to the Texas Department of Insurance (TDI) under this section must submit data using the data submission method available at www.tdi.texas.gov and must include at a minimum:

(1) the political subdivision's name and contact information;

(2) if known, the National Provider Identification (NPI) number of each EMS provider that provides a health care service, supply, or transport that is subject to rates set, controlled, or regulated by the political subdivision;

(3) each ZIP code that is subject to the rates set, controlled, or regulated by the political subdivision; and

(4) the applicable billing code, code type, and dollar amount for each health care service, supply, or transport rate that is set, controlled, or regulated by the political subdivision.

(d) A political subdivision may submit rates at any time on or before the final submission deadline of September 1, 2024, but a rate must be published to be used in payments to EMS providers under §21.5071 of this title (relating to Payments to Emergency Medical Services Providers).

(e) TDI will publish data reported by a political subdivision according to the following schedule:

(1) data submitted on or before December 15, 2023, will be published by January 1, 2024.

(2) data submitted on or before March 1, 2024, will be published by March 15, 2024.

(3) data submitted on or before June 1, 2024, will be published by June 15, 2024.

(4) data submitted on or before September 1, 2024, will be published by September 15, 2024.

(f) A political subdivision is not required to submit new or updated data each quarter. Data submitted for an earlier quarter will continue to be published in subsequent quarters unless the political subdivision updates or deletes the rate data. Data that is updated or deleted will be published for use in payments to EMS providers under §21.5071 of this title according to the schedule specified in subsection (e) of this section.

(g) A claim submitted by an EMS provider or its designee for a health care service, supply, or transport provided on behalf of a political subdivision must include the ZIP code in which the health care service, supply, or transport originated.

(h) A table illustrating the dates by which a political subdivision must submit rates, TDI will publish rate data, and published rates will begin to apply to claims is contained in Figure: 28 TAC §21.5070(h).

Figure: 28 TAC §21.5070(h)

§21.5071. Payments to Emergency Medical Services Providers.

(a) This section applies to a health benefit plan issuer or administrator that is subject to one of the following statutes:

(1) Insurance Code §1271.159, concerning Non-Network Emergency Medical Services Provider;

(2) Insurance Code §1275.054, concerning Out-of-Network Emergency Medical Services Provider Payments;

(3) Insurance Code §1301.166, concerning Out-of-Network Emergency Medical Services Provider;

(4) Insurance Code §1551.231, concerning Out-of-Network Emergency Medical Services Provider Payments;

(5) Insurance Code §1575.174, concerning Out-of-Network Emergency Medical Services Provider Payments; or

(6) Insurance Code §1579.112, concerning Out-of-Network Emergency Medical Services Provider Payments.

(b) For a covered health care or medical service, supply, or transport that is provided to an enrollee by an out-of-network emergency medical services (EMS) provider, a health benefit plan issuer or administrator must pay:

(1) for a service or transport that originated in a political subdivision that sets, controls, or regulates the rate, the rate for that political subdivision that is published in the EMS provider rate database established by the department consistent with the time frames addressed in subsection (c) of this section and adjusted as required in subsection (d) of this section; or

(2) if there is not a rate published in the EMS provider rate database for the political subdivision in which the service or transport originated, consistent with the time frames addressed in subsection (c) of this section, the lesser of:

(A) the provider's billed charge; or

(B) 325% of the current Medicare rate, including any applicable extenders or modifiers.

(c) Except as provided in subsection (d) of this section, for a claim for emergency medical services that is provided on or after January 1, 2024, a health benefit plan issuer or administrator must make a payment consistent with subsection (b) of this section, using rate data published in the department's EMS provider rate database according to the following schedule.

(1) For a claim submitted before April 1, 2024, the applicable rate is based on data published in the department's EMS provider rate database as of January 1, 2024.

(2) For a claim submitted on or after April 1, 2024, and before July 1, 2024, the applicable rate is based on data published in the department's EMS provider rate database as of March 15, 2024.

(3) For a claim submitted on or after July 1, 2024, and before October 1, 2024, the applicable rate is based on data published in the department's EMS provider rate database as of June 15, 2024.

(4) For a claim submitted on or after October 1, 2024, the applicable rate is based on data published in the department's EMS provider rate database as of September 15, 2024.

(d) The health benefit plan issuer or administrator must adjust a payment required under subsection (b)(1) of this section each plan year by increasing the payment by the lesser of the Medicare Economic Index rate or 10% of the provider's previous calendar year rates.

(1) For purposes of this subsection, the following terms are defined as follows.

(A) Plan year--a plan that starts on or after September 1, 2024.

(B) Calendar year rate--the most recently published rate available before the first day of the new plan year.

(2) Figure: 28 TAC §21.5071(d)(2) provides examples illustrating how a health benefit plan should apply published rates to a plan year under this subsection.
Figure: 28 TAC §21.5071(d)(2)

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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General Counsel
Texas Department of Insurance
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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 12. TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS

CHAPTER 364. REQUIREMENTS FOR LICENSURE

40 TAC §364.5

The Texas Board of Occupational Therapy Examiners proposes amendments to 40 Texas Administrative Code §364.5, concerning Recognition of Out-of-State License of Military Spouse. The amendments add military service members to those eligible for the recognition of an out of state license and make further changes regarding the recognition pursuant to changes required by Senate Bill 422 of the 88th Regular Legislative Session. In addition, the amendments remove from the section information concerning an address of record pursuant to changes required by SB 510 of the 88th Regular Legislative Session. The amendments also include adding that individuals provide the Board phone number and mailing address information and update the Board of related changes and include further cleanups and/or clarifications.

Senate Bill 422 requires the adoption of rules to implement changes to Texas Occupations Code §55.0041. The changes, which take effect September 1, 2023, will add military service members to those eligible to practice without obtaining the applicable occupational license. The bill also requires that not later than the 30th day after the date a military service member or military spouse submits certain information, a state agency verify the military service member's or military spouse's license and that in the event of a divorce or similar event that affects a person's status as a military spouse, the spouse may continue to engage in the business or occupation under the authority of the section until the third anniversary of the date the spouse received the confirmation described by the section. Amendments to §364.5 implement these requirements.

Senate Bill 510 adds Texas Government Code §552.11765, Confidentiality of Certain Information Maintained by State Licensing Authority. The new section, which takes effect September 1, 2023, includes that applicants', licensees', and former licensees' home addresses are confidential and not available public information. Pursuant to such, the Board proposes amendments to §364.5, as well as 40 Texas Administrative Code §369.2, Changes of Name or Contact Information, and §370.1, License Renewal, to remove information concerning the election an individual may make to designate a home, mailing, or business address as the address available to the public.

An additional change to §364.5 concerns adding the requirement that individuals seeking the authorization described by the section provide the Board with their phone number and mailing address and notify the Board of changes to such. The change is proposed to enhance the Board's ability to communicate with individuals who are seeking or who have received the authorization and remain apprised of changes to such information. The change will also enhance the consistency of the Board's rules, as prior rulemaking required the same for applicants for a license and licensees.

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 enhanced ability of the Board to communicate with those seeking or who have obtained the authorization and the conformance of Board rules to related statutes in Texas Occupations Code Chapter 55 and Texas Government Code Chapter 552. 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

The agency 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

The agency has determined under Texas Government Code §2001.0221 that during the first five years the rule would be in effect:

(1) the rule will not create or eliminate a government program;

(2) the rule will not require the creation of new employee positions or the elimination of existing employee positions;

(3) the rule will not require an increase or decrease in future legislative appropriations to the agency;

(4) the rule will not require an increase or decrease in fees paid to the agency;

(5) the rule will not create a new regulation;

(6) the rule will expand an existing regulation;

(7) the rule will increase the number of individuals subject to the rule's applicability; and

(8) the rule will neither positively nor adversely affect this state's economy.

COSTS TO REGULATED PERSONS

The agency has determined that the rule does not impose a cost on regulated persons. This rule is not subject to Texas Government Code §2001.0045 because the rule does not impose a cost, is necessary to protect the health, safety, and welfare of the residents of this state, and is necessary to implement legislation as Senate Bill 422 requires the adoption of rules to implement the section and amendments to the section are required to implement further changes made by Senate Bill 422 and Senate Bill 510.

ENVIRONMENTAL IMPACT STATEMENT

The agency 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; Texas Occupations Code §55.0041, Recognition of Out-of-State License of Military Service Members and Military Spouses, amended by Senate Bill 422 and effective September 1, 2023, which requires the Board to adopt rules to implement the legislation; and under Texas Government Code §552.11765, Confidentiality of Certain Information Maintained by State Licensing Authority, enacted by Senate Bill 510 and effective September 1, 2023, which includes that certain address information is confidential and not available public information.

CROSS REFERENCE TO STATUTE

The amendments implement Texas Occupations Code §55.0041, Recognition of Out-of-State License of Military Service Member and Military Spouses, amended by SB 422 and effective September 1, 2023, and Texas Government Code §552.11765, Confidentiality of Certain Information Maintained by State Licensing Authority, enacted by Senate Bill 510 and effective September 1, 2023.

§364.5. Recognition of Out-of-State License of Military Service Members and Military Spouses [~~Spouse~~].

(a) Notwithstanding any other law, a military service member or [~~A~~] military spouse may engage in the practice of occupational therapy without obtaining the applicable occupational therapy license if the service member or [~~military~~] spouse is currently licensed in good standing by another jurisdiction of the U.S. that has licensing requirements that are substantially equivalent to the requirements for the license in this state.

(b) Before engaging in the practice of occupational therapy, the military service member or military spouse must:

(1) notify the Board in writing of the following:

(A) the service member's or [~~military~~] spouse's intent to practice in this state;

(B) the service member's or [~~military~~] spouse's full name and any previous last names, social security number, date of birth, phone number, business phone number, residential address, business address, mailing address, and email address[~~, and a chosen address of record~~];

(C) the license type, license number, and jurisdiction in which the service member or [~~military~~] spouse is currently licensed in good standing; and

(D) a list of all jurisdictions in which the service member or [~~military~~] spouse has held or currently holds a license with the license type, license number, and license expiration date of each;

(2) submit to the Board proof of the service member's or [~~military~~] spouse's residency in this state and a copy of the service member's or [~~military~~] spouse's military identification card. Proof of residency may include a copy of the permanent change of station order for the military service member or, with respect to a military spouse, the permanent change of station order for the military service member to whom the spouse is married; and

(3) receive from the Board written confirmation that:

(A) the Board has verified the service member's or [~~military~~] spouse's license in the other jurisdiction; and

(B) the service member or [~~military~~] spouse is authorized to engage in the practice of occupational therapy in accordance with this section.

(c) The military service member or military spouse shall comply with all other [~~Board~~] laws and regulations applicable to the practice of occupational therapy in this state, including all other laws and regulations in the Occupational Therapy Practice Act and the Texas Board of Occupational Therapy Examiners Rules. The service member or [~~military~~] spouse may be subject to revocation of the authorization

described by subsection (b)(3)(B) of this section for failure to comply with these [~~Board~~] laws and regulations and the Board may notify any jurisdictions in which the service member or [~~military~~] spouse is licensed of the revocation of such.

(d) A military service member or military spouse may engage in the practice of occupational therapy under the authority of this section only for the period during which the military service member or, with respect to a military spouse, the military service member to whom the [~~military~~] spouse is married is stationed at a military installation in this state but not to exceed three years from the date the service member or [~~military~~] spouse receives the confirmation described by subsection (b)(3) of this section. [~~During this authorization period, the military spouse must:~~]

[~~(1) maintain a current license in good standing in another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license in this state;~~]

[~~(2) update the Board of any changes to information as specified in subsections (b)(1)(B)-(C) and (b)(2) of this section within 30 days of such change(s); and~~]

[~~(3) notify the Board within 30 days of any disciplinary action taken against the military spouse by another jurisdiction.~~]

(e) Notwithstanding subsection (d) of this section, in the event of a divorce or similar event that affects a person's status as a military spouse, the spouse may continue to engage in the practice of occupational therapy under the authority of this section until the third anniversary of the date the spouse received the confirmation described by subsection (b)(3) of this section.

(f) During the authorization period described by subsection (b)(3)(B) of this section, the military service member or military spouse must:

(1) maintain a current license in good standing in another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license in this state;

(2) update the Board of any changes to information as specified in subsections (b)(1)(B)-(C) and (b)(2) of this section within 30 days of such change(s); and

(3) notify the Board within 30 days of any disciplinary action taken against the service member or spouse by another jurisdiction.

(g) [~~(e)~~] The Board will identify, with respect to each type of license issued by the Board, the jurisdictions that have licensing requirements that are substantially equivalent to the requirements for the license in this state; and not later than the 30th day after the receipt of the items described by subsections (b)(1)-(2) of this section, the Board shall verify that the military service member or military spouse is licensed in good standing in a jurisdiction of the U.S. that has licensing requirements that are substantially equivalent to the requirements for the license in this state. [~~the Board shall verify that a military spouse is licensed in good standing in the jurisdiction upon receipt of the items described by subsection (b)(1)-(2) of this section.~~]

(h) [~~(f)~~] In this section, "military service member" and "military spouse" have the meaning as defined in Chapter 55, Texas Occupations Code, §55.001.

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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Ralph A. Harper
Executive Director
Texas Board of Occupational Therapy Examiners
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CHAPTER 368. OPEN RECORDS

40 TAC §368.1

The Texas Board of Occupational Therapy Examiners proposes amendments to 40 Texas Administrative Code §368.1, Open Records. The proposed amendments concern updating the references in the section, including to update information regarding the setting of costs for the copying of records due to the abolishment of the General Services Commission. The amendments also clarify that state or federal statutes in addition to Texas Government Code Chapter 552 may affect the disclosure of certain information and add information regarding the use of a designee for the Executive Director, the agency's open records coordinator. The amendments include further cleanups, including those concerning aligning the section with Texas Government Code Chapter 552.

The amendments will improve the accuracy of the information in the section, clarify that statutes other than those contained in Chapter 552 may affect the agency's disclosure of information, and align the section more closely with Texas Government Code Chapter 552.

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 conformance of the Board's regulations to Texas Government Code Chapter 552 and the improved accuracy of the Board's rules. 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

The agency 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

The agency has determined under Texas Government Code §2001.0221 that during the first five years the rule would be in effect:

(1) the rule will not create or eliminate a government program;

(2) the rule will not require the creation of new employee positions or the elimination of existing employee positions;

(3) the rule will not require an increase or decrease in future legislative appropriations to the agency;

(4) the rule will not require an increase or decrease in fees paid to the agency;

(5) the rule will not create a new regulation;

(6) the rule will expand an existing regulation;

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

(8) the rule will neither positively nor adversely affect this state's economy.

COSTS TO REGULATED PERSONS

The agency has determined that the rule does not impose a cost on regulated persons. This rule is not subject to Texas Government Code §2001.0045 because the rule does not impose a cost and is necessary to implement prior legislation codified in Texas Government Code Chapter 552.

ENVIRONMENTAL IMPACT STATEMENT

The agency 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.

CROSS REFERENCE TO STATUTE

The amendments implement Texas Government Code Chapter 552, which concerns the availability of information to the public.

§368.1. Open Records.

(a) Open Records Requests. Inspection of Public Records under the Texas Public information Act, Texas Government Code Chapter 552, provides [~~Open Records Act, Texas Civil Statutes, Article 8890, §9(c) and (d), provide~~] that public information is [~~all of the records of the board are public records and are~~] available for public inspection during normal business hours except [~~that~~] investigative files and other records of the Board made [~~board are~~] confidential by law. In addition, the exceptions to disclosure in Texas Government Code Chapter 552 or other state or federal statutes [~~Civil Statutes, Article 6252-17a,~~] may protect certain information. This rule is promulgated pursuant to Texas Government Code Chapter 552 [~~Article 6252-17a~~] to establish a records review process that is efficient, safe, and timely to the public and to the agency.

(1) Requests must be in writing and reasonably identify the records requested.

(2) Records access will be by appointment only.

(3) Records access is available only during the regular business hours of the agency.

(4) A review of public information may be by physical access or by duplication at the requestor's option. [~~Unless confidential information is involved, review may be by physical access or by duplication at the requestor's option. Any person, however, whose request would be unduly disruptive to the ongoing business of the office may be denied physical access and will be provided the option of receiving copies. Costs of duplication shall be the responsibility of the requesting party in accordance with the established board fee policy, payable at the time of receipt of records, if in person; or in advance, if by mail. The board may, in its discretion, waive fees if it is in the public interest to do so.~~]

(5) When the safety of any public record is at issue, physical access may be denied and the records will be provided by duplication as previously described.

(6) Confidential files will not be made available for inspection or for duplication except under certain circumstances, e.g., court order.

(7) All open records request appointments will be referred to the Executive Director [~~executive director~~] or the Executive Director's designee before complying with a request.

(8) The open records coordinator for the agency is the Executive Director [~~executive director~~] and the alternate is the Executive Director's [~~director's~~] designee.

(b) Charges for Copies of Public Records. The Board will calculate and collect charges in accordance with Texas Government Code Chapter 552 and rules promulgated by the Attorney General under Texas Government Code §552.262.

[~~(b) Charges for Copies of Public Records. The charge to any person requesting reproductions of any readily available record of the Texas Board of Occupational Therapy Examiners will be the charges established by the General Services Commission.~~]

(c) The Board [~~board~~] may waive these charges if there is a public benefit. The Executive Director [~~executive director of the Executive Council of Physical Therapy and Occupational Therapy Examiners~~] or the Executive Director's designee is authorized to determine whether a public benefit exists on a case-by-case basis.

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

Filed with the Office of the Secretary of State on August 21, 2023.

TRD-202303070
Ralph A. Harper
Executive Director
Texas Board of Occupational Therapy Examiners
Earliest possible date of adoption: October 1, 2023
For further information, please call: (512) 305-6900

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CHAPTER 369. DISPLAY OF LICENSES

40 TAC §369.2

The Texas Board of Occupational Therapy Examiners proposes amendments to 40 Texas Administrative Code §369.2, Changes of Name or Contact Information. The proposed amendments concern removing from the section information concerning an address of record pursuant to changes required by Senate Bill 510 of the 88th Regular Legislative Session.

Senate Bill 510 adds Texas Government Code §552.11765, Confidentiality of Certain Information Maintained by State Licensing Authority. The bill, which takes effect September 1, 2023, includes that applicants', licensees', and former licensees' home addresses are confidential and not available public information. Pursuant to such, the Board proposes amendments to §369.2, as well as 40 Texas Administrative Code §364.5, Recognition of Out-of-State License of Military Spouse, and §370.1, License Renewal, to remove information concerning the election an individual may make to designate a home, mailing, or business address as the address available to the public.

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 conformance of the Board's regulations to Texas Government Code Chapter 552. 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

The agency 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

The agency has determined under Texas Government Code §2001.0221 that during the first five years the rule would be in effect:

(1) the rule will not create or eliminate a government program;

(2) the rule will not require the creation of new employee positions or the elimination of existing employee positions;

(3) the rule will not require an increase or decrease in future legislative appropriations to the agency;

(4) the rule will not require an increase or decrease in fees paid to the agency;

(5) the rule will not create a new regulation;

(6) the rule will remove an existing regulation;

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

(8) the rule will neither positively nor adversely affect this state's economy.

COSTS TO REGULATED PERSONS

The agency has determined that the rule does not impose a cost on regulated persons. This rule is not subject to Texas Government Code §2001.0045 because the rule does not impose a cost and is necessary to implement legislation as the Board must adopt changes to implement Senate Bill 510.

ENVIRONMENTAL IMPACT STATEMENT

The agency 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 under Texas Government Code §552.11765, Confidentiality of Certain Information Maintained by State Licensing Authority, enacted by Senate Bill 510 and effective September 1, 2023, which includes that certain address information is confidential and not available public information.

CROSS REFERENCE TO STATUTE

The amendments implement §552.11765, Confidentiality of Certain Information Maintained by State Licensing Authority, enacted by Senate Bill 510 and effective September 1, 2023.

