

PROPOSED RULES

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

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

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 7. PESTICIDES

SUBCHAPTER H. STRUCTURAL PEST CONTROL SERVICE

The Texas Department of Agriculture (Department) proposes amendments to Chapter 7, Subchapter H, Division 2, §7.127; Division 3, §7.152; Division 6, §7.191 and §7.193; the repeal of Division 2, §7.122; Division 3, §7.141 and §7.150; Division 6, §7.192; new provisions in Division 2, §7.122; Division 3, §§7.141, 7.150, and 7.151; Division 6, §7.192; and new Division 7, titled "Integrated Pest Management Program for School Districts," §§7.201 - 7.205. The amendments, repeals and new sections clarify requirements for applications and licensing related to structural pest control licensing by the Department.

New §7.122 provides requirements for license applications, including provisions for denial of a license application. Amendments to §7.127 remove the fee required for the approval of continuing education courses. New §7.141 adds requirements for licensees to present identification to certain individuals. New §7.150 and §7.151 differentiate pesticide handling, use and storage requirements, making them more concise and easy to understand. Amendments to §7.152 prescribe advertising criteria to protect the public. The amendments to §7.191 are non-substantive corrections. New §7.192 clarifies the rules governing the operation of the structural pest control advisory committee, including the self-assessment process required yearly. The amendment to §7.193 adds criteria for qualification as a member from an institution of higher education. New Division 7, §§7.201 - 7.205, relating to Integrated Pest Management Program (IPM) for School Districts, clarifies continuing education and recordkeeping requirements for Integrated Pest Management Programs for School Districts. Current IPM program rules are moved to the proposed Division 7 to ensure all rules can be found in one location for easier use by school districts and the public.

The proposed amendments, repeals and additions have been presented to the Structural Pest Control Advisory Committee (Committee) for review and feedback as required by Texas Occupations Code §1951.104. The Committee's input has been taken into consideration and included in the proposed amendments, repeals and new rules.

Stephen Pahl, Administrator for Consumer Protection, has determined for the first five years the proposal is in effect, there will

be nominal fiscal implications for state government as a result of administering the proposed changes.

Mr. Pahl has also determined that for each year of the first five years the proposal is in effect, the public benefit will be an ease of understanding the requirements of these rules. There will be no adverse fiscal impact on individuals, small or micro businesses as a result of the proposed rule changes.

Written comments on the proposal may be submitted to Stephen Pahl, Administrator for Consumer Protection, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711 or by email to Stephen.Pahl@TexasAgriculture.gov. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

DIVISION 2. LICENSES

4 TAC §7.122

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Agriculture or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

This proposal is made pursuant to the Texas Occupations Code, Chapter 1951, which provides the Department with the authority to license and regulate structural pest control applicators.

The code affected by the proposal is the Texas Occupations Code, Chapter 1951.

§7.122. License Application.

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

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Jessica Escobar

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Texas Department of Agriculture

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



4 TAC §7.122, §7.127

This proposal is made pursuant to the Texas Occupations Code, Chapter 1951, which provides the Department with the authority to license and regulate structural pest control applicators.

The code affected by the proposal is the Texas Occupations Code, Chapter 1951.

§7.122. Applications for Licensing, Registration, Certification, and Approval.

(a) The application for a business license, a certified applicator license, technician license, or for registration as an apprentice under this chapter must be submitted on a form prescribed by the Department, which may be updated from time to time.

(b) Applications must include all information requested, unless the information is clearly marked as optional.

(c) A license application may be denied if a same or similar license issued to the applicant by this or another state or federal government has been revoked, suspended, probated or denied during the preceding five-year period for any reason that could result in the Department denying licensure or registration. For the purpose of this section, a license is similar if the license was issued for the practice of an occupation in which professional services are normally provided in-person.

§7.127. Fees.

Applicants and [Applicants,] licensees [and continuing education providers] will be charged the following fees:

(1) - (9) (No change.)

(10) a renewal fee for applications received 90 days or less after expiration date equal to 1-1/2 times the normally required renewal fee; and

(11) a renewal fee for applications received greater than 90 days but less than one year [days] after expiration date equal to 2 times the normally required renewal fee.[; and]

[(12) \$48 for continuing education course.]

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

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DIVISION 3. COMPLIANCE AND ENFORCEMENT

4 TAC §7.141, §7.150

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Agriculture or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

This proposal is made pursuant to the Texas Occupations Code, Chapter 1951, which provides the Department with the authority to license and regulate structural pest control applicators.

The code affected by the proposal is the Texas Occupations Code, Chapter 1951.

§7.141. License Display.

§7.150. Integrated Pest Management Program for School Districts.

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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4 TAC §§7.141, 7.150 - 7.152

This proposal is made pursuant to the Texas Occupations Code, Chapter 1951, which provides the Department with the authority to license and regulate structural pest control applicators.

The code affected by the proposal is the Texas Occupations Code, Chapter 1951.

§7.141. Identification of Licensees and Apprentices.

(a) Each individual licensee and apprentice shall carry their license or registration card with them at all times when performing structural pest control activities.

(b) Upon request, each individual licensee and apprentice shall present their license or registration card to:

(1) a customer;

(2) an employee of the Department;

(3) an employee of the Department of State Health Services;

or

(4) an employee of the U.S. Environmental Protection Agency; or

(5) a state or federal law enforcement officer.

(c) Upon request, each individual licensee and apprentice shall present a state driver's license, state identification card, or other government issued photo identification to a customer to verify the licensee's or apprentice's identity.

(d) Upon request, a business licensee shall present or provide access to their business license at their place of business to:

(1) a customer;

(2) an employee of the Department;

(3) an employee of the Department of State Health Services;

or

(4) an employee of the U.S. Environmental Protection Agency; or

(5) a state or federal law enforcement officer.

(e) Each business and individual licensee and apprentice shall maintain their license or registration card so that all information on the license or card is legible and shall apply with the Department for a replacement license or card within ten calendar days of any information on the license or card becoming illegible.

(f) A business or individual licensee or apprentice shall not add to, alter, deface, or otherwise modify any information placed on their license or card by the Department.

(g) A business licensee shall prominently display its business license number on all vehicles used by the business licensee for customer contact or service. For purposes of this section, prominently displayed means:

(1) permanently affixed (use of magnetic devices to adhere license numbers shall not meet the requirements of this section);

(2) preceded by "Texas Pest Control License #" or "TPCL #;"

(3) on either the front fender or both front door panels;

(4) in letters and numbers no less than two inches in height and one inch in width; and

(5) in a color that contrasts with the background color of the truck or vehicle.

(h) A vehicle shall display the business license number of each business for which the vehicle is used.

§7.150. General Standards for Use of Pesticides.

(a) Use of a pesticide shall be made consistent with the pesticide's labeling. Use inconsistent with the label includes, but is not limited to:

(1) applications at sites, rates, concentrations, intervals, or under conditions not specified in the labeled directions;

(2) tank mixing of pesticides, or using application techniques, or equipment prohibited by the label; or

(3) failure to observe reentry intervals.

(b) It shall be a violation for any person to use or cause to be used a pesticide in a manner inconsistent with any permit or emergency exemption issued by the Department or EPA.

(c) A pesticide shall not be used if the complete label is not available and the pesticide's identity is unknown. The words "Unknown Pesticide - Hazardous Material" shall be written on the container. The pesticide shall be stored and disposed of in accordance with all state and federal laws.

§7.151. General Standards for Storage and Disposal of Pesticides.

(a) Storage and disposal of a pesticide and/or its container shall be made consistent with the pesticide's labeling.

(b) No person may dispose of, discard, or store any pesticide or pesticide container in a manner that may cause or result in injury to humans, vegetation, crops, livestock, wildlife, pollinating insects, or pollution of any water supply or waterway.

(c) The applicator, the owner of the pesticide, and/or the person in control of the mixing shall be jointly and severally liable for proper storage and disposal of pesticide containers and contents.

(d) The name on either the pesticide label or the specimen label shall be written on the pesticide container if the name of the pesticide is not on the pesticide container and the pesticide's identity is known. Nothing in this subsection shall be construed as authorizing the misbranding of a pesticide as defined in §76.023 of the Texas Agriculture Code.

(e) A person storing a pesticide shall maintain the complete label of that pesticide, in hard copy, for as long as the pesticide is being stored. If the complete label is not available and the pesticide's identity is known, the person storing the pesticide shall obtain a hard copy of the EPA pesticide label.

(f) For every pesticide that is being stored, a hard copy of the complete label, shall be made immediately available for inspection

to the Department's inspector at the site where the pesticide is being stored.

§7.152. Advertising.

(a) A licensee must not use false, misleading or deceptive advertising. Examples of statements or representations which constitute false, misleading or deceptive advertising include the following:

(1) a false or misleading statement concerning the composition of products used;

(2) a false or misleading statement concerning the effectiveness of a product as a pesticide or device;

(3) a false or misleading statement about the value of the product for purposes other than as a pesticide or device;

(4) a false or misleading comparison with other pesticides;

(5) a statement directly or indirectly implying that a pesticide or device is recommended or endorsed by any agency of the state or federal government, such as "EPA Registered" or "EPA Approved";

(6) a true statement used in such a way as to give a false or misleading impression to the consumer;

(7) disclaimers or claims which negate or detract from labeling statements on the product label;

(8) claims as to the safety of a pesticide or its ingredients, including statements such as "free from risk or harm", "safe", "non-injurious", "harmless", or "non-toxic to humans and pets", with or without such a qualifying phrase as "when used as directed";

(9) claims that the pesticides and other substances the licensee applies, the application of such pesticides, or any other use of them are comparatively safe or free from risk or harm;

(10) claims that the pesticides and other substances the licensee applies, the applications of such pesticides, or any other use of them, are "environmentally friendly", "environmentally sound", "environmentally aware", "environmentally responsible", "pollution approved", "contain all natural ingredients", "organic", or are "among the least toxic chemicals known"; and

(11) claims regarding its goods and services for which the licensee does not have substantiation at the time such claim is made.

(b) A person subject to regulation under this chapter shall not advertise to perform structural pest control services without a structural pest control license.

(c) All advertisements must include the business name as indicated on the business license.

(d) Advertising includes, but is not limited to, any written, audio, audiovisual, digital media, recorded telephone message, or other electronic communication to the public.

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

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DIVISION 6. STRUCTURAL PEST CONTROL
ADVISORY COMMITTEE

4 TAC §§7.191 - 7.193

This proposal is made pursuant to the Texas Occupations Code, Chapter 1951, which provides the Department with the authority to license and regulate structural pest control applicators.

The code affected by the proposal is the Texas Occupations Code, Chapter 1951.

§7.191. *Purpose of the Committee.*

(a) The Structural Pest Control Advisory Committee shall be composed of eleven ~~nine~~ members appointed by the Commissioner.

(b) The Committee shall meet regularly, as prescribed by §7.196 ~~section 7.196~~ of this title (relating to Committee Meetings), to consider matters relating to the regulation and licensing of persons engaged in the business of structural pest control. The Commissioner, or his designee, shall have the authority to direct that the Committee include on its agenda any matters relating to the business of structural pest control, or the licensing and regulation of persons engaged in that business.

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

§7.192. *Rules Governing Operation of the Committee.*

(a) At the first meeting of each year, a Chairman and a Vice Chairman shall be elected by the members of the Committee for a term of one year.

(b) The members, other than the Commissioner of State Health Services, shall serve staggered four-year terms. (Initial committee members may serve shorter terms.) The terms of four members of the Committee shall expire on February 1 of each odd-numbered year.

(c) During the first meeting of each calendar year the Committee will include on its agenda as an item of business a self-assessment of its actions during the prior year.

(1) The self-assessment will be done using a process and on a form prepared by the Commissioner or his designee.

(2) In addition to evaluating its performance during the prior calendar year, the Committee shall establish goals to improve performance during the upcoming year.

(3) The Committee shall forward the self-assessment to the Commissioner for review.

(d) In addition to quarterly meetings, the Committee may meet as needed and upon the request of the Commissioner.

§7.193. *Appointment of Committee Members.*

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

(g) To qualify as a member of the Committee who is from an institution of higher education, an individual must have a post-graduate (masters or doctoral) degree and be, at the time of his or her appointment, employed in a teaching capacity at an institution of higher education and have experience teaching courses that demonstrate that the individual is knowledgeable in the science of pests and pest control.

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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4 TAC §7.192

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Agriculture or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

This proposal is made pursuant to the Texas Occupations Code, Chapter 1951, which provides the Department with the authority to license and regulate structural pest control applicators.

The code affected by the proposal is the Texas Occupations Code, Chapter 1951.

§7.192. *Membership of the Committee.*

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

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DIVISION 7. INTEGRATED PEST
MANAGEMENT PROGRAM FOR SCHOOL
DISTRICTS

4 TAC §§7.201 - 7.205

This proposal is made pursuant to the Texas Occupations Code, Chapter 1951, which provides the Department with the authority to license and regulate structural pest control applicators.

The code affected by the proposal is the Texas Occupations Code, Chapter 1951.

§7.201. *Responsibility of School Districts to Adopt an IPM Program.* Each school district shall establish, implement, and maintain an Integrated Pest Management (IPM) program. An IPM program is a regular set of procedures for preventing and managing pest problems using an integrated pest management strategy, as defined in §7.114 of this title (relating to Definition of Terms). The school district is responsible for each IPM Coordinator's compliance with these regulations.

(1) The IPM program shall contain these essential elements:

(A) a school board approved IPM policy, stating the school district's commitment to follow integrated pest management

guidelines in all pest control activities that take place on school district property. The IPM policy statement shall include:

(i) a definition of IPM consistent with this section;
(ii) a reference to Texas laws and rules governing pesticide use and IPM in public schools;
(iii) information about who can apply pesticides on school district property; and

(iv) information about designating, registering, and required training for the school district's IPM Coordinator. The Superintendent and IPM Coordinator will maintain a copy of the policy.

(B) a monitoring program to determine when pests are present and when pest problems are severe enough to justify corrective action;

(C) the preferential use of lower risk pesticides and the use of non-chemical management strategies to control pests, rodents, insects and weeds;

(D) a system for keeping records of facility inspection reports, pest-related work orders, pest control service reports, pesticide applications, and pesticide complaints;

(E) a plan for educating and informing school district employees about their roles in the IPM program; and

(F) written guidelines that identify thresholds for when pest control actions are justified.

(2) Each school district superintendent shall appoint an IPM Coordinator(s) to implement the school district's IPM program. Not later than 90 days after the superintendent designates or replaces an IPM Coordinator(s), the school district must report to the Department the newly appointed coordinator's name, address, telephone number, email address and the effective date of the appointment. A school district that appoints more than one IPM Coordinator shall designate a Responsible IPM Coordinator who will have overall responsibility for the IPM program and provides oversight of subordinate IPM Coordinators regarding IPM program decisions.

(3) Each school district that engages in pest control activities must employ or contract with a licensed applicator, who may, if an employee, also serve as the IPM Coordinator.

(4) Each school district shall prior to or by the first week of school attendance, ensure that a procedure is in place to provide prior notification of pesticide applications in accordance with this chapter. Individuals who request in writing to be notified of pesticide applications may be notified by telephonic, written or electronic methods.

§7.202. Responsibilities of the IPM Coordinator.

The IPM Coordinator(s) shall be responsible for implementation of the school district IPM Program. In addition, the IPM Coordinator(s) shall:

(1) successfully complete a Department-approved IPM Coordinator training course within six months of appointment;

(2) obtain at least six hours of Department-approved IPM continuing education units (CEU) every three years, beginning the effective date of this rule or the date of designation, whichever is later. The three-year period will begin from the date the IPM Coordinator receives initial training after being appointed by the superintendent, or if currently designated and trained as the IPM Coordinator, when this rule revision goes into effect. No approved course may be repeated for credit within the same three-year period. One of the six CEUs must be related to laws and regulations specific to IPM programs in schools. IPM Coordinators may satisfy the CEU requirements through one or more of the following methods:

(A) Completing a Department approved training course for IPM Coordinators;

(B) Completing courses that have been approved in the pest, lawn and ornamental, weed control or general IPM category; or

(C) By submitting information for a course completed, that was not previously approved by the Department, for the evaluation of credit. The information must include the name of the instructor(s), verification of attendance at the course, length of time of the course stated in hours and minutes, a detailed course outline indicating the scope of the course and learning objectives, and the number of continuing education units requested. Additionally, the IPM Coordinator must demonstrate that the course content is appropriate and pertinent to the use of pesticides and the implementation of IPM strategies at school buildings and other school district facilities.

(3) If the IPM Coordinator is also a licensed applicator, the CEUs obtained for the license under §7.134 of this title (relating to Continuing Education Requirements for Certified Applicators) will count towards the six hours of IPM CEUs.

(4) Following the three-year effective CEU period, IPM Coordinators must maintain certificates of completion for one additional calendar year (period through December 31). The certificates are subject to inspection by the Department at any time upon request.

(5) The IPM Coordinator shall oversee and be responsible for:

(A) coordination of pest management personnel, ensuring that all school employees who perform pest control, including those employees authorized to perform incidental use applications, have the necessary training, are equipped with the appropriate personal protective equipment, and have the necessary licenses for their pest management responsibilities;

(B) ensuring that all IPM program records, including incidental use training records (as provided for under §7.205 of this title (relating to Incidental Use for Schools)), pest-related work orders, pest control service reports, pesticide applications, and pesticide complaints are maintained for a period of two years and are made available to a Department inspector upon request;

(C) working with district administrators to ensure that all pest control proposal specifications for outside contractors are compatible with IPM principles, and that contractors work under the guidelines of the school district's IPM policy;

(D) ensuring that all pesticides used on school district property are in compliance with the school district's IPM program and that current pesticide labels and Safety Data Sheets (SDS) are available for interested individuals upon request;

(E) overseeing and implementing that portion of the plan that ensures that school district administrators and relevant school district personnel are provided opportunities to be informed and educated about their roles in the IPM program, reporting, and notification procedures;

(F) pesticide applications, including the approval of emergency applications at buildings and on school district grounds, are conducted in accordance with Division 7 of this subchapter; and

(G) maintaining a current copy of the school district's IPM policy and making available to a Department inspector upon request.

§7.203. Responsibilities of Certified Applicators and Licensed Technicians.

The commercial or noncommercial certified applicator or licensed technician shall:

(1) apply only EPA labeled pesticides, appropriate for the target pest, except as provided in Division 7 of this subchapter (relating to Integrated Pest Management Program for School Districts);

(2) provide the structural pest management needs of the school district by following the school district's IPM program and these regulations;

(3) obtain written approval from the IPM Coordinator(s) for the use of pesticides in accordance with Division 7;

(4) handle and forward to the IPM Coordinator(s) records of IPM activities, any complaints relating to pest problems, and pesticide use;

(5) ensure that pesticide use records are forwarded to the IPM Coordinator within two (2) business days or in a time frame as agreed to by the IPM Coordinator;

(6) consult with the IPM Coordinator(s) concerning the use of control measures in buildings and grounds; and

(7) ensure that all pest control activities are consistent with the school district's IPM program and IPM policy.

§7.204. Pesticide Use in School Districts.

All pesticides used by school districts must be registered with the United States Environmental Protection Agency (EPA) and the Texas Department of Agriculture, with the exception of those pesticides that have been exempted from registration by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), Section 25(b). All pesticides used by school districts must also bear a label as required by FIFRA and Chapter 76 of the Texas Agriculture Code. Pesticides intended and labeled for use on humans are exempt from this section. Pesticide use must also meet the following requirements:

(1) Pest control signs shall be posted at least 48 hours prior to a pesticide application inside school district buildings as provided for under §7.148 of this title (relating to Responsibilities of Unlicensed Persons for Posting and Notification).

(2) For outdoor applications made on school district grounds, the treated area must be identified at all entry points with a sign, or must be secured using a locking device, a fence or other practical barrier such as commercially available barrier caution tape, or periodically monitored to keep students out of the treated area until the allowed reentry time.

(3) Pesticides used on school district property shall be mixed outside of student occupied areas of buildings and grounds.

(4) The use of non-pesticide control measures, non-pesticide monitoring tools and mechanical devices, such as glue boards and traps as permitted in accordance with Division 7 of this subchapter (relating to Integrated Pest Management Program for School Districts), are exempt from posting requirements. The use of non-pesticide tools and devices by unlicensed school district personnel, for monitoring purposes, shall be permitted. Monitoring by unlicensed school district personnel shall be done only as directed, under the supervision of the IPM Coordinator.

(5) Pesticide applications shall not be made to outdoor school grounds if such an application will expose students to physical drift of pesticide spray particles. Reasonable preventive measures shall be taken to avoid the potential of drift to occur.

(6) School districts are allowed to apply the following pesticides to control pests, rodents, insects and weeds at school buildings,

grounds or other facilities in accordance with the approval for use and restrictions listed for each category:

(A) Green Category Pesticides.

(i) Definition: A pesticide will be designated as a Green Category pesticide if it meets the following criteria:

(I) all active ingredients belonging to EPA toxicity categories III and IV;

(II) it contains a CAUTION signal word on the product label, unless no signal word is required to appear on the product label as determined by EPA; and

(III) it consists of the active ingredient boric acid; disodium octoborate tetrahydrate or related boron compounds; silica gel; diatomaceous earth; or belongs to the class of pesticides that are insect growth regulators; microbe-based insecticides; botanical insecticides containing no more than 5% synergist (and does not include synthetic pyrethroids); biological (living) control agents; pesticidal soaps; natural or synthetic horticultural oils; or insect and rodent baits in tamper-resistant containers, or for crack-and-crevice use only;

(ii) Approval for Use: Green Category pesticides do not require prior written approval. These pesticides may be applied at the licensee's discretion under the guidelines of the school district IPM program.

(iii) Restrictions:

(I) Green Category pesticides may be applied indoors if students are not present and are not expected to be present in the room or treated area at the time of application. Reentry into the treated area is permitted as soon as the application is complete, the pesticide spray has dried, or the reentry interval specified on the pesticide label has expired, whichever interval is longer.

(II) Green Category pesticides may be applied outdoors if students are not present within ten (10) feet of the application site at the time of treatment. Students are allowed reentry into the treated area as soon as the application is complete, the pesticide spray has dried or the reentry interval specified on the pesticide label has expired, whichever interval is longer.

(B) Yellow Category Pesticides.

(i) Definition: A pesticide will be designated as a Yellow Category pesticide if it meets the following criteria:

(I) all active ingredients belonging to EPA toxicity categories III and IV;

(II) it contains a CAUTION signal word on the product label, unless no signal word is required to appear on the product label as determined by EPA; and

(III) it does not meet the criteria to be designated as a Green Category pesticide under subparagraph (A)(i) of this paragraph.

(ii) Approval for Use: Yellow Category pesticides require written approval from the certified applicator prior to their use. Yellow Category pesticide approvals shall have a duration of no longer than six (6) months or six (6) applications per site, whichever occurs first.

(iii) Restrictions:

(I) Yellow Category pesticides may be applied indoors if students are not present or not expected to be present in the room or treated area within the next four (4) hours following the appli-

ation, or until the reentry interval specified on the pesticide label has expired, whichever interval is longer.

(II) Yellow Category pesticides may be applied outdoors if students are not present or not expected to be present within ten (10) feet of application site and the area is secured and reentry is in accordance with this section for no less than four (4) hours, or until the reentry interval specified on the pesticide label has expired, whichever interval is longer.

(III) The treated area must be clearly posted at all entry points with a sign, or secured using a locking device, a fence or other practical barrier such as commercially available barrier caution tape, or periodically monitored to keep students out of the treated area until the allowed reentry time.

(C) Red Category Pesticides.

(i) Definition: A pesticide will be designated as a Red Category Pesticide if it meets the following criteria:

(I) all active ingredients belonging to EPA toxicity category I or II;

(II) it contains a WARNING or DANGER signal word on the product label; and

(III) it contains an active ingredient that has been designated as a restricted use pesticide, a state-limited-use pesticide or a regulated herbicide; and it does not meet the criteria to be designated as a Green Category pesticide under subparagraph (A)(i) of this paragraph, or a Yellow Category pesticide under subparagraph (B)(i) of this paragraph.

(ii) Approval for Use: Prior to the application, licensees must provide written justification to the IPM Coordinator for the use of the Red Category pesticide and must obtain signed approval for the application from the IPM Coordinator. Red Category pesticide approvals shall have a duration of no longer than three (3) months or three (3) applications per site, whichever occurs first.

(iii) Restrictions.

(I) Red Category pesticides may be applied indoors if students are not present and are not expected to be present in the room or treated area within eight (8) hours following the application, or until the reentry interval specified on the pesticide label has expired, whichever interval is longer.

(II) Red Category pesticides may be applied outdoors if students are not present within twenty-five (25) feet of the application site, the area is secured in accordance with this section, and reentry by students is prohibited for no less than eight (8) hours, or until the reentry interval specified on the pesticide label has expired, whichever interval is longer.

(III) The treated area must be clearly posted at all entry points with a sign, or secured using a locking device, a fence or other practical barrier such as commercially available barrier caution tape, or periodically monitored to keep students out of the treated area until the allowed reentry time.

§7.205. Incidental Use for Schools.

(a) The Incidental Use For Schools Fact Sheet must contain the following text: "This fact sheet must be distributed to all employees of school districts who apply general use Green Category pesticides (or Yellow Category pesticides specific to ant, bee and wasp applications) and are not licensed by the Texas Department of Agriculture. The fact sheet, instruction and training must be provided upon initial employment by the school district's IPM Coordinator, and thereafter must be available as needed. These general use Green Category pesticides in-

clude insecticides only and involve applications made both inside and outside of structures. Incidental Use is not intended for long term or extensive pest control measures, rather emergency situations where safety of students or workers is at risk and there is insufficient time to contact a licensed applicator. Where long term pest control is required, a trained, licensed person is to make the applications. Examples of Incidental Use situations are treating fire ants in a transformer box or treatments for bees or wasps as a non-routine application to protect children or personnel. Incidental Use is defined as site-specific and incidental to the employee's primary duties. If it is part of the employee's primary duty to make applications of pesticides, that employee is required by law to obtain a Texas Department of Agriculture license, depending on the location and type of application. In all cases of incidental use, the employee should use the least hazardous, effective method of controlling pests. All applications to schools or school grounds must be in compliance with school district IPM policies. If chemicals are utilized, they must be applied in strict accordance with manufacturer labels of products being used. Applications made inconsistent with the Department's law and regulations, or applications made inconsistent with the label requirements of the product may result in an enforcement action being taken against the individual and/or the certified applicator or technician responsible. Incidental pesticide use in schools is regulated by the Texas Department of Agriculture. If you have any questions or comments, contact the Texas Department of Agriculture, phone number 1-866-918-4481 or P.O. Box 12847, Austin, Texas 78711-2847."

(b) The Incidental Use For Schools Fact Sheet must be provided during pesticide instruction and training by the IPM Coordinator to each employee of the school district whose primary duty is not pest control, and whose work may include tasks subject to the exception. The IPM Coordinator must keep records of all the training conducted annually.

(c) Primary duty is defined as a job duty that is part of a written job description or is a regularly assigned task of the employee.

(d) Pest control use records for all incidental pesticide use application, including the reason for application and justification for emergency, must be maintained by the IPM Coordinator for a period of two years.

(e) Incidental pesticide use in school districts is limited to insecticides that are Green and Yellow Category pesticides.

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

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Jessica Escobar

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Texas Department of Agriculture

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



CHAPTER 27. TEXAS CITRUS PEST AND DISEASE MANAGEMENT CORPORATION

The Texas Department of Agriculture (Department) proposes new Chapter 27, Texas Citrus Pest and Disease Management Corporation, Subchapter A, §§27.101 - 27.107; Subchapter B, §§27.201 - 27.211; Subchapter C, §§27.301 - 27.307; Subchap-

ter D, §§27.401 - 27.408; Subchapter E, §§27.501 - 27.503; Subchapter F, §§27.601 - 27.605; and Subchapter G, §§27.701 - 27.707. New Chapter 27 is proposed to implement rules as required by Chapter 80 of the Texas Agriculture Code (the Code) in order for the Texas Citrus Pest and Disease Management Corporation, Inc. (Corporation), a Texas nonprofit corporation, the recognized entity by the Department, to plan, carry out, and operate suppression programs to manage and control citrus pests and diseases in this state under the supervision of the Department.

Proposed Subchapter A includes general definitions applicable to the chapter, operating and reporting requirements for the Corporation, and administrative review procedures for citrus producers. New Subchapter B is proposed to include all voting procedures required for the administration of an election or referendum of the Corporation and conducted by the Department. Subchapter B also includes notice and approval requirements for the creation of pest management zones and assessments. New Subchapter C proposes rules for required participation in the program by citrus producers, as well as procedures regarding penalties for failure to comply with program requirements, including paying assessments.

The proposed sections in Subchapter D establish rules, as required by §80.017 of the Code, for compliance certificates to manage the payment and collection of assessments levied on citrus producers and provides for an assessment lien in favor of the Corporation in the amount of an assessment that is due and unpaid. Subchapter D also includes notice of the assessment to producers and notice of any lien to buyers; provides for payment of assessments, including incentives for early payment as well as late fees for late payment of assessments; sets forth applicability of liens, lien priority and provides for the release of the liens.

Proposed Subchapter E provides rules for protection of individuals, livestock, wildlife, and honeybee colonies in eradication zones, as required by §80.022 of the Code; requires that the Corporation must establish procedures for implementing the citrus pest and disease suppression program, and methods of treatment for specific eradication zones. New sections in Subchapter F are proposed to provide procedures and requirements to allow a citrus producer in an active citrus suppression program to use bio-intensive controls as pest control methods, in accordance with §80.031 of the Code. Subchapter F includes procedures for requesting to use bio-intensive controls, items to be considered by the Corporation in reviewing requests, recordkeeping and treatment requirements, procedures for appeals of denial of a request or withdrawal of approval once given, and requirements for payment of costs of bio-intensive controls.

The new sections in Subchapter G are proposed to establish eligibility and a method and procedures for the indemnification of growers of organic citrus in active pest management zones and to provide for payment of an assessment by organic citrus producers farming in an active pest management zone.

Ms. Janet Fults, Director of Environmental & Biosecurity Programs for the Department, has determined that for the first five-year period the proposed new rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Ms. Fults has also determined that for each year of the first five years the proposed sections are in effect, the public benefit anticipated as a result of enforcing the rules will be the reduction and

management of the spread of citrus pests and diseases. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rules as proposed.

Written comments on the proposal may be submitted to Ms. Janet Fults, Director of Environmental & Biosecurity Programs, Texas Department of Agriculture. Comments may be sent by mail to: Janet Fults, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711 or by email to: Janet.Fults@Texas-Agriculture.gov. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

SUBCHAPTER A. GENERAL PROVISIONS

4 TAC §§27.101 - 27.107

The proposal is made under Chapter 80, Texas Agriculture Code, which authorizes the Department to designate the Texas Citrus Pest and Disease Management Corporation as the entity authorized to plan, carry out and operate suppression programs to manage and control citrus pests and diseases under the supervision of the Department.

Texas Agriculture Code, Chapter 80 is affected by this proposal.

§27.101. Definitions.

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

(1) Active pest management zone--A pest management zone established under the Texas Agriculture Code, Chapter 80, in which citrus producers by referendum have approved their participation in a suppression program and have approved an assessment to fund costs of implementing the program, and in which the Corporation has begun operations.

(2) Bio-intensive control--The use of biologically based pest control tactics, rather than traditional chemical control methods. Biologically based pest control tactics include biological controls, resistant host plants, cultural controls, botanical insecticides, or sterile insect techniques that cause little or no detrimental effect on non-target organisms.

(3) Citrus Producer--Means a person who grows citrus and receives or intends to receive income from the sale of citrus. The term includes an individual who as owner, landlord, tenant, or sharecropper is entitled to share in the citrus grown and available for marketing from a farm or to share in the proceeds from the sale of the citrus from the farm. The term includes a person who owns land that is primarily used to grow citrus and that is appraised based on agricultural use under Chapter 23, Texas Tax Code, regardless of whether the person receives income from the sale of citrus, and there is an irrebuttable presumption that the person intends to receive income from the sale of citrus.

(4) Code--The Texas Agriculture Code.

(5) Commercial citrus--Citrus grown for sale or barter.

(6) Corporation--The Texas Citrus Pest and Disease Management Corporation, Inc.

(7) Department--The Texas Department of Agriculture.

(8) Due and unpaid--An assessment is due and unpaid if it has not been paid after the due date set by the Commissioner for payment, and no written agreement has been made with the Corporation to pay the assessment.

(9) First buyer of citrus--A buyer who buys citrus from a citrus producer and disburses funds to the producer for the purchase of citrus.

(10) Noncommercial citrus--Any citrus that is not commercial citrus.

(11) Pest management zone--A geographic area established under §80.006 of the Code in which citrus producers by referendum approve their participation in a pest and/or disease suppression program.

(12) USDA--United States Department of Agriculture.

§27.102. Statement of Authority and Purpose.

The Corporation shall be recognized by the Department as the entity to plan, carry out, and operate suppression programs to manage and control pests and diseases in citrus plants in the state under the supervision of the Department as provided by Chapter 80 of the Code.

§27.103. Approval by the Commissioner of Agriculture.

The Corporation is required to obtain approval from the Commissioner as follows.

(1) The Commissioner must approve in writing the Corporation's policy for the procurement of goods and/or services. The procurement policy must be reviewed annually following initial approval. The procurement policy of the Corporation shall include:

(A) a requirement in regards to purchases of goods or services:

(i) that all purchase, service and/or lease agreements over the amount of \$20,000 be approved by the Commissioner;

(ii) a requirement that a statement of justification of need for the goods or services being purchased and/or leased be provided for each purchase and/or lease; and

(iii) a provision that excludes routine or day-to-day operating expenditures such as office supplies, payroll or utilities from this requirement.

(B) provisions for obtaining of competitive bids, including a requirement that bid announcements (request for bids) for purchases and/or leases, or financing of purchases and/or leases over the amount of \$20,000 be approved by the Commissioner prior to distribution of the request for bid.

(2) The Corporation must obtain approval in writing from the Commissioner to borrow money to fund operations of the Corporation.

(A) An approval request for the borrowing of money must first be approved by a majority of the board in an open meeting.

(B) Once approved by the board, the request for approval to borrow money must be submitted to the Commissioner in writing at least 30 days before the date of the actual borrowing transaction and include:

(i) name and address of lender;

(ii) amount to be borrowed;

(iii) copy of terms of agreement for the transaction and any supporting documentation;

(iv) a statement of justification for choosing the lender including other options considered; and

(v) any other information requested by the Commissioner.

(3) The Commissioner shall review and approve the Corporation's operating budget in writing. No funds may be used to fund programs not approved by the Commissioner. The budget must:

(A) be approved on an annual basis to correspond with the Corporation's fiscal year;

(B) be submitted at least 30 days prior to be the end of the Corporation's fiscal year;

(C) be approved by the Corporation board in an open meeting prior to submission to the Commissioner;

(D) include the following:

(i) a breakdown of expenses to show the budget as projected by zone;

(ii) a breakdown of Corporation operating expenses;

(iii) total projected budget including expenses for goods and services to be approved by the Commissioner; and

(iv) a description of programs to be implemented using budgeted funds.

(4) Budget revisions are permitted between the approved budget line items. Prior written approval from the Commissioner is required on all cumulative transfers for the fiscal year covered by the proposed budget of funds among budget line items when the amount transferred exceeds 10% of the total annual budget.

(5) The Commissioner must approve in writing the use of a bank depository prior to the deposit of funds by the Corporation.

(6) The Corporation must seek written approval from the Commissioner to enter cooperative agreements to destroy and manage pests and diseases in this state between the Corporation and:

(A) an agency of the federal government;

(B) a state agency;

(C) an appropriate agency of a foreign country contiguous to the affected area to the extent allowed by federal law;

(D) a person who is engaged in growing, processing, marketing, or handling citrus;

(E) a group of persons in this state involved in similar programs to carry out the purposes of this Chapter; or

(F) an appropriate state agency of another state contiguous to the affected area, to the extent allowed by federal law, the law of the contiguous state, and the law of this state.

§27.104. Reporting Requirements.

(a) The Corporation shall provide the Department with a copy of its annual audit within 30 days of the audit's completion, including any accompanying letters to the Corporation from the auditor.

(b) No later than 45 days after the fiscal year, the Corporation shall file with the Department an annual report. The annual report shall include, at a minimum:

(1) a balance sheet of assets, liabilities and fund equity;

(2) an itemization of income/expenditures;

(3) a statement of management activities carried out in the year covered by the report, by zone;

(4) information regarding the name and quantity of pesticides used in the program by zone; and

(5) copies of any resolutions adopted by the board regarding the suppression program.

§27.105. Cost Sharing Program.

(a) Statement of Purpose and Authority. In accordance with Chapter 80 of the Code, the Department is authorized to contract with the entity under §80.020 to carry out pest and disease suppression to obtain suppression services for the state of Texas as part of a cost-sharing program. The Corporation has been designated as that entity. This section sets forth requirements and procedures for the implementation of the cost-sharing program.

(b) Zone eligibility.

(1) The Department may spend money under the cost-sharing program only in a pest management zone in which:

(A) a suppression project authorized under the Code, Chapter 80 is active; or

(B) suppression has been declared complete by the United States Department of Agriculture or its designee.

(2) A zone meets the requirement set forth in paragraph (1)(A) of this subsection if a referendum of citrus producers has been held in the pest management zone in accordance with Chapter 80 of the Code, and both the establishment of a suppression program and a maximum assessment have been approved by producers for that pest management zone.

(c) Request for funding.

(1) The Corporation may request funding under this section to provide suppression services by submitting a proposal which meets the requirements specified by the Department.

(2) A proposal to provide suppression services shall include:

(A) a statement that the Corporation meets eligibility requirements;

(B) a statement verifying that the Corporation will comply with the Uniform Grant Management Standards promulgated by the Governor's Office of Budget and Planning, under the Texas Government Code, Chapter 783 (UGMS);

(C) Verification that funds provided will be used for suppression services in eligible zones; and

(D) the specific amount of funding requested and how the funds will be used, broken down by zone, period of time covered, specific category of expenditure, and nature of activity.

(3) Additional information may be requested, if needed.

(d) Disbursement of funds.

(1) Disbursement of funds will be made after review and acceptance of the Corporation's proposal by the Department and execution of a written contract for services between the Department and the Corporation.

(2) Disbursement shall be made only in accordance with the contract.

(3) Disbursement of funds may be made in a lump sum or installments, as set forth in the contract.

(e) Reporting/Accounting Requirements.

(1) After funds have been disbursed, the Corporation shall provide a written report of expenditures on a quarterly basis according

to the State of Texas fiscal year, or more often, as requested by the Department.

(2) Quarterly reports shall be submitted to the Department within 30 days after the end of each quarter.

(3) The Corporation shall establish an accounting system which identifies source of funds for programs, with separate accounting, in a manner that will enable the Department and others to audit funds and verify source of funds and how they are used, for:

(A) producer assessments;

(B) state funds; and

(C) federal funds.

(4) The Corporation shall comply with all applicable state requirements regarding use of state funds.

(5) The Department may suspend disbursement of funds to the Corporation, if:

(A) the Department determines, or has reason to believe, that appropriated funds are not being used for purposes stated in the contract or the Corporation is not complying with the terms of the contract, including reporting requirements, or these rules;

(B) the Department determines, or has reason to believe, that the use of the appropriated funds by the Corporation is not consistent with state law; and/or

(C) the Department determines or has reason to believe that the Corporation's use of the appropriated funds is not in the best interest of the state, citrus producers, or the suppression program.

§27.106. Administrative Review.

(a) Filing of request.

(1) Any person who believes they have been aggrieved in connection with an action of the Corporation may file a request for administrative review by the Department under §80.011 of the Code.

(2) A request must be made in writing and received by the Department within 90 days of the alleged action which is the subject of the complaint. Formal requests must comply with the following requirements, and shall be resolved in accordance with the procedures set forth below. Copies of the request and any supporting documentation must be mailed or delivered by the requesting party to the Department and the Corporation.

(b) Contents of request. A request filed under this section must be sworn and contain:

(1) a specific identification of the statutory or regulatory provision(s) that the action complained of is alleged to have violated;

(2) a specific description of each act alleged to have violated the statutory or regulatory provision(s) identified in paragraph (1) of this subsection, including an identification of the issue or issues to be resolved;

(3) a precise statement of the relevant facts;

(4) argument and authorities in support of the allegations made;

(5) any supporting documentation available; and

(6) a statement that a copy of the request has been mailed or delivered to the Corporation.

(c) Informal Review.

(1) Once a request is received by the Department, it shall be forwarded to the Department's Office of General Counsel for review.

(2) The General Counsel, or his or her designee, shall have the authority, prior to appeal to the Commissioner or designee, to settle and resolve the complaint that is the subject of the request, and may solicit additional information regarding the matters alleged in the request for review from the requester, the Corporation, or any other relevant party. Copies of any additional information received shall be provided to both the requester and the Corporation.

(3) If the issues raised in the request are not resolved by mutual agreement, the General Counsel will issue a written determination on the request for review as follows.

(A) If the General Counsel determines that no violation of rules or statutes has occurred, he or she shall so inform the requesting party and the Corporation by letter, setting forth the reasons for the determination.

(B) If the General Counsel determines that a violation of the rules or statutes has occurred, he or she shall so inform the requesting party and the Corporation by letter, setting forth the reasons for the determination and the appropriate remedial action.

(4) If the General Counsel's determination is not appealed within 15 business days, that determination shall serve as the final agency determination on the complaint.

(d) Appeal to Commissioner.

(1) The General Counsel's determination may be appealed to the Commissioner by the requester or the Corporation. An appeal of the General Counsel's determination must be in writing and must be received by the Department no later than 15 business days after the date of the General Counsel's determination. The appeal shall include specific reasons why the requester or the Corporation disagrees with the determination. Copies of the appeal must be mailed or delivered by the party appealing to the other party.

(2) The Commissioner, or his or her designee, shall review the request for appeal and any supporting documentation submitted with the appeal. The Commissioner shall be limited to review of the original request for administrative appeal and supporting documentation submitted with that request, and the General Counsel's determination.

(3) The Commissioner's determination of the appeal shall be the final administrative action of the agency and is subject to judicial review under Chapter 2001, Government Code.

(e) Actions Subject to Review.

(1) Request for review filed under §80.011 shall be based on actions taken by the Corporation under Chapter 80 of the Code.

(2) Actions subject to review under §80.001 do not include:

(A) alleged violations that may be prosecuted administratively by the Department under the §12.020 and/or §76.1555 of the Code;

(B) bid protests and other disputes arising from a bid made or a contract entered into with the Corporation under its procurement manual, and covered by the Corporation's procurement dispute resolution procedure; or

(C) disputes that have been resolved through a civil or criminal action brought in a court of law.

(f) Appropriate remedial actions. If the Department, or the Commissioner on appeal, determines that the Corporation acted in a

manner that warrants action by the Department, the Department may prescribe corrective action to be carried out by the Corporation, or refer its determination to the appropriate entity in accordance with the §80.027 of the Code. The Department is not authorized to award monetary damages to a person filing a request under this section.

§27.107. Public Information Act.

All information submitted to the Corporation under this chapter is subject to the Public Information Act (PIA), Chapter 552, of the Texas Government Code, and may be disclosed to the public upon written request submitted to the Corporation or the Department. All information shall be presumed to be subject to disclosure unless a specific exception to disclosure under the PIA applies.

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

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Texas Department of Agriculture

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



SUBCHAPTER B. ELECTION OR REFERENDUM PROCEDURES

4 TAC §§27.201 - 27.211

The proposal is made under §80.016, Texas Agriculture Code, which provides that the Department shall adopt rules related to voting in board elections and referenda to establish pest management zones.

Texas Agriculture Code Chapter 80 is affected by this proposal.

§27.201. Voter Eligibility.

(a) A citrus producer is a person defined in §27.101(3) of this title (relating to Definitions), and §80.003(6) of the Code. For purposes of determining voter eligibility for elections or referenda, this requirement will be determined from the official list provided to the Department of operators or crop-sharing landlords who have citrus in the zone or area in which a referendum is being held in the crop year in effect at the time of the referendum.

(b) A citrus producer eligible to vote in a pest management zone referendum is also entitled to elect board members to represent the pest management zone in which the producer's citrus production occurs.

(c) If a citrus producer has production in more than one zone, the producer may vote in each zone in which he or she meets the voting eligibility requirements in subsection (a) of this section.

§27.202. Board Candidates.

(a) A representative number of members to the Corporation's board of directors shall be elected from each established pest management zone for a term not to exceed two years.

(b) In order to be a candidate for board membership, a person must be eligible to vote in the referendum, must reside in the pest management zone that he or she is seeking to represent and have at least seven years citrus producing experience.

(c) In order to have his or her name put on the ballot, a person must file with the Department, at least 30 days prior to the first day of the voting period of the election, a petition signed by ten eligible voters within the pest management zone to be represented. The Department shall prescribe the form for the petition.

(d) An eligible voter may vote for a citrus producer whose name does not appear on the ballot by writing that person's name and county of residence on the ballot.

(e) Board candidates are elected by plurality, by receiving the highest number of votes of all candidates for that board position.

§27.203. Commissioner Approval Required for Assessment Referendum.

Before the referendum, the Commissioner shall review and approve:

- (1) the amount of the assessment;
- (2) the basis for the assessment;
- (3) the time for payment of the assessment;
- (4) the method of allocation of the assessment among citrus producers;

(5) the restructuring and repayment schedule for any pre-existing debt; and

(6) the amount of debt to be incurred in the pest management zone.

§27.204. Public Hearings.

The Commissioner shall give notice of and conduct a public hearing in the pest management zone regarding the proposed assessment referendum.

§27.205. Conduct of Election or Referendum.

(a) Upon request of the Corporation, the Commissioner shall conduct and prescribe the manner to conduct an election and/or referendum as authorized under the Chapter 80 of the Code.

(b) With the Commissioner's approval, the Corporation may set the assessment rate at a level less than the maximum assessment approved by the referendum.

(c) Notice of the referendum shall be published in one or more newspapers published and distributed within the boundaries in which the board operates. The notice shall be published at least 45 days before the date of the referendum and/or board election in one or more newspapers published and distributed throughout the proposed or established pest management zone or zones, or area proposed to be added or transferred. The notice shall be published not less than once a week for three consecutive weeks. In addition, at least 45 days before the date of the referendum, the Department will give direct written notice to the county office for the Texas AgriLife Extension Service in the pest management zone or zones or area proposed to be added or transferred.

(d) Notice provided in accordance with subsection (c) of this section shall include:

- (1) the date of the election;
- (2) the manner in which the election is to be conducted;
- (3) the purpose of the election and/or referendum;
- (4) if appropriate, information regarding the election of board members, including how to get on the ballot;

(5) if an assessment referendum is being conducted, the maximum assessment to be paid by citrus producers having production in the pest management zone and the time for which the assessment will be collected; and

(6) who to contact for more information.

(e) A proposed pest management zone referendum ballot must include or be accompanied by information about the proposed pest management zone, including:

(1) a statement of the purpose of the pest suppression program;

(2) the geographic area included in the proposed pest management zone;

(3) a general summary of rules adopted by the Commissioner under §§80.016, 80.020, and 80.022 of the Code, including a description of:

(A) citrus producer responsibilities; and

(B) penalties for noncompliance with rules adopted under this chapter; and

(4) an address and toll-free telephone number that a citrus producer may use to request more information about the referendum or the pest suppression program.

(f) The referendum will be conducted by mail ballot. All eligible producers will be mailed a ballot. An eligible producer who has not received a ballot may request a mail ballot by contacting Department headquarters. No eligible producer requesting a mail ballot shall be refused a ballot.

(1) Cast ballots will be returned by mail to Department headquarters by the citrus producer via postage paid envelope and must be postmarked by a deadline to be determined by the Department.

(2) Ballots submitted to the Department by mail shall be maintained at Department headquarters.

(g) The Department will be reimbursed by the Corporation for all costs associated with conducting a referendum under this subchapter.

§27.206. Canvass; Watchers; Recount.

(a) A canvassing committee appointed by the Commissioner shall count the ballots and verify the referendum results to the Commissioner for certification. Referendum results will be certified by the Commissioner.

(b) Ballots for the referendum will be counted in a manner determined by the Commissioner.

(c) After the ballots are counted and the results verified by the Commissioner, the ballots shall be locked in a container and stored at the Department's headquarters for a period of 30 days. The locked container containing referendum ballots cannot be opened for the 30-day period without a court order or written request for recount. If no contests or investigations arise out of the referendum within 30 days after certification of such referendum, the Department shall destroy the ballots by shredding.

(d) A watcher may be present at Department headquarters for the purpose of observing the canvass of the votes and until the canvassing committee completes its duties. Written notice of intent to be present during the canvass must be submitted to Department at least three days prior to the count.

(e) A request for recount submitted under this division must:

(1) be in writing;

(2) state the grounds for the recount;

(3) be submitted to the Commissioner within 10 calendar days of canvass results; and

(4) be signed by the person(s) requesting the recount, including address and phone number. If the request is made on behalf of an organization or association, the person submitting the request must state that he or she is authorized to request a recount on behalf of the organization or association.

(f) A recount will be conducted by the Department, under the supervision of a representative of the Office of the Secretary of State.

§27.207. Zone Activation; Producer Approval.

(a) Once a pest management zone has been designated by adoption of a rule subject to the authority of §80.005 of the Code, the pest management zone is not established until approved by a referendum of citrus producers in the new zone and held in accordance with §80.006 of the Code.

(b) Once a pest management zone has been designated by rule and established by approval of citrus producers in the zone, as provided in subsection (a) of this section, the zone shall operate in accordance with the provisions of Chapter 80 of the Code.

§27.208. Approval of Zones, Assessment Rates, Board Elections.

(a) A referendum to establish a zone, to establish a suppression program in an existing zone, to add a county or area to an existing zone, to transfer an area or county from one zone to another, to discontinue the program in a zone, or to set or continue an assessment rate must pass by a favorable vote of:

(1) at least two-thirds of those voting vote in favor of the referendum; or

(2) those voting in favor of the referendum cultivate more than 50 percent, as determined by the Commissioner, of the citrus acreage in the relevant pest management zone. The total acreage of citrus in each pest management zone or area shall be determined by use of the latest available figures provided to the Department by the Corporation.

(b) If a pest management zone or program establishment, assessment, or retention referendum conducted under §80.006 of the Code is not approved, the Department may not conduct another referendum in the same area on that same issue before one year after the date of the election on the failed referendum. In addition, if a zone is not established or is discontinued, any concurrent board member election has no effect, and the Commissioner shall appoint a board member to represent the zone in which the election was held.

(c) If a discontinuation referendum conducted under §80.014 of the Code is not approved, no such referendum may be held within two years of any other referendum in the pest management zone pertaining to establishing or discontinuing the pest management zone.

§27.209. Payment of Zone Debt upon Discontinuation.

Citrus producers may vote in a referendum to discontinue the suppression program in a zone under §80.014 of the Code. If a proposition is approved, the suppression program is abolished and the pest management zone ceases to exist on payment of all debts of the pest management zone. Assessments shall continue annually on any producer planting citrus in the zone in subsequent years until all debts of the pest management zone are paid.

§27.210. Petitions to Add an Area or County to an Existing Pest Management Zone or to Transfer an Area or County in One Pest Management Zone to Another Pest Management Zone.

(a) Parties wishing to petition for addition or movement into an existing pest management zone shall notify the Commissioner of their intent in writing. The petition shall include:

(1) a geographic description of the proposed area to be added or moved;

(2) information sufficient for the Commissioner to determine whether or not citrus production has begun or could begin in the proposed area;

(3) information sufficient for the Commissioner to determine whether or not the proposed area is adjacent to a pest management zone or is in an area with biological characteristics similar to the pest management zone to which the area is requesting to be added or moved; and

(4) any other pertinent information on the zone to which the area would be moved or added.

(b) The Department shall provide a petition form for the party submitting the request. The completed form must include:

(1) certification by the person signing the petition that he or she is an eligible citrus producer in the area proposed to be added or moved by having citrus production in the area proposed to be added or moved or sharing in the proceeds of citrus production in the current crop year;

(2) the complete name and address of the eligible citrus producer or entity;

(3) a legible signature of the person with authority to sign for the person or entity; and

(4) the date signed.

(c) Only one signature or petition form per entity may be gathered.

(d) Signatures that are dated before the date the petition process starts are invalid.

(e) Producer eligibility to sign a petition shall be determined as follows.

(1) If the petitioning process commences prior to or after traditional citrus production in the area, the immediately preceding citrus crop year information as maintained in the official list provided to the Department determines eligibility for having a producer's name on the petition.

