

# 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 14. TEXAS OPTOMETRY BOARD

#### CHAPTER 273. GENERAL RULES

##### 22 TAC §273.17

The Texas Optometry Board (TOB) proposes new §273.17 Emergency Management. This proposed new rule requires all initial applicants for licensure provide proof of successful completion of a cardiopulmonary resuscitation (CPR) or basic life support (BLS) course prior to receiving a license beginning in January 1, 2023. This proposed new rule also requires all active licensees to provide proof of successful completion of a CPR or BLS course prior to the renewal of license each cycle beginning in January 1, 2023. This new rule will ensure that active licensees are prepared to manage an emergency situation. Optometry students are already required to be certified in either CPR or BLS and approximately half of the current active licensee population is already CPR or BLS certified.

Kelly Parker, Executive Director, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for the state and local governments as a result of proposing this new rule.

Kelly Parker, Executive Director, has determined that for each of the first five years the proposed rule is in effect, the public benefit anticipated is enhanced patient safety during optometric appointments and assurance that a patient is properly taken care of in an emergency situation.

Legal counsel for the Board has reviewed the new rule and has found it to be within the Board's authority to propose.

#### ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS ON SMALL BUSINESSES AND RURAL COMMUNITIES

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

#### ENVIRONMENT AND TAKINGS IMPACT ASSESSMENT

The agency has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure. The agency has determined that the

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

#### GOVERNMENT GROWTH IMPACT STATEMENT

During the first five years that the proposed rule will be in effect, it is anticipated that the proposed rule will not create or eliminate a government program as no program changes are proposed. Further, implementation of the proposed rule will not require the creation of a new employee position or the elimination of an existing employee position.

#### PUBLIC COMMENTS

Comments on the proposed rule may be submitted electronically to: kelly.parker@tob.texas.gov, Kelly Parker, Executive Director, Texas Optometry Board, 333 Guadalupe Street, Suite 2-420, Austin, Texas 78701-3942. The deadline for furnishing comments is thirty days after publication in the *Texas Register*.

Proposed §273.17 is proposed under the Texas Optometry Act, Texas Occupations Code, §351.151.

No other sections are affected by this proposal.

#### §273.17. Emergency Management.

##### (a) Definitions.

(1) Cardiopulmonary resuscitation (CPR) is an emergency lifesaving procedure performed when the heart stops beating. A certification in CPR includes training and successful course completion in cardiopulmonary resuscitation, AED and obstructed airway procedures for all age groups according to recognized national standards.

(2) Basic Life Services (BLS) is a basic level of pre-hospital and inter-hospital emergency care and non-emergency medical services care. A certification in BLS includes training and successful course completion in airway management, cardiopulmonary resuscitation (CPR), control of shock and bleeding and splinting of fractures, according to recognized national standards.

(b) Requirement for Initial License. Commencing effective January 1, 2023, all applicants for initial licensure shall provide proof of successful completion of a CPR or BLS certification prior to receiving a license.

(c) Requirement for Renewal of License. Effective January 1, 2023, all active licensees shall provide proof of successful completion of a CPR or BLS certification for renewal of a license each renewal cycle. Licensees may be credited two general hours of continuing education for CPR certification and four general hours of continuing education for BLS certification.

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 May 16, 2022.

TRD-202201879

Kelly Parker

Executive Director

Texas Optometry Board

Earliest possible date of adoption: June 26, 2022

For further information, please call: (512) 305-8502



## TITLE 28. INSURANCE

### PART 4. STATE OFFICE OF RISK MANAGEMENT

#### CHAPTER 251. STATE EMPLOYEES--WORKERS' COMPENSATION

##### SUBCHAPTER E. RISK ALLOCATION PROGRAM

###### 28 TAC §251.503

The State Office of Risk Management (Office) proposes an amendment to 28 TAC §251.503. The change concerns updating the reference to the Office's risk management guidelines, published by the Office for implementation and use by covered state agencies. The name referenced currently is the Risk Management for Texas State Agencies (RMTSA). The Office has renamed the guidelines to the Texas Enterprise Risk Management (TERM) Guidelines.

The Office proposes this name change to ensure consistency with current policy and the published rules.

**FISCAL NOTE.** Deea Western, Chief of Legal Services and General Counsel, has determined that for each of the first five years the proposed rule is in effect, there will not be a fiscal impact on state or local government as a result of the amendment, as proposed.