§369.2. Changes of Name or Contact Information.

(a) A licensee or applicant shall notify the Board in writing of changes in name, phone number, business phone number, residential address, business address, mailing address, and/or email address within 30 days of such change(s). Applicants and temporary licensees, in addition, shall notify the Board in writing of changes of supervisor within 30 days of such change(s). A copy of the legal document (such as a marriage license, court decree, or divorce decree) evidencing a change in name must be submitted by the licensee or applicant with any written notification of a change in name. To request a replacement copy of the license to reflect a name change, refer to §369.1 of this title (relating to Display of Licenses).

~~[(b) The address of record is the physical address that will be provided to the public. Until applicants and licensees select an address of record, the work address will be used as the default. If no work address is available, the mailing address will be used. If no alternate address is available, the home address will be used. Applicants and licensees may update this information at any time.]~~

(b) [~~(c)~~] Failure to provide the changes requested in subsection (a) of this section may cause a licensee to be subject to 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.

Filed with the Office of the Secretary of State on August 21, 2023.

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Ralph A. Harper
Executive Director
Texas Board of Occupational Therapy Examiners
Earliest possible date of adoption: October 1, 2023
For further information, please call: (512) 305-6900

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CHAPTER 370. LICENSE RENEWAL

40 TAC §370.1

The Texas Board of Occupational Therapy Examiners proposes amendments to 40 Texas Administrative Code §370.1. License Renewal. The proposed amendments concern removing from the section information concerning an address of record pursuant to changes required by Senate Bill 510 of the 88th Regular Legislative Session.

Senate Bill 510 adds Texas Government Code §552.11765, Confidentiality of Certain Information Maintained by State Licensing Authority. The bill, which takes effect September 1, 2023, includes that applicants', licensees', and former licensees' home addresses are confidential and not available public information. Pursuant to such, the Board proposes amendments to §370.1, as well as 40 Texas Administrative Code §364.5, Recognition of Out-of-State License of Military Spouse, and §369.2, Changes of Name or Contact Information, to remove information concerning the election an individual may make to designate a home, mailing, or business address as the address available to the public.

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 conformance of the Board's regulations to Texas Government Code Chapter 552. 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

The agency 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

The agency has determined under Texas Government Code §2001.0221 that during the first five years the rule would be in effect:

(1) the rule will not create or eliminate a government program;

(2) the rule will not require the creation of new employee positions or the elimination of existing employee positions;

(3) the rule will not require an increase or decrease in future legislative appropriations to the agency;

(4) the rule will not require an increase or decrease in fees paid to the agency;

(5) the rule will not create a new regulation;

(6) the rule will remove an existing regulation;

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

(8) the rule will neither positively nor adversely affect this state's economy.

COSTS TO REGULATED PERSONS

The agency has determined that the rule does not impose a cost on regulated persons. This rule is not subject to Texas Government Code §2001.0045 because the rule does not impose a cost and is necessary to implement legislation as the Board must adopt changes to implement Senate Bill 510.

ENVIRONMENTAL IMPACT STATEMENT

The agency 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 under Texas Government Code §552.11765, Confidentiality of Certain Information Maintained by State Licensing Authority, enacted by Senate Bill 510 and effective September 1, 2023, which includes that certain address information is confidential and not available public information.

CROSS REFERENCE TO STATUTE

The amendments implement §552.11765, Confidentiality of Certain Information Maintained by State Licensing Authority, enacted by Senate Bill 510 and effective September 1, 2023.

§370.1. License Renewal.

(a) Licensee Renewal. Licensees are required to renew their licenses every two years by the end of their birth month. A licensee may not provide occupational therapy services without a current license. Licenses and license expiration dates should be verified on the Board's license verification web page.

(1) General Requirements. The renewal application is not complete until the Board receives all required items. The components required for license renewal are:

(A) a complete renewal application form as prescribed by the Board verifying completion of the required continuing education, as per Chapter 367 of this title (relating to Continuing Education);

(B) the renewal fee and any late fees as set by the Executive Council that may be due;

(C) a passing score on the jurisprudence examination;

(D) the licensee's physical address, any work address, other mailing address, and email address[~~, and a chosen address of record~~]; and

(E) a complete and legible set of fingerprints submitted in the manner prescribed by the Board for the purpose of obtaining criminal history record information from the Department of Public Safety and the Federal Bureau of Investigation. The licensee is not required to submit fingerprints under this section if the license holder has previously submitted fingerprints under:

(i) Chapter 364 of this title (relating to Requirements for Licensure) for the initial issuance of the license;

(ii) Chapter 370 of this title (relating to License Renewal) as part of a prior license renewal; or

(iii) Chapter 371 of this title (relating to Inactive and Retired Status) as part of a prior license renewal or change of license status.

(2) The licensee is responsible for ensuring that the license is renewed, whether receiving a renewal notice or not.

(3) The renewal process is not complete until the Board's license verification web page reflects that the license has been renewed by displaying the new renewal date.

(4) Renewal fees and late fees are non-refundable.

(5) Licensees electing to change their status or renewing a license on inactive or retired status must meet further requirements as per Chapter 371 of this title (relating to Inactive and Retired Status).

(6) Licensees renewing a license expired one year or more must meet further requirements as per §370.3 of this title (relating to Restoration of a Texas License).

(b) Restrictions to Renewal. The Board will not renew a license if it receives information from a child support agency that a licensee has failed to pay child support under a support order for six months or more as provided by Texas Family Code §232.0135. If all other renewal requirements have been met, the license will be renewed when the child support agency notifies the Board it may renew the 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 August 21, 2023.

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Ralph A. Harper
Executive Director
Texas Board of Occupational Therapy Examiners
Earliest possible date of adoption: October 1, 2023
For further information, please call: (512) 305-6900

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PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 838. TEXAS INDUSTRY-RECOGNIZED APPRENTICESHIP GRANT PROGRAM [~~TEXAS INDUSTRY-RECOGNIZED APPRENTICESHIP PROGRAMS GRANT PROGRAM~~]

The Texas Workforce Commission (TWC) proposes amendments to the following sections of Chapter 838, relating to the Texas Industry-Recognized Apprenticeship Programs Grant Program.

Subchapter A. General Purpose and Definitions, §838.1 and §838.2

Subchapter B. Grant Program, §§838.11 - 838.14

Subchapter C. Program Administration, §§838.21, 838.22, and 838.24

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed amendments to Chapter 838 is to remove references to the federal Industry-Recognized Apprenticeship Program (IRAP) and Standards Recognition Entities (SREs) because they no longer exist, and to state the eligibility criteria and application process for entities that apply to take part in the Texas Industry-Recognized Apprenticeship (TIRA) Grant Program.

In May 2020, the US Department of Labor (DOL) established a process to recognize third-party entities--SREs--which would evaluate and recognize IRAPs. In November 2021, DOL proposed rescinding this regulatory framework. Beginning November 25, 2022, DOL ceased recognizing SREs or IRAPs and rescinded the related rules that were under 29 Code of Federal Regulations Part 29. In response to DOL's action on IRAPs and SREs, TWC is amending Chapter 838 to remove DOL-related references.

In 2019, House Bill 2784, enacted by the 86th Texas Legislature, Regular Session, amended Chapter 302 of the Texas Labor Code by adding Subchapter I to create the Texas Industry-Recognized Apprenticeship Programs Grant Program. The grant program's purpose is to address Texas' immediate industrial workforce needs resulting from the impact of hurricanes, other natural disasters, and overall workforce shortages. Proposed amendments to Chapter 838 clarify the eligibility criteria and application process for entities wishing to take part in this state program.

Rule Review

Texas Government Code §2001.039 requires that every four years each state agency review and consider for readoption, revision, or repeal each rule adopted by that agency. TWC has assessed whether the reasons for adopting or readopting the rules continue to exist. TWC finds that the rules in Chapter 838 are needed, reflect current legal and policy considerations, and reflect current TWC procedures. The reasons for initially adopting the rules continue to exist. TWC, therefore, proposes to readopt Chapter 838 as amended.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

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

CHAPTER 838. TEXAS INDUSTRY-RECOGNIZED APPRENTICESHIP PROGRAMS GRANT PROGRAM

TWC proposes the following amendment to the title of Chapter 838:

The Chapter 838 title is amended to remove "Programs" to reflect that the rules no longer include references to the former federal Industry-Recognized Apprenticeship Program. The chapter title is amended to read "Texas Industry-Recognized Apprenticeship Grant Program."

SUBCHAPTER A. GENERAL PURPOSE AND DEFINITIONS

The section language throughout the subchapter is amended to remove DOL-related references and update the apprenticeship grant program name to Texas Industry-Recognized Apprenticeship (TIRA) program.

§838.1. Scope and Purpose

Section 838.1 is amended to remove IRAP language, replacing these references with TIRA program references.

§838.2. Definitions

Section 838.2 is amended to update the definition for "Texas Industry-Recognized Apprenticeship (TIRA) Program" removing in (3)(A) "by the US Department of Labor (DOL)" and updating the remaining portion of paragraph (3) to incorporate the provisions of former §838.13(b)(5) of this chapter. Additionally, §838.2(5) is removed.

SUBCHAPTER B. GRANT PROGRAM

The section language throughout the subchapter is amended to remove DOL-related references and update the program name to "Texas Industry-Recognized Apprenticeship (TIRA) program. "

Additionally, TWC proposes the following amendments to Subchapter B:

§838.11. General Statement of Purpose

Section 838.11 is amended to remove IRAP language, replacing these references with TIRA program references.

§838.12. Notice of Grant Availability and Application

Section 838.12 is amended to remove "in the *Texas Register,*" allowing TWC's three-member Commission to expedite funding actions resulting from the impact of hurricanes, other natural disasters, and overall workforce shortages.

New §838.12(b) - (d) are added to lay out the application process and the form and manner for an application's submission.

§838.13. Eligible Applicants

Section 838.13 is amended to rename the section "Eligible and Approved Applicants."

Section 838.13(a) is amended to set forth TIRA program requirements.

Section 838.13(b) is amended to replace references to the federal IRAP with the state's TIRA.

Section 838.13(b)(2) is removed and (b)(5) is relocated to the definition for TIRA in Section 838.2.

§838.14. Funding Qualifications for Industry-Recognized Apprenticeship Programs

Section 838.14 is amended to remove DOL-related references and update the apprenticeship grant program name to Texas Industry-Recognized Apprenticeship (TIRA) grant program. Section 838.14's title is amended to reflect this update.

SUBCHAPTER C. PROGRAM ADMINISTRATION

TWC proposes the following amendments to Subchapter C:

§838.21. Grants for Industry-Recognized Apprenticeship Programs

Section 838.21 is amended to remove IRAP language, replacing these references with TIRA program references. Section 838.21's title is amended to reflect this update.

§838.22. Program Objectives

Section 838.22 is amended to remove IRAP language, replacing these references with TIRA program references.

§838.24. Performance

Section 838.24 is amended to remove IRAP language, replacing these references with TIRA program references.

PART III. IMPACT STATEMENTS

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

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

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

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

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

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

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

Based on the analyses required by Texas Government Code §2001.024, TWC has determined that the requirement to repeal or amend a rule, as required by Texas Government Code §2001.0045, does not apply to this rulemaking.

Takings Impact Assessment

Under Texas Government Code §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the US Constitution or the Texas Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. TWC completed a Takings Impact Assessment for the proposed rulemaking action under Texas Government Code §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to update the rule to reflect actions taken by DOL to rescind the federal Industry-Recognized Apprenticeship Program (IRAP) program. Additionally, the rule change will further clarify the application process for the TIRA program.

The proposed rulemaking action will not create any additional burden on private real property or affect private real property in a manner that would require compensation to private real property owners under the US Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

Government Growth Impact Statement

TWC has determined that during the first five years the rules will be in effect, they:

--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 TWC;

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

--will not create a new regulation;

--will not expand, limit, or eliminate an existing regulation;

--will not change the number of individuals subject to the rules; and

--will not positively or adversely affect the state's economy.

Economic Impact Statement and Regulatory Flexibility Analysis

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

Mariana Vega, Director, Labor Market Information, has determined that there is not a significant negative impact upon employment conditions in the state as a result of the rules.

Courtney Arbour, Director, Workforce Development Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to increase the availability of quality paid work-based learning opportunities tied directly to employer needs throughout Texas.

TWC hereby certifies that the proposal has been reviewed by legal counsel and found to be within TWC's legal authority to adopt.

PART IV. COORDINATION ACTIVITIES

This rulemaking is in direct response to DOL's cancelation of the federal IRAP. The federal action made it necessary for TWC to amend the chapter to remove references to the federal program while maintaining the state's program rules. The public will have an opportunity to comment on these proposed rules when they are published in the *Texas Register* as set forth below.

PART V. PUBLIC COMMENTS

Comments on the proposed rules may be submitted to TWCPolicyComments@twc.texas.gov and must be received no later than October 2, 2023.

SUBCHAPTER A. GENERAL PURPOSE AND DEFINITIONS

40 TAC §838.1, §838.2

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

They are also proposed under the specific authority set out below:

House Bill 2784, 86th Texas Legislature, Regular Session (2019), enacted the following statutory authority under which these rule amendments are proposed to be adopted:

--Texas Labor Code §302.253 requires TWC to establish and administer the program.

--Texas Labor Code §302.257 grants TWC the authority to adopt rules to administer and enforce the program.

The rules implement Title 4, Texas Labor Code, particularly Chapter 302, Subchapter I.

§838.1. Scope and Purpose.

(a) Purpose. The purpose of this chapter is to implement the provisions of Texas Labor Code, Chapter 302, related to the Texas Industry-Recognized Apprenticeship Programs Grant Program. These rules may be cited as the Texas Industry-Recognized Apprenticeship Grant Program [~~industry-recognized apprenticeship program (IRAP)~~] fund rules.

(b) Goal. The goal of the Texas Industry-Recognized Apprenticeship (TIRA) [~~IRAP~~] fund is to address Texas' immediate industrial workforce needs resulting from the impact of hurricanes, other natural disasters, and overall workforce shortages.

§838.2. Definitions.

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

(1) Grant Recipient--An entity [~~eligible grant recipient~~] within Texas that is awarded TIRA [~~industry-recognized apprenticeship~~] funds by the Agency. Grant recipients must cooperate and comply with all contract requirements and Agency monitoring activities, as required by Chapter 802, Subchapter D of this title (relating to Agency Monitoring Activities).

(2) Eligible Grant Applicant [~~Recipient~~]--An entity, as specified in state [~~and federal~~] law, that is eligible to receive TIRA [~~IRAP~~] funding. Eligible grant applicants may [~~recipients~~] include, but are not limited to, the following:

(A) Trade and industry groups

(B) Corporations

(C) Nonprofit organizations

(D) Educational institutions

(E) Unions

(F) Joint labor-management organizations

(3) Texas Industry-Recognized Apprenticeship [~~Program~~]--A training program that:

(A) provides on-the-job training, preparatory instruction, supplementary instruction, or related instruction:

(i) in an occupation that has been recognized as an apprenticeable occupation; and [~~by the US Department of Labor (DOL); or~~]

(ii) under an industry-recognized and accredited training curriculum;

(B) guarantees employment to participants during and upon successful completion of the training period; [~~is certified as an IRAP by a third-party certifier that has received a DOL favorable determination of qualification to award that certification.~~]

(C) pays each participant a progressive wage and provides eligibility for participants to receive full-time employee benefits during and upon successful completion of the training period, equal to or above the impacted local workforce development area's (workforce area) self-sufficiency wage;

(D) requires participants to advance their skills, at a minimum, to a credentialed, performance-verified mid-level status in a field related to the TIRA;

(E) has a duration of no longer than 26 weeks; and

(F) gives preference to training and hiring:

(i) unemployed Texans who have registered with the Agency;

(ii) veterans of the United States armed forces;

(iii) formerly incarcerated individuals; and

(iv) underemployed individuals who are working without industry-recognized certifications or other credentials.

(4) Participant--An individual training in a TIRA [~~an IRAP~~] under an apprenticeship agreement who:

(A) is a full-time paid worker, receiving benefits and employed in the private sector during training;

(B) maintains suitable employment for at least 12 consecutive months immediately following completion of the training program; and

(C) receives related instructional training to learn a skill in a certified apprenticeable occupation that advances his or her skills to a credentialed, performance-verified mid-level status in the occupation, as identified by the Agency.

[~~(5) Standards Recognition Entity (third-party certifier)--An entity that is qualified to recognize an apprenticeship program as an IRAP and that is recognized by DOL.~~]

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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Les Trobman
General Counsel
Texas Workforce Commission
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For further information, please call: (512) 850-8356

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SUBCHAPTER B. GRANT PROGRAM

40 TAC §§838.11 - 838.14

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

They are also proposed under the specific authority set out below:

House Bill 2784, 86th Texas Legislature, Regular Session (2019), enacted the following statutory authority under which these rule amendments are proposed to be adopted:

--Texas Labor Code §302.253 requires TWC to establish and administer the program.

--Texas Labor Code §302.257 grants TWC the authority to adopt rules to administer and enforce the program.

The rules implement Title 4, Texas Labor Code, particularly Chapter 302, Subchapter I.

§838.11. General Statement of Purpose.

In accordance with Texas Labor Code, Chapter 302, the Agency establishes the TIRA [~~IRAP~~] Grant Program, which shall be administered pursuant to Texas Labor Code, Chapter 302, and the rules in this chapter, to award grants from the TIRA [~~IRAP~~] fund to encourage the private sector to develop specialized TIRA programs [~~IRAPs~~] in Texas that meet the requirements of Texas Labor Code[~~,~~] §302.255.

§838.12. Notice of Grant Availability and Application.

(a) From time to time, the Agency may publish a Notice of Availability (NOA) of grant funds under this chapter. The notice shall be published [~~in the *Texas Register* and~~] on the Agency's website. In addition to the respective purpose for each grant program under this chapter, the notice may include:

(1) the total amount of grant funds available for the award;

(2) the geographical [~~local workforce development areas (~~]workforce areas[~~)~~] that are eligible;

(3) the specific industries or occupations targeted;

(4) the maximum number of grants to be awarded;

(5) the special populations to be served;

(6) the application process and requirements; and

(7) any other grant requirements necessary and appropriate for awarding grants in addition to those set forth in this chapter.

(b) To be eligible for a grant award, an applicant meeting the eligibility criteria identified in the NOA shall submit an application to the Agency in the form and manner as prescribed in subsection (d) of this section [~~by the Agency in the NOA~~].

(1) The Agency's executive director, or designee, shall evaluate each application, considering the requirements and purpose of the NOA for which the application is submitted, the financial stability of the private sector employer, the regional economic impact, and any other factors the Agency determines appropriate.

(2) If the Agency determines that an application is appropriate for funding, the executive director or designee shall enter into a contract with the grant recipient on behalf of the Agency.

(3) Any applicants currently on corrective action pursuant to Chapter 802, Subchapter G of this title (relating to Corrective Actions), or not meeting any requirements of this chapter, shall not be eligible to receive a grant.

(c) The Agency may request additional information at any time before the grant award in order to effectively evaluate any application.

(d) Form and manner of application:

(1) Applications shall be in writing and contain the following information:

(A) The number of proposed jobs created, and retention plans to meet the requirements of §838.21(a)(1) of this chapter;

(B) A brief outline of the proposed project, including the skills acquired through training and the employer's involvement in the planning and design;

(C) A brief description of the measurable training objectives aligned with §838.22 of this chapter;

(D) The occupation and wages for participants who complete the project as set forth in §838.22(3) of this chapter;

(E) A budget summary, disclosing anticipated project costs and resource contributions, including the dollar amount the private partner is willing to commit to the project;

(F) A signed agreement between all partners that outlines each entity's roles and responsibilities if a grant is awarded;

(G) A statement explaining the basis for the determination by the TIRA that the application meets the requirements of the NOA applied for and identifying the targeted actual or projected labor shortages in the occupation in which the proposed training project will be provided;

(H) A statement identifying that the proposed cost of training included in the application is consistent with costs recorded on the Eligible Training Provider List (ETPL), as defined in Chapter 840, Subchapter A of this title (relating to General Provisions), if the applicant's program(s) are included on the ETPL;

(I) A statement describing the eligible applicant's equal employment opportunity policy;

(J) A list of the proposed employment benefits;

(K) A statement, supported by adequate documentation, establishing that the applicant's proposed training program is a TIRA as defined by §838.2(3) of this chapter; and

(L) Any additional information contained in §838.13 of this chapter and deemed necessary by the Agency to complete an evaluation of an application.

