

# PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to

submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

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

## TITLE 22. EXAMINING BOARDS

### PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS

#### CHAPTER 1. ARCHITECTS

##### SUBCHAPTER B. ELIGIBILITY FOR REGISTRATION

###### 22 TAC §1.29

The Texas Board of Architectural Examiners (Board) proposes the amendment of 22 Texas Administrative Code §1.29, relating to the Registration of a Military Service Member, Military Veteran, or Military Spouse (architects).

###### Subject Material Statement

This proposed rulemaking action would implement Senate Bill 422 (88th Regular Session, 2023), which amends provisions in Texas Occupations Code Chapter 55, relating to the licensure of military service members, military veterans, and military spouses.

In 2019, the Texas Legislature passed Senate Bill 1200 (86th Regular Session), which created a process under Texas Occupations Code §55.0041 to allow certain military spouses licensed in other states to engage in a business or occupation without becoming licensed in Texas. Through Senate Bill 422, the legislature has extended this provision to apply to military service members as well. Under amended §55.0041(a), a military service member may engage in a business or occupation for which a license is required without obtaining the applicable license if the military service member is currently licensed in good standing by another jurisdiction that has licensing requirements that are substantially equivalent to Texas requirements. A military service member seeking to practice under this provision is required to notify the licensing entity, submit proof of residency and military identification, and receive confirmation of qualification to practice from the state agency. See Tex. Occ. Code §55.0041(b). The law also authorizes state agencies to adopt rules to issue a temporary license to an individual who qualifies to practice their profession under §55.0041(a). In such a case, the agency cannot charge a fee for the issuance of the license.

Senate Bill 422 also amends the law to impose deadlines upon agencies in considering applications under Texas Occupations Code Chapter 55. Under these amendments, a licensing agency has no more than 30 days from the submission of required documentation to approve a qualifying military service member or military spouse seeking to practice under Tex. Occ. Code §55.0041. Additionally, an amendment to Tex. Occ. Code §55.005 requires a licensing agency to process and approve an application for li-

censure from a qualifying military service member, military veteran, or military spouse within 30 days.

###### Explanation of Action

The Board proposes to implement Senate Bill 422 by amending 22 Texas Administrative Code §1.29(b)(3) to implement a 30-day processing deadline for the consideration of an application submitted by a military service member, military veteran, or military spouse.

The Board proposes to implement Senate Bill 422 by amending §1.29(c). Previously, the Board adopted this rule to implement a temporary architectural registration procedure for qualifying military spouses pursuant to Tex. Occ. Code §55.0041. Because Senate Bill 422 expands §55.0041 to apply to qualifying military service members, the Board proposes to do the same for §1.29(c). The proposed rule would implement two additional Senate Bill 422 amendments to §55.0041 by requiring the Board to issue a temporary registration to a qualifying military service member or military spouse within 30 days, and by clarifying that a military spouse's temporary registration is not impacted by a divorce or similar event.

Finally, the Board proposes non-substantive amendments to §1.29(c)(7) and §1.29(c)(8)(B) to improve the clarity of the rule.

###### FISCAL NOTE

Lance Brenton, General Counsel, has determined that for the first five-year period the proposed rule is in effect, the amendments will have no significant fiscal impact upon state or local government or the Board. Any potential adverse fiscal impact would be based on a loss of revenue otherwise payable to the Board by qualifying military service members in the form of registration and renewal fees that would be waived under proposed §1.29(c). However, under 22 Texas Administrative Code §7.10(h), military service members are exempt from the payment of any fee to the Board during any period of active duty service. Because a "military service member" is by definition on active duty under Tex. Occ. Code §55.001(4) and 22 Texas Administrative Code §1.29(a)(3), the proposed rule will have no fiscal impact on state or local government or the Board.

###### GOVERNMENT GROWTH IMPACT STATEMENT

During the first five years the proposed rule would be in effect, no government program would be created or eliminated. Implementation of the proposed rule would not result in the creation or elimination of employee positions. Implementation of the proposed rule is not expected to require an increase or decrease in legislative appropriations to the agency. The proposed rule does not require an increase or decrease in fees paid to the agency. The proposed rule does not create a new regulation. Rather, the proposed rule amends an existing regulation. The proposed rule increases the number of individuals who can benefit from

waivers under the rule, as Senate Bill 422 creates the option for temporary architectural registration for qualifying military service members and ensures the continued validity of a military spouse's temporary architectural registration in the event of a divorce or similar event. The proposed rule is not expected to positively or adversely affect the state's economy.

#### PUBLIC BENEFIT/COST OF COMPLIANCE

Mr. Brenton has determined that for the first five-year period the proposed rule is in effect, public benefits will be realized with no probable economic cost to persons required to comply with the rule.

Adoption of the proposed rule would benefit the public by ensuring consistency between the Board's rules and the legislature's mandate enacted in Senate Bill 422. Additionally, the state may realize a public benefit resulting from marginal increased economic activity by military service members who obtain a temporary architectural registration when they might otherwise not participate in the practice of architecture due to licensure barriers.

There is no anticipated economic cost to persons required to comply with the proposed rule, including military spouses and military service members, as qualifying individuals will benefit from the ability to obtain a temporary architectural registration without charge.

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

There will be no adverse effect on small businesses, micro-businesses, or rural communities resulting from adoption of the proposed rules. Since the agency has determined that the proposed rules will have no adverse economic effect on small businesses, microbusinesses, or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis, as detailed under Texas Government Code §2006.002, is not required.

#### TAKINGS IMPACT ASSESSMENT

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

#### LOCAL EMPLOYMENT IMPACT STATEMENT

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

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

As a self-directed semi-independent agency, Government Code §2001.0045 does not apply to rules adopted by the Board.

#### PUBLIC COMMENT

Comments on the proposed rules may be submitted to Lance Brenton, General Counsel, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

#### STATUTORY AUTHORITY

The amendment of §1.29 is proposed under Occupations Code §1051.202, which authorizes the Board to adopt reasonable rules as necessary to regulate the practice of architecture. The amendment implements Occupations Code §55.0041, which requires the Board to adopt the proposed rule.

#### CROSS REFERENCE TO STATUTE

The proposed amendment does not affect any other statute.

§1.29. *Registration of a Military Service Member, Military Veteran, or Military Spouse.*

(a) (No change.)

(b) Architectural registration eligibility requirements for military service members, military veterans, and military spouses.

(1) Verified military service, training, or education will be credited toward the registration requirements, other than an examination requirement, of an Applicant who is a military service member or a military veteran.

(2) An Applicant who is a military service member, military veteran, or military spouse may be eligible for registration if the Applicant:

(A) Holds an active architectural registration issued by another jurisdiction that has licensing or registration requirements that are substantially equivalent to the requirements for registration in this state; or

(B) Held an active architectural registration in this state within the five years preceding the application.

(3) Not later than 30 days [As soon as practicable] after a military service member, military veteran, or military spouse files an application for registration, the Board shall process the application, and if the applicant qualifies for registration under this subsection, issue the registration.

(4) This subsection does not apply if the Applicant holds a restricted registration issued by another jurisdiction or has an unacceptable criminal history.

(c) Alternative temporary registration procedure for an individual who is a military service member or military spouse [spouses].

(1) An individual who is a military service member or [A] military spouse may qualify for a temporary architectural registration if the individual[spouse]:

(A) holds a current architectural license or registration in good standing in another jurisdiction that has licensing requirements substantially equivalent to the requirements for architectural registration in this state;

(B) notifies the Board in writing of the individual's [spouse's] intent to practice Architecture in this state;

(C) submits to the Board required information to demonstrate eligibility for temporary architectural registration; and

(D) receives a verification letter from the Board that:

(i) the Board has verified the individual's [spouse's] license or registration in the other jurisdiction; and

(ii) the individual [spouse] is issued a temporary architectural registration.

(2) The Board will review and evaluate the following criteria when determining whether another jurisdiction's licensing requirements are substantially equivalent to the requirements for an architectural registration in Texas:

(A) whether the other jurisdiction requires an applicant to pass the Architect Registration Examination (ARE);

(B) any experience qualifications required by the jurisdiction to obtain the license or registration; and

(C) any education credentials required by the jurisdiction to obtain the license or registration.

(3) The individual [military spouse] must submit the following information to the Board to demonstrate eligibility for temporary architectural registration:

(A) a written request for the Board to review the individual's [military spouse's] eligibility for temporary architectural registration;

(B) sufficient documentation to verify that the individual [military spouse] is currently licensed or registered in good standing in another jurisdiction and has no restrictions, pending enforcement actions, or unpaid fees or penalties relating to the license or registration;

(C) proof of residency in this state;

(D) a copy of the individual's military [spouse's] identification card; and

(E) proof the military service member or, with respect to a military spouse, the military service member to whom the spouse is married is stationed at a military installation in Texas.

(4) Not later than the 30th day after the date an individual submits the information described by paragraph (3) of this subsection, the Board shall provide the verification described by paragraph (1)(D) of this subsection if the individual is eligible for a temporary registration under this subsection.

(5) [(4)] A temporary architectural registration issued under this subsection expires three years from the date of issuance or when the military service member or, with respect to a military spouse, the military service member to whom the spouse is married is no longer stationed at a military installation in Texas, whichever occurs first. The registration may not be renewed.

(6) In the event of a divorce or similar event that affects an individual's status as a military spouse, the spouse's registration will continue in effect until the registration expires three years from the date of issuance.

(7)(5) Except as provided under this [the] subsection, an individual [a military spouse] who receives a temporary architectural registration under this subsection is subject to and shall comply with all applicable laws, rules, and standards governing the Practice of Architecture in this state.