(2) If a petition drive crosses crop years, the Commissioner shall use the most current complete eligible list of producers in the area proposed to be added or moved, and shall notify the petitioning party of the appropriate date when the eligibility list changes. If a person farmed in a year other than the year determined to be the eligible year, that signature or petition form will not be valid.

(f) Upon receipt of request for petition, the Department shall advise the party of the number of eligible voters/producers in the proposed area using the list that will be used to determine if the total number of producer signatures gathered meets or exceeds 30% of producers in the petitioning area, as required by §80.009(b) of the Code.

(g) Completed petitions may be filed with the Department either by sending them to the Department by postal mail or by hand-delivery to the Department's headquarters in Austin. The filing date of the petition shall be the date the petition is actually received by the Department. Signatures may not be added to or withdrawn from a petition, once filed with the Department.

(h) The petitioning party must certify that the documents submitted to the Department for review have been screened to eliminate possible duplicates. In addition, the petitioning party must attest in an affidavit that all signatures are valid according to the agreed upon eligibility list.

(i) Once a petition is received by the Department shall review the petition for compliance with the 30% requirement. If, upon review, greater than 10% of signatures on the petition forms are not in compliance with this section, the petition will be rejected. The Commissioner, at his or her discretion, may appoint a committee to review the petition.

(j) Within 30 days of receipt of the petition, the Department shall notify the petitioning party of a decision, and, if applicable, file for publication in the *Texas Register* a proposed rule adding or transferring the area, and may set a hearing in the area to take public comment on the rule. Once the required period for public comment on the proposed rule has passed, the Commissioner may adopt a rule adding or moving an area, and may hold a producer referendum, if appropriate.

(k) If necessary, the Department shall conduct a referendum to add or move an area or county in the same manner as other referenda conducted under Chapter 80 of the Code and this subchapter.

(l) If approved, citrus producers within the proposed area shall be part of the amended pest management zone and be subject to assessment and other participation requirements for that pest management zone.

§27.211. Petition for Discontinuation Referendum.

(a) Parties wishing to petition for a discontinuation referendum in an existing pest management zone shall notify the Commissioner of their intent in writing.

(b) The Department shall provide a petition form for request for discontinuation. The completed form must include:

(1) certification by the person signing the petition that he or she is an eligible citrus producer in the zone by having citrus production or sharing in the proceeds of citrus production in the current crop year;

(2) the complete name and address of the eligible citrus producer or entity;

(3) a legible signature of the person with authority to sign for the person or entity; and

(4) the date signed.

(c) Only one signature or petition form per producer may be gathered.

(d) The Commissioner shall conduct the referendum before the 90th day after the date the petition was filed, except that a referendum may not be held before the second anniversary of any other referendum in the pest management zone pertaining to establishing or discontinuing the pest management zone. If the two-year prohibition period applies, a petition drive conducted under this section may begin no sooner than nine months before the expiration of the two-year period. Signatures that are dated before the date the petition process starts or the date allowed for the petitioning process to begin are invalid.

(e) Producer eligibility to sign a petition shall be determined as follows.

(1) If the petitioning process commences prior to or after traditional citrus production in the zone, the immediately preceding citrus crop year information as maintained determines eligibility for having a producer's name on the petition.

(2) If a petition drive crosses crop years, the Commissioner shall use the most current eligible list of producers as maintained, and shall notify the petitioning party of the appropriate date when the eligibility list changes. If a person farmed in a year other than the year determined to be the eligible year, that signature or petition form will not be valid.

(f) Upon receipt of the notice of intent to petition, the Department shall notify the petitioning party of the eligible voter list that will be used to determine if the total number of producer signatures on the petition forms meets or exceeds 30% of producers in the pest management zone, as required by the §80.014 of the Code.

(g) Completed petitions must be filed with the Department by sending them to the Department's headquarters in Austin via postal mail or by hand-delivery. The filing date of the petition shall be the date the petition is actually received by the Department. Signatures may not be added to or withdrawn from a petition, once filed with the Department.

(h) The petitioning party must certify that the documents submitted to the Department for review have been screened to eliminate possible duplicates. In addition, the petitioning party must attest in an affidavit that all signatures are valid according to the agreed upon eligibility list. If, upon review, greater than 10% of the signatures or petition forms are not in compliance with this section, the petition will be deemed null and void and will be rejected.

(i) Once a petition is received, the Department shall review the petition for compliance with the 30% requirement. The Commissioner, at his discretion, may appoint a committee to review the petition.

(j) Within 30 days of receipt of the petition, the Department shall notify the petitioning party of a decision, and set a referendum date within 90 days of receipt, if the petition meets all requirements.

(k) If a referendum of producers is held, the Department shall conduct the referendum in the same manner as other referenda conducted under Chapter 80 of the Code and this subchapter.

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SUBCHAPTER C. REQUIREMENT FOR PARTICIPATION IN THE SUPPRESSION PROGRAM AND ADMINISTRATIVE PENALTY

4 TAC §§27.301 - 27.307

The proposal is made under §80.020, Texas Agriculture Code, which authorizes the Department to adopt rules requiring all growers of citrus in a pest management zone to participate in a pest and disease suppression program and growers of commercial citrus to participate in pest and disease management programs that include cost sharing as required by the rules.

Texas Agriculture Code Chapter 80 is affected by this proposal.

§27.301. Requirement for Program Participation.

(a) All citrus producers within a pest management zone are required to participate in the suppression program approved by producers in a referendum for that zone.

(b) Participation in the suppression program includes:

(1) timely reporting to the Corporation, as specified in subsection (c) or (d) of this section, of all information regarding all commercial and noncommercial citrus and of all citrus grown for ornamental, research, or any other purposes as provided in §80.023 of the Code;

(2) payment of the assessment in the amount and manner established and approved for that pest management zone; and

(3) compliance with any rules or procedures established by the Department or the Corporation for implementation of the suppression program in that pest management zone.

(c) Reporting deadlines.

(1) All acreage planted with citrus and the location of such acreage in an active pest management zone, regardless of which pest management zone, must be reported annually to the Corporation by the producer no later than the reporting date established for each pest management zone.

(2) The dates by which citrus acreage and location of such acreage in an active pest management zone must be reported by July 1 of each year.

(3) The citrus acreage and location of such acreage required to be reported by paragraph (1) of this subsection may be reported to the Department rather than the Corporation.

(d) The Corporation may send a written inquiry directly to a producer who has previously failed to report citrus acreage or location planted within a then-active pest management zone or to a producer who the Corporation has probable cause to believe has planted citrus in an active zone without reporting the acreage or location of such citrus to the Corporation. The written inquiry shall be sent by certified mail and shall require that the recipient producer certify in writing, on a form supplied by the Corporation, either the number of acres and location of each tract of citrus the producer has planted within an active pest management zone for the current producing season or that no acres of citrus are planted in an active pest management zone for the current producing season. The form must be returned within 10 days of receipt by the producer. After delivery or refusal of delivery of the written inquiry, the producer's obligation to report citrus acreage and location may be satisfied only by return of the certification required by this subsection. Failure to return the required certification or refusal of delivery of the written inquiry may result in the assessment of an administrative penalty, which shall not relieve the producer of the requirement to submit the certification required by this subsection. The Corporation may send out an additional written inquiry upon refusal of delivery of a previous written inquiry or if the Corporation considers a response to a previous written inquiry inadequate. Each written inquiry mailed under this subsection may serve as the basis for a separate violation.

(e) Falsely reporting the number of acres or location of citrus under any provision of this section may result in the assessment of an administrative penalty.

§27.302. Notice of Requirement for Participation.

(a) After passage of a referendum establishing a suppression program and maximum assessment and/or upon adoption of any new requirements by the Department and/or the Corporation, a notice of the requirements to participate in the suppression program shall be published by the Corporation in a newspaper having general circulation within the affected zone or zones for one day each week for three successive weeks.

(b) The notice required by subsection (a) of this section shall include any requirements for timely reporting of acreage to the Corporation, compliance with regulations of the Department, and payment

of the assessment established and approved for that pest management zone.

§27.303. Penalties for Non-Payment of Assessment and Failure to Timely Report Acreage.

(a) Upon receiving notice from the Corporation that a producer has failed to timely pay an assessment in the amount and manner established for that pest management zone, the Department may assess an administrative penalty against the producer.

(b) Upon receiving notice from the Corporation that a producer has failed to timely report to the Corporation information regarding acreage and location of all citrus groves and of noncommercial citrus grown for ornamental, research, or other purposes as provided by §27.301 of this title (relating to Requirement for Program Participation), the Department may assess an administrative penalty against the producer. A penalty assessed for failure to timely report acreage shall not exceed \$50 per acre.

§27.304. Appeal of Penalty Assessment.

(a) The Department shall issue a notice of violation to each person against whom the Department has proposed to assess a penalty under §27.303 of this title (relating to Penalties for Non-Payment of Assessment and Failure to Timely Report Acreage). The notice of violation, with attachments, shall include a brief statement of the matters alleged, the amount of the recommended penalty, the date on which the penalty will be assessed, the dates and amounts of any penalty increases in accordance with the Department's penalty matrix, and the right of the person charged to request a hearing.

(b) A person against whom a penalty has been assessed may accept the determination of the Department, including the recommended penalty, or may protest the determination and request a hearing. A notice of protest and request for hearing may be filed with the Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711.

(c) If the person accepts the determination of the Department, the Commissioner shall issue an order approving the determination and ordering payment of the penalty.

(d) If the person protests the determination of the Department and requests a hearing, or fails to respond to the Notice of Violation, a hearing on the matter shall be provided and conducted in accordance with the procedures provided for contested cases in the Texas Administrative Procedure Act, Government Code, Chapter 2001, Chapter 1 of this title (relating to General Procedures), and 1 TAC Chapter 155 (Rules of Procedure of the State Office of Administrative Hearings).

§27.305. Application for Exemption from Assessment Penalty.

(a) If an administrative penalty is assessed by the Department under the Code, §80.017, for failure to pay an assessment, the citrus producer may apply for an exemption from that administrative penalty in writing on a form prescribed by the Department within 20 days from receipt of the notice of violation, stating the reasons justifying the request. The conditions must be such that payment of the penalty would impose an undue financial burden upon the producer.

(b) A grower who applies for an exemption from the penalty under this section must use a form prescribed by the commissioner. Forms may be obtained by contacting the Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, or call (512) 463-7476. A citrus producer must file a separate application with the Department for each year for which an exemption is claimed.

(c) A request for exemption from the penalty will be considered only upon submission of a completed application form and the following documentation:

(1) an income tax statement showing taxable net income for the previous year; and

(2) an assignment of deficiency payments for citrus or any other crop to cover the amount due for assessments and assessment penalties and a general crop lien for all crops and products of such crops if deficiency payments are insufficient; or

(3) a financial statement from a bank or other lending institution financing the farming operation indicating inability to pay.

(d) Additional information may be submitted by the citrus producer for consideration by the Department.

(e) The Department shall promptly notify the applicant of its determination regarding the applicant's request for exemption by mail at the address provided by the applicant in the application for exemption.

(f) If the request for exemption from assessment penalties under this section is denied, assessments and penalties for the year for which the application is made are due on the later of:

(1) the date on which they would be due in the absence of an application for exemption; or

(2) 30 days after the date the applicant receives notice of the denial.

(g) If warranted, the Department may grant a full or partial exemption.

§27.306. Criteria for Exemption from Penalty for Failure to Pay Assessment.

(a) The Department's determination regarding a request for exemption will be based upon whether the completed application and other satisfactory documentation establish that payment of the assessment penalty would impose an undue financial burden upon the producer.

(b) In addition to the general financial condition of the producer, factors which may be considered by the Department in determining whether the assessment penalty would impose an undue financial burden include:

(1) adverse health conditions supported by a physician;

(2) a natural or physical disaster resulting in at least 30% crop loss not covered by insurance;

(3) a biological disaster such as severe insect or disease infestation not controllable by currently available pesticides or pest management strategies;

(4) a financial disaster such as theft or fire; or

(5) any other extraordinary circumstances.

(c) Any factors which the citrus producer wishes the Department to consider must be supported by satisfactory documentation. The Department may request additional information or documentation as necessary prior to making a determination.

§27.307. Application for Payment Plan from Assessment Penalty.

A citrus producer who applies for an exemption from assessment penalties under §27.305 of this title (relating to Application for Exemption from Assessment Penalty), may apply with the Department, using a form prescribed by the Commissioner, for permission to establish a payment plan for the assessment penalty. Forms may be obtained by contacting the Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, or call (512) 463-7476. A separate application must be made for each year a payment plan is requested.

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SUBCHAPTER D. ASSESSMENTS, COMPLIANCE AND LIENS

4 TAC §§27.401 - 27.408

The proposal is made under §80.017, Texas Agriculture Code, which provides the Department with authority to adopt rules related to assessments, liens and compliance certificates.

Texas Agriculture Code Chapter 80 is affected by this proposal.

§27.401. Approval of Assessment Rates and Collection Dates.

(a) Each year, the Corporation shall recommend assessment rates, the date a notice of assessment will be sent, and assessment due dates for each active pest management zone to the Department for consideration by the Commissioner.

(b) The Commissioner will review these proposals and determine the assessment rates and due dates for each pest management zone.

§27.402. Notice of Assessment to Producer.

(a) The Corporation shall send notice of assessments to each citrus producer on record in each active pest management zone who has reported citrus acreage to the Corporation. Notice shall be sent at least 30 days before the due date for assessments in that pest management zone.

(b) If special circumstances prevent the Corporation from meeting this deadline, the Corporation must receive a written waiver from the Commissioner.

(c) The notice of assessment shall include the Corporation's field identification number if the acreage has not been certified with the USDA Farm Service Agency (FSA), counties in which farms are located and identification number (such as the last four digits of the citrus producer's social security number, or the entity's taxpayer identification number) and shall inform the producer of the following:

(1) the date the assessment is due;

(2) the full amount of their assessment;

(3) information relating to an early payment discount;

(4) information relating to payment after the due date; and

(5) that an automatic lien will attach to the citrus grown on the acreage which is the subject of the assessment and perfect 60 days after the date of the notice of assessment unless the assessment is paid by that date, or written arrangements are made with the Corporation by that date to pay the assessments.

§27.403. Payment of Assessments, Incentives for Early Payment; Penalties for Late Payment.

(a) All assessments are due in full, postmarked to the Corporation on or before the due date set by the Commissioner each year.

(b) Any producer who pays the full amount of the assessment 15 or more days before the due date will be entitled to a reduction in the total amount of their assessment of not less than 2.0%.

(c) Any producer who has not paid the amount of the assessment by the due date will be charged a late fee not to exceed 1.5% per month of the total amount due to the Corporation.

(d) Assessments not paid 30 days or more after the due date may be referred to the Department for assessment of administrative penalties in accordance with Chapter 80 of the Code, and §27.303 of this title (relating to Penalties for Non-Payment of Assessment and Failure to Timely Report Acreage).

§27.404. Compliance Certificates.

(a) When a producer has paid all assessments for a farm or for all farms for which an assessment is due from the producer in full for the current crop year, the Corporation shall issue a compliance certificate to that producer for that farm and/or for all farms on which an assessment is due from that producer and has been paid in full.

(b) The compliance certificate shall include the following information:

(1) The name of the producer;

(2) The producer's identification number. This shall be either the last four digits of the citrus producer's social security number, or the entity's tax identification number.

(c) A compliance certificate shall be issued and mailed by the Corporation within 30 business days of the date the full amount of assessment is received by the Corporation.

(d) In addition to the document described in subsection (b) of this section, the following shall also serve the same purpose as a compliance certificate and shall be accepted by first buyers of citrus as proof of payment of an assessment, in the same manner as a compliance certificate:

(1) a receipt issued by the Corporation evidencing payment of the assessment on the acreage on which the citrus was grown as long as the receipt contains the same information required to be included on the compliance certificate; or

(2) an electronic copy of the compliance records of the Corporation.

§27.405. Attachment of Lien on Harvested Citrus.

(a) An assessment lien established under §80.017 of the Code attaches and is perfected 60 days after the date the Corporation mails notice of an assessment due and owing by a citrus producer certifying or reporting citrus production within an active pest management zone.

(b) The assessment lien attaches to citrus produced and harvested from acreage subject to the assessment that assessment year for the amount of the assessment which is "due and unpaid," as defined by §27.101 of this title (relating to Definitions), for that assessment year.

(c) The assessment lien attaches only as to the first buyer of citrus and subsequent buyers take the citrus free of the assessment lien.

(d) A first buyer of citrus takes free of the assessment lien if the buyer receives a compliance certificate or other acceptable documentation as described in §27.404 of this title (relating to Compliance Certificates).

(e) A first buyer of citrus also takes free of the assessment lien if the buyer pays for the citrus with a check naming the Corporation as

a payee, or writes a separate check for the full amount of the unpaid assessment naming the Corporation as the sole payee.

§27.406. Notice to Buyers.

Notwithstanding any other provisions of this subchapter:

(1) Once a lien is perfected and attaches in accordance with §80.017 of the Code, the lien established will be solely against citrus producers and first buyers of citrus, as defined by §27.101 of this title (relating to Definitions), and will be subject to and preempted by the Food Security Act of 1985 (7 USCA §1631), and the lien notice provisions thereof to first buyers of citrus, to be given by the Corporation.

(2) The lien established by §80.017 is not effective or enforceable against a first buyer of citrus until the written notice described in paragraph (1) of this section is received by the buyer.

§27.407. Lien priority.

An assessment lien placed in accordance with this section is not a priority lien, and does not have superior status to prior liens on the harvested citrus to which the lien is attached under this subchapter and §80.017 of the Code.

§27.408. Release of Lien.

The Corporation will issue a release of lien to the producer:

(1) once the assessment has been paid in full or adequate documentation has been provided to establish that a prior lienholder is entitled to all or a portion of proceeds of the sale of citrus that would be paid towards the assessment; and

(2) the producer has executed an affidavit verifying that no other lienholders are entitled to the proceeds of the citrus, which is subject to the assessment lien.

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SUBCHAPTER E. ESTABLISHMENT OF RULES, PROCEDURES, AND METHODS OF TREATMENT

4 TAC §§27.501 - 27.503

The proposal is made under §80.022, Texas Agriculture Code, which provides that the Department shall adopt rules to protect individuals, livestock, wildlife, and honeybee colonies on any premises in a pest management zone on which citrus plants are being grown that have been or are being treated to control or suppress pests.

Texas Agriculture Code Chapter 80 is affected by this proposal.

§27.501. Protection of Individuals, Livestock Wildlife and Honeybee Colonies.

(a) Any applicator or applicators retained by the Corporation to apply or cause to be applied pesticides for the purpose of suppression of the invasive citrus pests and diseases in an established pest management zone will make such applications in accordance with the requirements of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), the Texas pesticide laws and regulations, the pesticide label requirements of the product being used, the federal guidelines and any other special provision provided for in this section.

(b) The Corporation shall establish procedures for each pest management zone that are consistent with specific parts of the Texas pesticide regulations relating to prior notification and reentry into sprayed groves and found at Chapter 7, Subchapter D of this title (relating to Use and Application), and §8.1 of this title (relating to General Provisions) to ensure compliance with requirements regarding prior notification and reentry.

(c) The Corporation shall establish any zone-specific rules needed in addition to the requirements of subsections (a) and (b) of this section after analyzing each pest management zone for specially identified risks to humans, livestock, wildlife, honeybee colonies, or the environment. Such analysis will allow for specific rules to be written by the Corporation for each pest management zone with special concerns.

(d) Beekeepers must file the location of their hives and their address and phone number with the Chief Apiary Inspector, Apiary Inspection Service, Entomology Department, Texas A&M University, College Station, Texas 77843-2475, so that a list of beekeepers may be prepared for each county and furnished to the Corporation. In lieu of filing the location of hives and names and addresses with the chief apiary inspector, any beekeeper may file such information with the Texas A&M AgriLife Extension agent for the county in which hives are located. The Corporation shall notify or cause to be notified beekeepers located adjacent to any fields being sprayed prior to the application at the earliest time possible to allow the beekeeper to restrict the bees leaving the hive or to move the hives until danger to the bees has diminished. In addition, the Corporation will make available the pest management zone plans to any beekeeper upon request.

§27.502. Guidelines for Establishment of Corporation Rules, Procedures and Methods of Treatment.

(a) The Corporation shall establish procedures for determining when pest population levels have reached economic significance. The Corporation will estimate pest populations using generally accepted entomological methods, including, but not limited to, pheromone traps, visual inspection and, when necessary, estimate nymph and egg distribution by examining the citrus flush; and establish thresholds to determine when treatments are necessary. This will be done for each pest management zone and will encompass both the initial infestation phase as well as post-treatment. The Corporation shall establish criteria to declare when suppression is maximized.

(b) The Corporation shall establish a treatment regimen that seeks to provide the least possible risk to human health and the environment. The treatment regimen must consider all cultural controls; and, when the treatment regime must consider the use of pesticides, such pesticides must be considered on the basis of low toxicity and the least potential for environmental hazards. To achieve these objectives, the treatment regimen shall require, include, or incorporate the following:

(1) Provisions mandating maximum compliance with pest control requirements, and considering other appropriate cultural controls;

(2) Development of emergency response plans to minimize the health and environmental threat posed by accidental pesticide contamination;

(3) Selection of pesticides and other cultural controls or other methods based on the severity of pest infestation, location of pest management zones, climatic conditions, and other factors that may contribute to the efficacy of the treatment;

(4) Specification of the duration, application rate and frequency, type of application, and total amount of the active ingredient used, taking into consideration cost per acre;

(5) Evaluation and selection of pesticides considering their acute and chronic toxicity, reproductive and developmental effects, acute and delayed neurotoxicological potential, and carcinogenic and other possible toxicological endpoints;

(6) Consideration of possible risks to workers, mixers, loaders, and applicators to ensure that occupational exposure (via all routes) to the pesticides does not cause adverse health effects;

(7) Assurance that adequate safety and protection are provided to workers consistent with state and federal worker protection standards by adhering to the precautionary statements and the reentry intervals, personal protective equipment, and other requirements of law, and where state and federal standards differ, by adhering to the more stringent requirement;

(8) Methods for informing the public of possible health risks that could result from exposure to the pesticides used;

(9) Working in cooperation with the United States Fish and Wildlife Service, the Texas Parks and Wildlife Department, and the Department, and providing consideration of the impact of pesticide use on endangered, threatened, and non-target organisms (plants, aquatic, and wildlife) and their habitats and assurance that precautionary and remedial measures are considered to mitigate the exposure; and

(10) Cooperation with all agencies concerned including the USDA, United States Environmental Protection Agency, the Texas Parks and Wildlife Department, the Department, and the Texas Natural Resources Conservation Commission, to furnish collected data and assist in further study of the fate, mobility, and persistence of pesticides and their metabolites in soil, water, and air, and assistance in establishing the strategies for their safe use and disposal.

(c) The Corporation shall develop a long-term control plan that will describe the methods to be used in each pest management zone for the purpose of suppression of the pests and diseases. The plan must specify the procedures that will be used to minimize the effect of the use of pesticides in long-term control plans. In developing the procedures to be used for minimizing the effects of the use of pesticides, the plan must consider the potential impact of each pesticide used in the suppression program as conducted by the Corporation on the following parameters:

(1) Human health and safety;

(2) Soils;

(3) Vegetation;

(4) Water quality of both surface and groundwater;

(5) Air quality;

(6) Non-target wildlife, domestic animals, and aquatic and insect species; and

(7) Other methods of control to be employed or considered for employment.

(d) The Corporation shall consider the acute and chronic toxicity of the particular pesticides used in the suppression program. In addition to the guidelines set forth in subsection (b)(5) of this section, the following parameters shall be considered by the Corporation:

(1) Human exposure and risk analysis to:

(A) The public; and

(B) Workers;

(2) Non-target species analysis of:

(A) Terrestrial species; and

(B) Aquatic species; and

(3) Environmental fate.

(e) In consideration of the analysis required by subsection (d)(1) of this section, and notification requirements provided for in §27.501 of this title (relating to Protection of Individuals, Livestock, Wildlife, and Honeybee Colonies), the Corporation shall consider additional methods of notification, as appropriate for specific zones.

(f) Subject to procedures established by subsection (a) of this section, the Corporation shall only treat or cause to be treated citrus trees which meet or exceed the approved treatment thresholds, and shall only treat with the appropriate amount of approved pesticides.

(g) The Corporation shall establish methods for verifying pesticide use reduction resulting from the pest and disease suppression programs as conducted by the Corporation. The Corporation shall maintain an annual record of total amount of each pesticide used in the suppression program in each pest management zone, shall conduct an evaluation at the end of each year of pesticide use in the pest and disease suppression program, and maintain the most recent data, when available. For other insecticides used, the Corporation shall develop methods to assess insecticide use for other citrus pests and diseases.

§27.503. Authorization for Destruction.

Upon referral by the Corporation, subject to §80.021 of the Code, the Department may authorize the destruction or treatment, and establish procedures for the purchase and destruction, of citrus plants and hosts in pest management zones if the Department determines the action is necessary to carry out the purpose of Chapter 80. The Corporation must demonstrate that a public nuisance exists to establish that the action is warranted, including non-compliance with suppression program requirements.

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SUBCHAPTER F. BIO-INTENSIVE CONTROLS IN ACTIVE PEST MANAGEMENT ZONES

4 TAC §§27.601 - 27.605

The proposal is made under §80.031 of the Texas Agriculture Code, which provides that the Department shall adopt rules to allow a citrus producer in a suppression program to use biological, botanical, or other nonsynthetic pest control methods.

Texas Agriculture Code Chapter 80 is affected by this proposal.

§27.601. Request for Approval to Use Bio-Intensive Controls Methods.

(a) Any citrus producer who wishes to integrate a Corporation-approved bio-intensive control method in an active pest management zone shall request approval in writing and must agree to follow the bio-intensive control regime provided by the biological control scientific community from the Corporation at least 90 days prior to release of bio-intensive controls.

(b) The request shall be considered by the Corporation and shall be granted or denied in writing at least 30 days prior to planned release and/or application of bio-intensive controls, and if approved, certification issued designating the time period for which the approval is valid.

(c) In the request for use of bio-intensive controls, the producer must state:

(1) the pest management approach for the previous year;

(2) the specific locations and acreage of the citrus groves;

(3) the alternative control(s) to be used and its source and availability;

(4) the expected dates of release;

(5) the duration and timing expected in using the control method(s);

(6) the plan for coordinating the monitoring methods of target pest between the Corporation and the producer;

(7) the producer's name, address and phone number;

(8) the expected cost of use of bio-intensive control; and

(9) other relevant information to be considered by the Corporation in determining the request for the use of alternative controls.

(d) In making its decision to grant approval for bio-intensive control methods in an active suppression program, the Corporation shall consider:

(1) recommendations from the science advisory panel;

(2) whether the producer has the fiscal means to pay for the alternative control method and pay any assessment;

(3) the overall progress of the suppression program in the area and the location of the citrus on which bio-intensive methods are proposed to be used;

(4) how the use of alternative methods would impact citrus in the pest management zone in question; and

(5) the recommendation from the Corporation's Technical Advisory Committee.

(e) If an application is approved by the Corporation in accordance with subsection (b) of this section, the producer shall document release and/or application dates and outcomes, and make the records available to the Corporation at a pre-determined time, and stay in weekly contact with the Corporation's operation manager for the area for updates on pest numbers evaluated and area infestation levels.

(f) If the Corporation disapproves the request of an application in accordance with subsection (b) of this section, the producer may appeal the decision to the Department in accordance with the administrative review process set forth in §27.106 of this title (relating to Administrative Review). This process must be completed prior to implementation.

§27.602. Treatment of Groves Approved for Use of Alternative Control Methods.

The Corporation shall not treat with its regular regimen of chemical applications groves for which a producer has been approved to use bio-intensive control and is in compliance with Corporation best management practices.

§27.603. Withdrawal of Approval to Use Bio-Control Methods.

(a) Groves meeting Corporation pest thresholds, and approved for bio-intensive control methods, must be treated within 48 hours of the Corporation's notification to the producer or designee, or the Corporation will withdraw approval in writing.

(b) If pest numbers and/or infestation levels in a grove monitored by the Corporation in the grove(s) approved for bio-intensive control methods exceed those in a majority of groves within the Corporation's work unit by 25% for any period of time, the Corporation shall notify the producer of this event.

(c) If, after discussion between the producer and the Corporation, no other alternative is available, the producer's approval to use a bio-intensive control method shall be withdrawn by the Corporation and notice of withdrawal provided to the producer in writing.

(d) A producer may appeal the withdrawal of the certification to the Department within 5 days of receipt of the notice of withdrawal. The producer shall provide a notice of the appeal to the Corporation. The Corporation shall not treat the producer's field while TDA reviews the appeal. In making its decision on the appeal, the Department shall consider the impact the decision will have on the overall success of the suppression program in the zone.

§27.604. Payment of Costs of Bio-Control.

Under all circumstances, any citrus producer who uses alternative methods for treating pests or diseases shall pay any additional costs of bio-intensive controls in addition to any assessment required to be paid by citrus producers in the pest management zone in accordance with Chapter 80 of the Code.

§27.605. Annual Approval.

A producer must apply annually for approval of use of bio-control methods.

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

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Texas Department of Agriculture

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



SUBCHAPTER G. ORGANIC CITRUS RULES

4 TAC §§27.701 - 27.707

The proposal is made under §80.026, Texas Agriculture Code, which provides that the Department shall adopt rules related to organic citrus producers and organic certification standards.

Texas Agriculture Code Chapter 80 is affected by this proposal.

§27.701. Purpose and Authority.

Section 80.126 of the Code provides that the Commissioner shall adopt rules and procedures to protect the eligibility of certified organic and transitional citrus production in active pest management zones and ensure that organic and transitional certification by the Commissioner continue to meet national certification standards in order for organic citrus to maintain marketability, while ensuring the ultimate success of the pest and disease suppression program in Texas. Section 80.026 further provides that rules adopted under that section may provide indemnity for the organic citrus producers for reasonable losses that result from a prohibition of production of organic citrus. The Corporation board may not treat or require treatment of organic citrus with chemicals that are not allowed for use on certified organic citrus except as provided in Chapter 18 of this title (relating to Organic Standards and Certification).

§27.702. Planting of Certified Organic or Transitional Citrus in Active Pest Management Zones.

The decision on whether to plant certified organic or transitional citrus in any grove located in an active pest management zone will be made solely by the producer producing the crop, subject to any designations of prohibited growing areas under the Code, §80.026, and rules adopted thereunder. Neither the Corporation nor the Department will urge or persuade, in any way, a citrus producer to plant or not to plant certified organic or transitional citrus. This provision shall not affect the rights of the parties to negotiate in good faith pursuant to §27.705 of this title (relating to Eligibility for Indemnification).

§27.703. Protection of Organic Certifications.

(a) The Corporation will take steps reasonably necessary to protect the certification of organic crops during the course of its normal suppression activities.

(b) In the event the Corporation or an employee or independent contractor of the Corporation inadvertently treats a certified organic or transitional grove or portion of a grove, either directly or through drift, with prohibited materials, other than an application allowed under emergency pest or disease treatment program provisions of Chapter 18 of this title (relating to Organic Standards and Certification), the Corporation will, to the extent appropriate, assist the citrus producer in obtaining just and reasonable compensation.

(c) For purposes of this section, a determination of whether or not a direct treatment or drift occurred will be made by the Department in accordance with established procedures.

(d) In the event of a confirmed case of direct treatment or drift of chemical applied for or by the Corporation, and where appropriate, the Department will investigate and seek such penalties as warranted under Chapter 76 of the Code, and Chapter 7 of this title (relating to Pesticides).

§27.704. Communication with Organic Citrus Producers; Notification of Organic Production.

(a) All organic citrus (transitional, certified or decertified) must be registered with the Corporation. Organic citrus producers must include:

- (1) Producer's name;
- (2) Organic certifier's name, address, phone number;

- (3) Legal description of the property;
- (4) Physical location of the property; and
- (5) Total acreage.

(b) In the event of a change in the certifier, citrus producer must notify the Corporation within thirty days.

(c) All notifications required within the statute will apply to organic producers.

(d) For all new orchards added, the citrus producer must register the citrus and meet all notification requirements.

(e) The Corporation will communicate with all citrus producers of certified organic or transitional groves in active pest management zones to discuss suppression activities in and around the production of such crops and to plan measures to minimize problems such as drift.

§27.705. Eligibility for Indemnification.

(a) Certified organic and/or transitional citrus producers in active pest management zones may negotiate and enter into voluntary indemnification agreements with the Corporation provided that those agreements are negotiated and made in good faith by both parties and are approved by the Commissioner.

(b) Until each respective zone is declared eradicated by the Commissioner, certified organic and/or transitional citrus producers in pest management zones that are active at the time this rule becomes effective will be eligible for compensation under the following conditions. The citrus producer must have planted certified organic or transitional citrus during or prior to the effective date.

(c) Certified organic and/or transitional citrus producers in pest management zones which become active after the effective date of this subchapter will be eligible for compensation under the following conditions. The citrus producer must have an application for transitional or organic citrus approved by either the Department's Organic Certification Program or a third-party certifier at least one year before the date a referendum is held establishing a suppression program and assessment and approving a budget for that pest management zone.

§27.706. Calculation of Indemnity or Compensation.

(a) Definitions.

(1) Eligible acreage--The acreage, planted to certified organic or transitional citrus, determined as provided in §27.705 of this title (relating to Eligibility for Indemnification), and identified for that grove as described in this paragraph. Organic or transitional citrus must be planted on this acreage by the organic certification date submitted to the Corporation.

(2) Yield--The yield per acre will be determined by using the Actual Production History per acre planted to citrus for that farm, or if registered for crop insurance verified by the Risk Management Agency.

(3) Conventional Price--The conventional citrus price will be determined by the USDA marketing order.

(b) When a citrus producer is entitled to indemnification as a result of crop destruction, the Corporation will indemnify the citrus producer in accordance with the following formula: A (Organic Price) - B (Conventional Price) = C (Compensation)

(c) The Commissioner will resolve any dispute between the citrus producer and the Corporation regarding the amount of indemnification.

§27.707. Payment of Assessment for Organic Citrus.

(a) Organic citrus producers who plant certified organic or transitional citrus will be required to pay an assessment in accordance with Chapter 80 of the Code, and comply with all rules adopted thereunder. The assessment will be in the amount set for the entire pest management zone and will be billed in the same manner as all citrus grown in the pest management zone.

(b) Agreements negotiated under §27.705 of this title (relating to Eligibility for Indemnification) may include provisions for payment of an assessment or reduction of payment to an organic producer in the amount of an assessment for that acreage.

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



TITLE 10. COMMUNITY DEVELOPMENT
PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
CHAPTER 20. SINGLE FAMILY PROGRAMS
UMBRELLA RULE

10 TAC §§20.1 - 20.16

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Housing and Community Affairs or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of 10 TAC Chapter 20, Single Family Umbrella Rule, §§20.1 - 20.16, concerning the Department's HOME Investment Partnerships Program ("HOME"), Housing Trust Fund ("HTF"), Bond/First Time Homebuyer ("FTHB"), Taxable Mortgage Program ("TMP"), Neighborhood Stabilization Program ("NSP") and the Office of Colonia Initiatives ("OCI"). The purpose of the proposed repeal is driven by stakeholder input and the need to codify current Department monitoring and compliance processes in current rule.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the repeal will be in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the repeal will be in effect, the public benefit anticipated as a result of the repeal will be to avoid redundancy in and clarify Department rules. There will not

be any economic cost to any individuals required to comply with the repeal.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Marni Holloway, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or by fax to (512) 475-1672. **ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 19, 2015.**

STATUTORY AUTHORITY. The repeal is proposed pursuant to Texas Government Code, §2306.053(b)(4), which authorizes the Department to adopt rules.

The proposed repeal affects no other code, article, or statute.

§20.1. *Purpose.*

§20.2. *Applicability.*

§20.3. *Definitions.*

§20.4. *Eligible Single Family Activities.*

§20.5. *Funding Notices.*

§20.6. *Applicant Eligibility.*

§20.7. *Household Eligibility Requirements.*

§20.8. *Single Family Housing Unit Eligibility Requirements.*

§20.9. *General Administration and Program Requirements.*

§20.10. *Inspection Requirements for Construction Activities.*

§20.11. *Survey Requirements for Acquisition Activities.*

§20.12. *Insurance Requirements for Acquisition Activities.*

§20.13. *Loan, Lien and Mortgage Requirements for Acquisition Activities Only.*

§20.14. *Amendments to Agreements and Contracts and Modification to Mortgage Loan Documents.*

§20.15. *Compliance and Monitoring.*

§20.16. *Waivers and Appeals.*

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

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TRD-201503596

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

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For further information, please call: (512) 463-8921



10 TAC §§20.1 - 20.16

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 20, Single Family Umbrella Rule, §§20.1 - 20.16, concerning the Department's HOME Investment Partnerships Program ("HOME"), Housing Trust Fund ("HTF"), Bond/First Time Homebuyer ("FTHB"), Taxable Mortgage Program ("TMP"), Neighborhood Stabilization

Program ("NSP") and the Office of Colonia Initiatives ("OCI"). The purpose of the proposed new Chapter 20 is driven by stakeholder input and the need to codify current Department monitoring and compliance processes in current rule.

FISCAL NOTE. Timothy K. Irvine, Executive Director, has determined that, for each year of the first five years the proposed new chapter will be in effect, enforcing or administering the proposed new chapter does not have any foreseeable additional costs or revenues for the state or local governments.

PUBLIC BENEFIT/COST NOTE. Mr. Irvine also has determined that, for each year of the first five years the new chapter is in effect, the public benefit anticipated as a result of the new chapter will be assurance of Subrecipient compliance with federal rules. There are no anticipated additional new economic costs to individuals required to comply with the chapter as a result of this action.

ADVERSE IMPACT ON SMALL OR MICRO-BUSINESSES. The Department has determined that there will be no additional economic effect on small or micro-businesses.

REQUEST FOR PUBLIC COMMENT. Written comments may be submitted to the Texas Department of Housing and Community Affairs, Marni Holloway, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941 or by fax to (512) 475-1672. **ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. OCTOBER 19, 2015.** A black line version with all changes will be available on the Department's website at <http://www.tdhca.state.tx.us> during the public comment period.

STATUTORY AUTHORITY. The new chapter is proposed pursuant to Texas Government Code, §2306.053(b)(4), which authorizes the Department to adopt rules.

The proposed new chapter affects no other code, article, or statute.

§20.1. *Purpose.*

This Chapter sets forth the common elements of the Texas Department of Housing and Community Affairs' (the "Department") single family Programs, which includes the Department's HOME Investment Partnerships Program (HOME), Texas Housing Trust Fund (HTF), Bond/First Time Homebuyer (FTHB), Taxable Mortgage Program (TMP), Texas Neighborhood Stabilization (NSP), and Office of Colonia Initiatives (OCI) Programs and other single family Programs as developed by the Department. Single family Programs are designed to improve and provide affordable housing opportunities to low-income individuals and families in Texas and in accordance with Texas Government Code, Chapter 2306 and any applicable statutes and federal regulations.

§20.2. *Applicability.*

Unless otherwise noted, this Chapter only applies to single family Programs. Program Rules may impose additional requirements related to any provision of this Chapter. Where Program Rule is less restrictive than and not preempted by federal law of this Chapter, the provisions of this Chapter will control Program decisions. The Amy Young Barrier Removal Program is excluded from the Inspection and Construction Requirements identified in §20.10 and Survey Requirements in §20.11.

§20.3. *Definitions.*

The following words and terms, when used in this Chapter, shall have the following meanings unless the context or the NOFA indicates otherwise. Other definitions may be found in Texas Government Code, Chapter 2306 and Chapter 1 of this Title (relating to Administration), and the applicable federal regulations.

(1) Activity--A form of assistance provided to a Household or Administrator by which single family funds are used for acquisition, new construction, Reconstruction, Rehabilitation, refinance of an existing Mortgage, tenant-based rental assistance, or other single family Department approved expenditure for single family housing.

(2) Administrator--A unit of local government, Nonprofit Organization or other entity acting as a Community Housing Development Organization under 24 C.F.R. Part 92 ("CHDO"), Subrecipient, Developer or similar organization that has an executed written Agreement with the Department.

(3) Affirmative Marketing Plan--HUD Form 935.2B or equivalent plan created in accordance with HUD requirements to direct specific marketing and outreach to potential tenants and homebuyers who are considered "least likely" to know about or apply for housing based on an evaluation of market area data.

(4) Affiliate--If, directly or indirectly, either one Controls or has the power to Control the other or a third person Controls or has the power to Control both. The Department may determine Control to include, but not be limited to:

(A) interlocking management or ownership;

(B) identity of interests among family members;

(C) shared facilities and equipment;

(D) common use of employees; or

(E) a business entity which has been organized following the exclusion of a person which has the same or similar management, ownership, or principal employees as the excluded person.

(5) Affiliated Party--A person or entity with a contractual relationship with the Administrator through an Agreement with the Department.

(6) Agreement--Same as "Contract." May be referred to as a "Reservation System Agreement" or "Reservation Agreement" when providing access to the Department's Reservation System as defined in this Chapter.

(7) Amy Young Barrier Removal Program--Program designed to remove barriers and address immediate health and safety issues for Persons with Disabilities as outlined in the Program Rule or NOFA.

(8) Annual Income--The definition of Annual Income and the methods utilized to establish eligibility for housing or other types of assistance as defined under the Program Rule.

(9) Applicant--An individual, unit of local government, nonprofit corporation or other entity who has submitted to the Department an Application for Department funds or other assistance.

(10) Application--A request for a Contract award or a request to participate in a Reservation System submitted by an Applicant to the Department in a form prescribed by the Department, including any exhibits or other supporting material.

(11) Certificate of Occupancy--Document issued by a local authority to the owner of premises attesting that the structure has been built in accordance with building ordinances.

(12) Chapter 2306--Texas Government Code, Chapter 2306.

(13) Combined Loan to Value (CLTV)--The aggregate principal balance of all the Mortgage Loans, including Forgivable Loans, divided by the appraised value.

(14) Competitive Application Cycle--A defined period of time that Applications may be submitted according to a published Notice of Funding Availability (NOFA) that will include a submission deadline and selection or scoring criteria.

(15) Conforming Mortgage Loan--A first-lien Mortgage Loan that meets Federal Housing Administration (FHA), U.S. Department of Agriculture (USDA), U.S. Department of Veterans Affairs (VA), and Fannie Mae or Freddie Mac guidelines.

(16) Contract--The executed written Agreement between the Department and an Administrator performing an Activity related to a single family Program that describes performance requirements and responsibilities. May also be referred to as "Agreement."

(17) Contract Administrator (CA)--Same as "Administrator."

(18) Control--The possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of any person or entity, whether through the ownership or voting securities, by contract or otherwise, including ownership of more than 50 percent of the general partner interest in a limited partnership, or designation as a managing member of a limited liability company or managing general partner of a limited partnership or any similar member.

(19) Deobligate--The cancellation of or release of funds under a Contract or Agreement as a result of the termination of or reduction of funds under a Contract or Agreement.

(20) Department--The Texas Department of Housing and Community Affairs as defined in Chapter 2306 of the Texas Government Code.

(21) Developer--Any person, general partner, Affiliate, or Affiliated Party or affiliate of a person who owns or proposes a Development or expects to acquire control of a Development and is the person responsible for performing under the Contract with the Department.

(22) Domestic Farm Laborer--Individuals (and the family) who receive a substantial portion of their income from the production or handling of agricultural or aquacultural products.

(23) Draw--Funds requested by the Administrator, approved by the Department and subsequently disbursed to the Administrator.

(24) Forgivable Loan--Financial assistance in the form of money that, by Agreement, is not required to be repaid if the terms of the Mortgage Loan are met.

(25) HOME Program--HOME Investment Partnerships Program at 42 U.S.C. §§12701 - 12839.

(26) Household--One or more persons occupying a rental unit or owner-occupied Single Family Housing Unit. May also be referred to as a "family" or "beneficiary."

(27) Housing Trust Fund (HTF)--State-funded Programs authorized under Chapter 2306 of Texas Government Code.

(28) Housing Contract System (HCS)--The electronic information system that is part of the "central database" established by the Department to be used for tracking, funding, and reporting single family Contracts and Activities.

(29) HUD--The United States Department of Housing and Urban Development or its successor.

(30) Life of Loan Flood Certification--Tracks the flood zone of the Single Family Housing Unit for the life of the Mortgage Loan.

(31) Limited English Proficiency (LEP)--Requirements as issued by HUD and the Department of Justice to ensure meaningful and appropriate access to programs and activities by individuals who have a limited ability to read, write, speak or understand English.

(32) Loan Assumption--An agreement between the buyer and seller of Single Family Housing Unit that the buyer will make remaining payments and adhere to terms and conditions of an existing Mortgage Loan on the Single Family Housing Unit and Program requirements. A Mortgage Loan assumption requires Department approval.

(33) Loan to Value (LTV)--The amount of the Mortgage Loan(s) divided by the Single Family Housing Unit's appraised value, excluding Forgivable Loans.

(34) Manufactured Housing Unit (MHU)--A structure that meets the requirements of Texas Manufactured Housing Standards Act, Texas Occupations Code, Chapter 1201 or FHA guidelines as required by the Department.

(35) Mortgage--Has the same meaning as defined in §2306.004 of the Texas Government Code.

(36) Mortgage Loan--Has the same meaning as defined in §2306.004 of the Texas Government Code.

(37) Nonconforming Mortgage Loan--Any Mortgage Loan that does not meet the definition of a "Conforming Mortgage Loan" defined in this section.

(38) Neighborhood Stabilization Program (NSP)--A HUD-funded program authorized by HR3221, the "Housing and Economic Recovery Act of 2008" (HERA) and §1497 of the Wall Street Reform and Consumer Protection Act of 2010, as a supplemental allocation to the CDBG Program.

(39) NOFA--Notice of Funding Availability.

(40) Nonprofit Organization--An organization with a current tax exemption ruling from the Internal Revenue Service under the Internal Revenue Code, or classification as a subordinate of a nonprofit under the Internal Revenue Code.

(41) Office of Colonia Initiatives--A division of the Department authorized under Chapter 2306 of Texas Government Code which acts as a liaison to the colonias and manages some Programs in the colonias.

(42) Parity Lien--A lien position whereby two or more lenders share a security interest of equal priority in the collateral.

(43) Persons with Disabilities--Any person who has a physical or mental impairment that substantially limits one or more major life activities and has a record of such impairment; or is regarded as having such impairment.

(44) Principal Residence--The primary Single Family Housing Unit that a Household inhabits. May also be referred to as "primary residence."

(45) Program--The specific fund source from which single family funds are applied for and used.

(46) Program Income--Gross income received by the Administrator or Affiliate directly generated from the use of Single Family funds.

(47) Program Manual--A set of guidelines designed to be an implementation tool for the single family Programs which allows the Administrator to search for terms, statutes, regulations, forms and attachments. The Program Manual is developed by the Department and amended or supplemented from time-to-time.

(48) Program Rule--Chapters of this Title which pertain to specific single family Program requirements.

(49) Reconstruction--The demolition and rebuilding a Single Family Housing Unit on the same lot in substantially the same manner. The number of housing units may not be increased; however, the number of rooms may be increased or decreased dependent on the number of family members living in the housing unit at the time of Application.

(50) Rehabilitation--The improvement or modification of an existing residential unit through an alteration, addition, or enhancement.

(51) Reservation--Funds set-aside for a Household Applicant or single family Activity registered in the Department's registration system.

(52) Reservation System--The Department's computer registration system(s) that allows Administrators to reserve funds for a specific Household.

(53) Resolution--Formal action by a corporate board of directors or other corporate body authorizing a particular act, transaction, or appointment. Resolutions must be in writing and state the specific action that was approved and adopted, the date the action was approved and adopted, and the signature of person or persons authorized to sign resolutions. Resolutions must be approved and adopted in accordance with the corporate bylaws.

(54) Self-Help--Housing Programs that allow low, very low, and extremely low-income families to build or rehabilitate their Single Family Housing Units through their own labor or volunteers.

(55) Set-up--The creation of a new Activity in the Department database by an Administrator, which requires review and approval by the Department.

(56) Single Family Housing Unit--A home designed and built for one person or one Household for rental or owner-occupied. This includes the acquisition, construction, Reconstruction or Rehabilitation of an attached or detached unit. May be referred to as a single family "home," "housing," "property," "structure," or "unit."

(57) Soft Costs--Costs related to and identified with a specific Single Family Housing Unit other than construction costs. May also be referred to as "direct delivery" costs.

(58) Subgrantee--Same as "Administrator."

(59) Subrecipient--Same as "Administrator."

(60) TAC--Texas Administrative Code.

(61) TMCS--Texas Minimum Construction Standards as amended and described in the Miscellaneous Section of the *Texas Register*.

(62) TREC--Texas Real Estate Commission.

§20.4. Eligible Single Family Activities.

(a) Availability of funding for and specific Program requirements related to the Activities described in subsection (b)(1) - (7) of this section are defined in each Program's Rules.

(b) Activity Types for eligible single family housing Activities include the following, as allowed by the Program Rule or NOFA:

(1) rehabilitation, or new construction of Single Family Housing Units;

(2) reconstruction of an existing Single Family Housing Unit on the same site;

(3) replacement of existing owner-occupied housing with a new MHU;

(4) acquisition of Single Family Housing Units, including acquisition with Rehabilitation and accessibility modifications;

(5) refinance of an existing Mortgage;

(6) tenant-based rental assistance; and

(7) any other single family Activity as determined by the Department.

§20.5. Funding Notices.

(a) The Department will make funds available for eligible Administrators for single family activities through NOFAs, requests for qualifications (RFQs), request for proposals (RFPs) or other methods for the release of funding, describing the submission and eligibility guidelines.

(b) Funds may be allocated through Contract awards by the Department or by Department authority to submit Reservations.

(c) Funds may be subject to regional allocation in accordance with Chapter 2306.

(d) The Department will develop and publish Application materials for participation in the HCS and/or Reservation Systems.

(e) Eligible Applicants must comply with the provisions of the Application materials and NOFA and are responsible for the accuracy and timely completion and submission of all Applications and timely correction of all deficiencies.

§20.6. Applicant Eligibility.

(a) Eligible Applicants may include entities such as units of local governments, Nonprofit Organizations, or other entities as further provided in the Program Rule and/or NOFA.

(b) Applicants shall be in good standing with the Department, Texas Office of the Secretary of State, Texas Comptroller of Public Accounts and HUD, as applicable.

(c) Applicants shall comply with all applicable state and federal rules, statutes, or regulations including those requirements in Chapter 1 of this Title.

(d) Resolutions must be provided in accordance with the applicable Program Rule or NOFA.

(e) The violations described in paragraphs (1) - (5) of this subsection may cause an Applicant and any Applications they have submitted, to be ineligible:

(1) Applicant did not satisfy all eligibility requirements described in the Program Rule and NOFA to which they are responding;

(2) Applicant failed to make timely payment on fee commitments or on debts to the Department and for which the Department has initiated formal collection or enforcement actions;

(3) Applicant failed to comply with any other provisions of debt instruments held by the Department including, but not limited to, such provisions as timely payment of property taxes and proper placement and maintenance of insurance;

(4) Applicant is debarred by HUD or the Department; or

(5) current or previous noncompliance. Each Applicant will be reviewed for compliance history by the Department. Applications submitted by Applicants found to be in noncompliance or otherwise violating the Rules of the Department may be terminated and/or not recommended for funding.

(f) The Department reserves the right to adjust the amount awarded based on the Application's feasibility, underwriting analysis, the availability of funds, or other similar factors as deemed appropriate by the Department.

(g) The Department may decline to fund any Application if the proposed Activities do not, in the Department's sole determination, represent a prudent use of the Department's funds. The Department is not obligated to proceed with any action pertaining to any Applications which are received, and may decide it is in the Department's best interest to refrain from pursuing any selection process. The Department reserves the right to negotiate individual elements of any Application.

§20.7. Household Eligibility Requirements.

(a) The method used to determine Annual Income will be provided in the Program Rule or NOFA.

(b) Households must occupy the Single Family Housing Unit as their Principal Residence for a period of time as established by the Program Rule or NOFA.

§20.8. Single Family Housing Unit Eligibility Requirements.

(a) A Single Family Housing Unit to be acquired or constructed with Department funds must be located in the State of Texas, and must have good and marketable title at the closing of any Mortgage Loan.

(b) Real property taxes assessed on an owner-occupied Single Family Housing Unit must be current (including prior years) or the Household must be satisfactorily participating in an approved payment plan with the taxing authority, must qualify for an approved tax deferral plan or has received a valid exemption from real property taxes.