(2) Applications shall disclose other grant funds sought or awarded from the Agency or other state and federal sources for the project proposed in the application.

(3) Applicants shall submit their application to the Agency's executive director or designee as specified in the NOA for which the applicant is applying.

(4) An applicant may, with the approval of the executive director or designee, submit an application for funding that does not contain or identify all of the required elements under paragraph (1) of this subsection. The release of any funding is contingent upon the applicant's submission, and the Agency's approval, of all the required elements in this subsection.

§838.13. Eligible and Approved Applicants.

(a) Eligible applicants [~~grant recipients~~] are the TIRA entities who submit a complete application demonstrating that the TIRA meets the criteria specified in the NOA for which the TIRA is applying. [~~eligible to apply to the agency for IRAP funding.~~]

(b) Approved applicants must [~~grant recipients shall~~]:

(1) be the fiscal agents for the funds and are subject to the annual report procedures set forth in Texas Labor Code[~~,~~] §302.258;

[~~(2) apply to the Agency in the form and manner prescribed by the NOA;~~]

(2) [~~(3)~~] be in good standing under the laws of the state, as evidenced by a certificate issued by the secretary of state; and

(3) [~~(4)~~] not owe delinquent taxes to a taxing unit of Texas.[~~; and~~]

[~~(5) operate a certified IRAP that:~~]

[~~(A) provides on-the-job training under an industry-recognized, accredited training curriculum;~~]

[~~(B) guarantees employment to participants during and upon successful completion of the training period;~~]

[~~(C) pays each participant a progressive wage and provides eligibility for participants to receive full-time employee benefits during and upon successful completion of the training period, equal to or above the impacted workforce area's self-sufficiency wage;~~]

[~~(D) requires participants to advance their skills, at a minimum, to a credentialed, performance-verified mid-level status in a field related to the IRAP;~~]

[~~(E) has a duration of no longer than 26 weeks; and~~]

[~~(F) gives preference to training and hiring:~~]

~~(i)~~ ~~unemployed Texans who have registered with the Agency;~~]

~~(ii)~~ ~~veterans of the United States armed forces;~~]

~~(iii)~~ ~~formerly incarcerated individuals; and~~]

~~(iv)~~ ~~underemployed individuals who are working without industry-recognized certifications or other credentials.~~]

§838.14. Funding Qualifications for Texas Industry-Recognized Apprenticeship Grant Program [~~Programs~~].

[~~(a)~~] To qualify for funding, each TIRA must: [~~IRAP shall~~]

(1) meet the requirements listed in §838.13 of this chapter [~~(relating to Eligible Applicants).~~];

(2) [~~(b) The IRAP must~~] meet the definition prescribed in §838.2(3) of this chapter [~~(relating to Definitions).~~];

(3) [~~(c) Each IRAP shall~~] provide the Agency with a [~~validated~~] copy of its written training plan for validation [~~or recognition certificate as approved by the third-party certifier.~~]; and

(4) [~~(d) A funded IRAP must~~] comply with Agency rules and Texas Labor Code, Chapter 302.

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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Les Trobman
General Counsel
Texas Workforce Commission
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For further information, please call: (512) 850-8356

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SUBCHAPTER C. PROGRAM ADMINISTRATION

40 TAC §§838.21, 838,22, 838.24

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

They are also proposed under the specific authority set out below:

House Bill 2784, 86th Texas Legislature, Regular Session (2019), enacted the following statutory authority under which these rule amendments are proposed to be adopted:

--Texas Labor Code §302.253 requires TWC to establish and administer the program.

--Texas Labor Code §302.257 grants TWC the authority to adopt rules to administer and enforce the program.

The rules implement Title 4, Texas Labor Code, particularly Chapter 302, Subchapter I.

§838.21. Texas [~~Grants for~~] Industry-Recognized Apprenticeship Grants [~~Programs~~].

(a) Grants received under this subchapter may be used to:

(1) reimburse an eligible grant recipient for costs incurred while training a participant who:

(A) completes a program operated by the grant recipient and achieves the required skill level set forth in Texas Labor Code §302.255(4)(D); and

(B) maintains suitable employment for at least 12 consecutive months immediately following completion of the program;

(2) be awarded on a TIRA-[~~an IRAP-~~]participant basis; and

(3) not exceed the lesser of:

(A) the total cost for training the participant, excluding wages and benefits; or

(B) $10,000.

(b) In awarding a grant under this subchapter, the Agency may consider:

(1) the anticipated economic value to the state upon participants' program completion;

(2) the increased tax revenue generated by participants' wages; and

(3) the decrease in participants' use of state-funded benefits, attributable to the participants' job placements and earning projections.

§838.22. Program Objectives.

The following are the program objectives in administering the TIRA [~~IRAP~~] fund:

(1) To ensure that funds from the program are spent in workforce areas that are impacted by hurricanes and other natural disasters and to respond to immediate workforce needs and overall workforce shortages;

(2) To encourage the private sector to develop specialized apprenticeships [~~IRAPs~~] in Texas;

(3) To develop projects that, at completion of the training, will result in wages equal to or greater than the mid-level status of the apprenticeable occupation related to that TIRA [~~IRAP~~]; and

(4) To promote [~~sponsor the attraction of~~] advancing participant skills, at a minimum, to obtaining an industry credential in the related field of the TIRA [~~IRAP~~].

§838.24. Performance.

The Agency may:

(1) develop and adopt annual performance measures and targets for TIRAs [~~IRAPs~~]; and

(2) consider past performance of TIRAs [~~IRAPs~~] in determining eligibility for 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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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 1. MANAGEMENT

SUBCHAPTER F. ADVISORY COMMITTEES

43 TAC §1.84, §1.88

The Texas Department of Transportation (department) proposes the amendments to §1.84, Statutory Advisory Committees, and §1.88, Duration of Advisory Committees.

EXPLANATION OF PROPOSED AMENDMENTS

The department's rules provide, in accordance with Government Code, §2110.008, that each of the commission's or department's advisory committees created by statute or by the commission or department is abolished on December 31, 2023. The commission has reviewed the need to continue the existence of those advisory committees beyond that date. The commission recognizes that the continuation of some of the existing advisory committees is necessary for improved communication between the department and the public and this rulemaking extends the duration of specified advisory committees for that purpose.

Amendments to §1.84, Statutory Advisory Committees, delete the references to and information about the Urban Air Mobility Advisory Committee because the statute creating that advisory committee, Transportation Code, §21.004, expired January 1, 2023. The amendments add provisions relating to the new Advanced Air Mobility Advisory Committee, created under Transportation Code, Section 21.0045, which was added by S.B. 2144, Acts of the 88th Legislature, Regular Session.

Amendments to §1.88, Duration of Advisory Committees, extend the dates on which the various advisory committees will be abolished.

FISCAL NOTE

Stephen Stewart, Chief Financial Officer, has determined, in accordance with Government Code, §2001.024(a)(4), that for each of the first five years in which the proposed rules are in effect, there will be no fiscal implications for state or local governments as a result of the department's or commission's enforcing or administering the proposed rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

Brandye Hendrickson, Deputy Executive Director, has determined that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed rules and therefore, a local employment impact statement is not required under Government Code, §2001.022.

PUBLIC BENEFIT

Ms. Hendrickson has determined, as required by Government Code, §2001.024(a)(5), that for each year of the first five years in which the proposed rules are in effect, the public benefit anticipated as a result of enforcing or administering the rules will be improved accuracy of the rules and improved communication between the department and the public.

COSTS ON REGULATED PERSONS

Ms. Hendrickson has also determined, as required by Government Code, §2001.024(a)(5), that for each year of that period there are no anticipated economic costs for persons, including a state agency, special district, or local government, required to comply with the proposed rules and therefore, Government Code, §2001.0045, does not apply to this rulemaking.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

There will be no adverse economic effect on small business, micro-business, or rural communities, as defined by Government Code, §2006.001, and therefore, an economic impact statement and regulatory flexibility analysis are not required under Government Code, §2006.002.

GOVERNMENT GROWTH IMPACT STATEMENT

Ericka Kemp has considered the requirements of Government Code, §2001.0221 and anticipates that the proposed rules will have no effect on government growth. She expects that during the first five years that the rule would be in effect:

(1) it would not create or eliminate a government program;

(2) its implementation would not require the creation of new employee positions or the elimination of existing employee positions;

(3) its implementation would not require an increase or decrease in future legislative appropriations to the agency;

(4) it would not require an increase or decrease in fees paid to the agency;

(5) it would not create a new regulation;

(6) it would not expand, limit, or repeal an existing regulation;

(7) it would not increase or decrease the number of individuals subject to its applicability; and

(8) it would not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

Ms. Hendrickson has determined that a written takings impact assessment is not required under Government Code, §2007.043.

SUBMITTAL OF COMMENTS

Written comments on the amendments to §§1.84 and 1.88, may be submitted to Rule Comments, General Counsel Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "Advisory Committees." The deadline for receipt of comments is 5:00 p.m. on October 2, 2023. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

STATUTORY AUTHORITY

The amendments and repeal are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §201.117, which provides the commission with the authority to establish, as it considers necessary, advisory committees on any of the matters under its jurisdiction, and Government Code, §2110.008, which provides that a state agency by rule may designate the date on which an advisory committee will automatically be abolished.

CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING

Government Code, Chapter 2110, and Transportation Code, §§21.003, 21.0045, 201.114, 201.117, 201.623, and 455.004.

§1.84. Statutory Advisory Committees.

(a) Aviation Advisory Committee.

(1) Purpose. Created pursuant to Transportation Code, §21.003, the Aviation Advisory Committee provides a direct link for general aviation users' input into the Texas Airport System. The committee provides a forum for exchange of information concerning the users' view of the needs and requirements for the economic development of the aviation system. The members of the committee are an avenue for interested parties to utilize to voice their concerns and have that data conveyed for action for system improvement. Additionally, committee members are representatives of the department and its Aviation Division, able to furnish data on resources available to the Texas aviation users.

(2) Membership. The commission will appoint nine members to staggered terms of three years with three members' terms expiring August 31 of each year. A majority of the members of the committee must have five years of successful experience as an aircraft pilot, an aircraft facilities manager, or a fixed-base operator. A member may not serve more than three consecutive terms on the committee.

(3) Duties. The committee shall:

(A) periodically review the adopted capital improvement program;

(B) advise the commission on the preparation and adoption of an aviation facilities development program;

(C) advise the commission on the establishment and maintenance of a method for determining priorities among locations and projects to receive state financial assistance for aviation facility development;

(D) advise the commission on the preparation and update of a multi-year aviation facilities capital improvement program; and

(E) perform other duties as determined by order of the commission.

(4) Meetings. The committee shall meet once a calendar year and such other times as requested by the Aviation Division Director.

(5) Rulemaking. Section 1.83 of this subchapter (relating to Rulemaking) does not apply to the Aviation Advisory Committee.

(b) Public Transportation Advisory Committee.

(1) Purpose. Created pursuant to Transportation Code, §455.004, the Public Transportation Advisory Committee provides a forum for the exchange of information between the department, the commission, and committee members representing the transit industry and the general public. Advice and recommendations expressed by the committee provide the department and the commission with a broader perspective regarding public transportation matters that will be considered in formulating department policies.

(2) Membership. Members of the Public Transportation Advisory Committee shall be appointed and shall serve pursuant to Transportation Code, §455.004.

(3) Duties. The committee shall:

(A) advise the commission on the needs and problems of the state's public transportation providers, including recommending methods for allocating state public transportation funds if the allocation methodology is not specified by statute;

(B) comment on proposed rules or rule changes involving public transportation matters during their development and prior to final adoption unless an emergency requires immediate action by the commission;

(C) advise the commission on the implementation of Transportation Code, Chapter 461; and

(D) perform other duties as determined by order of the commission.

(4) Meetings. The committee shall meet as requested by the commission or the division designated under §1.82(f) of this subchapter (relating to Statutory Advisory Committee Operations and Procedures).

(5) Public transportation technical committees.

(A) The Public Transportation Advisory Committee may appoint one or more technical committees to advise it on specific issues, such as vehicle specifications, funding allocation methodologies, training and technical assistance programs, and level of service planning.

(B) A technical committee shall report any findings and recommendations to the Public Transportation Advisory Committee.

(c) Port Authority Advisory Committee.

(1) Purpose. Created pursuant to Transportation Code, §55.006, the purpose of the Port Authority Advisory Committee is to provide a forum for the exchange of information between the commission, the department, and committee members representing the maritime port industry in Texas and others who have an interest in maritime ports. The committee's advice and recommendations will provide the commission and the department with a broad perspective regarding maritime ports and transportation-related matters to be considered in formulating department policies concerning the Texas maritime port system.

(2) Membership. Members shall be appointed pursuant to Transportation Code, §55.006. Members appointed by the commission serve staggered three-year terms unless removed sooner at the discretion of the commission.

(3) Duties. The committee shall:

(A) prepare a maritime port mission plan, in accordance with Transportation Code, §55.008 and submit the plan to the governor, lieutenant governor, speaker of the house of representatives and commission not later than December 1 of each even-numbered year;

(B) review each project eligible to be funded under Transportation Code, Chapter 55, and make recommendations for approval or disapproval to the department; and

(C) advise the commission and the department on matters relating to port authorities.

(4) Meeting. The committee shall meet at least semiannually and such other times as requested by the commission, the executive director, or the executive director's designee. The chair may request the department to call a meeting.

(d) Border Trade Advisory Committee.

(1) Purpose. Created pursuant to Transportation Code, §201.114, the Border Trade Advisory Committee provides a forum for the exchange of communications among the commission, the department, the governor, and committee members representing border trade interests. The committee's advice and recommendations will provide the governor, the commission, and the department with a broad perspective regarding the effect of transportation choices on border trade in general and on particular communities. The members of the committee also provide an avenue for interested parties to express opinions with regard to border trade issues.

(2) Membership. The border commerce coordinator designated under Government Code, §772.010, shall serve as the chair of the committee. The commission will appoint the other members of the committee in accordance with Transportation Code, §201.114. The commission will appoint members to staggered three-year terms expiring on August 31 of each year, except that the commission may establish terms of less than three years for some members in order to stagger terms.

(3) Duties. The committee shall:

(A) define and develop a strategy for identifying and addressing the highest priority border trade transportation challenges;

(B) make recommendations to the commission regarding ways in which to address the highest priority border trade transportation challenges;

(C) advise the commission on methods for determining priorities among competing projects affecting border trade; and

(D) perform other duties as determined by the commission, the executive director, or the executive director's designee.

(4) Meetings. The committee shall meet at least once a calendar year. The dates and times of meetings shall be set by the committee. The committee shall also meet at the request of the department.

(5) Rulemaking. Sections 1.82(i) and 1.83 of this subchapter do not apply to the Border Trade Advisory Committee.

(e) I-27 Advisory Committee.

(1) Purpose. Created pursuant to Transportation Code, §201.623, the purpose of the I-27 Advisory Committee, as stated in subsection (b) of that section, is to provide the department with information on concerns and interests along the Ports-to-Plains Corridor, which is specified in Transportation Code, §225.069, and advise the department on transportation improvements impacting the Ports-to-Plains Corridor.

(2) Membership. Composition of the committee is provided by Transportation Code, §201.623(c) and (d). A member serves in accordance with §201.623(e). The chair and vice-chair of the committee are elected in accordance with §201.623(g).

(3) Duty. The duty of committee is to provide to the department the information and advice on the Ports-to-Plains Corridor for which it was formed.

(4) Meeting. In accordance with Transportation Code, §201.623(h), the committee shall meet at least twice each state fiscal year and at other times, as requested by the department or the chair.

(5) Compensation. In accordance with Transportation Code, §201.623(i), an advisory committee member is not entitled to receive compensation for service on the committee or reimbursement for expenses incurred in the performance of official duties as a member of the committee.

(f) Advanced [~~Urban~~] Air Mobility Advisory Committee.

(1) Purpose. Created pursuant to Transportation Code, §21.0045 [~~§21.004~~], the purpose of the Advanced [~~Urban~~] Air Mobility Advisory Committee, as stated in subsection (b) [~~(a)~~] of that section, is to assess current state law and any potential changes to state law that are needed to facilitate the implementation [~~development~~] of advanced [~~urban~~] air mobility technology [~~operations and infrastructure~~] in this state.

(2) Membership. The committee is composed of members appointed by the commission in accordance with Transportation Code, §21.0045(c) [~~§21.004(b)~~].

(3) Duty. Not later than November 1, 2024 [~~September 1, 2022~~], the committee shall submit [~~report~~] to the commission and [~~to the members of~~] the legislature a written report that includes the committee's findings and recommendations on any changes to state law that are needed to facilitate the implementation [~~development~~] of advanced [~~urban~~] air mobility technology in this state [~~operations and infrastructure~~].

(4) Meeting. The committee shall hold public hearings and receive comments in accordance with Transportation Code, §21.0045(d) [~~§21.004(c)~~].

§1.88. Duration of Advisory Committees.

(a) Except as provided by this section, each statutory advisory committee or department advisory committee is abolished on December 31, 2023 [~~2021~~].

(b) The following advisory committees are abolished on December 31, 2025 [~~2023~~]:

(1) a statutory or department advisory committee created after December 31, 2023 [~~2021~~];

(2) the Aviation Advisory Committee;

(3) the Public Transportation Advisory Committee;

(4) the Port Authority Advisory Committee;

(5) the Bicycle and Pedestrian Advisory Committee;

(6) the Freight Advisory Committee; and

(7) the Commission for High-Speed Rail in the Dallas/Fort Worth Region.

(c) A corridor segment advisory committee created under §1.87 of this subchapter (relating to Corridor Segment Advisory Committees) after December 31, 2023 [~~2021~~] is abolished on the date provided in the minute order creating the committee or if a date is not provided in the order, on the earlier of:

(1) the date of the completion of the segment for which the committee was created; or

(2) December 31, 2025 [~~2023~~].

(d) This section does not apply to the Border Trade Advisory Committee or the I-27 Advisory Committee.

(e) The Advanced [~~Urban~~] Air Mobility Advisory Committee is abolished on January 1, 2025 [~~2023~~], as provided by Transportation Code, §21.0045(f) [~~§21.004(e)~~].

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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Becky Blewett
Deputy General Counsel
Texas Department of Transportation
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For further information, please call: (512) 463-3164

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PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 206. MANAGEMENT
SUBCHAPTER E. ADVISORY COMMITTEES

43 TAC §§206.92, 206.93, 206.98

INTRODUCTION. The Texas Department of Motor Vehicles (department) proposes to amend 43 Texas Administrative Code (TAC) §206.92 and §206.93. The department also proposes new 43 TAC §206.98. New §206.98 is necessary to implement Transportation Code, §643.155, which requires the department to appoint an advisory committee to make recommendations to the department to modernize and streamline certain rules regarding the protection of consumers of motor carriers transporting household goods. The amendments update §206.92 to address the addition of §206.98. Additionally, the amendments to §206.93 remove language that is already in statute, make the language consistent with the statute and other rules in Subchapter E of this chapter, and correct grammatical errors.

EXPLANATION.

Proposed new §206.98 would create the Household Goods Rules Advisory Committee (HGRAC) as a stand-alone advisory committee pursuant to Transportation Code, §643.155, which requires the department to appoint a rules advisory committee consisting of representatives of motor carriers transporting household goods, the public, and the department.