(8)(6) A temporary architectural registration issued under this subsection may be revoked if the individual [military spouse]:

(A) fails to comply with paragraph (7) [(5)] of this subsection; or

(B) the individual's [military spouse's] license or registration required under paragraph (1)(A) [(1)(a)] of this subsection expires or is suspended or revoked.

(9)(7) The Board shall not charge a fee for the issuance of a temporary architectural registration under this subsection.

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 December 21, 2023.

TRD-202304951

Lance Brenton

General Counsel

Texas Board of Architectural Examiners

Earliest possible date of adoption: February 11, 2024

For further information, please call: (512) 305-8519

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CHAPTER 3. LANDSCAPE ARCHITECTS  
SUBCHAPTER B. ELIGIBILITY FOR  
REGISTRATION

22 TAC §3.29

The Texas Board of Architectural Examiners (Board) proposes the amendment of 22 Texas Administrative Code §3.29, relating to the Registration of a Military Service Member, Military Veteran, or Military Spouse (landscape architects).

Subject Material Statement

This proposed rulemaking action would implement Senate Bill 422 (88th Regular Session, 2023), which amends provisions in Texas Occupations Code Chapter 55, relating to the licensure of military service members, military veterans, and military spouses.

In 2019, the Texas Legislature passed Senate Bill 1200 (86th Regular Session), which created a process under Texas Occupations Code §55.0041 to allow certain military spouses licensed in other states to engage in a business or occupation without becoming licensed in Texas. Through Senate Bill 422, the legislature has extended this provision to apply to military service members as well. Under amended §55.0041(a), a military service member may engage in a business or occupation for which a license is required without obtaining the applicable license if the military service member is currently licensed in good standing by another jurisdiction that has licensing requirements that are substantially equivalent to Texas requirements. A military service member seeking to practice under this provision is required to notify the licensing entity, submit proof of residency and military identification, and receive confirmation of qualification to practice from the state agency. See Tex. Occ. Code §55.0041(b). The law also authorizes state agencies to adopt rules to issue a temporary license to an individual who qualifies to practice their profession under §55.0041(a). In such a case, the agency cannot charge a fee for the issuance of the license.

Senate Bill 422 also amends the law to impose deadlines upon agencies in considering applications under Texas Occupations Code Chapter 55. Under these amendments, a licensing agency has no more than 30 days from the submission of required documentation to approve a qualifying military service member or military spouse seeking to practice under Tex. Occ. Code §55.0041. Additionally, an amendment to Tex. Occ. Code §55.005 requires a licensing agency to process and approve an application for licensure from a qualifying military service member, military veteran, or military spouse within 30 days.

Explanation of Action

The Board proposes to implement Senate Bill 422 by amending 22 Texas Administrative Code §3.29(b)(3) to implement a 30-day

processing deadline for the consideration of an application submitted by a military service member, military veteran, or military spouse.

The Board proposes to implement Senate Bill 422 by amending §3.29(c). Previously, the Board adopted this rule to implement a temporary landscape architectural registration procedure for qualifying military spouses pursuant to Tex. Occ. Code §55.0041. Because Senate Bill 422 expands §55.0041 to apply to qualifying military service members, the Board proposes to do the same for §3.29(c). The proposed rule would implement two additional Senate Bill 422 amendments to §55.0041 by requiring the Board to issue a temporary registration to a qualifying military service member or military spouse within 30 days, and by clarifying that a military spouse's temporary registration is not impacted by a divorce or similar event.

Finally, the Board proposes non-substantive amendments to §§3.29(b)(2)(A), 3.29(c)(7) and 3.29(c)(8)(B) to improve the clarity of the rule.

#### FISCAL NOTE

Lance Brenton, General Counsel, has determined that for the first five-year period the proposed rule is in effect, the amendments will have no significant fiscal impact upon state or local government or the Board. Any potential adverse fiscal impact would be based on a loss of revenue otherwise payable to the Board by qualifying military service members in the form of registration and renewal fees that would be waived under proposed §3.29(c). However, under 22 Texas Administrative Code §7.10(h), military service members are exempt from the payment of any fee to the Board during any period of active duty service. Because a "military service member" is by definition on active duty under Tex. Occ. Code §55.001(4) and 22 Texas Administrative Code §3.29(a)(3), the proposed rule will have no fiscal impact on state or local government or the Board.

#### GOVERNMENT GROWTH IMPACT STATEMENT

During the first five years the proposed rule would be in effect, no government program would be created or eliminated. Implementation of the proposed rule would not result in the creation or elimination of employee positions. Implementation of the proposed rule is not expected to require an increase or decrease in legislative appropriations to the agency. The proposed rule does not require an increase or decrease in fees paid to the agency. The proposed rule does not create a new regulation. Rather, the proposed rule amends an existing regulation. The proposed rule increases the number of individuals who can benefit from waivers under the rule, as Senate Bill 422 creates the option for temporary landscape architectural registration for qualifying military service members and ensures the continued validity of a military spouse's temporary landscape architectural registration in the event of a divorce or similar event. The proposed rule is not expected to positively or adversely affect the state's economy.

#### PUBLIC BENEFIT/COST OF COMPLIANCE

Mr. Brenton has determined that for the first five-year period the proposed rule is in effect, public benefits will be realized with no probable economic cost to persons required to comply with the rule.

Adoption of the proposed rule would benefit the public by ensuring consistency between the Board's rules and the legislature's mandate enacted in Senate Bill 422. Additionally, the state may

realize a public benefit resulting from marginal increased economic activity by military service members who obtain a temporary landscape architectural registration when they might otherwise not participate in the profession due to licensure barriers.

There is no anticipated economic cost to persons required to comply with the proposed rule, including military spouses and military service members, as qualifying individuals will benefit from the ability to obtain a temporary landscape architectural registration without charge.

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

There will be no adverse effect on small businesses, micro-businesses, or rural communities resulting from adoption of the proposed rules. Since the agency has determined that the proposed rules will have no adverse economic effect on small businesses, microbusinesses, or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis, as detailed under Texas Government Code §2006.002, is not required.

#### TAKINGS IMPACT ASSESSMENT

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

#### LOCAL EMPLOYMENT IMPACT STATEMENT

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

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

As a self-directed semi-independent agency, Government Code §2001.0045 does not apply to rules adopted by the Board.

#### PUBLIC COMMENT

Comments on the proposed rules may be submitted to Lance Brenton, General Counsel, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

#### STATUTORY AUTHORITY

The amendment of §3.29 is proposed under Occupations Code §1051.202, which authorizes the Board to adopt reasonable rules as necessary to regulate the practice of landscape architecture. The amendment implements Occupations Code §55.0041, which requires the Board to adopt the proposed rule.

#### CROSS REFERENCE TO STATUTE

The proposed amendment does not affect any other statute.

§3.29. *Registration of a Military Service Member, Military Veteran, or Military Spouse.*

(a) (No change.)

(b) Landscape architectural registration eligibility requirements for military service members, military veterans, and military spouses.

(1) Verified military service, training, or education will be credited toward the registration requirements, other than an examination requirement, of an Applicant who is a military service member or a military veteran.

(2) An Applicant who is a military service member, military veteran, or military spouse may be eligible for registration if the Applicant:

(A) Holds an active landscape architectural registration issued by another jurisdiction that has licensing or registration requirements that are substantially equivalent to the requirements for registration [the license] in this state; or

(B) Held an active landscape architectural registration in this state within the five years preceding the application.

(3) Not later than 30 days [As soon as practicable] after a military service member, military veteran, or military spouse files an application for registration, the Board shall process the application, and if the applicant qualifies for registration under this subsection, issue the registration.

(4) This subsection does not apply if the Applicant holds a restricted registration issued by another jurisdiction or has an unacceptable criminal history.

(c) Alternative temporary registration procedure for an individual who is a military service member or military spouse [spouses].

(1) An individual who is a military service member or [A] military spouse may qualify for a temporary landscape architectural registration if the individual [spouse]:

(A) holds a current landscape architectural license or registration in good standing in another jurisdiction that has licensing requirements substantially equivalent to the requirements for landscape architectural registration in this state;

(B) notifies the Board in writing of the individual's [spouse's] intent to practice Landscape Architecture in this state;

(C) submits to the Board required information to demonstrate eligibility for temporary landscape architectural registration; and

(D) receives a verification letter from the Board that:

(i) the Board has verified the individual's [spouse's] license or registration in the other jurisdiction; and

(ii) the individual [spouse] is issued a temporary landscape architectural registration.

(2) The Board will review and evaluate the following criteria when determining whether another jurisdiction's licensing requirements are substantially equivalent to the requirements for a landscape architectural registration in Texas:

(A) whether the other jurisdiction requires an applicant to pass the Landscape Architect Registration Examination (LARE);

(B) any experience qualifications required by the jurisdiction to obtain the license or registration; and

(C) any education credentials required by the jurisdiction to obtain the license or registration.

(3) The individual [military spouse] must submit the following information to the Board to demonstrate eligibility for temporary landscape architectural registration:

(A) a written request for the Board to review the individual's [military spouse's] eligibility for temporary landscape architectural registration;

(B) sufficient documentation to verify that the individual [military spouse] is currently licensed or registered in good standing in another jurisdiction and has no restrictions, pending enforcement actions, or unpaid fees or penalties relating to the license or registration;

(C) proof of residency in this state;

(D) a copy of the individual's military [spouse's] identification card; and

(E) proof the military service member or, with respect to a military spouse, the military service member to whom the spouse is married is stationed at a military installation in Texas.

(4) Not later than the 30th day after the date an individual submits the information described by paragraph (3) of this subsection, the Board shall provide the verification described by paragraph (1)(D) of this subsection if the individual is eligible for a temporary registration under this subsection.