(c) An owner-occupied Single Family Housing Unit must not be encumbered with any liens which impair the good and marketable title. The Department will require the owner to be current on any existing Mortgage Loans or home equity loans prior to assistance.

§20.9. General Administration and Program Requirements.

(a) Costs incurred by Administrator for travel, including costs of lodging, other subsistence, and incidental expenses, shall be considered reasonable and allowable only to the extent such costs do not exceed charges normally allowed by the U.S. General Services Administration (GSA) per diem rates at: <http://www.gsa.gov/portal/category/21287>.

(b) Administrators must comply with all applicable local, state, and federal laws, regulations, and ordinances for procurement with single family Program funds.

(c) In addition to Chapter 1, Subchapter B of this Title, Administrators receiving Federal funds must comply with all applicable state and federal rules, statutes, or regulations, involving accessibility including the Fair Housing Act, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act, and the Architectural Barriers Act as well as state and local building codes that contain accessibility requirements; where local, state, or federal rules are more stringent, the most stringent rules shall apply.

(d) Administrators receiving Federal funds must also comply with HUD's Affirmative Fair Housing Marketing and Limited English Proficiency Requirements and the Age Discrimination Act of 1975. Administrators receiving Federal funds must also have an Affirmative Fair Housing Marketing Plan.

§20.10. Inspection Requirements for Construction Activities.

(a) New construction requirements.

(1) A Certificate of Occupancy shall be issued prior to final payment for construction, as applicable. In instances where the local jurisdiction does not issue a Certificate of Occupancy for the Activity undertaken, the Administrator must provide to the Department documentation evidencing that the Single Family Housing Unit has passed all required building codes.

(2) Applicant must demonstrate compliance with Texas Government Code §2306.514, "Construction Requirements for Single Family Affordable Housing," and other Program Rules.

(b) Reconstruction requirements.

(1) The initial inspection must identify all substandard conditions listed in TMCS along with any other health or safety concerns.

(A) The initial inspection may be waived if the local building official certifies that the extent of the subject property's substandard conditions is beyond repair, or the property has been condemned.

(B) A copy of the initial inspection report must be provided to the Department and to the Household.

(C) All substandard conditions identified in the initial inspection report shall be addressed in the work write-up in adequate detail to document the need for Reconstruction.

(2) A Certificate of Occupancy shall be issued prior to final payment for Reconstruction, as applicable. In instances where the local jurisdiction does not issue a Certificate of Occupancy for the Activity undertaken, the Administrator must obtain and provide to the Department documentation evidencing that the Single Family Housing Unit has passed all required building codes.

(3) Applicant must demonstrate compliance with Texas Government Code §2306.514, "Construction Requirements for Single Family Affordable Housing," and other Program Rules.

(c) Rehabilitation requirements.

(1) The initial inspection must identify all substandard conditions listed in TMCS along with any other health and safety concerns.

(A) A copy of the initial inspection report must be provided to the Department and to the Household.

(B) All substandard conditions identified in the initial inspection report shall be addressed in the work write-up, scope of work or specifications in adequate detail to ensure that all substandard conditions are properly corrected.

(2) Final inspections must document that all substandard and health and safety issues identified in the initial inspection have been corrected.

(3) Administrators shall meet the applicable requirements of the TMCS. TMCS requirements may be waived only through the process provided in §20.16 of this Chapter.

(d) Requirements for all construction activities.

(1) Interim inspections of construction progress may be required to document a draw request, in the Program Rule, Program Manual, or NOFA.

(2) Final inspections are required for all single family new construction, Reconstruction and Rehabilitation Activities. The inspection must document that Activity is complete; meets all applicable

codes, requirements, zoning ordinances; and has no observed deficiencies related to health and safety standards.

(A) Third party certification of compliance with Chapter 21, Minimum Energy Efficiency Requirements for Single Family Construction Activities, of this Title is required as applicable.

(B) A copy of the final inspection report must be provided to the Department and to the Household.

(C) The Certificate of Occupancy may serve as the final inspection if available and acceptable in the Program Rule, Program Manual, or NOFA.

(D) All deficiencies noted on the inspector's report must be corrected prior to the final draw.

(3) Correction of cosmetic issues, such as paint, wall texture, etc., will not be required to be corrected if acceptable to the Program as outlined in the Program Rule, Program Manual, or NOFA; or if utilizing a Self-Help construction Program.

(e) Inspector Requirements.

(1) Inspectors hired to verify compliance with this Chapter must meet Program requirements as outlined in the Program Rule, Program Manual, or NOFA, as applicable.

(2) Within city limits and extraterritorial jurisdictions, municipal code inspectors shall conduct all inspections for local code requirements as applicable.

(3) All non-municipal code inspectors shall conduct inspections using applicable construction standards prescribed by the Department.

(4) All non-municipal code inspectors shall conduct inspections using approved and prescribed inspections forms and checklists, as applicable.

(f) The Department reserves the right to reject any inspection report if, in its sole determination, the report does not accurately represent the property conditions or if the inspector does not meet Program requirements. All related construction costs in a rejected inspection report may be disallowed until the deficiencies are adequately cured.

(g) Single Family Housing Units participating in the Colonia Self-Help Center Program and receiving utility connections only are exempt from compliance with this Chapter.

§20.11. Survey Requirements for Acquisition Activities.

(a) A survey sufficient to induce a Title Company to issue a Title Insurance policy without the standard survey exception is required for single family acquisition where the Department is a lien holder and the Program funds are used for construction or purchase because:

(1) the Rehabilitation project is enlarging the footprint; or

(2) the project is Reconstruction or new construction or purchase of an existing home.

(b) If allowed by the Program Rules or NOFA, existing surveys for acquisition only activities may be used if the Owner certifies that no changes were made to the footprint of any building or structure, or to any improvement on the Single Family Housing Unit, and the Title Company accepts the certification and survey.

(c) The Department reserves the right to determine the survey requirements on a per project basis if additional survey requirements would, at the sole discretion of the Department, benefit the project.

§20.12. Insurance Requirements for Acquisition Activities.

(a) Title Insurance requirements. A Mortgagee's Title Insurance Policy is required for all non-conforming Department Mortgage Loans as required by the Program Rules or NOFA, exclusive of Mortgage Loans financed with mortgage revenue bonds or through the Taxable Mortgage Program. The title insurance must be written by a title insurer licensed or authorized to do business in the jurisdiction where the Single Family Housing Unit is located. The policy must be in the amount of the Mortgage Loan. The mortgagee named shall be: "Texas Department of Housing and Community Affairs."

(b) Title Reports.

(1) Title reports may be provided in lieu of title commitments only for grants when title insurance is not available. Title reports shall be required when the grant funds exceed \$20,000.

(2) The preliminary title report may not be older than allowed by the Program Rule or NOFA.

(3) Liens, or any other restriction or encumbrances that impair good and marketable title must be cleared on or before closing of the Department's transaction.

(c) Builder's Risk (non-reporting form only) is required where construction funds in excess of \$20,000.00 for a Single Family Housing Unit is being financed and/or advanced by the Department. At the end of the construction period, the binder must be endorsed to remove the "pending disbursements" clause.

(d) Hazard Insurance.

(1) The hazard insurance provisions are not applicable to HOME Program activities unless required in the Program Rule or NOFA.

(2) If Department funds are provided in the form of a Mortgage Loan, then:

(A) the Department requires property insurance for fire and extended coverage;

(B) Homeowner's policies or package policies that provide property and liability coverage are acceptable. All risk policies are acceptable;

(C) the amount of hazard insurance coverage at the time the Mortgage Loan is funded should be no less than 100 percent of the current insurable value of improvements; and

(D) the Department should be named as a loss payee and mortgagee on the hazard insurance policy.

(e) Flood insurance must be maintained for all structures located in special flood hazard areas as determined by the U.S. Federal Emergency Management Agency (FEMA).

(1) A Household may elect to obtain flood insurance even though flood insurance is not required. However, the Household may not be coerced or required to obtain flood insurance unless it is required in accordance with this section.

(2) Evidence of insurance, as required in this Chapter, must be obtained prior to Mortgage Loan funding. A one year insurance policy must be paid and up to two (2) months of reserves may be collected at the closing of the Mortgage Loan. The Department must be named as loss payee on the policy.

§20.13. Loan, Lien and Mortgage Requirements for Activities with Acquisition.

(a) The requirements in this section shall apply to Nonconforming Mortgage Loans for Activities with acquisition of real prop-

erty, unless otherwise provided in the Program Rule, NOFA or Program guidelines.

(b) The fee requirements described in paragraphs (1) - (3) of this subsection apply to Nonconforming Mortgage Loans:

(1) Allowable expenses are restricted to reasonable third party fees.

(2) Fees charged by third party Mortgage lenders are limited to the greater of 2 percent of the Mortgage Loan amount or \$3,500, including but not limited to origination, Application, and/or underwriting fees.

(3) Fees paid to other parties that are supported by an invoice and reflected on the HUD-1 will not be included in the limit.

(c) Maximum Debt Ratio. The total debt-to-income ratio may not exceed 45 percent. A borrower's spouse who does not apply for the Mortgage Loan will be required to execute the information disclosure form and the deed of trust as a "non-purchasing" spouse. The "non-purchasing" spouse will not be required to execute the note. For credit underwriting purposes all debts and obligations of both the borrower and the "non-purchasing" spouse will be considered in the borrower's total debt-to-income ratio.

(d) The Department reserves the right to deny assistance in the event that the senior lien conditions are not to the satisfaction of the Department, as outlined in the Program Rule or NOFA.

(e) Lien position requirements.

(1) A Mortgage Loan made by the Department shall be secured by a first (1st) lien on the real property if the Department's Mortgage Loan is the largest Mortgage Loan secured by the real property; or

(2) The Department may accept a Parity Lien position if the original principal amount of the leveraged Mortgage Loan is equal to or greater than the Department's Mortgage Loan; or

(3) The Department may accept a subordinate lien position if the original principal amount of the leveraged Mortgage Loan is at least \$1,000 or greater than the Department's Mortgage Loan. However liens related to other subsidized funds provided in the form of grants and non-amortizing Mortgage Loan, such as deferred payment or Forgivable Loans, must be subordinate to the Department's payable Mortgage Loan.

(4) A subordinate Mortgage Loan may be re-subordinated, at the discretion of the Department, and as provided in the Program Rules or NOFA.

(f) Escrow Accounts.

(1) An escrow account must be established if:

(A) the Department holds a first lien Mortgage Loan which is due and payable on a monthly basis to the Department; or

(B) the Department holds a subordinate Mortgage Loan and the first lien lender does not require an escrow account, the Department may require an escrow account to be established.

(2) If an escrow account held by the Department is required under one of the provisions described in this subsection, then the provisions described in subparagraphs (A) - (F) of this paragraph are applicable:

(A) The borrower must contribute monthly payments to cover the anticipated costs of real estate taxes, hazard and flood insurance premiums, and other related costs as applicable;

(B) Escrow reserves shall be calculated based on land and completed improvement values;

(C) The Department may require up to two (2) months of reserves for hazard and/or flood insurance and property taxes to be collected at the time of closing to establish the required Escrow account;

(D) In addition, the Department may also require that the property taxes be prorated at the time of closing and those funds be deposited with the Department;

(E) The borrower will be required to deposit monthly funds to an escrow account with the Mortgage Loan servicer in order to pay the taxes and insurance. This will ensure that funds are available to pay for the cost of real estate taxes, insurance premiums, and other assessments when they come due; and

(F) These funds are included in the borrower's monthly payment to the Department or to the servicer. The Department will establish and administer the escrow accounts in accordance with the Real Estate Settlement and Procedures Act of 1974 (RESPA) if applicable.

(g) Requirements for Administrators and individuals originating Nonconforming loans for the Department.

(1) Any Administrator or staff member of an Administrator that is not exempt must be properly licensed as a Residential Mortgage Loan Originator.

(A) The Department reserves the right to reject any loan application originated by an Administrator or individual that is not properly licensed.

(B) The Department will not reimburse any expenses related to a rejected loan application received from an Administrator or individual that is not properly licensed.

(2) Only Administrators approved by the Department may issue Loan Estimates for loans made by the Department.

(A) The Department reserves the right to reject any Loan Application and Loan Estimate submitted by an Administrator that has not received Department approval because the loan product as disclosed is not offered or the borrower does not qualify for that loan product.

(B) The Department will not reimburse any expenses related to a Loan Estimate or Application received from an Administrator that does not have Department approval.

(3) Only Administrators approved by the Department may issue Closing Disclosures for loans made by the Department.

(A) The Department reserves the right to reject any Closing Disclosure issued by an Administrator or Title Company without Department approval.

(B) The Department reserves the right to refuse to fund a loan with a Closing Disclosure that does not have Department approval.

§20.14. Amendments and Modifications to Written Agreements and Contracts.

(a) The Department, acting by and through its Executive Director or his/her designee, may authorize, execute, and deliver amendments to any written Agreement or Contract that is not a Household Commitment Contract, provided that the requirements of this section are met.

(1) Time extensions. The Executive Director or his/her designee may grant up to a cumulative twelve (12) months extension to

the end date of any Contract unless otherwise indicated in the Program Rules or NOFA. Any additional time extension granted by the Executive Director shall include a statement by the Executive Director identifying the unusual, non-foreseeable or extenuating circumstances justifying the extension. If more than a cumulative twelve (12) months of extension is requested and the Department determines there are no unusual, non-foreseeable, or extenuating circumstances, it will be presented to the Board for approval, approval with revisions, or denial of the requested extension.

(2) Award or Contract Reductions. The Department may decrease an award for any good cause including but not limited to the request of the Administrator, insufficient eligible costs to support the award, or failure to meet deadlines or benchmarks.

(3) Changes in Household. Reductions in Contractual deliverables and Households shall require an amendment to the Contract. Increases in Contractual deliverables and Households that do not shift funds, or cumulatively shift less than 10 percent of total award or Contract funds, shall be completed through an amendment to the Contract at the discretion of the Department.

(4) Increases in Award and Contract Amounts.

(A) For a specific single family Program's Contract, the Department can award a cumulative increase of funds up to the greater of 25 percent of the original award amount or \$50,000.

(B) Requests for increases in funding will be evaluated by the Department on a first-come, first-served basis to assess the capacity to manage additional funding, the demonstrated need for additional funding and the ability to expend the increase in funding within the Contract period.

(C) The requirements to approve an increase in funding shall include, at a minimum, Administrator's ability to continue to meet existing deadlines, benchmarks and reporting requirements.

(D) Funding may come from Program funds, Deobligated funds or Program income.

(E) Qualifying requests will be recommended to the Executive Director or his/her designee for approval.

(F) The Board must approve requests for increase in Program funds in excess of the cumulative 25 percent or \$50,000 threshold.

(5) The single family Program's Director may approve Contract budget modifications provided the guidelines described in paragraphs (1) - (4) of this subsection are met:

(A) funds must be available in a budget line item;

(B) the budget change(s) are less than 10 percent of the total Contract's budget;

(C) if units or activities are desired to be increased, but funds must be shifted from another budget line item in which units or activities from that budget line item have been completed, a Contract amendment will only be necessary if the cumulative budget changes exceed 10 percent of the Contract amount; and

(D) the cumulative total of all Contract's budget modifications cannot exceed 10 percent of the total Contract's budget amount.

(E) If these guidelines are not met, an amendment to the Contract will be required.

(b) The Department may terminate a Contract in whole or in part if the Administrator does not achieve performance benchmarks

as outlined in the Contract or NOFA or for any other reason in the Department's reasonable discretion.

(c) In all instances noted in this section, where an expected Mortgage Loan transaction is involved, Mortgage Loan documents will be modified accordingly at the expense of the Administrator/borrower.

§20.15. Compliance and Monitoring.

(a) The Department will perform monitoring of single family Program Contracts and Activities in order to ensure that applicable requirements of federal laws and regulations, and state laws and rules have been met, and to provide Administrators with clear communication regarding the condition and operation of their Contracts and Activities so they understand clearly, with a documented record, how they are performing in meeting their obligations.

(1) The physical condition of assisted properties and Administrator's documented compliance with contractual and program requirements may be subject to monitoring.

(2) The Department may contract with an independent third party to monitor an Activity for compliance with any conditions imposed by the Department in connection with the award of any Department funds, and appropriate state and federal laws.

(b) If an Administrator has Contracts for more than one single family Program, or other programs through the Department or the State, the Department may, at its discretion, coordinate monitoring of those programs with monitoring of single family Contracts under this chapter.

(c) In general, Administrators will be scheduled for monitoring based on federal or state monitoring requirements, or a risk assessment process including but not limited to: the number of Contracts administered by the Administrator, the amount of funds awarded and expended, the length of time since the last monitoring, findings identified during previous monitoring, issues identified through the submission or lack of submission of a single audit, complaints, and reports of fraud, waste and/or abuse. The risk assessment will also be used to determine which Administrators will have an onsite review and which may have a desk review.

(d) The Department will provide an Administrator with written notice of any upcoming onsite or desk monitoring review, and such notice will be given to the Administrator by email to the Administrator's chief executive officer at the email address most recently provided to the Department by the Administrator. In general, a thirty (30) day notice will be provided. However, if a credible complaint of fraud or other egregious noncompliance is received the Department reserves the right to conduct unannounced monitoring visits, or provide a shorter notice period. It is the responsibility of the Administrator to maintain current contact information with the Department for the organization, key staff members, and governing body.

(e) Upon request, Administrators must make available to the Department all books and records that the Department determines are reasonably relevant to the scope of the Department's review, along with access to assisted properties.

(f) Post Monitoring Procedures. After the review, a written monitoring report will be prepared for the Administrator describing the monitoring assessment and any corrective actions, if applicable. The monitoring report will be emailed to the Administrator. Issues of concern over which there is uncertainty or ambiguity may be discussed by the Department with the staff of cognizant agencies overseeing federal funding.

(g) Administrator Response. If there are any findings of non-compliance requiring corrective action, the Administrator will be pro-

vided a thirty (30) day corrective action period, which may be extended for good cause. In order to receive an extension, the Administrator must submit a written request to the Chief of Compliance within the corrective action period, stating the basis for good cause that the Administrator believes justifies the extension. In general, the Department will approve or deny the extension request within three (3) business days. Failure to timely respond to a corrective action notice and/or failure to correct all findings will be taken into consideration if the Administrator applies for additional funding and may result in suspension of the Contract, referral for administrative penalties, or other action under this Title.

(h) Monitoring Close Out. After the end of the corrective action period, a close out letter will be issued to the Administrator. If the Administrator supplies evidence establishing continual compliance that negates the finding of noncompliance, the issue of noncompliance will be rescinded. If the Administrator's response satisfies all findings and concerns noted in the monitoring letter, the issue of noncompliance will be noted as resolved. In some circumstances, the Administrator may be unable to secure documentation to resolve a finding. In those instances, if there are mitigating circumstances, the Department may note the finding is not resolved but may close the issue with no further action required. If the Administrator's response does not correct all findings noted, the close out letter will identify the documentation that must be submitted to correct the issue. Results of monitoring findings may be reported to the Executive Awards and Review Advisory Committee for consideration relating to previous participation.

(i) Options for Review. If, following the submission of corrective action documentation, Compliance staff continues to find the Administrator in noncompliance, the Administrator may request or initiate review of the matter using the following options, where applicable:

(1) If the issue is related to a program requirement or prohibition Administrators may contact an applicable federal program officer for guidance or request that the Department contact applicable federal program officer for guidance without identifying the Administrator.

(2) If the issue is related to application of a provision of the Contract or a requirement of the Texas Administrative Code, or the application of a provision of an OMB Circular, the Administrator may request review by the Department's Compliance Committee, as set out in paragraph (l) of this subsection.

(3) Administrators may request Alternative Dispute Resolution (ADR). An Administrator may send a proposal to the Department's Dispute Resolution Coordinator to initiate ADR pursuant to §1.17 of this title.

(j) If Administrators do not respond to a monitoring letter or fail to provide acceptable evidence of timely compliance after notification of an issue, the matter will be reported to the Department's Enforcement Committee for consideration of administrative penalties, full or partial cost reimbursement, or suspension.

(k) Administrators must provide timely response to corrective action requirements imposed by other agencies. Administrator records may be reviewed during the course of monitoring or audit of the Department by HUD, the Office of the Inspector General, the State Auditor's Office or others. If a finding or concern is identified during the course of a monitoring or audit by another agency, the Administrator is required to provide timely action and response within the conditions imposed by that agency's notice.

(l) Compliance Committee.

(1) The Compliance Committee is a committee of three (3) to five (5) persons appointed by the Executive Director. The Compliance Committee is established to provide independent review of certain compliance issues as provided by this section. Staff from the Legal and the Compliance Divisions will not be appointed to the committee, but may be available as a resource to the Committee.

(2) Informal discussion with Compliance staff. If the Administrator has questions or disagreements regarding any compliance issues, they should first try to resolve them by discussing them with the Compliance staff, including, as needed, the Chief of Compliance.

(3) Informal discussion with the Compliance Committee. An Administrator may request an informal meeting with the Compliance Committee if the informal discussion with the Compliance staff did not resolve the issue.

(4) Compliance Committee Process and Timeline:

(A) At any time, the Administrator may call or request an informal conference with the Compliance staff and/or the Chief of Compliance.

(B) If a call or an informal conference with the Compliance staff does not result in a resolution of the issue, the Administrator may, within thirty (30) days of the call or informal conference with Compliance staff, request a meeting with the Compliance Committee.

(C) If timely requested in accordance with this section, the Compliance Committee will hold an informal conference with the Administrator. An Administrator should not offer evidence, documentation, or information to the Compliance Committee that was not presented to Compliance staff during the informal staff conference. If additional information is offered, the Compliance Committee may disallow the information or refer the matter back to Compliance staff to allow review of the additional information prior to any consideration by the Compliance Committee.

(D) If a meeting with the Compliance Committee does not result in a resolution, matters related to a compliance requirement, other than those required by federal regulation, may be appealed in accordance with appeal rights described in Chapter 1 of this Title.

§20.16. Waivers and Appeals.

(a) Appeal of Department staff decisions or actions will follow requirements in Program Rules, NOFA, and Chapter 1 or Chapter 2 of this Title, as applicable.

(b) Waiver of Texas Minimum Construction Standards.

(1) Waiver may be requested if a legal or factual reason makes compliance with provisions of TMCS impossible.

(2) Waivers must be approved prior to the commencement of Rehabilitation work.

(3) Lack of adequate initial inspection is not a valid basis for a waiver.

(4) Waiver requests must be made in writing, specifically identify the grounds for a waiver, and include all necessary documentation to support the request.

(5) Each request will be reviewed by Department staff with sufficient knowledge of the construction process to render an opinion on the validity of the request. The staff opinion will be provided to the Executive Director or his/her designee, along with the original request and the supporting documents.

(6) On or before the fourteenth business day after receipt of the request by the Department, the Executive Director or his/her

designee will approve or disapprove the request, and provide written notice to the Administrator.

(7) Appeal of the Executive Director's decision will follow the Staff Appeal process provided in Chapter 1 of this Title.

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

Filed with the Office of the Secretary of State on September 4, 2015.

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Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

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For further information, please call: (512) 463-8921



TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 66. REGISTRATION OF PROPERTY TAX CONSULTANTS

16 TAC §66.80

The Texas Department of Licensing and Regulation (Department) proposes amendments to an existing rule at 16 Texas Administrative Code (TAC) Chapter 66, §66.80, regarding the Registration of Property Tax Consultants program.

House Bill 7 (H.B. 7), 84th Legislature, Regular Session (2015), repealed the stand alone registration fee increase of \$200 for property tax consultants, senior property tax consultants, and real estate property tax consultants.

The proposed amendment is necessary to implement the changes made by H.B. 7 to Texas Occupations Code, Chapter 1152.

The proposed amendments to §66.80 remove the \$200 original registration and renewal fee for property tax consultants, senior property tax consultants, and real estate property tax consultants.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed amendment is in effect there will be no direct cost to state or local government as a result of enforcing or administering the proposed amendment. The estimated loss in revenue to the state is a result of the statutory change to remove the once collected professional fee.

Mr. Kuntz also has determined that for each year of the first five-year period the proposed amendment is in effect, the public will benefit by paying a reduced fee that is less burdensome on the industry.

The anticipated economic effect on small and micro-businesses and to all other persons who are required to comply with the rules as amended will be the elimination of this professional fee as determined by statute. Therefore, there will be no adverse effect

on small or micro-businesses or to persons who are required to comply with the amendments as proposed.

Since the agency has determined that the proposed amendments will have no adverse economic effect on small or micro-businesses, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, under Texas Government Code §2006.002, is not required.

Comments on the proposal may be submitted by mail to Pauline Easley, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711; or by facsimile to (512) 475-3032, or electronically to erule.comments@tdlr.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, Chapters 51 and 1152, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 1152. No other statutes, articles, or codes are affected by the proposal.

§66.80. Fees.

(a) The non-refundable original application fee for a property tax consultant is \$25.

(b) The non-refundable original application fee for a senior property tax consultant is \$75.

(c) The refundable original registration fee for a property tax consultant is \$25. [~~\$225. This fee includes a \$200 professional fee, as assessed by Texas Occupations Code, §1152.053.~~]

(d) The refundable original registration fee for a senior property tax consultant is \$40. [~~\$240. This fee includes a \$200 professional fee, as assessed by Texas Occupations Code, §1152.053.~~]

(e) The fee for the timely renewal of a property tax consultant's, senior property tax consultant's and real estate property tax consultant's registration is \$75. [~~\$275. This fee includes a \$200 professional fee, as assessed by Texas Occupations Code, §1152.053.~~]

(f) Revised/Duplicate License/Certificate/Permit/Registration--\$25.

(g) Late renewal fees for registrations issued under this chapter are provided for in §60.83 of this title (relating to Late Renewal Fees).

(h) The non-refundable application fee for recognition as a private provider is \$125.

(i) In addition to the application fee, a private provider shall pay an annual fee of \$75, which shall be refunded if the department does not recognize the private provider's educational program or course.

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 September 3, 2015.

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William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

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For further information, please call: (512) 463-8179



CHAPTER 76. WATER WELL DRILLERS AND WATER WELL PUMP INSTALLERS

16 TAC §§76.10, 76.20, 76.21, 76.25 - 76.28, 76.70, 76.78, 76.80, 76.100

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC) Chapter 76, §§76.10, 76.20, 76.21, 76.25, 76.26, 76.70, 76.78, 76.80 and 76.100 and proposes new rules §76.27 and §76.28, regarding the Water Well Drillers and Water Well Pump Installers program.

House Bill 930 (H.B. 930), 84th Legislature, Regular Session (2015), authorizes the Department to establish an apprentice driller and apprentice pump installer program. The bill made some other changes including providing for the electronic transmittal of a well log report, and it repealed some obsolete language, and clarified other requirements. The proposed amendments and new rules are necessary to implement the changes made by H.B. 930 to Texas Occupations Code, Chapters 1901 and 1902.

The proposed amendment to §76.10 adds a definition for "apprentice." Editorial changes are also made to renumber the remaining definitions and align language in the rules with the Code.

Proposed amendments to §76.20 delete unnecessary language.

Proposed amendments to §76.21 clarify the requirements for issuing a driller or pump installer license.

The proposed amendments to §76.25 add continuing education requirements for the apprenticeship registration and makes editorial changes to clarify the rules.

The proposed amendments to §76.26 clarify the requirements regarding direct supervision of an unlicensed person assisting a driller or installer, including a definition of "direct supervision," and providing a basis for enforcement.

Proposed new §76.27 adds requirements for registration as an apprentice driller or installer.

Proposed new §76.28 adds standards of conduct for an apprentice and the supervising licensee and provides a basis for enforcement.

Proposed amendments to §76.70 provide that a State Well Report may be transmitted electronically to the appropriate agencies.

Proposed amendments to §76.78 clarify that a well screen is for the purpose of preventing sand or sediment from entering a well.

The proposed amendments to §76.80 add a registration fee and renewal fee for the apprentice registration as well as adding a fee for a combination apprentice registration and fee for endorsements to a current license. The endorsement fee is not a new fee; it was never shown in the rules but was on department forms. Editorial changes are also made to re-letter the section.

Proposed amendments to §76.100 clarify in subsection (g)(1) the size of the steel or plastic casing to be used in the surface completion of a well.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed amendments and new rules are in effect there will be no direct cost to state or local government as a result of enforcing or administering the proposed amendments and new rules. There is no estimated loss in revenue to the state as a result of enforcing or administering the proposed amendments and new rules. The estimated increase in revenue to the state will be approximately \$58,500; which was the fiscal note for H.B. 930. This number was calculated from the total number of apprentices who were registered in 2012 and who are anticipated to re-register.

Mr. Kuntz also has determined that for each year of the first five-year period the proposed amendments and new rules are in effect, the public will benefit by having more knowledgeable and skilled water well drillers and pump installers and better ground-water protection.

There will be no anticipated economic effect on small and micro-businesses who are required to comply with the rules as proposed. The cost to an individual to register and maintain the license is \$65 a year for the registration and \$25 for the continuing education. The apprentice program is not the only path to gain experience to be a licensed driller or installer. A person can gain experience as an unlicensed assistant, but only under the direct supervision of a licensee. The apprentice program may actually help a licensee grow their business by utilizing these higher skilled people, by allowing the licensee to monitor multiple well sites via contact with apprentices, without having to be on-site to directly supervise.

Since the agency has determined that the proposed amendments and new rules will have no adverse economic effect on small or micro-businesses, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, under Texas Government Code §2006.002, is not required.

Comments on the proposal may be submitted by mail to Pauline Easley, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711; or by facsimile to (512) 475-3032; or electronically to erule.comments@tdlr.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments and new rules are proposed under Texas Occupations Code, Chapters 51, 1901 and 1902, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51, 1901 and 1902. No other statutes, articles, or codes are affected by the proposal.

§76.10. Definitions.

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

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

(4) Apprentice--An individual registered by the department to act or offer to act as a driller or installer under the supervision of, and pursuant to a training program developed by the supervising licensed driller or pump installer.

(5) ~~[(4)]~~ Atmospheric barrier--A section of cement placed from two feet below land surface to the land surface when using granular sodium bentonite as a casing sealant or plugging sealant in lieu of cement.

(6) ~~[(5)]~~ Bentonite--A sodium hydrous aluminum silicate clay mineral (montmorillonite) commercially available in powdered, granular, or pellet form which is mixed with potable water and used for a variety of purposes including the stabilization of borehole walls during drilling, the control of potential or existing high fluid pressures encountered during drilling below a water table, and to provide a seal in the annular space between the well casing and borehole wall.

(7) ~~[(6)]~~ Bentonite grout--A fluid mixture of sodium bentonite and potable water mixed at manufacturers' specifications to a slurry consistency that can be pumped through a pipe directly into the annular space between the casing and the borehole wall. Its primary function is to seal the borehole in order to prevent the subsurface migration or communication of fluids.

(8) ~~[(7)]~~ Borehole or well bore--The drilled hole.

(9) ~~[(8)]~~ Capped well--A well that is closed or capped with a covering capable of preventing surface pollutants from entering the well and sustaining weight of at least 400 pounds and constructed in such a way that the covering cannot be easily removed by hand.

(10) ~~[(9)]~~ Casing--A watertight pipe which is installed in an excavated or drilled hole, temporarily or permanently, to maintain the hole sidewalls against caving, advance the borehole, and in conjunction with cementing and/or bentonite grouting, to confine the ground waters to their respective zones of origin, and to prevent surface contaminant infiltration.

(A) Plastic casing--National Sanitation Foundation (NSF-WC) or American Society of Testing Material (ASTM) F-480 minimum SDR 26 approved water well casing.

(B) Steel Casing--New ASTM A-53 Grade B or better and have a minimum weight and thickness of American National Standards Institute (ANSI) schedule 10.

(C) Monitoring wells may use other materials, such as fluoropolymer (Teflon), glass-fiber-reinforced epoxy, or various stainless steel alloys.

(11) ~~[(40)]~~ Cement--A neat portland or construction cement mixture of not more than seven gallons of water per 94-pound sack of dry cement, or a cement slurry which contains cement along with bentonite, gypsum or other additives.

(12) ~~[(44)]~~ Cessation of drilling--When the borehole has been drilled to total depth and casing has been placed in the borehole.

(13) ~~[(42)]~~ Chemigation--A process whereby pesticides, fertilizers or other chemicals, or effluents from animal wastes is added to irrigation water applied to land or crop, or both, through an irrigation distribution system.

(14) ~~[(43)]~~ Closed Loop Geothermal Well--A vertical closed system well used to circulate water, and other fluids or gases through the earth as a heat source or heat sink.

(15) ~~[(44)]~~ Code--Refers to Texas Occupations Code, Chapters 1901 and 1902.

(16) ~~[(45)]~~ Commingling--The mixing, mingling, blending or combining through the borehole casing annulus or the filter pack of waters that differ in chemical quality, which causes quality degradation of any aquifer or zone.

(17) [(46)] Completed monitoring well--A monitoring well which allows water from a single water-producing zone to enter the well bore, but isolates the single water-producing zone from the surface and from all other water-bearing zones by proper casing and/or cementing procedures. Annular space positive displacement or pressure tremie tube grouting or cementing (sealing) method shall be used when encountering injurious water or constituents above or below the zone to be monitored or if the monitoring well is greater than twenty (20) feet in total depth. The single water-producing zone shall not include more than one continuous water-producing unit unless a qualified geologist or a groundwater hydrologist has determined that all the units screened or sampled by the well are interconnected naturally.

(18) [(47)] Completed to produce undesirable water--A completed well which is designed to extract water from a zone which contains injurious water.

(19) [(48)] Completed water well--A water well, which has sealed off access of injurious water or constituents to the well bore by utilizing proper casing and annular space positive displacement or pressure tremie tube grouting or cementing (sealing) methods.

(20) [(49)] Constituents--Elements, ions, compounds, or substances which may cause the degradation of the soil or ground water.

(21) [(20)] Deteriorated well--A well that, because of its condition, will cause or is likely to cause pollution of any water in this state, including groundwater.

(22) [(21)] Dry litter poultry facility--Fully enclosed poultry operation where wood shavings or similar material is used as litter.

(23) [(22)] Easy access--Access is not obstructed by other equipment and the fitting can be removed and replaced with a minimum of tools without risk of breakage of the attachment parts.

(24) [(23)] Edwards aquifer--That portion of an arcuate belt of porous, water bearing, predominantly carbonate rocks known as the Edwards and Associated Limestones in the Balcones Fault Zone trending from west to east to northeast in Kinney, Uvalde, Medina, Bexar, Comal, Hays, Travis, Williamson, and Bell Counties; and composed of the Salmon Peak Limestone, McKnight Formation, West Nueces Formation, Devil's River Limestone, Person Formation, Kainer Formation, Edwards Formation and Georgetown Formation. The permeable aquifer units generally overlie the less-permeable Glen Rose Formation to the south, overlie the less-permeable Comanche Peak and Walnut formations north of the Colorado River, and underlie the less-permeable Del Rio Clay regionally.

(25) [(24)] Environmental soil boring--An artificial excavation constructed to measure or monitor the quality and quantity or movement of substances, elements, chemicals, or fluids beneath the surface of the ground. The term shall not include any well that is used in conjunction with the production of oil, gas, or any other minerals.

(26) [(25)] Filter pack--The media that is used in the annular space around the well screen to create a filter to prevent sand or sediment from entering the well.

(27) [(26)] Flapper--The clapper, closing, or checking device within the body of the check valve.

(28) [(27)] Foreign substance--Constituents that include recirculated tailwater and open-ditch water when a pump discharge pipe is submerged in the ditch.

(29) [(28)] Freshwater--Water whose bacteriological, physical, and chemical properties are such that it is suitable and feasible for beneficial use.

(30) [(29)] Granular sodium bentonite--Sized, coarse ground, untreated, sodium based bentonite (montmorillonite) which has the specific characteristic of swelling in freshwater.

(31) [(30)] Grout--This term shall include cement or bentonite mixed with water, or a combination of bentonite and cement mixed with water and/or department-approved additives.

(32) [(31)] Injection well--This term includes:

(A) an air-conditioning return flow well used to return water that has been used for heating or cooling in a heat pump to the aquifer that supplied the water;

(B) a cooling water return flow well used to inject water that has been used for cooling;

(C) a drainage well used to drain surface fluid into a subsurface formation;

(D) a recharge well used to replenish water in an aquifer;

(E) a saltwater intrusion barrier well used to inject water into a freshwater aquifer to prevent the intrusion of salt water into fresh water;

(F) a sand backfill well used to inject a mixture of water and sand, mill tailings, or other solids into subsurface mines;

(G) a subsidence control well used to inject fluids into a non-oil-producing or non-gas-producing zone to reduce or eliminate subsidence associated with the overdraft of fresh water; and

(H) a closed system geothermal well used to circulate water, other fluids, or gases through the earth as a heat source or heat sink.

(33) [(32)] Injurious water--Water that is harmful to vegetation, land or other water as set forth in §1901.254(a) and §1902.252(a) of the Code.

(34) [(33)] Irrigation distribution system--A device or combination of devices having a hose, pipe, or other conduit which connects directly to any water well or reservoir connected to the well, through which water or a mixture of water and chemicals is drawn and applied to land. The term does not include any hand held hose sprayer or other similar device, which is constructed so that an interruption in water flow automatically prevents any backflow to the water source.

(35) [(34)] Monitoring well--An artificial excavation that is constructed to measure or monitor the quantity or movement of substances below the surface of the ground, and that is not used in conjunction with the production of oil, gas, or other minerals.

(36) [(35)] Mud for drilling--A relatively homogenous, viscous fluid produced by the suspension of clay-size particles in water or the additives of bentonite or polymers.

(37) [(36)] Offering to act [perform]--Making a written or oral proposal, contracting in writing or orally to perform well drilling or pump installing work, or advertising in any form through any medium that a person or business entity is a well driller or pump installer, or that implies in any way that a person or business entity is available to contract for, act as a driller or installer, or perform well drilling or pump installing work.

(38) [(37)] Piezometer--A device so constructed and sealed as to measure hydraulic head at a point in the subsurface.

(39) [(38)] Piezometer well--A well of a temporary nature constructed to monitor well standards for the purpose of measuring

water levels or used for the installation of piezometer resulting in the determination of locations and depths of permanent monitor wells.

(40) [(39)] Placement and preparation for operation of equipment and materials--Includes but is not limited to removing the pump.

(41) [(40)] Plugging--An absolute sealing of the well bore.

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

(43) [(42)] Positive Displacement method--The process in which the cement, bentonite or a combination of the two sealing materials is forced through the well casing followed by water or drilling fluids, via a mechanical pump and out through relief holes in the casing at the maximum depth of the zone to be grouted. The grout then returns under pressure to the surface through the annular space and upon curing or setting causing an annular seal.

(44) [(43)] Potable water--Water which is safe for human consumption in that it is free from impurities in amounts sufficient to cause disease or harmful physiological effects.

(45) [(44)] Public water system--A system supplying water to a number of connections or individuals, as defined by current rules and regulations of the Texas Commission on Environmental Quality, 30 TAC Chapter 290.

(46) [(45)] Recharge zone--Generally, that area where the stratigraphic units constituting the Edward Aquifer crop out, including the outcrops of other geologic formations in proximity to the Edwards Aquifer, where caves, sinkholes, faults, fractures, or other permeable features would create a potential for recharge of surface waters into the Edwards Aquifer. The recharge zone is identified as that area designated as such in official maps in the appropriate regional office of the Texas Commission on Environmental Quality.

(47) [(46)] Reconditioning--The process where a well is cleaned out to original depth and the water production is restored. This term shall include any procedures that make the well operable.

(48) [(47)] Re-completion--The process to bring an existing well into compliance with §76.100 or §76.105 by installing any and all sanitary seals, safeguards, casing, grouting, and the re-setting of well screens as required.

(49) [(48)] Recovery well--A well constructed for the purpose of recovering injurious groundwater for treatment or removal of contamination.

(50) [(49)] Sanitary well seal--A watertight device to maintain a junction between the casing and the pump column.

(51) [(50)] Test well--A well drilled to explore for groundwater.

(52) [(51)] Tremie pipe method--The process in which a small diameter pipe or tubing is inserted in the annular space of the well to the maximum depth of the zone to be sealed, before the grouting procedure is commenced to pump sealing material through. The tubing or pipe may be retrieved during the grouting process, causing an annular seal.

(53) [(52)] Water or waters in the state--Groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the

Gulf of Mexico inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or non-navigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.

(54) [(53)] State of Texas Well Report (Well Log)--A log recorded on forms prescribed by the department, at the time of drilling showing the depth, thickness, character of the different strata penetrated, location of water-bearing strata, depth, size, and character of casing installed, together with any other data or information required by the executive director.

§76.20. *Licensing Requirements--General.*

A person may not act or offer to act as a driller or pump installer unless the person is licensed or registered by the executive director pursuant to the [Texas Occupations] Code, and this chapter [Chapters 1901 and 1902].

§76.21. *Requirements for Issuance of a Driller or Pump Installer License.*

(a) An applicant must submit a completed application, the required fee, and have the required two (2) years of experience drilling wells or installing pumps.

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

(d) An applicant must have sufficient installation/drilling experience as set forth in paragraphs (1) and (2) to be eligible to take each applicable endorsement examination.

(1) Drillers Endorsements--Qualifying number of installation/drillings

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

(F) Master Driller (A)--All of the above endorsements required.

(2) Pump Installer Endorsements--Qualifying number of installation/drillings

(A) - (D) (No change.)

(E) Master Installer (I)--All of the above endorsements required.

(e) An applicant who has all of the endorsements in subsection (d)(1)(A) - (E) [demonstrated competency in all types of well drilling] is qualified to be [for] a master driller [driller's license].

(f) An applicant who has all of the endorsements in subsection (d)(2)(A) - (D) [demonstrated competency in all types of pump installation] is qualified to be [for] a master pump installer [installer's license].

§76.25. *Continuing Education.*

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

(c) To renew a registration as an apprentice, a registrant must complete a one (1) hour department-approved continuing education course dedicated to the Water Well Driller and Pump Installer statutes and rules.

(d) [(e)] The continuing education hours must have been completed within the term of the current license or registration, in the case of a timely renewal. For a late renewal, the continuing education hours must have been completed within the one year period immediately prior to the date of the late renewal.

(e) [(d)] A licensee or registrant may not receive continuing education credit for attending the same course more than once during their license term.

~~(f)~~ ~~[(e)]~~ Licensees and registrants must retain a copy of the certificate of course completion for one year after the date of completion. In conducting any inspection or investigation of the licensee or registrant, the department may examine the licensee's or registrant's records to determine compliance with this subsection.

~~(g)~~ ~~[(f)]~~ To be approved under Chapter 59 of this title, a provider's course must be dedicated to instruction in one or more of the topics listed in subsection (b), and the provider must be registered under Chapter 59 of this title.

~~(h)~~ ~~[(g)]~~ A licensee whose license has been placed on "inactive" status pursuant to Texas Occupations Code, §51.4011 is not required to complete continuing education as required by this section until the licensee seeks to change to "active" status.

§76.26. A Person Assisting Licensed Driller or Licensed Pump Installers.

(a) A person not licensed or registered to perform drilling or pump installing work may assist a licensed driller or pump installer, pursuant to the Code, provided that the unlicensed person is not primarily responsible for the drilling or installation operations, and provided that the unlicensed person:

(1) performs drilling work under the direct supervision of a licensed driller who has been licensed for a minimum of two (2) years; or

(2) performs pump installing work under the direct supervision of a licensed pump installer who has been licensed for a minimum of two (2) years.

~~[(b)]~~ A licensed driller or pump installer may directly supervise no more than three (3) unlicensed persons at any time.

~~[(c)]~~ At the time of license renewal, the licensed driller or pump installer must provide a department-approved form with a list of all unlicensed assistants the licensee directly supervises to perform drilling or pump installing work at the time of the renewal, including those supervised at any time during the previous twelve (12) month period.

~~(b)~~ ~~[(d)]~~ For purposes of this chapter and the Code, a licensed driller or pump installer provides "direct supervision" to an unlicensed assistant if the licensed driller or pump installer:

(1) is present at the well site at all times during all drilling or pump installing operations performed by the assistant; or

(2) is represented at the well site by the ~~an~~ unlicensed assistant, capable of immediate communication with the licensed driller or pump installer at all times and the licensed driller or pump installer is no more than a reasonable distance from the well site, but no further than a two (2) hour arrival time; and

(3) inspects the well site at least once in every twenty-four (24) hour period of operation.

(4) The requirements of paragraphs (2) and (3) will expire June 1, 2016.

~~(c)~~ ~~[(e)]~~ The supervising licensee is responsible for direct supervision of the unlicensed assistant, and for ensuring that the unlicensed assistant ~~person~~ performs drilling or pump installing work in compliance with the Code and this chapter.

~~(d)~~ ~~[(f)]~~ Any allegation of a violation of this chapter or the Code against an unlicensed person performing drilling or installing work as an unlicensed assistant to a driller without direct supervision, may ~~set forth in this chapter, shall~~ be opened as a complaint against both the ~~supervising~~ licensee responsible for supervising the unlicensed person, and the unlicensed person.

~~[(g)]~~ The provisions listed in subsection (e) are effective for water well driller and pump installer licenses that expire on or after May 1, 2013.

~~(e)~~ ~~[(h)]~~ An unlicensed assistant may not contract, bid, advertise or ~~and/or~~ accept payment for drilling or pump installing services.

§76.27. Registration for Driller and/or Pump Installer Apprenticeship.

(a) A person who wishes to participate in a driller or installer apprentice program under the supervision of a licensed well driller and/or a licensed pump installer who has been licensed for a minimum of two (2) years, must submit a registration form to the Department, provide a detailed copy of the training program, including the effective commencement and termination date, and provide proof that the licensed well driller and/or pump installer has agreed to accept the responsibility of supervising the training.

(b) To qualify for an apprentice registration the person must:

(1) Be at least eighteen (18) years old;

(2) Participate in an apprentice program developed by a licensed driller or installer who has been licensed as a driller or installer for at least two years;

(3) Submit an application on a department-approved form; and

(4) Pay the registration fee.

(c) The application form for an apprentice shall include:

(1) the name, business address, and permanent mailing address of the apprentice;

(2) the name and license number of the licensed driller and/or pump installer who will supervise the training;

(3) a detailed description of the training program, including the types of wells to be drilled and/or the classifications of pumps to be installed, the effective commencement and termination dates of the program, equipment used, safety training and procedures, and experience, knowledge, and qualification benchmarks while under the apprenticeship;

(4) a statement by the licensed driller and/or pump installer that the licensed driller or installer takes responsibility for the apprentice's acts under the Code and this Chapter for the activities of the apprentice associated with the training program; and

(5) the signatures of the apprentice and the licensed driller and/or pump installer and the certification of the licensee and apprentice that the information provided is true and correct.

§76.28. Standards of Conduct--Apprentice and Supervising Licensee.

(a) A registered driller or pump installer apprentice may only accept bids in the name of the supervising licensee, or perform or offer to perform well construction under the Code or this Chapter that the supervising licensee authorizes in writing pursuant to the apprentice program.

(b) A supervising licensee shall determine the manner and type of supervision for every apprentice under his supervision.

(c) A supervising licensee is ultimately responsible for the drilling of a well or installation of a pump according to the Code and this Chapter. The licensee shall supervise the drilling activities of an apprentice, pursuant to the Code, this Chapter and the written apprentice program developed by the licensee.

(d) A registered driller or pump installer apprentice may not act or offer to act as a driller or pump installer except under the authority

of a licensed driller or pump installer and according to the supervising driller or pump installer's direction.

(e) A registered apprentice who is not currently participating in an apprentice program, may assist a licensed driller or installer as an unlicensed assistant, under direct supervision pursuant to §76.26 of this title.

(f) A driller or pump installer apprentice must have the registration issued by the department in his possession at all times and must present the registration upon request.

(g) A complaint alleging a violation of this Chapter and the Code involving a person performing work as an apprentice, may be opened against both, the apprentice and the supervising licensee for failing to properly supervise the apprentice.

(h) A licensed driller or installer shall notify the department in writing within 10 days of the termination of a registered apprentice.

§76.70. Responsibilities of the Licensee--State Well Reports.

Every well driller who drills, deepens, or alters a well, within this state shall record and maintain a legible and accurate State of Texas Well Report on a department-approved form. Each copy of a State of Texas Well Report, other than a department copy, shall include the name, mailing address, web address and telephone number of the department.

(1) Every well driller shall transmit electronically through the Texas Well Report Submission and Retrieval System or deliver or send by first-class [~~certified~~] mail, a copy [~~the original~~] of the State of Texas Well Report to the department. Every well driller shall deliver, transmit electronically, or send by first-class mail a copy [~~photocopy~~] to the groundwater conservation district in which the well is located, if any. Every well driller shall also deliver, transmit electronically, or send by first-class mail a copy [~~photocopy~~] to the owner or person for whom the well was drilled, within sixty (60) days from the completion or cessation of drilling, deepening, or otherwise altering a well.

(2) Each State of Texas Well Report and Plugging Report shall include the specific geographic coordinates with the longitude and latitude of the subject well.

(3) The person that plugs a well shall, within thirty (30) days after plugging is complete, transmit electronically through the Texas Well Report Submission and Retrieval System or deliver or send by first-class [~~certified~~] mail, a copy [~~the original~~] of the State of Texas Plugging Report to the department. The person that plugs the well shall deliver, transmit electronically, or send by first-class mail a copy of the State of Texas Plugging Report to the groundwater conservation district in which the well is located, if any. The person that plugs the well shall deliver, transmit electronically, or send by first-class mail a copy of the State of Texas Plugging Report to the owner or person for whom the well was plugged.

(4) The department shall furnish State of Texas Plugging Reports on request.

(5) The executive director shall prescribe the contents of the State of Texas Plugging Reports.

§76.78. Responsibilities of the Licensee--Adherence to Manufacturer's Recommended Well Construction Materials and Equipment.

(a) Unless waived by the landowner, a licensee shall use a manufacturer's well screen, and select the correct slot size for the screen in the installation of a domestic (household use) or landscape irrigation water well to prevent sand or sediment from entering the well.

(b) The waiver must be on a department-approved form, signed by the landowner or person having the well drilled and the driller, and presented to the landowner.

(c) A licensee shall adhere to manufacturers' recommended pump sizing and wiring specifications.

(d) A licensee shall select the proper hydraulic collapse pressure for casing to be installed.

§76.80. Fees.

(a) Application Fees

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

(4) Apprentice registration--\$65

(5) Combination Apprentice registration--\$115

(b) Renewal Fees

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

(4) Apprentice registration--\$65

(5) Combination Apprentice registration--\$115

(6) [(4)] Late renewal fees for licenses issued under this chapter are provided in §60.83 of this title.

(c) Lost, revised, or duplicate license--\$25

(d) Adding an endorsement to a current license--\$25

(e) [~~(d)~~] Variance request fee--\$100

(f) [~~(e)~~] Inactive License Status

(1) The fee for an inactive license--No charge.

(2) The fee to renew a license marked "inactive" is the renewal fee as stated in subsection (b).

(3) The fee to change from an inactive license to an active license is \$25.

§76.100. Technical Requirements--Locations and Standards of Completion for Wells.

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

(g) Alternative Surface Completion. In wells where a steel or PVC sleeve is used:

(1) The steel sleeve shall be a minimum of 3/16 inches in thickness and shall be a minimum of twenty-four (24) inches in length. The plastic sleeve shall be a minimum of Schedule 80 sun resistant or SDR 17 sun resistant and be twenty-four (24) inches in length, and either sleeve used shall extend twelve (12) inches into the cement, except when steel casing or a pitless adapter as described in paragraph (2) is used. The casing shall extend to a minimum of twelve (12) inches above the land surface, and the steel/plastic sleeve's inside diameter [sleeve] shall be two (2) inches larger in diameter than the outside diameter of the plastic casing being used and filled entirely with cement; or

(2) (No change.)

(h) (No change.)

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

Filed with the Office of the Secretary of State on September 4, 2015.

TRD-201503576

William H. Kuntz Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: October 18, 2015
For further information, please call: (512) 463-8179



CHAPTER 82. BARBERS

16 TAC §§82.10, 82.20 - 82.22, 82.28, 82.31, 82.70 - 82.72, 82.80, 82.110, 82.120

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC) Chapter 82, §§82.10, 82.20 - 82.22, 82.28, 82.31, 82.70 - 82.72, 82.80, 82.110 and 82.120, regarding the Barbers program.