The department previously had a stand-alone HGRAC, which met multiple times in 2015 and 2016 and provided the board of the Texas Department of Motor Vehicles (board) with recommendations regarding rules that the board adopted under Transportation Code, §643.153(a) and (b). The department may need advice and recommendations from the HGRAC when the department performs the rule review of Chapter 218 of this title pursuant to Government Code, §2001.039.

The department merged the functions of the prior HGRAC into the current Customer Service and Protection Advisory Committee (CSPAC) under §206.97. However, Transportation Code, §643.155 requires that the rules advisory committee pertaining to motor carriers transporting household goods include department representatives. In contrast, Transportation Code, §1001.031 does not require department representatives to serve on the advisory committee that considers other consumer protection and customer service issues. Therefore, dividing the advisory committees so that the committee on which department employees serve considers only rules involving motor carriers transporting household goods would allow the most efficient use of department employees' time. For these reasons, proposed new §206.98 would create HGRAC as a stand-alone advisory committee with the limited scope authorized by Transportation Code, §643.155, and would set in rule its purpose, tasks, reporting requirements, and expiration, in accordance with Government Code, Chapter 2110.

The proposed amendment to §206.92 would expand the definition of "advisory committee" by adding Transportation Code, §643.155 as a statute under which an advisory committee may be created. Transportation Code, §643.155 is the statute that requires the department to have an advisory committee for rules involving motor carriers transporting household goods. This would clarify the basis for the creation of HGRAC.

Proposed amendments to §206.93(a) and (b) would allow the advisory committees to report to the department by providing recommendations either to the board or to the executive director. This would create more flexibility in how the committees report and would make the language consistent with the definition of "advisory committee" in §206.92(1) and with Transportation Code, §1001.031(a).

Another proposed amendment to §206.93(a) would clarify that the department or board can request the advice and recommendations of the advisory committees on any issue. This would guarantee as much flexibility as possible in the issues presented to the advisory committees.

Proposed amendments to §206.93(d) would remove the requirement that advisory committee members have an interest or expertise in the subject area of the advisory committee. This language is redundant with the statutory language that is already contained in Transportation Code, §1001.031 and is therefore unnecessary.

A proposed amendment to §206.93(i) would remove an unnecessary hyphen to clarify and correct a grammatical error.

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 section and amendments will be in effect, there will be no 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 and Corrie Thompson, Director of the Enforcement Division, have determined that there will be no measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT AND COST NOTE. Mr. Archer and Ms. Thompson have also determined that, for each year of the first

five years the new and amended sections are in effect, there are several public benefits anticipated because of increased opportunities for stakeholders and the public to provide input into rulemaking and policy development by the department on the issue of motor carriers transporting household goods.

Anticipated Costs to Comply with the Proposal. Mr. Archer and Ms. Thompson anticipate that there will be no costs to comply with the new section and amendments because the new section and amendments do not establish any additional requirements on regulated persons. Advisory committee members serve on a voluntary basis.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. As required by Government Code, §2006.002, the department has determined that the proposed new section and amendments will not have an adverse economic effect on small businesses, micro-businesses, and rural communities because the new section and amendments do not add new requirements on, or directly affect, small businesses, micro-businesses, or rural communities. The proposed new section and amendments do not require small businesses, micro-businesses, or rural communities to comply. 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 section and amendments are in effect, no government program would be created or eliminated. Implementation of the proposed new section and amendments 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 amendments create a new regulation in proposed new §206.98, which creates the HGRAC. The proposed amendments do not expand, limit, or repeal an existing regulation. Lastly, the proposed new section and amendments do not affect the number of individuals subject to the applicability of the rules 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 October 1, 2023. 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.

STATUTORY AUTHORITY. The department proposes amendments to §206.92 and §206.93 and proposes new §206.98 under Transportation Code, §643.155, which authorizes the department to adopt rules to create a rules advisory committee consisting of representatives of motor carriers transporting household goods using small, medium, and large equipment, the public, and the department; 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, §2110.005, which requires state agencies establishing advisory committees to make rules stating the purpose and tasks of the committee and describing the manner in which the committee will report to the agency; and Government Code, §2110.008, which allows state agencies establishing advisory committees make rules designating the date an advisory committee will be abolished.

CROSS REFERENCE TO STATUTE. Transportation Code Chapters 643 and 1001; Government Code Chapter 2110.

§206.92. Definitions.

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

(1) Advisory Committee--Any committee created by the board to make recommendations to the board or the executive director pursuant to Transportation Code, §1001.031 and §643.155.

(2) Board--The board of the Texas Department of Motor Vehicles.

(3) Department--The Texas Department of Motor Vehicles.

(4) Division director--The chief administrative officer in charge of a division of the department.

(5) Executive director--The chief executive officer of the Texas Department of Motor Vehicles.

(6) Member--An appointed member of an advisory committee created under this subchapter.

(7) Presiding officer--The presiding officer of an advisory committee elected by the membership of the advisory committee created under this subchapter.

§206.93. Advisory Committee Operations and Procedures.

(a) Role of advisory committee. The role of an advisory committee under this subchapter is to provide advice and recommendations to the board or the executive director. Advisory committees shall meet and carry out their functions upon a request from the department or board for advice and recommendations on any issues. [~~an issue(s).~~]

(b) Appointment of advisory committee. The board shall appoint members to an advisory committee by selecting potential members from a list provided to the board by the executive director. Each advisory committee shall elect from its members a presiding officer, who shall report the advisory committee's recommendations to the board or the executive director. The executive director may designate a division or divisions of the department to participate with, or to provide subject-matter expertise, guidance, or administrative support to the advisory committee as necessary.

(c) Member qualifications. Members shall have knowledge about and interests in, and represent a broad range of viewpoints about, the work of the committee or applicable division(s). Board members shall not serve as advisory committee members.

(d) Composition of advisory committees. In making appointments to the advisory committees, the board shall, to the extent practical, ensure representation of members from diverse geographical regions of the state [~~who have an interest or expertise in the subject area of the particular advisory committee~~].

(e) Committee size and quorum requirements. An advisory committee shall be composed of a reasonable number of members not

to exceed 24 as determined by the board. A simple majority of advisory committee members will constitute a quorum. An advisory committee may only deliberate on issues within the jurisdiction of the department or any public business when a quorum is present.

(f) Terms of service. Advisory committee members will serve terms of four years. A member will serve on the committee until the member resigns, is dismissed or replaced by the board, or the member's term expires.

(g) Member training requirements. Each member of an advisory committee must receive training regarding the Open Meetings Act, Government Code, Chapter 551; and the Public Information Act, Government Code, Chapter 552.

(h) Compliance with Open Meetings Act. The advisory committee shall comply with the Open Meetings Act, Government Code, Chapter 551.

(i) Public input and participation. The advisory committee shall accept public comments made in person [~~in-person~~] at advisory committee meetings or submitted in writing. Public comments made in writing should be submitted to the advisory committee five business days in advance of the advisory committee meeting with sufficient copies for all members.

(j) Reporting recommendations. Recommendations of the advisory committee shall be reported to the board at a board meeting prior to board action on issues related to the recommendations. The recommendations shall be in writing and include any necessary supporting materials. The presiding officer of the advisory committee or the presiding officer's designee may appear before the board to present the committee's advice and recommendations. This subsection does not limit the ability of the advisory committee to provide advice and recommendations to the executive director as necessary.

(k) Board use of advisory committee recommendations. In developing department policies, the board shall consider the written recommendations and reports submitted by advisory committees.

(l) Reimbursement. The department may, if authorized by law and the executive director, reimburse advisory committee members for reasonable and necessary travel expenses.

(m) Expiration dates for advisory committees. Unless a different expiration date is established by the board for the advisory committee, each advisory committee is abolished on the fourth anniversary of its creation by the board.

§206.98. Household Goods Rules Advisory Committee (HGRAC).

(a) The HGRAC is created to make recommendations, as requested by the department or board, to modernize and streamline the rules adopted under Transportation Code §643.153(a) and (b).

(b) The HGRAC shall comply with the requirements of §206.93 of this title (relating to Advisory Committee Operations and Procedures).

(c) The HGRAC shall expire on July 7, 2027.

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

Filed with the Office of the Secretary of State on August 17, 2023.

TRD-202303032

Laura Moriaty
General Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: October 1, 2023
For further information, please call: (512) 465-4160

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CHAPTER 211. CRIMINAL HISTORY OFFENSE AND ACTION ON LICENSE

SUBCHAPTER A. CRIMINAL OFFENSE AND ACTION ON LICENSE

43 TAC §211.6

INTRODUCTION. The Texas Department of Motor Vehicles (department) proposes to amend 43 Texas Administrative Code (TAC) §211.6 concerning fingerprint requirements for license applicants and holders. These amendments are consistent with House Bill (HB) 4123, 88th Legislature, Regular Session (2023), which clarified the department's existing authority under Texas Government Code, §411.122 to require fingerprints as part of the license application process for licenses issued under Occupations Code Chapters 2301 and 2302 and Transportation Code, Chapter 503. Fingerprint requirements prevent application fraud in two important ways - by verifying identify and by allowing the department to obtain a complete and comprehensive criminal background check from both the Texas Department of Public Safety (DPS) and the Federal Bureau of Investigation (FBI) prior to issuing a license. The current rule references only General Distinguishing Numbers issued under Transportation Code 503, so this rule proposal amends §211.6 to make it possible for the department to require fingerprinting for all license types in the future, if the department chooses to subsequently propose amendments to Chapter 215 or 221 of this title to add fingerprint requirements for a specific license type.

The department proposes changes to the title of §211.6 and amendments to subsections to clarify that additional license types may be designated by rule to require fingerprinting. The proposed amendments would consolidate the language that currently appears in subsection (c) into subsection (b), would revise language for clarity and ease of understanding, and would add new language to subsection (c) to inform the public that the department will first review an application and then notify the applicant or license holder which specific persons will be required to provide fingerprints.

EXPLANATION.

The title of §211.6 is proposed to be amended to reflect that the fingerprint requirements of this section will apply to all license types designated in Chapters 215 and 221 of this title as requiring fingerprinting for licensure. This may include licenses other than general distinguishing numbers if the department amends Chapters 215 and 221 of this title in the future. This amendment is necessary to describe more accurately the department's authority under Texas Government Code, §411.122 and §411.12511 to implement fingerprint requirements.

Proposed amendments to subsections (a) and (b) would delete references to a General Distinguishing Number under Transportation Code, Chapter 503. These amendments are necessary to reflect more accurately the department's authority to implement fingerprint requirements for additional license types through rulemaking.

Other proposed amendments in subsection (a) would specify that the rule will apply to license types designated in Chapter 215 or Chapter 221 of this title as requiring fingerprints for licensure. These amendments are necessary to reflect more accurately the department's authority to implement fingerprint requirements for additional license types through rulemaking, and to clarify for ease of reference which chapters may contain fingerprint requirements for specific license types.

Proposed amendments to subsection (b) would combine language currently in subsections (b) and (c) into amended (b), would make clarifying changes to remove unnecessary language, and would identify the persons that may be subject to a fingerprint requirement. These amendments are proposed to add clarity and for ease of understanding.

Proposed amendments to subsection (c) would replace the existing language that is proposed to be consolidated into subsection (b) with new language clarifying that the department will review each license application, determine which persons need to be fingerprinted, and notify the applicant or license holder. This amendment is necessary to inform the public, including applicants and license holders, that the department must first review the application and department licensing records to determine which persons are required to be fingerprinted, before then notifying the applicant of which individuals must submit fingerprints.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Glenna Bowman, Chief Financial Officer, has determined that for each year of the first five years the amendments 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. Monique Johnston, Director of the Motor Vehicle Division, has determined that there will be no measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT AND COST NOTE. Ms. Johnston has also determined that, for each year of the first five years the amended section is in effect, there are several public benefits and no costs anticipated.

Anticipated Public Benefits. The public benefits anticipated as a result of the proposal include clarifying the fingerprinting requirements for licensure by the department. Contingent on additional future rulemaking, the proposed amendments would allow the department the possibility of exercising its full legal authority to fingerprint licensure applicants, verifying the identity of applicants and license holders for more types of licenses and thereby preventing fraudulent applications under false or stolen identities, while giving the department access to more accurate and comprehensive criminal history record information to use in evaluating fitness for licensure under its criminal offense guidelines in §211.3. These amendments, combined with additional future rulemaking, will benefit the public by preventing bad actors with a history of criminal offenses that directly relate to the duties and responsibilities of a license holder from obtaining licenses from the department and using those licenses to perpetrate fraudulent and criminal actions, or otherwise taking advantage of the position of trust created by the license.

Anticipated Costs To Comply With The Proposal. Ms. Johnston anticipates that there will be no additional costs on regulated persons to comply with the fingerprint requirements under this proposal as these amendments alone do not expand fingerprinting requirements or establish fees for fingerprinting or processing criminal background checks. Fees for fingerprinting and access to criminal history reports are established by DPS under the authority of Texas Government Code Chapter 411.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. In the cost analysis in the Public Benefit and Cost Note section of this proposal, the department has determined that proposed amendments to §211.6 will not result in additional costs for license holders or applicants, including any small businesses, micro-businesses, or rural communities. 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 amendments are in effect, no government program would be created or eliminated. Implementation of the proposed amendments 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. Without additional rulemaking, the proposed amendments do not create a new regulation, or expand, limit, or repeal an existing regulation. Lastly, without additional rulemaking the proposed amendments do not affect the number of individuals subject to the 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 October 1, 2023. 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.

STATUTORY AUTHORITY. The department proposes amendments to §211.6 under Government Code, §411.122(d), which authorizes department access to criminal history record information maintained by DPS; Government Code, §411.12511, which authorizes the department to obtain criminal history record information from DPS and the FBI for license applicants, license holders, and representatives whose act or omission would be cause for denying, revoking, or suspending a general distinguishing number or license issued under Transportation Code, Chapter 503, or Occupations Code, Chapters 2301 and 2302; Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise that authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license holders, ensure that the distribution, sale and lease of motor vehicles is conducted as required by statute and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles, and to enforce and administer Occupations Code, Chapter 2301 and Transportation Code, Chapter

503; Occupations Code, §2301.155, which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651, which gives the board authority to deny an application for a license, revoke or suspend a license, place on probation, or reprimand a licensee if the applicant or license holder is unfit, makes a material misrepresentation, violates any law relating to the sale, distribution, financing, or insuring of motor vehicles, willfully defrauds a purchaser, or fails to fulfill a written agreement with a retail purchaser of a motor vehicle; Occupations Code, §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code, Chapter 2302; Transportation Code, §503.002, which authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503; and 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.

CROSS REFERENCE TO STATUTE. Government Code, Chapter 411; Occupations Code, Chapters 2301 and 2302; and Transportation Code, Chapters 503 and 1002.

§211.6. Fingerprint Requirements for Designated License Types [~~General Distinguishing Numbers~~].

(a) The requirements of this section apply to applicants for and holders of license types designated in Chapter 215 or Chapter 221 of this title as requiring fingerprints for licensure [~~a general distinguishing number under Transportation Code Chapter 503 for all dealer types under Transportation Code §503.029(a)(6)~~].

(b) Unless previously submitted [~~to the department by an applicant~~] for an active license issued by the department [~~under Transportation Code Chapter 503~~], the following persons may be required to [~~a person applying for a new license, license amendment due to change in ownership, or license renewal, must~~] submit a complete and acceptable set of fingerprints to the Texas Department of Public Safety and pay required fees for purposes of obtaining criminal history record information from the Texas Department of Public Safety and the Federal Bureau of Investigation: [~~.~~]

(1) a person applying for a new license, license amendment due to change in ownership, or license renewal; and

(2) a person acting in a representative capacity for an applicant or license holder who is required to be listed on a licensing application, including an officer, director, member, manager, trustee, partner, principal, or manager of business affairs.

(c) After reviewing a licensure application and licensing records, the department will notify the applicant or license holder which persons in subsection (b) of this section are required to submit fingerprints to the Texas Department of Public Safety [~~Persons acting in a representative capacity for an applicant or holder of a license who are required to be listed on a licensing application under §215.133(c) of this title (relating to General Distinguishing Number), including the applicant's or holder's officers, directors, members, managers, trustees, partners, principals, or managers of business affairs, must submit a complete and acceptable set of fingerprints and pay fees to the Texas Department of Public Safety under subsection (b) of this section, unless the person has previously submitted fingerprints related to an active license issued by the department under Transportation Code Chapter 503~~].

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

Filed with the Office of the Secretary of State on August 17, 2023.

TRD-202303031
Laura Moriaty
General Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: October 1, 2023
For further information, please call: (512) 465-4160

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CHAPTER 217. VEHICLE TITLES AND REGISTRATION

SUBCHAPTER B. MOTOR VEHICLE REGISTRATION

43 TAC §217.52

INTRODUCTION. The Texas Department of Motor Vehicles (department) proposes to amend 43 Texas Administrative Code (TAC) §217.52 concerning the marketing of specialty license plates through a private vendor. These proposed amendments are necessary to implement Senate Bill (SB) 702 enacted during the 88th Legislature, Regular Session (2023). SB 702 amends Transportation Code, §504.851, "Contract with Private Vendor," to require a contract entered into by the department and a private vendor for the marketing and sale of specialty license plates to allow the private vendor to establish a range of premium *embossed specialty license plates to be sourced, marketed, and sold by the private vendor.* Amendments are proposed for: §217.52(h)(5), to establish fees required for embossed background-only license plates; §217.52(h)(7), to clarify that the fees for an auction pattern apply to an embossed license plate design and that the owner of an auction pattern may move the auction pattern to an embossed license plate design under subsection (n); §217.52(h)(8), to establish embossed personalized specialty license plates and the corresponding fees required; renumbered §217.52(h)(9), to expressly retain the grandfathered fees if the board approves a crossover plate under Transportation Code, §504.6011 as an embossed plate design; and §217.52(n), to define "restyled license plate," to include embossed specialty license plates, and to set fees for restyling a plate from non-embossed to embossed.

EXPLANATION.

Texas license plates currently display flat, printed plate numbers. Historically, license plates were stamped to create raised numbers on the plate, known as embossed license plates. SB 702 amended Transportation Code, §504.851 to require the department to allow for the establishment of a range of premium embossed specialty license plates to be sourced, marketed, and sold by the vendor with which the department has entered into a contract. The proposed amendments to §217.52 are necessary to implement SB 702. The proposed amendments would allow vehicle owners the option to purchase embossed specialty license plates if they choose to do so. No person would be required to purchase an embossed license plate and the standard default option would still be a printed plate. The proposed amendments would allow classic car collectors to fully restore cars with historically accurate embossed license plates.

The proposed amendment to §217.52(h) would clarify the rule by using the term "vendor specialty license plates" that is defined in §217.52(a) to provide consistent meaning throughout §217.52.

Proposed amendments to §217.52(h)(5) would implement SB 702 by adding an embossed option for background-only, non-personalized license plates. Proposed amendments to §217.52(h)(5) would clarify that background-only, non-personalized license plates are available as either embossed or non-embossed. Another proposed amendment to §217.52(h)(5) would create fees for issuance for embossed, background-only license plates; however, the amendment would expressly retain the grandfathered fees under re-numbered subsection (h)(9)(C) if the board approves a crossover plate under Transportation Code, §504.6011 as an embossed plate design. These fees are sufficient to cover the department's direct, indirect and administrative costs associated with the department's contract with its specialty license plates vendor and were determined through discussions with the vendor. Other proposed amendments to §217.52(h)(5) would add subparagraphs (A) and (B) to separate the fees for non-embossed, background-only specialty license plates from the fees for embossed, background-only specialty license plates. In addition, proposed amendments to §217.52(h)(5) would add a hyphen between the words "background" and "only" because they are compound modifiers for the term "license plates."

Proposed amendments to §217.52(h)(7) would clarify that the fees for an auction pattern apply to an embossed license plate design and that the owner of an auction pattern may move the auction pattern to an embossed license plate design under subsection (n) regarding a restyled vendor specialty plate design.