(5) [(4)] A temporary landscape architectural registration issued under this subsection expires three years from the date of issuance or when the military service member or, with respect to a military spouse, the military service member to whom the spouse is married is no longer stationed at a military installation in Texas, whichever occurs first. The registration may not be renewed.

(6) In the event of a divorce or similar event that affects an individual's status as a military spouse, the spouse's registration will continue in effect until the registration expires three years from the date of issuance.

(7) [(5)] Except as provided under this [the] subsection, an individual [a military spouse] who receives a temporary landscape architectural registration under this subsection is subject to and shall comply with all applicable laws, rules, and standards governing the practice of Landscape Architecture in this state.

(8) [(6)] A temporary landscape architectural registration issued under this subsection may be revoked if the individual [military spouse]:

(A) fails to comply with paragraph (7) [(5)] of this subsection; or

(B) the individual's [military spouse's] license or registration required under paragraph (1)(A) [(1)(a)] of this subsection expires or is suspended or revoked.

(9) [(7)] The Board shall not charge a fee for the issuance of a temporary landscape architectural registration under this subsection.

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 December 21, 2023.

TRD-202304952

Lance Brenton

General Counsel

Texas Board of Architectural Examiners

Earliest possible date of adoption: February 11, 2024

For further information, please call: (512) 305-8519

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CHAPTER 5. REGISTERED INTERIOR  
DESIGNERS  
SUBCHAPTER B. ELIGIBILITY FOR  
REGISTRATION

**22 TAC §5.39**

The Texas Board of Architectural Examiners (Board) proposes the amendment of 22 Texas Administrative Code §5.39, relating to the Registration of a Military Service Member, Military Veteran, or Military Spouse (registered interior designers).

Subject Material Statement

This proposed rulemaking action would implement Senate Bill 422 (88th Regular Session, 2023), which amends provisions in Texas Occupations Code Chapter 55, relating to the licensure of military service members, military veterans, and military spouses.

In 2019, the Texas Legislature passed Senate Bill 1200 (86th Regular Session), which created a process under Texas Occupations Code §55.0041 to allow certain military spouses licensed in other states to engage in a business or occupation without becoming licensed in Texas. Through Senate Bill 422, the legislature has extended this provision to apply to military service members as well. Under amended §55.0041(a), a military service member may engage in a business or occupation for which a license is required without obtaining the applicable license if the military service member is currently licensed in good standing by another jurisdiction that has licensing requirements that are substantially equivalent to Texas requirements. A military service member seeking to practice under this provision is required to notify the licensing entity, submit proof of residency and military identification, and receive confirmation of qualification to practice from the state agency. See Tex. Occ. Code §55.0041(b). The law also authorizes state agencies to adopt rules to issue a temporary license to an individual who qualifies to practice their profession under §55.0041(a). In such a case, the agency cannot charge a fee for the issuance of the license.

Senate Bill 422 also amends the law to impose deadlines upon agencies in considering applications under Texas Occupations Code Chapter 55. Under these amendments, a licensing agency has no more than 30 days from the submission of required documentation to approve a qualifying military service member or military spouse seeking to practice under Tex. Occ. Code § 55.0041. Additionally, an amendment to Tex. Occ. Code §55.005 requires a licensing agency to process and approve an application for licensure from a qualifying military service member, military veteran, or military spouse within 30 days.

Explanation of Action

The Board proposes to implement Senate Bill 422 by amending 22 Texas Administrative Code §5.39(b)(3) to implement a 30-day processing deadline for the consideration of an application submitted by a military service member, military veteran, or military spouse.

The Board proposes to implement Senate Bill 422 by amending §5.39(c). Previously, the Board adopted this rule to implement a temporary interior designer registration procedure for qualifying military spouses pursuant to Tex. Occ. Code §55.0041. Because Senate Bill 422 expands §55.0041 to apply to qualifying

military service members, the Board proposes to do the same for §5.39(c). The proposed rule would implement two additional Senate Bill 422 amendments to §55.0041 by requiring the Board to issue a temporary registration to a qualifying military service member or military spouse within 30 days, and by clarifying that a military spouse's temporary registration is not impacted by a divorce or similar event.

Finally, the Board proposes non-substantive amendments to §§5.39(b)(2)(A), 5.39(c)(7) and 5.39(c)(8)(B) to improve the clarity of the rule.

FISCAL NOTE

Lance Brenton, General Counsel, has determined that for the first five-year period the proposed rule is in effect, the amendments will have no significant fiscal impact upon state or local government or the Board. Any potential adverse fiscal impact would be based on a loss of revenue otherwise payable to the Board by qualifying military service members in the form of registration and renewal fees that would be waived under proposed §5.39(c). However, under 22 Tex. Administrative Code §7.10(h), military service members are exempt from the payment of any fee to the Board during any period of active duty service. Because a "military service member" is by definition on active duty under Tex. Occ. Code §55.001(4) and 22 Texas Administrative Code §5.39(a)(3), the proposed rule will have no fiscal impact on state or local government or the Board.

GOVERNMENT GROWTH IMPACT STATEMENT

During the first five years the proposed rule would be in effect, no government program would be created or eliminated. Implementation of the proposed rule would not result in the creation or elimination of employee positions. Implementation of the proposed rule is not expected to require an increase or decrease in legislative appropriations to the agency. The proposed rule does not require an increase or decrease in fees paid to the agency. The proposed rule does not create a new regulation. Rather, the proposed rule amends an existing regulation. The proposed rule increases the number of individuals who can benefit from waivers under the rule, as Senate Bill 422 creates the option for temporary interior design registration for qualifying military service members and ensures the continued validity of a military spouse's temporary interior design registration in the event of a divorce or similar event. The proposed rule is not expected to positively or adversely affect the state's economy.

PUBLIC BENEFIT/COST OF COMPLIANCE

Mr. Brenton has determined that for the first five-year period the proposed rule is in effect, public benefits will be realized with no probable economic cost to persons required to comply with the rule.

This proposal would benefit the public by ensuring consistency between the Board's rules and the legislature's mandate enacted in Senate Bill 422. Additionally, the state may realize a public benefit resulting from marginal increased economic activity by military service members who obtain a temporary interior design registration when they might otherwise not participate in the profession due to licensure barriers.

There is no anticipated economic cost to persons required to comply with the proposed rule, including military spouses and military service members, as qualifying individuals will benefit from the ability to obtain a temporary interior design registration without charge.

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

There will be no adverse effect on small businesses, micro-businesses, or rural communities resulting from the proposed rules. Since the agency has determined that the proposed rules will have no adverse economic effect on small businesses, microbusinesses, or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis, as detailed under Texas Government Code §2006.002, is not required.

## TAKINGS IMPACT ASSESSMENT

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

## LOCAL EMPLOYMENT IMPACT STATEMENT

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

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

As a self-directed semi-independent agency, Government Code §2001.0045 does not apply to rules adopted by the Board.

## PUBLIC COMMENT

Comments on the proposed rules may be submitted to Lance Brenton, General Counsel, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

## STATUTORY AUTHORITY

The amendment of §5.39 is proposed under Occupations Code §1051.202, which authorizes the Board to adopt reasonable rules as necessary to regulate the practice of interior design. The amendment implements Occupations Code §55.0041, which requires the Board to adopt the proposed rule.

## CROSS REFERENCE TO STATUTE

The proposed amendment does not affect any other statute.

§5.39. *Registration of a Military Service Member, Military Veteran, or Military Spouse.*

(a) (No change.)

(b) Interior design registration eligibility requirements for military service members, military veterans, and military spouses.

(1) Verified military service, training, or education will be credited toward the registration requirements, other than an examination requirement, of an Applicant who is a military service member or a military veteran.

(2) An Applicant who is a military service member, military veteran, or military spouse may be eligible for registration if the Applicant:

(A) Holds an active interior design registration issued by another jurisdiction that has licensing or registration requirements that are substantially equivalent to the requirements for registration [the license] in this state; or

(B) Held an active interior design registration in this state within the five years preceding the application.

(3) Not later than 30 days [As soon as practicable] after a military service member, military veteran, or military spouse files an application for registration, the Board shall process the application, and if the applicant qualifies for registration under this subsection, issue the registration.

(4) This subsection does not apply if the Applicant holds a restricted registration issued by another jurisdiction or has an unacceptable criminal history.

(c) Alternative temporary registration procedure for an individual who is a military service member or military spouse [spouses].

(1) An individual who is a military service member or [A] military spouse may qualify for a temporary Interior Design registration if the individual [spouse]:

(A) holds a current interior design license or registration in good standing in another jurisdiction that has licensing requirements substantially equivalent to the requirements for Interior Design registration in this state;

(B) notifies the Board in writing of the individual's [spouse's] intent to practice Interior Design in this state;

(C) submits to the Board required information to demonstrate eligibility for temporary Interior Design registration; and

(D) receives a verification letter from the Board that:

(i) the Board has verified the individual's [spouse's] license or registration in the other jurisdiction; and

(ii) the individual [spouse] is issued a temporary Interior Design registration.

(2) The Board will review and evaluate the following criteria when determining whether another jurisdiction's licensing requirements are substantially equivalent to the requirements for an Interior Design registration in Texas:

(A) whether the other jurisdiction requires an applicant to pass the Council for Interior Design Qualification (CIDQ) examination;

(B) any experience qualifications required by the jurisdiction to obtain the license or registration; and

(C) any education credentials required by the jurisdiction to obtain the license or registration.