House Bill 104 (H.B. 104), 84th Legislature, Regular Session (2015), allows services to be provided outside a licensed facility for special events, such as weddings. In addition, House Bill 2717 (H.B. 2717) removes hair braiding from barbering regulations.

The proposed amendments are necessary to implement the changes made by H.B. 104 and H.B. 2717, to Texas Occupations Code, Chapters 1601 and 1603.

The proposed amendments to §82.10 removes the definition of "hair braider" and "shampoo apprentice permit" and adds the definition for "special event". Editorial changes are also made to renumber the section.

Proposed amendments to §82.20 remove all references to the "hair braiding specialty certificate of registration" and the "hair braiding specialty instructor license".

Proposed amendments to §82.21 remove the reference to the "hair braiding specialty instructor license".

The proposed amendments to §82.22 delete the references to hair braiding and expired dates.

The proposed amendments to §82.28 delete the reference to hair braiders.

Proposed amendments to §82.31 remove hair braiding from license terms.

Proposed amendments to §82.70 remove any reference to hair braiders, specify when a licensee may work outside a licensed facility, and makes editorial changes.

Proposed amendments to §82.71 remove responsibilities of hair braiding specialty shops.

The proposed amendments to §82.72 remove the requirements regarding hair braiding curriculum in barber schools and corrects a cross reference.

Proposed amendments to §82.80 remove all fees pertaining to hair braiding and removes expired renewal dates.

The proposed amendments to §82.110 delete the reference to hair braiders.

Proposed amendments to §82.120 deletes the curriculum for the hair braiding specialty certificate of registration and the hair braiding specialty instructor license. Editorial changes are also made to re-letter the section.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed amendments are in effect there will be no direct cost to state or local government as a result of enforcing or administering the proposed amendments. The estimated loss in revenue to the state is a result of the statutory change to deregulate hair braiding.

Mr. Kuntz also has determined that for each year of the first five-year period the proposed amendments are in effect, the public will benefit by less burdensome regulation on the barbering industry.

There will be no anticipated economic effect on small and micro-businesses and to all other persons who are required to comply with the rules as proposed.

Since the agency has determined that the proposed amendments will have no adverse economic effect on small or micro-businesses, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, under Texas Government Code §2006.002, is not required.

Comments on the proposal may be submitted by mail to Pauline Easley, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711; or by facsimile to (512) 475-3032, or electronically to erule.comments@tdlr.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, Chapters 51 and 1601, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51, 1601 and 1603. No other statutes, articles, or codes are affected by the proposal.

§82.10. Definitions.

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

(1) - (9) (No change.)

(10) Booth Rental Permit--A permit issued or renewed to an applicant at the same time the applicant is issued one of the following license types: barber, barber instructor, specialty instructor, barber technician, manicurist, barber technician/manicurist, barber technician/hair weaver, or hair weaver[; ~~or hair braider~~]; which allows the holder to lease space on the premises of a barber shop, specialty shop, mini-barbershop, dual shop, or mini-dual shop to engage in the practice of barbering as an independent contractor.

(11) - (17) (No change.)

~~[(18) Hair braider--A person who holds a Hair Braiding Specialty Certificate of Registration and who may perform only the practice of barbering as defined in Texas Occupations Code, §1601.002(1)(K).]~~

~~[(18) [(19)] Hair Relating to Haircutting--The hair extending from the scalp of the head is recognized as the hair trimmed, shaped or cut in the process of hair cutting.~~

~~[(19) [(20)] Hair weaver--A person who holds a Hair Weaving Specialty Certificate of Registration and who may perform only the practice of barbering as defined in Texas Occupations Code, §1601.002(1)(H).~~

(20) [(21)] License--A license, permit, certificate, or registration issued under the authority of the Act.

(21) [(22)] License by reciprocity--A process that permits a barber license holder from another jurisdiction or foreign country to obtain a Texas barber license without repeating barber education or examination license requirements.

(22) [(23)] Line of Demarcation between "the hair" and "the beard"--The demarcation boundary between scalp hair ("the hair") and facial hair ("the beard") is a horizontal line drawn from the bottom of the ear.

(23) [(24)] Manicurist--A person who holds a specialty license and who is authorized to practice the services defined in Texas Occupations Code §1601.002(1)(E) and (F).

(24) [(25)] Mini-Barbershop--A barber establishment in which a person practices barbering under a license, certificate, or permit issued under this chapter and which consists of a room or suite of rooms that is one of a number of connected establishments in a single premises that open onto a common hallway or common area.

(25) [(26)] Mini-Dual Shop--A shop owned, operated, or managed by a person holding a mini-barber and mini-beauty shop license under Texas Occupations Code §1603.207.

(26) [(27)] Mini-Barbershop Permittee--A person or entity that holds a license for a mini-barbershop or mini-dual shop. The mini-barbershop permittee shall be responsible for rules under Texas Occupations Code, Chapters 1601, 1602, and 1603 and 16 TAC Chapters 82 and 83 for its mini-barbershop or mini-dual shop.

(27) [(28)] Mobile Shop--A barbershop, specialty shop, or dual shop that is operated in a self-contained, self-supporting, enclosed mobile unit.

(28) [(29)] Provisional license--A license that allows a person to practice barbering in Texas pending the department's approval or denial of that person's application for licensure by reciprocity.

(29) [(30)] Self-Contained--Containing within itself all that is necessary to be able to operate without connecting to outside utilities such as water and electricity.

[(31)] Shampoo Apprentice Permit--A non-renewable permit that allows a person to perform the practice of barbering defined in Texas Occupations Code §1601.002(1)(I).]

(30) [(32)] Sideburn--Part of a haircut or style that is a continuation of the natural scalp hair growth, does not extend below the line of demarcation, and is not connected to any other bearded area on the face.

(31) Special Event--Includes weddings, quinceaneras, pageants, proms, debutante balls, birthday parties, religious and cultural ceremonies, and on-stage performances.

(32) [(33)] Specialty Instructor--A person authorized by the department to perform or offer instruction in an act or practice of barbering limited to Texas Occupations Code §1601.002(1)(C) - (H) [and (K)].

(33) [(34)] Specialty Shop--A barber establishment in which only the practice of barbering as defined in Texas Occupations Code §1601.002(1)(E), (F), or (H) [or (K)] is performed.

(34) [(35)] Student Permit--A permit issued by the department to a student enrolled in barber school which states the student's name and the name of the school. A person holding an active student permit may shampoo and condition a person's hair in a facility licensed under Texas Occupations Code, Chapters 1601 and 1603.

(35) [(36)] Weaving--The process of attaching, by any method, commercial hair (hair pieces, hair extensions) to a client's hair and/or scalp. Weaving is also known as hair integration or hair intensification.

§82.20. License Requirements--Individuals.

(a) (No change.)

(b) To be eligible for a [Hair Braiding Specialty Certificate of Registration or] Student Permit, an applicant must:

(1) submit the completed application on a department-approved form;

(2) pay the fee required under §82.80; and

(3) meet other applicable requirements of the Act, this section and the applicable curriculum set forth in §82.120.

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

[(h) Hair Braiding Specialty Certificate of Registration--To be eligible for a Hair Braiding Specialty Certificate of Registration, an applicant must meet the eligibility requirements set forth in Texas Occupations Code §1601.259. No examination is required.]

(h) [(+) Student Permit--To be eligible for a Student permit, an applicant must meet the eligibility requirements set forth in Texas Occupations Code §1601.260.

(i) [(+)] Barber Technician/Manicurist License--To be eligible for a Barber Technician/Manicurist License, an applicant must meet the eligibility requirements set forth in Texas Occupations Code §1601.262.

(j) [(+) Barber Technician/Hair Weaving License--To be eligible for a Barber Technician/Hair Weaving License, an applicant must meet the eligibility requirements set forth in Texas Occupations Code §1601.263.

(k) [(+)] To be eligible for a Specialty Instructor License as a Manicurist Instructor, Barber Technician Instructor, Barber Technician/Manicurist Instructor, Barber Technician/Hair Weaving Instructor, or Hair Weaving Instructor, an applicant must:

(1) submit the completed application on a department-approved form;

(2) pay the fee required under §82.80;

(3) be at least 18 years of age;

(4) have a high school diploma or high school equivalency certificate;

(5) hold a current specialty license in the specialty or specialties in which the applicant is seeking licensure; and

(A) have completed a course consisting of 750 hours of instruction in barber courses and methods of teaching in a barber school; or

(B) have at least one year of licensed work experience in each of the specialties in which the applicant is seeking licensure; and

(i) have completed 500 hours of instruction in barber courses and methods of teaching in a barber school, or

(ii) have completed 15 semester hours in education courses from an accredited college or university within the 10 years preceding the date of the application; or

(iii) have obtained a degree in education from an accredited college or university; and

(6) pass a written and practical exam required under §82.21.

~~[(m) To be eligible for a Hair Braiding Specialty Instructor License, on or after September 1, 2014, an applicant must:]~~

~~[(1) submit the completed application on a department-approved form;]~~

~~[(2) pay the fee required under §82.80;]~~

~~[(3) be at least 18 years of age;]~~

~~[(4) have a high school diploma or high school equivalency certificate;]~~

~~[(5) hold a current hair braiding specialty certificate;]~~

~~[(6) have completed a 50 hour hair braiding instructor course in a barber school; and]~~

~~[(7) pass a written examination required under §82.21. No practical examination is required.]~~

§82.21. *License Requirements--Examinations.*

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

~~[(d) Notwithstanding subsection (c), no practical examination is required for the Hair Braiding Specialty Instructor license.]~~

~~(d) [(e)]~~ Examinees must pass the written examination before being eligible to take the practical examination.

~~(e) [(f)]~~ When appearing for an examination the examinee shall bring the instruments necessary to give a practical demonstration of the barbering services applicable to the license for which the examinee is applying.

~~(f) [(g)]~~ The examinee shall provide a model, of 16 years of age or older, on whom to demonstrate the practical work. The department may require parental approval for models under 18 years of age.

~~(g) [(h)]~~ To be admitted to an examination, the examinee must present a current, valid government-issued photo identification, which includes the applicant's full name and date of birth.

~~(h) [(i)]~~ Examinees are required to wear a smock or professional attire for the practical examination.

~~(i) [(j)]~~ The department will notify an examinee if the examinee fails either the written or practical examination.

~~(j) [(k)]~~ Any student or applicant having had a name change during his or her enrollment at any department licensed barber school must notify the department in writing prior to the date on which the student or applicant is scheduled to take any examination, written or practical.

§82.22. *Permit Requirements--Barbershops, Specialty Shops, Dual Shops, Mini-Barbershops, Mini-Dual Shops, Mobile Shops, and Booth Rental.*

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

(c) Specialty Shop Permit--To be eligible for a Specialty Shop Permit, an applicant must meet the eligibility requirements set forth in Texas Occupations Code §1601.305. The categories of Specialty Shop Permits issued by the department are: manicurist ~~and~~ hair weaving ~~and hair braiding~~.

(d) Dual Shop License--To be eligible for a Dual Shop License, an applicant must comply with the requirements of the Act, this chapter, Texas Occupations Code, Chapter 1602, and 16 TAC Chapter 83 for obtaining a beauty salon license and a barbershop permit.

(e) Mini-Barbershop Permit--To be eligible for a Mini-Barbershop Permit, ~~[on or after November 1, 2014,]~~ an applicant must meet the eligibility requirements set forth in Texas Occupations Code §1601.303 and §1603.207.

(f) Mini-Dual Shop Permit--To be eligible for a Mini-Dual Shop Permit, ~~[on or after November 1, 2014,]~~ an applicant must comply with the requirements of the Act, this chapter, Texas Occupations Code, Chapter 1602, and 16 TAC Chapter 83 for obtaining a beauty salon license and a barbershop permit.

(g) Mobile Shop License--To be eligible for a Mobile Shop License, an applicant must:

(1) provide a permanent physical address from which the mobile unit is dispatched and to which the mobile unit is returned when not in use;

(2) provide a permanent mailing address where correspondence from the department may be received; and

(3) verify that the mobile shop complies with the requirements of the Act and this chapter.

(h) Booth Rental Permit--To be eligible for a booth rental permit, an applicant must hold a valid department-issued Class A barber certificate, barber technician license, barber technician/manicurist license, barber technician/hair weaving license, barber instructor license, specialty instructor license, manicurist license, or hair weaving specialty certificate of registration ~~or hair braiding specialty certificate of registration~~ and meet the requirements of this section.

§82.28. *Reciprocity or Endorsement and Provisional Licensure.*

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

(d) The department may waive any license requirement, except for a license or certificate for a Class A Barber, Barber Technician, or Hair Weaver ~~or Hair Braider~~, for an applicant who holds a license from another state or country that has license requirements substantially equivalent to those of Texas.

(e) - (j) (No change.)

§82.31. *Licenses--License Terms.*

(a) The following licenses issued under this chapter shall have a term of two years from the date of issuance:

(1) Class A Barber Certificate;

(2) Barber Instructor License;

(3) Specialty License--Barber Technician, Manicurist, Barber Technician/Manicurist, Barber Technician/Hair Weaving;

(4) Specialty Certificate of Registration--Hair Weaving ~~and Hair Braiding~~;

(5) Specialty Instructor License-- Barber Technician, Manicurist, Barber Technician/Manicurist, Barber Technician/Hair Weaving, Hair Weaving ~~and Hair Braiding~~;

(6) Barbershop Permit;

(7) Mini-Barbershop Permit;

(8) Specialty Shop Permit;

(9) Dual Shop License;

(10) Mini-Dual Shop Permit;

(11) Mobile Shop License; and

(12) Booth Rental Permit.

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

§82.70. *Responsibilities of Individuals.*

(a) For purposes of this section, "licensed facility" means the premises of a place of business that holds a license, certificate, or permit under Texas Occupations Code, Chapters 1601, 1602 and 1603.

(b) A licensee ~~is~~ [shall be] restricted to working in a licensed facility but may perform a service within the scope of the license, [certificate or permit] at a location other than a licensed facility for a customer who: [; because of illness or physical or mental incapacitation;]

(1) is unable to receive the services at a licensed facility because of illness of physical or mental incapacitation; or [; The appointment for services must be made through a licensed facility;]

(2) will receive the services in preparation for and at the location of a special event; and

(3) makes the appointment for services through a licensed facility.

(c) (No change.)

(d) License holders, including Class A barbers, barber instructors, barber technicians, barber technician/manicurists, barber technician/hair weavers, hair weavers, [hair braiders;] manicurists, and specialty instructors are responsible for compliance with the health and safety standards of this chapter.

(e) - (g) (No change.)

(h) Barbers, manicurists, barber instructors, specialty instructors, barber technicians, barber technician/manicurists, barber technician/hair weavers, or hair weavers [; or hair braiders] who lease space on the premises of a barbershop, dual shop, or specialty shop to engage in the practice of barbering as an independent contractor must hold a booth rental permit.

§82.71. *Responsibilities of Barbershops, Specialty Shops, Dual Shops, Mini-Barbershops, and Mini-Dual Shops.*

(a) - (q) (No change.)

~~[(t) Hair braiding specialty shops shall provide the following equipment for each licensee present and providing services;]~~

~~[(1) one work station; and]~~

~~[(2) one styling chair;]~~

~~[(r) [(s)] Manicure specialty shops shall provide the following equipment for each licensee present and providing services;~~

~~(1) one manicure table with light;~~

~~(2) one manicure stool; and~~

~~(3) one professional client chair for each manicure station.~~

~~[(s) [(t)] Dual shops shall:~~

~~(1) comply with all requirements of the Act and this chapter applicable to barbershops;~~

~~(2) comply with all requirements of Texas Occupations Code, Chapter 1602 and 16 TAC Chapter 83 applicable to beauty salons; and~~

~~(3) if the shop does not currently have employed or have a contract with at least one licensed barber (or cosmetologist) the owner must immediately display a prominent sign at the entrance and exit of the shop indicating that no barber (or cosmetologist) is available; and:~~

~~(4) if the shop has neither employed nor contracted with at least one licensed barber (or cosmetologist) for a period of 45 days or more the owner shall;~~

~~(A) not place any new advertisement or display any sign or symbol indicating that the shop offers barbering (or cosmetology) services; and~~

~~(B) remove or obscure any existing sign or symbol indicating that the shop offers barbering (or cosmetology) services.~~

~~[(t) [(u)] Mini-barbershops must comply with all requirements of the Act and this chapter applicable to mini-barbershops and Texas Occupations Code §1603.207.~~

~~[(u) [(v)] Mini-dual shops must:~~

~~(1) comply with all requirements of the Act and this chapter applicable to barbershops; and~~

~~(2) comply with all requirements of Texas Occupations Code, Chapter 1602, and 16 TAC Chapter 83 applicable to beauty shops; and~~

~~(3) comply with all the requirements for dual shops listed under subsection (t).~~

~~[(v) [(w)] A person holding a barber shop, mini-barbershop, specialty shop, dual shop, mini-dual shop, or mobile shop license may not employ a person who is not otherwise licensed by the department to shampoo or condition a person's hair, unless the person holds an active student permit.~~

§82.72. *Responsibilities of Barber Schools.*

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

~~(g) Each barber school shall have:~~

~~(1) for each student in attendance on the practical floor, enrolled in a manicurist course outlined in §82.120, one complete manicure table, one complete set of manicuring implements for plain and sculptured nails, and one textbook with complete instructions;~~

~~(2) an adequate supply of permanent wave rods, and optional hair styling rollers;~~

~~(3) a minimum of two canvas-type wig blocks;~~

~~(4) two mannequins, one long-haired and one short-haired;~~

~~(5) a minimum of one wig, one hairpiece, and hair extensions for weaving;~~

~~(6) clock;~~

~~(7) bulletin board;~~

~~(8) chalk board or dry erase board;~~

~~(9) one hooded hair dryer;~~

~~(10) fire extinguisher with current inspection report;~~

~~(11) instructor's desk in classroom; and~~

~~(12) if providing manicure or pedicure nail services, an autoclave, dry heat sterilizer or ultraviolet sanitizer.~~

~~[(13) If providing the hair braiding curriculum, the equipment listed in subsection (h)(1) - (11);]~~

~~[(h) Notwithstanding subsections (e) - (g), a barber school that offers only the hair braiding curriculum must have a clock and a fire extinguisher with current inspection report and must make the following equipment available in adequate number for student use:]~~

~~[(1) mannequin with sufficient hair, with table or attached to styling station;]~~

~~[(2) assortment of combs;]~~

- ~~{(3) brushes;}~~
- ~~{(4) yarn;}~~
- ~~{(5) artificial hair;}~~
- ~~{(6) seissors;}~~
- ~~{(7) butterfly clamps and small elips;}~~
- ~~{(8) haekle;}~~
- ~~{(9) ehairs;}~~
- ~~{(10) spray bottle; and}~~
- ~~{(11) drawing board/card.}~~

~~(h) [(i)]~~ A student instructor may instruct theory only if assisted by a person holding a barber instructor's license.

~~(i) [(j)]~~ A barber school shall submit each application for student permit in a manner prescribed by the department.

~~(j) [(k)]~~ Students must have a permit to attend barber school and are authorized to only practice barbering in that school.

~~(k) [(l)]~~ The school must attach a current student photograph to the school's portion of the permit and to the student's portion of the permit. No student permit is valid unless these photographs are attached.

~~(l) [(m)]~~ Notwithstanding subsection ~~(j) [(k)]~~, a student may shampoo and condition a person's hair in a facility licensed under Texas Occupations Code, Chapters 1601 and 1603.

~~(m) [(n)]~~ A barber school shall maintain one album displaying the school's portion of student permits, including affixed picture, of all enrolled students. The permits shall be in alphabetical order. No student may accrue hours for practical work or theory unless the student's permit is displayed in accordance with this subsection.

~~(n) [(o)]~~ Each barber school approved by the department shall include in its instruction the curricula approved by the department.

~~(o) [(p)]~~ No business other than the teaching and practicing of barbering can be operated on the premises of a barber school, with the exception of vending machines or retail products directly relating to hair care.

~~(p) [(q)]~~ A barber school offering distance education must:

- (1) obtain department approval before offering a course;
- (2) provide students with the educational materials necessary to fulfill course requirements; and
- (3) comply with the curriculum requirements set forth in §82.120 by limiting distance education to the maximum number of theory hours designated for each course type.

~~(q) [(r)]~~ Only a permitted barber school, barbershop, mini-barbershop, dual shop, mini-dual shop, mobile shop, or manicurist specialty shop or a licensed barber may advertise as a "Barber."

~~(r) [(s)]~~ Schools may establish rules of operation and conduct, which may include rules relating to student clothing, that do not conflict with this chapter.

~~(s) [(t)]~~ A student enrolled in a barber school must wear a clean uniform or smock during school hours.

~~(t) [(u)]~~ Barber schools are responsible for compliance with the health and safety standards of this chapter.

~~(u) [(v)]~~ Alterations to the school's floor plan must be in compliance with the requirements of the Act and this chapter.

~~(v) [(w)]~~ Barber schools shall notify the department in writing of any name change of the school within thirty days of the change.

~~(w) [(x)]~~ Barber schools shall maintain a current mailing address on file with the department and must notify the department not later than thirty days following any change of mailing address.

~~(x) [(y)]~~ At least one time per month, barber schools shall submit to the department an electronic record of each student's accrued hours, in a manner and format prescribed by the department. Delayed data submission(s) are permitted only upon department approval, and the department shall determine the period of time for which a school may delay the electronic submission of data on a case by case basis. Upon department approval, a school may submit data required under this subsection in an alternate manner and format as determined by the department, if the school demonstrates that the requirements of this subsection would cause a substantial hardship to the school.

~~(y) [(z)]~~ A school shall maintain and have available for department and/or student inspection the monthly progress report required by Texas Occupations Code, §1601.561(a), documenting the daily attendance record of each student and number of credit hours earned. The school shall maintain the monthly progress report throughout the period of the student's enrollment and for 48 months after the student completes the curriculum, withdraws, or is terminated.

~~(z) [(aa)]~~ A barber establishment shall display in the establishment, in a conspicuous place clearly visible to the public, a copy of the establishment's most recent inspection report issued by the department.

~~(aa) [(bb)]~~ A barber school must have at least one instructor for every 25 students on the school's premises.

~~(bb) [(cc)]~~ A barber school must have at least one instructor for every three student instructors on the school's premises. A student instructor shall concentrate on developing teaching skills and may not be booked with customers.

~~(cc) [(dd)]~~ A barber school must ensure that guest presenters possess the necessary knowledge and teaching ability to present a curriculum topic and that a licensed instructor is present during the guest presenter's classroom instruction.

~~(dd) [(ee)]~~ A private barber school or post-secondary barber school may provide barber instruction to public high school students by contracting with the school district and complying with Texas Education Agency law and rules. A public high school student receiving instruction under such contract is considered to be a public high school student enrolled in a public school barber program for purposes of the Act and department rules.

§82.80. Fees.

(a) Application Fees:

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

(5) Specialty Certificate of Registration--Hair Weaving[, Hair Braiding]--\$30

(6) Specialty Instructor License--Barber Technician, Manicurist, Barber Technician/Manicurist, Barber Technician/Hair Weaving, Hair Weaving[, Hair Braiding]--\$65

(7) - (14) (No change.)

(b) Renewal Fees:

(1) Class A Barber Certificate--[~~\$60 for certificates expiring before February 1, 2014;~~] \$55 [for certificates expiring on or after February 1, 2014]

(2) Barber Instructor License--[\$70 for licenses expiring before February 1, 2014;] \$65 [for licenses expiring on or after February 1, 2014]

(3) Specialty License--Barber Technician, Manicurist, Barber Technician/Manicurist, Barber Technician/Hair Weaving--\$30

(4) Student Permit--No fee [charge.]

(5) Specialty Certificate of Registration--Hair Weaving[, Hair Braiding]--[\$43 for certificates expiring before February 1, 2014;] \$30 [for certificates expiring on or after February 1, 2014]

(6) Specialty Instructor License--Barber Technician, Manicurist, Barber Technician/Manicurist, Barber Technician/Hair Weaving, Hair Weaving[, Hair Braiding]--[\$70 for licenses expiring before February 1, 2014;] \$65 [for licenses expiring on or after February 1, 2014]

(7) - (9) (No change.)

(10) Booth Rental Permit--No fee [\$50 for permits expiring before February 1, 2014. No fee for licenses expiring on or after February 1, 2014.]

(11) - (14) (No change.)

(c) - (j) (No change.)

§82.110. Health and Safety Standards--Hair Weaving [and Hair Braiding] Services.

(a) Hair weavers [and hair braiders] shall wash their hands with soap and water, or use a liquid hand sanitizer, prior to performing any services on a client.

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

§82.120. Technical Requirements--Curricula.

(a) - (j) (No change.)

~~[(k) The curriculum for the hair braiding specialty certificate of registration consists of 35 hours as follows:]~~
~~[Figure: 16 TAC §82.120(k)]~~

~~[(k) [(4)] The curriculum for the hair weaving specialty certificate of registration consists of 300 hours as follows:~~
~~Figure: 16 TAC §82.120(k)]~~

~~[(m) The curriculum for the hair braiding specialty instructor license consists of 50 hours as follows:]~~
~~[Figure: 16 TAC 82.120 (m)]~~

~~[(n)]~~ Field Trips

(1) Barber related field trips are permitted under the following conditions for students enrolled in the following courses and the guidelines under this subsection must be strictly followed.

(2) A student may obtain the following field trip curriculum hours:

(A) a maximum of 75 hours out of the 1,500 hour Class A Barber course;

(B) a maximum of 50 hours out of the 1,000 hour class A Barber course;

(C) a maximum of 30 hours for the Manicure course;

(D) a maximum of 20 hours for the Barber Technician course;

(E) a maximum of 45 hours for the Barber Technician/Manicurist course;

(F) a maximum of 30 hours for the Barber Technician/Hair Weaving course;

(G) a maximum of 20 hours for the Hair Weaving course;

(H) a maximum of 35 hours for the 750 hour Instructor course;

(I) a maximum of 25 hours for the 500 hour Instructor course; and

(J) a maximum of 15 hours for the Cosmetology Operator to Class A Barber course.

(3) Students must be under the supervision of a licensed instructor from the school where the student is enrolled at all times during the field trip. The instructor-student ratio required in a school is required on a field trip.

(4) Complete documentation is required, including student names, instructor names, activity, location, date, and duration of the activity.

(5) No credit may be earned for travel.

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 September 3, 2015.

TRD-201503570

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: October 18, 2015

For further information, please call: (512) 463-8179



CHAPTER 83. COSMETOLOGISTS

16 TAC §§83.10, 83.20, 83.22, 83.25, 83.31, 83.70 - 83.72, 83.80, 83.106, 83.110, 83.114, 83.120

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC) Chapter 83, §§83.10, 83.20, 83.22, 83.25, 83.31, 83.70 - 83.72, 83.80, 83.106, 83.110, 83.114 and 83.120, regarding the Cosmetologists program.

House Bill 104 (H.B. 104), 84th Legislature, Regular Session (2015), allows services to be provided outside of a licensed facility for special events, such as weddings. In addition, House Bill 2717 (H.B. 2717) removes hair braiding from cosmetology regulations.

The proposed amendments are necessary to implement the changes made by H.B. 104 and H.B. 2717, to Texas Occupations Code, Chapters 1602 and 1603 and to clean up outdated references.

The proposed amendments to §83.10 removes "hair braider" and adds "special event" to the definitions. Editorial changes are also made to renumber the section and correct cross references.

Proposed amendments to §83.20 remove all references to the "hair braiding specialty certificate" as well as editorial changes.

Proposed amendments to §83.22 eliminates the temporary license.

The proposed amendments to §83.25 delete the requirements for continuing education that was established for a specific time frame and deletes references to hair braiding.

The proposed amendments to §83.31 delete the reference to hair braiding.

Proposed amendments to §83.70 specify when a licensee may work outside a licensed facility, and makes editorial changes.

Proposed amendments to §83.71 remove the reference to the shampoo apprentice permit and delete the equipment requirements for hair braiding salons.

Proposed amendments to §83.72 change the equipment requirement term to "wet sanitizer" to "wet disinfectant soaking container" conform to industry practice.

The proposed amendments to §83.80 delete all fees pertaining to hair braiding, temporary license and expired renewal dates.

Proposed amendments to §83.106 delete the term isopropyl and ethyl alcohol which were removed from the rules as sanitation products in the adoption published in the June 13, 2014 issue of the *Texas Register* (39 TexReg 4650).

The proposed amendments to §83.110 delete the reference to hair braiders.

The proposed amendments to §83.114 simplify the language regarding service animals.

Proposed amendments to §83.120 deletes the curriculum for hair braiding.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed amendments are in effect there will be no direct cost to state or local government as a result of enforcing or administering the proposed amendments. The estimated loss in revenue to the state is a result of the statutory change to deregulate hair braiding.

Mr. Kuntz also has determined that for each year of the first five-year period the proposed amendments are in effect, the public will benefit by less burdensome regulation on the barbering industry.

There will be no anticipated economic effect on small and micro-businesses and to all other persons who are required to comply with the rules as proposed.

Since the agency has determined that the proposed amendments will have no adverse economic effect on small or micro-businesses, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, under Texas Government Code §2006.002, is not required.

Comments on the proposal may be submitted by mail to Pauline Easley, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711; or by facsimile to (512) 475-3032, or electronically to erule.comments@tdlr.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, Chapters 51 and 1602, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51, 1602 and 1603. No other statutes, articles, or codes are affected by the proposal.

§83.10. Definitions.

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

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

(4) Booth rental license--A license issued or renewed to an applicant the same time the applicant is issued one of the following license types: operator, manicurist, esthetician, esthetician/manicurist, eyelash extension specialist, hair weaver, ~~hair braider,~~ wig specialist, instructor, or specialty instructor, which allows the holder to lease space on the premises of a beauty shop, specialty shop, mini-salon, dual shop, or mini-dual shop to engage in the practice of cosmetology as an independent contractor.

(5) - (11) (No change.)

(12) Eyelash Extension Specialist--A person who holds a specialty license and who is authorized to practice the service defined in Texas Occupations Code §1602.002(a)(11) [~~§1602.002(a)(12)~~].

(13) Esthetician--A person who holds a specialty license and who is authorized to practice the services defined in Texas Occupations Code §1602.002(a)(5) - (8) [~~§1602.002(a)(6) - (9)~~] and (11) [~~(12)~~]. The term esthetician in this chapter includes the term facialist.

(14) Esthetician/Manicurist--An esthetician/manicurist may perform only those services defined in Texas Occupations Code §1602.002(a)(5) - (11) [~~§1602.002(a)(6) - (12)~~].

(15) Guest Presenter--A person who possesses subject matter knowledge in specific curriculum topics and who has the teaching ability necessary to impart the information to cosmetology students. Instruction is limited to the presenter's area of expertise and a licensed instructor must be present during the classroom session in order for students to earn hours.

~~[(16) Hair braider--A person who holds a hair braiding specialty certificate and who may perform only the practice of cosmetology defined in Texas Occupations Code §1602.002(a)(2).]~~

(16) ~~[(17) Hair weaver--A person who holds a hair weaving specialty certificate and who may perform only the practice of cosmetology defined in Texas Occupations Code §1602.002(a)(2)[, (3), and (12) [(13)].]~~

(17) ~~[(18) Instructor--An individual authorized by the department to perform or offer instruction in any act or practice of cosmetology under Texas Occupations Code, §1602.002.~~

(18) ~~[(19) Law and Rules Book--Texas Occupations Code, Chapters 1602 and 1603, and 16 Texas Administrative Code Chapter 83.~~

(19) ~~[(20) License--A department-issued permit, certificate, approval, registration, or other similar permission required under Texas Occupations Code, Chapter 1601, 1602, or 1603.~~

(20) ~~[(21) License by reciprocity--A process that permits a cosmetology license holder from another jurisdiction or foreign country to obtain a Texas cosmetology license without repeating cosmetology education or examination license requirements.~~

(21) ~~[(22) Manicurist--A manicurist may perform only those services defined in Texas Occupations Code §1602.002(a)(9) [(10)] and (10) [(11)].]~~

(22) [(23)] Mini-Salon--A cosmetology establishment in which a person practices cosmetology under a license, certificate or permit issued under this chapter and which consists of a room or suite of rooms that is one of a number of connected establishments in a single premises that open onto a common hallway or common area.

(23) [(24)] Mini-Dual Shop--A shop owned, operated, or managed by a person meeting the requirements of both a mini-barbershop and mini-beauty shop license under Texas Occupations Code §1603.207.

(24) [(25)] Mini-Salon Licensee--A person or entity that holds a license for a mini-salon or mini-dual shop. The mini-salon licensee shall be responsible for rules under Texas Occupations Code, Chapters 1601, 1602, and 1603, and 16 TAC Chapters 82 and 83 for the mini-salon or mini-dual shop.

(25) [(26)] Mobile Shop--A beauty salon, specialty salon, or dual shop that is operated in a self-contained, self-supporting, enclosed mobile unit.

(26) [(27)] Operator--An individual authorized by the department to perform any act or practice of cosmetology under Texas Occupations Code, §1602.002.

(27) [(28)] Preparation--A substance used to beautify a person's face, neck or arms or to temporarily remove superfluous hair from a person's body including but not limited to antiseptics, tonics, lotions, powders, oils, clays, creams, sugars, waxes and/or chemicals.

(28) [(29)] Provisional license--A license that allows a person to practice cosmetology in Texas pending the department's approval or denial of that person's application for licensure by reciprocity.

(29) [(30)] Self-Contained--Containing within itself all that is necessary to be able to operate without connecting to outside utilities such as water and electricity.

(30) [(31)] Safety Razor--A razor that is fitted with a guard close to the cutting edge of the razor that is intended to prevent the razor from cutting too deeply and reduces the risk and incidence of accidental cuts.

[(32)] Shampoo Apprentice--A person authorized to perform the practice of cosmetology as defined in Texas Occupations Code §1602.002(a)(3), relating to shampooing and conditioning a person's hair.}]

(31) Special Event--Includes weddings, quinceaneras, pageants, proms, debutante balls, birthday parties, religious and cultural ceremonies, and on-stage performances.

(32) [(33)] Specialty Instructor--An individual authorized by the department to perform or offer instruction in an act or practice of cosmetology limited to Texas Occupations Code, §1602.002(a)(5) - (10) [§1602.002(a)(7), (9), (10)] and/or (11) [(12)].

(33) [(34)] Specialty Salon--A cosmetology establishment in which only the practice of cosmetology as defined in Texas Occupations Code, §1602.002(a)(3) or (5) - (12) [§1602.002(a)(2), (4), (7), (9), (10), (12), or (13)] is performed. Specialty salons may only perform the act or practice of cosmetology in which the salon is licensed.

(34) [(35)] Student Permit--A permit issued by the department to a student enrolled in cosmetology school which states the student's name and the name of the school. A person holding an active student permit may shampoo and condition a person's hair in a facility licensed under Texas Occupations Code, Chapters 1602 and 1603.

(35) [(36)] Tweezing Technique--Any type of temporary hair removal procedure involving the extraction of hair from the hair

follicle by use of, but not limited to, an instrument, appliance or implement made of metal, plastic, thread or other material.

(36) [(37)] Weaving--The process of attaching, by any method, commercial hair (hair pieces, hair extensions) to a client's hair and/or scalp. Weaving is also known as hair integration or hair intensification.

(37) [(38)] Wet disinfectant soaking container--A container with a cover to prevent contamination of the disinfectant solution and of a sufficient size such that the objects to be disinfected may be completely immersed in the disinfectant solution.

(38) [(39)] Wig Specialist--A person who holds a wig specialty certificate and who may perform only the practice of cosmetology defined in Texas Occupations Code §1602.002(a)(3) [§1602.002(a)(4)].

§83.20. License Requirements--Individuals.

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

(e) To be eligible for a hair weaving specialty certificate[, hair braiding specialty certificate,] or wig specialty certificate an applicant must:

- (1) submit a completed application on a department-approved form;
- (2) pay the fee required under §83.80;
- (3) be at least 17 years of age;
- (4) have completed the following hours of cosmetology curriculum in a beauty culture school:

(A) for a hair weaving specialty certificate, 300 hours of instruction completed in not less than eight weeks from date of enrollment;

[(B) for a hair braiding specialty certificate, 35 hours of instruction; or]

(B) [(C)] for a wig specialty certificate, 300 hours of instruction completed in not less than eight weeks from date of enrollment; and

(5) [for a hair weaving specialty certificate or wig specialty certificate] pass a written and practical examination required under §83.21. [No examination is required for a hair braiding specialty certificate.]

(f) - (h) (No change.)

§83.22. License Requirements--Beauty Salons, Specialty Salons, Mini-Salons, Dual Shops, Mini-Dual Shops, Mobile Shops, and Booth Rentals (Independent Contractors).

(a) (No change.)

(b) To be eligible for a mini-salon or mini-dual shop license [on or after November 1, 2014,] an applicant must:

- (1) obtain the current law and rules book;
- (2) comply with the requirements of the Act and this chapter;
- (3) submit a completed application on a department-approved form; and
- (4) pay the fee required under §83.80.

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

[(f) To be eligible for a temporary beauty salon, specialty salon, or dual shop license, an applicant must:]

- ~~[(1) obtain the current law and rules book;]~~
- ~~[(2) comply with the requirements of the Act, this chapter and if applicable, Texas Occupations Code, Chapter 1601 and 16 TAC Chapter 82;]~~
- ~~[(3) submit a completed application on a department-approved form;]~~
- ~~[(4) pay the fee required under §83.80; and]~~
- ~~[(5) hold an active department-issued cosmetology operator license, specialty license, or certificate.]~~
- ~~[(g) A temporary license may not be issued for more than one physical address.]~~
- ~~[(h) A temporary license expires on the 60th day after the date the license is issued and may not be renewed.]~~
- ~~[(i) An applicant who is issued a license under subsection (f) is not eligible for another temporary license until one year after the date the previous license was issued.]~~

§83.25. License Requirements--Continuing Education.

- ~~(a) (No change.)~~
- ~~[(b) To renew an operator license, or an esthetician, manicurist, esthetician/manicurist or a hair weaving, hair braiding, or wig specialty certificate that expires prior to September 1, 2012, a licensee must complete a total of 6 hours of continuing education through department-approved courses. The continuing education hours must include the following:]~~
 - ~~[(1) 2 hours in Sanitation required under the Act and this chapter;]~~
 - ~~[(2) 2 hours in the Act and this chapter addressing topics other than Sanitation; and]~~
 - ~~[(3) 2 hours in any topics listed in subsection (i).]~~
- ~~[(b) [(e)] To renew an operator license, or an esthetician, manicurist, esthetician/manicurist or eyelash extension specialty license, or a hair weaving, [hair braiding,] or wig specialty certificate [that expires on or after September 1, 2012], a licensee must complete a total of 4 hours of continuing education through department-approved courses. The continuing education hours must include the following:]~~
 - ~~(1) 1 hour in Sanitation required under the Act and this chapter; and~~
 - ~~(2) 3 hours in any topics listed in subsection (i).~~
- ~~[(d) To renew an instructor license, an esthetician instructor, manicure instructor, or esthetician/manicure instructor license, that expires prior to September 1, 2012, a licensee must complete a total of 6 hours of continuing education through department-approved courses. The continuing education hours must include the following:]~~
 - ~~[(1) 2 hours in Sanitation required under the Act and this chapter;]~~
 - ~~[(2) 2 hours in the Act and this chapter, addressing topics other than Sanitation; and]~~
 - ~~[(3) 2 hours in methods of teaching in accordance with §83.120.]~~
- ~~[(c) [(e)] To renew an instructor license, or an esthetician instructor, manicure instructor, esthetician/manicure instructor or eyelash extension instructor specialty license [that expires on or after September 1, 2012], a licensee must complete a total of 4 hours of continuing~~

education through department-approved courses in the following manner:

- ~~[(1) Option One]~~
 - ~~(1) [(A)] 1 hour in Sanitation required under the Act and this chapter; and~~
 - ~~(2) [(B)] 3 hours in methods of teaching in accordance with §83.120; or~~
 - ~~[(2) Option Two (which expires on 9/1/2014)]~~
 - ~~[(A) 2 hours in Sanitation required under the Act and this chapter; and]~~
 - ~~[(B) 2 hours in methods of teaching in accordance with §83.120.]~~
 - ~~(d) [(f)] For a timely or a late renewal, a licensee must complete the required continuing education hours within the two year period immediately preceding the renewal date.~~
 - ~~(e) [(g)] A licensee may receive continuing education hours in accordance with the following:]~~
 - ~~(1) A licensee may not receive continuing education hours for attending the same course more than once.~~
 - ~~(2) A licensee will receive continuing education hours for only those courses that are registered with the department, under procedures prescribed by the department.~~
 - ~~(f) [(h)] A licensee shall retain a copy of the certificate of completion for a course for two years after the date of completion. In conducting any inspection or investigation of the licensee, the department may examine the licensee's records to determine compliance with this subsection.~~
 - ~~(g) [(i)] To be approved under Chapter 59 of this title, a provider's course must be dedicated to instruction in one or more of the following topics:]~~
 - ~~(1) Sanitation required under the Act and this chapter;~~
 - ~~(2) the Act and this chapter, addressing topics other than Sanitation;~~
 - ~~(3) the curriculum subjects listed in §83.120.~~
 - ~~(h) [(j)] A registered course may be offered until the expiration of the course registration or until the provider ceases to hold an active provider registration, whichever occurs first.~~
 - ~~(i) [(k)] A provider shall pay to the department a continuing education record fee of \$5 for each licensee who completes a course for continuing education credit. A provider's failure to pay the record fee for courses completed may result in disciplinary action against the provider, up to and including revocation of the provider's registration under Chapter 59 of this title.~~
 - ~~(j) [(h)] Notwithstanding subsections (b) and (c) [through (e)] a licensee may satisfy the continuing education requirement for renewal by completing one hour of Sanitation in department-approved courses, if the licensee:]~~
 - ~~(1) is at least 65 years of age; and~~
 - ~~(2) has held a cosmetology license for at least 15 years.~~
- §83.31. Licenses--License Terms.*
- ~~(a) The following licenses have a term of two (2) years:]~~
 - ~~(1) operator license;~~

(2) specialty license--esthetician, manicurist, esthetician/manicurist, eyelash extension;

(3) specialty certificate--hair weaving, [~~hair braiding,~~] wig, shampoo/conditioning;

(4) - (11) (No change.)

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

§83.70. *Responsibilities of Individuals.*

(a) For purposes of this section, "licensed facility" means the premises of a place of business that holds a license, certificate, or permit under Texas Occupations Code, Chapters 1601, 1602 and 1603.

(b) A licensee is [~~shall be~~] restricted to working in a licensed facility but may perform a service within the scope of the license, [~~certificate or permit~~] at a location other than a licensed facility for a customer who: [~~because of illness or physical or mental incapacitation,~~]

(1) is unable to receive the services at a licensed facility because of illness or physical or mental incapacitation; or [~~The appointment for services must be made through a licensed facility.~~]

(2) will receive the services in preparation for and at the location of a special event; and

(3) makes the appointment for services through a licensed facility.

(c) - (j) (No change.)

§83.71. *Responsibilities of Beauty Salons, Mini-Salons, Specialty Salons, Dual Shops, Mini-Dual Shops and Booth Rentals.*

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

(g) A person holding a beauty, specialty or mini-salon license or a dual or mini-dual shop permit may not employ a person who is not otherwise licensed by the department to shampoo or condition a person's hair, unless the person holds a [~~an active shampoo apprentice permit or~~] student permit.

(h) (No change.)

(i) In addition to the requirements of subsection (h):

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

~~[(8) hair braiding salons shall provide the following equipment for each licensee present and providing services:]~~

~~[(A) one work station; and]~~

~~[(B) one styling chair.]~~

(8) [(9)] Dual shops shall:

(A) comply with all requirements of the Act and this chapter applicable to beauty salons;

(B) comply with all requirements of Texas Occupations Code, Chapter 1601, and Chapter 82 of this title applicable to barber-shops;

(C) if the shop does not currently have employed or have a contract with at least one licensed barber or one licensed cosmetologist, the owner must immediately display a prominent sign at the entrance and exit of the shop indicating that no barber or no cosmetologist is available; and

(D) if the shop has neither employed nor contracted with at least one licensed barber or cosmetologist for a period of 45 days or more the owner shall:

(i) not place any new advertisement or display any sign or symbol indicating that the shop offers barbering or cosmetology services; and

(ii) remove or obscure any existing sign or symbol indicating that the shop offers barbering or cosmetology services.

(9) [(10)] Mini-dual shops shall:

(A) comply with all requirements of the Act and this chapter applicable to beauty salons; and

(B) comply with all requirements of Texas Occupations Code, Chapter 1601, and 16 TAC Chapter 82 applicable to barber-shops.

(j) - (m) (No change.)

§83.72. *Responsibilities of Beauty Culture Schools.*

(a) - (u) (No change.)

(v) Beauty culture schools must have a classroom separated from the laboratory area by walls extending to the ceiling and equipped with the following equipment to properly instruct a minimum of ten students enrolled at the school:

(1) - (8) (No change.)

(9) If offering the operator curriculum the following equipment must be available in adequate number for student use:

(A) - (L) (No change.)

(M) wet disinfectant soaking containers [~~sanitizer~~].

(10) If offering the esthetician curriculum the following equipment must be available in adequate number for student use:

(A) - (L) (No change.)

(M) wet disinfectant soaking containers [~~sanitizer~~].

(11) If offering the manicure curriculum the following equipment must be available in adequate number for student use:

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

(H) paraffin bath and paraffin wax; [~~and~~]

(I) air brush system; and[-]

(J) wet disinfectant soaking containers.

(12) (No change.)

(13) If offering the eyelash extension curriculum; the following equipment must be available in adequate number for student use:

(A) - (D) (No change.)

(E) wet disinfectant soaking containers [~~sanitizer~~]; and

(F) dry sanitizer.

(w) (No change.)

§83.80. *Fees.*

(a) Application fees.

(1) Operator License--\$50

(2) Specialty License--Esthetician, Manicurist, Esthetician/Manicurist, Eyelash Extension--\$50

(3) Specialty Certificate--Hair Weaving, [~~Hair Braiding,~~] Wig--\$50

(4) - (13) (No change.)

~~{(14) Temporary Beauty Salon, Specialty Salon, or Dual Shop License--\$20}~~

(b) Renewal fees.

(1) Operator License--~~[\$53 for licenses expiring before February 1, 2014;] \$50 [for licenses expiring on or after February 1, 2014.]~~

(2) Specialty License--Esthetician, Manicurist, Esthetician/Manicurist, Eyelash Extension--~~[\$53 for licenses expiring before February 1, 2014;] \$50 [for licenses expiring on or after February 1, 2014.]~~

(3) Specialty Certificate--Hair Weaving, ~~[Hair Braiding;] Wig, Shampoo/Conditioning--[\$53 for certificates expiring before February 1, 2014;] \$50 [for certificates expiring on or after February 1, 2014.]~~

(4) Instructor License--~~[\$70 for licenses expiring before February 1, 2014;] \$60 [for licenses expiring on or after February 1, 2014.]~~

(5) Instructor Specialty License--Esthetician, Manicurist, Esthetician/Manicure, Eyelash Extension--~~[\$70 for licenses expiring before February 1, 2014;] \$60 [for licenses expiring on or after February 1, 2014.]~~

(6) - (8) (No change.)

(9) Booth Rental (Independent Contractor) License--~~[\$67 for licenses expiring before February 1, 2014;] No fee [for licenses expiring on or after February 1, 2014.]~~

(10) - (12) (No change.)

(c) - (l) (No change.)

§83.106. Health and Safety Standards--Manicure and Pedicure Services.

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

(f) Buffer blocks, porous nail files, pedicure files, callus rasps, natural pumice and foot brush, arbor, sanding bands, sleeves, heel and toe pumice, exfoliating block (~~washable [rough surfaced or absorbent] materials~~) shall be cleaned by manually brushing or other adequate methods to remove all visible debris after each use, and then sprayed with ~~[isopropyl or ethyl alcohol;]~~ an EPA-registered bactericidal, fungicidal, and virucidal disinfectant, or a ~~[or a]~~ high level chlorine bleach solution in accordance with this chapter. If a buffer block or porous nail file is exposed to broken skin (skin that is not intact) or unhealthy skin or nails, it must be discarded immediately after use in a trash receptacle.

(g) (No change.)

§83.110. Health and Safety Standards--Hair Weaving [and Hair Braiding] Services.

(a) Cosmetologists, wig specialists, and hair weavers~~;~~ and hair braiders shall wash their hands with soap and water, or use a liquid hand sanitizer, prior to performing any services on a client.

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

§83.114. Health and Safety Standards--Establishments.

(a) - (h) (No change.)

(i) Only service animals ~~[No animals with the exception of those providing assistance to individuals]~~ are allowed in establishments. Covered aquariums are allowed provided that they are maintained in a sanitary condition.

§83.120. Technical Requirements--Curriculum.

(a) (No change.)

(b) Specialist Curricula
Figure: 16 TAC §83.120(b)

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

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

Filed with the Office of the Secretary of State on September 3, 2015.

TRD-201503569

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: October 18, 2015

For further information, please call: (512) 463-8179



CHAPTER 85. VEHICLE STORAGE FACILITIES

16 TAC §§85.10, 85.711, 85.1003

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC) Chapter 85, §§85.10, 85.711 and 85.1003, regarding the Vehicle Storage Facilities program.

House Bill 804 (H.B. 804), 84th Legislature, Regular Session (2015), clarifies the forms of payment a vehicle storage operator shall accept including cash, debit card, and credit card.

The proposed amendments are necessary to implement the changes made by H.B. 804 to Texas Occupations Code, Chapter 2303.

The proposed amendments to §85.10 adds a definition for "credit card". Editorial changes are also made to renumber the section.

Proposed amendments to §85.711 require cash and credit cards be forms of payment accepted at vehicle storage facilities and prohibit the vehicle storage facility to charge additional storage fees beyond the date payment by credit card is tendered.

Proposed amendments to §85.1003 change the required language on signs posted at a vehicle storage facility regarding forms of payment.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed amendments are in effect there will be no direct cost to state or local government as a result of enforcing or administering the proposed amendments. There is no estimated loss in revenue to the state as a result of enforcing or administering the proposed amendments.

Mr. Kuntz also has determined that for each year of the first five-year period the proposed amendments are in effect, the public will benefit by reducing the burden of limited payment options when paying a vehicle storage facility.

The anticipated economic effect on small and micro-businesses and to all other persons who are required to comply with the rules as amended will be minimal considering the majority, if not all, current vehicle storage facilities have the capability to accept electronic payment. Therefore, there will be no adverse

effect on small or micro-businesses or to persons who are required to comply with the amendments as proposed. However, any economic effect on small and micro-businesses is a result of statutory changes requiring vehicle storage facilities to accept different forms of payment.

Since the agency has determined that the proposed amendments will have no adverse economic effect on small or micro-businesses, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, under Texas Government Code §2006.002, is not required.

Comments on the proposal may be submitted by mail to Pauline Easley, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711; or by facsimile to (512) 475-3032; or electronically to erule.comments@tdlr.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, Chapters 51 and 2303, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 2303. No other statutes, articles, or codes are affected by the proposal.

§85.10. Definitions.

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

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

(5) Credit card--A form of payment processed over the Visa, Mastercard, American Express, and Discover networks.

(6) [~~5~~] Day--Twenty-four continuous hours.

(7) [~~6~~] Department--The Texas Department of Licensing and Regulation.

(8) [~~7~~] Executive director--The executive director of the department.

(9) [~~8~~] Fence--An enclosure of wood, chain link, metal, concrete, or masonry, placed around an area used to store vehicles and designed to prevent intrusion and escape.

(10) [~~9~~] Immediate family--A vehicle owner's parents, spouse, children, brothers, and sisters.

(11) [~~10~~] Impoundment--The following actions when performed on a stored vehicle:

(A) using materials such as plastic or canvas tarpaulins to ensure the preservation of a stored vehicle if doors, windows, convertible tops, hatchbacks, sunroofs, trunks, or hoods are broken or inoperative;

(B) conducting a written inventory of any unsecured personal property contained in a stored vehicle;

(C) removing and storing all unsecured personal property that is contained in a stored vehicle and for which safekeeping is necessary; or

(D) obtaining motor vehicle registration information for a specific vehicle from the Texas Department of Transportation, Vehicle Titles and Registration Division, or an equivalent out-of-state agency.

(12) [~~11~~] License holder or Licensee--The person to which the department issued a license.

(13) [~~12~~] Main entrance--The initial point from the public road onto the private property leading to the vehicle storage facility at which a consumer or service recipient enters a vehicle storage facility.