**PUBLIC BENEFIT/COST NOTE.** General Counsel has also determined that for the first five-year period the amendment is in effect, the public benefit will be more user-friendly and thus more readily accessible Office rules.

**ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT.** There are no anticipated economic costs to persons who are required to comply with the amendment, as proposed. There is no effect on local economy for the first five years that the proposed rule amendment is in effect; therefore, no local employment impact statement is required under Government Code, §§2001.022 and 2001.024(a)(6).

**ENVIRONMENTAL IMPACT STATEMENT.** The Office has determined that the proposed amendment does not require an environmental impact analysis because the proposed rule amendment is not a major environmental rule under the Government Code, §2001.0225.

**COSTS TO REGULATED PERSONS.** The proposed amendment does not impose a cost on regulated persons, including another state agency, a special district, or a local government and, therefore, is not subject to Government Code, §2001.0045.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSI-**

**NESSES, AND RURAL COMMUNITIES.** General Counsel has also determined that there will be no impact on rural communities, small businesses, or microbusinesses as a result of implementing the amendment and, therefore, no regulatory flexibility analysis, as specified in Government Code, §2006.002, is required.

**GOVERNMENT GROWTH IMPACT STATEMENT.** Office staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking, as specified in Texas Government Code §2001.0221. During the first five years that the amendment would be in effect, the proposed amendment: will not eliminate or create a government program, the proposed amendment will not result in the addition or reduction of employees; will not require an increase or decrease in future legislative appropriations; will not lead to an increase or decrease in fees paid to a state agency; will not repeal existing regulations; and will not result in an increase or decrease in the number of individuals subject to the rule. During the first five years that the amended rule would be in effect, the proposed amendment will not positively or adversely affect the Texas economy.

**TAKINGS IMPACT ASSESSMENT.** The Office has determined that no private real property interests are affected by this proposal and the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Government Code, §2007.043.

**REQUEST FOR PUBLIC COMMENT.** Written comments on the proposed rule amendment may be directed to Deea Western, General Counsel, via email at [Deea.Western@sorm.texas.gov](mailto:Deea.Western@sorm.texas.gov), or mail, P.O. Box 13777, Austin, Texas 78711-3777. Comments will be accepted for 30 days after publication in the *Texas Register*.

**STATUTORY AUTHORITY.** The amendment is proposed under: Texas Labor Code §412.031 which requires the Office board to "adopt rules as necessary to implement this chapter and Chapter 501, including rules relating to reporting requirements for a state agency," §412.041(c)(3) requiring the SORM director to prepare and recommend to the board plans and procedures necessary to implement the purposes and objectives of this chapter and Chapter 501, including rules and proposals for administrative procedures consistent with this chapter and Chapter 501; and under Texas Labor Code §412.0125(b)(3) which requires the Office to adopt, as part of return-to-work coordination services, rules that set standards and provide guidance to a state agency interacting with an injured employee.

**CROSS REFERENCE TO STATUTES AFFECTED.** Texas Labor Code §§412.031 and 412.0125(b)(3).

§251.503. *Definitions.*

The following words and terms, when used in this subchapter, shall have the following meanings:

(1) [(3)] **Claims Cost**--The net amount of payments made on claims, minus subrogation and restitution costs, as reported by the Office.

(2) [(4)] **Covered Agency**--A department, board, commission, or institution of this state with workers' compensation coverage under Chapter 501 of the Texas Labor Code (Labor Code).

(3) [(5)] **Covered FTE**--An FTE covered under workers' compensation coverage under Chapter 501 of the Labor Code.

(4) [(2)] Injury Frequency Rate (IFR)--The number of accepted claims, as reported by the State Office of Risk Management (the Office), per 100 covered FTEs. For purposes of this calculation all agencies are deemed to have no less than 100 employees.

(5) [(4)] Payroll--The total dollars paid for gross salary for all covered Full-Time Equivalents (FTEs), as reported by covered agencies.

(6) Plan Year--The state fiscal year beginning on September 1 and ending on August 31 the following year.

(7) Texas Enterprise Risk Management Guidelines [Risk Management For Texas State Agencies]--Risk management guidelines published by the Office for implementation and use by covered state agencies.

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 May 11, 2022.