(3) The individual [military spouse] must submit the following information to the Board to demonstrate eligibility for temporary Interior Design registration:

(A) a written request for the Board to review the individual's [military spouse's] eligibility for temporary Interior Design registration;

(B) sufficient documentation to verify that the individual [military spouse] is currently licensed or registered in good standing in another jurisdiction and has no restrictions, pending enforcement actions, or unpaid fees or penalties relating to the license or registration;

(C) proof of residency in this state;

(D) a copy of the individual's military [spouse's] identification card; and

(E) proof the military service member or, with respect to a military spouse, the military service member to whom the spouse is married is stationed at a military installation in Texas.

(4) Not later than the 30th day after the date an individual submits the information described by paragraph (3) of this subsection, the Board shall provide the verification described by paragraph (1)(D) of this subsection if the individual is eligible for a temporary registration under this subsection.

(5) ~~[(4)]~~ A temporary Interior Design registration issued under this subsection expires three years from the date of issuance or when the military service member or, with respect to a military spouse, the military service member to whom the spouse is married is no longer stationed at a military installation in Texas, whichever occurs first. The registration may not be renewed.

(6) In the event of a divorce or similar event that affects an individual's status as a military spouse, the spouse's registration will continue in effect until the registration expires three years from the date of issuance.

(7) ~~[(5)]~~ Except as provided under this [the] subsection, an individual [a military spouse] who receives a temporary Interior Design registration under this subsection is subject to and shall comply with all applicable laws, rules, and standards governing the practice of Interior Design in this state.

(8) ~~[(6)]~~ A temporary Interior Design registration issued under this subsection may be revoked if the individual [military spouse]:

(A) fails to comply with paragraph (7) ~~[(5)]~~ of this subsection; or

(B) the individual's [military spouse's] license or registration required under paragraph (1)~~(A)~~ ~~[(a)]~~ of this subsection expires or is suspended or revoked.

(9) ~~[(7)]~~ The Board shall not charge a fee for the issuance of a temporary Interior Design registration under this subsection.

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 December 21, 2023.

TRD-202304953

Lance Brenton

General Counsel

Texas Board of Architectural Examiners

Earliest possible date of adoption: February 11, 2024

For further information, please call: (512) 305-8519



## TITLE 28. INSURANCE

### PART 1. TEXAS DEPARTMENT OF INSURANCE

#### CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

##### SUBCHAPTER A. AUTOMOBILE INSURANCE

## DIVISION 3. MISCELLANEOUS INTERPRETATIONS

### 28 TAC §5.208

The Texas Department of Insurance (TDI) proposes new 28 TAC §5.208, concerning terminology describing transportation-related incidents. Section 5.208 implements House Bill 2190, 88th Legislature, 2023.

EXPLANATION. New §5.208 is proposed to clarify terminology in the Insurance Code.

New §5.208(a) clarifies that the changes made by House Bill 2190, 88th Legislature, 2023, are nonsubstantive and are intended to clarify rather than change existing law.

Subsection (b) clarifies that the term "collision" has the same meaning that "accident" had before HB 2190 for the purposes of Insurance Code §1952.155 and §1954.056.

Subsection (c) clarifies that for the purposes of Title 28, Chapter 5, Subchapter A, HB 2190 did not change the meaning of the term "accident."

This section is proposed because the transition provision in Section 142 of HB 2190 is not included in the statutory text. This section highlights that the changes in law made by HB 2190 are nonsubstantive and are intended to clarify rather than change existing law. Because there is no substantive change to the meaning of the term "accident" as currently used in many policy forms, insurers do *not* need to file updated policy forms.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Marianne Baker, director, Property and Casualty Lines, has determined that during each year of the first five years the proposed new §5.208 is in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the new section, other than that imposed by the statute. Ms. Baker made this determination because the proposed new section does not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed new section.

Ms. Baker does not anticipate any 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 section is in effect, Ms. Baker expects that administering the proposed section will have the public benefit of providing clarity in TDI's rules on the impact of HB 2190 in light of the transition provision in HB 2190.

Ms. Baker expects that the proposed new section will not increase the cost of compliance with the Insurance Code because it does not impose requirements beyond those in the statute.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed new section will not have an adverse economic effect on small or micro businesses, or on rural communities. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal will not impose a cost on regulated persons. Therefore, no additional rule amendments are required under Government Code §2001.0045.



GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed new section is 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 not expand, limit, or repeal an existing regulation;
- will increase or decrease 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 February 12, 2024. 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.

To request a public hearing on the proposal, submit a request before the end of the comment period 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 request for public hearing must be separate from any comments and received by TDI no later than 5:00 p.m., central time, on February 12, 2024. If TDI holds a public hearing, TDI will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. TDI proposes new §5.208 under Insurance Code §1951.002 and §36.001.

Insurance Code §1951.002 provides that the commissioner may adopt reasonable rules necessary to carry out the provision of Insurance Code Title 10, Subtitle C, which includes Insurance Code §1952.155 and §1954.056.

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 5.208 implements Insurance Code §1952.155 and §1954.056.

§5.208. Terminology Describing Transportation-Related Accidents (Collisions).

(a) House Bill 2190, 88th Legislature, 2023 (HB 2190) replaced the term "accident" with "collision" in Insurance Code §1952.155, concerning Benefits Payable Without Regard to Fault or Collateral Source; Effect on Subrogation, and §1954.056(b), concerning Financial Responsibility. However, the transition provision in Section 142 of HB 2190 states that these changes to the law are

nonsubstantive and are intended to clarify rather than change existing law.

(b) Consistent with the transition provision in Section 142 of HB 2190, the Texas Department of Insurance (TDI) interprets the term "collision" when used in Insurance Code §1952.155 and §1954.056(b) as having the same meaning that "accident" had before passage of HB 2190 and as having no impact on rules adopted pursuant to Insurance Code §1952.155 and §1954.056(b) or forms filed for approval with TDI under those Insurance Code sections and rules before HB 2190.

(c) Because the transition provision in Section 142 of HB 2190 says the changes are nonsubstantive, they do not impact the rules in this subchapter.

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 December 27, 2023.

TRD-202304969

Jessica Barta

General Counsel

Texas Department of Insurance

Earliest possible date of adoption: February 11, 2024

For further information, please call: (512) 676-6555

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**TITLE 31. NATURAL RESOURCES AND CONSERVATION**

**PART 21. TEXAS LOW-LEVEL RADIOACTIVE WASTE DISPOSAL COMPACT COMMISSION**

**CHAPTER 675. OPERATIONAL RULES  
SUBCHAPTER B. EXPORTATION AND IMPORTATION OF WASTE**

**31 TAC §675.24**

The Texas Low-Level Radioactive Waste Disposal Compact Commission (TLLRWDC or Commission) proposes to amend 31 Texas Administrative Code §675.24, concerning Importation of Certain Low-Level Radioactive Waste for Management or Disposal that is not Required to be Disposed of in the Compact Facility. The proposed changes to 31 Texas Administrative Code §675.24 improves the quality, frequency, and accuracy of information facilities in Texas report to the Commission about the low-level radioactive waste they receive from outside the Texas Compact region for treatment, processing, storage or disposal. The proposed rule implements and complies with Texas Health and Safety Code §403.006 ("the Texas Low-Level Radioactive Waste Disposal Compact" or "the Compact").

BACKGROUND AND PURPOSE. Pursuant to the Commission's authority set out in Tex. Health & Safety Code §403.006, the Commission proposes to amend §675.24 to require monthly reporting of material that may become low-level waste when it enters the state rather than at the time the facility seeks approval to import the material into Texas. The rule protects the health, safety, and welfare of the residents of Texas by allowing the

Commission to be fully informed of the nature, volume, and curie count of radioactive material entering the Texas. The Commission has determined that it is in the public interest that the Commission require monthly reporting instead of every six months. More accurate reporting of low-level radioactive waste (LLRW) entering the state is necessary because radioactive material entering Texas may become waste that either will need to be disposed of in the Compact Facility, disposed of at another alternate approved facility or will need to be exported. The Commission has determined that it is in the public interest to receive timely reports regarding LLRW that enters the host state irrespective of whether it requires an agreement for importation for disposal at the Compact Facility and the disposition of imported LLRW in the host state. For this reason, the Commission proposed the following changes to the rule text, summarized below.

**SECTION BY SECTION ANALYSIS.** The proposed amendments to section 675.24(b) describes which facilities are subject to the reporting requirements in this rule. Re-numbered subsection (c) describes the type of radioactive material subject to this rule and expands the definition to material that may become LLRW. Renumber subsection (d) defines what information must be reported to the Commission and revises the requirement to report non-compact facility low-level radioactive waste to the Commission from every six months to monthly. (d) also requires reporting on the generator, source state, curies, date of receipt, date of processing, disposition, physical location of the waste and for export authorizations from other compacts or foreign countries to be made available on request. Renumbered subsections (e)-(k) clarifies that a report is required regardless of whether it requires an agreement for importation, adjusts the timelines for reporting to the Commission, and makes other technical changes to increase accuracy, transparency, and clarity in the rule text.

**FISCAL NOTE ON STATE AND LOCAL GOVERNMENTS.** Stephen Raines, the Commission's Executive Director, has determined that, for the first five-year period the proposed rules are in effect, no fiscal impact to state government or local government as a result enforcing or administering these amendments as proposed under Tex. Gov't Code §2001.024(a) because the rule does not change the responsibilities of government entities.

**PUBLIC BENEFIT/COST NOTE.** Mr. Raines has also determined under Tex. Gov't Code § 2001.024(a)(5), for each year of the first five years the proposed rules would be in effect, the public benefit will be improved reporting, processing, and transparency with respect to the presence of low-level radioactive waste in Texas, the Compact's host state. Mr. Raines further has determined there will be no probable economic cost to persons required to comply with the rule because the rule enhances pre-existing reporting and record-keeping requirements but are not more costly to comply with than the current rule.