(14) [~~13~~] Notice of Right of Possession for Salvage--A form prescribed by the department and executed by persons licensed under 16 Texas Administrative Code Chapter 86 as agents for an insurance company that has documented authority from the vehicle owner obtained prior to execution of the form, certifying right of possession of a total loss vehicle stored at a vehicle storage facility.

(15) [~~14~~] Person--An individual, corporation, organization, business trust, estate, trust, partnership, association, or other legal entity.

(16) [~~15~~] Primary lien holder--First lien holder named on the certificate of title in the motor vehicle registration records of the Texas Department of Transportation.

(17) [~~16~~] Principal--An individual who:

(A) holds, whether personally, as a beneficiary of a trust, or by other constructive means:

(i) 10% of a corporation's outstanding stock; or

(ii) an ownership interest in a business that is equivalent to a fair market value of more than \$25,000;

(B) has the controlling interest in a business;

(C) has a participating interest of more than 10% in the profits, proceeds, or capital gains of a business, regardless of whether the interest is direct or indirect, whether it is held through share, stock, or any other manner, or whether it includes voting rights;

(D) holds a position as a member of the board of directors or other governing body of a business; or

(E) holds a position as an elected officer of a business.

(18) [~~17~~] Proof of loss claim form--A form prescribed by the department and submitted by an insurance company certifying right of possession to a vehicle stored at a vehicle storage facility.

(19) [~~18~~] Registered owner--Each person in whose name a vehicle is titled under Transportation Code, Chapter 501, or in whose name a vehicle is registered under Transportation Code, Chapter 502.

(20) [~~19~~] Vehicle--A motor vehicle subject to registration under Transportation Code, Title 7, Subtitle A, or any other device designed to be self-propelled or transported on a public highway.

(21) [~~20~~] Vehicle owner--A person:

(A) in whose name a vehicle is registered under the Certificate of Title Act, Transportation Code, Chapter 501;

(B) in whose name a vehicle is registered under Transportation Code, Chapter 502, or a member of that person's immediate family;

(C) who holds a vehicle through a valid lease agreement;

(D) who is an unrecorded lienholder with a right to possession; or

(E) who is a lienholder that holds an affidavit of repossession and has the right to repossess a vehicle.

(22) [(21)] Vehicle storage facility (VSF)--A garage, parking lot, or other facility owned or operated by a person other than a governmental entity for storing or parking 10 or more vehicles per year.

(23) [(22)] Vehicle transfer--Any movement of a vehicle out of a VSF, prior to its release as prescribed in this chapter.

§85.711. *Responsibilities of Licensee--Forms of Payment for Release of Vehicle.*

(a) For purposes of this section, credit card means a form of payment processed over the Visa, Mastercard, American Express, and Discover networks.

(b) In addition to other forms of payment accepted by the VSF, including a governmental VSF, a VSF must accept cash, debit cards and credit cards[, debit cards or electronic checks].

(c) A VSF in violation of subsection (b), in addition to administrative penalties, may not charge for the storage of a vehicle beyond the date payment by credit card is tendered.

§85.1003. *Technical Requirements--Storage Lot Signs.*

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

(e) A VSF must conspicuously post a sign that states: "This vehicle storage facility must accept payment by cash, debit cards and credit cards [an electronic check, credit card, or debit card] for any fee or charge associated with delivery or storage of a vehicle."

(f) - (g) (No change.)

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

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William H. Kuntz Jr.

Executive Director

Texas Department of Licensing and Regulation

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For further information, please call: (512) 463-8179



CHAPTER 86. VEHICLE TOWING AND BOOTING

16 TAC §86.10

The Texas Department of Licensing and Regulation (Department) proposes amendments to an existing rule at 16 Texas Administrative Code (TAC) Chapter 86, §86.10, regarding the Vehicle Towing and Booting program.

Senate Bill 1820 (S.B. 1820), 84th Legislature, Regular Session (2015), exempts certain vehicles from towing regulations.

The proposed amendments are necessary to implement the changes made by S.B. 1820 to Texas Occupations Code, Chapter 2308.

The proposed amendments to §86.10 clarify the definition of a "tow truck."

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed amendments are in effect there will be no direct cost to state or local government as

a result of enforcing or administering the proposed amendments. There is no estimated loss in revenue to the state as a result of enforcing or administering the proposed amendments.

Mr. Kuntz also has determined that for each year of the first five-year period the proposed amendment is in effect, the public will benefit by having clarity on towing regulations and specifically issues related to what constitutes a tow truck will be better defined.

There is no anticipated economic effect on small and micro-businesses and to all other persons who are required to comply with the rules as amended. Therefore, there will be no adverse effect on small or micro-businesses or to persons who are required to comply with the amendments as proposed.

Since the agency has determined that the proposed amendments will have no adverse economic effect on small or micro-businesses, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, under Texas Government Code §2006.002, is not required.

Comments on the proposal may be submitted by mail to Pauline Easley, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711; or by facsimile to (512) 475-3032, or electronically to erule.comments@tdlr.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendment is proposed under Texas Occupations Code, Chapters 51 and 2308, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 2308. No other statutes, articles, or codes are affected by the proposal.

§86.10. *Definitions.*

The following words and terms, when used in this chapter will have the following meanings, unless the context clearly shows otherwise:

(1) - (20) (No change.)

(21) Tow truck--A motor vehicle, including a wrecker, equipped with a mechanical device used to tow, winch, or otherwise move another motor vehicle. The term does not include:

(A) a motor vehicle owned and operated by a governmental entity, including a public school district;

(B) a motor vehicle towing:

(i) a race car;

(ii) a motor vehicle for exhibition; or

(iii) an antique motor vehicle;

(C) a recreational vehicle towing another vehicle;

(D) a motor vehicle used in combination with a tow bar, tow dolly, or other mechanical device if the vehicle is not operated in the furtherance of a commercial enterprise;

(E) a motor vehicle that is controlled or operated by a farmer or rancher and used for towing a farm vehicle; [ø]

(F) a motor vehicle that:

(i) is owned or operated by an entity the primary business of which is the rental of motor vehicles; and

(ii) only tows vehicles rented by the entity.

(G) a truck-trailer combination that is owned or operated by a dealer licensed under Chapter 2301 and used to transport new vehicles during the normal course of a documented transaction in which the dealer is a party and ownership or the right of possession of the transported vehicle is conveyed or transferred; or

(H) a car hauler that is used solely to transport, other than in a consent or nonconsent tow, two or more motor vehicles as cargo in the course of a prearranged shipping transaction or for use in mining, drilling, or construction operations. This does not include:

(i) the movement of a motor vehicle pursuant to the vehicle owner's or operator's request for assistance because of a mechanical malfunction, damage, or similar disablement of the vehicle;

(ii) the movement of a motor vehicle pursuant to the vehicle owner's request because of an inability to obtain an operator to move the vehicle;

(iii) obtaining possession of a motor vehicle pursuant to a repossession, levy, or other debt collection or judicial process;

(iv) the movement of a motor vehicle from the scene of a traffic accident or incident; or

(v) the removal of a motor vehicle from private property without the consent of the vehicle's owner or operator.

(22) Towing company--An individual, association, corporation, or other legal entity that controls, operates, or directs the operation of one or more tow trucks over a public roadway in this state but does not include a political subdivision of the state.

(23) Towing operator--The person to which the department issued a towing operator license.

(24) Unauthorized vehicle--A vehicle parked, stored, or located on a parking facility without the consent of the parking facility owner.

(25) Vehicle--A device in, on, or by which a person or property may be transported on a public roadway. The term includes an operable or inoperable automobile, truck, motorcycle, recreational vehicle, or trailer but does not include a device moved by human power or used exclusively on a stationary rail or track.

(26) Vehicle owner--A person:

(A) named as the purchaser or transferee in the certificate of title issued for the vehicle under Chapter 501, Transportation Code;

(B) in whose name the vehicle is registered under Chapter 502, Transportation Code, or a member of the person's immediate family;

(C) who holds the vehicle through a lease agreement;

(D) who is an unrecorded lienholder entitled to possess the vehicle under the terms of a chattel mortgage; or

(E) who is a lienholder holding an affidavit of repossession and entitled to repossess the vehicle.

(27) Vehicle storage facility--A vehicle storage facility, as defined by Texas Occupations Code, §2303.002 that is operated by a person who holds a license issued under Texas Occupations Code, Chapter 2303 to operate the facility.

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 September 3, 2015.

TRD-201503568

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: October 18, 2015

For further information, please call: (512) 463-8179



TITLE 22. EXAMINING BOARDS

PART 6. TEXAS BOARD OF PROFESSIONAL ENGINEERS

CHAPTER 131. ORGANIZATION AND ADMINISTRATION

The Texas Board of Professional Engineers (Board) proposes new §131.37 concerning State Contract Guidelines and an amendment to §131.85 concerning Board Rules Procedures.

New §131.37 is required to implement changes to Chapter 2261 of the Texas Government Code made by SB 20 in the 84th Texas Legislative session related to managing contracts with state agencies.

The proposed amendment to §131.85 is required to implement changes to Chapter 2001 of the Texas Government Code made by HB 763 in the 84th Texas Legislative session related to rule-making procedures for state agencies. The change clarifies the procedure for accepting petitions for rulemaking.

David Howell, P.E., Deputy Executive Director for the Board, has determined that for the first five-year period the proposed rules are in effect there is no adverse fiscal impact for the state and local government as a result of enforcing or administering the sections as proposed. There is no additional cost to licensees or other individuals. There is no adverse fiscal impact to the estimated 1,000 small or 6,400 micro businesses regulated by the Board. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Howell also has determined that for the first five years the proposed rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules is an improvement in the flexibility of the licensure processes and the ability to issue international temporary licenses to qualified engineers.

Any comments or request for a public hearing may be submitted no later than 30 days after the publication of this notice to David Howell, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 S. Interstate 35, Austin, Texas 78741, faxed to his attention at (512) 440-0417 or sent by email to rules@engineers.texas.gov.

SUBCHAPTER B. ORGANIZATION OF THE BOARD STAFF

22 TAC §131.37

The new rule is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

No other statutes, articles or codes are affected by the proposed rule.

§131.37. State Contract Guidelines.

Pursuant to Texas Government Code, §2261.253, the executive director or his/her representative shall establish a written procedure to identify each contract that requires enhanced contract or performance monitoring and submit information on the contract to the Board.

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

Filed with the Office of the Secretary of State on September 4, 2015.

TRD-201503591

Lance Kinney, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: October 18, 2015

For further information, please call: (512) 440-7723



SUBCHAPTER F. ADMINISTRATION

22 TAC §131.85

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

No other statutes, articles or codes are affected by the proposed rule.

§131.85. Board Rules Procedures.

(a) Amendments, Deletions, and Additions of Rules. Proposed amendments, deletions, or additions to the board rules of practice and procedure may be submitted by the staff or any board member. Board action to accept or amend the proposal shall require a majority vote when a quorum is present at a meeting. A proposal or amended proposal, as accepted by the board, can be promulgated as an amendment, deletion, or addition to board rules by following the procedures set out in 2001 and 2002, Government Code.

(b) Petition for Adoption of Rules. The board shall accept a petition from an interested person as defined in Texas Government Code, Chapter 2001, submitted by at least 25 persons or by an association having at least 25 members to adopt, delete, or amend a rule. For a petition under this section, at least 51 percent of the total number of signatures required must be of residents of this state. The petition must be filed with the executive director at least 30 days and not more than 60 days prior to a regular board meeting at which board action will be taken. Such a petition will include, but need not be limited to, the following.

(1) Identity information. Full name and complete mailing address and telephone number of the petitioner on whose behalf the petition is filed.

(2) Reference. Reference to the rule which it is proposed to make, change or amend, or delete, so that it may be identified and prepared in a manner to indicate the word, phrase, or sentence to be added, changed, or deleted from the current text, if any. The proposed rule should be presented in the exact form in which it is to be published, adopted, or promulgated.

(3) A suggested effective date. The desired effective date should be stated.

(4) Justification. Justification for the proposed action in narrative form with sufficient particularity to fully inform the board and any interested party of the facts upon which the petitioner relies, including the statutory authority for the promulgation of the proposed rule.

(5) Desired effect of proposal. Include a brief statement detailing the desired effect to be achieved by the proposed rule, change, or amendment or deletion.

(6) Summary. A concise summary of the proposed rule, change, or amendment.

(7) Signatures. Signatures on the petition of the petitioners and/or the attorney or representative of the petitioners.

(8) Fee. Any fee required by statute or board rules.

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

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

Filed with the Office of the Secretary of State on September 4, 2015.

TRD-201503592

Lance Kinney, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: October 18, 2015

For further information, please call: (512) 440-7723



CHAPTER 133. LICENSING

The Texas Board of Professional Engineers (Board) proposes amendments to §133.21 concerning Application for Standard License, §133.23 concerning Applications from Former Standard License Holders, §133.25 concerning Application from Engineering Educators, §133.81 concerning Receipt and Processing of Applications by the Board, §133.87 concerning Final Action on Applications, and §133.97 concerning Issuance of License.

The proposed amendments to §§133.21, 133.23, 133.25, and 133.81 are required to implement changes to Chapter 55 of the Texas Government Code made by SB 807 and SB 1307 in the 84th Texas Legislative session related to licensing and renewal requirements for active duty military, qualifying military spouses and military veterans.

The proposed amendments to §§133.81, 133.87, and 133.97 are required to implement changes to the Texas Engineering Practice Act made by HB 7 in the 84th Texas Legislative session re-

lated to the Professional Fee. The change repeals the \$200 Professional Fee which has been collected at the time of issuance and renewal of a license.

David Howell, P.E., Deputy Executive Director for the Board, has determined that for the first five-year period the proposed amendments are in effect there is no adverse fiscal impact for the state and local government as a result of enforcing or administering the sections as amended. There is no additional cost to licensees or other individuals. There is no adverse fiscal impact to the estimated 1,000 small or 6,400 micro businesses regulated by the Board. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Howell also has determined that for the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the proposed amendments is an improvement in the flexibility of the licensure processes and the ability to issue international temporary licenses to qualified engineers.

Any comments or request for a public hearing may be submitted no later than 30 days after the publication of this notice to David Howell, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 S. Interstate 35, Austin, Texas 78741, faxed to his attention at (512) 440-0417 or sent by email to rules@engineers.texas.gov.

SUBCHAPTER C. PROFESSIONAL ENGINEER LICENSE APPLICATION REQUIREMENTS

22 TAC §§133.21, 133.23, 133.25

The amendments are proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

No other statutes, articles or codes are affected by the proposed amendments.

§133.21. *Application for Standard License.*

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

(d) Applicants for a license shall submit:

(1) an application in a format prescribed by the board and shall:

(A) list his or her full, legal and complete name without abbreviations, nicknames, or other variations of the full legal name. If applicable, the applicant shall submit proof of a legal name change including but not limited to a marriage certificate, passport, current Driver's License issued by the State of Texas, court documents, or nationalization documents to substantiate other documentation submitted in the application; and

(B) list social security number, as required under the Texas Family Code, §231.302;

(2) current application fee as established by the board. Application fees shall be waived for qualifying military service members, military veterans, and military spouses in accordance with Texas Occupations Code Chapter 55;

(3) proof of educational credentials pursuant to §133.33 or §133.35 of this chapter (relating to Proof of Educational Qualifications);

(4) supplementary experience record as required under §133.41 of this chapter (relating to Supplementary Experience Record);

(5) reference statements as required under §133.51 of this chapter (relating to Reference Providers);

(6) documentation of passage of examination(s), which may include official verifications from the National Council of Examiners for Engineering and Surveying (NCEES) or other jurisdictions as required under §133.61(g) of this chapter (relating to Engineering Examinations), if applicable;

(7) verification of a current license, if applicable;

(8) a completed Texas Engineering Professional Conduct and Ethics Examination as required under §133.63 of this chapter (relating to Professional Conduct and Ethics Examination);

(9) scores of TOEFL, if applicable;

(10) information regarding any criminal history including any judgments, deferred judgments or pre-trial diversions for a misdemeanor or felony provided in a format prescribed by the board together with copies of any court orders or other legal documentation concerning the criminal charges and the resolution of those charges;

(11) documentation of submittal of fingerprints for criminal history record check as required by §1001.3035 of the Act; and

(12) if applicable, written requests for waivers of the examinations on the fundamentals and/or principles and practices of engineering, the TOEFL, or a commercial evaluation of non-accredited degrees and a statement supporting the request(s).

(e) - (h) (No change.)

§133.23. *Applications from Former Standard License Holders.*

(a) A former standard license holder, whose original license has been expired for two or more years and who meets the current requirements for licensure, may apply for a new license. This section does not apply to a former holder of a temporary license.

(b) A former standard license holder applying for a license under the current law and rules must have the documentation requested in §133.21 of this chapter (relating to Application) recorded and on file with the board and may request in writing that any transcripts, reference statements, evaluations, supplementary experience records or other similar documentation previously submitted to the board be applied toward the new application. The applicant shall:

(1) submit a new application in a format prescribed by the board;

(2) pay the application fee established by the board. Application fees shall be waived for qualifying military service members, military veterans, and military spouses in accordance with Texas Occupations Code Chapter 55;

(3) submit a completed Texas Engineering Professional Conduct and Ethics examination;

(4) submit a supplementary experience record that includes at least the last four years of engineering experience, which may include experience before the previous license expired;

(5) submit also at least one reference statement conforming to §133.51 of this chapter (relating to Reference Providers), in which

a professional engineer shall verify at least four years of the updated supplementary experience record; and

(6) documentation of submittal of fingerprints for criminal history record check as required by §1001.3035 of the Act, unless previously submitted to the board.

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

§133.25. *Application from Engineering Educators.*

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

(c) An engineering educator, applying under the alternate process, shall submit:

- (1) an application in a format prescribed by the board;
- (2) a supplementary experience record:

(A) For tenured faculty (or those approved for promotion), submit a dossier including a comprehensive resume or curriculum vitae containing educational experience, engineering courses taught, and description of research and scholarly activities in lieu of the supplementary experience record;

(B) For non-tenured faculty, a standard supplementary experience record with courses taught and/or other engineering experience shall be submitted;

(3) reference statements or letters from currently licensed professional engineers who have personal knowledge of the applicant's teaching and/or other creditable engineering experience. A reference provider may, in lieu of the reference statement, submit a letter of recommendation that, at a minimum, testifies to the credentials and abilities of the educator. The reference statements or letters of recommendation can be from colleagues within the department, college, or university; from colleagues from another university; or professional engineers from outside academia;

(4) proof of educational credentials pursuant to §133.33 or §133.35 of this chapter (relating to Proof of Educational Qualifications);

(5) a completed Texas Professional Conduct and Ethics Examination;

(6) current application fee as established by the board. Application fees shall be waived for qualifying military service members, military veterans, and military spouses in accordance with Texas Occupations Code Chapter 55;

(7) Information regarding any criminal history including any judgments, deferred judgments or pre-trial diversions for a misdemeanor or felony provided in a format prescribed by the board, together with copies of any court orders or other legal documentation concerning the criminal charges and the resolution of those charges;

(8) documentation of submittal of fingerprints for criminal history record check as required by §1001.3035 of the Act;

(9) documentation of passage of examination(s), which may include official verifications from the National Council of Examiners for Engineering and Surveying (NCEES) or other jurisdictions as required under §133.61(g) of this chapter (relating to Engineering Examinations), if applicable; and

(10) written requests for waivers of the examinations on the fundamentals and/or principles and practices of engineering, if applicable.

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

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

Filed with the Office of the Secretary of State on September 4, 2015.

TRD-201503593

Lance Kinney, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: October 18, 2015

For further information, please call: (512) 440-7723



SUBCHAPTER H. REVIEW PROCESS OF APPLICATIONS AND LICENSE ISSUANCE

22 TAC §§133.81, 133.87, 133.97

The amendments are proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

No other statutes, articles or codes are affected by the proposed amendments.

§133.81. *Receipt and Processing of Applications by the Board.*

(a) Upon receipt of an application for licensure and application fee at the board office, the board shall initiate a review of the credentials submitted. Applicants who meet the licensure requirements [~~and pay the Professional Fee in accordance with §1001.206 of the Act~~] shall be issued a license. Applicants who fail to meet one or more of the licensure requirements shall be denied a license.

(b) - (g) (No change.)

(h) Pursuant to Chapter 55, [§55-005] Texas Occupations Code, an application for license from a military service member, military veteran or military spouse shall be processed and reviewed as soon as practicable in accordance with subsection (a) of this section. All other applications will be processed in the order they were received.

§133.87. *Final Action on Applications.*

(a) Upon approval of an application by the executive director, the licensing committee, or the board in a manner provided in this subchapter, the executive director shall:

(1) issue a license subject to the applicant's taking and passing the examination on the principles and practice of engineering according to §133.67 of this chapter (relating to Examination on the Principles and Practice of Engineering) [~~and paying the Professional Fee in accordance with §1001.206 of the Act~~]; or

(2) issue a license to an applicant who has passed the examination on the principles and practice of engineering or who has had that examination waived [~~and has paid the Professional Fee in accordance with §1001.206 of the Act~~].

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

§133.97. *Issuance of License.*

(a) A license as a professional engineer shall be issued upon the approval of the application pursuant to §133.87(a) of this chapter (relating to Final Action on Applications).

~~[(b) The Professional Fee paid in accordance with §1001.206 of the Act at the time of license issuance is applied toward the required licensing fee for the first partial year of licensure.]~~

~~(b) [(e)]~~ The new license holder shall be assigned a serial number issued consecutively in the order of approval.

~~(c) [(d)]~~ The executive director shall notify the new license holder in writing of:

- (1) the license issuance;
- (2) the license serial number;
- (3) the instructions to obtain a seal; and
- (4) the instructions to return a seal imprint and a recent, wallet-size, portrait photograph.

~~(d) [(e)]~~ Within 60 days from the written notice from the executive director of license issuance, the new license holder shall:

- (1) obtain a seal(s);
- (2) place the seal imprint(s) on the form provided by the board and return it to the board office; and
- (3) furnish a wallet-size portrait photograph for the board's files.

~~(e) [(f)]~~ Failure to comply with paragraph ~~(d) [(e)]~~ of this section is a violation of board rules and shall be subject to sanctions.

~~(f) [(g)]~~ The printed license shall bear the signature of the chair and the secretary of the board, bear the seal of the board, and bear the full name and license number of the license holder.

~~(g) [(h)]~~ The printed license shall be uniform and of a design approved by the board. Any new designs for a printed license shall be made available to all license holders upon request and payment of a replacement certificate fee.

~~(h) [(i)]~~ A license issued by the board is as a professional engineer, regardless of branch designations or specialty practices. Practice is restricted only by the license holder's professional judgment and applicable board rules regarding professional practice and ethics.

~~(i) [(j)]~~ The records of the board shall indicate a branch of engineering considered by the board or license holder to be a primary area of competency. A license holder shall indicate a branch of engineering by providing:

- (1) a transcript showing a degree in the branch of engineering;
- (2) a supplementary experience record documenting at least 4 years of experience in the branch of engineering and verified by at least one PE reference provider that has personal knowledge of the license holder's character, reputation, suitability for licensure, and engineering experience; or
- (3) verification of successful passage of the examination on the principles and practice of engineering in the branch of engineering.

~~(j) [(k)]~~ A license holder may request that the board change the primary area of competency or indicate additional areas of competency by providing one or more of the items listed in paragraphs (1) - (3) of this subsection:

- (1) a transcript showing an additional degree in the new branch other than the degree used for initial licensure;
- (2) a supplementary experience record documenting at least 4 years of experience in the new branch verified by at least one PE reference provider who has documented competence in the

engineering discipline being added that has personal knowledge of the license holder's character, reputation, suitability for licensure, and engineering experience; or

(3) verification of successful passage of the examination on the principles and practice of engineering in the new branch.

~~(k) [(h)]~~ All requests relating to branch listings for areas of competency require the review and approval of the executive director or the executive director's designee.

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

Filed with the Office of the Secretary of State on September 4, 2015.

TRD-201503594

Lance Kinney, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: October 18, 2015

For further information, please call: (512) 440-7723



CHAPTER 137. COMPLIANCE AND PROFESSIONALISM

SUBCHAPTER A. INDIVIDUAL AND ENGINEER COMPLIANCE

22 TAC §§137.7, 137.9, 137.11, 137.13, 137.19

The Texas Board of Professional Engineers (Board) proposes amendments to §137.7 concerning License Expiration and Renewal, §137.9 concerning Renewal for Expired License, §137.11 concerning Expiration and Licensed in Another Jurisdiction, §137.13 concerning Inactive Status, and §137.19 concerning Engineers Qualified to be Texas Windstorm Inspectors.

The proposed amendment to §137.9 is required to implement changes to Chapter 55 of the Texas Government Code made by SB 807 and SB 1307 in the 84th Texas Legislative session related to licensing and renewal requirements for active duty military, qualifying military spouses and military veterans.

The proposed amendments to §§137.7, 137.9, 137.11 and 137.13 are required to implement changes to the Texas Engineering Practice Act made by HB 7 in the 84th Texas Legislative session related to the Professional Fee. The change repeals the \$200 Professional Fee which has been collected at the time of issuance and renewal of a license.

The proposed amendment to §137.19 is required to implement changes to the Texas Engineering Practice Act made by HB 2439 in the 84th Texas Legislative session related to the Texas Windstorm Insurance Program implemented by the Texas Department of Insurance. The change repeals Subchapter N of the Act, but the implementation date of the program sunset was extended until the end of 2016.

David Howell, P.E., Deputy Executive Director for the Board, has determined that for the first five-year period the proposed amendments are in effect there is no adverse fiscal impact for the state and local government as a result of enforcing or administering the sections as amended. There is no additional

cost to licensees or other individuals. There is no adverse fiscal impact to the estimated 1,000 small or 6,400 micro businesses regulated by the Board. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Howell also has determined that for the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the proposed amendments is an improvement in the flexibility of the licensure processes and the ability to issue international temporary licenses to qualified engineers.

Any comments or request for a public hearing may be submitted no later than 30 days after the publication of this notice to David Howell, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 S. Interstate 35, Austin, Texas 78741, faxed to his attention at (512) 440-0417 or sent by email to rules@engineers.texas.gov.

The amendments are proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

No other statutes, articles or codes are affected by the proposed amendments.

§137.7. License Expiration and Renewal.

(a) Pursuant to §1001.352 of the Act, the license holder must renew the license annually to continue to practice engineering under the provisions of the Act. If the license renewal requirements are not met by the expiration date of the license, the license shall expire and the license holder may not engage in engineering activities that require a license until the renewal requirements have been met.

(b) Pursuant to §1001.352 of the Act, the board will mail a renewal notice to the last recorded address of each license holder at least 30 days prior to the date a person's license is to expire. Regardless of whether the renewal notice is received, the license holder has the sole responsibility to pay the required renewal fee together with any applicable [~~increase in fees or~~] late fees at the time of payment.

(c) A license holder may renew a license by submitting:

(1) the required annual renewal fee[; ~~including applicable increase in fees as required by §1001.206 of the Act~~]. Payment may be made by personal, company, or other checks drawn on a United States bank (money order or cashier's check), or by electronic means, payable in United States currency;

(2) the continuing education program documentation as required in §137.17 of this chapter (relating to Continuing Education Program) to the board prior to the expiration date of the license; and

(3) documentation of submittal of fingerprints for criminal history record check as required by §1001.3535 of the Act, unless previously submitted to the board.

~~[(d) Pursuant to authority in §1001.205(b) and §1001.206(e) of the Act, the board has established the renewal fee for the following categories of licenses that do not require the increase in professional fees:]~~

~~[(1) a license holder who is 65 years of age or older;]~~

~~[(2) a license holder who is disabled with a mental or physical impairment that substantially limits the ability of the person to earn~~

~~a living as an engineer excluding an impairment caused by an addiction to the use of alcohol, illegal drugs, or controlled substance;]~~

~~[(3) a license holder who meets the exemption from licensure requirement of §1001.057 or §1001.058 of the Act but does not claim that exemption;]~~

~~[(4) a license holder who is not practicing engineering and has claimed inactive status with the board in accordance with the requirements of §137.13 of this chapter (relating to Inactive Status).]~~

~~(d) [(e)] Licenses will expire according to the following schedule:~~

~~(1) Licenses originally approved in the first quarter of a calendar year will expire on December 31.~~

~~(2) Licenses originally approved in the second quarter of a calendar year will expire on March 31.~~

~~(3) Licenses originally approved in the third quarter of a calendar year will expire on June 30.~~

~~(4) Licenses originally approved in the fourth quarter of a calendar year will expire on September 30.~~

~~(e) [(f)] A temporary license may only be renewed twice for a total duration of three years, after which the former license holder may apply for a new temporary or a standard license as provided in the current Act and applicable board rules.~~

~~(f) [(g)] A license holder who, at the time of his or her annual renewal, has any unpaid administrative penalty owed to the Board or who has failed to comply with any term or condition of a Consent Order, Agreed Board Order, or a Final Board Order shall not be allowed to renew his or her license to practice engineering until such time as the administrative penalty is paid in full or the term or condition is satisfied unless otherwise authorized by the Consent Order, Agreed Board Order, or a Final Board Order.~~

§137.9. Renewal for Expired License.

(a) A license holder may renew a license that has expired for 90 days or less by submitting to the board the required annual renewal fee, a late renewal fee[; ~~any increase in fees as required by §1001.206 of the Act~~], and the continuing education program documentation as required in §137.17 of this chapter.

(b) A license holder may renew a license that has expired for more than 90 days but less than one year by submitting to the board the required annual renewal fee, a late renewal fee[; ~~any increase in fees as required by §1001.206 of the Act~~], and the continuing education program documentation as required in §137.17 of this chapter (relating to Continuing Education Program).

(c) A license holder may renew a license that has expired for more than one year but less than two years by submitting to the board the required annual renewal fee, a late renewal fee[; ~~any increase in fees as required by §1001.206 of the Act~~], and the continuing education program documentation as required in §137.17 of this chapter for each delinquent year or part of a year.

(d) A license which has been expired for two years may not be renewed, but the former license holder may apply for a new license as provided in the current Act and applicable board rules. Military service members, as defined in Texas Occupations Code, §55.001(4), may be granted up to two years of additional time to renew a license.

(e) - (g) (No change.)

(h) Pursuant to Texas Occupations Code Chapter 55 [§55.002], a license holder is exempt from any [~~increased fee or other~~] penalty imposed in this section for failing to renew the license in a

timely manner if the license holder provides adequate documentation, including copies of orders, to establish to the satisfaction of the board that the license holder failed to renew in a timely manner because the license holder was serving as a military service member as defined in Texas Occupations Code, §55.001(4) [on active duty in the United States armed forces outside Texas].

§137.11. *Expiration and Licensed in Another Jurisdiction.*

(a) A person who was licensed in Texas and moved to another state and, for the two years preceding the date of application for an out-of-state renewal, who is currently licensed and has been practicing engineering in the other state may apply for a new license pursuant to this section.

(b) A person meeting the criteria in subsection (a) of this section is exempt from examination requirements.

(c) To apply for renewal, the former license holder meeting the criteria in subsection (a) of this section, must fill out an out-of-state renewal application form, submit documentation demonstrating licensure in the other state, pay a renewal fee that is equal to two times the normally required renewal fee for the license, [pay any increase in fees as required by §1001.206 of the Act as applicable,] and submit documentation demonstrating compliance with the continuing education program requirements for an expired license as prescribed in §137.17 of this chapter (relating to Continuing Education Program).

(d) Any license issued to a former Texas license holder under this section shall be assigned a new serial number.

§137.13. *Inactive Status.*

(a) A license holder may request in writing to change the status of the license to "inactive" at any time. A license holder whose license is inactive may not practice engineering. A license holder who has requested inactive status [shall not be required to pay the fee increase per §1001.206 of the Act and] shall not receive any refunds for licensing fees previously paid to the board.

(b) A license holder whose license is inactive must pay an annual fee as established by the board at the time of the license renewal. If the inactive fee is not paid by the date a person's license is to expire, the inactive renewal fee for the expired license shall be increased in the same manner as for an active license renewal fee.

(c) A license holder whose license is inactive is not required to:

(1) comply with the continuing education requirements adopted by the board; or

(2) take an examination for reinstatement to active status.

(d) To return to active status, a license holder whose license is inactive must:

(1) submit a request in writing for reinstatement to active status;

(2) pay the fee for annual renewal [and the fee increase required by §1001.206 of the Act], as applicable;

(3) provide documentation of submittal of fingerprints for criminal history record check as required by §1001.3535 of the Act, unless previously submitted to the board; and

(4) comply with the continuing education program requirements for inactive license holders returning to practice as prescribed in §137.17(o) of this chapter (relating to Continuing Education Program).

(e) - (h) (No change.)

§137.19. *Engineers Qualified to be Texas Windstorm Inspectors.*

(a) Pursuant to Texas House Bill 2439, 84th Legislature, Regular Session (2015) and §1001.652 of the Act as it existed on August 31, 2015, which is continued in effect until January 1, 2017, the board shall create and maintain a roster of windstorm inspector candidates composed of licensed engineers who have demonstrated the knowledge, understanding, and professional competence to be qualified to provide engineering design services related to compliance with applicable windstorm certification standards under Subchapter F, Chapter 2210, Insurance Code.

(b) - (g) (No change.)

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

Filed with the Office of the Secretary of State on September 4, 2015.

TRD-201503595

Lance Kinney, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: October 18, 2015

For further information, please call: (512) 440-7723



PART 14. TEXAS OPTOMETRY BOARD

CHAPTER 273. GENERAL RULES

22 TAC §273.4

The Texas Optometry Board proposes amendments to §273.4 to set fees for new licenses and fees for license renewal of active licensees. House Bill 7, Regular Session, 84th Legislature, repealed Texas Occupations Code §351.153 that imposed a charge of \$200 for new and renewed active licensees. Previous proposed amendments to this rule published in the May 29, 2015, issue of the *Texas Register* (40 TexReg 2926) have been withdrawn.

It is anticipated that there will be no economic costs for active licensees and initial licensees since the initial and renewal fees are reduced by \$200.00 in these amendments.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

The agency licenses approximately 4,200 optometrists and therapeutic optometrists. A significant majority of licensees own or work in one or more of the 1,000 to 3,000 optometric practices which meet the definition of a small business. Some of these practices meet the definition of a micro business. The agency does not license these practices.

ENVIRONMENT AND TAKINGS IMPACT ASSESSMENT

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

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

The amendment is proposed under the Texas Optometry Act, Texas Occupations Code, §351.151, §351.152, and House Bill 7, Regular Session, 84th Legislature. No other sections are affected by the amendments.

The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession. The agency interprets §351.152 as authorizing the agency to set license initial and renewal fees, and House Bill 7, Regular Session, 84th Legislature, as repealing the \$200 additional fee for renewing or obtaining an active license.

§273.4. *Fees (Not Refundable).*

(a) (No change.)

(b) Initial Therapeutic License \$50.00 [~~plus \$200.00 additional fee required by §351.153 of the Act, and~~] plus \$5.00 fee required by House Bill 2985, 78th Legislature. Total fee: \$55.00. [~~\$255.00-~~]

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

(g) License Renewal: \$208.00 [~~plus \$200.00 additional fee required by §351.153 of the Act, and~~] plus \$1.00 fee required by House Bill 2985, 78th Legislature. [~~The inactive licensee fee does not include \$200.00 additional fee.~~] Total fees: [~~\$409.00 active renewal;~~] \$209.00 [~~inactive renewal~~]. The license renewal fee includes \$10.00 to fund a program to aid impaired optometrists and optometry students as authorized by statute.

(h) License fee for late renewal, one to 90 days late: \$312.00 [~~plus \$200.00 additional fee required by §351.153 of the Act, and~~] plus \$1.00 fee required by House Bill 2985, 78th Legislature. [~~The inactive licensee fee does not include \$200.00 additional fee.~~] Total late license fees: [~~\$513.00 active renewal;~~] \$313.00 [~~inactive renewal~~].

(i) License fee for late renewal, 90 days to one year late: \$416.00 [~~plus \$200.00 additional fee required by §351.153 of the Act, and~~] plus \$1.00 fee required by House Bill 2985, 78th Legislature. [~~The inactive licensee fee does not include \$200.00 additional fee.~~] Total late license fees: [~~\$617.00 active renewal;~~] \$417.00 [~~inactive renewal~~].

(j) - (q) (No change.)

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

Filed with the Office of the Secretary of State on September 4, 2015.

TRD-201503581

Chris Kloeris

Executive Director

Texas Optometry Board

Earliest possible date of adoption: October 18, 2015

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



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 1. ORGANIZATION AND ADMINISTRATION

SUBCHAPTER I. FEES FOR COPIES OF RECORDS

37 TAC §1.129

The Texas Department of Public Safety (the department) proposes amendments to §1.129, concerning Fees for Sale of Motor Vehicle Crash Reports in Highway Patrol Field Offices. The proposed amendments are intended to implement the requirements of House Bill 2633, enacted by the 84th Texas Legislature. These amendments include the criteria for obtaining a redacted or un-redacted copy of the crash report from highway patrol field offices. The proposal also reflects minor changes that revise or remove obsolete language.

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

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

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be publication of the new guidelines for obtaining a redacted or un-redacted copy of the crash report from highway patrol field offices.

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

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

Comments on this proposal may be submitted to Major Justin Chrane, Texas Department of Public Safety, 5805 N. Lamar Blvd., Austin, Texas 78773-0001. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Transportation Code, §550.065.

Texas Government Code, §411.004(3) and Texas Transportation Code, §550.065 are affected by this proposal.

§1.129. *Fees for Sale of a Texas Peace Officer's Crash Report [Motor Vehicle Crash Reports] in Highway Patrol Field Offices.*

(a) Reproduction of approved field copies of Department of Public Safety investigated Texas Peace Officer's Crash Reports (CR-3) [motor vehicle crash reports] will be furnished upon written request in all field offices where adequate clerical support exists and reproduction equipment is available.

(b) Persons or firms desiring reproduction of Texas Peace Officer's Crash Reports [motor vehicle crash reports] from field office files will ~~request them in person and~~ submit a written request. If the desired report is available and the requestor meets the requirements under Texas Transportation Code, §550.065 for an un-redacted report, it will be reproduced and furnished upon payment of the statutory fee in the form of a personal check, money order, or cashier's [cashiers] check. Copies of each ~~motor vehicle~~ crash report purchased in a highway patrol field office will be stamped "Field Copy--Not From Custodial File." If the requestor does not meet the requirements under Texas Transportation Code, §550.065 for an un-redacted report, they will be sold a redacted report stamped "Field Copy--Not From Custodial File."

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

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TRD-201503535

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: October 18, 2015

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



SUBCHAPTER J. AIRCRAFT OPERATIONS

37 TAC §1.143

The Texas Department of Public Safety (the department) proposes amendments to §1.143, concerning Use of Unmanned Aircraft by a Law Enforcement Authority. These amendments are necessary to update the rule with new guidance from the Federal Aviation Administration regarding public aircraft operations.

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

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

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be publication of the new guidelines from the Federal Aviation Administration regarding public aircraft operations.

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

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

Comments on this proposal may be submitted to Chief Bill Nabors, Texas Department of Public Safety, 5805 N. Lamar Blvd., Austin, Texas 78773-0001. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and §423.007 which authorizes the department to adopt rules and guidelines for use of an unmanned aircraft by a law enforcement authority in Texas.

Texas Government Code, §411.004(3) and §423.007 are affected by this proposal.

§1.143. *Use of Unmanned Aircraft by a Law Enforcement Authority.*

(a) General. Texas Government Code, §423.007 provides for the department to adopt rules and guidelines for use of an unmanned aircraft by a law enforcement authority in Texas.

(b) Rules and Guidelines. Each law enforcement authority in Texas that uses unmanned aircraft shall comply with the Federal Aviation Administration minimum requirements for public aircraft operations. Information regarding public aircraft operations is available at: <http://www.faa.gov/uas/>. [as contained in the Memorandum of Understanding Between Federal Aviation Administration, Unmanned Aircraft Systems Integration Office, and the U.S. Department of Justice, Office of Justice Programs, National Institute of Justice Concerning Operation of Unmanned Aircraft Systems by Law Enforcement Agencies. The memorandum and attachments may be viewed at: http://www.txdps.state.tx.us/Director_Staff/MOU/MOU.pdf.]

(c) Reporting by Agency. Not earlier than January 1 and not later than January 15 of each odd-numbered year, each state law enforcement agency and each county or municipal law enforcement agency located in a county or municipality, as applicable, with a population greater than 150,000, that used or operated an unmanned aircraft during the preceding 24 months shall issue a written report to the governor, the lieutenant governor, and each member of the legislature as provided by Texas Government Code, §423.008.

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 September 2, 2015.

TRD-201503537

D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: October 18, 2015
For further information, please call: (512) 424-5848



SUBCHAPTER R. ACCOUNTING PROCEDURES

37 TAC §1.231

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Public Safety or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Department of Public Safety (the department) proposes the repeal of §1.231, concerning Procedures for Vendor Protests of Procurements. The repeal of §1.231 is filed simultaneously with proposed new §1.264. These proposals reorganize and update the rules governing contracting, placing all rules related to contracts in one location.

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

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

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

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

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

Comments on this proposal may be submitted to Amanda Ariaga, Texas Department of Public Safety, P.O. Box 4087, MSC-0200, Austin, Texas 78752-0200. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

The repeal is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and §2155.076, which requires the department

to develop and adopt protest procedures for resolving vendor protests relating to purchasing issues.

Texas Government Code, §411.004(3) and §2155.076 are affected by this proposal.

§1.231. Procedures for Vendor Protests of Procurements.

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 September 2, 2015.

TRD-201503564

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: October 18, 2015

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



SUBCHAPTER U. CONTRACTING

37 TAC §§1.262 - 1.264

The Texas Department of Public Safety (the department) proposes new §§1.262 - 1.264, concerning Contracting. Senate Bill 20 of the 84th Legislative Session added new Government Code, §2261.253 which requires state agencies to establish by rule procedures to identify each contract that requires enhanced contract or performance monitoring and submit information on the contract to the agency's governing body. The department has determined that such a rule would enhance contract management policies and that new rules should be implemented.

The new rules are proposed pursuant to Texas Government Code, §2261.253 which requires state agencies to establish by rule procedures to identify each contract that requires enhanced contract or performance monitoring and submit information on the contract to the agency's governing body.

Specifically, new §1.262 relates to contract monitoring by the contract review board. This new rule explains the procedure for identifying contracts requiring enhanced contract or performance monitoring.

Proposed new §1.263, relates to contract monitoring program risk assessment. The new rule articulates the criteria for identifying contracting risks.

This proposal adds §1.264, concerning procedures for vendor protests of procurements to this newly named subchapter, placing all contract related rules within one subchapter. Additionally, it clarifies the procedure for appealing a determination by including the department's deputy director in the review procedure and makes non-substantive updates to the rule language.

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

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

with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be that the public will be informed of new enhanced contract management policies and the rules will be updated to reflect all recent legislative changes.

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

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

Comments on this proposal may be submitted to Amanda Arriaga, Texas Department of Public Safety, P.O. Box 4087, MSC-0200, Austin, Texas 78752-0200. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; §2155.076, which requires the department to develop and adopt protest procedures for resolving vendor protests relating to purchasing issues; §2261.202, which requires state agencies to adopt rules clearly defining contract monitoring roles and responsibilities and §2001.004(1), which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

Texas Government Code, §§411.004(3), 2155.076, 2261.202, and 2001.004(1) are affected by this proposal.

§1.262. Enhanced Contract Monitoring by Contract Review Board.

(a) The commission authorized the creation of a contract review board to review contracts entered by the department. The contract review board is chaired by the assistant director of the administration division, has a representative from each of the department's divisions, and has a member from the commission that serves on the contract review board as a liaison to the commission. The contract review board maintains an executive committee to review procurements and contracts that may be high risk at their inception.

(b) The contract review board reviews the contracts as detailed in this subsection:

- (1) contracts that are over one million dollars in value; and
- (2) contracts that constitute high risk to the department based on the criteria of the contract monitoring program or as determined by the contract review board, executive committee of the contract review board, or the commission.

(c) All procurements and contracts that meet the threshold of review by the contract review board or the executive committee of the

contract review board will be considered to require enhanced contract or performance monitoring.

(d) Performance monitoring reports will be submitted to the commission by the assistant director of the administration division.

(e) Any member of the contract review board or the procurement director may recommend or report risk concerns to the assistant director for reporting to the commission.

§1.263. Contract Monitoring Program Risk Assessment.

The department has established a contract monitoring program within the Administration division. The contract monitoring program identifies each contract that requires enhanced contract or performance monitoring by conducting an initial risk assessment based on the factors, detailed in this section, consistent with the guidelines in the Texas Contract Management Guide, as applicable to the contract:

- (1) Total contract value;
- (2) Total contract duration;
- (3) User involvement;
- (4) Criticality of deliverables;
- (5) Contract failure impact;
- (6) Vendor experience;
- (7) Availability of department resources for contract management;
- (8) Business process impact;
- (9) End users' training needs;
- (10) Software technology customization;
- (11) Impact on existing application or infrastructure;
- (12) Interface connectivity;
- (13) Complexity of contract; and
- (14) Payment methodology.

§1.264. Procedures for Vendor Protests of Procurements.

(a) Definitions.

(1) Working days--Monday through Friday, except national and state holidays as defined by Texas Government Code, §662.003. When counting working days, do not count the day of the act or event after which the ten-day period of time begins to run. The last day of the ten-day period is included in the count, unless the last day is a Saturday, Sunday, national holiday or state holiday, in which event the ten-day period runs until the end of the next day which is not a Saturday, Sunday, national holiday or state holiday.

(2) Interested parties--All contractors who have submitted bids, offers, responses or proposals for the contract at issue.

(b) Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation, evaluation, or award of a contract, may formally protest to the assistant director of the administration division. Such protests must be in writing, addressed to the assistant director of the administration division and filed within ten working days after such aggrieved person knows, or should have known, of the occurrence of the action which is protested. A protest is considered filed when received by the assistant director of the administration division. Formal protests must conform to the requirements herein and shall be resolved in accordance with the procedure set forth herein. Copies of the protest must be mailed or delivered by the protesting party to all other identifiable interested parties.

(c) In the event of a timely protest under this section, the department shall not proceed further with the solicitation or award of the contract unless the director, after consultation with the end user, deputy director, and the assistant director of the administration division makes a written determination that the award of contract without delay is necessary to protect the best interests of the state.

(d) A formal protest must be sworn and notarized and must contain:

- (1) the name and address of the protestor;
- (2) appropriate identification of the procurement;
- (3) a specific identification of the statutory or regulatory provision(s) that the action complained of is alleged to have violated;
- (4) a specific description of each act alleged to have violated the statutory or regulatory provision(s) identified in paragraph (3) of this subsection;
- (5) a precise statement of the relevant facts regarding the alleged violation of the statutory or regulatory provision(s) identified in paragraph (3) of this subsection;
- (6) an identification of the issue or issues to be resolved regarding the alleged violation of the statutory or regulatory provision(s) identified in paragraph (3) of this subsection;
- (7) supporting exhibits, evidence or documents to substantiate the alleged violation of the statutory or regulatory provision(s) identified in paragraph (3) of this subsection, unless not available at the time of filing, in which case the expected availability date shall be indicated;
- (8) arguments and authorities in support of the protest; and
- (9) an affidavit which affirms that the contents of the protest are true and accurate and that copies of the protest have been mailed or delivered to other identifiable interested parties.

(e) The department will maintain all documentation regarding the purchase in accordance with the department's applicable records retention schedule.

(f) The assistant director of administration shall have the authority, prior to appeal to the director, to settle and resolve a protest concerning the solicitation or award of a contract. The assistant director may solicit written responses to the protest from other interested parties.

(g) If the protest is not resolved by mutual agreement, the assistant director will issue a written determination on the protest after conferring with the deputy director.

(1) If the assistant director determines that no violation of rules or statutes has occurred, the assistant director shall so inform the protesting party and other interested parties by letter which sets forth the reasons for the determination.

(2) If the assistant director determines that a violation of the rules or statutes has occurred in a case where a contract has not been awarded, the assistant director shall so inform the protesting party and other interested parties by letter which sets forth the reasons for the determination and the appropriate remedial action.

(3) If the assistant director determines that a violation of the rules or statutes has occurred in a case where a contract has been awarded, the assistant director shall so inform the protesting party and other interested parties by letter which sets forth the reasons for the determination, which may include ordering the contract void.

(h) The assistant director's determination on a protest may be appealed by the protesting party to the director. The appeal shall be limited to review of the assistant director's determination. Copies of the appeal must be mailed or delivered by the appealing party to the other interested parties and must contain an affidavit that such copies have been provided. An appeal of the assistant director's determination must be in writing and must be received in the director's office no later than ten working days after the protestor's receipt of the assistant director, administration's determination. The protestor is deemed to have received the assistant director's determination upon the earliest of the following:

- (1) when delivered in hand and a receipt granted;
- (2) three days after it is deposited in the United States mail by regular mail; or
- (3) at the time it is sent via electronic mail or facsimile.

(i) The director may confer with the general counsel in his review of the matter appealed. The director may, in his discretion, refer the matter to the commission for its consideration at a regularly scheduled open meeting or issue a written decision on the protest. A decision issued either by the commission in open meeting or in writing by the director shall be the final administrative action of the department.

(j) When a protest has been appealed to the director under subsection (h) of this section and has been referred to the commission by the director under subsection (i) of this section, the requirements detailed in this subsection shall apply:

(1) The director's office shall mail copies of the appeal and responses of interested parties, if any, to the commissioners.

(2) All interested parties who wish to make an oral presentation at the open meeting shall notify the director at least 48 hours in advance of the open meeting.

(3) The commission may consider oral presentations and written documents presented by staff and interested parties. The chairman of the commission shall set the order and amount of time allowed for presentations.

(4) The commission's determination of the appeal shall be by duly adopted resolution reflected in the minutes of the open meeting and shall be final.

(k) Unless good cause for delay is shown or the department determines that a protest or appeal raises issues significant to procurement practices or procedures, a protest or appeal that is not timely filed will not be considered.

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

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D. Phillip Adkins
General Counsel

Texas Department of Public Safety

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

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CHAPTER 3. TEXAS HIGHWAY PATROL

SUBCHAPTER J. PROTECTION OF STATE BUILDINGS AND GROUNDS

37 TAC §3.146

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Public Safety or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Department of Public Safety (the department) proposes the repeal of §3.146, concerning Prohibited Weapons. Pursuant to Government Code, §2001.039, the department reviewed this section and determined the reason for initially adopting this section continues to exist. The repeal of this section is filed simultaneously with proposed new §8.7. The proposed new §8.7 removes the word "concealed" pursuant to House Bill 910, enacted by the 84th Texas Legislature.

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

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

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be that the rules will be updated to reflect all department organizational and legislative changes.

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

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

Comments on this proposal may be submitted to Commander Jose Ortiz, Texas Department of Public Safety, P.O. Box 13126, Austin, Texas 78711. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; §411.062(d) which authorizes the department to adopt rules relating to security of persons and access to and protection of the grounds, public buildings, and property of the state within the Capitol Complex; §411.062(g) which authorizes the Public Safety Commission to authorize the department director to impose measures the director determines to be necessary to protect the safety and security of persons and property within

the Capitol Complex; and §2001.039 which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.

Texas Government Code, §411.004(3); §411.062; and §2001.039 are affected by this proposal.

§3.146. Prohibited Weapons.

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

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Texas Department of Public Safety

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CHAPTER 8. CAPITOL COMPLEX SUBCHAPTER A. PROTECTION OF STATE BUILDINGS AND GROUNDS

37 TAC §8.7

The Texas Department of Public Safety (the department) proposes new §8.7, concerning Prohibited Weapons. This new section is filed simultaneously with the repeal of §3.146. This section was reviewed pursuant to Government Code, §2001.039. During this review, the department determined the reason for initially adopting this section continues to exist. Additionally, this proposal removes the word "concealed" pursuant to House Bill 910, enacted by the 84th Texas Legislature.

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

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

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be that the rules will be updated to reflect all department organizational and legislative changes.

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

vironment or reduce risks to human health from environmental exposure.

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

Comments on this proposal may be submitted to Commander Jose Ortiz, Texas Department of Public Safety, P.O. Box 13126, Austin, Texas 78711. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; §411.062(d) which authorizes the department to adopt rules relating to security of persons and access to and protection of the grounds, public buildings, and property of the state within the Capitol Complex; §411.062(g) which authorizes the Public Safety Commission to authorize the department director to impose measures the director determines to be necessary to protect the safety and security of persons and property within the Capitol Complex; and §2001.039 which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.