TRD-202201844

Stephen Vollbrecht

Executive Director

State Office of Risk Management

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For further information, please call: (512) 936-1540



## CHAPTER 252. STATE RISK MANAGEMENT SUBCHAPTER B. RISK MANAGEMENT

### 28 TAC §252.201

The State Office of Risk Management (Office) proposes an amendment to 28 TAC §252.201, regarding State Risk Management Guidelines. The first change concerns updating the reference to the Office's risk management guidelines, published by the Office for implementation and use by covered state agencies. The name referenced currently is the Risk Management for Texas State Agencies (RMTSA). The Office has renamed the guidelines to the Texas Enterprise Risk Management (TERM) Guidelines.

The Office proposes this name change to ensure consistency with current policy and the published rules.

In addition, the Office proposes other changes for the purpose of simplification and administrative convenience.

**FISCAL NOTE.** Deea Western, Chief of Legal Services and General Counsel, has determined that for each of the first five years the proposed rule is in effect, there will not be a fiscal impact on state or local government as a result of the amendment, as proposed.

**PUBLIC BENEFIT/COST NOTE.** General Counsel has also determined that for the first five-year period the amendment is in effect, the public benefit will be more user-friendly and thus more readily accessible Office rules.

**ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT.** There are no anticipated economic costs to persons who are required to comply with the amendment, as proposed. There is no effect on local economy for the first five years that the proposed rule amendment is in effect; therefore, no lo-

cal employment impact statement is required under Government Code, §§2001.022 and 2001.024(a)(6).

**ENVIRONMENTAL IMPACT STATEMENT.** The Office has determined that the proposed amendment does not require an environmental impact analysis because the proposed rule amendment is not a major environmental rule under the Government Code, §2001.0225.

**COSTS TO REGULATED PERSONS.** The proposed amendment does not impose a cost on regulated persons, including another state agency, a special district, or a local government and, therefore, is not subject to Government Code, §2001.0045.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES.** General Counsel has also determined that there will be no impact on rural communities, small businesses, or micro-businesses as a result of implementing the amendment and therefore no regulatory flexibility analysis, as specified in Government Code, §2006.002, is required.

**GOVERNMENT GROWTH IMPACT STATEMENT.** Office staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking, as specific in Texas Government Code §2001.0221. During the first five years that the amendment would be in effect, the proposed amendment: will not eliminate or create a government program, the proposed amendment will not result in the addition or reduction of employees; will not require an increase or decrease in future legislative appropriations; will not lead to an increase or decrease in fees paid to a state agency; will not repeal existing regulations; and will not result in an increase or decrease in the number of individuals subject to the rule. During the first five years that the amendment would be in effect, the proposed amendment will not positively or adversely affect the Texas economy.

**TAKINGS IMPACT ASSESSMENT.** The Office has determined that no private real property interests are affected by this proposal and the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Government Code, §2007.043.

**REQUEST FOR PUBLIC COMMENT.** Written comments on the proposed rule amendment may be directed to Deea Western, General Counsel, via email at [Deea.Western@sorm.texas.gov](mailto:Deea.Western@sorm.texas.gov), or mail, P.O. Box 13777, Austin, Texas 78711-3777. Comments will be accepted for 30 days after publication in the *Texas Register*.

**STATUTORY AUTHORITY.** The amendment is proposed under: Texas Labor Code §412.031 which requires the Office board to adopt rules as necessary to implement this chapter and Chapter 501; §412.041(c)(3) requiring the SORM director to prepare and recommend to the board plans and procedures necessary to implement the purposes and objectives of this chapter and Chapter 501, including rules and proposals for administrative procedures consistent with this chapter and Chapter 501; and under Texas Labor Code §412.0125(b)(3) which requires the Office to adopt, as part of return-to-work coordination services, rules that set standards and provide guidance to a state agency interacting with an injured employee.

**CROSS REFERENCE TO STATUTES AFFECTED.** Texas Labor Code §§412.031 and 412.0125(b)(3).

§252.201. *State Risk Management Guidelines.*

(a) Each state agency covered by Texas Labor Code, Chapter 412, shall [by January 1, 1996,] develop and implement an agency risk management program, which shall include a safety and health program and a return-to-work [return to work] program. State agency risk management programs shall either:

(1) comply with the risk management guidelines, including risk control and risk financing, contained in the Texas Enterprise Risk Management Guidelines [Risk Management for Texas State Agencies] published by the State Office of Risk Management (the Office) [the Office]; or

(2) utilize other appropriate nationally recognized standards, including Occupational Safety and Health Administration (OSHA) standards.