**IMPACT ON LOCAL EMPLOYMENT OR ECONOMY.** There is no anticipated effect on the local economy for the first five years that the proposed amendments are in effect because the rules only concern reporting certain activities of facilities that import, export, and dispose of low-level radioactive waste. Therefore, no economic impact statement, local employment impact statement, nor regulatory flexibility analysis is required under Texas Government Code §§2001.022 or 2001.024(a)(6).

**COST TO REGULATED PERSONS (COST-IN/COST-OUT).** Pursuant to Tex. Gov't Code §2001.024, this rule may impose a cost on regulated persons to develop a database query that would produce a report that contains the information meeting

the requirements of the rule. However, the rule is exempt from the requirements of Texas Government Code §2001.0045 because the Commission is an independent entity established by federal law and governed by the compact and is not a "state agency" under Tex. Gov't Code § 2001.024(a). Tex. Gov't Code § 403.0051(a). Further, the Commission is exempt because the rule is necessary to protect the health, safety, and welfare of the residents of the state under subsection (c)(6). Knowing the nature, volume, and curie count of radioactive material entering Texas will allow the Commission to determine when LLRW will need to be disposed of in the Compact Facility in Texas or will need to be exported.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES.** The Commission hired an outside contractor with expertise in radioactive waste regulatory requirements to conduct the analysis as specified in Texas Government Code §2006.002. In consulting with the contractor, the Commission has determined (1) there is no impact on a rural community or unit of local government; (2) there is an estimated one-time cost of \$416.32 for a computer programmer to develop a database query to generate the new report fields and execute it monthly on one small business, NSSI, but it will not adversely impact NSSI; (3) in conducting a regulatory flexibility analysis, the Commission: (a) revised the rule to reduce this cost by allowing NSSI to use reports already produced to TCEQ and DSHS for compliance purposes instead of generating a new report, (b) revised the rule require reporting only to make available some documentation for export authorization from other compacts and foreign countries.

**GOVERNMENT GROWTH IMPACT STATEMENT.** In compliance with Texas Government Code §2001.0221, the agency has determined that during the first five years the proposed rule is in effect, the proposed amendment: (1) will not create or eliminate a government program; (2) will not result in an increase or decrease in the number of agency employees; (3) will not require an increase or decrease in future legislative appropriations to the agency because there are no costs associated with the rule; (4) will not lead to an increase or decrease in fees paid to a state agency; (5) will not create a new regulation; (6) will not repeal an existing regulation; and (7) will not result in an increase or decrease in the number of individuals subject to the rule; and (8) the proposed amendment will not positively or adversely affect the state's economy because it involves no fiscal requirements.

**ENVIRONMENTAL REGULATORY ANALYSIS.** The Commission has determined the proposed rules are not "major environmental rules" as defined by Texas Government Code, §2001.0225 and are not subject to its requirements.

**TAKINGS STATEMENT.** The Commission has concluded the proposed rules do not restrict or limit an owner's right to his or her real property that would otherwise exist in the absence of this action.

**SUBMITTAL OF COMMENTS.** Written comments may be submitted to Stephen Raines, Executive Director, 1502 West Avenue, Austin, Texas 78701, or, by electronic mail to comments@tllrwccc.org. All comments should reference "Rules" in the subject field. The comment period closes on 30 days after the date this notice is published. Copies of the proposed rulemaking can be obtained from the Commission's website at <http://www.tllrwccc.org/rules/>. For further information, please contact Stephen Raines, Executive Director, (512) 350-6241.

STATUTORY AUTHORITY. The rules are proposed under the authority granted in §3.05(4) of the Compact, which authorizes the Commission to adopt, by a majority vote, bylaws and rules necessary to carry out the terms of the Compact. The proposed rules implement and facilitate the Commission's obligations and due diligence regarding §3.05(6) and §§4.02, 4.04(2), (5); 4.05 (1) - (4); 6.01, and 6.02 of the Compact as set out at Tex. Health & Safety Code §403.006.

CROSS-REFERENCE TO STATUTES. The Commission proposes the rule amendment to fulfill its responsibilities with respect to 42 United States Code, §§2021(b)-2021(j)

§675.24. *Requirement to Report on the Importation of Certain Low-Level Radioactive Waste for Management or Disposal that is not Required to be Disposed of in the Compact Facility.*

(a) This section is applicable only in the host state.

(b) This section is applicable only to State of Texas licensed waste processors or brokers, or source consolidators, of certain radioactive waste (LLRW) that is included within the definition of low-level radioactive waste found in 30 TAC §336.2(89) (relating to Definitions) as the definition is in effect on the date this section becomes effective, or as 30 TAC §336.2(89) may be amended or renumbered in the future. For the purposes of this section, the material described in this subsection will be referred to as Non-Compact-Facility Low-Level Radioactive Waste ("NCFW").

(c) [(b)] This section is designed to gather information on the importation into the host state for disposal or management of certain low-level radioactive waste that:

[(1) is required when shipped to be listed on Nuclear Regulatory Commission (NRC) Forms 540 or 541 (Uniform Low-Level Waste Manifest Shipping Forms);]

[(2) is included within the definition of low-level radioactive waste found in 30 TAC §336.2(89) (relating to Definitions) as the definition is in effect on the date this section becomes effective or as 30 TAC §336.2(89) may be amended or renumbered in the future, but is not intended for disposal in the Compact Waste Facility;]

(1) [(3)] is not low-level radioactive waste described by 42 United States Code, §2021c(b)(1) (relating to waste disposal for which the Federal government is responsible) or waste that is regulated under §675.23 of this title (relating to Importation of Waste from a Non-Party Generator for Disposal); and

(2) is required, when shipped, to be listed on Nuclear Regulatory Commission (NRC) Uniform Low-Level Waste Manifest Shipping Forms or other shipping paperwork (including but not limited to Bill of Lading, Hazardous Waste Manifest, or other manifest); or

(3) is radioactive material being received for processing, recycling or consolidation and is subsequently declared to bebecomes low level radioactive waste as a result of the processing, recycling or consolidation, and becomes low level radioactive waste as a result of the processing, recycling, consolidation, including radioactive wastematerial imported into the Compact under NRC 10 CFR Part 110 (under a general or specific license) for processing, recycling or consolidation and is subsequently declared low level radioactive waste;

(4) The information gathering associated with radioactive waste described in (c)(3) does not begin until after the radioactive material is declared waste by the processor, recycler or consolidator.

[(4) for the purposes of this section, the material described in this subsection will be referred to as Non-Compact-Facility Low-Level Radioactive Waste ("NCFW").]

(d) [(e)] Any entity in the host state that imports NCFW or radioactive material which is subsequently declared NCFW must enter into an agreement with the Commission that contains a requirement that it will report or make available for review as detailed below to the Commission on a monthly [semi-annual] basis the following information with respect to each shipment of NCFW that it has received in the previous month [six-month period]:

(1) report the name of the generator;

(2) report the name of the unaffiliated state, territory, or low-level waste compact (if any), or foreign country of origin, [(including State and City);] where the waste originated (including State and City);

(3) report the activity of the waste in curies;

(4) report the gross volume or weight of the waste; the date of receipt; the date of processing (if and when this occurs, whether the waste is being stored, processed, disposed, or otherwise managed; [provided; however, that waste that has been disposed of in the same reporting period in which it was received shall only report gross volume or weight;] and

(5) report the physical location of management or the date of and physical location of disposal of that waste.

(6) make available for review documentation or supporting information to address the requirement for an export agreement from another compact.

(7) make available for review federal documentation supporting import/export of waste from a foreign country, including import/export under 10 CFR Part 110.

(e) Waste must be reported each reporting period until the waste has been returned to the generator, sent out of the compact for disposal or additional processing, or disposed of within the Compact;

(f) If a change in material classification occurs for any material in possession of the agreement holder (such as radioactive material being reclassified as LLRW due to processing, recycling, or consolidation or other factors), then that LLRW must be reported during the next reporting period, and subsequent reporting periods;

(g) [(d)] Monthly [Semi-annual] reports must be submitted electronically on forms provided or approved by the Commission and must be received [submitted] on or before the 15th [31st] day of the month [after the end of each six-month period of the Commission's fiscal year, which begins on September 1 and ends on August 31]. An entity may file its monthly [semi-annual] report on its own form if the Commission has provided its prior written authorization for the form submitted. The report shall only contain information concerning NCFW as defined in this section.

(h) [(e)] An entity that imports [low-level radioactive waste into the host state as described in subsection (e) of this section shall] NCFW into the host state must shall have entered into an agreement with the Commission within 90 days after the effective date of this section or within such time extensions thereafter as the Commission may allow. [New entrants that import waste into the host state as described in subsection (e) of this section.] Entities formed after the effective date of this rule or that apply to import waste into the host state must enter into an NCFW agreement with the Commission within 30 days of commencement of management operations and prior to importing NCFW. To the maximum extent possible, each agreement entered into under this section will contain provisions identical to those in each other agreement entered into under this section.

(i) [(f)] An entity that imports NCFW [waste] into the host state [as described in subsection (e) of this section] shall submit an application for entry into an agreement with the Commission electronically or on a paper [on a] form authorized [provided] by the Commission.

(j) [(g)] Failure on the part of an entity that imports NCFW [waste] into the host state as described in subsection (d) [(e)] of this section to comply with any provision of this section or the agreement entered into pursuant to subsection (i) [(f)] of this section may result in the Commission reporting such failures to the [host] state or federal agency that has licensed, permitted, or otherwise authorized the operation of such entities.