Texas Government Code, §411.004(3); §411.062; and §2001.039 are affected by this proposal.

§8.7. Prohibited Weapons.

(a) Firearms, explosive weapons, illegal knives, clubs, and knuckles, as defined in the Texas Penal Code, §46.01, and prohibited weapons as defined in the Texas Penal Code, §46.06, are not permitted in state buildings or on state grounds covered under this subchapter, except in the possession of:

(1) a licensed peace officer;

(2) as to a handgun or nightstick, a properly licensed private security officer while working under an approved department contract and the contract authorizes the use of an armed guard; or

(3) a person who is licensed to carry a handgun, under Texas Government Code, Chapter 411, Subchapter H, provided that such a person may only carry a handgun in a place and under circumstances where not otherwise prohibited by law.

(b) Violations of laws relating to weapons will be prosecuted under the applicable statute. Violations of this section which are not otherwise a violation of a particular statute, will be prosecuted under Texas Government Code, §411.065.

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

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SUBCHAPTER B. UNMANNED AERIAL VEHICLES

37 TAC §8.21, §8.22

The Texas Department of Public Safety (the department) proposes new §8.21 and §8.22, concerning Unmanned Aerial Vehicles. This proposal is intended to implement the requirements of House Bill 3628, enacted by the 84th Texas Legislature, which details the limited use of authorized unmanned aircraft in the Capitol Complex.

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

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

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be the publication of the rules governing the use of unmanned aircraft in the Capitol Complex.

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

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

Comments on this proposal may be submitted to Commander Jose Ortiz, Texas Department of Public Safety, P.O. Box 13126, Austin, Texas 78711. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and §411.062(d-1), which authorizes the director to adopt rules governing the use of unmanned aircraft in the Capitol Complex.

Texas Government Code, §411.004(3) and §411.062 are affected by this proposal.

§8.21. Unmanned Aerial Vehicles Prohibited.

An unmanned aerial vehicle may not be operated in or over state property including land and buildings in the Capitol Complex as defined by Government Code, §411.061 unless authorized as provided under §8.22 of this title (relating to Limited Use Authorization to Operate Unmanned Aerial Vehicles).

§8.22. Limited Use Authorization to Operate Unmanned Aerial Vehicles.

(a) Capitol grounds. An unmanned aerial vehicle may be operated in or over the capitol grounds if advance limited use authorization has been obtained from the State Preservation Board. The operator shall comply with all terms of the limited use authorization in operating the vehicle. Authorization from the State Preservation Board extends only to the capitol grounds area and does not extend to the Capitol Complex.

(b) Capitol Complex area. An unmanned aerial vehicle may be operated in or over the Capitol Complex area if advance limited use authorization has been obtained from the Texas Facilities Commission. The operator shall comply with all terms of the limited use authorization in operating the vehicle. Authorization from the Texas Facilities Commission extends only to the Capitol Complex area and does not extend to the capitol grounds.

(c) Other authorizations. An unmanned aerial vehicle may be operated within the Capitol Complex by:

(1) a law enforcement agency or person operating under contract with a law enforcement agency; or

(2) any state, federal, or local government agency or contractor for that agency that is using the unmanned aerial vehicle to perform a governmental function.

(d) Flight operations. Prior to operating an unmanned aerial vehicle, as authorized under a limited use authorization or other authorization, the operator shall contact the department Capitol Complex headquarters to schedule the flight operation. During operations the pilot of the unmanned aerial vehicle shall possess and present the authorization upon request to any personnel of the department, Texas Facilities Commission, or State Preservation Board.

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

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CHAPTER 12. COMPASSIONATE-USE/LOW-THC CANNABIS PROGRAM

SUBCHAPTER A. GENERAL PROVISIONS

37 TAC §§12.1 - 12.8

The Texas Department of Public Safety (the department) proposes new §§12.1 - 12.8, concerning General Provisions. The proposed new Subchapter A is intended to implement the requirements of Senate Bill 339, enacted by the 84th Texas Legislature. Entitled the "Texas Compassionate-Use Act," the bill adds new Chapter 487 to the Texas Health and Safety Code and new Chapter 169 to the Texas Occupations Code. The bill requires the Department of Public Safety to license dispensing organizations of low-THC cannabis and to establish and main-

tain a secure, online registry of certain patients with intractable epilepsy and of qualified prescribing physicians. Subchapter A provides definitions, requirements and standards generally applicable to those licensed or registered under the provisions of the bill.

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

Ms. Whittenton has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with §§12.1, 12.3, 12.4, 12.5, and 12.6, as proposed. There is no anticipated economic cost to businesses required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has also determined that §§12.2, 12.7, and 12.8, may have adverse economic effects on small businesses or micro-businesses required to comply with these rules as proposed. The department estimates there will be twelve licensees, all of these licensees will be small businesses, and four will be micro businesses. These estimates are based on an analysis of other states' compassionate-use programs and the number of patients in Texas with intractable epilepsy. The department estimates the projected impact of these rules will be increased costs of compliance associated with record keeping, reporting, security, and testing. In preparing these rules the department considered the alternatives of granting exemptions or grace periods from the requirements for small and micro businesses. However, these rules are intended to implement Senate Bill 339's requirements that licensees possess the technical and technological ability to cultivate and produce low-THC cannabis; the ability to secure the necessary resources, personnel, and facilities; the ability to maintain accountability for the raw materials, the finished product, and any by-products used or produced in the cultivation or production of low-THC cannabis to prevent unlawful access to or unlawful diversion or possession of those materials, products, or by-products; and the financial ability to maintain operations for not less than two years. The department's proposed rules elaborate on these statutory requirements by mandating objectively verifiable standards instead of overly specific equipment or structural requirements. The rule requirements are performance standards, not design or equipment requirements. The proposed rules reflect the minimum standards necessary to ensure the health, safety, and the environmental and economic welfare of the state. The department is not authorized to create grace periods or other exemptions from the statutory requirements, reflected in Texas Health and Safety Code, §487.102. Moreover, an exemption or grace period would be inconsistent with the health, safety, or environmental and economic welfare of the state. There is no anticipated negative impact on local employment.

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be the availability of low-THC cannabis to certain patients with intractable epilepsy, through the department's administration and enforcement of Texas Health and Safety Code, Chapter 487, the licensure of dispensers of low-THC cannabis to certain patients with intractable epilepsy, and the establishment and maintenance of a secure, online compassionate-use registry for patients and physicians.

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

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

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

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Health and Safety Code, §487.052, which requires the department adopt rules necessary for the administration and enforcement of Texas Health and Safety Code, Chapter 487.

Texas Government Code, §411.004(3) and Texas Health and Safety Code, §487.052 are affected by this proposal.

§12.1. Definitions.

The terms in this section have the following meanings when used in this chapter unless the context clearly indicates otherwise:

- (1) Act--Texas Health and Safety Code, Chapter 487.
- (2) Application--Includes an original application for a registration or license, or an application to renew a registration or license, issued under the Act.
- (3) Department--The Texas Department of Public Safety.
- (4) Director--An individual, including any owner, involved in decisions governing the operation or daily functions of the licensed dispensing organization.
- (5) Dispensing organization--An organization licensed to perform the regulated functions of cultivation, processing, and dispensing of low-THC cannabis.
- (6) Employee--An individual engaged by or contracting with a licensee to assist with any regulated function, whether or not compensated by salary or wage.
- (7) Licensee--An organization licensed under the Act.
- (8) Manager--An individual employed or otherwise engaged by a dispensing organization to supervise others in any portion of the regulated functions and processes.
- (9) Prescription--An entry in the compassionate-use registry that meets the requirements of Texas Occupations Code, Chapter 169.
- (10) Product--Any form of low-THC cannabis that is cultivated, handled, transported, processed, or dispensed, or raw materi-

als used in or by-products created by the production or cultivation of low-THC cannabis.

(11) Registrant--An individual registered with the department as a director, manager, or employee of a licensee; this term does not include a physician registered as a prescriber of low-THC cannabis.

(12) Regulated premises--The physical areas under the control of a licensee, in which low-THC cannabis is cultivated, handled, transported, processed, or dispensed.

(13) SOAH--State Office of Administrative Hearings.

§12.2. Requirements and Standards.

(a) Licensees may only provide regulated services at the department approved locations. Any change in location must be approved by the department prior to operation in a regulated capacity.

(b) Licensees shall notify the department within five (5) business days of a registrant's termination of employment.

(c) All licensees shall display in a conspicuous location in the principal place of business and in any branch location a copy of the department issued license and information on how to submit a complaint to the department.

(d) Licensees must establish and implement a drug-free workplace policy consistent with the Texas Workforce Commission's "Drug-Free Workplace Policy," and shall maintain in each registrant's file a copy of the company's policy signed or otherwise acknowledged by the registrant.

(e) Licensees and registrants must cooperate fully with any inspection or investigation conducted by the department, including but not limited to the provision of any laboratory test results, employee records, or inventory and destruction records, and the compliance with any subpoena issued by the department.

(f) Licensees and registrants may not cultivate, process, or dispense low-THC cannabis if the respective license or registration has expired, or has been suspended or revoked.

(g) Licensees and registrants may not dispense to an individual other than a qualified patient or a qualified patient's legal representative.

(h) Licensees and registrants may not permit or fail to prevent the diversion of any controlled substance.

(i) Those registered with the department as directors, managers, or employees of a licensed dispensing organization may only perform services regulated under the Act for the licensee with whom they are registered.

(j) If arrested, charged, or indicted for a criminal offense above the level of Class C misdemeanor, a registrant shall within seventy-two (72) hours notify the employing licensee, and the employer when notified by the employee or otherwise informed shall notify the department in writing (including by email) within seventy-two (72) hours of notification. The notification shall include the name of the arresting agency, the offense, court, and cause number of the charge or indictment. The registrant and licensee must supplement their respective notifications as further information becomes available.

(k) Registrants must carry on their person or otherwise display their department issued registration card while performing any services regulated under the Act involving contact with or exposure to patients or the general public, including the dispensing of low-THC cannabis to patients and the transportation of low-THC cannabis on behalf of a licensee.

(l) All advertisements for services regulated under the Act must contain the license number.

(m) Licensees must comply with all applicable local, state and federal regulations relating to air and environmental quality, fire safety, and noise or other nuisances.

(n) Destruction of any waste products related to the cultivation or processing of low-THC cannabis must involve the rendering of the product indistinguishable from other non-cannabis related plant material. The waste product must be stored in a locked container prior to disposal.

(o) Licensees must use applicable best practices to limit contamination of the product including but not limited to residual solvents, metals, mold, fungus, bacterial diseases, rot, pests, pesticides, mildew, and any other contaminant identified as posing potential harm. The licensee shall maintain quality history records showing any laboratory testing results conducted on the licensee's products.

(p) Licensees must have a plan for establishing a recall of their products in the event a product is shown by testing or other means to be, or potentially to be, defective or have a reasonable probability that their use or exposure to will cause serious adverse health consequences. At a minimum, the plan should include the method of identification of the products involved; notification to the processing or dispensing organization or others to whom the products were sold or otherwise distributed; and how the products will be disposed of if returned to or retrieved by the licensee.

§12.3. Criminal History Disqualifiers.

(a) Registration as a director, manager or employee of a licensed dispensing organization provides these individuals access to sensitive medical information, drugs, and the equipment and raw materials needed to produce drugs. Registration provides those predisposed to commit fraud, theft and drug related crimes with greater opportunities to engage in such conduct and escape detection or prosecution. Therefore, the department has determined that offenses of the types detailed in subsection (b) of this section directly relate to the duties and responsibilities of those who are registered under the Act. Such offenses include crimes under the laws of another state or the United States, if the offense contains elements that are substantially similar to the elements of an offense under the laws of this state. Such offenses also include those "aggravated" or otherwise enhanced versions of the listed offenses.

(b) The list of offenses in this subsection is intended to provide guidance only and is not exhaustive of either the offenses that may relate to the regulated occupation or of those independently disqualifying under Texas Occupations Code, §53.021(a)(2) - (4). The listed offenses are general categories that include all specific offenses within the corresponding chapter of the Texas Penal Code and Texas Health and Safety Code. In addition, after due consideration of the circumstances of the criminal act and its relationship to the position of trust involved in the particular licensed occupation, the department may find that an offense not described in this subsection also renders an individual unfit to hold a registration. In particular, an offense that is committed in one's capacity as a registrant under the Act, or an offense that is facilitated by one's registration under the Act, will be considered related to the regulated occupation and may render the individual unfit to hold the registration.

(1) Bribery--Any offense under the Texas Penal Code, Chapter 36.

(2) Burglary and criminal trespass--Any offense under the Texas Penal Code, Chapter 30.

(3) Fraud--Any offense under the Texas Penal Code, Chapter 32.

(4) Perjury--Any offense under the Texas Penal Code, Chapter 37.

(5) Robbery--Any offense under the Texas Penal Code, Chapter 29.

(6) Theft--Any offense under the Texas Penal Code, Chapter 31.

(7) Organized Crime, Texas Penal Code, Chapter 71.

(8) Any offense under Texas Health and Safety Code, Chapters 481, 482, or 483.

(9) In addition:

(A) An attempt to commit a crime listed in this subsection;

(B) Aiding and abetting in the commission of a crime listed in this subsection; and

(C) Being an accessory before or after the fact to a crime listed in this subsection.

(c) A felony conviction for an offense listed in subsection (b) of this section is disqualifying for ten (10) years from the date of the conviction.

(d) A Class A or B misdemeanor conviction for an offense listed in subsection (b) of this section is disqualifying for five (5) years from the date of conviction.

(e) Conviction for a felony or Class A offense that does not relate to the occupation for which registration is sought is disqualifying for five (5) years from the date of commission, pursuant to Texas Occupations Code, §53.021(a)(2).

(f) Independently of whether the offense is otherwise described or listed in subsection (b) of this section, a conviction for an offense listed in Texas Code of Criminal Procedure, Article 42.12, §3g, or that is a sexually violent offense as defined by Texas Code of Criminal Procedure, Article 62.001, is permanently disqualifying subject to the requirements of Texas Occupations Code, Chapter 53.

(g) Any unlisted offense that is substantially similar in elements to an offense listed in subsection (b) of this section is disqualifying in the same manner as the corresponding listed offense.

(h) A pending Class B misdemeanor charged by information for an offense listed in subsection (b) of this section is grounds for suspension.

(i) Any pending Class A misdemeanor charged by information or pending felony charged by indictment is grounds for suspension.

(j) In determining the fitness to perform the duties and discharge the responsibilities of the regulated occupation of an individual against whom disqualifying charges have been filed or who has been convicted of a disqualifying offense, the department may consider evidence of:

(1) The extent and nature of the individual's past criminal activity;

(2) The age of the individual when the crime was committed;

(3) The amount of time that has elapsed since the individual's last criminal activity;

(4) The conduct and work activity of the individual before and after the criminal activity;

(5) Evidence of the individual's rehabilitation or rehabilitative effort while incarcerated or after release;

(6) The date the individual will no longer be disqualified under the provisions of this section; and

(7) Any other evidence of the individual's fitness, including letters of recommendation from:

(A) Prosecutors or law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility for the individual; or

(B) The sheriff or chief of police in the community where the individual resides.

(k) In addition to the documentation listed in subsection (j) of this section, the applicant or registrant shall, in conjunction with any request for hearing on a criminal history based denial, suspension or revocation, furnish proof in the form required by the department that the individual has:

(1) Maintained a record of steady employment;

(2) Supported the individual's dependents;

(3) Maintained a record of good conduct; and

(4) Paid all outstanding court costs, supervision fees, fines and restitution ordered in any criminal case in which the individual has been charged or convicted.

(l) The information listed in subsection (j) and subsection (k) of this section must be submitted in conjunction with the request for hearing, following notification of the proposed action and prior to the deadline for submission of the request for hearing.

§12.4. Records.

(a) Records required under the Act or this chapter must be maintained and made available for inspection or copying for a period of two (2) years. Records may be maintained in digital form so long as a hard copy may be produced upon request of department personnel.

(b) The records detailed in this subsection must be maintained by all licensees for two (2) years, unless otherwise provided:

(1) All application materials submitted to the department or relied on in making any representation or affirmation in conjunction with the application process;

(2) Purchase, sale, and inventory records, including records of destruction;

(3) Shipping invoices, log books, records of duty status if applicable, delivery records and manifests reflecting the recipient's acknowledgment and establishing the chain of custody, relating to the transportation of:

(A) Low-THC cannabis and any cannabis sativa plants intended for use in the processing of low-THC cannabis;

(B) Raw materials used in or by-products created by the production or cultivation of low-THC cannabis; or

(C) Drug paraphernalia used in the production, cultivation or delivery of low-THC cannabis.

(4) Security records, including building access and visitor logs, and video recordings;

(5) The licensee's drug-free workplace policy;

(6) Records on all registered directors, managers, and employees, including a color photograph of the individual, a copy of the registration issued by the department, records reflecting the individual's position, assigned duties, and work schedule, and a copy of the company's drug-free workplace policy signed by the individual. These

records must be maintained for two years from the date employment is terminated.

§12.5. Address on File.

(a) All licensees, registrants, or applicants shall at all times maintain on file with the department a current electronic mail address, physical mailing address, facsimile number, and the physical address of each location at which low-THC cannabis is cultivated, processed, or dispensed.

(b) All licensees or registrants shall notify the department of any change to their addresses on file in the manner provided on the department's website prior to the effective date of the change of address.

§12.6. Notice.

(a) The department is entitled to rely on the physical mailing address, the facsimile number, and the electronic mail address currently on file for all purposes relating to notification. The failure to maintain current addresses with the department is not a defense to any action based on the licensee's, registrant's, or applicant's failure to respond.

(b) Service of notice is complete and receipt is presumed upon the date the notice is sent, if sent before 5:00 p.m. by facsimile transmission or electronic mail, or three (3) days following the date sent, if notice is sent by regular United States mail or certified mail, return receipt requested.

(c) Unless otherwise specified by the Act, notifications by the department may be by facsimile transmission, electronic mail, regular U.S. mail, certified mail, return receipt requested, or hand-delivery.

§12.7. Testing, Production, and Packaging.

(a) Licensees must comply with all applicable provisions of the Texas Agriculture Code and the Texas Department of Agriculture's administrative rules.

(b) Licensees must test all processed products for the levels of tetrahydrocannabinol and cannabidiol, and for residual solvents, pesticides, fungicides, fertilizers, mold, and heavy metals, in accordance with applicable provisions of the Texas Agriculture Code and Texas Department of Agriculture's administrative rules, and Code of Federal Regulations, Title 16, Part 1107.

(c) All final packaging for patient consumption must be in child-resistant packaging designed or constructed to be significantly difficult for children under five years of age to open and not difficult for normal adults to use properly as defined by the most current version of the Code of Federal Regulations, Title 16, Part 1700 and Title 40, Part 157.2 and American Society for Testing and Materials (ASTM) D3475-15, Standard Classification of Child-Resistant Packages, ASTM International, West Conshohocken, PA, 2015.

(d) All final packaging labels must include:

(1) Physician's name;

(2) Patient's name;

(3) Dispensing organization's name, state license number, telephone number, and mailing address;

(4) Dosage prescribed and means of administration;

(5) Date the dispensing organization packaged the contents;

(6) Batch number, sequential serial number, and bar code when used, to identify the batch associated with manufacturing and processing;

(7) Potency of the low-THC cannabis contained in the package, including the levels of tetrahydrocannabinol and cannabidiol;

(8) Statement that the product has been tested for contaminants with specific indications of all findings, and the date of testing in accordance with Code of Federal Regulations, Title 16, Part 1107; and

(9) Statement that the product is for medical use only and is intended for the exclusive use of the patient to whom it is prescribed. This statement should be in bold print.

(e) The dispensed product may contain no more than 0.5% by weight of tetrahydrocannabinols and not less than 10% by weight of cannabidiol.

§12.8. Inventory Control System.

(a) A licensed dispensing organization shall use a perpetual inventory control system that identifies and tracks the licensee's stock of low-THC cannabis from the time it is propagated from seed or cutting to the time it is delivered to either another licensee or a qualifying patient or legal guardian.

(b) The inventory control system shall be capable of tracking low-THC cannabis from a qualified patient back to the source of the low-THC cannabis in the event of a serious adverse event.

(c) The inventory control system shall be designed to promptly identify a discrepancy and interact with the department's centralized registry system.

(d) Upon receipt of raw material for cultivation, a licensee shall record in the inventory control system:

(1) The date delivered; and

(2) The number of clones or seeds delivered or the weight of the seeds for each variety in the shipment.

(e) For each plant, including any clippings to be used for propagation, a licensee shall:

(1) Create a unique identifier;

(2) Assign a batch number;

(3) Enter appropriate plant identifying information into the inventory control system;

(4) Create an indelible and tamper resistant tag made of temperature and moisture resistance material, with a unique identifier and batch number;

(5) Securely attach the tag to a container in which a plant is grown until a plant is large enough to securely hold a tag;

(f) Upon curing or drying of each batch, a licensee shall weigh low-THC cannabis to update inventory control for the batch.

(g) At least monthly, a licensee shall conduct a physical inventory of the stock and compare the physical inventory of stock with inventory control system data.

(h) If a licensee discerns a discrepancy between the inventory of stock and inventory control system data outside of normal weight loss due to moisture loss and handling, a licensee shall commence an audit of the discrepancy.

(i) Within fifteen (15) business days of discovering a discrepancy, the licensee shall:

(1) Complete an audit;

(2) Amend the licensee's standard operating procedures, if necessary; and

(3) Send an audit report to the department.

(j) If a licensee finds evidence of theft or diversion, the licensee shall immediately report the theft or diversion to the department.

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

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D. Phillip Adkins

General Counsel

Texas Department of Public Safety

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



SUBCHAPTER B. APPLICATION AND RENEWAL

37 TAC §§12.11 - 12.16

The Texas Department of Public Safety (the department) proposes new §§12.11 - 12.16, concerning Application and Renewal. The proposed new Subchapter B is intended to implement the requirements of Senate Bill 339, enacted by the 84th Texas Legislature. Entitled the "Texas Compassionate-Use Act," the bill adds new Chapter 487 to the Texas Health and Safety Code and new Chapter 169 to the Texas Occupations Code. The bill requires the Department of Public Safety to license dispensing organizations of low-THC cannabis and to establish and maintain a secure, online registry of certain patients with intractable epilepsy and of qualified prescribing physicians. Subchapter B provides application and renewal requirements for licensure and registration under the provisions of the bill, including the application fees, as well as provisions for the denial of applications.

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

Ms. Whittenton has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with §§12.12, 12.15, and 12.16, as proposed. There is no anticipated economic cost to businesses required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has also determined that new §§12.11, 12.13, and 12.14, may have an adverse economic effect on small businesses or micro-businesses required to comply with these rules as proposed. The department estimates there will be twelve licensees, all of these licensees will be small businesses, and four will be micro businesses. These estimates are based on an analysis of other states' compassionate-use programs and the number of patients in Texas with intractable epilepsy. The department estimates the projected impact of §12.11 and §12.13 will be increased costs of compliance associated with record keeping, reporting, security, and testing. In preparing these rules the department considered the alternatives of granting exemptions or grace periods from the requirements for small and micro businesses. However, these rules are intended to implement Senate Bill 339's requirements that licensees possess the technical and

technological ability to cultivate and produce low-THC cannabis; the ability to secure the necessary resources, personnel, and facilities; the ability to maintain accountability for the raw materials, the finished product, and any by-products used or produced in the cultivation or production of low-THC cannabis to prevent unlawful access to or unlawful diversion or possession of those materials, products, or by-products; and the financial ability to maintain operations for not less than two years. Proposed §12.11 and §12.13 elaborate on these statutory requirements by mandating objectively verifiable standards instead of overly specific equipment or structural requirements. The rule requirements are performance standards, not design or equipment requirements. The proposed rules reflect the minimum standards necessary to ensure the health, safety, and the environmental and economic welfare of the state. The department is not authorized to create grace periods or other exemptions from the statutory requirements, reflected in Texas Health and Safety Code, §487.102. Moreover, an exemption or grace period would be inconsistent with the health, safety, or environmental and economic welfare of the state. There is no anticipated negative impact on local employment.

With respect to proposed rule §12.14, relating to application fees and method of payment, the fees are based on the costs associated with administering the program, divided by the anticipated number of licensees and registrants. The cost analysis includes the estimated number of dispensing organizations and the number of employees per dispensing organization. The department estimates twelve dispensing organizations would be licensed and an average of thirty-seven employees per dispensing organization would be registered. In calculating the costs of administering the statute, the department considered the type of employees to be involved with processing applications and inspecting facilities. A percentage of salary, fuels, consumables, and other operating costs are included. Estimated costs for license cards and FBI and state background checks are also included. The estimated fee is \$6,000 per dispensing organization and \$150 per registrant. Because the proposed fees are based on the cost of administering the program, they are consistent with the statutory requirements. No alternative fees have been considered because any variance would be inconsistent the health, safety, and environmental and economic welfare of the state.

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be the availability of low-THC cannabis to certain patients with intractable epilepsy, through the department's administration and enforcement of Texas Health and Safety Code, Chapter 487, the licensure of dispensers of low-THC cannabis to certain patients with intractable epilepsy, and the establishment and maintenance of a secure, online compassionate-use registry for patients and physicians.

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

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

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

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Health and Safety Code, §487.052, which requires the department adopt rules necessary for the administration and enforcement of Texas Health and Safety Code, Chapter 487, including rules imposing fees in amounts sufficient to cover the cost of administering the chapter.

Texas Government Code, §411.004(3) and Texas Health and Safety Code, §487.052 are affected by this proposal.

§12.11. Application for License.

(a) Application for license as a dispensing organization may only be made through the department's online application process.

(b) A complete application must include the items detailed in this subsection, in a manner determined by the department:

(1) Proof of ownership and current status in the manner required by the department, including but not limited to a current Certificate of Existence or Certificate of Authority from the Texas Office of the Secretary of State and a Certificate of Good Standing from the Texas Comptroller of Public Accounts;

(2) All fees required under §12.14 of this title (relating to Application Fees and Method of Payment);

(3) Names, dates of birth, addresses, and all other information required by the department necessary to verify the identity of all directors, managers, and employees of the applicant;

(4) Criminal history disclosure of all convictions and deferred adjudications for each individual listed on the application as directors, managers, and employees of the dispensing organization;

(5) Complete registration applications for all directors, managers and employees submitted in the manner approved by the department and in compliance with §12.12 of this title (relating to Application for Registration);

(6) Evidence of the qualifications detailed in this paragraph as determined at the time of the required onsite inspection, in the manner determined by the department:

(A) The technical and technological ability to cultivate, process, and/or dispense low-THC cannabis, evidenced by experience in the areas of:

(i) Cultivation, analytical organic chemistry and micro-biology; and analytical laboratory methods; and

(ii) Patient education and interaction, and the handling of confidential information including familiarity with the requirements of the Health Insurance Portability and Accountability Act (HIPAA).

(B) The ability to secure the premises, resources, and personnel necessary to operate as a dispensing organization, evidenced by:

(i) Descriptions of all properties applicant proposes to utilize to cultivate, process, and dispense low-THC cannabis, including ownership information for the properties;

(ii) Descriptions of the methods proposed for the cultivation, processing, and dispensing of low-THC cannabis;

(iii) Descriptions of the types and locations of worker safety equipment and plans and procedures for complying with federal Occupational Safety and Health Administration (OSHA) regulations for workplace safety;

(iv) A list of current and proposed staff, including position, duties and responsibilities, and an organizational chart illustrating the supervisory structure of the dispensing organization;

(v) Description of the applicant's proposed testing laboratory, and cannabis testing protocols and methods; and

(vi) A proposal establishing the ability to secure premises reasonably located to allow patient access through existing infrastructure.

(C) The ability to maintain accountability of all raw materials, finished products, and any byproducts to prevent diversion or unlawful access to or possession of these substances, evidenced by:

(i) Floor plan of each facility or proposed floor plans for proposed facilities, including:

(I) Locking options for all means of ingress and egress;

(II) Alarm systems;

(III) Video surveillance;

(IV) Name, layout and function of each room;
and

(V) Storage, including safes and vaults.

(ii) Diversion prevention procedures;

(iii) Emergency management plan;

(iv) System for tracking low-THC source plant material throughout cultivation, processing, and dispensing;

(v) Inventory control system for low-THC cannabis as required by §12.8 of this title (relating to Inventory Control System);

(vi) Policies and procedures for recordkeeping;

(vii) Electronic vehicle tracking systems;

(viii) Vehicle security systems;

(ix) Methods of screening and monitoring employees;

(x) Personnel qualifications and experience with chain of custody or other tracking mechanisms;

(xi) Waste disposal plan;

(xii) Recall procedures for any product that has a reasonable probability of causing adverse health consequences based on a testing result, patient reaction, or other reason; and

(xiii) Access to specialized resources or expertise regarding data collection, security, and tracking.

(D) Infrastructure reasonably located to dispense low-THC cannabis to registered patients, evidenced by:

(i) Map showing the location of the applicant's proposed dispensing facilities with streets; property lines; buildings; parking areas; outdoor areas, if applicable; fences; security features; fire hydrants, if applicable; and access to water and sanitation systems;

(ii) Floor plan of the actual or proposed building or buildings where dispensing activities will occur showing areas designed to protect patient privacy and areas designed for retail sales, with proposed hours of operation;

(iii) HIPAA compliant computer network utilized by all facilities;

(iv) Identifying descriptions of any vehicles to be used to transport product; and

(v) Description of all communication systems.

(E) The financial ability to maintain operations for two (2) years from the date of application, evidenced by:

(i) Applicant's business organization, and corporate structure if applicable;

(ii) List of all owners of the applicant, including any shareholders owning 10% or more of a corporate applicant;

(iii) All individuals and entities with control over the applicant;

(iv) Projected two (2) year budget; and

(v) Description of available assets sufficient to support the dispensing organization activities.

(c) Subsequent to the submission of all information and documentation required by subsection (b)(1) - (5) of this section, and prior to approval of the application, the department will conduct an onsite inspection to confirm applicant's compliance with the requirements of subsection (b)(6) of this section and of this chapter generally. The applicant must pass the inspection prior to licensure. Failure to pass the inspection will result in notification of the basis for the failure. Failure to address the basis for the failure within ninety (90) days of notice may result in the denial of the application, pursuant to §12.15 of this title (relating to Denial of Application for License). Upon request of the applicant, the department may extend the period to address the basis for the failure for one (1) additional ninety (90) day period.

(d) Failure of an applicant to submit all information and documentation required by subsection (b)(1) - (5) of this section will result in notification of the deficiency. Applicant will have ninety (90) days from the date of notice to address the deficiency. Upon request of the applicant, the department may extend the period to address the deficiency for one (1) additional ninety (90) day period. If an applicant fails to provide all required application materials, or fails to respond to a request by the department for additional information necessary to process the application, the application will be terminated. Following the termination of an application, a new application, including a new application fee, must be submitted.

§12.12. Application for Registration.

(a) In conjunction with the dispensing organization's application for license, or prior to employment with a currently licensed dispensing organization, directors, managers, and employees must submit:

(1) Identifiers, including the individual's full name, date of birth, telephone number, electronic mail address, residential address, and driver license or state-issued identification number; and

(2) Fingerprints submitted in the manner approved by the department.

(b) If the applicant does not have a digital photograph on file with the department or the department is unable to access the photograph on file, the registration card will be issued without a photograph. When presenting such a card to a peace officer or to a representative of the department, the registrant shall also present a valid government issued identification card or driver license.

(c) Failure of an applicant to comply with the requirements of this section will result in notification of the deficiency. Applicant will have ninety (90) days from the date of notice to address the deficiency. Upon request of the applicant, the department may extend the period to address the deficiency for one additional ninety (90) day period. If an applicant fails to provide all required application materials, or fails to respond to a request by the department for additional information necessary to process the application, the application will be terminated. Following the termination of an application, a new application, including a new application fee, must be submitted.

§12.13. Renewal.

(a) A license or registration may be renewed at any time during the six (6) months prior to expiration.

(b) A renewal applicant must pass department inspection prior to approval of the application. This requirement is satisfied by an inspection within ninety (90) days prior to the submission of the renewal application.

(c) An expired license or registration may be renewed for up to six (6) months after the expiration date. If the license has been expired for more than six (6) months, the former license holder must submit an original license application to receive a license in the future.

§12.14. Application Fees and Method of Payment.

(a) The application fee for a dispensing organization license is \$6,000.

(b) The fee for the biennial renewal of the dispensing organization license is \$6,000.

(c) The registration application and biennial renewal fees are \$150.

(d) Payment of all fees must be made electronically in the manner determined by the department.

(e) If payment is dishonored or reversed prior to issuance of the license or registration, the application will be rejected as incomplete. If the license or registration has been issued prior to the payment being dishonored or reversed, revocation proceedings will be initiated pursuant to § 12.23 of this title (relating to Revocation). The department may dismiss a pending revocation proceeding upon receipt of payment of the full amount due, including any additional processing fees.

§12.15. Denial of Application for License.

(a) The department may deny the application for a license as a dispensing organization if the applicant fails to pass the onsite inspection, based on the failure to satisfy the requirements reflected in subsection (b)(6) of §12.11 of this title (relating to Application for License), and has either failed to address the basis for the failure within ninety (90) days of notice of the failure, or has failed to request an additional ninety (90) days to address the basis for the failure.

(b) The department may also deny the application for a license if the applicant is found to have violated any provision of the Act or this chapter, or §§481.120, 481.121, 481.122, or 481.125 of the Texas Health and Safety Code prior to licensure or renewal.

(c) Following the notice of denial the applicant will be provided thirty (30) days to request a hearing by submitting a request through the department's website.

§12.16. Denial of Application for Registration.

The department may deny the application for registration of a director, manager, or employee of a dispensing organization if the applicant is disqualified pursuant to §12.3 of this title (relating to Criminal History Disqualifiers). The applicant may request a hearing by submitting a request through the department's website within thirty (30) days of the date of the denial notice.

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

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D. Phillip Adkins

General Counsel

Texas Department of Public Safety

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SUBCHAPTER C. COMPLIANCE AND ENFORCEMENT

37 TAC §§12.21 - 12.25

The Texas Department of Public Safety (the department) proposes new §§12.21 - 12.25, concerning Compliance and Enforcement. The proposed new Subchapter C is intended to implement the requirements of Senate Bill 339, enacted by the 84th Texas Legislature. Entitled the "Texas Compassionate Use Act," the bill adds new Chapter 487 to the Texas Health and Safety Code and new Chapter 169 to the Texas Occupations Code. The bill requires the Department of Public Safety to license dispensing organizations of low-THC cannabis and to establish and maintain a secure, online registry of certain patients with intractable epilepsy and of qualified prescribing physicians. Subchapter C provides compliance and enforcement standards, including inspection standards provisions for the suspension and revocation of licenses and registrations.

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

Ms. Whittenton has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with §§12.22, 12.23, 12.24, and 12.25 as proposed. There is no anticipated economic cost to businesses required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has also determined that new §12.21 may have an adverse economic effect on small businesses or micro-businesses required to comply with this rule as proposed. The department estimates there will be twelve licensees, all of these licensees will be small businesses, and four will be micro businesses. These estimates are based on an analysis of other states' compassionate-use programs and the number

of patients in Texas with intractable epilepsy. The department estimates the projected impact of §12.21 will be increased costs of compliance associated with record keeping, reporting, security, and testing. In preparing the department considered the alternatives of granting exemptions or grace periods from the requirements for small and micro businesses. However, these rules are intended to implement Senate Bill 339's requirements that licensees possess the technical and technological ability to cultivate and produce low-THC cannabis; the ability to secure the necessary resources, personnel, and facilities; the ability to maintain accountability for the raw materials, the finished product, and any by-products used or produced in the cultivation or production of low-THC cannabis to prevent unlawful access to or unlawful diversion or possession of those materials, products, or by-products; and the financial ability to maintain operations for not less than two years. Proposed §12.21 elaborates on these statutory requirements by mandating objectively verifiable standards instead of overly specific equipment or structural requirements. The rule requirements are performance standards, not design or equipment requirements. The proposed rule reflects the minimum standards necessary to ensure the health, safety, and the environmental and economic welfare of the state. The department is not authorized to create grace periods or other exemptions from the statutory requirements, reflected in Texas Health and Safety Code, §487.102. Moreover, an exemption or grace period would be inconsistent with the health, safety, or environmental and economic welfare of the state. There is no anticipated negative impact on local employment.

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be the availability of low-THC cannabis to certain patients with intractable epilepsy, through the department's administration and enforcement of Texas Health and Safety Code, Chapter 487, the licensure of dispensers of low-THC cannabis to certain patients with intractable epilepsy, and the establishment and maintenance of a secure, online compassionate use registry for patients and physicians.

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

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

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

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission

to adopt rules considered necessary for carrying out the department's work, and Texas Health and Safety Code, §487.052, which requires the department adopt rules necessary for the administration and enforcement of Texas Health and Safety Code, Chapter 487.

Texas Government Code, §411.004(3) and Texas Health and Safety Code, §487.052 are affected by this proposal.

§12.21. Inspections.

(a) Submission of an application for a license as a dispensing organization constitutes permission for entry by the department to the regulated premises of the dispensing organization at any time during regular business hours.

(b) While conducting an inspection or engaging in activity reasonably related to the inspection, the department may be assisted by a peace officer or a representative of an appropriate state regulatory agency.

(c) Within thirty (30) calendar days of the date of receipt of the written notice of violation, the dispensing organization shall provide the department with notification of all corrective actions taken and the dates of the corrections.

(d) Onsite inspections may include but are not limited to review of:

(1) All requirements provided in §12.11(b) of this title (relating to Application for License);

(2) Security equipment and protocols as provided in §12.31 and §12.32 of this title (relating to Security of Facilities and Security of Vehicles, respectively);

(3) Records as provided in §12.4 of this title (relating to Records).

(e) Failure to cooperate with an inspection by department personnel may result in suspension or revocation of the individual's registration and the license of the dispensing organization.

§12.22. Suspension.

(a) The department may initiate suspension proceedings against the license of a dispensing organization if the licensee or its registrant:

(1) Willfully or knowingly submits false, inaccurate, or incomplete information to the department or records such information on any records required to be maintained under this chapter;

(2) Fails to maintain the records required under this chapter; or

(3) Violates any provision of the Act, of this chapter, or §§481.120, 481.121, 481.122, or 481.125 of the Texas Health and Safety Code.

(b) For the first violation of subsection (a) of this section, the license may be suspended for a period not to exceed thirty (30) days.

(c) For multiple first time violations, or for a second violation of subsection (a) of this section occurring within two (2) years of an earlier violation for which a final order has been issued, the license may be suspended for a period not to exceed ninety (90) days.

(d) For multiple, repetitive violations, or for a third violation of subsection (a) of this section occurring within two (2) years of two (2) earlier violations for which final orders have been issued, the license may be suspended for a period not to exceed one hundred eighty (180) days.

(e) Upon receipt of a notice of suspension under this section, the licensee will be provided with thirty (30) days to address the violation or request a hearing before SOAH. The failure to timely appeal the proposed action will result in the issuance of a final order.

(f) Registrants may be suspended if charged by misdemeanor information or felony indictment with a disqualifying offense as provided in §12.3 of this title (relating to Criminal History Disqualifiers).

§12.23. Revocation.

(a) The department may revoke a license or registration if the licensee or registrant:

(1) Is found to have performed a regulated function prior to issuance of the license or registration;

(2) Misrepresents a material fact in any application to the department or any other information filed pursuant to the Act or this chapter;

(3) Prepares or submits to the department false, incorrect, incomplete or misleading forms or reports on multiple occasions;

(4) Performs a regulated function while suspended;

(5) Exhibits a pattern of misconduct evidenced by previous violations for which previous suspensions have been inadequate to affect compliance;

(6) Is convicted of a disqualifying felony or misdemeanor offense pursuant to §12.3 of this title (relating to Criminal History Disqualifiers);

(7) Violates §§481.120, 481.121, 481.122, or 481.125 of the Texas Health and Safety Code; or

(8) Submits to the department a payment that is dishonored, reversed, or otherwise insufficient or invalid.

(b) Following notification of the violation, the licensee will be provided with thirty (30) days to address the violation or request a hearing by submitting the request electronically through the department's website or as otherwise determined by the department. If a hearing is requested, the department will schedule a hearing before SOAH.

(c) Except as provided in subsection (b) of this section, an individual whose certificate of registration has been revoked may not be relicensed or reregistered earlier than two (2) years from the date of revocation.

(d) A individual whose registration has been revoked for a dishonored or reversed payment, as provided under subsection (a)(8) of this section may reapply at any time. Approval of the application is contingent upon receipt of payment of the full amount due, including any additional processing fees resulting from the prior dishonored or reversed payment.

(e) Other than as provided in subsection (d) of this section, an individual whose license or registration has been revoked for a dishonored or reversed payment must follow the applicable procedures pursuant to §12.11 or §12.12 of this title (relating to Application for License and Application for Registration, respectively) for new applications.

§12.24. Default Judgments.

Following adequate notice of a hearing on a contested case before SOAH, failure of the respondent to appear at the time of hearing shall entitle the department to request from the administrative law judge an order dismissing the case from the SOAH docket and to informally dispose of the case on a default basis.

§12.25. Hearing Costs.

(a) In cases brought before SOAH, in the event the respondent is adjudicated as being in violation of the Act or this chapter after a trial on the merits, the department has authority to assess the actual costs of the administrative hearing in addition to the penalty imposed. Such costs include, but are not limited to, investigative costs, witness fees, deposition expenses, travel expenses of witnesses, transcription expenses, or any other costs that are necessary for the preparation of the department's case.

(b) The costs of transcriptions and preparation of the record for appeal shall be paid by the respondent.

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

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D. Phillip Adkins

General Counsel

Texas Department of Public Safety

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SUBCHAPTER D. SECURITY

37 TAC §§12.31 - 12.34

The Texas Department of Public Safety (the department) proposes new §§12.31 - 12.34, concerning Security. The proposed new Subchapter D is intended to implement the requirements of Senate Bill 339, enacted by the 84th Texas Legislature. Entitled the "Texas Compassionate-Use Act," the bill adds new Chapter 487 to the Texas Health and Safety Code and new Chapter 169 to the Texas Occupations Code. The bill requires the Department of Public Safety to license dispensing organizations of low-THC cannabis and to establish and maintain a secure, online registry of certain patients with intractable epilepsy and of qualified prescribing physicians. Subchapter D provides standards relating to the security of licensee's facilities and vehicles.

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

Ms. Whittenton has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with §12.33 and §12.34 as proposed. There is no anticipated economic cost to businesses required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

Ms. Whittenton has also determined that new §12.31 and §12.32 may have an adverse economic effect on small businesses or micro-businesses required to comply with this rule as proposed. The department estimates there will be twelve licensees, all of these licensees will be small businesses, and four will be micro businesses. These estimates are based on an analysis of other states' programs and the number of patients in Texas with intractable epilepsy. Sections 12.31 and 12.32 are intended to implement Senate Bill 339's requirements that licensees prevent unlawful access to or unlawful diversion or possession of low-THC products or by-products. The department estimates

the projected impact of §12.31 and §12.32 will be increased costs of compliance associated with record keeping, reporting, and security. In preparing these rules the department considered the alternatives of granting exemptions or grace periods from the requirements for small and micro businesses. However, these rules are intended to implement Senate Bill 339's requirements that licensees possess the ability to maintain accountability for the raw materials, the finished product, and any by-products used or produced in the cultivation or production of low-THC cannabis to prevent unlawful access to or unlawful diversion or possession of those materials, products, or by-products. Proposed §12.31 and §12.32 elaborate on these statutory requirements by mandating objectively verifiable standards instead of overly specific equipment or structural requirements. The rule requirements are performance standards, not design or equipment requirements. The proposed rules reflect the minimum standards necessary to ensure the health, safety, and the environmental and economic welfare of the state. The department is not authorized to create grace periods or other exemptions from the statutory requirements, reflected in Texas Health and Safety Code, §487.102. Moreover, an exemption or grace period would be inconsistent with the health, safety, or environmental and economic welfare of the state. There is no anticipated negative impact on local employment.

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be the availability of low-THC cannabis to certain patients with intractable epilepsy, through the department's administration and enforcement of Texas Health and Safety Code, Chapter 487, the licensure of dispensers of low-THC cannabis to certain patients with intractable epilepsy, and the establishment and maintenance of a secure, online compassionate-use registry for patients and physicians.

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

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

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

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Health and Safety Code, §487.052,

which requires the department adopt rules necessary for the administration and enforcement of Texas Health and Safety Code, Chapter 487.

Texas Government Code, §411.004(3) and Texas Health and Safety Code, §487.052 are affected by this proposal.

§12.31. Security of Facilities.

(a) A licensee or applicant for licensure must maintain effective controls and procedures in order to prevent unauthorized access, theft, or diversion of the low-THC cannabis and any derivative products. The standards provided in this subchapter are minimum standards only.

(b) During the regular course of business activities, a dispensing organization licensed under the Act may not allow access to the facility's low-THC cannabis area to unauthorized personnel or to the public. The licensee must establish and maintain a building, an enclosure within a building, or an enclosed yard that provides reasonably adequate security against the diversion of low-THC cannabis or raw materials used in or by-products created by the production or cultivation of low-THC cannabis; limit access to each area to the minimum number of individuals or employees necessary for the licensee's activities; and designate an individual or a limited number of individuals with responsibility for each area where a controlled item is cultivated, processed, dispensed, produced, or stored; and authority to enter or control entry into the area.

(c) Access to regulated premises by authorized personnel shall at a minimum be restricted by a physical barrier with a mechanical locking device that must be kept closed and locked at all times when not immediately being used to enter or exit the area. The area shall be clearly marked with signage indicating access is restricted to individuals registered with the Texas Department of Public Safety under Chapter 487 of the Texas Health and Safety Code.

(d) When unregistered individuals, whether personnel or contractors, business guests or visitors, or maintenance or other service providers not regulated under the Act, are to be present in or are to pass through regulated premises, the unregistered individuals must be continuously escorted by a registrant. Unregistered individuals must be provided a visitor's badge reflecting the individual's name and the date of issuance. All ingress and egress by unregistered individuals must be recorded in a daily log.

§12.32. Security of Vehicles.

Any vehicle used by a dispensing organization for the transportation of low-THC cannabis must have a vehicle security system and a securely attached and locked container within the vehicle. It is the responsibility of the licensee to ensure that only authorized registered personnel have access to the locked secure container within the vehicle.

§12.33. Response to Security Breach.

(a) The licensee must immediately report any unauthorized intrusion or other security breach of the regulated premises to both the local law enforcement agency with primary jurisdiction and to the department.

(b) Following any security breach the licensee shall review existing security procedures for any deficiencies that may have contributed to the breach. The licensee shall remedy the deficiency and report the remedial measures to the department.

(c) The licensee must rekey or change the combinations of any locks opened in the breach, and change any passwords that may have been used in the breach.

§12.34. Reporting of Discrepancy, Loss or Theft.

(a) A licensee or registrant must report to the department not later than the second day following the date the licensee or registrant learns of:

- (1) A notable inventory discrepancy;
- (2) An inventory loss or theft; or
- (3) A loss or theft during transport.

(b) The report required by subsection (a) of this section must reflect the name and registration or license number of the individual preparing the report, the date of the report, and the details listed in this subsection, as applicable:

- (1) Date of discovery;
- (2) Amount of low-THC cannabis involved, including amounts transported and received;
- (3) Physical location at issue;
- (4) Date transported, name of carrier or employee involved in the transport; or
- (5) Description of any suspected criminal activity.

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

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D. Phillip Adkins

General Counsel

Texas Department of Public Safety

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SUBCHAPTER E. COMPASSIONATE-USE REGISTRY

37 TAC §§12.41 - 12.44

The Texas Department of Public Safety (the department) proposes new §§12.41 - 12.44, concerning Compassionate-Use Registry. The proposed new Subchapter E is intended to implement the requirements of Senate Bill 339, enacted by the 84th Texas Legislature. Entitled the "Texas Compassionate-Use Act," the bill adds new Chapter 487 to the Texas Health and Safety Code and new Chapter 169 to the Texas Occupations Code. The bill requires the Department of Public Safety to license dispensing organizations of low-THC cannabis and to establish and maintain a secure, online registry of certain patients with intractable epilepsy and of qualified prescribing physicians. Subchapter E provides guidelines for access to and registration in the Compassionate-Use Registry.

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

Ms. Whittenton has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with these rules as proposed. There is no an-

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

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be the availability of low-THC cannabis to certain patients with intractable epilepsy, through the department's administration and enforcement of Texas Health and Safety Code, Chapter 487, the licensure of dispensers of low-THC cannabis to certain patients with intractable epilepsy, and the establishment and maintenance of a secure, online compassionate-use registry for patients and physicians.

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

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

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

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Health and Safety Code, §487.052, which requires the department adopt rules necessary for the administration and enforcement of Texas Health and Safety Code, Chapter 487.

Texas Government Code, §411.004(3) and Texas Health and Safety Code, §487.052 are affected by this proposal.

§12.41. Access to Compassionate-Use Registry.

(a) Qualified physicians registered as prescribers of low-THC cannabis under Texas Occupations Code, Chapter 169 may access the Compassionate-Use Registry using the department's secure web portal.

(b) Dispensing organizations and law enforcement agencies may request access to the Compassionate-Use Registry for the purpose of verifying whether a patient is one for whom low-THC cannabis is prescribed and whether the patient's prescriptions have been filled.

§12.42. Verification of Patient Registration.

(a) Before dispensing any low-THC cannabis to a registered patient or the patient's legal guardian, the dispensing organization must verify the identity of the patient or guardian, verify the guardian's status, if applicable, and confirm the patient has an active registration, the order has been entered in the registry by the physician, and the order has not already been dispensed.

(b) The dispensing organization shall enter a dispensing action into the registry immediately upon dispensing the low-THC cannabis to the registered patient or the patient's legal guardian.

§12.43. Prescriber Registration.

(a) In addition to the requirements of Texas Occupations Code, §169.004, for purposes of identification the physician's registration must include the patient's address, the last four digits of the patient's Social Security number, and if applicable, the name of the patient's legal guardian.

(b) Physicians registered as prescribers of low-THC cannabis under Texas Occupations Code, Chapter 169 must immediately inform the department of any change to their qualifications to prescribe under §169.002.

§12.44. Prescriptions.

Prescriptions for low-THC cannabis must be submitted electronically to the Compassionate-Use Registry in compliance with Texas Occupations Code, §169.003, and may be confirmed and dispensed based on the electronic prescription record in accordance with §487.107 of the Act.

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

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D. Phillip Adkins
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SUBCHAPTER F. SPECIAL CONDITIONS FOR MILITARY SERVICE MEMBERS AND SPOUSES

37 TAC §§12.51 - 12.55

The Texas Department of Public Safety (the department) proposes new §§12.51 - 12.55, concerning Special Conditions for Military Service Members and Spouses. The proposed new Subchapter F is intended to implement the requirements of Senate Bill 339, enacted by the 84th Texas Legislature. Entitled the "Texas Compassionate-Use Act," the bill adds new Chapter 487 to the Texas Health and Safety Code and new Chapter 169 to the Texas Occupations Code. The bill requires the Department of Public Safety to license dispensing organization of low-THC cannabis and to establish and maintain a secure, online registry of certain patients with intractable epilepsy and of qualified prescribing physicians. Subchapter F provides special licensing conditions for certain military service members and their spouses, and is intended to comply with the requirements of Texas Occupations Code, Chapter 55, as amended by Senate Bill 1307, 84th Legislative Session.

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

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

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

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be the availability of low-THC cannabis to certain patients with intractable epilepsy, through the department's administration and enforcement of Texas Health and Safety Code, Chapter 487, the licensure of dispensers of low-THC cannabis to certain patients with intractable epilepsy, and the establishment and maintenance of a secure, online compassionate-use registry for patients and physicians.

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

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

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

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Health and Safety Code, §487.052, which requires the department adopt rules necessary for the administration and enforcement of Texas Health and Safety Code, Chapter 487.

Texas Government Code, §411.004(3) and Texas Health and Safety Code, §487.052 are affected by this proposal.

§12.51. Definitions.

For purposes of this subchapter, the terms "military service member", "military veteran", and "military spouse" have the meanings provided in Texas Occupations Code, §55.001.

§12.52. Exemption from Penalty for Failure to Renew in Timely Manner.

An individual who holds a registration or license issued under the Act is exempt from any increased fee or other penalty for failing to renew the license or registration in a timely manner if the individual establishes to the satisfaction of the department the individual failed to renew the license or registration in a timely manner because the individual was serving as a military service member.

§12.53. Extension of License Renewal Deadlines for Military Members.