(b) When a risk exposure is not covered by the guidelines referenced in subsection (a) of this section, appropriate nationally recognized standards shall be followed, including the OSHA standards.

(c) A state agency that [which] cannot comply with any applicable guideline or nationally recognized standard shall, upon request of the Office at the time of a risk management program review, file a statement with the Office which:

(1) clearly identifies the factors preventing the agency's compliance with the appropriate guideline or nationally recognized standard; and

(2) states the action the agency will take in lieu of complying with the guideline or nationally recognized standard.

(d) The Office shall review, verify, monitor, and approve state agency risk management programs based on compliance with subsections (a), (b), and (c) of this section.

(e) State agencies covered by Chapter 412 of the Texas Labor Code that [which] do not comply with subsections (a), (b), and (c) of this section will be identified as not in compliance with this subchapter in the biennial report to the Legislature.

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 May 11, 2022.

TRD-202201843

Stephen Vollbrecht

Executive Director

State Office of Risk Management

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For further information, please call: (512) 936-1540



## TITLE 34. PUBLIC FINANCE

### PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

#### CHAPTER 3. TAX ADMINISTRATION

##### SUBCHAPTER A. GENERAL RULES

###### 34 TAC §3.9

The Comptroller of Public Accounts proposes amendments to §3.9, concerning electronic filing of returns and reports; electronic transfer of certain payments by certain taxpayers. The

comptroller amends the section to reflect the changes made in Tax Code, Chapter 151, Subchapter I-2 (Reports by Manufacturers and Distributors of Certain Off-Highway Vehicles Purchased Outside This State), made by Senate Bill 586, 87th Legislature, 2021, effective September 1, 2021.

The comptroller amends subsection (e)(5) to include "distributors" alongside the existing term "manufacturers" to implement the reporting requirements for both license types. Distributors of off-highway vehicles are subject to the same reporting requirements as manufacturers of off-highway vehicles. The comptroller adds the effective dates for the reporting requirements for both manufacturers and distributors.

The comptroller adds the definition of distributor, as defined by Tax Code, §151.481(1) (Definitions) in subparagraph (A)(ii). The comptroller re-numbers subsequent clauses.

Brad Reynolds, Chief Revenue Estimator, has determined that during the first five years that the proposed amended rules are in effect, the rules: 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 rules' applicability; and will not positively or adversely affect this state's economy.

Mr. Reynolds also has determined that the proposed amendments would benefit the public by conforming the rule 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 amendments 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 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*.

This amendment is proposed under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture), which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2 (State Taxation).

This section implements Tax Code, §§151.481 (Definitions), 151.482 (Reports By Manufacturers and Distributors), 151.485 (Civil Penalty), 151.486 (Actions By Texas Department Of Motor Vehicles), and 151.487 (Audit; Inspection).

§3.9. *Electronic Filing of Returns and Reports; Electronic Transfer of Certain Payments by Certain Taxpayers.*

(a) Voluntary electronic filing of returns and reports. The comptroller may authorize a taxpayer to file any report or return required to be filed with the comptroller under Tax Code, Title 2 (State Taxation), by means of electronic transmission under the following circumstances:

(1) the taxpayer or its authorized agent has registered with the comptroller to use an approved reporting method, such as WebFile, or the taxpayer is filing a return or report other than a return showing a tax liability; and

(2) the method of electronic transmission of each return or report complies with any requirements established by the comptroller and is compatible with the comptroller's equipment and facilities.

(b) Required electronic transfer of certain payments by certain taxpayers pursuant to Tax Code, §111.0625 (Electronic Transfer of Certain Payments).

(1) This paragraph is effective with the state fiscal year beginning September 1, 2018, for payments due on or after January 1, 2019. This paragraph applies to a taxpayer who pays the comptroller a total of \$500,000 or more in any single category of payments or taxes during the preceding state fiscal year, and whom the comptroller reasonably anticipates will pay at least that amount during the current state fiscal year. The comptroller shall notify the taxpayer of this electronic funds transfer requirement as provided in subsection (f) of this section. The taxpayer shall transfer all payments in any category of payments or taxes that totaled \$500,000 or more to the comptroller using the State of Texas Financial Network (TexNet), pursuant to Chapter 15 of this title (relating to Electronic Transfer of Certain Payments to State Agencies). This requirement applies to payments due beginning January 1 of each state fiscal year in which a taxpayer is notified and continues for one calendar year. For example, a taxpayer remits \$500,000 in any single category of taxes to the comptroller during the state fiscal year ending August 31, 2019. The comptroller reasonably anticipates that the taxpayer will pay at least \$500,000 in the same category of payments or taxes for fiscal year ending August 31, 2020. The comptroller notifies the taxpayer of the electronic payment requirement by October 31, 2019. The taxpayer must begin transferring payments to the comptroller using TexNet beginning on January 1, 2020. The taxpayer's electronic payment requirement continues until December 31, 2020.