(k) [(h)] The Commission may unilaterally revoke or amend an NCFW agreement [on its own motion or in response to an application by the agreement holder]. When the Commission amends an NCFW agreement [on its own motion], it may provide a reasonable time to allow the other party to the agreement [holder] to make the changes necessary to comply with any additional requirements imposed by the Commission. No importation of NCFW shall be allowed under an NCFW [any amended] agreement for the importation of NCFW until:

(1) the NCFW agreement or any amendment to the NCFW agreement has been executed by both the Commission and the agreement holder; and

(2) the agreement holder has made any changes necessary to comply with additional requirements.

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

Filed with the Office of the Secretary of State on December 27, 2023.

TRD-202304980

Stephen Raines

Executive Director

Texas Low-Level Radioactive Waste Disposal Compact Commission

Earliest possible date of adoption: February 11, 2024

For further information, please call: (512) 350-6241



## TITLE 34. PUBLIC FINANCE

### PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

#### CHAPTER 3. TAX ADMINISTRATION

##### SUBCHAPTER JJ. CIGARETTE, E-CIGARETTE, AND TOBACCO PRODUCTS REGULATION

###### 34 TAC §3.1203

The Comptroller of Public Accounts proposes amendments to §3.1203, concerning approved seller training programs. The amendments implement the portion of Senate Bill 248, 87th Legislature, 2021, that requires vendors providing comptroller approved training programs to include training on e-cigarette sales. The comptroller also proposes amendments to require the recer-

tification of approved training programs and to make other minor updates and improve readability.

The comptroller amends the definitions in subsection (a). In paragraph (1), the comptroller removes the definition of "application," which has a plain meaning, and replaces it with the definition of "cigar" from Tax Code, Chapter 155 (Cigar and Tobacco Products Tax). In paragraph (2), the comptroller replaces a reference to the definition of "cigarette" with the actual definition from Tax Code, Chapter 154 (Cigarette Tax). The comptroller adds the definition of "e-cigarette" in paragraph (3) and the definition of "minor" in paragraph (4), both from Health and Safety Code, Chapter 161 (Public Health Provisions), Subchapter H (Distribution of Cigarettes, E-cigarettes, or Tobacco Products) and renumbers the subsequent definitions. The comptroller amends the definition of "second party sales" in renumbered paragraph (5) to prohibit the sale of cigarettes and e-cigarettes that result in the provision of such products to a minor. The comptroller updates renumbered paragraph (6) by replacing the term "this state" with the term "Texas" and to add e-cigarettes to the list of products sold by a "seller." In new paragraph (7), the comptroller replaces a reference to the definition of "tobacco product" with the actual definition from Tax Code, Chapter 155.

The comptroller amends subsection (b) to include e-cigarette sellers in the list of sellers to whom the training curriculum must be focused.

The comptroller amends subsection (d) to clarify that the sale of cigarettes, e-cigarettes, and tobacco products must be included in the required course curriculum.

The comptroller amends subsection (g) to add that a certification expires if not recertified under new subsection (h).

The comptroller adds subsection (h) to establish recertification requirements for a comptroller approved seller course curriculum. The recertification must be renewed every two years to ensure the training includes any changes made during a legislative session. Subsequent subsections are relettered.

The comptroller amends relettered subsection (o) to remove the telephone contact numbers for class cancellations. The comptroller's webpage on Seller Training Programs is the best resource for current information of this sort.

Tetyana Melnyk, Director of Revenue Estimating Division, has determined that during the first five years that the proposed amended rule is in effect, the rule: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rule's applicability; and will not positively or adversely affect this state's economy.

Ms. Melnyk also has determined that the proposed amended rule would benefit the public by conforming the rules to current statute. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses or rural communities. The proposed amended rule would have no significant fiscal impact on the state government, units of local government, or individuals. There would be no anticipated significant economic cost to the public.

You may submit comments on the proposal to Jenny Burleson, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528 or to the email address: [tp.rule.com](mailto:tp.rule.com)

ments@cpa.texas.gov. The comptroller must receive your comments no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The comptroller proposes the amendments under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture) and §111.0022 (Application to Other Laws Administered by Comptroller) which provide the comptroller with authority to prescribe, adopt, and enforce rules relating to the administration and enforcement provisions of Tax Code, Title 2, and taxes, fees, or other charges which the comptroller administers under other law.

The amendments to this section implement Health & Safety Code, §§161.081 (Definitions), 161.0901 (Disciplinary Action against Cigarette, E-cigarette, and Tobacco Product Retailers), and Tax Code, §155.001 (Definitions).

§3.1203. *Approved Seller Training Programs.*

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

(1) Cigar--A roll of fermented tobacco that is wrapped in tobacco and the main stream of smoke from which produces an alkaline reaction to litmus paper.

~~[(1) Application--The form provided by the comptroller's office for use by persons interested in performing training under this section.]~~

(2) Cigarette--A roll for smoking:

(A) that is made of tobacco or tobacco mixed with another ingredient and wrapped or covered with a material other than tobacco; and

(B) that is not a cigar.

~~[(2) Cigarettes--Has the meaning assigned by Tax Code, Chapter 154.]~~

(3) E-cigarette--An electronic cigarette or any other device that simulates smoking by using a mechanical heating element, battery, or electronic circuit to deliver nicotine or other substances to the individual inhaling from the device; or a consumable liquid solution or other material aerosolized or vaporized during the use of an electronic cigarette or other device described by this paragraph.

(A) The term "e-cigarette" includes:

(i) a device described by this paragraph regardless of whether the device is manufactured, distributed, or sold as an e-cigarette, e-cigar, or e-pipe or under another product name or description; and

(ii) a component, part, or accessory for the device, regardless of whether the component, part, or accessory is sold separately from the device.

(B) The term "e-cigarette" does not include a prescription medical device unrelated to the cessation of smoking.

(4) Minor--A person under 21 years of age.

(5) ~~[(3)]~~ Second party sales--Sales that result [A sale which results] in the provision of cigarettes, e-cigarettes, or tobacco products to a minor, even though the purchaser of those products [the tobacco product] is not necessarily a minor.

(6) ~~[(4)]~~ Seller--Any person who sells cigarettes, e-cigarettes, or tobacco products in Texas [this state].

~~[(5) Tobacco products--Has the meaning assigned by Tax Code, Chapter 155.]~~

(7) Tobacco product--A tobacco product is:

(A) a cigar;

(B) smoking tobacco, including granulated, plug-cut, crimp-cut, ready-rubbed, and any form of tobacco suitable for smoking in a pipe or as a cigarette;

(C) chewing tobacco, including Cavendish, Twist, plug, scrap, and any kind of tobacco suitable for chewing;

(D) snuff or other preparations of pulverized tobacco;  
or

(E) an article or product that is made of tobacco or a tobacco substitute and that is not a cigarette or an e-cigarette.

(b) Application process. In order for a vendor to be certified to provide employers and employees engaged in the retail sales of cigarettes, e-cigarettes, or tobacco products with training regarding provisions in [the] Health and Safety Code, Chapter 161 and in [the] Tax Code, Chapters 154 and 155, regarding regulation of sales, distribution, and use of tobacco products, the vendor's training program must meet the minimum curriculum requirements established by the comptroller and be certified by the comptroller. Vendors must make application to the comptroller's office on a prescribed application form. The comptroller's office will review qualified applications and certify vendors interested in providing a seller training program.

(c) Curriculum information. Vendors interested in obtaining certification must apply in writing and provide a written description detailing curriculum information, including:

(1) the presentation;

(2) specific course objectives;

(3) academic content;

(4) learning activities;

(5) audio-visual materials, if any;

(6) written materials (including instructor manual and participant workbook); and

(7) course evaluation or feedback forms.

(d) Curriculum requirements. The curriculum of the training program presented should include, but is not limited to, the following components.

(1) Component One--tobacco-related health hazards. Statistical information regarding tobacco-related health hazards as published by the U.S. Food and Drug Administration must be included in this component.

(2) Component Two--federal and state laws. Discussion and comparison of the provisions of current federal law with the provisions of current state law pertaining to minors and cigarettes, e-cigarettes, and tobacco products must be included in this component. In particular, this component must include a review and explanation of all provisions relating to:

(A) prohibiting the distribution of cigarettes, e-cigarettes, or tobacco products to minors;

(B) prohibiting the purchase, possession, or consumption of cigarettes, e-cigarettes, or tobacco products by minors (citing examples of tobacco products included);

(C) the warning notice signs for retail locations;

(D) statistics on cigarette, e-cigarette, and tobacco usage by adults and minors; and

(E) the placement of cigarettes, e-cigarettes, and tobacco products in retail locations.

(3) Component Three--detection of minors. This component must identify and discuss:

(A) observation techniques for determining when a customer is a minor;

(B) common physical and behavioral signs of underage status; and

(C) behaviors indicative of adolescence, including current clothing trends and fads, and physical appearance preferences, according to generally recognized experts in the field.

(4) Component Four--personal identification. This component must:

(A) identify, discuss, and provide actual samples of acceptable forms of identification, including, but not limited to:

(i) a valid state driver's license issued by the Texas Department of Public Safety; and

(ii) other state or U.S. government issued forms of identification (with photograph);

(B) identify, discuss, and provide actual samples of unacceptable forms of identification including, but not limited to:

(i) a temporary state driver's license;

(ii) a birth certificate;

(iii) a school or work ID;

(iv) a social security card; and

(v) a professionally printed identification card.

(C) explain how to detect invalid identification documents used in attempts to establish proof of age and provide examples of the following:

(i) unofficial documents that look similar to official documents;

(ii) types of document counterfeiting and alteration; and

(iii) warning signs of document counterfeiting and alterations.