A military service member who holds a registration or license issued under the Act is entitled to two (2) years of additional time to complete any requirement related to the renewal of the license.

§12.54. Alternative Licensing for Military Service Members, Military Veterans, and Military Spouses.

(a) An individual who is a military service member, military veteran, or military spouse may apply for a license under this section if the individual:

(1) Holds a current license issued by another jurisdiction with licensing requirements substantially equivalent to the Act's requirements for the license; or

(2) Held a license in this state within the five (5) years preceding the date of application.

(b) The department may accept alternative demonstrations of professional competence in lieu of existing experience, training, or educational requirements.

§12.55. Credit for Military Experience and Training.

(a) Verified military service, training, or education that relates to the registration or license for which a military service member or military veteran has applied will be credited toward the respective experience or training requirements.

(b) This section does not apply to an applicant who:

(1) Holds a restricted license issued by another jurisdiction; or

(2) Is ineligible for the registration or license under the Act or this chapter, based on a disqualifying criminal history.

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

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D. Phillip Adkins

General Counsel

Texas Department of Public Safety

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CHAPTER 35. PRIVATE SECURITY
SUBCHAPTER O. MILITARY SERVICE
MEMBERS, MILITARY VETERANS, AND
MILITARY SPOUSES - SPECIAL CONDITIONS

37 TAC §§35.181 - 35.183, 35.185

The Texas Department of Public Safety (the department) proposes amendments to §§35.181 - 35.183, and proposes new §35.185, concerning Military Service Members, Military Veterans, and Military Spouses- Special Conditions. These amendments are required by Senate Bill 1307, 84th Legislative Session. The bill amends Chapter 55 of the Occupations Code and addresses special application and licensing provisions for military service members and military spouses applying for occupational licenses.

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

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

In addition, Ms. Whittenton has also determined that for each year of the first five-year period these rules are in effect, the public benefit anticipated as a result of enforcing these rules will be greater employment opportunities in the private security industry for military spouses, veterans, and active duty service members who can obtain credit for their skills and have their license applications expedited.

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

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

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, or by email at <https://www.txdps.state.tx.us/rsd/contact/default.aspx>. Select "Private Security," then "Rules and Regulations." Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Occupations Code, §1702.061(b), which authorizes the board to adopt rules to guide the agency in the administration of this chapter.

Texas Occupations Code, §1702.061(b) is affected by this proposal.

§35.181. Exemption from Penalty for Failure to Renew in Timely Manner.

An individual who holds a registration, commission, or license issued under the Act is exempt from any increased fee or other penalty for failing to renew the license in a timely manner if the individual establishes to the satisfaction of the department the individual failed to renew the license in a timely manner because the individual was serving as a military service member [on active duty in the United States Armed Forces serving outside this state].

§35.182. Extension of License Renewal [Certain] Deadlines for [Active] Military Service Members [Personnel].

A military service member [person] who holds a registration, commission, or license issued under the Act[; who is a member of the state military forces or a reserve component of the armed forces of the United States; and who is ordered to active duty by proper authority] is entitled to two (2) years of additional time [an additional amount of time,

equal to the total number of years or parts of years the person serves on active duty,] to complete:

(1) Any continuing education requirements; and

(2) Any other requirement related to the renewal of the military service member's [person's] license.

§35.183. Alternative Licensing [License Procedure] for Military Service Members, Military Veterans, and Military Spouses [Spouse].

(a) An individual who is a military service member, military veteran, or military spouse [the spouse of a person serving on active duty as a member of the armed forces of the United States] may apply for a license under this section if the individual:

(1) Holds a current license issued by another jurisdiction [state] with licensing requirements substantially equivalent to the Act's requirements for the license; or

(2) Within the five (5) years preceding the application date held the [a] license in this state [that expired while the applicant lived in another state for at least six (6) months].

(b) The department may accept alternative demonstrations of professional competence in lieu of existing experience, training, or educational requirements.

§35.185. Definitions.

For purposes of this subchapter, the terms 'military service member', 'military veteran', and 'military spouse' have the meanings provided in Texas Occupations Code, §55.001.

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

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CHAPTER 36. METALS REGISTRATION

37 TAC §§36.1 - 36.24

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Public Safety or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Department of Public Safety (the department) proposes the repeal of §§36.1 - 36.24, concerning Metals Recycling. The repeal of §§36.1 - 36.24 is filed simultaneously with proposed new §§36.1 - 36.60. The proposed new Chapter 36 is intended to reorganize and update the rules governing the metals program, improve the clarity, and update the rules to reflect all recent legislative changes.

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

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

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the repeals are in effect, the public benefit anticipated as a result of enforcing the repeals will be that the public will be informed of new requirements concerning the metals program and the rules will be updated to reflect all recent legislative changes.

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

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

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0246, Austin, Texas 78752-0246, or by email at <https://www.txdps.state.tx.us/rsd/contact/default.aspx>. Select "Texas Metals Program". Comments must be received no later than thirty (30) days from the date of publication of this proposal.

The repeals are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, Texas Occupations Code, §1956.013, which allows the commission to adopt rules establishing minimum requirements for registration and adopt required forms; and Texas Occupations Code, §1956.014, which allows the commission to prescribe fees in reasonable amounts sufficient to cover the costs of administering the Act.

Texas Government Code, §411.004(3) and Texas Occupations Code, Chapter 1956 are affected by this proposal.

§36.1. *Definitions.*

§36.2. *Address on File.*

§36.3. *Notice.*

§36.4. *Application for Certificate of Registration.*

§36.5. *Statutory Agent Disclosure.*

§36.6. *Change in Ownership.*

§36.7. *Application Review.*

§36.8. *Term of Certificate of Registration.*

§36.9. *Renewal of Certificate of Registration.*

§36.10. *Denial of Application for Certificate of Registration.*

§36.11. *Reprimands and Suspensions of a Certificate of Registration.*

§36.12. *Revocation of a Certificate of Registration.*

§36.13. *Recertification after Revocation.*

§36.14. *Reporting Requirements.*

§36.15. *Exemption from Electronic Reporting.*

§36.16. *Disqualifying Offenses.*

- §36.17. *Informal Hearings.*
- §36.18. *Hearings Before the State Office of Administrative Hearings.*
- §36.19. *Fees.*
- §36.20. *Documentation on Fire-Salvaged Insulated Communications Wire.*
- §36.21. *Military Exemption from Penalty for Failure to Renew in Timely Manner.*
- §36.22. *Extension of Certain Deadlines for Active Military Personnel.*
- §36.23. *Alternative License Procedure for Military Spouse.*
- §36.24. *Adding or Changing Locations.*

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

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D. Phillip Adkins

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CHAPTER 36. METALS RECYCLING ENTITIES

SUBCHAPTER A. GENERAL PROVISIONS

37 TAC §§36.1 - 36.4

The Texas Department of Public Safety (the department) proposes new §§36.1 - 36.4, concerning General Provisions. The proposed new Subchapter A is intended to reorganize and update the rules governing the metals program and to generally improve the clarity of the related rules.

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

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

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be that the public will be informed of new requirements concerning the metals program and the rules will be updated to reflect all recent legislative changes.

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment

or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

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

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

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, Texas Occupations Code, §1956.013, which allows the commission to adopt rules establishing minimum requirements for registration and adopt required forms; and Texas Occupations Code, §1956.014, which allows the commission to prescribe fees in reasonable amounts sufficient to cover the costs of administering the Act.

Texas Government Code, §411.004(3) and Texas Occupations Code, Chapter 1956 are affected by this proposal.

§36.1. Definitions.

The terms in this section have the following meanings when used in this chapter unless the context clearly indicates otherwise:

- (1) Act--Texas Occupations Code, Chapter 1956.
- (2) Advisory letter--An informational notification of an alleged minor violation of statute or administrative rule for which no disciplinary action is proposed.
- (3) Applicant--A person who has applied for registration under the Act.
- (4) Business owner--A proprietor, partner, member, or individual.
- (5) Commission--The Public Safety Commission.
- (6) Department--The Texas Department of Public Safety.
- (7) Fixed location--A building or structure for which a certificate of occupancy can be issued.
- (8) Immediate family member--A parent, child, sibling, or spouse.
- (9) Military service member, military veteran, and military spouse--Have the meanings provided in Texas Occupations Code, §55.001.
- (10) On-site representative--A person responsible for the day-to-day operation of the location.
- (11) Person--A corporation, organization, agency, business trust, estate, trust, partnership, association, holder of a certificate of registration, an individual, or any other legal entity.
- (12) Personal identification document--Has the meanings provided by Texas Occupations Code, §1956.001(8) of the Act.

(13) Program--Texas Metals Program.

(14) Registrant--A person who holds a certificate of registration under the Act.

(15) Revocation--The withdrawal of authority to act as a metal recycling entity under the Act.

(16) Statutory agent--The natural person to whom any legal notice may be delivered for each location.

(17) Suspension--A temporary cessation of the authority to act as a metal recycling entity under the Act.

§36.2. Notice.

(a) The department is entitled to rely on the mailing and electronic mail address currently on file for all purposes relating to notification. The failure to maintain a current mailing and electronic mail address with the department is not a defense to any action based on the registrant's, statutory agent's, or applicant's failure to respond.

(b) Service upon the registrant, applicant or statutory agents of notice is complete and receipt is presumed upon the date the notice is sent, if sent before 5:00 p.m. by facsimile or electronic mail, and the department receives confirmation of the transmission. If the notice is received after 5:00 p.m. or on a weekend or holiday, it is considered received on the next business day. Receipt is presumed three (3) days following the date sent, if by regular United States mail.

(c) The department shall notify the applicant of the denial of an application for a certificate of registration or renewal application for a certificate of registration and the registrant or statutory agent of advisory letters, reprimands, suspensions, or revocations of certificates of registration by certified mail, return receipt requested.

§36.3. Address on File.

(a) All registrants or applicants at all times shall maintain on file with the department their current mailing and principal place of business address. The principal place of business address must be a physical address and may not be a post office box.

(b) The current mailing address for a statutory agent at all times shall be on file with the department.

(c) All registrants, applicants, and statutory agents at all times shall maintain on file with the department a current and valid electronic mail address.

(d) All registrants, applicants, and statutory agents shall notify the department of any change of their mailing or electronic mail address using the department's online application prior to the effective date of the change of address.

§36.4. Forms.

(a) All forms required by the department must be completed legibly and in English.

(b) Except as provided in subsection (c) of this section, information submitted pursuant to the requirements of §1956.0382(b) or §1956.032(a)(3)(B) of the Act must be on a department approved form.

(c) In lieu of a form required by subsection (b) of this section, a person may submit to the department a waiver requesting approval to use an alternative form that contains information substantially consistent with that required by subsection (b) of this section.

(d) The name or State Seal of Texas or the name or seal of the Texas Department of Public Safety shall not be displayed on any alternative form.

(e) The digital photograph required on a form pursuant to §1956.0382(b) of the Act must be in color.

(f) A waiver to use an alternative form must be submitted in a manner prescribed by the department.

(g) A person is not authorized to use an alternative form described in subsection (c) of this section without first obtaining written approval of the department.

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

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D. Phillip Adkins

General Counsel

Texas Department of Public Safety

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SUBCHAPTER B. CERTIFICATE OF REGISTRATION

37 TAC §§36.11 - 36.18

The Texas Department of Public Safety (the department) proposes new §§36.11 - 36.18, concerning Certificate of Registration. The proposed new Subchapter B is intended to reorganize and update the rules governing the metals program and to generally improve the clarity of the related rules.

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

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

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be that the public will be informed of new requirements concerning the metals program and the rules will be updated to reflect all recent legislative changes.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly,

the department is not required to complete a takings impact assessment regarding this proposal.

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

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, Texas Occupations Code, §1956.013, which allows the commission to adopt rules establishing minimum requirements for registration and adopt required forms; and Texas Occupations Code, §1956.014, which allows the commission to prescribe fees in reasonable amounts sufficient to cover the costs of administering the Act.

Texas Government Code, §411.004(3) and Texas Occupations Code, Chapter 1956 are affected by this proposal.

§36.11. Application for Certificate of Registration.

(a) A certificate of registration may only be obtained through the department's online application process.

(b) The application for certificate of registration must include, but is not limited to:

(1) Criminal history disclosure of all convictions and deferred adjudications for each person listed as a business owner engaged in the regular course of business of a metal recycling entity on the application;

(2) Proof of ownership and current status as required by the department, including but not limited to, a current Certificate of Existence or Certificate of Authority from the Texas Office of the Secretary of State and a Certificate of Good Standing from the Texas Comptroller of Public Accounts;

(3) All fees required pursuant to §36.17 of this title (relating to Fees);

(4) A copy of any license or permit required by a county, municipality, or political subdivision of this state in order to act as a metal recycling entity in that county or municipality;

(5) Proof of training pursuant to §36.34 of this title (relating to Texas Metals Program Recycler Training); and

(6) A statutory agent disclosure pursuant to §36.12 of this title (relating to Statutory Agent Disclosure).

(c) Applicants proposing to conduct business at more than one (1) location must complete an application for each location and obtain a certificate of registration for each location. An applicant proposing to conduct business at more than one (1) location is only required to comply with the requirement of subsection (b)(5) of this section for the initial location at which they are seeking to conduct business.

(d) A new certificate of registration for a metals recycling entity may not be issued if the applicant's immediate family member's registration as a metals recycling entity, at that same location, is currently suspended or revoked, or is subject to a pending administrative action, unless the applicant submits an affidavit stating the family member who is the subject of the suspension, revocation or pending action, has no, nor will have any, direct involvement or influence in the business of the metals recycling entity.

(e) A new certificate of registration may be issued at the same location where a previous owner's registration as a metals recycling entity is pending or currently serving a suspension, revocation, or is subject to a pending administrative action if the applicant submits an affidavit stating the previous owner who is the subject of the suspension, revocation, or other pending administrative action, has no, nor will have any, direct involvement or influence in the business of the metals recycling entity. The affidavit must contain the statement that the affiant understands and agrees that in the event the department discovers the previous registration holder is involved in the business of metals recycling entity at that location, the certificate of registration will be revoked pursuant to §36.53 of this title (relating to Revocation of a Certificate of Registration). In addition to the affidavit, when the change of ownership of the metals recycling entity is by lease of the location, the applicant seeking a certificate of registration must provide a copy of the lease agreement included with the application for certification of registration.

(f) The failure of an applicant to meet any of the conditions of subsections (a) - (e) of this section will result in rejection of the application as incomplete.

(g) An applicant for a certificate of registration is not authorized to engage in any activity for which a certificate of registration is required prior to being issued a certificate of registration by the department.

§36.12. Statutory Agent Disclosure.

(a) Statutory agent disclosure information must be submitted by all applicants for each location at which the applicant is seeking to conduct business. Each person applying for a certificate of registration must designate a natural person as the statutory agent and provide a physical address where that natural person may be located. This address may not be a post office box.

(b) Modification of the statutory agent disclosure information must be submitted using the department's online application and all required fees must be paid pursuant to §36.17 of this title (relating to Fees), prior to the effective date of the change.

§36.13. Change in Ownership.

(a) The department must be notified of any change in ownership structure or registrant status within five (5) business days of the effective date of the change. Notification must be through the department's online application. All fees required pursuant to §36.17 of this title (relating to Fees) must be paid at the time of notification.

(b) The registrant must submit amended proof of ownership and status as required by the department.

§36.14. Application Review.

(a) If an incomplete application is received, the applicant will be notified of the deficiency and provided twenty (20) calendar days after receipt of notice to submit the missing information. If an applicant fails to furnish the missing information within twenty (20) calendar days, the application will be rejected as incomplete.

(b) An application is complete when:

(1) It contains all of the items required pursuant to §36.11 of this title (relating to Application for Certificate of Registration);

(2) It conforms to the Act, this chapter, and the program's instructions;

(3) All fees have been paid pursuant to §36.17 of this title (relating to Fees);

(4) All requests for additional information have been satisfied; and

(5) Proof of training has been completed pursuant to §36.34 of this title (relating to Texas Metals Program Recycler Training).

§36.15. Term of Certificate of Registration.

(a) A certificate of registration is valid for two (2) years from the date of issuance.

(b) A person whose certificate of registration has expired may not act as a metal recycling entity, represent to the public that the person is a metal recycling entity, or perform collections until the certificate has been renewed.

(c) A registrant must display a copy of the current, certificate of registration in a manner clearly visible to anyone authorized to inspect pursuant to §1956.035(b)(2) of the Act.

§36.16. Renewal of Certificate of Registration.

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

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

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

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

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

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

§36.17. Fees.

(a) The department has prescribed the following non-refundable fees for purposes of administering the Act:

(1) Initial application. A \$500 fee is assessed for each application for a new certificate of registration. Applicants conducting business at more than one (1) location must apply for a new certificate of registration and submit a \$500 fee for each location.

(2) Statutory agent disclosure. A \$10 fee is assessed each time statutory agent disclosure information is filed, without an initial application or application for renewal.

(3) Change in ownership. A \$10 fee is assessed each time change of ownership information is filed, without an initial application or application for renewal.

(4) Renewal certificate of registration. A \$500 fee is assessed for each location renewing a certificate of registration in accordance with §36.16 of this title (relating to Renewal of Certificate of Registration). A certificate of registration that has been expired for ninety (90) days or less may be renewed by submitting a renewal application using the department's online application and by paying \$750.

A certificate of registration that has been expired for more than ninety (90) days but less than one (1) year may be renewed by submitting a renewal application using the department's online application and by paying \$1,000.

(5) Add or change location. A \$500 fee is assessed each time a metal recycling entity adds or changes a fixed location.

(b) Payment of fees shall be in the manner prescribed by the department. If payment is dishonored or reversed prior to issuance of the certificate, the application will be rejected as incomplete. If the certificate of registration has been issued prior to the payment being dishonored or reversed, revocation proceedings will be initiated pursuant to §36.53 of this title (relating to Revocation of Certificate of Registration). The department may dismiss a pending revocation proceeding upon receipt of payment of the full amount due, including any additional processing fees.

(c) Except as authorized pursuant to §36.41 of this title (relating to Military Exemption from Penalty for Failure to Renew in Timely Manner) no exemption from a penalty for failure to renew a registration before expiration is authorized.

§36.18. Adding or Changing Locations.

To conduct business at a new or additional location a registrant must apply for a certificate of registration for each location, pay all fees required pursuant to §36.17 of this title (relating to Fees), and obtain a certificate of registration pursuant to §36.11 (relating to Application for Certificate of Registration) for each location.

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

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D. Phillip Adkins

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SUBCHAPTER C. PRACTICE BY CERTIFICATE HOLDERS AND REPORTING REQUIREMENTS

37 TAC §§36.31 - 36.37

The Texas Department of Public Safety (the department) proposes new §§36.31 - 36.37, concerning Practice by Certificate Holders and Reporting Requirements. The proposed new Subchapter C is intended to reorganize and update the rules governing the metals program and to generally improve the clarity of the related rules. The proposed new sections also are intended to implement the requirements of House Bill 2187, enacted by the 84th Texas Legislature. The bill requires changes in payment methods and the use of a cash transaction card. The proposal reflects such changes as well as minor changes proposed for the purposes of clarification.

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

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

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

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will that the public will be informed of new requirements concerning the metals program and the rules will be updated to reflect all recent legislative changes.

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

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

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

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, Texas Occupations Code, §1956.013, which allows the commission to adopt rules establishing minimum requirements for registration and adopt required forms; and Texas Occupations Code, §1956.014, which allows the commission to prescribe fees in reasonable amounts sufficient to cover the costs of administering the Act.

Texas Government Code, §411.004(3) and Texas Occupations Code, Chapter 1956 are affected by this proposal.

§36.31. Reporting Requirements.

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

§36.32. Exemption from Electronic Reporting.

(a) A metal recycling entity unable to comply with the electronic reporting requirements may request an exemption from the requirement. The request must be in the form of an affidavit stating the

entity does not have an available and reliable means of submitting the transaction report electronically. In addition, the request must clearly describe the metal recycling entity's technological inadequacies, explain why those inadequacies cannot be remedied, and include documentation establishing the financial hardship associated with compliance.

(b) If an exemption is granted, the entity must file reportable transactions with the department on an approved form. The exemption will remain in effect for no longer than twelve (12) months, beginning the first (1st) day of the month following the month the exemption was granted. A new exemption must be requested annually in writing.

(c) The department may rescind an exemption if the reasons underlying the exemption no longer exist.

§36.33. Documentation on Fire-Salvaged Insulated Communications Wire.

Pursuant to §1956.032(a)(5) and (h) of the Act, a person attempting to sell insulated communications wire that has been burned wholly or partly to remove the insulation must display to the purchasing metal recycling entity documentation of the seller's ownership of the property at which the fire occurred or an affidavit from the owner reflecting the owner's consent for the material to be removed and sold.

§36.34. Texas Metals Program Recycler Training.

Before receiving a certificate of registration pursuant to §36.11 of this title (relating to Application for Certificate of Registration) or renewal of certificate of registration pursuant to §36.16 of this title (relating to Renewal of Certificate of Registration), all applicants and registrants must satisfactorily complete the department's Texas Metals Program Recycler Training. A copy of the proof of training for registrants must be maintained at the place of business and available for inspection by anyone authorized to inspect pursuant to §1956.035(b)(2) of the Act.

§36.35. Payment by Metal Recycling Entity.

A check or money order issued to a seller pursuant to §1956.0381(a)(3) or §1956.0381(a)(4) of the Act must not be cashed by a metal recycling entity or at a metal recycling entity location.

§36.36. Standards of Conduct.

(a) Pursuant to §1956.035 of the Act, a metal recycling entity shall cooperate fully with any investigation or inspection conducted by a peace officer, a representative of the department, or a representative of a county, municipality, or political subdivision that issues a license or permit under §1956.003(b) of the Act.

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

(c) A metal recycling entity must not purchase, sell, or possess any regulated material that reasonably could have been known to contain a substance as defined by Texas Penal Code, §46.01(2).

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

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

§36.37. Cash Transaction Card.

(a) In addition to the requirements pursuant to §1956.0382(d) of the Act, a cash transaction card must be laminated or made of a rigid

plastic or other durable material that will preserve the legibility of the information contained on the card. All information on the card must be legible and in English.

(b) The name of the metal recycling entity issuing the card and their state issued registration number must be included on the front of the card.

(c) The Texas state seal or the name or insignia of the department must not be displayed as part of a cash transaction card other than such items prepared or issued by the department.

(d) The digital photograph required pursuant to §1956.0382(d)(2) of the Act, must be the same digital photograph required pursuant to §1956.0382(b)(3) and it must be in color.

(e) A cash transaction card required by a local law, regulation, or ordinance consistent with §1956.0382(d) of the Act that is issued subsequent to the effective date of this section must comply with this section. Any such card issued prior to the effective date of this section need not comply with this section so long as it remains valid and has not expired, unless more than two (2) years have passed since the date of issuance.

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

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SUBCHAPTER D. MILITARY EXEMPTIONS

37 TAC §§36.41 - 36.44

The Texas Department of Public Safety (the department) proposes new §§36.41 - 36.44, concerning Military Exemptions. The proposed new Subchapter D is intended to implement the requirements of Senate Bill 1307, enacted by the 84th Texas Legislature. The bill requires the creation of exemptions and extensions for occupational license applications and renewals for military service members, military veterans, and military spouses. The proposal reflects such changes as well as minor changes proposed for the purposes of clarification.

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

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

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

the public will be informed of new requirements concerning the metals program and the rules will be updated to reflect all recent legislative changes.

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

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

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

These rules are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, Texas Occupations Code, §1956.013, which allows the commission to adopt rules establishing minimum requirements for registration and adopt required forms; and Texas Occupations Code, §1956.014, which allows the commission to prescribe fees in reasonable amounts sufficient to cover the costs of administering the Act.

Texas Government Code, §411.004(3) and Texas Occupations Code, Chapter 1956 are affected by this proposal.

§36.41. Military Exemption from Penalty for Failure to Renew in Timely Manner.

A person who holds a certificate of registration issued under the Act is exempt from any increased fee or other penalty imposed by the department for failing to renew the certificate of registration in a timely manner, if the person establishes to the satisfaction of the department the person failed to renew the certificate of registration in a timely manner because the person was serving as a military service member.

§36.42. Extension of Registration Renewal Deadlines for Military Service Members.

A military service member who holds a certificate of registration issued under the Act is entitled to two (2) years of additional time to complete any requirement related to the renewal of the military service member's certificate of registration.

§36.43. Alternative Registration Procedures for Military Service Members, Military Veterans, and Military Spouses.

An applicant who is a military service member, military veteran, or military spouse may apply for a certificate of registration under this section if the applicant:

(1) Establishes to the satisfaction of the department that the applicant holds a current certificate of registration or the equivalent issued by another jurisdiction with requirements substantially equivalent to the Act's requirements for the certificate of registration; or

(2) Within the five (5) years preceding the application date held the certificate of registration in this state.

§36.44. Credit for Military Experience and Training.

(a) Verified military service, training, or education that relates to registration as a metal recycling entity will be credited toward the respective experience or training requirements.

(b) This section does not apply to an applicant who:

(1) holds a restricted license issued by another jurisdiction; or

(2) is ineligible for the registration or license under the Act or this chapter, based on a disqualifying criminal history.

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

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SUBCHAPTER E. DISCIPLINARY PROCEDURES AND ADMINISTRATIVE PROCEDURES

37 TAC §§36.51 - 36.60

The Texas Department of Public Safety (the department) proposes new §§36.51 - 36.60, concerning Disciplinary Procedures and Administrative Procedures. The proposed new Subchapter E is intended to reorganize and update the rules governing the metals program and to generally improve the clarity of the related rules. The proposed new sections are also intended to implement the requirements of House Bill 2187, enacted by the 84th Texas Legislature. The bill allows for the imposition of administrative penalties in addition to other administrative actions. The proposal reflects such changes as well as minor changes proposed for the purposes of clarification.

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

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

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be that the public will be informed of new requirements concerning the metals program and the rules will be updated to reflect all recent legislative changes.

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

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

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

These rules are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, Texas Occupations Code, §1956.013, which allows the commission to adopt rules establishing minimum requirements for registration and adopt required forms; and Texas Occupations Code, §1956.014, which allows the commission to prescribe fees in reasonable amounts sufficient to cover the costs of administering the Act, and Texas Occupations Code, §1956.041, as amended by House Bill 2187, 84th Legislative Session, effective September 1, 2015, which authorizes the commission to impose administrative penalties for certain violations of the Act.

Texas Government Code, §411.004(3) and Texas Occupations Code, Chapter 1956 are affected by this proposal.

§36.51. Denial of Application for Certificate of Registration.

(a) The department may deny an application for a certificate of registration if:

(1) The applicant attempts to obtain a certificate of registration by means of fraud, misrepresentation, or concealment of a material fact;

(2) The applicant has sold, bartered, or offered to sell or barter a certificate of registration;

(3) The applicant is ineligible pursuant to §36.55 of this title (relating to Disqualifying Offenses);

(4) The applicant's certificate of registration was revoked within two (2) years prior to the date of application; or

(5) The applicant operated a metal recycling entity in violation of §1956.021 of the Act and, after notice of the violation, failed to obtain a registration required by the Act.

(b) Upon the denial of an application under this section, an applicant may request a hearing before the department pursuant to §36.56 of this title (relating to Informal Hearings).

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

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

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

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

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

(4) Violates the Act or this chapter.

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

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

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

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

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

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

§36.53. Revocation of a Certificate of Registration.

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

(1) Commits multiple violations of the same type pursuant to §36.52(a) of this title (relating to Advisory Letters, Reprimands and Suspensions of a Certificate of Registration);

(2) Obtains a certificate of registration by means of fraud, misrepresentation, or concealment of a material fact;

(3) Sells, barter, or offers to sell or barter a certificate of registration;

(4) Is convicted of a disqualifying felony or misdemeanor offense pursuant to §36.55 of this title (relating to Disqualifying Offenses); or

(5) Submits to the department a payment that is dishonored, reversed, or otherwise insufficient or invalid.

(b) Upon receipt of notice of revocation under this section, a person may request a hearing before the department pursuant to §36.56 of this title (relating to Informal Hearings).

§36.54. Recertification After Revocation.

(a) Except as provided in subsection (b) of this section, a person whose certificate of registration has been revoked may not be recertified earlier than two (2) years from the date of revocation.

(b) A person whose certificate of registration has been revoked for a dishonored or reversed payment, as provided under §36.53(a)(5) of this title (relating to Revocation of a Certificate of Registration), may reapply at any time. Approval of the application is contingent upon receipt of payment of the full amount due, including any additional processing fees resulting from the prior dishonored or reversed payment.

(c) A person whose certificate of registration has been revoked must follow the procedures pursuant to §36.11 of this title (relating to Application for Certificate of Registration) for new applications including proof of training pursuant to §36.34 of this title (relating to Texas Metals Program Recycler Training).

§36.55. Disqualifying Offenses.

(a) Pursuant to Texas Occupations Code, §53.021(a)(1), the department may revoke a certificate of registration or deny an application for a certificate of registration if the applicant, registrant, and/or business owner thereof has been convicted of a felony or misdemeanor that directly relates to the duties and responsibilities of a metal recycling entity.

(b) The department has determined the types of offenses detailed in this subsection directly relate to the duties and responsibilities of metal recycling entities. A conviction for an offense within one (1) or more of the following categories may result in the denial of an application (initial or renewal) for a certificate of registration or the revocation of a certificate of registration. The Texas Penal Code references provided in this section are for illustrative purposes and are not intended to exclude similar offenses in other state or federal codes. The types of offenses directly related to the duties and responsibilities of metal recycling entities include, but are not limited to:

(1) Arson, Criminal Mischief, and other Property Damage or Destruction (Texas Penal Code, Chapter 28);

(2) Burglary and Criminal Trespass (Texas Penal Code, Chapter 30);

(3) Theft (Texas Penal Code, Chapter 31);

(4) Fraud (Texas Penal Code, Chapter 32);

(5) Bribery and Corrupt Influence (Texas Penal Code, Chapter 36);

(6) Perjury and Other Falsification (Texas Penal Code, Chapter 37);

(7) Any violation of Texas Occupations Code, §1956.038 or §1956.040;

(8) Prohibited Weapon - Explosive Weapon (Texas Penal Code, §46.05(a)(1); and

(9) Component of Explosives (Texas Penal Code, §46.09).

(c) A felony conviction for one of the offenses listed in subsection (b) of this section, a sexually violent offense as defined by Texas Code of Criminal Procedure, Article 62.001, or an offense listed in Texas Code of Criminal Procedure, Article 42.12, §3(g), is disqualifying for ten (10) years from the date of the conviction, unless a full pardon has been granted under the authority of a state or federal official and not only by statutory effect.

(d) A misdemeanor conviction for one of the offenses listed in subsection (b) of this section or a substantially similar offense is disqualifying for five (5) years from the date of conviction.

(e) For the purposes of this chapter, all references to conviction are to those for which the judgment has become final.

(f) A certificate of registration may be revoked for the imprisonment of the registrant following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision for an offense that does not relate to the occupation of metal recycling and is disqualifying for five (5) years from the date of the conviction.

(g) The department may consider the factors specified in Texas Occupations Code, §53.022 and §53.023 in determining whether to grant, deny, or revoke any certificate of registration.

§36.56. Informal Hearings.

(a) A person who receives notice of the department's intention to deny an application for a certification of registration to suspend or revoke a certificate of registration to be reprimanded, or to be prohibited from paying cash for a purchase of regulated material pursuant to §1956.036(e) of the Act, may appeal the decision by requesting an informal hearing.

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

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

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

§36.57. Hearings Before the State Office of Administrative Hearings.

The determination of the informal hearing officer may be appealed by requesting a hearing before an administrative law judge of the State Office of Administrative Hearings within twenty (20) calendar days of receipt of the statement of findings. The request must be submitted in writing by mail, facsimile, or electronic mail, to the department in the manner provided on the metals recycling program's website.

§36.58. Default Judgments.

Following adequate notice of a hearing on a contested case before State Office of Administrative Hearings, failure of the respondent to appear at the time of hearing shall entitle the department to request from the administrative law judge an order dismissing the case from the State Office of Administrative Hearings docket and to informally dispose of the case on a default basis.

§36.59. Hearing Costs.

(a) In cases brought before State Office of Administrative Hearings, in the event the respondent is adjudicated as being in violation of the Act or this chapter after a trial on the merits, the department has authority to assess the actual costs of the administrative hearing in addition to the penalty imposed. Such costs include, but are not limited to, investigative costs, witness fees, deposition expenses, travel expenses of witnesses, transcription expenses, or any other costs that are necessary for the preparation of the department's case.

(b) The costs of transcriptions and preparation of the record for appeal shall be paid by the respondent.

§36.60. Administrative Penalties.

(a) In addition to or in lieu of discipline imposed pursuant to §36.52 of this title (relating to Advisory Letters, Reprimands and Suspensions of a Certificate of Registration) the department may impose an administrative penalty on a person who violates §1956.036 of the Act.

(b) For a first (1st) violation, the penalty may not exceed \$500.

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

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

- (1) The degree of knowledge or intent;
- (2) The amount necessary to deter a future violation;
- (3) Efforts to correct the violation; and
- (4) Any other matter that justice may require.

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

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

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TRD-201503557

D. Phillip Adkins

General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: October 18, 2015

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



TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 219. OVERSIZE AND OVERWEIGHT VEHICLES AND LOADS

The Texas Department of Motor Vehicles (department) proposes amendments to Chapter 219, Oversize and Overweight Vehicles and Loads, Subchapter A: §219.1, Purpose and Scope; and §219.2, Definitions; Subchapter B: §219.10, Purpose and Scope; §219.11, General Oversize/Overweight Permit Requirements and Procedures; §219.12, Single-Trip Permits Issued Under Transportation Code, Chapter 623, Subchapter D; §219.13, Time Permits; and §219.14, Manufactured Housing, and Industrialized Housing and Building Permits; Subchapter C: §219.31, Timber Permits; Subchapter D: §219.41, General Requirements; §219.42, Single-Trip Mileage Permits; §219.43, Quarterly Hubometer Permits; and §219.45, Permits for Vehicles Transporting Liquid Products Related to Oil Well Production; Subchapter E: §219.61, General Requirements

for Permits for Oversize and Overweight Unladen Lift Equipment Motor Vehicles; §219.62, Single Trip Mileage Permits; and §219.63, Quarterly Hubometer Permits; Subchapter G: §219.102, Records; and Subchapter H: §219.121, Administrative Penalties; and §219.125, Settlement Agreements.

EXPLANATION OF PROPOSED AMENDMENTS

In §219.2(36), the department proposes to replace the term "nondivisible load" with the term "nondivisible load or vehicle." The department also proposes to replace the definition with the definition from 23 C.F.R. §658.5 for the term "nondivisible load or vehicle." Texas must comply with certain federal size and weight laws and regulations to receive federal highway funding.

Amendments are made throughout Chapter 219 to use the term "nondivisible load" or "nondivisible vehicle" where the defined term applies. Other amendments replace the terms "nondivisible" and "non-divisible" with other language when the definition of the term "nondivisible load or vehicle" does not apply. Amendments to §219.12(b)(6) and §219.13(e)(4) make it clear that the permit may not be used for containers, including trailers and intermodal containers, loaded with divisible cargo, unless the permit is a single-trip permit issued for a load under §219.12(c).

An amendment is proposed to §219.11(d)(1)(E) to clarify that a permitted vehicle or combination of vehicles may not exceed the manufacturer's rated tire carrying capacity, unless expressly authorized in the language on the permit.

Amendments are proposed to §219.11(d)(2)(G) to clarify the weight requirements for trunnion axles, to add additional requirements, to make it clear that there is an authorized weight per axle, and to delete the unnecessary graphic because the requirements are stated in §219.11(d)(2)(G).

Amendments to §219.11(e)(3) clarify that the permit authorizes the permitted vehicle to move oversize and overweight hauling equipment to pick up a permitted load, as well as on the return trip after dropping off the permitted load. The permit also authorizes the permitted vehicle to transport a load on the way to pick up a permitted load and after dropping off a permitted load, as long as the load does not exceed legal size and weight limits and as long as the transport complies with the permit. Similar amendments clarify the movement of overwidth trailers in §219.13(c)(3).

An amendment deletes language from §219.11(e)(4)(A) regarding the requirement to keep the permit in the permitted vehicle because this issue is addressed in the amendments to §219.102(b), which applies to all permits. An amendment deletes the remainder of §219.11(e)(4) because the department's requirements to retain records are contained in the department's records retention schedule. Also, some of the language in §219.11(e)(4) is incorrect.

An amendment is proposed to delete the language in §219.11(h)(1) and §219.13(e)(2)(D) because it is sometimes necessary for a route to include a designated lane due to overhead structures of varying heights.

An amendment is proposed to §219.11(k)(4)(A) to clarify the purpose of the height pole.

An amendment is proposed to §219.11(k)(5) to delete the unnecessary example regarding escort requirements.

An amendment is proposed to §219.11(l)(4) to clarify that counties also impose curfew restrictions; however, only the curfew restrictions listed on the permit apply to the permit.

An amendment is proposed to §219.12(b)(6) to delete the exemption from the vehicle supervision fee under Transportation Code, §623.078 for single and multiple box culverts because the statute does not authorize this exemption.

An amendment is proposed to §219.12(b)(7)(C) to delete the unnecessary requirement for applicants to provide the department with a copy of the signed contract for the proposed shipment. The proposed amendment replaces this requirement with a form that provides the department with the necessary information.

An amendment is proposed to §219.12(c)(2) to increase the maximum width from nine feet to 10 feet because pipe boxes are now built slightly wider than nine feet.

An amendment is proposed to delete §219.12(d)(5) and (6) because the language is outdated. The department will permit based on the size and weight, rather than the type of load, under this subsection. There is no reason to treat storage tanks and houses differently in this subsection.

An amendment is proposed to §219.13(d)(2)(B) to delete the language regarding an exception because the department does not issue this permit if there is more than 25 feet front overhang or more than 30 feet rear overhang. If a vehicle and load exceed one of these limits, a single-trip permit with a route inspection is required.

Proposed §219.13(e)(8) implements the new annual overlength permit authorized by Senate Bill 562, 84th Legislature, Regular Session, 2015. Senate Bill 562 amended Transportation Code, §623.071 and §623.076, authorizing the department to issue a permit to a person to operate over a state highway or road a vehicle or combination of vehicles with a maximum length not to exceed 110 feet and a maximum height not to exceed 14 feet. Proposed §219.13(e)(8) establishes the requirements, restrictions, and procedures regarding this new permit.

Amendments are proposed to §219.102 to update the requirements regarding evidence of the permit. The amendments authorize an operator to provide a department inspector or a peace officer with an electronic copy of certain permits on a wireless communication device.

An amendment is proposed to §219.121(b)(2) to duplicate the definition of the word "knowingly" that is used in §218.71 because Transportation Code, §643.251 governs administrative penalties for Chapters 218 and 219.

Amendments are proposed to §219.125 to allow more flexibility regarding settlement agreements.

Amendments are proposed throughout Chapter 219 to reflect the role of the Texas Department of Transportation regarding permits.

Amendments are proposed in more than one section because a route must be inspected for the movement of both the vehicle and load to make sure both the vehicle and load can safely negotiate the route.

Amendments are proposed to make the rules consistent with current practice, current terminology, other department rules, and current statutes. For example, amendments are proposed to add the application requirements to obtain certain permits, and deletions are proposed because permit applications are no longer accepted at cash collection offices. Amendments are also proposed to correct cross-references.

Amendments are also proposed to delete language that repeats language found in other parts of Chapter 219 and in statute. Also, the department proposes to reorganize portions of Chapter 219 for clarity. Further, the department proposes to restructure portions of Chapter 219 due to deletions and additions.

FISCAL NOTE

Linda M. Flores, Chief Financial Officer, has determined that for each of the first five years the amendments as proposed are in effect, there will be minimal fiscal implications for state or local governments as a result of enforcing or administering the proposed amendments. The department proposes to delete the exemption from the vehicle supervision fee for single and multiple box culverts in §219.12(b)(6). This deletion may slightly increase the amount of vehicle supervision fees that the department collects.

Jimmy Archer, Director of the Motor Carrier Division, has certified that there will be no impact on local economies or overall employment as a result of enforcing or administering the proposed amendments.

PUBLIC BENEFIT AND COST

Mr. Archer has also determined that for each year of the first five years the amendments as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be a process by which a person can obtain an annual extended length permit, as well as permit requirements and restrictions which help protect the state highways and assist with enforcement of the size and weight laws and rules. In addition, the public will benefit from updated rules that are consistent with the applicable statutes, regulations, and current practice. The public and the regulated industry will benefit because certain unnecessary requirements and limitations are proposed to be deleted from Chapter 219. The regulated industry will benefit because the language expressly authorizes the operator to display an electronic copy of certain permits on a wireless communications device, upon request from a department inspector or a peace officer.

For each of the first five years the proposed amendments are in effect, there are no anticipated economic costs for persons required to comply with the amendments as proposed. There will be no adverse economic effect on small businesses or micro-businesses.

Transportation Code, §623.078 does not authorize the department to provide an exemption from the vehicle supervision fee. So, the proposed deletion of the exemption from this fee in §219.12(b)(6) for single and multiple box culverts does not result in: 1) an anticipated economic cost for persons required to comply with this amendment; or 2) an adverse economic effect on small businesses or micro-businesses.

The proposed definition for "nondivisible load or vehicle" applies to certain vehicles and loads that are authorized to travel on the following: 1) the national system of interstate and defense highways (interstate); and 2) the classes of qualifying federal-aid primary system highways designated by the U.S. Secretary of Transportation under 49 U.S.C. §31111(e) (federal-aid primary system highways). The current definition of a "nondivisible load" in §219.2(36) does not apply to the permits authorized by Transportation Code, §623.071 for such vehicles and loads. Because these permits authorize the transportation of vehicles and loads on the interstate and the federal-aid primary system highways,

the department complies with the federal laws and regulations regarding weight and length limits.

The federal weight and length limits are incorporated into the Texas statutes, so Texas can receive federal highway funding through the Texas Department of Transportation. According to 23 U.S.C. §141, Texas risks the loss of federal highway funding if Texas doesn't adequately enforce such state laws on the interstate and the federal-aid primary system highways, which are part of the state highway system.

Transportation Code, §621.101 incorporates the federal axle weight limits, the gross weight limit, and the bridge formula. The federal law and regulations authorize a state to issue a special permit to exceed the federal axle weight, gross weight, and bridge formula for nondivisible loads or vehicles. See 23 U.S.C. §127(a)(2) and 23 C.F.R. §658.5 and §658.17(h). Proposed amendments regarding "nondivisible load" and "nondivisible vehicle" expressly incorporate the definition for these terms found in 23 C.F.R. §658.5.

Transportation Code, Subtitle E, incorporates the federal length limits. The federal law and regulations authorize a state to issue a special permit to exceed certain length limits if the vehicle or load is nondivisible. See 49 U.S.C. §31112(b) and 23 C.F.R. §658.5 and §658.23(d). Proposed amendments regarding "nondivisible load" and "nondivisible vehicle" expressly incorporate the definition for these terms found in 23 C.F.R. §658.5.

For these reasons, the proposed amendments regarding "nondivisible load" and "nondivisible vehicle" do not result in: 1) an anticipated economic cost for persons required to comply with these amendments; or 2) an adverse economic effect on small businesses or micro-businesses. In addition, an Economic Impact Statement and Regulatory Flexibility Analysis is not required for the proposed amendments regarding "nondivisible load" and "nondivisible vehicle" because Texas risks the loss of federal highway funding if Texas doesn't adequately enforce all state laws regarding maximum vehicle size and weight in accordance with 23 U.S.C. §127 and 49 U.S.C. §31112. See 23 U.S.C. §141 and Government Code, §2006.002(c-1).

TAKINGS IMPACT ASSESSMENT

The department has determined that this proposal affects no private real property interests and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action, and so does not constitute a taking or require a takings impact assessment under Government Code, §2007.043.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments may be submitted to David D. Duncan, General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Building 1, Austin, Texas 78731 or by email to rules@txdmv.gov. The deadline for receipt of comments is 5:00 p.m. on October 19, 2015.

SUBCHAPTER A. GENERAL PROVISIONS

43 TAC §219.1, §219.2

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the Board of the Texas Department of Motor Vehicles (board) with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code; and

more specifically, Transportation Code, §§621.008, 622.002, and 623.002, which authorize the board to adopt rules that are necessary to implement and enforce Chapters 621, 622, and 623.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 621, 622, and 623.

§219.1. Purpose and Scope.

The department is responsible for regulating the movement of oversize and overweight vehicles and loads on the state highway system, in order to insure the safety of the traveling public, and to protect the integrity of the highways and the bridges. This responsibility is accomplished through the issuance of permits for the movement of oversize and overweight vehicles and loads. The sections under this chapter prescribe the policies and procedures for the issuance of permits ~~and the execution of contracts~~. All applications for permits and all questions regarding the permits should be directed to the department, even though TxDOT is responsible for certain issues regarding permits.

§219.2. Definitions.

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

(1) Annual permit--A permit that authorizes movement of an oversize and/or overweight load for one year commencing with the effective ~~["movement to begin"]~~ date.

(2) Applicant--Any person, firm, or corporation requesting a permit.

(3) Axle--The common axis of rotation of one or more wheels whether power-driven or freely rotating, and whether in one or more segments.

(4) Axle group--An assemblage of two or more consecutive axles, with two or more wheels per axle, spaced at least 40 inches from center of axle to center of axle, equipped with a weight-equalizing suspension system that will not allow more than a 10% weight difference between any two axles in the group.

(5) Board--The Board of the Texas Department of Motor Vehicles.

~~[(6) Cash collection office--An office that has been designated as the place where a permit applicant can apply for a permit or pay for a permit with cash, cashier's check, personal or business check, or money order.]~~

(6) ~~[(7)]~~ Closeout--The procedure used by the department to terminate a permit, issued under Transportation Code, §623.142 or §623.192 that will not be renewed by the applicant.

(7) ~~[(8)]~~ Complete identification number--A unique and distinguishing number assigned to equipment or a commodity for purposes of identification.

(8) ~~[(9)]~~ Concrete pump truck--A self-propelled vehicle designed to pump the concrete product from a ready mix truck to the point of construction.

(9) ~~[(10)]~~ Crane--Any unladen lift equipment motor vehicle designed for the sole purpose of raising, shifting, or lowering heavy weights by means of a projecting, swinging mast with an engine for power on a chassis permanently constructed or assembled for such purpose.

(10) ~~[(11)]~~ Credit card--A credit card approved by the department and a permit account card.

(11) ~~[(12)]~~ Daylight--The period beginning one-half hour before sunrise and ending one-half hour after sunset.

(12) ~~[(13)]~~ Department--The Texas Department of Motor Vehicles.

(13) ~~[(14)]~~ Digital signature--An electronic identifier intended by the person using it to have the same force and effect as a manual signature. The digital signature shall be unique to the person using it.

(14) ~~[(15)]~~ Director--The Executive Director of the Texas Department of Motor Vehicles or a designee not below the level of division director.

(15) ~~[(16)]~~ District--One of the 25 geographical areas, managed by a district engineer of the Texas Department of Transportation, in which the Texas Department of Transportation conducts its primary work activities.

(16) ~~[(17)]~~ District engineer--The chief executive officer in charge of a district of the Texas Department of Transportation.

(17) ~~[(18)]~~ Electronic identifier--A unique identifier which is distinctive to the person using it, is independently verifiable, is under the sole control of the person using it, and is transmitted in a manner that makes it infeasible to change the data in the communication or digital signature without invalidating the digital signature.

(18) ~~[(19)]~~ Escort vehicle--A motor vehicle used to warn traffic of the presence of a permitted vehicle.

(19) ~~[(20)]~~ Four-axle group--Any four consecutive axles, having at least 40 inches from center of axle to center of axle, whose extreme centers are not more than 192 inches apart and are individually attached to or articulated from, or both, to the vehicle by a weight equalizing suspension system.

(20) ~~[(21)]~~ Gauge--The transverse spacing distance between tires on an axle, expressed in feet and measured to the nearest inch, from center-of-tire to center-of-tire on an axle equipped with only two tires, or measured to the nearest inch from the center of the dual wheels on one side of the axle to the center of the dual wheels on the opposite side of the axle.

(21) ~~[(22)]~~ Gross weight--The unladen weight of a vehicle or combination of vehicles plus the weight of the load being transported.

(22) ~~[(23)]~~ Height pole--A device made of a non-conductive material, used to measure the height of overhead obstructions.

(23) ~~[(24)]~~ Highway maintenance fee--A fee established by Transportation Code, §623.077, based on gross weight, and paid by the permittee when the permit is issued.

(24) ~~[(25)]~~ Highway use factor--A mileage reduction figure used in the calculation of a permit fee for a permit issued under Transportation Code, §623.142 and §623.192.

(25) ~~[(26)]~~ Hubometer--A mechanical device attached to an axle on a unit or a crane for recording mileage traveled.

(26) ~~[(27)]~~ HUD number--A unique number assigned to a manufactured home by the U.S. Department of Housing and Urban Development.

(27) ~~[(28)]~~ Indirect cost share--A prorated share of administering department activities, other than the direct cost of the activities, including the cost of providing statewide support services.

(28) ~~[(29)]~~ Load-restricted bridge--A bridge that is restricted by the Texas Department of Transportation, under the provi-

sions of Transportation Code, §621.102, to a weight limit less than the maximum amount allowed by Transportation Code, §621.101.

(29) ~~[(30)]~~ Load-restricted road--A road that is restricted by the Texas Department of Transportation, under the provisions of Transportation Code, §621.102, to a weight limit less than the maximum amount allowed by Transportation Code, §621.101.

(30) ~~[(31)]~~ Machinery plate--A license plate issued under Transportation Code, §502.146.

(31) ~~[(32)]~~ Manufactured home--Manufactured housing, as defined in Occupations Code, Chapter 1201, and industrialized housing and buildings, as defined in Occupations Code, §1202.002, and temporary chassis systems, and returnable undercarriages used for the transportation of manufactured housing and industrialized housing and buildings, and a transportable section which is transported on a chassis system or returnable undercarriage that is constructed so that it cannot, without dismantling or destruction, be transported within legal size limits for motor vehicles.

(32) ~~[(33)]~~ Motor carrier--A person that controls, operates, or directs the operation of one or more vehicles that transport persons or cargo over a public highway in this state, as defined in Chapter 218 of this title (relating to Motor Carriers).

(33) ~~[(34)]~~ Motor carrier registration (MCR)--The registration issued by the department to motor carriers moving intrastate, under authority of Transportation Code, Chapter 643 as amended.

(34) ~~[(35)]~~ Nighttime--The period beginning one-half hour after sunset and ending one-half hour before sunrise, as defined by Transportation Code, §541.401.

(35) ~~[(36)]~~ Nondivisible load or vehicle--~~[A load that cannot be reduced to a smaller dimension without compromising the integrity of the load or requiring more than eight hours of work using appropriate equipment to dismantle.]~~

(A) Any load or vehicle exceeding applicable length or weight limits which, if separated into smaller loads or vehicles, would:

(i) compromise the intended use of the vehicle, i.e., make it unable to perform the function for which it was intended;

(ii) destroy the value of the load or vehicle, i.e., make it unusable for its intended purpose; or

(iii) require more than eight workhours to dismantle using appropriate equipment. The applicant for a nondivisible load permit has the burden of proof as to the number of workhours required to dismantle the load.

(B) Emergency response vehicles, including those loaded with salt, sand, chemicals or a combination thereof, with or without a plow or blade attached in front, and being used for the purpose of spreading the material on highways that are or may become slick or icy.

(C) Casks designed for the transport of spent nuclear materials.

(D) Military vehicles transporting marked military equipment or materiel.

(36) ~~[(37)]~~ Oil field rig-up truck--An unladen vehicle with an overweight single steering axle, equipped with a winch and set of gin poles used for lifting, erecting, and moving oil well equipment and machinery.

(37) ~~[(38)]~~ Oil well servicing unit--An oil well clean-out unit, oil well drilling unit, or oil well swabbing unit, which is mobile

equipment, either self-propelled or trailer-mounted, constructed as a machine used solely for cleaning-out, drilling, servicing, or swabbing oil wells, and consisting in general of, but not limited to, a mast, an engine for power, a draw works, and a chassis permanently constructed or assembled for this purpose.

(38) ~~[(39)]~~ One trip registration--Temporary vehicle registration issued under Transportation Code, §502.095.

(39) ~~[(40)]~~ Overdimension load--A vehicle, combination of vehicles, or vehicle and its load that exceeds maximum legal width, height, length, overhang, or weight as set forth by Transportation Code, Chapter 621, Subchapters B and C.