Proposed new §217.52(h)(8) would implement SB 702 by creating personalized, embossed specialty license plates. Proposed amendments to §217.52(h)(8) would allow the department's vendor to source, market and sell a range of embossed, personalized specialty license plates with board-approved background and color combinations. Proposed new §217.52(h)(8) would also set fees for issuance of embossed, personalized specialty license plates. Proposed new §217.52(h)(8) would also clarify that the fees under subsection (h)(7) regarding auction plate patterns are grandfathered for embossed plate designs. Proposed new §217.52(h)(8) would also clarify that the personalization and specialty plate fees under renumbered subsection (h)(9) do not apply to an embossed, personalized specialty plate because the fees under new §217.52(h)(8) already include the personalization fees; however, there is an exception under re-numbered subsection (h)(9)(C) if the board approves a crossover plate under Transportation Code, §504.6011 as an embossed plate design. These fees are sufficient to cover the department's direct, indirect and administrative costs associated with the department's contract with its specialty license plates vendor and were determined through discussions with the vendor.

Proposed amendments would also renumber current §217.52(h)(8) to §217.52(h)(9). Proposed amendments to renumbered §217.52(h)(9) would expressly retain the grandfathered fees if the board approves a crossover plate under Transportation Code, §504.6011 as an embossed plate design.

Proposed amendments to §217.52(n) would implement SB 702 by adding embossed specialty license plate styles to the provision on restyled vendor specialty license plates to allow people who currently have non-embossed specialty license plates to restyle their plates into an embossed specialty license plate. Proposed new §217.52(n)(2)(B) would set a fee of $75 for restyling a non-embossed specialty license plate into an embossed specialty license plate. This fee is sufficient to cover the department's direct, indirect and administrative costs associated with the department's contract with its specialty license plates vendor and were determined through discussions with the vendor. The proposed amendments would also re-letter subparagraphs within §217.52(n) for clarity and ease of reference.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Glenna Bowman, Chief Financial Officer, has determined that for each year of the first five years the amendments 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. Annette Quintero, Director of the Vehicle Titles and Registration Division, has determined that there will be no measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT AND COST NOTE. Ms. Quintero has also determined that, for each year of the first five years the amended section is in effect, there are several public benefits anticipated because it would provide an option for vehicle owners to purchase an embossed specialty license plate, allowing classic car collectors to have the vintage-look embossed license plates as a purchase option.

Anticipated Costs To Comply With The Proposal. Ms. Quintero anticipates that there will be no costs to comply with these amendments. Specialty license plates, including embossed specialty license plates, are optional and are not required for any vehicle.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. As required by Government Code, §2006.002, the department has determined that the proposed amendments will not have an adverse economic effect on small businesses, micro-businesses, and rural communities because no person would be required to purchase an embossed specialty license plate. The proposed amendments do not require small businesses, micro-businesses, or rural communities to comply. 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 amendments are in effect, no government program would be created or eliminated. Implementation of the proposed amendments 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 a decrease of fees paid to the department. The proposed amendments may create a slight increase in fees paid to the department if people choose to buy embossed specialty license plates, but the increase is not expected to be significant. The proposed amendments do not limit or repeal an existing regulation. The proposed amendments would create new regulations in §217.52(h)(5) to set a new fee for embossed background-only license plates, in §217.52(h)(8) to create embossed, personalized specialty license plates and related fees, and in §217.52(n)(2)(B) to set the fee for restyling a

license plate from non-embossed to embossed. The proposed amendments would expand existing regulations in §217.52 to include embossed specialty license plates among the types of specialty license plates that are available for Texas registrants. Lastly, the proposed amendments do not affect the number of individuals subject to the 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 October 1, 2023. 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.

STATUTORY AUTHORITY. The department proposes amendments to §217.52 under Transportation Code, §504.0011, which grants the board authority to adopt rules to implement Transportation Code, Chapter 504; Transportation Code, §504.0051, which gives the department authority to issue personalized license plates and forbids the department from issuing replacement personalized license plates unless the vehicle owner pays the statutory fee required under Transportation Code, §504.007; Transportation Code, §504.007, which states that replacement license plates can only be issued if the vehicle owner pays the statutory fee; Transportation Code, §504.6011, which authorizes the sponsor of a specialty license plate to reestablish its specialty license plate under Subchapter J of Transportation Code, Chapter 504, and for the board to establish the fees under Transportation Code, §504.851; Transportation Code, §504.851(a), which allows the department to contract with a private vendor to provide specialty and personalized license plates; Transportation Code, §504.851(b)-(d), which authorize the board to establish fees by rule for the issuance or renewal of personalized license plates that are marketed and sold by the vendor as long as the fees are reasonable and not less than the amounts necessary to allow the department to recover all reasonable costs associated with the procurement, implementation and enforcement of the vendor's contract; Transportation Code, §504.851(i), as amended by SB 702, 88th Legislature, Regular Session (2023), which requires a contract entered into by the department and a private vendor for the marketing and sale of specialty license plates to allow the vendor to establish a range of premium embossed specialty license plates to be sourced, marketed, and sold by the private vendor; and 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.

CROSS REFERENCE TO STATUTE. Transportation Code, Chapters 504 and 1002.

§217.52. Marketing of Specialty License Plates through a Private Vendor.

(a) Purpose and scope. The department will enter into a contract with a private vendor to market department-approved specialty license plates in accordance with Transportation Code, Chapter 504, Subchapter J. This section sets out the procedure for approval of the design, purchase, and replacement of vendor specialty license plates. In this section, the license plates marketed by the vendor are referred to as vendor specialty license plates.

(b) Application for approval of vendor specialty license plate designs.

(1) Approval required. The vendor shall obtain the approval of the board for each license plate design the vendor proposes to market in accordance with this section and the contract entered into between the vendor and the department.

(2) Application. The vendor must submit a written application on a form approved by the executive director to the department for approval of each license plate design the vendor proposes to market. The application must include:

(A) a draft design of the specialty license plate;

(B) projected sales of the plate, including an explanation of how the projected figure was determined;

(C) a marketing plan for the plate including a description of the target market;

(D) a licensing agreement from the appropriate third party for any design or design element that is intellectual property; and

(E) other information necessary for the board to reach a decision regarding approval of the requested vendor specialty plate.

(c) Review and approval process. The board will review vendor specialty license plate applications. The board:

(1) will not consider incomplete applications; and

(2) may request additional information from the vendor to reach a decision.

(d) Board decision.

(1) Decision. The decision of the board will be based on:

(A) compliance with Transportation Code, Chapter 504, Subchapter J;

(B) the proposed license plate design, including:

(i) whether the design meets the legibility and reflectivity standards established by the department;

(ii) whether the design meets the standards established by the department for uniqueness to ensure that the proposed plate complies with Transportation Code, §504.852(c);

(iii) whether the license plate design can accommodate the International Symbol of Access (ISA) as required by Transportation Code, §504.201(f);

(iv) the criteria designated in §217.27 of this title (relating to Vehicle Registration Insignia) as applied to the design;

(v) whether a design is similar enough to an existing plate design that it may compete with the existing plate sales; and

(vi) other information provided during the application process.

(2) Public comment on proposed design. All proposed plate designs will be considered by the board as an agenda item at a regularly or specially called open meeting. Notice of consideration of proposed plate designs will be posted in accordance with Office of the Secretary of State meeting notice requirements. Notice of each license plate design will be posted on the department's Internet web site to receive public comment at least 25 days in advance of the meeting at which it will be considered. The department will notify all specialty plate organizations and the sponsoring agencies who administer specialty license plates issued in accordance with Transportation Code, Chapter 504, Subchapter G, of the posting. A comment on the proposed design can be submitted in writing through the mechanism provided on the department's Internet web site for

submission of comments. Written comments are welcome and must be received by the department at least 10 days in advance of the meeting. Public comment will be received at the board's meeting.

(e) Final approval and specialty license plate issuance.

(1) Approval. The board will approve or disapprove the specialty license plate application based on all of the information provided pursuant to this subchapter in an open meeting.

(2) Application not approved. If the application is not approved, the applicant may submit a new application and supporting documentation for the design to be considered again by the board if:

(A) the applicant has additional, required documentation; or

(B) the design has been altered to an acceptable degree.

(3) Issuance of approved specialty plates.

(A) If the vendor's specialty license plate is approved, the vendor must submit the non-refundable start-up fee before any further design and processing of the license plate.

(B) Approval of the plate does not guarantee that the submitted draft plate design will be used. The board has final approval of all specialty license plate designs and will provide guidance on the submitted draft design to ensure compliance with the format and license plate specifications.

(f) Redesign of vendor specialty license plates.

(1) On receipt of a written request from the vendor, the department will allow a redesign of a vendor specialty license plate.

(2) The vendor must pay the redesign administrative costs as provided in the contract between the vendor and the department.

(g) Multi-year vendor specialty license plates. Purchasers will have the option of purchasing vendor specialty license plates for a one-year, a three-year, or a five-year period.

(h) License plate categories and associated fees. The categories and the associated fees for vendor specialty license plates are set out in this subsection.

(1) Custom license plates. Custom license plates include license plates with a variety of pre-approved background and character color combinations that may be personalized with either three alpha and two or three numeric characters or two or three numeric and three alpha characters. Generic license plates on standard white sheeting with the word "Texas" that may be personalized with up to six alphanumeric characters are considered custom license plates before December 2, 2010. The fees for issuance of Custom and Generic license plates are $150 for one year, $400 for three years, and $450 for five years.

(2) T-Plates (Premium) license plates. T-Plates (Premium) license plates may be personalized with up to seven alphanumeric characters, including the "T," on colored backgrounds or designs approved by the department. The fees for issuance of T-Plates (Premium) license plates are $150 for one year, $400 for three years, and $450 for five years.

(3) Luxury license plates. Luxury license plates may be personalized with up to six alphanumeric characters on colored backgrounds or designs approved by the department. The fees for issuance of luxury license plates are $150 for one year, $400 for three years, and $450 for five years.

(4) Freedom license plates. Freedom license plates include license plates with a variety of pre-approved background and character color combinations that may be personalized with up to seven alphanumeric characters. The fees for issuance of freedom license plates are $195 for one year, $445 for three years, and $495 for five years.

(5) Background-only [~~Background only~~] license plates. Background-only [~~Background only~~] license plates include non-personalized license plates with a variety of pre-approved background and character color combinations, and may be embossed or non-embossed.

(A) The fees for issuance of non-embossed, background-only [~~background only~~] license plates are $50 for one year, $130 for three years, and $175 for five years.

(B) Except as stated in subsection (h)(9)(C), the fees for embossed, background-only license plates are $125 for one year, $205 for three years, and $250 for five years.

(6) Vendor souvenir license plates. Vendor souvenir license plates are replicas of vendor specialty license plate designs that may be personalized with up to 24 alphanumeric characters. Vendor souvenir license plates are not street legal or legitimate insignias of vehicle registration. The fee for issuance of souvenir license plates is $40.

(7) Auction of alphanumeric patterns. The vendor may auction alphanumeric patterns for one, three, or five year terms with options to renew indefinitely at the current price established for a one, three, or five year luxury category license plate. The purchaser of the auction pattern may select from the vendor background designs, including any embossed license plate designs, at no additional charge at the time of initial issuance. The auction pattern may be moved from one vendor design plate to another vendor design plate as provided in subsection (n) [~~(n)(1)~~] of this section. The auction pattern may be transferred from owner to owner as provided in subsection (l)(2) of this section.

(8) Embossed, personalized specialty license plates. The vendor may sell embossed, personalized specialty license plates with a variety of pre-approved background and character color combinations that may be personalized with up to seven alphanumeric characters. Except as stated in subsection (h)(7) of this section, the fees for issuance of embossed, personalized specialty license plates are $270 for one year, $520 for three years, and $570 for five years. Except as stated in subsection (h)(9)(C) of this section, the fees under subsection (h)(9) of this section do not apply to an embossed, personalized specialty license plate.

(9) [~~(8)~~] Personalization and specialty plate fees.

(A) The fee for the personalization of license plates applied for prior to November 19, 2009 is $40 if the plates are renewed annually.

(B) The personalization fee for plates applied for after November 19, 2009 is $40 if the plates are issued pursuant to Transportation Code, Chapter 504, Subchapters G and I.

(C) If the plates are renewed annually, the personalization and specialty plate fees remain the same fee as at the time of issuance if a sponsor of a specialty license plate authorized under Transportation Code, Chapter 504, Subchapters G and I signs a contract with the vendor in accordance with Transportation Code, Chapter 504, Subchapter J, even if the board approves the specialty license plate to be an embossed specialty license plate design.

(i) Payment of fees.

(1) Payment of specialty license plate fees. The fees for issuance of vendor specialty license plates will be paid directly to the state through vendor and state systems for the license plate category and period selected by the purchaser. A person who purchases a multi-

year vendor specialty license plate must pay upon purchase the full fee which includes the renewal fees.

(2) Payment of statutory registration fees. To be valid for use on a motor vehicle, the license plate owner is required to pay, in addition to the vendor specialty license plate fees, any statutorily required registration fees in the amount as provided by Transportation Code, Chapter 502, and this subchapter.

(j) Refunds. Fees for vendor specialty license plate fees will not be refunded after an application is submitted to the vendor and the department has approved issuance of the license plate.

(k) Replacement.

(1) Application. An owner must apply directly to the county tax assessor-collector for the issuance of replacement vendor specialty license plates and must pay the fee described in paragraphs (2) or (3) of this subsection, whichever applies.

(2) Lost or mutilated vendor specialty license plates. To replace vendor specialty license plates that are lost or mutilated, the owner must pay the statutory replacement fee provided in Transportation Code, §504.007.

(3) Optional replacements. An owner of a vendor specialty license plate may replace vendor specialty license plates by submitting a request to the county tax assessor-collector accompanied by the payment of a $6 fee.

(4) Interim replacement tags. If the vendor specialty license plates are lost or mutilated to such an extent that they are unusable, replacement license plates will need to be remanufactured. The county tax assessor-collector will issue interim replacement tags for use until the replacements are available. The owner's vendor specialty license plate number will be shown on the interim replacement tags.

(5) Stolen vendor specialty license plates. The county tax assessor-collector will not approve the issuance of replacement vendor specialty license plates with the same license plate number if the department's records indicate that the vehicle displaying that license plate number was reported stolen or the license plates themselves were reported stolen.

(l) Transfer of vendor specialty license plates.

(1) Transfer between vehicles. The owner of a vehicle with vendor specialty license plates may transfer the license plates between vehicles by filing an application through the county tax assessor-collector if the vehicle to which the plates are transferred:

(A) is titled or leased in the owner's name; and

(B) meets the vehicle classification requirements for that particular specialty license plate.

(2) Transfer between owners. Vendor specialty license plates may not be transferred between persons unless the license plate pattern was initially purchased through auction as provided in subsection (h)(7) of this section. An auctioned alphanumeric pattern may be transferred as a specialty license plate or as a virtual pattern to be manufactured on a new background as provided under the restyle option in subsection (n)(1) of this section. In addition to the fee paid at auction, the new owner of an auctioned alphanumeric pattern or plate will pay the department a fee of $25 to cover the cost of the transfer, and complete the department's prescribed application at the time of transfer.

(m) Gift plates.

(1) A person may purchase plates as a gift for another person if the purchaser submits a statement that provides:

(A) the purchaser's name and address;

(B) the name and address of the person who will receive the plates; and

(C) the vehicle identification number of the vehicle on which the plates will be displayed or a statement that the plates will not be displayed on a vehicle.

(2) To be valid for use on a motor vehicle, the recipient of the plates must file an application with the county tax assessor-collector and pay the statutorily required registration fees in the amount as provided by Transportation Code, Chapter 502, and this subchapter.

(n) Restyled vendor specialty license plates. A person who has purchased a multi-year vendor specialty license plate may request a restyled license plate at any time during the term of the plate.

(1) For the purposes of this subsection, "restyled license plate" is a vendor specialty license plate that has a different style from the originally purchased vendor specialty license plate but:

(A) is within the same price category, except if the pattern is an auction pattern[;] and

[~~(B)~~] has the same alpha-numeric characters and expiration date as the previously issued multi-year license plates; or[.]

(B) is restyling from a non-embossed specialty license plate style to an embossed specialty license plate style and has the same alpha-numeric characters and expiration date as the previously issued multi-year license plates.

(2) The fee for each restyled license plate is:

(A) $50 for restyling under subsection (n)(1)(A) of this section; or

(B) $75 for restyling under subsection (n)(1)(B) of this section.

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

Filed with the Office of the Secretary of State on August 17, 2023.

TRD-202303033
Laura Moriaty
General Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: October 1, 2023
For further information, please call: (512) 465-4160

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43 TAC §217.54

INTRODUCTION. The Texas Department of Motor Vehicles (department) proposes amendments to 43 Texas Administrative Code (TAC) §217.54 concerning registration of fleet vehicles. These amendments are necessary to implement House Bill (HB) 433 enacted during the 88th Legislature, Regular Session (2023). HB 433 amends the definition of "commercial fleet" in Transportation Code, §502.001(6) by reducing from 25 to 12 the minimum number of nonapportioned motor vehicles, semitrailers, or trailers owned, operated, or leased by a business entity necessary to constitute a commercial fleet.

EXPLANATION.

Under Transportation Code, §502.0023 and 43 TAC §217.54, vehicles in commercial fleets are eligible for multi-year registra-

tion and the same registration expiration date for the entire commercial fleet. The proposed amendments to §217.54 are necessary to implement HB 433 and would incorporate the change in the eligibility requirements for fleet registration and fleet composition. The proposed amendment to §217.54(b)(1) would replace the number "25" with "12" for fleet eligibility requirements. The proposed amendments to §217.54(f)(3) would replace the number "25" with "12" for fleet composition as it relates to the status of an account holder's registration when the account falls below the minimum number of vehicles for a commercial fleet.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Glenna Bowman, Chief Financial Officer, has determined that for each year of the first five years the amendments 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 measurable effect 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 amended section is in effect, the anticipated public benefit is that §217.54 would be consistent with the definition of "commercial fleet" in Transportation Code, §502.001(6) as amended by HB 433.

Anticipated Costs To Comply With The Proposal. Mr. Archer anticipates that there will be no costs to comply with the proposed amendments.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. As required by Government Code, §2006.002, the department has determined that the proposed amendments will not have an adverse economic effect on small businesses, micro-businesses, and rural communities because the amendments would make §217.54 consistent with the definition of "commercial fleet" in Transportation Code, §502.001(6) as amended by HB 433. The proposed amendments do not require small businesses, micro businesses, or rural communities to obtain commercial fleet registration under Transportation Code, §502.0023. 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 amendments are in effect, no government program would be created or eliminated. Implementation of the proposed amendments 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 amendments do not create a new regulation, or limit, or repeal an existing regulation. The proposed amendments expand an existing regulation by reducing from 25 to 12 the number of vehicles required to constitute a commercial fleet, which is eligible for an extended vehicle registration period and the same registration expiration date for the entire commercial fleet. The proposed amendments would increase the number of individuals subject to the rule's applicability, because smaller fleets of 12 vehicles or more will now be eligible for multi-year registration. Lastly, the rule 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 October 1, 2023. 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.

STATUTORY AUTHORITY. The department proposes amendments to §217.54 under Transportation Code, §502.001(6), as amended by HB 433, which defines "commercial fleet" for purposes of Transportation Code, Chapter 502; Transportation Code, §502.0021, which authorizes the department to adopt rules to administer Transportation Code, Chapter 502; Transportation Code, §502.0023, which sets out the requirements for extended vehicle registration of commercial fleets and requires the department to adopt rules to implement those requirements; and 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 as provided in the Texas Transportation Code and other laws of this state.

CROSS REFERENCE TO STATUTE. Transportation Code, Chapters 502 and 1002.

§217.54. Registration of Fleet Vehicles.