(5) Component Five--second party sales. This component must:

(A) explain and define second party sales; and

(B) provide examples of second party sales including, but not limited to, the following:

(i) a minor loitering outside a store in the store parking lot;

(ii) a minor loitering around a store, either inside or outside, after having been refused a cigarette, e-cigarette, or tobacco product purchase; and

(iii) a minor randomly approaching an adult customer to solicit the adult customer to purchase cigarettes, e-cigarettes, or tobacco products and giving the adult customer money.

(6) Component Six--refusing a sale. This component must:

(A) identify and discuss techniques to prevent an illegal sale of cigarettes, e-cigarettes, or tobacco products to a minor or second party;

(B) identify and discuss techniques to terminate an illegal sale of cigarettes, e-cigarettes, or tobacco products to a minor or second party; and

(C) provide examples of words and actions that may be used by a seller to amicably avoid or terminate illegal attempts to purchase cigarettes, e-cigarettes, or tobacco products by a minor.

(e) Class length. The time length of the seller training class should be a minimum of two actual clock hours, including class breaks.

(f) Notice of certification or denial. The comptroller shall notify each applicant with a letter of certification or denial, including reasons for the denial, within 15 business days from the date the application is received by the comptroller. The certification or denial letter will be mailed to the address on the vendor's application.

(g) Certification. A qualified vendor is certified to provide seller training until the certification expires under subsection (h) of this section or [unless the certification] is revoked or suspended by the comptroller.

(h) Recertification of curriculum.

(1) Every two years, a previously certified vendor must submit a new application to ensure the vendor's course curriculum aligns with federal law, state law, and policy changes relating to cigarettes, e-cigarettes, and tobacco products.

(2) The seller training certification is valid until the last day of each odd numbered year.

(i) [(h)] Denial. Applications for certification will be denied based on the following factors:

(1) the curriculum information submitted does not meet the minimum requirements set out in subsection (d) of this section;

(2) the application is incomplete; or

(3) the applicant is currently delinquent in the payment of any tax or fee collected by the comptroller.

(j) [(h)] Administrative hearing. If the comptroller determines that an applicant is not eligible for certification, the applicant will be notified, in writing, that the application has been denied. The notice will state the reasons for the denial. The applicant may, within 15 days of the date of the notice of denial, make a written request for an oral hearing to contest the denial. If the applicant does not request a hearing within 15 days of the date of the notice of denial, the hearing is waived and the denial is final. The hearing will be governed by the provisions of §§1.1-1.42 of this title (relating to Practice and Procedure).

(k) [(h)] Certification revocation or suspension. The comptroller may, after notice and opportunity for a hearing, revoke or suspend a vendor's certification upon finding that the seller training classes provided by a vendor fail to comply with the comptroller's standards and requirements for seller training programs described in subsections (c), (d), and (e) of this section, or the vendor becomes delinquent in the payment of any tax or fee collected by the comptroller. If the comptroller determines that certification should be suspended or revoked, the comptroller will notify the vendor, in writing, that the certification will be suspended or revoked and will state the reasons for the action. The vendor may, within 15 days of the date of the notice of suspension or revocation, make a written request for an oral hearing to contest the action. If the vendor does not request a hearing within 15 days of the

date of the notice of suspension or revocation, the hearing is waived and the suspension or revocation becomes effective.

(l) [(k)] Certification reinstatement. The comptroller may reinstate the vendor's certification after receiving proof that the vendor has satisfied all the comptroller's standards and requirements for seller training as provided under subsections (c), (d), and (e) of this section, and the vendor is current in the payment of any tax or fee obligation due the comptroller.

(m) [(h)] Notice of classes scheduled. Vendors must provide the comptroller's office written notification of the date, time, and location of scheduled training classes at least five business days prior to the date training classes will be conducted.

(n) [(m)] Vendor reporting requirements.

(1) By the 15th day of the month, each certified vendor must report data for each training class completed during the previous month. The data must include:

- (A) a class roster with the name, driver's license number, and date of birth of each participant;
- (B) the total number of classes conducted for the month;
- (C) the total number of participants that attended each class; and
- (D) the total number of participants that successfully completed the class.

(2) The reports must be mailed to the Texas Comptroller of Public Accounts, 111 East 17th Street, Austin, Texas 78774-0100.

(o) [(n)] Class cancellations. Vendors must notify the comptroller's office [by telephone] of any training class cancellations prior to the actual training session date [by calling 1-800-531-5441, extension 65946 or the local number in Austin (512) 936-5946].

(p) [(o)] Class monitoring. Training classes may be monitored unannounced by the comptroller or a comptroller's representative to evaluate the curriculum presentation and the classroom environment.

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 December 27, 2023.

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Jenny Burleson

Director, Tax Policy

Comptroller of Public Accounts

Earliest possible date of adoption: February 11, 2024

For further information, please call: (512) 475-2220



### 34 TAC §3.1204

The Comptroller of Public Accounts proposes amendments to §3.1204, concerning administrative remedies for violations of Health and Safety Code, Chapter 161, Subchapter H or K. The comptroller proposes amendments to implement the portions of Senate Bill 248, 87th Legislature, 2021, that relate to violations and to provide guidance on the process for a permit suspension or revocation that conforms with applicable laws and current agency practice.

The comptroller proposes amending the name of this section to remove the reference to Subchapter K as this section addresses only Subchapter H violations.

The comptroller adds titles to statutory references and makes minor grammatical revisions throughout the section.

The comptroller amends subsection (a) to add definitions of cigar, cigarette, e-cigarette, e-cigarette retailer, and tobacco products from Health and Safety Code, §161.081 and Tax Code, §154.001 and §155.001. The comptroller amends the existing definitions of place of business and permit holder by replacing the statutory references with definitions, based on similar terms from Tax Code, §154.001, Tax Code, §155.001 and Health and Safety Code §161.001 with the actual statutory definitions. The comptroller amends the definition of retailer to include the concepts in Health and Safety Code, §147.001(3) and §161.081(4) and Tax Code, §154.001(17) and §155.001(14). The comptroller alphabetizes and renumbers the definitions accordingly.

The comptroller adds, as subsection (b), a non-exclusive list of violations that result in disciplinary action. The comptroller reletters subsequent subsections.

The comptroller amends the title and content of relettered subsection (c) to clarify that a violation is *reported* to the comptroller and that the list of people that may report a violation is non-exclusive.

The comptroller amends relettered subsection (d) to implement Senate Bill 248 which repealed the violation provisions in Tax Code, Chapters 154 (Cigarette Tax) and 155 (Cigars and Tobacco Product Tax) and added the updated violation provisions to Health and Safety Code, Chapter 161. The updated provisions extend the look-back violation period from 12 months to 24 months and increase the amount of the fine for each violation that occurs within a specific timeframe.

The comptroller amends relettered subsection (e) to memorialize agency practice regarding the comptroller's notification to a permit holder of a violation of Health and Safety Code, Subchapter H. The comptroller amends the subsection to reflect that the comptroller no longer sends a written notice of a violation by certified mail. The comptroller also amends the subsection to require a permit holder to respond to the written notice of violation within 20 calendar days, rather than 15 calendar days, consistent with current agency practice.

The comptroller amends relettered subsection (f) to provide information on a permit holder's procedures for requesting a hearing. The comptroller also amends the subsection to remove information related to a permit holder's failure to respond to the violation notice which is now in new subsection (g).

The comptroller deletes original subsection (f) as the information is obsolete.

The comptroller removes original subsection (g) regarding the burden of proof in an administrative hearing in its entirety. The burden of proof is addressed in §1.21 of this title (Practice and Procedures).

Tetyana Melnyk, Director of Revenue Estimating Division, has determined that during the first five years that the proposed amended rule is in effect, the rule: will not create or eliminate a government program; will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require

an increase or decrease in fees paid to the agency; will not increase or decrease the number of individuals subject to the rule's applicability; and will not positively or adversely affect this state's economy.

Ms. Melnyk also has determined that the proposed amended rule would benefit the public by conforming the rules to current statute. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses or rural communities. The proposed amended rule would have no significant fiscal impact on the state government, units of local government, or individuals. There would be no anticipated significant economic cost to the public.

You may submit comments on the proposal to Jenny Burleson, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528 or to the email address: [tp.rule.comments@cpa.texas.gov](mailto:tp.rule.comments@cpa.texas.gov). The comptroller must receive your comments no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendments are proposed under Health and Safety Code, §161.0901 (Disciplinary Action Against Cigarette, E-Cigarette, and Tobacco Product Retailers), and Tax Code, §111.002, (Rulemaking Authority), which provides the comptroller with the authority to prescribe, adopt, and enforce procedural and due process rules relating to the administration and enforcement of the provisions of regulation of the tobacco statutes.

The amendments implement Government Code, Chapter 2001 (Administrative Procedures Act); Health and Safety Code, Chapter 161, Subchapter H (Distribution of Cigarettes, E-Cigarettes, Or Tobacco Products); and conforms this section to the relevant portions of 34 TAC §§1.1-1.35 (relating to Rules of Practice and Procedure).

§3.1204. *Administrative Remedies for Violations of Health and Safety Code, Chapter 161, Subchapter H* [~~or K~~].

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

(1) Cigar--A roll of fermented tobacco that is wrapped in tobacco and the main stream of smoke from which produces an alkaline reaction to litmus paper.

(2) Cigarette--A roll for smoking:

(A) that is made of tobacco or tobacco mixed with another ingredient and wrapped or covered with a material other than tobacco; and

(B) that is not a cigar.

(3) E-cigarette--An electronic cigarette or any other device that simulates smoking by using a mechanical heating element, battery, or electronic circuit to deliver nicotine or other substances to the individual inhaling from the device; or a consumable liquid solution or other material aerosolized or vaporized during the use of an electronic cigarette or other device described by this paragraph.