(2) Taxpayers who paid the comptroller a total of \$100,000 or more in any single category of payments or taxes and were notified by the comptroller of a TexNet payment requirement must continue to make those payments using TexNet for original or amended reports filed for the calendar year for which the taxpayer was notified.

(3) Beginning January 1, 2019, taxpayers who paid \$100,000 or more, but less than \$500,000, in any single category of payments or taxes during the preceding state fiscal year, and whom the comptroller reasonably anticipates will pay at least that amount during the current state fiscal year, shall transfer all payments in that category of payments or taxes during the calendar year beginning January 1 of the current state fiscal year to the comptroller by means of electronic funds transfer as set out in paragraph (4)(C) of this subsection. The comptroller shall notify the taxpayer of this electronic funds transfer requirement as provided in subsection (f) of this section. This requirement applies to payments due beginning January 1 of each state fiscal year for which a taxpayer is notified and continues for one calendar year. For example, a taxpayer remits \$100,000 in any single category of taxes to the comptroller during the state fiscal year ending August 31, 2019. The comptroller reasonably anticipates that the taxpayer will pay at least \$100,000 in the same category of payments or taxes for fiscal year ending August 31, 2020. The comptroller notifies the taxpayer of the electronic payment requirement by October 31, 2019. The taxpayer must begin transferring payments to the comptroller using one of the methods described in paragraph (4)(C) of this subsection beginning on January 1, 2020. The taxpayer's electronic payment requirement continues until December 31, 2020.

(4) Taxpayers who paid at least \$10,000, but less than \$100,000, in a single category of payments or taxes as listed in subparagraph (A) of this paragraph during the preceding state fiscal year, and whom the comptroller reasonably anticipates will pay at least that amount during the current state fiscal year, shall transfer all payments

in that category of payments or taxes during the calendar year beginning January 1 of the current state fiscal year to the comptroller by means of electronic funds transfer as set out in subparagraph (C) of this paragraph.

(A) This paragraph applies only to:

- (i) state and local sales and use taxes;
- (ii) direct payment sales tax;
- (iii) gas severance tax;
- (iv) oil severance tax;
- (v) franchise tax;
- (vi) gasoline tax;
- (vii) diesel fuel tax;
- (viii) hotel occupancy tax;
- (ix) insurance premium taxes;
- (x) mixed beverage gross receipts tax;
- (xi) mixed beverage sales tax; and
- (xii) motor vehicle rental tax.

(B) The comptroller may add or remove a category of payments or taxes to or from this paragraph if the comptroller determines that such action is necessary to protect the interests of the state or of taxpayers.

(C) Payments under this paragraph shall be made by those electronic funds transfer methods approved by the comptroller, which include, but are not limited to, TexNet, electronic check (WebEFT), and the electronic transmission of credit card information. The comptroller may require payments in specific categories to be made by specific methods of electronic funds transfer.

(D) A taxpayer required under this paragraph to use electronic funds transfer who cannot comply due to hardship, impracticality, or other valid reason may submit a written request to the comptroller for a waiver of the requirement.

(c) Payment date for electronic transfer of funds.

(1) Pursuant to §15.33 of this title (relating to Determination of Settlement Date), a person who enters payment information into TexNet may choose either to accept the settlement date that TexNet offers or enter a settlement date up to 30 days from the business day after payment is submitted. TexNet will offer the business day following the day on which payment information is entered into TexNet, provided that the information is entered by 6:00 p.m. central time on any business day.

(2) A taxpayer who files tax returns and makes payments through the electronic data interchange (EDI) system must submit the payment information to the comptroller by 2:30 p.m. central time.

(3) A taxpayer who makes payment by an electronic funds transfer method approved by the comptroller other than TexNet or the EDI system must transmit payment information by 11:59 p.m. central time on the date payment is due.

(d) The administrative rules found in Chapter 15 of this title on electronic funds transfer under Government Code, §404.095 (Electronic Transfer of Certain Payments) using TexNet apply to all such payments to the comptroller.