(a) Scope. A registrant may consolidate the registration of multiple motor vehicles in a fleet instead of registering each vehicle separately. A fleet may include trailers and semitrailers. Except as provided by §217.55 of this title (relating to Exempt and Alias Vehicle Registration), to consolidate registration, a registration must meet the requirements of this section.

(b) Eligibility. A fleet must meet the following requirements to be eligible for fleet registration.

(1) No fewer than 12 [~~25~~] vehicles will be registered as a fleet;

(2) Vehicles may be registered in annual increments for up to eight years;

(3) All vehicles in a fleet must be owned by or leased to the same business entity;

(4) All vehicles must be vehicles that are not registered under the International Registration Plan; and

(5) Each vehicle must currently be titled in Texas or be issued a registration receipt, or the registrant must submit an application for a title or registration for each vehicle.

(c) Application.

(1) Application for fleet registration must be in a form prescribed by the department. At a minimum the form will require:

(A) the full name and complete address of the registrant;

(B) a description of each vehicle in the fleet, which may include the vehicle's model year, make, model, vehicle identification

number, document number, body style, gross weight, empty weight, and for a commercial vehicle, manufacturer's rated carrying capacity in tons;

(C) the existing license plate number, if any, assigned to each vehicle; and

(D) any other information that the department may require.

(2) The application must be accompanied by the following items:

(A) in the case of a leased vehicle, a certification that the vehicle is currently leased to the person to whom the fleet registration will be issued;

(B) registration fees prescribed by law for the entire registration period selected by the registrant;

(C) local fees or other fees prescribed by law and collected in conjunction with registering a vehicle for the entire registration period selected by the registrant;

(D) evidence of financial responsibility for each vehicle as required by Transportation Code, §502.046, unless otherwise exempted by law;

(E) annual proof of payment of Heavy Vehicle Use Tax;

(F) the state's portion of the vehicle inspection fee; and

(G) any other documents or fees required by law.

(d) Registration period.

(1) The fleet owner will designate a single registration period for a fleet so the registration period for each vehicle will expire on the same date.

(2) The fleet registration period will begin on the first day of a calendar month and end on the last day of a calendar month.

(e) Registration receipt and fleet license plates.

(1) As evidence of registration, the department will issue a registration receipt and one or two metal fleet license plates for each vehicle in a fleet.

(2) The registration receipt for each vehicle shall at all times be carried in that vehicle and be available to law enforcement personnel upon request.

(3) A registration receipt or fleet license plate may not be transferred between vehicles, owners, or registrants.

(f) Fleet composition.

(1) A registrant may add a vehicle to a fleet at any time during the registration period. An added vehicle will be given the same registration period as the fleet and will be issued one or two metal fleet license plates and a registration receipt.

(2) A registrant may remove a vehicle from a fleet at any time during the registration period. After a vehicle is removed from the fleet, the fleet registrant shall either return the metal fleet license plates for that vehicle to the department or provide the department with acceptable proof that the metal fleet license plates for that vehicle have been destroyed. Credit for any vehicle removed from the fleet for the remaining full year increments can be applied to any vehicle added to the fleet or at the time of renewal. No refunds will be given if credit is not used or the account is closed.

(3) If the number of vehicles in an account falls below 12 [~~25~~] during the registration period, fleet registration will remain in effect. If the number of vehicles in an account is below 12 [~~25~~] at the end of the registration period, fleet registration will be canceled. In the event of cancellation, each vehicle shall be registered separately. The registrant shall immediately either return all metal fleet license plates to the department or provide the department with acceptable proof that the metal fleet license plates have been destroyed.

(g) Fees.

(1) When a fleet is first established, the department will charge a registration fee for each vehicle for the entire registration period selected. A currently registered vehicle, however, will be given credit for any remaining time on its separate registration.

(2) When a vehicle is added to an existing fleet, the department will charge a registration fee that is prorated based on the number of months of fleet registration remaining. If the vehicle is currently registered, this fee will be adjusted to provide credit for the number of months of separate registration remaining.

(3) When a vehicle is removed from fleet registration, it will be considered to be registered separately. The vehicle's separate registration will expire on the date that the fleet registration would have expired. The registrant must pay the statutory replacement fee to obtain regular registration insignia before the vehicle may be operated on a public highway.

(4) In addition to the registration fees prescribed by Transportation Code, Chapter 502, an owner registering a fleet under this section must pay a one-time fee of $10 per motor vehicle, semitrailer, or trailer in the fleet. This fee is also due as follows:

(A) for each vehicle added to the owner's existing fleet; and

(B) for each vehicle that a buyer registers as a fleet, even though the seller previously registered some or all of the vehicles as a fleet under this section.

(h) Payment. Payment will be made in the manner prescribed by the department.

(i) Cancellation.

(1) The department will cancel registration for non-payment and lack of proof of annual payment of the Heavy Vehicle Use Tax.

(2) The department may cancel registration on any fleet vehicle on the anniversary date of the registration if the fleet vehicle is not in compliance with the inspection requirements under Transportation Code, Chapter 548 or the inspection requirements in the rules of the Texas Department of Public Safety

(3) A vehicle with a canceled registration may not be operated on a public highway.

(4) If the department cancels the registration of a vehicle under this subsection, the registrant can request the department to reinstate the registration by doing the following:

(A) complying with the requirements for which the department canceled the registration;

(B) providing the department with notice of compliance on a form prescribed by the department; and

(C) for a registration canceled under paragraph (2) of this subsection, paying an administrative fee in the amount of $10.

(5) A registrant is eligible for reinstatement of the registration only within 90 calendar days of the department's notice of cancellation.

(6) If a registrant fails to timely reinstate the registration of a canceled vehicle registration under this section, the registrant:

(A) is not entitled to a credit or refund of any registration fees for the vehicle; and

(B) must immediately either return the metal fleet license plates to the department or provide the department with acceptable proof that the metal fleet license plates have been destroyed.

(j) Inspection fee. The registrant must pay the department by the deadline listed in the department's invoice for the state's portion of the vehicle inspection fee.

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

Filed with the Office of the Secretary of State on August 17, 2023.

TRD-202303030
Laura Moriaty
General Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: October 1, 2023
For further information, please call: (512) 465-4160

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CHAPTER 219. OVERSIZE AND OVERWEIGHT VEHICLES AND LOADS

INTRODUCTION. The Texas Department of Motor Vehicles (department) proposes amendments to 43 Texas Administrative Code (TAC) Subchapter B, General Permits, §§219.11, 219.13, and 219.14; Subchapter C, Permits for Over Axle and Over Gross Weight Tolerances, §§219.30-219.36; Subchapter D, Permits for Oversize and Overweight Oil Well Related Vehicles, §219.41 and §219.43; and Subchapter E, Permits for Oversize and Overweight Unladen Lift Equipment Motor Vehicles, §219.61 and §219.63 concerning oversize and overweight vehicles and loads. As further described herein, the proposed amendments are necessary to implement legislation; to modify language to be consistent with statutes and other sections in Chapter 219 of Title 43; to delete language that is already contained in statute; to delete language for which the department does not have rulemaking authority; to clarify the language; to modify language to be consistent with current practice; to amend certain application requirements to provide the department with additional information that would help it administer and enforce Subtitle E of Title 7 of the Transportation Code and that the department would provide to law enforcement officers who use the information to enforce the laws regarding size and weight under Subtitle E of Title 7 of the Transportation Code; and to update application requirements to allow applicants that are required to file a surety bond under Transportation Code, §623.075 to file an electronic copy, rather than a paper copy.

EXPLANATION.

A proposed amendment to §219.11(c)(1) would create an exception for a permit application under §219.14(b), which prescribes the permit application requirements that are unique to a manufactured house as defined by Transportation Code, §623.091. Although §219.11(c)(1) currently purports to provide the permit application requirements for all oversize or overweight permits (permits) under Subchapter B of Chapter 219, it does not provide the permit application requirements for a permit under §219.14. A permit applicant for a permit regarding a manufactured house under §219.14 must provide additional specific information to the department, as explained below regarding proposed amendments to §219.14(b). This proposed amendment to §219.11(c)(1) would clarify that the more specific requirements in §219.14(b) control over the more general requirements in §219.11(c)(1).

Proposed amendments to §219.11(c)(1)(A) and (B) would modify the application requirements to provide the department with the information it needs to process an application and to contact the correct person if there are updates to the permit restrictions. The amendments would require the applicant to provide the department with the name, telephone number, and email address of the contact person, and would delete the requirement for the applicant to provide the department with the applicant's telephone number and email address. The applicant could be a large corporation with different contact people for different permits. Having the contact person's email address and telephone number would enable the department to communicate more efficiently with the applicant and any permit holder. The amendments would also move the current requirement for the applicant to provide its customer identification number from subparagraph (B) to subparagraph (A).

A proposed amendment to §219.11(c)(1)(C) would remove the requirement for a permit applicant under Subchapter B of Chapter 219 to provide their motor carrier registration (MCR) number to the department. An MCR number is issued to a motor carrier in a certificate of registration under Transportation Code, Chapter 643. The department no longer needs the MCR number in an application for a permit under Subchapter B of Chapter 219 because the department's Texas Permitting and Routing Optimization System (TxPROS or permitting system) can search the federal motor carrier system by using the applicant's United States Department of Transportation (USDOT) Number to determine if the applicant has an MCR number under Transportation Code, Chapter 643 if necessary. Transportation Code, §623.075 and §623.094 state when it may be necessary for the department to know if a permit applicant under Subchapter B of Chapter 219 has an MCR number.

A proposed amendment to §219.11(c)(1)(C) is necessary to clarify whether the permit applicant must provide their USDOT Number. The proposed amendment would replace the words "if applicable" with the more precise explanation "if applicant is required by law to have a USDOT Number" because federal law and Texas law prescribe when a motor carrier must have a USDOT Number. For example, 49 U.S.C. §31134 requires an employer or person to be registered by the Secretary of Transportation and obtain a USDOT Number in order to operate a commercial motor vehicle in interstate transportation. Transportation Code, §643.064 requires a motor carrier to have and maintain a USDOT Number if they are required to register with the department under Subchapter B of Chapter 643 of the Transportation Code to engage in intrastate transportation.

A motor carrier's USDOT number is used as its identification number in state and federal agencies' databases and tracking systems that contain information the department needs to evaluate an applicant for a permit. To leverage this ease of reference and consistent identification that a USDOT number provides, proposed amendments to the following sections would conform with the requirement in §219.11(c)(1)(C) for a permit applicant to provide their USDOT Number if the applicant is required by law to have a USDOT Number: §§219.14(b), re-let-

tered 219.30(c)(2), 219.31(b)(2), 219.32(c)(2), 219.33(b)(2), 219.34(b)(2), 219.35(b)(2), 219.36(b)(2), 219.41(b), and 219.61(b). As previously explained, the department's permitting system can search the federal motor carrier system by using the motor carrier's USDOT Number to determine if the applicant has a certificate of registration under Chapter 643, which allows the department to determine, for example, whether certain applicants for permits for oil well-related vehicles are eligible for a permit because an applicant is not eligible if the applicant has a certificate of registration under Chapter 643. As another example, the department needs the permit applicant's USDOT Number to query the federal motor carrier system to determine whether the applicant has been placed out of service by the Federal Motor Carrier Safety Administration (FMCSA) or the Texas Department of Public Safety (DPS). Transportation Code, §623.004, which was enacted by House Bill 2620, 86th Legislature, Regular Session (2019), authorizes the department to deny a permit application under Subtitle E of Title 7 of the Transportation Code if either FMCSA or DPS issued an out-of-service order to the applicant. Motor carriers that have been issued an out-of-service order by FMCSA or DPS are legally prohibited from operating their commercial motor vehicles on public roadways in interstate or intrastate transportation, respectively. These motor carriers are therefore ineligible to receive a permit from the department to operate a commercial motor vehicle that exceeds legal size or weight on a public roadway. Making the USDOT number a consistent application requirement for permits is necessary for the department to get the information it needs to vet the permit applications under Transportation Code, §623.004.

Proposed amendments to §219.11(l)(1) would delete language regarding hazardous conditions during which movement of a permitted vehicle is prohibited and renumber the remaining paragraphs. This proposed amendment is necessary because DPS and FMCSA, rather than the department, have the statutory authority to determine when road conditions are hazardous for vehicle movement. Transportation Code, §644.051 gives DPS the authority to adopt rules regulating the safe operation of commercial motor vehicles, including the authority to adopt by reference all or part of the federal safety regulations. DPS adopted 49 C.F.R. §392.14 by reference in 37 TAC §4.11(a). Section 392.14 regulates the operation of a commercial motor vehicle regarding hazardous conditions. Together, 49 C.F.R. §392.14 and 37 TAC §4.11(a) regulate the operation of a commercial motor vehicle regarding hazardous conditions for both interstate and intrastate transportation. Also, even if a permittee is not operating a commercial motor vehicle, the Rules of the Road (Subtitle C of Title 7 of the Transportation Code) include provisions that govern the safe operation of a vehicle, such as Transportation Code, §545.401, which says a person commits an offense if the person drives a vehicle in willful or wanton disregard for the safety of persons or property.

The following sections in Chapter 219 either cross-reference the language regarding hazardous conditions in §219.11(l) or repeat the language contained in §219.11(l) regarding hazardous conditions: §§219.13(e)(6), 219.32(h), 219.33(c), 219.34(e), 219.35(g), 219.36(g), 219.41(d), and 219.61(d). To align with the proposed amendments to §219.11(l), these provisions are also proposed to be amended to delete the language regarding hazardous conditions during which movement of a permitted vehicle is prohibited and to renumber or re-letter the remaining subdivisions within these sections as necessary.

Additionally, other sections cross-reference §219.11(l). While these sections do not need to be amended, the meaning of the provisions that cite to §219.11(l) will be impacted by the proposed amendments to §219.11(l). The proposed deletion of the language regarding hazardous conditions in §219.11(l) will have the effect of removing hazardous conditions from §219.13(a), 219.13(e)(1)(C), §219.16(e), and §219.31(h).

A proposed amendment to §219.11(n) would authorize applicants for permits to file an electronic copy of a surety bond that a permit applicant must file with the department under Transportation Code, §623.075(c). Transportation Code, §623.074(d) authorizes the department to adopt a rule to authorize an applicant to submit an application electronically. Currently, permit applicants must file an original surety bond (the paper version with the original signature) with the department under §219.11(n)(1)(A)(iv) and (2)(B). Proposed new §219.11(n)(4) would allow permit applicants to file their bonds electronically, providing a convenience for permit applicants that want to file their bonds electronically, potentially reducing costs for the department, and potentially streamlining the department's process. An electronic copy of a surety bond is legally enforceable under Texas Business and Commerce Code, §322.007. Moreover, the department currently maintains its records in electronic format, scanning a copy of the original surety bond and destroying the original as authorized by the Texas Department of Transportation (TxDOT). The proposed rule would remove the scanning step from the department's process.

Proposed amendments to §219.11(n) would delete language that is inconsistent with the proposed amendment to allow a permit applicant to file an electronic copy of the surety bond. The department proposes to delete the following: the requirement for the bond to have an original signature under §219.11(n)(1)(A)(iv), the authority for an applicant to file a facsimile or electronic copy of the surety bond as long as the original surety bond is received by the department within 10 days under §219.11(n)(2)(B), and the restriction on the department issuing the applicant a permit until the original surety bond has been received by the department under §219.11(n)(2)(B). None of these requirements will be necessary if proposed new §219.11(n)(4) is adopted to allow electronic filing of surety bonds.

Other proposed amendments to §219.11(n) would remove language in §219.11(n)(1)(C) regarding TxDOT's process for making a claim on a surety bond. TxDOT's process for making a claim against a surety bond should not be included in the department's rules because the department does not have statutory authority to set processes for TxDOT through rule. Section 219.11(n)(1)(C) is a relic from a time when TxDOT was responsible for implementing and administering Subtitle E of Title 7 of the Transportation Code and is no longer necessary or appropriate in the department's rule. This proposed amendment would also remove the reference to a bond under Transportation Code, §623.163 because the §623.163 bond is addressed in §219.3.

Proposed new §219.11(n)(1) through (3) would set out the procedures for filing surety bonds with the department for clarity and ease of reference. New paragraphs (1) through (3) consist of rearranged and edited existing language found in §219.11(n)(1)(A)(ii) (minus the unnecessary language that provides an example), §219.11(n)(1)(A)(iii), §219.11(n)(1)(A)(iv), §219.11(n)(1)(A)(v), §219.11(n)(1)(A)(vi), §219.11(n)(1)(B), and §219.11(n)(2)(A).

Other proposed amendments to §219.11(n) would remove all or part of the language in the following subdivisions because the language is redundant and duplicative of Transportation Code, §623.075, and therefore unnecessary in rule: §219.11(n)(1)(A)(i), §219.11(n)(1)(D), and §219.11(n)(2)(E) and (F). The proposed deletion of §219.11(n)(2)(F) also removes the reference to Chapter 645 of the Transportation Code because Senate Bill 1814, 87th Legislature, Regular Session (2021) removed the reference to Chapter 645 from Transportation Code, §623.075. Proposed amendments would delete §219.11(n)(2)(C) and (D) because they are unnecessary interpretations of the exemption in Transportation Code, §623.075(b)(1).

Proposed amendments to §219.14(b) would update the permit application requirements to be consistent with the format and application requirements in §219.11(c), while omitting unnecessary requirements and customizing the requirements to comply with Subchapter E of Chapter 623 of the Transportation Code. Proposed amended §219.14(b)(1) would clarify that the permit applicant must submit the application to the department.

Proposed amendments to §219.14(b)(2) would modify the application requirements to provide the department with the information it needs to process an application and to contact the correct person if there are updates to the permit restrictions. The amendments would require the applicant to provide the department with the name, customer identification number, and address of the applicant. The department needs the name of the applicant, so the department has the name of the person to whom the department issues a permit. The applicant's name and address would help law enforcement to enforce Transportation Code, §621.511, which makes it an offense if a person operates or moves a vehicle on a public highway under a permit when the person is not the person named on the permit or an employee of the person named on the permit. Also, the department cannot issue a permit unless the applicant provides their customer identification number, which the applicant can obtain from the department at no cost.

The proposed amendments would also require the applicant to provide the department with the name, telephone number, and email address of the contact person. Having the contact person's email address and telephone number would enable the department to communicate more efficiently with the applicant and any permit holder. The applicant could be a large corporation with different contact people for different permits.

The proposed amended §219.14(b)(2) would also include rearranged and edited language currently found in §219.14(b)(1) and would incorporate the specific requirements which are unique to manufactured houses as defined by Transportation Code, §623.091. The permit applicant must provide a description of the manufactured home and the dimensions of the manufactured home to the department, so the department can include certain information on the permit as required by Transportation Code, §623.093. A proposed amendment states that the permit applicant must provide any other information required by law, including the information listed in Transportation Code, §623.093(a).

Proposed amendments to §219.14(b) would delete the following language which is included in Transportation Code, §623.093 because it is not necessary to repeat statutory language in a rule: "If the manufactured home is being moved to or from a site in this state where it has been, or will be, occupied as a dwelling, the permit must also show the name of the owner of the home, the location from which the home is being moved, and the location to which the home is being delivered." A proposed amendment to §219.14(b) would delete the current language §219.14(b)(2) because it is an unnecessary cross-reference that does not add clarity.

Proposed amendments to §219.30 would remove language that is duplicative with statute because it is not necessary to repeat statutory language in a rule. A proposed amendment to §219.30(c) would delete language that is in Transportation Code, §623.011(b)(1). A proposed amendment to re-lettered §219.30(d) would delete language that is in Transportation Code, §623.012 and the reference to the state highway system, which was removed by Senate Bill 1814, 87th Legislature, Regular Session (2021). Proposed amendments to §219.30 would re-letter the remaining subsections, as well as an internal cross-reference to re-lettered subsection (e), due to the proposed deletion of subsections (c) and (d).