(A) The term "e-cigarette" includes:

(i) a device described by this paragraph regardless of whether the device is manufactured, distributed, or sold as an e-cigarette, e-cigar, or e-pipe or under another product name or description; and

(ii) a component, part, or accessory for the device, regardless of whether the component, part, or accessory is sold separately from the device.

(B) The term "e-cigarette" does not include a prescription medical device unrelated to the cessation of smoking.

(4) Interstate warehouse--A person in this state who receives untaxed cigarettes, e-cigarettes, tobacco products from a manufacturer, bonded agent, distributor, or importer and stores the tobacco products exclusively for an interstate warehouse transaction.

(5) Interstate warehouse transaction--The sale or delivery of cigarettes, e-cigarettes and tobacco products from an interstate warehouse to a person located in another state who is licensed or permitted by the other state to pay the state's excise tax on tobacco products as required.

[(1) Place of business--Has the meaning assigned by Tax Code, §154.001 and §155.001.]

(6) [(2)] Permit holder--A bonded agent, interstate warehouse, distributor, wholesaler, manufacturer, importer, export warehouse, or retailer who obtains a permit under Health & Safety Code, Chapter 147, Subchapter B (Permits), or Tax Code, §154.101 (Permits) or §155.041 (Permits). [Has the meaning assigned by Tax Code, §154.001 or §155.001.]

(7) Place of business--

(A) a commercial business location where cigarettes, e-cigarettes or tobacco products are sold;

(B) a commercial business location where cigarettes, e-cigarettes or tobacco products are kept for sale or consumption or otherwise stored;

(C) a vehicle from which cigarettes, e-cigarettes or tobacco products are sold; or

(D) a vending machine from which cigarettes or tobacco products are sold.

(8) [(3)] Retailer--A person who engages in the practice of selling cigarettes, e-cigarettes, or tobacco products to consumers and includes a person who sells e-cigarettes through a marketplace and the owner of a cigarette or tobacco product vending machine. [Has the meaning assigned by Tax Code, §154.001 or §155.001.]

(9) Tobacco product--A tobacco product is:

(A) a cigar;

(B) smoking tobacco, including granulated, plug-cut, crimp-cut, ready-rubbed, and any form of tobacco substitute for smoking in a pipe or as a cigarette;

(C) chewing tobacco, including Cavendish, Twist, plug, scrap, and any kind of tobacco suitable for chewing;

(D) snuff or other preparations of pulverized tobacco;

or

(E) an article or product that is made of tobacco or a tobacco substitute and that is not a cigarette or an e-cigarette.

(b) Violations. Violations of Health and Safety Code, Chapter 161, Subchapter H (Distribution of Cigarettes, E-Cigarettes, or Tobacco Products) include, but are not limited to:

(1) the sale of cigarettes, e-cigarettes or tobacco products to persons younger than 21 years of age, as provided in Health and Safety Code, §161.082;

(2) failure to display a warning sign as prescribed by Health and Safety Code, §161.084;



(3) failure to notify employees of state law as required by Health and Safety Code §161.085;

(4) offering cigarettes, e-cigarettes, or tobacco products for sale in a manner that permits a customer direct access to the cigarettes, e-cigarettes, or tobacco products in violation of Health and Safety Code, §161.086;

(5) installing or maintaining a vending machine containing cigarettes, e-cigarettes, or tobacco products in violation of Health and Safety Code, §161.086;

(6) distributing a free sample of a cigarette, e-cigarette, or tobacco product, or a coupon or other item that the recipient may use to receive a free cigarette, e-cigarette, or tobacco product, in violation of Health and Safety Code, §161.087;

(7) distributing to a person younger than 21 years of age a coupon or other item that the recipient may use to receive a discounted cigarette, e-cigarette, or tobacco product in violation of Health and Safety Code, §161.087; and

(8) markets, advertises, sells, or causes to be sold a prohibited e-cigarette product in violation of Health and Safety Code, §161.0876 and §3.1208 of this title (concerning Prohibited E-Cigarette Products).

(c) [(b)] Report of violation [Notice of violations]. The comptroller may receive a report [receives notice] of a violation of Health and Safety Code, Chapter 161, Subchapter H [or K] from any person, including:

(1) the Enforcement or Criminal Investigations Divisions of the comptroller's office;

(2) local law enforcement;

(3) a municipal court or a justice of the peace court; or

(4) a complaint reported by a caller on the tobacco hotline.

(d) [(e)] Disciplinary actions. [The comptroller after receiving notice of violation may take the following actions:]

(1) A retailer is subject to disciplinary action as provided by this section if an agent or employee of the retailer commits an offense under this subchapter. [if during the preceding 12 months at the place of business for which a permit is issued, the permit holder has not been found to have violated Health and Safety Code, Chapter 161, Subchapter H or K, the comptroller may require the permit holder to pay a fine in an amount not to exceed \$500 per violation;]

(2) The penalties for a violation of Health and Safety Code, Subchapter H are: [if during the preceding 12 months at a place of business for which a permit is issued, the permit holder has been found to have violated Health and Safety Code, Chapter 161, Subchapter H or K, the comptroller may require the permit holder to pay a fine in an amount not to exceed \$750 per violation;]

(A) for the first violation at a place of business during the 24-month period preceding the violation, a fine in an amount not to exceed \$1,000;

(B) for the second violation at a place of business during the 24-month period preceding the most recent violation, a fine in an amount not to exceed \$2,000;

(C) for the third violation at a place of business during the 24-month period preceding the most recent violation:

(i) a fine in an amount not to exceed \$3,000; and

(ii) suspension, for not more than five days, of the permit for that place of business issued under Health and Safety Code, Chapter 147, or Tax Code, Chapters 154 or 155, as applicable; and

(D) except as provided by paragraph (4) of this subsection, for the fourth or subsequent violation at a place of business during the 24-month period preceding the most recent violation, revocation of the permit issued under Health and Safety Code, Chapter 147, or Tax Code, Chapters 154 or 155, as applicable. If the permit holder does not hold a permit for that place of business under Health and Safety Code, Chapter 147, or Tax Code, Chapters 154 or 155, the revocation of the sales and use tax permit issued under Tax Code §151.201 (Sales Tax Permits).

(3) A permit holder whose permit has been revoked under paragraph (2)(D) of this subsection may not apply for a permit for the same place of business before the expiration of six months after the effective date of the revocation. [if during the preceding 12 months at a place of business for which a permit is issued, the permit holder has been found to have violated Health and Safety Code, Chapter 161, Subchapter H or K at least twice, the comptroller may require the permit holder to pay a fine in an amount not to exceed \$1,000 per violation or suspend the permit for that place of business for not more than three days; or]

(4) The comptroller may suspend a permit, but may not revoke the permit, under paragraph (2)(D) of this subsection if the comptroller finds: [if during the preceding 12 months the permit holder has been found to have violated Health and Safety Code, §161.082(b), on four or more previous and separate occasions at the same place of business for which a permit is issued, the comptroller may revoke the permit.]

(A) the permit holder has not violated this subchapter more than seven times at the place of business for which the permit is issued in the 48-month period preceding the violation in question; [The revocation of the retailer's permit shall be governed by the provisions in Tax Code, §154.114 and §155.059.]

(B) the permit holder requires its employees to attend a comptroller-approved seller training program; [A retailer whose permit has been revoked under paragraph (4) of this subsection may not apply for a retailer's permit for the same place of business before the expiration of six months after the effective date of the revocation.]

(C) the employees have actually attended a comptroller-approved seller training program; and

(D) the permit holder has not directly or indirectly encouraged the employees to violate the law.

(e) [(d)] Written notice of violation. When the comptroller receives a report of a violation by a permit holder, the [The] comptroller may [will] send a written notice of violation [by certified mail] to the permit holder informing the permit holder that a violation has been reported and that the comptroller proposes taking disciplinary action against the permit holder. [occurred. If the comptroller so offers, the permit holder may have the option to waive the right to a hearing and pay a lesser administrative fine or agree to a lesser administrative remedy.]

(1) The written notice of violation will identify the disciplinary action that the comptroller proposes to take.

(2) The written notice of violation will provide the permit holder an opportunity to request a hearing on or before the 20th day after the date on the written notice of violation and will inform the permit holder that failure to request a hearing on or before that date

will result in the waiver of the right to a hearing and the imposition of the proposed penalty.

{(f) [(e)] Administrative hearings. If the permit holder responds [does not respond] to the written notice of violation and requests a hearing on or before the 20th day after the date on the written notice of violation, the comptroller will grant an administrative hearing. A hearing request is considered submitted by the date-stamp affixed by the agency mail room. [within 15 calendar days, an order finding that a violation has occurred may be entered and the maximum penalty may be imposed. If the permit holder requests a hearing, a hearing will be set.] The hearing shall be governed by §1.21 [Chapter 1, Subchapter A, Division 1] of this title (relating to Cigarette, E-Cigarette, Cigar, and Tobacco Tax Hearings [Practice and Procedures]).

{(f) An oral administrative hearing will be held at the office of the Comptroller of Public Accounts in Austin, Texas. The recourse for a permit holder who does not agree with the administrative decision will be governed by the provisions of Tax Code, Chapter 111; Government Code, Chapter 2001; and Chapter 1, Subchapter A, Division 1 of this title.}

(g) Waiver of hearing. If the permit holder does not respond to the written notice of violation on or before the 20th day after the date

on the written notice of violation, the permit holder's right to an administrative hearing is waived. An untimely request for an administrative hearing will not be granted.

{(g) The burden of proof in an administrative hearing pursuant to this rule is by a preponderance of the evidence, unless otherwise provided by statute.}

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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Jenny Burleson

Director, Tax Policy

Comptroller of Public Accounts

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