(e) Required electronic filing of certain reports by certain taxpayers.

(1) Reports required by Tax Code, §111.0626 (Electronic Filing of Certain Reports).

(A) Pursuant to Tax Code, §111.0626(a)(1), taxpayers who are required to use electronic funds transfer for payments of certain taxes must also file report data electronically, including reports required by the International Fuel Tax Agreement. This requirement applies to:

- (i) state and local sales and use taxes;
- (ii) direct payment sales tax;
- (iii) gas severance tax;
- (iv) oil severance tax; and
- (v) motor fuel tax.

(B) Pursuant to Tax Code, §111.0626(a)(2), taxpayers who owe no tax and are required to file an information report under Tax Code, §171.204 (Information Report) must file the information report electronically.

(C) Pursuant to Tax Code, §111.0626(b-1), taxpayers who paid \$50,000 or more during the preceding fiscal year must file report data electronically. A taxpayer filing a report electronically may use an application provided by the comptroller, software provided by the comptroller, or commercially available software that satisfies requirements prescribed by the comptroller. This subparagraph only applies after issuance to the taxpayer of the 60 days notice required by subsection (f) of this section.

(2) Reports by brewers, manufacturers, brewpubs, wholesalers, and distributors of alcoholic beverages required by Tax Code, Chapter 151, Subchapter I-1 (Reports by Persons Involved in the Manufacture and Distribution of Alcoholic Beverages).

(A) For purposes of this paragraph, a "seller" means a person who is a brewer with a brewer's self-distribution permit, manufacturer with a manufacturer's self-distribution license, brewpub, wholesaler, winery, distributor, or package store local distributor, as described in Tax Code, §§151.461(1) - (4) and (6) (Definitions), 151.465 (Applicability to Certain Brewers), and 151.466 (Applicability to Certain Manufacturers); and a "retailer" means a person who holds one or more of the permits listed in Tax Code, §151.461(5).

(B) On or before the 25th day of each month, each seller holding a comptroller-issued tax identification number must file a report of alcoholic beverage sales to retailers in this state. The report must be filed by a means of electronic transmission approved by the comptroller. The report must contain the following information:

(i) each Texas Alcoholic Beverage Commission (TABC) permit or license associated with the seller's comptroller-issued tax identification number;

(ii) the TABC permit or license number for each seller location from which a sale was made to a retailer during the preceding calendar month;

(iii) the TABC permit or license number, comptroller-issued tax identification number, and TABC trade name and physical address (street name and number, city, state, and zip code) of each retail location to which the seller sold alcoholic beverages during the preceding calendar month;

(iv) the information required by Tax Code, §151.462(b) (Reports by Brewers, Manufacturers, Brewpubs, Wholesalers and Distributors) regarding the seller's monthly sales to each retailer holding a separate TABC permit or license, including:

(I) the individual container size of each product, such as the individual bottle or can container size, sold to retailers;

(II) the brand name of the alcoholic beverage sold;

(III) the beverage class code for distilled spirits, wine, beer, or malt beverage;

(IV) the Universal Product Code (UPC) of the alcoholic beverage sold;

(V) the number of individual containers of alcoholic beverages sold for each brand, UPC, and container size. Multi-unit packages, such as cases, must be broken down into the number of individual bottles or cans;

(VI) the total selling price of the containers sold; and

(v) any other information deemed necessary by the comptroller for the efficient administration of this subsection.

(C) A brewpub license holder not performing activities described under Alcoholic Beverage Code, §74.08 (Sales by Brewpub License Holders to Retailers) is not required to file the report described by subparagraph (B) of this paragraph.

(D) If a person fails to file a report required by subparagraph (B) of this paragraph, or fails to file a complete report, the comptroller may:

(i) suspend or cancel one or more permits issued to the person under Tax Code, §151.203 (Suspension and Revocation of Permit);

(ii) impose a civil penalty under Tax Code, §151.703(d) (Failure to Report or Pay Tax);

(iii) impose a criminal penalty under Tax Code, §151.709 (Failure to Furnish Report; Criminal Penalty); and/or

(iv) notify the TABC of the failure and the TABC may take administrative action against the person for the failure under the Alcoholic Beverage Code.

(E) In addition to the penalties imposed under subparagraph (C) of this paragraph, if a person violates Tax Code, Chapter 151, Subchapter I-1, or this paragraph, the comptroller shall collect from the seller an additional civil penalty of not less than \$25 or more than \$2,000 for each day the violation continues.