A proposed amendment to re-lettered §219.30(c)(1) would update the language to be consistent with the language in other sections of Chapter 219 regarding permit applications by stating the person must submit an application to qualify for the permit. A proposed amendment to re-lettered §219.30(c)(2)(A) would require the applicant to provide its customer identification number because the department cannot issue a permit without the customer's identification number. The applicant can obtain a customer identification number from the department at no cost. A proposed amendment to §219.30(c)(2)(B) would rearrange the language for clarity. A proposed amendment to re-lettered §219.30(c)(2)(B) would also require the applicant to provide an email address for its contact person to enable the department to communicate more efficiently with the applicant's contact person. Having an email address for the permittee's contact person would enable the department to disseminate information more quickly and easily. For example, if an amendment must be made to the permit because of a new restriction provided by TxDOT, the department currently sends an email to the permit holders who provide the department with an email address. The department sends an email to the permit holders regarding a new restriction so they can receive the update as soon as possible and print an updated permit. As another example, when a safety issue arises like a new height restriction on a specific roadway that includes a bridge, the permit holders need to know about the new height restriction as soon as possible. An email with this information would reach permittees more quickly than phone calls, which can be a slow process, especially if the department must call a large number of permit holders. Also, the department's permitting staff currently contact applicants and permit holders by both email and telephone, depending on the issue. For these reasons, similar amendments that would require applicants to provide email addresses are also proposed to the following sections: §§219.14(b), 219.31(b), 219.32(c), 219.33(b), 219.34(b), 219.35(b), and 219.36(b).

A proposed amendment to re-lettered §219.30(c)(2)(C) would require the applicant to provide vehicle registration information because Transportation Code, §623.011(b)(1) says the vehicle must 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. Other proposed amendments to re-lettered §219.30(c)(2)(C) would require the permit applicant to provide the truck year and vehicle identification number. The department needs the vehicle information for investigations regarding possible administrative enforcement actions and to provide to law enforcement officers who

use the information to enforce the laws regarding size and weight under Subtitle E of Title 7 of the Transportation Code. For example, law enforcement officers use vehicle information to verify whether a permit is being used for more than one vehicle in violation of the law.

Proposed amendments to re-lettered §219.30(h)(4) would substitute the word "permittee" for the word "applicant" and add the replacement of the letter of credit or bond to be consistent with Transportation Code, §623.012(c) and (d). A proposed amendment to re-lettered §219.30(h) would replace the reference to deleted §219.30(d) with a reference to Transportation Code, §623.012, which contains the relevant language. Proposed amendments to §219.30 would delete subsections (k) and (l) because the applicable statutes do not provide the authority to void the permit for the reason stated in subsection (k).

A proposed amendment to §219.31(b)(2)(A) would require the applicant to provide its customer identification number because the department cannot issue a permit without the customer's identification number. The applicant can obtain a customer identification number from the department at no cost. A proposed amendment to §219.31(b)(2)(A) would also delete the requirement for the applicant to provide its telephone number and email address because current §219.31(b)(2)(B) already requires the applicant to provide the department with the contact information for the applicant's contact person. A proposed amendment to §219.31(b)(2)(B) would also rearrange the language for clarity.

A proposed amendment to §219.32(c)(2)(A) would require the applicant to provide its customer identification number because the department cannot issue a permit without the customer's identification number. The applicant can obtain a customer identification number from the department at no cost. A proposed amendment to §219.32(c)(2)(B) would also rearrange the language for clarity. For these reasons, similar amendments are also proposed to the following sections: §§219.33(b), 219.34(b), 219.35(b), and 219.36(b).

A proposed amendment to re-lettered §219.32(h) would clarify that the city's curfew movement restrictions 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.

Proposed amendments to §219.33(a), (c), and (d) would delete reference to an emergency declared by the president of the United States under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, (42 U.S.C. §5121, *et seq.*) (Stafford Act) because Transportation Code, §623.341(a) and 23 U.S.C. §127(i) only authorize the federal disaster relief permit if the president of the United States issues a major disaster declaration. The federal disaster relief permit authorizes an overweight vehicle that will be used to deliver relief supplies to exceed legal weight up to the axle weights and gross weight listed in §219.33(c), even if the vehicle is transporting a divisible load. Subject to the restrictions and conditions in §219.33, the permitted vehicle is authorized to exceed legal weight on state highways, including the National System of Interstate and Defense Highways.

Although 23 U.S.C. §127(i) uses the term "emergency," §127(i)(1)(A) says a state may issue these special permits if the president has declared the emergency to be a "major disaster" under the Stafford Act. An emergency declaration is different than a major disaster declaration under the Stafford Act. Section 5170 of the Stafford Act provides the procedures for the president to declare a major disaster, which is defined in §5122 of the Stafford Act. Section 5191 of the Stafford Act provides the procedure for the president to declare an emergency, which is defined in §5122.

The Federal Highway Administration (FHWA) is a government agency within the United States Department of Transportation that supports state and local governments in the design, construction, and maintenance of the U.S. highway system. FHWA's website explains that through financial and technical assistance to state and local governments, FHWA is responsible for ensuring that America's roads and highways continue to be among the safest and most technologically sound in the world.

FHWA issued a memo on June 5, 2013, regarding the Public Law which enacted 23 U.S.C. §127(i) in which FHWA stated as follows: "Section 1511 of MAP-21 extends the States' authority to issue Special Permits to vehicles with divisible loads that are delivering relief supplies during a Presidentially-declared emergency or major disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("Stafford Act") (42 U.S.C. 5121 et seq.)." The memo, titled "MAP-21, Section 1511 - Special Permits During Periods of National Emergency Implementation Guidance, Revised," was available on FHWA's website as of August 1, 2023. FHWA's June 5, 2013, memo is from FHWA's Associate Administrator for Operations to the Division Administrators, Directors of Field Services, and Director of Technical Services. Although the department previously relied on FHWA's June 5, 2013, memo when enacting §219.33, the department proposes to amend §219.33(a), (c), and (d) to delete the reference to an emergency because Transportation Code, Section §623.341(a) and 23 U.S.C. §127(i) only authorize this special permit if the president issues a major disaster declaration for the reasons previously stated.

Proposed amendments to §219.33(c)(3) and re-numbered (c)(4) are necessary to clarify that the city's curfew movement restrictions 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 its website.

A proposed amendment to re-numbered §219.33(c)(7) would specify that a permit will expire 120 days after the date of a disaster because the department's permitting system does not calculate the expiration date for each federal disaster relief permit. Under Transportation Code, §623.341(b) and 23 U.S.C. §127(i), the permit expires not later than the 120th day after the date the president declares a major disaster. The department's permitting system issues permits for 120 days after the major disaster declaration and does not print the expiration date on the permits. The proposed amendment would delete language that says the expiration date is listed in the permit and replace that language with language that says the permit will expire 120 days after the date of the major disaster declaration. The proposed language is consistent with Transportation Code, §623.341(b) and 23 U.S.C. §127(i).

Proposed amendments to §219.33(d) are necessary because in practice, only the notice of the president's major disaster declaration is available on the White House website and the Federal Emergency Management Agency's website. The official declaration that is signed by the president does not appear to be readily available to the public where a person can download it,

so the department should only require a person to carry a copy of the notice of declaration in the permitted vehicle, along with the permit. If the permittee is stopped by law enforcement, the documentation will help the peace officer determine whether the permit was issued under a major disaster declaration issued by the president and whether the permit is valid under §219.33 and Transportation Code, §623.341.

Proposed amendments to §219.41(b) would modify the application requirements to provide the department with the information it needs to process an application under Subchapter D of Chapter 219 and to contact the correct person if there are updates to the permit restrictions. A proposed amendment to §219.41(b)(1) would require the applicant to provide its customer identification number because the department cannot issue a permit without the customer's identification number. The applicant can obtain a customer identification number from the department at no cost. A proposed amendment to §219.41(b)(1) would also delete the requirement for the applicant to provide its telephone number and email address because a proposed amendment to §219.41(b)(2) would require the applicant to provide the department with the name, telephone number, and email address for the applicant's contact person. The applicant could be a large corporation with different contact people for different permits. Having an email address for the permittee's contact person would enable the department to disseminate information more quickly and easily, including information that could impact the safety of the traveling public, such as a new permit restriction provided by TxDOT. Transportation Code, §623.145 requires the board of the Texas Department of Motor Vehicles (board) and the Texas Transportation Commission to consider the safety and convenience of the general traveling public when adopting rules regarding the issuance of permits for oil well servicing and drilling machinery under Subchapter G of Chapter 623 of the Transportation Code. A proposed amendment to §219.41(b)(2) and (3) would remove the year and make of the unit from paragraph (2) and combine this language with the language in paragraph (3) regarding the identification number of the unit. For these reasons, similar amendments are also proposed to §219.61(b) regarding an application for a crane, which provisions apply to permit applications under Subchapter E of Chapter 219. Transportation Code, §623.195 requires the board and the Texas Transportation Commission to consider the safety and convenience of the general traveling public when adopting rules regarding the issuance of permits for cranes (a/k/a unladen lift equipment motor vehicles) under Subchapter J of Chapter 623 of the Transportation Code.

A proposed amendment to §219.41 would delete subsection (e) regarding void permits because it overstates the language in Transportation Code, §623.146 regarding the ramifications of an owner's or an owner's representative's violation of a rule of the board or a violation of a condition placed on the permit. A proposed amendment to §219.41 would delete subsection (g) regarding records retention because §219.102(b) already includes language that requires the permit to be kept in the permitted vehicle until the permit terminates or expires. Proposed amendments to §219.41 would re-letter the remaining subsections due to the deletion of subsections (e) and (g).

Proposed amendments to §219.43(f) and §219.63(a)(7) would eliminate the implication that a hubometer serial number is required to be listed on the permit and to conform the language to current practice. A proposed amendment to §219.43(f) and §219.63(a)(7) would clarify that an amendment can be made to the hubometer serial number on the permit if a hubometer serial number is listed on the permit.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Glenna Bowman, Chief Financial Officer, has determined that for each year of the first five years the amendments 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 amended sections are in effect, there are several anticipated public benefits because of the amendments.

Anticipated Public Benefits. The public benefits anticipated as a result of the proposal include the following: safer public roadways for the traveling public resulting from full implementation of the department's authority under Transportation Code, §623.004 to deny a permit to an applicant who is subject to an out-of-service order issued by FMCSA or DPS; safer public roadways for the traveling public when all permit applicants provide the department with their email address, which allows the department to quickly email the permit holders any updates to permit restrictions that impact safety; additional information to help the department administer and enforce Subtitle E of Title 7 of the Transportation Code and to provide to law enforcement officers who use the information to enforce the laws regarding size and weight under Subtitle E of Title 7 of the Transportation Code; and updated rules that are more streamlined and consistent with current practice.

Anticipated Costs To Comply With The Proposal. Mr. Archer anticipates that there may be minimal costs to comply with the proposed amendments. The potential cost to persons required to comply with the proposal are the costs to obtain an email address to provide to the department as part of the permit application, as well as the costs to obtain access to a computer; however, many libraries provide computers that the public can use at no cost, and there are common free providers of web-based email accounts, such as Gmail, Hotmail, and Yahoo@ Mail.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. As required by Government Code, §2006.002, the department has determined that the proposed amendments will not have an adverse economic effect on small businesses, micro-businesses, and rural communities because the requirement for an applicant to provide a USDOT Number only applies if the applicant is required by law to have a USDOT Number. The proposed amendments require small businesses, micro-businesses, and rural communities to comply. Even if the proposed requirement for the applicant to provide an email address increases an applicant's costs, this requirement is necessary to protect the public health and safety under Government Code, §2006.002(c-1), so the email requirement is exempt from the requirement to prepare a regulatory flexibility analysis under Government Code, §2006.002. The department may need a permit applicant's email address to quickly provide amendments to a permit regarding safety issues, such as a new height restriction as described above.

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 amendments are in effect, a government program would be expanded. As described above, proposed amendments require certain permit applicants to provide their USDOT Number so the department can fully implement Transportation Code, §623.004 to deny permits to an applicant that is subject to an out-of-service order issued by FMCSA or DPS. Implementation of the proposed amendments 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 amendments create a new regulation. As described above, proposed amendments require certain permit applicants to provide their USDOT Number so the department can fully implement Transportation Code, §623.004 to deny permits to an applicant that is subject to an out-of-service order issued by FMCSA or DPS. Also, proposed amendments require permit applicants to provide an email address and contact information for their contact person. The proposed amendment to §219.11(c)(1)(C) repeals an existing regulation that requires certain permit applicants to provide their MCR number to the department to indicate that they are a motor carrier registered under Transportation Code, Chapter 643. Proposed amendments also repeal an existing regulation regarding hazardous conditions during which movement of a permitted vehicle is prohibited because DPS and FMCSA have the authority to regulate this issue, and the department lacks this authority. Lastly, the proposed amendments do not affect the number of individuals subject to the 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 October 1, 2023. 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 B. GENERAL PERMITS

43 TAC §§219.11, 219.13, 219.14

STATUTORY AUTHORITY. The department proposes amendments under Transportation Code, §§621.008, 622.002, 622.051, *et seq.,* 623.002, 623.004, 623.070, *et seq.,* 623.074(d), 623.095(c), 623.145, 623.195, 623.342, 623.411, 623.427, 1002.001, as well as the statutes referenced throughout this preamble.

Transportation Code, §621.008 authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 621.

Transportation Code, §622.002 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 authorizes the board to adopt rules as necessary to implement Transportation Code, Chapter 623. Chapter 623 includes sections such as §623.004 which authorizes the department to deny a permit application if the applicant is subject to an out-of-service order issued by FMCSA or DPS; and §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) authorizes the department to adopt a rule to authorize an applicant to submit an application electronically.

Transportation Code, §623.095(c) 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 §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, §623.145 authorizes the board, in consultation with the Texas Transportation Commission, by rule to provide for the issuance of permits under Subchapter G of Chapter 623 of the Transportation Code regarding oil well servicing and drilling machinery.

Transportation Code, §623.195 authorizes the board, in consultation with the Texas Transportation Commission, by rule to provide for the issuance of permits under Subchapter J of Chapter 623 of the Transportation Code regarding cranes.

Transportation Code, §623.342 authorizes the board to adopt rules that are necessary to implement Subchapter R of Chapter 623 of the Transportation Code regarding federal disaster relief permits.

Transportation Code, §623.411 authorizes the department to adopt rules that are necessary to implement Subchapter U of Chapter 623 of the Transportation Code regarding the permit for intermodal shipping containers.

Transportation Code, §623.427 authorizes the department to adopt rules that are necessary to implement Subchapter V of Chapter 623 regarding the permit for fluid milk.

Transportation Code, §1002.001 authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. Transportation Code Chapters 621, 622, and 623.

§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) Prerequisites to obtaining an oversize/overweight permit. Unless exempted by law 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, Sub-

chapter 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 [~~, telephone number, and email address (if requested)~~] of the applicant;

(B) name, telephone number, and email address of contact person; [~~applicant's customer identification number;~~]

(C) applicant's [~~MCR number or~~] USDOT Number if applicant is required by law to have a USDOT Number [~~, if applicable~~];

(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 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 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 engineer must have final approval from TxDOT.

(F) 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, 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 group--46,000 pounds;

(C) three axle group--60,000 pounds;

(D) four axle group--70,000 pounds;

(E) 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 group--41,400 pounds;

(C) three axle group--54,000 pounds;

(D) four axle group--63,000 pounds;

(E) 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) 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 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 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) 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 multi-lane 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) Restrictions pertaining to road conditions. Movement of a permitted vehicle is prohibited when road conditions are hazardous based upon the judgment of the operator and law enforcement officials. Law enforcement officials shall make the final determination regarding whether or not conditions are hazardous. Conditions that should be considered hazardous include, but are not limited to:]~~

~~[(A) visibility of less than 2/10 of one mile; or]~~

~~[(B) weather conditions such as wind, rain, ice, sleet, or snow.]~~

(1) [~~(2)~~] Daylight and night movement restrictions.

(A) A permitted vehicle may be moved only during 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 night movement, based on a route and traffic study conducted by TxDOT. Escort flag vehicles may be required when an exception allowing night movement is granted.

(2) [~~(3)~~] 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 a determination that the load could pose a hazard for the traveling public due to local road or traffic conditions.

(3) [~~(4)~~] Curfew restrictions. The operator of a permitted vehicle must observe the curfew movement restrictions 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) 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.

(C) An applicant requesting a permit to haul a dozer and its detached blade may be issued a permit, as a 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. [~~The following conditions apply to surety bonds specified in Transportation Code, §623.075.~~]

[~~(A) The surety bond must:~~]

[~~(i)~~ ~~be made payable to the Texas Department of Transportation with the condition that the applicant will pay the Texas Department of Transportation for any damage caused to the highway by the operation of the equipment covered by the surety bond;~~]

[~~(ii)~~ ~~be 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;~~]

[~~(iii)~~ ~~include the complete mailing address and zip code of the principal;~~]

[~~(iv)~~ ~~be filed with the department and have an original signature of the principal;~~]

[~~(v)~~ ~~have a single entity as principal with no other principal names listed; and~~]

[~~(vi)~~ ~~A non-resident agent with a valid Texas insurance license may issue a bond on behalf of an authorized insurance company when in compliance with Insurance Code, Chapter 4056.~~]

[~~(B) A certificate of continuation will not be accepted.~~]

[(C) The owner of a vehicle bonded under Transportation Code, §623.075 or §623.163, that damages the state highway system as a result of the permitted vehicle's movement will be notified by certified mail of the amount of damage and will be given 30 days to submit payment for such damage. Failure to make payment within 30 days will result in TxDOT placing the claim with the attorney general for collection.]

[(D) The venue of any suit for a claim against a surety bond for the movement of a vehicle permitted under the provisions of Transportation Code, Chapter 623, Subchapter D, will be any court of competent jurisdiction in Travis County.]

[(2) Permit surety bonds.]

[(A) A surety bond required under the provisions of Transportation Code, Chapter 623, Subchapter D, must be submitted on the department's standard surety bond form in the amount of $10,000.]

[(B) A facsimile or electronic copy of the surety bond is acceptable in lieu of the original surety bond, for a period not to exceed 10 days from the date of its receipt in the department. If the original surety bond has not arrived in the department by the end of the 10 days, the applicant will not be issued a permit until the original surety bond has been received in the department.]

[(C) The surety bond requirement does apply to the delivery of farm equipment to a farm equipment dealer.]

[(D) A surety bond is required when a dealer or transporter of farm equipment or a manufacturer of farm equipment obtains a permit.]

[(E) The surety bond requirement does not apply to driving or transporting farm equipment which is being used for agricultural purposes if it is driven or transported by or under the authority of the owner of the equipment.]

[(F) The surety bond requirement does not apply to a vehicle or equipment operated by a motor carrier registered with the department under Transportation Code, Chapters 643 or 645 as amended.]

§219.13. Time Permits.

(a) General information. Applications for time permits issued under Transportation Code, 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.

(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.

(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.

(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.

(6) Permit routes. The permit will allow travel on a statewide basis.

(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.

(8) Escort requirements. Permitted vehicles are subject to the escort requirements specified in §219.11(k) of this title.

(9) Transfer of time permits. Time permits issued under this subsection are non-transferable between permittees or vehicles.

(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 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.

(B) Permits issued under this subsection are not transferable.

(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.

(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.

(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.

(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 non-transferable 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 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), (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.

(F) Authorized movement for a vehicle permitted under this section shall be valid during 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).

(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.

(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 night, a vehicle permitted under this subsection must be accompanied by a rear escort flag vehicle.

[~~(H) The permitted vehicle may not travel during hazardous road conditions as stated in §219.11(l)(1)(A) and (B) of this title except to prevent interruption or impairment of electric service, or to restore electric service that has been interrupted.~~]

(H) [~~(I)~~] The speed of the permitted vehicle may not exceed 50 miles per hour.