(F) The requirements of this paragraph related to brewpubs apply to sales occurring on or after September 1, 2019. The requirements of this paragraph related to permittees other than brewpubs, apply to sales occurring on or after September 1, 2011.

(3) Reports by wholesalers and distributors of cigarettes. Pursuant to Tax Code, §154.212 (Reports by Wholesalers and Distributors of Cigarettes), on or before the 25th day of each month each wholesaler or distributor of cigarettes shall file a report of sales to retailers in this state. The report must be filed by a means of electronic transmission approved by the comptroller and must contain the following information for the preceding calendar month's sales made to each retailer:

(A) the name of the retailer and the address, including city and zip code, of the retailer's outlet location to which the wholesaler or distributor delivered cigarettes;

(B) the comptroller-assigned taxpayer number of the retailer, if the wholesaler or distributor is in possession of the number;

(C) the cigarette permit number of the outlet location to which the wholesaler or distributor delivered cigarettes;

(D) the monthly net sales made to the retailer, including the quantity and units of cigarettes in stamped packages sold to the retailer and the price charged to the retailer; and

(E) any other information deemed necessary by the comptroller for the efficient administration of this subsection.

(4) Reports by wholesalers and distributors of cigars and tobacco products. Pursuant to Tax Code, §155.105 (Reports by Wholesalers and Distributors of Cigars and Tobacco Products), on or before the 25th day of each month each wholesaler or distributor of cigars or tobacco products shall file a report of sales to retailers in this state. The report must be filed by a means of electronic transmission approved by the comptroller and must contain the following information for the preceding calendar month's sales made to each retailer:

(A) the name of the retailer and the address, including the city and zip code, of the retailer's outlet location to which the wholesaler or distributor delivered cigars or tobacco products;

(B) the comptroller-assigned taxpayer number of the retailer, if the wholesaler or distributor is in possession of the number;

(C) the tobacco permit number of the outlet location to which the wholesaler or distributor delivered cigars or tobacco products;

(D) the monthly net sales made to the retailer, including the quantity and units of cigars and tobacco products sold to the retailer and the price charged to the retailer;

(E) the net weight as listed by the manufacturer for each unit of tobacco products other than cigars; and

(F) any other information deemed necessary by the comptroller for the efficient administration of this subsection.

(5) Reports by manufacturers and distributors of certain off-highway vehicles purchased outside this state. Pursuant to Tax Code, Chapter 151, Subchapter I-2 (Reports by Manufacturers and Distributors of Certain Off-highway Vehicles Purchased Outside This State) manufacturers and distributors must file a report on or before March 1 of each year, listing each warranty issued by the manufacturer for each new off-highway vehicle that was, during the preceding calendar year, sold to a resident of this state by a retailer located outside this state. This paragraph is effective September 1, 2019 for manufacturers and September 1, 2021 for distributors.

(A) For the purposes of this paragraph:

(i) Manufacturer means a person that manufactures off-highway vehicles and is required to hold a manufacturer's license under Occupations Code, Chapter 2301.

(ii) Distributor means a person that distributes off-highway vehicles and is required to hold a distributor's license under Occupations Code, Chapter 2301.

(iii) [(iii)] New off-highway vehicle means an off-highway vehicle that has not been the subject of a retail sale.

(iv) [(iii)] Off-highway vehicle includes:

(I) All-terrain vehicle--A vehicle that is equipped with a seat or seats for the use of the rider and one or more passengers, designed to propel itself with three or more tires in contact with the ground, designed by the manufacturer for off-highway use, not designed by the manufacturer primarily for farming or lawn care, and not more than 50 inches in width;

(II) Off-highway motorcycle--A vehicle, other than a tractor or moped, that is equipped with a rider's saddle, designed to propel itself with not more than three tires on the ground, and designed by the manufacturer for off-highway use only;

(III) Recreational off-highway vehicle--A vehicle that is equipped with a seat or seats for the use of the rider and one or more passengers, designed to propel itself with four or more tires in contact with the ground, designed by the manufacturer for off-highway use, and not designed by the manufacturer primarily for farming or lawn care;

(IV) Sand rail--A vehicle that is designed or built primarily for off-highway use in sandy terrains, including for use on sand dunes; has a tubular frame, an integrated roll cage, and an engine that is rear-mounted or placed midway between the front and rear axles of the vehicle; and has a gross vehicle weight of not less than 700 pounds and not more than 2,000 pounds; or

(V) Utility vehicle--A vehicle that is equipped with side-by-side seating for the use of the operator and one or more passengers, designed to propel itself with at least four tires in contact with the ground, designed by the manufacturer for off-highway use, and designed by the manufacturer primarily for utility work and not for recreational purposes.

(B) The report must be filed by a means of electronic transmission approved by the comptroller and contain the following information for each new off-highway vehicle:

(i) the vehicle identification number;

(ii) the make, model, and model year of the vehicle;

(iii) the total sales price, or, if the total sales price is not available, the manufacturer suggested retail price; and

(iv) the name and address, including street name and number, city, and zip code, of the purchaser of the vehicle.

(C) A manufacturer or distributor must file a report, even if they have no warranty information to report.

(D) If a manufacturer or distributor fails to file a report or files an incomplete report, the comptroller:

(i) may impose a civil penalty of \$50 under Tax Code, §151.703(d) for each report not filed or for each incomplete report;

(ii) shall impose a civil penalty of not less than \$25 or more than \$2,000 for each day the violation continues under Tax Code, §151.485 (Civil Penalty); and

(iii) may notify the Texas Department of Motor Vehicles (TxDMV) of the failure. The TxDMV may take administrative action against the manufacturer or distributor for the failure under Occupations Code, Chapter 2301.

(6) Except as provided by Tax Code, §111.006 (Confidentiality of Information), information contained in the reports required by paragraphs (2), (3), (4), and (5) of this subsection is confidential and not subject to disclosure under Government Code, Chapter 552 (Public Information).

(7) The reports required by paragraphs (2), (3), (4), and (5) of this subsection are required in addition to any other reports required by the comptroller.

(8) The reports required by paragraphs (2), (3), and (4) of this subsection must be filed each month even if no sales were made to retailers during the preceding month.

(f) Notification of affected persons. The comptroller shall notify taxpayers who are affected by subsection (b) or (e)(1) of this section no less than 60 days before the first required electronic transmittal of report data or payment.

(g) A taxpayer who is required to file report data electronically under subsection (e)(1) of this section may submit a written request to the comptroller for a waiver of the requirement. A taxpayer who is required to electronically file a report under subsection (e)(3) or (4) of this section may submit a written request to the comptroller for a waiver of the requirement and authorization of an alternative filing method.

(h) Pursuant to Tax Code, §111.063 (Penalty for Failure to Use Electronic Transfers and Filings), the comptroller may impose separate penalties of 5.0% of the tax due for failure to pay the tax due by electronic funds transfer, as required by this section, or for failure to file a report electronically, as required by Tax Code, §111.0626.

(i) Protest payments by electronic funds transfer. Protested tax payments made under Tax Code, §112.051 (Protest Payment Required), must be accompanied by a written statement that fully and in detail sets out each reason for recovery of the payment. Protested tax payments are not required to be submitted by electronic funds transfer.

(1) A person who is otherwise required to pay taxes by means of electronic funds transfer may make protested payments by other means, including cash, check, or money order. A written statement of protest that fully and in detail sets out each reason for recovery of the payment must accompany the non-electronic payment.

(2) A person may submit a protested tax payment by means of electronic funds transfer if the written statement is submitted in compliance with the requirements set out in subparagraph (A) of this paragraph.

(A) A person may submit a protest payment by means of electronic funds transfer only if:

(i) a written statement of protest is delivered by facsimile transmission or hand-delivery at one of the comptroller's offices in Austin, Texas;

(ii) the written statement of protest is delivered to the comptroller within 24 hours before or after the electronic transfer of the payment;

(iii) the written statement of protest identifies the date of electronic payment, the taxpayer number under which the electronic payment was or will be submitted, and the amount paid under protest; and

(iv) the electronic payment is specifically identified as a protest payment by the method, if any (such as a special transaction code or accompanying electronic message), that the comptroller may designate as appropriate to the method by which the person transferred the funds electronically.

(B) The failure of a taxpayer to submit a written statement in compliance with subparagraph (A) of this paragraph means the tax payment that the taxpayer made is not considered to be a protest tax payment as provided by Tax Code, §112.051.

(C) If a person submits multiple written statements of protest that relate to the same electronic payment, then only the first statement that the comptroller actually receives is considered the written protest for purposes of Tax Code, §112.051.

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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Comptroller of Public Accounts

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