(I) [~~(J)~~] 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 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. [~~Application for permit.~~]

(1) To qualify for a permit under this section, a person must submit an application to the department. [~~The applicant must complete the application and shall include the manufactured home's HUD label number, Texas seal number, or the complete identification number or serial number of the manufactured home, and the overall width, height, and length of the home and the towing vehicle in combination. If the manufactured home is being moved to or from a site in this state where it has been, or will be, occupied as a dwelling, the permit must also show the name of the owner of the home, the location from which the home is being moved, and the location to which the home is being delivered.~~]

(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).

[~~(2) A permit application for industrialized housing or industrialized building that does not meet the definition in Occupations Code, §1202.002 and §1202.003 shall be submitted in accordance with §219.11(c) of this title (relating to General Oversize/Overweight Permit Requirements and Procedures).~~]

(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.

(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.

(6) The department may limit the hours for travel on certain routes because of heavy traffic conditions.

(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.

(8) The permit will contain the route for the transportation of the manufactured home from the point of origin to the point of destination.

(9) The route for the transportation must be the most practical route as described in §219.11(e) of this title, except where construction is in progress and the permitted vehicle's dimensions 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.

(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.

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 - 219.36

STATUTORY AUTHORITY. The department proposes amendments under Transportation Code, §§621.008, 622.002, 622.051, *et seq.,* 623.002, 623.004, 623.070, *et seq.,* 623.074(d), 623.095(c), 623.145, 623.195, 623.342, 623.411, 623.427, 1002.001, as well as the statutes referenced throughout this preamble.

Transportation Code, §621.008 authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 621.

Transportation Code, §622.002 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 authorizes the board to adopt rules as necessary to implement Transportation Code, Chapter 623. Chapter 623 includes sections such as §623.004 which authorizes the department to deny a permit application if the applicant is subject to an out-of-service order issued by FMCSA or DPS; and §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) authorizes the department to adopt a rule to authorize an applicant to submit an application electronically.

Transportation Code, §623.095(c) 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 §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, §623.145 authorizes the board, in consultation with the Texas Transportation Commission, by rule to provide for the issuance of permits under Subchapter G of Chapter 623 of the Transportation Code regarding oil well servicing and drilling machinery.

Transportation Code, §623.195 authorizes the board, in consultation with the Texas Transportation Commission, by rule to provide for the issuance of permits under Subchapter J of Chapter 623 of the Transportation Code regarding cranes.

Transportation Code, §623.342 authorizes the board to adopt rules that are necessary to implement Subchapter R of Chapter 623 of the Transportation Code regarding federal disaster relief permits.

Transportation Code, §623.411 authorizes the department to adopt rules that are necessary to implement Subchapter U of Chapter 623 of the Transportation Code regarding the permit for intermodal shipping containers.

Transportation Code, §623.427 authorizes the department to adopt rules that are necessary to implement Subchapter V of Chapter 623 regarding the permit for fluid milk.

Transportation Code, §1002.001 authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. Transportation Code Chapters 621, 622, and 623.

§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 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) Eligibility. To be eligible for a permit under this section, a vehicle must 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 in total gross weight.]~~

~~[(d) Security.]~~

~~[(1) Before a permit may be issued under this section, an applicant, other than an applicant who intends to operate a vehicle that is loaded with timber or pulp wood, wood chips, cotton, or agricultural products in their natural state, must have on file with the department one of the following forms of security in the amount of $15,000, conditioned that payment will be made to the department for any damages to the state highway system and to any county for damages to a road or bridge of such county caused by the operation of any vehicle for which a permit is issued under this section and which has an axle weight or gross weight that exceeds the weights authorized in Transportation Code, Chapter 621:]~~

~~[(A) an irrevocable letter of credit issued by a financial institution which deposits are guaranteed by the Federal Deposit Insurance Corporation; or]~~

~~[(B) a blanket surety bond.]~~

~~[(2) The department may reject a bond which it determines will not provide the intended security.]~~

~~[(3) If payment is made by the issuer in respect of the bond or letter of credit and the applicant does not file with the department a replacement bond or letter of credit in the full amount of $15,000, or a notification from the issuer of the existing bond or letter of credit that the existing bond or letter of credit has been restored to the full $15,000, within 30 days after the date of such payment, all permits held by the applicant under this section shall automatically expire on the 31st day after such date.]~~

(c) [~~(e)~~] Application for permit.

(1) To qualify for a permit under this section, a person [~~A person who desires to permit a vehicle as provided in this section,~~] 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, [~~of contact person and~~] 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; [~~and~~]

(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) [~~(f)~~] 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 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) [~~(g)~~] 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) [~~(h)~~] Use of credit. A credit issued under subsection (e) [~~(g)~~] of this section may be used only towards the payment of permit fees under this section.

(g) [~~(i)~~] 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.

(h) [~~(j)~~] 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 [~~applicant~~] does not replace or replenish the letter of credit or bond as required by Transportation Code, §623.012. [~~in subsection (d) of this section.~~]

[~~(k) Void permit. A permit will be voided when the department is informed by law enforcement that a citation has been issued for a violation of a permit's terms and conditions.~~]

[~~(l) Movement with void permit. A permittee may not operate a permitted vehicle with a void permit; a new permit must be obtained.~~]

§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 [~~, telephone number, and email address (if requested)~~] of the applicant;

(B) name, [~~of contact person and~~] telephone number, and [~~or~~] 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) 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, [~~of contact person and~~] telephone number, and [~~or~~] 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) 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) Restrictions pertaining to road conditions. Movement of a permitted vehicle is prohibited when road conditions are hazardous based upon the judgment of the operator and law enforcement officials. Law enforcement officials shall make the final determination regarding whether or not conditions are hazardous. Conditions that should be considered hazardous include, but are not limited to:~~]

[~~(1) visibility of less than 2/10 of one mile; or~~]

[~~(2) weather conditions such as wind, rain, ice, sleet, or snow.~~]

(h) [~~(i)~~] Curfew restrictions. The operator of a permitted vehicle must observe the curfew movement restrictions published by the department. [~~of any city in which the vehicle is operated.~~]

(i) [~~(j)~~] 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) [~~(k)~~] Manufacturer's tire load rating. Permits issued under this section do not authorize the vehicle to exceed the manufacturer's tire load rating.

(k) [~~(l)~~] Distribution of fees. The fees collected for permits under Transportation Code, §623.0171 shall be 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.

§219.33. Federal Disaster Relief Permit.

(a) Purpose. In accordance with Transportation Code, Chapter 623, Subchapter R, and 23 U.S.C. §127(i), the department may issue a special permit that authorizes additional weight allowances for the transportation of certain divisible loads on state highways in Texas during a [~~an emergency or~~] major disaster declared by the president of the United States under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. §5121 et seq.). This section prescribes the requirements, restrictions, and procedures regarding this permit.

(b) Application for permit.

(1) To obtain a Federal Disaster Relief 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, [~~of contact person and~~] telephone number, and [~~or~~] 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) the applicable attestation(s); and

(E) applicant's USDOT Number if applicant is required by law to have a USDOT Number.

(c) Conditions and restrictions. This permit is subject to the following conditions and restrictions:

(1) The vehicle and load must not exceed the following weight limits:

(A) single axle--21,500 pounds;

(B) two-axle group--43,000 pounds;

(C) three-axle group--53,000 pounds. For the purposes of this section, a three-axle group is three consecutive axles more than 8 feet apart but less than 13 feet apart, measured from the center of the first axle to the center of the last axle in the group; and

(D) gross weight--160,000 pounds.

(2) The permitted vehicle must not cross a load-restricted bridge or travel on a load-restricted state highway when exceeding the posted capacity of the bridge or state highway.

(3) Nighttime movement is allowed under this permit, unless prohibited by the curfew movement restrictions published by the department. [~~of a city in which the vehicle is operated.~~]

[~~(4) Movement of a permitted vehicle is prohibited when road conditions are hazardous, based upon the judgment of the operator and law enforcement officials. Law enforcement officials shall make the final determination regarding whether or not conditions are hazardous. Conditions that should be considered hazardous include, but are not limited to:~~]

[~~(A) visibility of less than 2/10 of one mile; or~~]

[~~(B) weather conditions such as wind, rain, ice, sleet, or snow.~~]

(4) [~~(5)~~] The operator of a permitted vehicle must observe the curfew movement restrictions published by the department. [~~of any city in which the vehicle is operated.~~]

(5) [~~(6)~~] The permit does not authorize the vehicle to exceed the manufacturer's tire load rating.

(6) [~~(7)~~] The permit is not transferable from the applicant to another person or entity. Also, the permit is not transferable between vehicles.

(7) [~~(8)~~] The permit will expire 120 days after the date of the major disaster declaration. [~~on the expiration date listed in the permit.~~]

(8) [~~(9)~~] The permit may not be used in conjunction with any other oversize or overweight permits.

(9) [~~(10)~~] If the vehicle is being used to deliver relief supplies, the entire load must consist of relief supplies, which may include, but are not limited to:

(A) medicine and medical equipment;

(B) food supplies (including feed for livestock);

(C) water;

(D) materials used to provide or construct temporary housing;

(E) other supplies directly supporting the type of relief needed following a presidential declaration of a [~~emergency or~~] major disaster; and

(F) other materials as authorized by federal law or regulation; the United States Department of Transportation, Federal Highway Administration; or the president of the United States.

(10) [~~(11)~~] If the vehicle is being used to deliver relief supplies, the permit only authorizes delivery to a destination that is part of the geographical area covered by the president's [~~emergency or~~] major disaster declaration.

(11) [~~(12)~~] If the vehicle is being used to transport materials from a geographical area covered by the president's [~~emergency or~~] major disaster declaration, the permit only authorizes loads which are necessary to facilitate the delivery of relief supplies to the geographical

area covered by the president's [~~emergency or~~] major disaster declaration. An example of an authorized load is debris, as long as the removal of the debris expedites the clearing of roadways, staging areas, or locations for temporary structures in order to facilitate the delivery of relief supplies. However, the permit will only authorize such divisible overweight load if the permit expressly authorizes it.

(d) Copy of permit and notice of current [~~emergency or~~] disaster declaration. A copy of the permit and notice of the president's current [~~emergency or~~] major disaster declaration, including any amendments, must be kept in the permitted vehicle until the day after the date the permit expires.

§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, [~~of contact person and~~] telephone number, and [~~or~~] email address of contact person; [~~and~~]

(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) Restrictions pertaining to road conditions. Movement of a permitted vehicle is prohibited when road conditions are hazardous based upon the judgment of the operator and law enforcement officials. Law enforcement officials shall make the final determination regarding whether or not conditions are hazardous. Conditions that should be considered hazardous include, but are not limited to:~~]

[~~(1) visibility of less than 2/10 of one mile; or~~]

[~~(2) weather conditions such as wind, rain, ice, sleet, or snow.~~]

(e) [~~(f)~~] Curfew restrictions. The operator of a permitted vehicle must observe the curfew movement restrictions published by the department.

(f) [~~(g)~~] 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) [~~(h)~~] Night movement. Night movement is allowed under this permit, unless prohibited by the curfew movement restrictions published by the department.

(h) [~~(i)~~] Manufacturer's tire load rating. Permits issued under this section do not authorize the vehicle to exceed the manufacturer's tire load rating.

(i) [~~(j)~~] 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) [~~(k)~~] 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 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, [~~of contact person and~~] telephone number, and [~~or~~] 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) 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) Restrictions pertaining to road conditions. Movement of a permitted vehicle is prohibited when road conditions are hazardous based upon the judgment of the operator and law enforcement officials. Law enforcement officials shall make the final determination regarding whether or not conditions are hazardous. Conditions that should be considered hazardous include, but are not limited to:]~~

~~[(1) visibility of less than 2/10 of one mile; or]~~

~~[(2) weather conditions such as wind, rain, ice, sleet, or snow.]~~

(g) [~~(h)~~] Curfew restrictions. The operator of a permitted vehicle must observe the curfew movement restrictions published by the department.

(h) [~~(i)~~] 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) [~~(j)~~] Night movement. Night movement is allowed under this permit, unless prohibited by the curfew movement restrictions published by the department.

(j) [~~(k)~~] Manufacturer's tire load rating. Permits issued under this section do not authorize the vehicle to exceed the manufacturer's tire load rating.

(k) [~~(l)~~] 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, [~~of contact person and~~] telephone number, and [~~or~~] 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) 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) Restrictions pertaining to road conditions. Movement of a permitted vehicle is prohibited when road conditions are hazardous based upon the judgment of the operator and law enforcement officials. Law enforcement officials shall make the final determination regarding whether or not conditions are hazardous. Conditions that should be considered hazardous include, but are not limited to:]~~

~~[(1) visibility of less than 2/10 of one mile; or]~~

~~[(2) weather conditions such as wind, rain, ice, sleet, or snow.]~~

(g) [~~(h)~~] Curfew restrictions. The operator of a permitted vehicle must observe the curfew movement restrictions published by the department.

(h) [~~(i)~~] 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) [~~(j)~~] Night movement. Night movement is allowed under this permit, unless prohibited by the curfew movement restrictions published by the department.

(j) [~~(k)~~] Manufacturer's tire load rating. Permits issued under this section do not authorize the vehicle to exceed the manufacturer's tire load rating.

(k) [~~(l)~~] 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) [~~(m)~~] 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) [~~(n)~~] 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 August 17, 2023.

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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, §219.43

STATUTORY AUTHORITY. The department proposes amendments under Transportation Code, §§621.008, 622.002, 622.051, *et seq.,* 623.002, 623.004, 623.070, *et seq.,* 623.074(d), 623.095(c), 623.145, 623.195, 623.342, 623.411, 623.427, 1002.001, as well as the statutes referenced throughout this preamble.

Transportation Code, §621.008 authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 621.

Transportation Code, §622.002 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 authorizes the board to adopt rules as necessary to implement Transportation Code, Chapter 623. Chapter 623 includes sections such as §623.004 which authorizes the department to deny a permit application if the applicant is subject to an out-of-service order issued by FMCSA or DPS; and §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) authorizes the department to adopt a rule to authorize an applicant to submit an application electronically.

Transportation Code, §623.095(c) 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 §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, §623.145 authorizes the board, in consultation with the Texas Transportation Commission, by rule to provide for the issuance of permits under Subchapter G of Chapter 623 of the Transportation Code regarding oil well servicing and drilling machinery.

Transportation Code, §623.195 authorizes the board, in consultation with the Texas Transportation Commission, by rule to provide for the issuance of permits under Subchapter J of Chapter 623 of the Transportation Code regarding cranes.

Transportation Code, §623.342 authorizes the board to adopt rules that are necessary to implement Subchapter R of Chapter 623 of the Transportation Code regarding federal disaster relief permits.

Transportation Code, §623.411 authorizes the department to adopt rules that are necessary to implement Subchapter U of Chapter 623 of the Transportation Code regarding the permit for intermodal shipping containers.

Transportation Code, §623.427 authorizes the department to adopt rules that are necessary to implement Subchapter V of Chapter 623 regarding the permit for fluid milk.

Transportation Code, §1002.001 authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. Transportation Code Chapters 621, 622, and 623.

§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 [~~, telephone number, and email address (if requested)~~] of the applicant;

(2) name, telephone number, and email address of contact person; [~~year and make of the unit;~~]

(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; [~~and~~]

(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).

(d) Restrictions.

(1) A vehicle permitted under this subchapter is subject to the restrictions specified in §219.11(l) (2) [~~(1),~~] and (3) [~~, and (4)~~], 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 daylight movement only.

[~~(e) Void permits. A permit will be voided when the department is informed by law enforcement that a citation has been issued for a violation of a permit's terms and conditions.~~]

(e) [~~(f)~~] Transferability. Unless otherwise noted, a permit issued under this subchapter may not be transferred between units or permittees.

[~~(g) Records retention. A unit permitted under this section must keep the permit and any attachments to the permit in the unit until the day after the date the permit expires.~~]

(f) [~~(h)~~] 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).

§219.43. 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 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 units.

(A) The permit fee for a 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 [~~indicate~~]:

(1) if listed on the permit, the [~~a new~~] hubometer serial number; or

(2) the [~~a new~~] license plate number.

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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SUBCHAPTER E. PERMITS FOR OVERSIZE AND OVERWEIGHT UNLADEN LIFT EQUIPMENT MOTOR VEHICLES

43 TAC §219.61, §219.63

STATUTORY AUTHORITY. The department proposes amendments under Transportation Code, §§621.008, 622.002, 622.051, *et seq.,* 623.002, 623.004, 623.070, *et seq.,* 623.074(d), 623.095(c), 623.145, 623.195, 623.342, 623.411, 623.427, 1002.001, as well as the statutes referenced throughout this preamble.

Transportation Code, §621.008 authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 621.

Transportation Code, §622.002 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 authorizes the board to adopt rules as necessary to implement Transportation Code, Chapter 623. Chapter 623 includes sections such as §623.004 which authorizes the department to deny a permit application if the applicant is subject to an out-of-service order issued by FMCSA or DPS; and §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) authorizes the department to adopt a rule to authorize an applicant to submit an application electronically.

Transportation Code, §623.095(c) 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 §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, §623.145 authorizes the board, in consultation with the Texas Transportation Commission, by rule to provide for the issuance of permits under Subchapter G of Chapter 623 of the Transportation Code regarding oil well servicing and drilling machinery.

Transportation Code, §623.195 authorizes the board, in consultation with the Texas Transportation Commission, by rule to provide for the issuance of permits under Subchapter J of Chapter 623 of the Transportation Code regarding cranes.

Transportation Code, §623.342 authorizes the board to adopt rules that are necessary to implement Subchapter R of Chapter 623 of the Transportation Code regarding federal disaster relief permits.

Transportation Code, §623.411 authorizes the department to adopt rules that are necessary to implement Subchapter U of Chapter 623 of the Transportation Code regarding the permit for intermodal shipping containers.

Transportation Code, §623.427 authorizes the department to adopt rules that are necessary to implement Subchapter V of Chapter 623 regarding the permit for fluid milk.

Transportation Code, §1002.001 authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. Transportation Code Chapters 621, 622, and 623.

§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) Cranes are eligible for an annual permit under this subchapter.

(3) 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 [~~, telephone number, and email address (if requested)~~] of the applicant;

(2) name, telephone number, and email address of contact person; [~~year and make of the crane;~~]

(3) year, make and vehicle identification number of the crane;

(4) width, height, and length of the crane;

(5) crane axle and tire information, including the number of axles, distance between axles, gauge per axle, axle weights, number of tires, and tire size; [~~and~~]

(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.

(d) Restrictions.

(1) A crane permitted under this subchapter is subject to the restrictions specified in §219.11(l) (2) [~~(1),~~] and (3) [~~, and (4)~~] of this title, and the permittee is responsible for obtaining information concerning current restrictions from the department.

(2) 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) A crane permitted under this subchapter may only be operated during daylight, unless:

(A) the crane is overweight only; or

(B) the crane complies with one of the following, regardless of whether the crane is overweight:

(i) the crane does not exceed nine feet in width, 14 feet in height, or 65 feet in length; or

(ii) the 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.

(e) Transferability. Unless otherwise noted, a permit issued under this subchapter may not be transferred between cranes or between permittees.

(f) Escort requirements. In addition to any other escort requirements specified in this subchapter, 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.

§219.63. 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 crane to travel on all state-maintained highways; and

(C) allows the crane to travel on a state-wide basis.

(3) 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 cranes that are overlength only, cranes operated with a quarterly hubometer permit must be equipped with a hubometer. The permittee must maintain the hubometer in good working condition.

(5) A crane exceeding 175,000 pounds gross weight must:

(A) have front and rear escort flag vehicles to prevent traffic from traveling beside the crane as it crosses a bridge;

(B) cross all multi-lane bridges by centering the 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 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 [~~indicate~~]:

(A) if listed on the permit, the [~~a new~~] hubometer serial number; or

(B) the [~~a new~~] 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 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) 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 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 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 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 crane's current hubometer mileage reading minus the 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 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.

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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