(40) ~~[(41)]~~ Overhang--The portion of a load extending beyond the front or rear of a vehicle or combination of vehicles.

(41) ~~[(42)]~~ Overheight--An overdimension load that exceeds the maximum height specified in Transportation Code, §621.207.

(42) ~~[(43)]~~ Overlength--An overdimension load that exceeds the maximum length specified in Transportation Code, §§621.203, 621.204, 621.205, and 621.206.

(43) ~~[(44)]~~ Overweight--An overdimension load that exceeds the maximum weight specified in Transportation Code, §621.101.

(44) ~~[(45)]~~ Overwidth--An overdimension load that exceeds the maximum width specified in Transportation Code, §621.201.

(45) ~~[(46)]~~ Permit--Authority for the movement of an overdimension load, issued by the department under Transportation Code, Chapter 623.

(46) ~~[(47)]~~ Permit account card (PAC)--A debit card that can only be used to purchase a permit ~~[or temporary vehicle registration]~~ and which is issued by a financial institution that is under contract to the department and the Comptroller of Public Accounts.

(47) ~~[(48)]~~ Permit officer--An employee of the department who is authorized to issue an oversize/overweight permit ~~[or temporary vehicle registration]~~.

(48) ~~[(49)]~~ Permit plate--A license plate issued under Transportation Code, §502.146, to a crane or an oil well servicing vehicle.

(49) ~~[(50)]~~ Permitted vehicle--A vehicle, combination of vehicles, or vehicle and its load operating under the provisions of a permit.

(50) ~~[(51)]~~ Permittee--Any person, firm, or corporation that is issued an oversize/overweight permit ~~[or temporary vehicle registration]~~ by the department.

(51) ~~[(52)]~~ Pipe box--A container specifically constructed to safely transport and handle oil field drill pipe and drill collars.

(52) ~~[(53)]~~ Portable building compatible cargo--Cargo, other than a portable building unit, that is manufactured, assembled, or distributed by a portable building unit manufacturer and is transported in combination with a portable building unit.

(53) ~~[(54)]~~ Portable building unit--The pre-fabricated structural and other components incorporated and delivered by the manufacturer as a complete inspected unit with a distinct serial number whether in fully assembled, partially assembled, or kit (unassembled) configuration when loaded for transport.

(54) ~~[(55)]~~ Principal--The person, firm, or corporation that is insured by a surety bond company.

(55) [(56)] Recyclable materials--Material that has been recovered or diverted from the solid waste stream for purposes of reuse, recycling, or reclamation, a substantial portion of which is consistently used in the manufacture of products which may otherwise be produced using raw or virgin materials. Recycled material is not solid waste unless the material is deemed to be hazardous solid waste by the Administrator of the United States Environmental Protection Agency, whereupon it shall be regulated accordingly unless it is otherwise exempted in whole or in part from regulation under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901, et seq.), by Environmental Protection Agency regulation. However, recyclable material may become solid waste at such time, if any, as it is abandoned or disposed of rather than recycled, whereupon it will be solid waste with respect only to the party actually abandoning or disposing of the material.

(56) [(57)] Shipper--Person who consigns the movement of a shipment.

(57) [(58)] Shipper's certificate of weight--A form approved by the department in which the shipper certifies to the maximum weight of the shipment being transported.

(58) [(59)] Single axle--An assembly of two or more wheels whose centers are in one transverse vertical plane or may be included between two parallel transverse planes 40 inches apart extending across the full width of the vehicle.

(59) [(60)] Single-trip permit--A permit issued for an overdimension load for a single continuous movement over a specific route for an amount of time necessary to make the movement.

(60) [(61)] State highway--A highway or road under the jurisdiction of the Texas Department of Transportation.

(61) [(62)] State highway system--A network of roads and highways as defined by Transportation Code, §221.001.

(62) [(63)] Surety bond--An agreement issued by a surety bond company to a principal that pledges to compensate the Texas Department of Transportation for any damage that might be sustained to the highways and bridges by virtue of the operation of the equipment for which a permit was issued. A surety bond is effective the day it is issued and expires at the end of the state fiscal year, which is August 31st. For example, if you obtain a surety bond on August 30th, it will expire the next day at midnight.

(63) [(64)] Tare weight--The empty weight of any vehicle transporting an overdimension load.

(64) [(65)] Temporary vehicle registration--A 72-hour temporary vehicle registration, 144-hour temporary vehicle registration, or one-trip registration, as defined by Transportation Code, §502.094.

(65) [(66)] Three-axle group--Any three consecutive axles, having at least 40 inches from center of axle to center of axle, whose extreme centers are not more than 144 inches apart, and are individually attached to or articulated from, or both, to the vehicle by a weight equalizing suspension system.

(66) [(67)] Time permit--A permit issued for a specified period of time under §219.13 of this title (relating to Time Permits).

(67) [(68)] Traffic control device--All traffic signals, signs, and markings, including their supports, used to regulate, warn, or control traffic.

(68) [(69)] Trailer mounted unit--An oil well clean-out, drilling, servicing, or swabbing unit mounted on a trailer, constructed

as a machine used for cleaning out, drilling, servicing, or swabbing oil wells, and consisting in general of, but not limited to, a mast, an engine for power, a draw works, and a chassis permanently constructed or assembled for this purpose.

(69) [(70)] Truck--A motor vehicle designed, used, or maintained primarily for the transportation of property.

(70) [(71)] Truck-tractor--A motor vehicle designed or used primarily for drawing another vehicle:

(A) that is not constructed to carry a load other than a part of the weight of the vehicle and load being drawn; or

(B) that is engaged with a semitrailer in the transportation of automobiles or boats and that transports the automobiles or boats on part of the truck-tractor.

(71) [(72)] Trunnion axle--Two individual axles mounted in the same transverse plane, with four tires on each axle, that are connected to a pivoting wrist pin that allows each individual axle to oscillate in a vertical plane to provide for constant and equal weight distribution on each individual axle at all times during movement.

(72) [(73)] Trunnion axle group--Two or more consecutive trunnion axles whose centers are at least 40 inches apart and which are individually attached to or articulated from, or both, to the vehicle by a weight equalizing suspension system.

(73) [(74)] Two-axle group--Any two consecutive axles whose centers are at least 40 inches but not more than 96 inches apart and are individually attached to or articulated from, or both, to the vehicle by a weight equalizing suspension system.

(74) [(75)] TxDOT--Texas Department of Transportation.

(75) [(76)] Unit--Oil well clean-out unit, oil well drilling unit, oil well servicing unit, and/or oil well swabbing unit.

(76) [(77)] Unladen lift equipment motor vehicle--A motor vehicle designed for use as lift equipment used solely to raise, shift, or lower heavy weights by means of a projecting, swinging mast with an engine for power on a chassis permanently constructed or assembled for such purpose.

(77) [(78)] USDOT Number--The United States Department of Transportation number.

(78) [(79)] Variable load suspension axles--Axles, whose controls must be located outside of and be inaccessible from the driver's compartment, that can be regulated, through the use of hydraulic and air suspension systems, mechanical systems, or a combination of these systems, for the purpose of adding or decreasing the amount of weight to be carried by each axle during the movement of the vehicle.

(79) [(80)] Vehicle--Every device in or by which any person or property is or may be transported or drawn upon a public highway, except devices used exclusively upon stationary rails or tracks.

(80) [(81)] Vehicle identification number--A unique and distinguishing number assigned to a vehicle by the manufacturer or by the department in accordance with Transportation Code, §501.032 and §501.033.

(81) [(82)] Vehicle supervision fee--A fee required by Transportation Code, §623.078, paid by the permittee to the department, designed to recover the direct cost of providing safe transportation of a permit load exceeding 200,000 pounds gross weight over a state highway, including the cost for bridge structural analysis, monitoring the progress of the trip, and moving and replacing traffic control devices.

(82) [(83)] Water Well Drilling Machinery--Machinery used exclusively for the purpose of drilling water wells, including machinery that is a unit or a unit mounted on a conventional vehicle or chassis.

(83) [(84)] Weight-equalizing suspension system--An arrangement of parts designed to attach two or more consecutive axles to the frame of a vehicle in a manner that will equalize the load between the axles.

(84) [(85)] Windshield sticker--Identifying insignia indicating that an over axle/over gross weight tolerance permit has been issued in accordance with Subchapter C of this chapter and Transportation Code, §623.011.

(85) [(86)] Year--A time period consisting of 12 consecutive months that commences with the effective [~~movement to begin~~] date stated in the permit.

(86) [(87)] 72-hour temporary vehicle registration--Temporary vehicle registration issued by the department authorizing a vehicle to operate at maximum legal weight on a state highway for a period not longer than 72 consecutive hours, as prescribed by Transportation Code, §502.094.

(87) [(88)] 144-hour temporary vehicle registration--Temporary vehicle registration issued by the department authorizing a vehicle to operate at maximum legal weight on a state highway for a period not longer than 144 consecutive hours, as prescribed by Transportation Code, §502.094.

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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For further information, please call: (512) 465-5665



SUBCHAPTER B. GENERAL PERMITS

43 TAC §§219.10 - 219.14

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the Board of the Texas Department of Motor Vehicles (board) with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code; and more specifically, Transportation Code, §§621.008, 622.002, and 623.002, which authorize the board to adopt rules that are necessary to implement and enforce Chapters 621, 622, and 623.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 621, 622, and 623.

§219.10. *Purpose and Scope.*

(a) In accordance with Transportation Code, Chapters 621, 622, and 623, the department may issue permits for the operation of oversize and/or overweight vehicles for:

(1) the transportation of a nondivisible load or vehicle [cargo that cannot be reasonably dismantled] when the size or gross weight exceeds the limits allowed by law;

(2) the transportation of oversize portable building units and portable building compatible cargo;

(3) the movement of oversize manufactured housing and industrialized buildings;

(4) the movement of cylindrically shaped bales of hay; and

(5) the movement of water well drilling machinery and equipment.

(b) The issuance of a permit for an oversize and/or overweight unit is not a guarantee by the department that the highways can safely accommodate such movement. The transporter of a unit is responsible for any damage caused to the state highway system or any of its structures or appurtenances by movement of the unit, whether or not the unit is permitted.

(c) The following sections in this subchapter set forth the requirements and procedures applicable to those permits.

§219.11. *General Oversize/Overweight Permit Requirements and Procedures.*

(a) Purpose and scope. This section contains general requirements relating to oversize/overweight permits, including single trip permits. Specific requirements for each type of specialty permit are provided for in this chapter.

(b) Prerequisites to obtaining an oversize/overweight permit. Unless exempted by law or this chapter, the following requirements must be met prior to the issuance of an oversize/overweight permit.

(1) Commercial motor carrier registration or surety bond. Prior to obtaining an oversize/overweight permit, an applicant permitted under the provisions of Transportation Code, Chapter 623, Subchapter D, must be registered as a commercial motor carrier under Chapter 218 of this title (relating to Motor Carriers) or, if not required to obtain a motor carrier registration, file a surety bond with the department as described in subsection (n) of this section.

(2) Vehicle registration. A vehicle registered with a permit plate will not be issued an oversize/overweight permit under this subchapter. A permitted vehicle operating under this subchapter must be registered with one of the following types of vehicle registration:

(A) current Texas license plates that indicate the permitted vehicle is registered for maximum legal gross weight or the maximum weight the vehicle can transport;

(B) Texas temporary vehicle registration;

(C) current out of state license plates that are apportioned for travel in Texas; or

(D) foreign commercial vehicles registered under Texas annual registration.

(c) Permit application.

(1) An application for a permit shall be made in a form and by the method prescribed by the department, and at a minimum shall include the following: [~~may be made to the department by telephone, by facsimile, electronically, or in person at a cash collection office.~~ All applications shall be made on a form prescribed by the department,

and all applicable information shall be provided by the applicant, including:]

(A) name, address, [and] telephone number, and email address (if requested) of the applicant;

(B) applicant's customer identification number;

(C) applicant's MCR [motor carrier registration] number or USDOT Number, if applicable;

(D) complete load description, including maximum width, height, length, overhang, and gross weight;

(E) complete description of vehicle, [equipment,] including truck year, make, license plate number and state of issuance, and vehicle identification number, if required;

(F) vehicle [equipment] axle and tire information including number of axles, distance between axles, axle weights, number of tires, and tire size for overweight permit applications; and

(G) any other information required by law.

(2) Applications transmitted electronically are considered signed if a digital signature is transmitted with the application and intended by the applicant to authenticate the application.

(A) The department may only accept a digital signature used to authenticate an application under procedures that comply with any applicable rules adopted by the Department of Information Resources regarding department use or acceptance of a digital signature.

(B) The department may only accept a digital signature to authenticate an application if the digital signature is:

(i) unique to the person using it;

(ii) capable of independent verification;

(iii) under the sole control of the person using it; and

(iv) transmitted in a manner that will make it infeasible to change the data in the communication or digital signature without invalidating the digital signature.

(d) Maximum permit weight limits.

(1) General. An overweight permitted vehicle will not be routed over a load-restricted [load restricted] bridge when exceeding the posted capacity of the bridge, unless a special exception is granted by TxDOT, [the department,] based on an analysis of the bridge performed by a TxDOT approved licensed professional engineer or by TxDOT. Any approval by a non-TxDOT engineer must have final approval by TxDOT.

(A) An axle group must have a minimum spacing of four feet, measured from center of axle to center of axle, between each axle in the group to achieve the maximum permit weight for the group.

(B) The maximum permit weight for an axle group with spacing [spacings] of five or more feet between each axle will be based on an engineering study of the equipment conducted by TxDOT. [the department.]

(C) A permitted vehicle will be allowed to have air suspension, hydraulic suspension and mechanical suspension axles in a common weight equalizing suspension system for any axle group.

(D) The department may permit axle weights greater than those specified in this section, for a specific individual permit request, based on an engineering study of the route and hauling equipment performed by a TxDOT approved licensed professional engineer

or by TxDOT. Any approval by a non-TxDOT engineer must have final approval from TxDOT.

(E) A permitted vehicle or combination of vehicles [An overdimensional load] may not exceed the manufacturer's rated tire carrying capacity, unless expressly authorized in the language on the permit.

(F) Two or more consecutive axle groups having an axle spacing of less than 12 feet, measured from the center of the last axle of the preceding group to the center of the first axle of the following group, will be reduced by 2.5% for each foot less than 12 feet.

(2) Maximum axle weight limits. Maximum permit weight for an axle or axle group is based on 650 pounds per inch of tire width or the following axle or axle group weights, whichever is the lesser amount:

(A) single axle--25,000 pounds;

(B) two axle group--46,000 pounds;

(C) three axle group--60,000 pounds;

(D) four axle group--70,000 pounds;

(E) five axle group--81,400 pounds;

(F) axle group with six or more axles--determined by TxDOT [the department] based on an engineering study of the equipment, which will include the type of steering system used, the type of axle suspension, the spacing distance between each axle, the number of tires per axle, and the tire size on each axle; or

(G) trunnion axles--30,000 pounds per axle if the trunnion configuration has: [60,000 pounds if;]

(i) [the trunnion configuration has] two axles;

(ii) eight tires per axle; [there are a total of 16 tires for a trunnion configuration; and]

(iii) axles a minimum of [the trunnion axle as shown in the following diagram is] 10 feet in width; and [43 TAC §219.11(d)(2)(G)(iii)]

(iv) at least five feet of spacing between the axles, not to exceed six feet.

(3) Weight limits for load restricted roads. Maximum permit weight for an axle or axle group, when traveling on a load restricted road, will be based on 650 pounds per inch of tire width or the following axle or axle group weights, whichever is the lesser amount:

(A) single axle--22,500 pounds;

(B) two axle group--41,400 pounds;

(C) three axle group--54,000 pounds;

(D) four axle group--63,000 pounds;

(E) five axle group--73,260 pounds;

(F) axle group with six or more axles--determined by TxDOT [the department] based on an engineering study of the equipment, which will include the type of steering system used, the type of axle suspension, the spacing distance between each axle, the number of tires per axle, and the tire size on each axle;

(G) trunnion axles--54,000 pounds; and

(H) two or more consecutive axle groups having an axle spacing of less than 12 feet, measured from the center of the last axle of the preceding group to the center of the first axle of the following group will be reduced by 2.5% for each foot less than 12 feet.

(e) Permit issuance.

(1) General. Upon receiving an application in the form prescribed by the department, the department will review the permit application for the appropriate information and will then determine the most practical route based on information provided by TxDOT. After a route is selected and a permit number is assigned by the department, an applicant requesting a permit by telephone must legibly enter all necessary information on the permit application, including the approved route and permit number. Permit requests made by methods other than telephone will be returned via facsimile, mail, or electronically.

(2) Routing.

(A) A permitted vehicle will be routed over the most practical route available taking into consideration:

(i) the size and weight of the overdimension load in relation to vertical clearances, width restrictions, steep grades, and weak or load restricted bridges;

(ii) the geometrics of the roadway in comparison to the overdimension load;

(iii) sections of highways restricted to specific load sizes and weights due to construction, maintenance, and hazardous conditions;

(iv) traffic conditions, including traffic volume;

(v) route designations by municipalities in accordance with Transportation Code, §623.072;

(vi) load restricted roads; and

(vii) other considerations for the safe transportation of the load.

(B) When a permit applicant desires a route other than the most practical, more than one permit will be required for the trip unless an exception is granted by the department.

(3) Movement to and from point of origin or place of business. ~~[Return movements.]~~ A permitted vehicle will be allowed to:

(A) move empty ~~[return movement of]~~ oversize and overweight hauling equipment to and from the job site; and

(B) move oversize and overweight hauling equipment with a load from the permitted vehicle's point of origin to pick up a permitted load, and to the permitted vehicle's point of origin or the permittee's place of business after dropping off a permitted load, as long as:

(i) the load does not exceed legal size and weight limits under Transportation Code, Chapters 621 and 622; and ~~[; and may transport a non-divisible load of legal dimensions on the return trip; provided]~~

(ii) the transport complies with the permit, including ~~[is completed within]~~ the time period stated on the permit.

~~[(4) Records retention.]~~

~~[(A) The original permit, a facsimile copy of the permit, or a department computer generated permit must be kept in the permitted vehicle until the day after the date the permit expires.]~~

~~[(B) All telephone requests for permits are recorded and retained for future reference.]~~

~~[(C) Permit information shall be stored in the department's mainframe computer located in Austin, which shall constitute the official permit record.]~~

(f) Payment of permit fees, refunds.

(1) Payment methods. All permit applications must be accompanied by the proper fee, which shall be payable as provided by §209.23 of this title (relating to Methods of Payment).

(A) Permit Account Card (PAC). Application for a PAC should be made directly to the issuing institution. A PAC must be established and maintained according to the contract provisions stipulated between the PAC holder and the financial institution under contract to the department and the Comptroller of Public Accounts.

(B) Escrow accounts. A permit applicant may establish an escrow account with the department for the specific purpose of paying any fee that is related to the issuance of a permit under this subchapter.

(i) A permit applicant who desires to establish an escrow account shall complete and sign an escrow account agreement, and shall return the completed and signed agreement to the department with a check in the minimum amount of \$305, which shall be deposited to the appropriate fund by the department with the Comptroller of Public Accounts. In lieu of submitting a check for the initial deposit to an applicant's escrow account, the applicant may transfer funds to the department electronically.

(ii) Upon initial deposit, and each subsequent deposit made by the escrow account holder, \$5 will be charged as an escrow account administrative fee.

(iii) The escrow account holder is responsible for monitoring of the escrow account balance.

(iv) An escrow account holder must submit a written request to the department to terminate the escrow account agreement. Any remaining balance will be returned to the escrow account holder.

(2) Refunds. A permit fee will not be refunded after the permit number has been issued unless such refund is necessary to correct an error made by the permit officer.

(g) Amendments. A permit may be amended for the following reasons:

(1) vehicle breakdown;

(2) changing the intermediate points in an approved permit route;

(3) extending the expiration date due to conditions which would cause the move to be delayed;

(4) changing route origin or route destination prior to the start date as listed on the permit;

(5) changing vehicle size limits prior to the permit start date as listed on the permit, provided that changing the vehicle size limit does not necessitate a change in the approved route; and

(6) correcting any mistake that is made due to permit officer error.

(h) Requirements for overwidth loads.

~~[(1) An overwidth load must travel in the outside traffic lane on multi-lane highways, when the width of the load exceeds 12 feet.]~~

~~[(2) [(2)] Overwidth loads are subject to the escort requirements of subsection (k) of this section.~~

~~[(3) [(3)] A permitted vehicle exceeding 16 feet in width will not be routed on the main lanes of a controlled access highway, unless an exception is granted by TxDOT, [the department,] based on~~

a route and traffic study. The load may be permitted on the frontage roads when available, if the movement will not pose a safety hazard to other highway users.

(3) [(4)] An applicant requesting a permit to move a load exceeding 20 feet wide will be furnished with a proposed route. The applicant must physically inspect the proposed route to determine if the vehicle and [overdimension] load can safely negotiate it, unless an exception is granted based on a route and traffic study conducted by TxDOT, [the department.] A permit application and the appropriate fee are required for every route inspection.

(A) The applicant must notify the department in writing whether the vehicle and [overdimension] load can or cannot safely negotiate the proposed route.

(B) If any section of the proposed route is unacceptable, the applicant shall provide the department with an alternate route around the unacceptable section.

(C) Once a route is decided upon and a permit issued, the permit may not be amended unless an exception is granted by the department.

(i) Requirements for overlength loads.

(1) Overlength loads are subject to the escort requirements stated in subsection (k) of this section.

(2) A single vehicle, such as a motor crane, that has a permanently mounted boom is not considered as having either front or rear overhang as a result of the boom because the boom is an integral part of the vehicle.

(3) When a single vehicle with a permanently attached boom exceeds the maximum legal length of 45 feet, a permit will not be issued if the boom projects more than 25 feet beyond the front bumper of the vehicle, or when the boom projects more than 30 feet beyond the rear bumper of the vehicle, unless an exception is granted by TxDOT, [the department,] based on a route and traffic study.

(4) Maximum permit length for a single vehicle is 75 feet.

(5) A load extending more than 20 feet beyond the front or rearmost portion of the load carrying surface of the permitted vehicle must have a rear escort, unless an exception is granted by TxDOT, [the department,] based on a route and traffic study.

(6) A permit will not be issued for a vehicle and oversize [an overdimension] load with:

(A) more than 25 feet front overhang; or

(B) more than 30 feet rear overhang, unless an exception is granted by TxDOT, [the department,] based on a route and traffic study.

(7) An applicant requesting a permit to move an oversize vehicle and [overdimension] load exceeding 125 feet overall length will be furnished with a proposed route. The applicant must physically inspect the proposed route to determine if the oversize vehicle and [overdimension] load can safely negotiate it, unless an exception is granted based on a route and traffic study conducted by TxDOT, [the department.] A permit application and the appropriate fee are required for every route inspection.

(A) The applicant must notify the department in writing whether the oversize vehicle and [overdimension] load can or cannot safely negotiate the proposed route.

(B) If any section of the proposed route is unacceptable, the applicant shall provide the department with an alternate route around the unacceptable section.

(C) Once a route is decided upon and a permit issued, the permit may not be amended unless an exception is granted by the department.

(8) A permitted vehicle that is not overwidth or overheight, and does not exceed 150 feet overall length, may be moved in a convoy consisting of not more than four overlength permitted vehicles. A permitted vehicle that is not overwidth or overheight that exceeds 150 feet, but does not exceed 180 feet overall length, may be moved in a convoy consisting of not more than two overlength permitted vehicles. Convoys are subject to the requirements of subsection (k) of this section. Each permitted vehicle in the convoy must:

(A) be spaced at least 1,000 feet, but not more than 2,000 feet, from any other permitted vehicle in the convoy; and

(B) have a rotating amber beacon or an amber pulsating light, not less than eight inches in diameter, mounted at the rear top of the load being transported.

(j) Requirements for overheight loads.

(1) Overheight loads are subject to the escort requirements stated in subsection (k) of this section.

(2) An applicant requesting a permit to move an oversize vehicle and [overdimension] load with an overall height of 19 feet or greater will be furnished with a proposed route. The applicant must physically inspect the proposed route to determine if the oversize vehicle and [overdimension] load can safely negotiate it, unless an exception is granted based on a route and traffic study conducted by TxDOT, [the department.] A permit application and the appropriate fee are required for every route inspection.

(A) The applicant must notify the department in writing whether the oversize vehicle and [overdimension] load can or cannot safely negotiate the proposed route.

(B) If any section of the proposed route is unacceptable, the applicant shall provide the department with an alternate route around the unacceptable section.

(C) Once a route is decided upon and a permit issued, the permit may not be amended unless an exception is granted by the department.

(k) Escort vehicle requirements. Escort vehicle requirements are provided to facilitate the safe movement of permitted vehicles and to protect the traveling public during the movement of permitted vehicles. A permittee must provide for escort vehicles and law enforcement assistance when required by TxDOT, [the department.] The requirements in this subsection do not apply to the movement of manufactured housing, portable building units, or portable building compatible cargo. [Escort vehicle requirements for the movement of manufactured housing are described in §219.14 of this title (relating to Manufactured Housing, and Industrialized Housing and Building Permits). Escort vehicle requirements for the movement of portable building units and portable building compatible cargo are described in §219.15 of this title (relating to Portable Building Unit Permits).]

(1) General.

(A) Applicability. The operator of an escort vehicle shall, consistent with applicable law, warn the traveling public when:

(i) a permitted vehicle must travel over the center line of a narrow bridge or roadway;

(ii) a permitted vehicle makes any turning movement that will require the permitted vehicle to travel in the opposing traffic lanes;

(iii) a permitted vehicle reduces speed to cross under a low overhead obstruction or over a bridge;

(iv) a permitted vehicle creates an abnormal and unusual traffic flow pattern; or

(v) in the opinion of TxDOT, [the department,] warning is required to ensure the safety of the traveling public or safe movement of the permitted vehicle.

(B) Law enforcement assistance. Law enforcement assistance may be required by TxDOT [the department] to control traffic when a permitted vehicle is being moved within the corporate limits of a city, or at such times when law enforcement assistance would provide for the safe movement of the permitted vehicle and the traveling public.

(C) Obstructions. It is the responsibility of the permittee to contact utility companies, telephone companies, television cable companies, or other entities as they may require, when it is necessary to raise or lower any overhead wire, traffic signal, street light, television cable, sign, or other overhead obstruction. The permittee is responsible for providing the appropriate advance notice as required by each entity.

(2) Escort requirements for overwidth loads. Unless an exception is granted [by the department,] based on a route and traffic study conducted by TxDOT, an overwidth load must:

(A) have a front escort vehicle if the width of the load exceeds 14 feet, but does not exceed 16 feet, when traveling on a two lane roadway;

(B) have a rear escort vehicle if the width of the load exceeds 14 feet, but does not exceed 16 feet, when traveling on a roadway of four or more lanes; and

(C) have a front and a rear escort vehicle for all roads, when the width of the load exceeds 16 feet.

(3) Escort requirements for overlength loads. Unless an exception is granted by TxDOT, [the department,] based on a route and traffic study, overlength loads must have:

(A) a front escort vehicle when traveling on a two lane roadway if the vehicle exceeds 110 feet overall length, but does not exceed 125 feet overall length;

(B) a rear escort vehicle when traveling on a multi-lane highway if the vehicle exceeds 110 feet overall length, but does not exceed 125 feet overall length; and

(C) a front and rear escort vehicle at all times if the permitted vehicle exceeds 125 feet overall length.

(4) Escort requirements for overheight loads. Unless an exception is granted by TxDOT, [the department,] based on a route and traffic study, overheight loads must have:

(A) a front escort vehicle equipped with a height pole to ensure the vehicle and load can clear all [accurately measure] overhead obstructions for any permitted vehicle that exceeds 17 feet in height; and

(B) a front and rear escort vehicle for any permitted vehicle exceeding 18 feet in height.

(5) Escort requirements for permitted vehicles exceeding legal limits in more than one dimension. When a load exceeds more than one dimension that requires an escort under this subsection, front

and rear escorts will be required unless an exception is granted by TxDOT. [the department. For example, under this subsection one escort is required for a load exceeding 14 feet in width, and one escort is required for a load exceeding 110 feet in length. In the case of a permitted vehicle that exceeds both 14 feet in width and 110 feet in length, both front and rear escorts are required.]

(6) Escort requirements for convoys. Convoys must have a front escort vehicle and a rear escort vehicle on all highways at all times.

(7) General equipment requirements. The following special equipment requirements apply to permitted vehicles and escort vehicles that are not motorcycles.

(A) An escort vehicle must be a single unit with a gross vehicle weight (GVW) of not less than 1,000 pounds nor more than 10,000 pounds.

(B) An escort vehicle must be equipped with two flashing amber lights or one rotating amber beacon of not less than eight inches in diameter, affixed to the roof of the escort vehicle, which must be visible to the front, sides, and rear of the escort vehicle while actively engaged in escort duties for the permitted vehicle.

(C) An escort vehicle must display a sign, on either the roof of the vehicle, or the front and rear of the vehicle, with the words "OVERSIZE LOAD" or "WIDE LOAD." The sign must be visible from the front and rear of the vehicle while escorting the permitted load. The sign must meet the following specifications:

(i) at least five feet, but not more than seven feet in length, and at least 12 inches, but not more than 18 inches in height;

(ii) the sign must have a yellow background with black lettering;

(iii) letters must be at least eight inches, but not more than 10 inches high with a brush stroke at least 1.41 inches wide; and

(iv) the sign must be visible from the front or rear of the vehicle while escorting the permitted vehicle, and the signs must not be used at any other time.

(D) An escort vehicle must maintain two-way communications with the permitted vehicle and other escort vehicles involved with the movement of the permitted vehicle.

(E) Warning flags must be either red or orange fluorescent material, at least 12 inches square, securely mounted on a staff or securely fastened by at least one corner to the widest extremities of an overwidth permitted vehicle, and at the rear of an overlength permitted vehicle or a permitted vehicle with a rear overhang in excess of four feet.

(8) Equipment requirements for motorcycles.

(A) An official law enforcement motorcycle may be used as a primary escort vehicle for a permitted vehicle traveling within the limits of an incorporated city, if the motorcycle is operated by a highway patrol officer, sheriff, or duly authorized deputy, or municipal police officer.

(B) An escort vehicle must maintain two-way communications with the permitted vehicle and other escort vehicles involved with the movement of the permitted vehicle.

(l) Restrictions.

(1) Restrictions pertaining to road conditions. Movement of a permitted vehicle is prohibited when road conditions are hazardous based upon the judgment of the operator and law enforcement officials.

Law enforcement officials shall make the final determination regarding whether or not conditions are hazardous. Conditions that should be considered hazardous include, but are not limited to:

- (A) visibility of less than 2/10 of one mile; or
- (B) weather conditions such as wind, rain, ice, sleet, or snow.

(2) Daylight and night movement restrictions.

(A) A permitted vehicle may be moved only during daylight hours unless:

- (i) the permitted vehicle is overweight only;
- (ii) the permitted vehicle is traveling on an interstate highway and does not exceed 10 feet wide and 100 feet long, with front and rear overhang that complies with legal standards; or
- (iii) the permitted vehicle meets the criteria of clause (ii) of this subparagraph and is overweight.

(B) An exception may be granted allowing night movement, based on a route and traffic study conducted by TxDOT. ~~[the department.]~~ Escorts may be required when an exception allowing night movement is granted.

(3) Holiday ~~[Weekend and holiday]~~ restrictions. The maximum size limits for a permit issued under Transportation Code, ~~[Chapter 622, Subchapter E and]~~ Chapter 623, Subchapter D, ~~[Subchapters D and E.]~~ for holiday movement is 14 feet wide, 16 feet high, and 110 feet long, unless an exception is granted ~~[by the department]~~ based on a route and traffic study conducted by TxDOT. The department may restrict ~~[weekend and]~~ holiday movement of specific loads based on a determination that the load could pose a hazard for the traveling public due to local road or traffic conditions.

(4) Curfew restrictions. The operator of a permitted vehicle must observe the curfew movement restrictions of any city or county in which the vehicle is operated. However, only the curfew restrictions listed on the permit apply to the permit.

(m) General provisions.

(1) Multiple commodities.

(A) Except as provided in subparagraph (B) of this paragraph, when a permitted commodity creates a single overdimension, two or more commodities may be hauled as one permit load, provided legal axle weight and gross weight are not exceeded, and provided an overdimension of width, length or height is not created or made greater by the additional commodities. For example, a permit issued for the movement of a 12 foot wide storage tank may also include a 10 foot wide storage tank loaded behind the 12 foot wide tank provided that legal axle weight and gross weight are not exceeded, and provided an overdimension of width, length or height is not created.

(B) When the transport of more than one commodity in a single load creates or makes greater an illegal dimension of length, width, or height the department may issue an oversize permit for such load subject to each of the following conditions.

(i) The permit applicant or the shipper of the commodities files with the department a written certification by the Texas Department of Economic Development, approved by the Office of the Governor, attesting that issuing the permit will have a significant positive impact on the economy of Texas and that the proposed load of multiple commodities therefore cannot be reasonably dismantled. As used in this clause the term significant positive impact means the creation of not less than 100 new full-time jobs, the preservation of not less than 100 existing full-time jobs, that would otherwise be eliminated if

the permit is not issued, or creates or retains not less than one percent of the employment base in the affected economic sector identified in the certification.

(ii) Transport of the commodities does not exceed legal axle and gross load limits.

(iii) The permit is issued in the same manner and under the same provisions as would be applicable to the transport of a single oversize commodity under this section; provided, however, that the shipper and the permittee also must indemnify and hold harmless the department, its board members, officers, and employees from any and all liability for damages or claims of damages including court costs and attorney fees, if any, which may arise from the transport of an oversized load under a permit issued pursuant to this subparagraph.

(iv) The shipper and the permittee must file with the department a certificate of insurance on a form prescribed by the department, or otherwise acceptable to the department, naming the department, its board members, officers, and employees as named or additional insurers on its comprehensive general liability insurance policy for coverage in the amount of \$5 million per occurrence, including court costs and attorney fees, if any, which may arise from the transport of an oversized load under a permit issued pursuant to this subparagraph. The insurance policy is to be procured from a company licensed to transact insurance business in the State of Texas.

(v) The shipper and the permittee must file with the department, in addition to all insurance provided in clause (iv) of this subparagraph, a certificate of insurance on a form prescribed by the department, or otherwise acceptable to the department, naming the department, its board members, officers, and employees as insurers under an auto liability insurance policy for the benefit of said insurers in an amount of \$5 million per accident. The insurance policy is to be procured from a company licensed to transact insurance business in the State of Texas. If the shipper or the permittee is self-insured with regard to automobile liability then that party must take all steps and perform all acts necessary under the law to indemnify the department, its board members, officers, and employees as if the party had contracted for insurance pursuant to, and in the amount set forth in, the preceding sentence and shall agree to so indemnify the department, its board members, officers, and employees in a manner acceptable to the department.

(vi) Issuance of the permit is approved by written order of the board which written order may be, among other things, specific as to duration and routes.

(C) An applicant requesting a permit to haul a dozer and its detached blade may be issued a permit, as a non-dismantable load, if removal of the blade will decrease the overall width of the load, thereby reducing the hazard to the traveling public.

(2) Oversize hauling equipment. A vehicle that exceeds the legal size limits, as set forth by Transportation Code, Chapter 621, Subchapter C, may only haul a load that exceeds legal size limits unless otherwise noted in this subchapter, but such vehicle may haul an overweight load that does not exceed legal size limits, except for the special exception granted in §219.13(c)(3) ~~[\$219.13(e)(4)]~~ of this title (relating to Time Permits).

(n) Surety bonds.

(1) General. The following conditions apply to surety bonds specified in Transportation Code, §623.075.

(A) The surety bond must:

(i) be made payable to the department with the condition that the applicant will pay the department for any damage caused

to the highway by the operation of the equipment covered by the surety bond;

(ii) be effective the day it is issued and expires at the end of the state fiscal year, which is August 31st. For example, if you obtain a surety bond on August 30th, it will expire the next day at midnight.

(iii) include the complete mailing address and zip code of the principal;

(iv) be filed with the department and have an original signature of the principal;

(v) have a single entity as principal with no other principal names listed; and

(vi) A non-resident agent with a valid Texas insurance license may issue a bond on behalf of an authorized insurance company when in compliance with Insurance Code, Chapter 4056.

(B) A certificate of continuation will not be accepted.

(C) The owner of a vehicle bonded under Transportation Code, §623.075 or §623.163, that damages the state highway system as a result of the permitted vehicle's movement will be notified by certified mail of the amount of damage and will be given 30 days to submit payment for such damage. Failure to make payment within 30 days will result in TxDOT placing the claim with the attorney general for collection.

(D) The venue of any suit for a claim against a surety bond for the movement of a vehicle permitted under the provisions of Transportation Code, Chapter 623, Subchapter D, will be any court of competent jurisdiction in Travis County.

(2) Permit surety bonds.

(A) A surety bond required under the provisions of Transportation Code, Chapter 623, Subchapter D, must be submitted on the department's standard surety bond form in the amount of \$10,000.

(B) A facsimile or electronic copy of the surety bond is acceptable in lieu of the original surety bond, for a period not to exceed 10 days from the date of its receipt in the department. If the original surety bond has not arrived in the department by the end of the 10 days, the applicant will not be issued a permit until the original surety bond has been received in the department.

(C) The surety bond requirement does apply to the delivery of farm equipment to a farm equipment dealer.

(D) A surety bond is required when a dealer or transporter of farm equipment or a manufacturer of farm equipment obtains a permit.

(E) The surety bond requirement does not apply to driving or transporting farm equipment which is being used for agricultural purposes if it is driven or transported by or under the authority of the owner of the equipment.

(F) The surety bond requirement does not apply to a vehicle or equipment operated by a motor carrier registered with the department under Transportation Code, Chapters 643 or 645 as amended.

§219.12. Single-Trip Permits Issued Under Transportation Code, Chapter 623, Subchapter D.

(a) General. The information in this section applies to single-trip permits issued under Transportation Code, Chapter 623, Subchapter D. The department will issue permits under this section in ac-

cordance with the requirements of §219.11 of this title (relating to General Oversize/Overweight Permit Requirements and Procedures).

(b) Overweight loads.

(1) The maximum weight limits for an overweight permit are specified in §219.11(d).

(2) The applicant shall pay, in addition to the single-trip permit fee of \$60, the applicable highway maintenance fee.

(3) The applicant must also pay the vehicle supervision fee (VSF) for a permit issued for an overweight vehicle and load exceeding 200,000 pounds gross weight.

(A) The VSF is \$35 if:

(i) the vehicle and load do not exceed 254,300 pounds gross weight;

(ii) there is at least 95 feet of overall axle spacing; and

(iii) the vehicle and load do not exceed maximum permit weight on any axle or axle group, as described in §219.11(d).

(B) The VSF is \$500 if:

(i) there is less than 95 feet of overall axle spacing;

(ii) the vehicle and load exceed maximum permit weight on any axle or axle group, as described in §219.11(d); or

(iii) the vehicle and load exceed 254,300 pounds gross weight. However, for a vehicle and load described in this subparagraph, the VSF is reduced from \$500 to \$100 if no bridges are crossed, and the VSF is reduced from \$500 to \$35 for an additional identical load that is to be moved over the same route within 30 days of the movement date of the original permit.

(C) An applicant must pay the VSF at the time of permit application in order to offset department costs for analyses performed in advance of issuing the permit. A request for cancellation must be in writing and received by the department prior to collection of the structural information associated with the permit application. If the application is canceled, the department will return the vehicle supervision fee.

(4) An applicant applying for a permit to move a load that is required for the fulfillment of a fixed price public works contract that was entered into prior to the effective date of this section, and administered by federal, state, or local governmental entities, will not be required to pay the vehicle supervision fee, provided the applicant presents proof of the contract to the department prior to permit issuance.

(5) When the department has determined that a permit can be issued for an overdimension load exceeding 200,000 pounds gross weight, all remaining fees are due at the time the permit is issued.

(6) Unless the permit is issued for a load under subsection (c) of this section, this permit may not be used for a container, including a trailer or an intermodal container, loaded with divisible cargo. [The department will not charge an analysis fee for single and multiple box eulverts.]

(7) An applicant requesting a permit to move an overdimension load that is between 200,001 and 254,300 pounds total with less than 95 feet overall axle spacing, or is over the maximum permitted weight on any axle or axle group, or is over 254,300 pounds gross weight, or the weight limits described in §219.11(d), must submit the following items to the department to determine if the permit can be issued:

(A) a detailed loading diagram which indicates the number of axles, the number of tires on each axle, the tire size on each axle, the distance between each axle, the tare and gross weight on each axle, the transverse spacing of each set of dual wheels, the distance between each set of dual wheels, the load's center of gravity, the distance from the center of gravity to the center of the front bolster, the distance from the center of gravity to the center of the rear bolster, the distance from the center of the front bolster to the center of the fifth wheel of the truck, the distance from the center of the rear bolster to the center of the closest axle, and any other measurements as may be needed to verify that the weight of the overdimension load is adequately distributed among the various axle groups in the amounts indicated by the loading diagram;

(B) a map indicating the exact beginning and ending points relative to a state highway;

(C) a completed form prescribed by the department, attesting to the facts regarding the applicant's agreement to transport the shipment; [copy of the signed contract indicating that the applicant has been retained to transport the shipment;]

(D) the vehicle supervision fee as specified in paragraph (3) of this subsection; and

(E) the name, phone number, and fax number of the applicant's licensed professional engineer who has been approved by the department.

(8) The department will select a tentative route based on the physical size of the overdimension load excluding the weight. The tentative route must be investigated by the applicant, and the department must be advised, in writing, that the route is capable of accommodating the overdimension load.

(9) Before the permit is issued, the applicant's TxDOT approved licensed professional engineer shall submit to the department and TxDOT a written certification that includes a detailed structural analysis of the bridges on the proposed route demonstrating that the bridges and culverts on the travel route are capable of sustaining the load. The certification must be approved by TxDOT and submitted to the department before the permit will be issued.

~~[(10) A permit may be issued for the movement of oversize and overweight self-propelled off road equipment under the following guidelines.]~~

~~[(A) The weight per inch of tire width must not exceed 650 pounds.]~~

~~[(B) The rim diameter of each wheel must be a minimum of 25 inches.]~~

~~[(C) The maximum weight per axle must not exceed 45,000 pounds.]~~

~~[(D) The minimum spacing between axles, measured from center of axle to center of axle, must not be less than 12 feet.]~~

~~[(E) The equipment must be moved empty.]~~

~~[(F) The equipment must be licensed with a machinery license plate or a one trip registration.]~~

~~[(G) The route will not include any controlled access highway, unless an exception is granted based on a route and traffic study conducted by the department.]~~

(c) Drill pipe and drill collars hauled in a pipe box.

(1) A vehicle or combination of vehicles may be issued a permit under Transportation Code, §623.071, to haul drill pipe and drill collars in a pipe box.

(2) The maximum width must not exceed 10 [nine] feet.

(3) The axle weight limits must not exceed the maximum weight limits as specified in §219.11(d)(3).

(4) The height and length must not exceed the legal limits specified in Transportation Code, Chapter 621, Subchapter C.

(5) The permit will be issued for a single-trip only. For loads over 80,000 pounds, the applicant must pay the single-trip permit fee, in addition to the highway maintenance fee specified in Transportation Code, §623.077.

(6) The permit is valid only for travel on any farm-to-market and ranch-to-market road, and such road will be specified on the permit; however, the permitted vehicle will not be allowed to cross any load restricted bridge when exceeding the posted capacity of the bridge.

(7) Movement will be restricted to daylight hours only.

(d) Houses and storage tanks.

(1) Unless an exception is granted by TxDOT, the department will not issue; approval for the issuance of] a permit for a house or storage tank exceeding 20 feet in width [will reside with each district engineer, or the district engineer's designee, along the proposed route].

(2) The issuance of a permit for a house or storage tank exceeding 20 feet in width will be based on:

(A) the amount of inconvenience and hazard to the traveling public, based on traffic volume;

(B) highway geometrics and time of movement; and

(C) the overall width, measured to the nearest inch, of the house, including the eaves or porches.

(3) A storage tank must be empty.

(4) The proposed route must include the beginning and ending points on a state highway.

~~[(5) A permit will not be issued for a newly constructed house or storage tank that exceeds 34 feet overall width unless an exception is granted by the department based on a route and traffic study.]~~

~~[(6) A permit will not be issued for the relocation of an existing house or storage tank that exceeds 40 feet overall width, unless an exception is granted by the department based on a route and traffic study.]~~

(5) [(7)] A permit may be issued for the movement of an overweight house provided:

(A) the applicant completes and submits to the department a copy of a diagram for moving overweight houses, as shown in Figure: 43 TAC §219.12(e) of this section;

(B) each support beam, parallel to the centerline of the highway, is equipped with an identical number of two axle groups which may be placed directly in line and across from the other corresponding two axle group or may be placed in a staggered offset arrangement to provide for proper weight distribution;

(C) that, when a support beam is equipped with two or more two axle groups, each two axle group is connected to a common mechanical or hydraulic system to ensure that each two axle group shares equally in the weight distribution at all times during the movement; and when the spacing between the two axle groups, measured

from the center of the last axle of the front group to the center of the first axle of the following group, is eight feet or more, the front two axle group is equipped for self-steering in a manner that will guide or direct the axle group in turning movements without tire scrubbing or pavement scuffing; and

(D) the department conducts a detailed analysis of each structure on the proposed route and determines the load can be moved without damaging the roads and bridges.

(6) [(8)] The department may waive the requirement that a loading diagram be submitted for the movement of an overweight house if the total weight of all axle groups located in the same transverse plane across the house does not exceed the maximum weight limits specified in §219.11(d)(2).

(e) Diagram for moving overweight houses. The following Figure: 43 TAC §219.12(e) indicates the type of diagram that is to be completed by the permit applicant for moving an overweight house. All measurements must be stated to the nearest inch. Figure: 43 TAC §219.12(e) (No change.)

(f) Self-propelled off-road equipment. A permit may be issued for the movement of oversize and overweight self-propelled off-road equipment under the following conditions.

(1) The weight per inch of tire width must not exceed 650 pounds.

(2) The rim diameter of each wheel must be a minimum of 25 inches.

(3) The maximum weight per axle must not exceed 45,000 pounds.

(4) The minimum spacing between axles, measured from center of axle to center of axle, must not be less than 12 feet.

(5) The equipment must be moved empty.

(6) The route will not include any controlled access highway, unless an exception is granted based on a route and traffic study conducted by TxDOT.

§219.13. *Time Permits.*

(a) General information. Applications for time permits issued under Transportation Code, Chapter 623, and this section shall be made in accordance with §219.11(b) and (c) of this title (relating to General Oversize/Overweight Permit Requirements and Procedures). Permits issued under this section are governed by the requirements of §219.11(e)(1) [and (4)].

(b) 30, 60, and 90 day permits. The following conditions apply to time permits issued for overwidth or overlength loads, or overlength vehicles, under this section.

(1) Fees. The fee for a 30-day permit is \$120; the fee for a 60-day permit is \$180; and the fee for a 90-day permit is \$240. All fees are payable in accordance with §219.11(f). All fees are non-refundable.

(2) Validity of Permit. Time permits are valid for a period of 30, 60, or 90 calendar days, based on the request of the applicant, and will begin on [with] the effective ["movement to begin"] date stated on the permit.

(3) Weight/height limits. The permitted vehicle may not exceed the weight or height limits set forth by Transportation Code, Chapter 621, Subchapters B and C.

(4) Registration requirements for permitted vehicles. [The permitted vehicle must be registered in accordance with Transportation Code, Chapter 502, for maximum weight for the vehicle or vehi-

ele combination as set forth by Transportation Code, §502.043.] Time permits will not be issued to a vehicle or vehicle combination that is registered with temporary vehicle registration.

(5) Vehicle indicated on permit. The permit will indicate only the truck or truck-tractor transporting the load; however, any properly registered trailer or semi-trailer is covered by the permit.

(6) Permit routes. The permit will allow travel on a statewide basis.

(7) Restrictions.

(A) The permitted vehicle must not cross a load restricted bridge or load restricted road when exceeding the posted capacity of the road or bridge.

(B) The permitted vehicle may travel through highway construction or maintenance areas if the dimensions do not exceed the construction restrictions as published by the department.

(C) The permitted vehicle is subject to the restrictions specified in §219.11(l), and the permittee is responsible for obtaining from the department information concerning current restrictions.

(8) Escort requirements. Permitted vehicles are subject to the escort requirements specified in §219.11(k).

(9) Transfer of time permits. Time permits issued under this subsection are non-transferable between permittees or vehicles.

(10) Amendments. With the exception of time permits issued under subsection (e)(4) of this section, time permits issued under this subsection will not be amended except in the case of permit officer error.

(c) Overwidth loads. An overwidth time permit may be issued for the movement of any [non-divisible] load or overwidth trailer, subject to subsection (a) of this section and the following conditions: [-]

(1) Width requirements.

(A) A time permit will not be issued for a vehicle with a width exceeding 13 feet.

(B) When multiple items are hauled at the same time, the items may not be loaded in a manner that creates a width greater than the width of the widest item being hauled.

(2) Weight, height, and length requirements.

(A) The permitted vehicle shall not exceed legal weight, height, or length according to Transportation Code, Chapter 621, Subchapters B and C.

(B) When multiple items are hauled at the same time, the items may not be loaded in a manner that creates:

[(A) a width greater than the width of the widest item being hauled;]

(i) [(B)] a height greater than 14 feet;

(ii) [(C)] an overlength load; or

(iii) [(D)] a gross weight exceeding the legal gross or axle weight of the vehicle hauling the load.

(3) Movement of overwidth trailers. When the permitted vehicle is an overwidth trailer, it will be allowed [permitted] to:

(A) move empty to and from the job site; and

(B) haul a load from the permitted vehicle's point of origin to pick up a permitted load, and to the permitted vehicle's point of origin or [return from the job site to] the permittee's place of business

after dropping off a permitted load, as long as: [with a legal nondivisible load.]

(i) the load does not exceed legal size and weight limits under Transportation Code, Chapters 621 and 622; and

(ii) the transport complies with the permit, including the time period stated on the permit.

(4) Use in conjunction with other permits. An overwidth time permit may be used in conjunction with an overlength time permit.

(d) Overlength loads. An overlength time permit may be issued for the transportation of overlength loads or the movement of an overlength self-propelled vehicle, subject to subsection (a) of this section and the following conditions:—]

(1) Length requirements.

(A) The maximum overall length for the permitted vehicle may not exceed 110 feet.

(B) The department may issue a permit under Transportation Code, §623.071(a) for an overlength load or an overlength self-propelled vehicle that falls within the definition of a nondivisible load or vehicle.

(2) Weight, height and width requirements.

(A) The permitted vehicle may not exceed legal weight, height, or width according to Transportation Code, Chapter 621, Subchapters B and C.

{(A) The maximum length for a single permitted vehicle may not exceed 75 feet.}

(B) A permit will not be issued when the load has more than 25 feet front overhang, or more than 30 feet rear overhang[, unless an exception is granted by the department, based on a route and traffic study].

(3) Use in conjunction with other permits. An overlength time permit may be used in conjunction with an overwidth time permit.

(4) Emergency movement. A permitted vehicle transporting utility poles will be allowed emergency night movement for restoring electrical utility service, provided the permitted vehicle is accompanied by a rear escort vehicle.

(e) Annual permits.

(1) General information. All permits issued under this subsection are subject to the following conditions.

(A) Fees for permits issued under this subsection are payable as described in §219.11(f).

(B) Permits issued under this subsection are not transferable.

(C) Vehicles permitted under this subsection shall be operated according to the restrictions described in §219.11(l). The permittee is responsible for obtaining information concerning current restrictions from the department.

(D) Vehicles permitted under this subsection may not travel over a load restricted bridge or load restricted road when exceeding the posted capacity of the road or bridge.

(E) Vehicles permitted under this subsection may travel through any highway construction or maintenance area provided the dimensions do not exceed the construction restrictions as published by the department.

(F) With the exception of permits issued under paragraph (5) of this subsection, vehicles permitted under this subsection shall be operated according to the escort requirements described in §219.11(k).

(2) Implements of husbandry. An annual permit may be issued for an implement of husbandry being moved by a dealer in those implements, and for harvesting equipment being moved as part of an agricultural operation. Permits issued under this paragraph are subject to the conditions described in paragraph (1) of this subsection.

(A) The fee for a permit issued under this paragraph is \$270, plus the highway maintenance fee specified in Transportation Code, §623.077.

(B) The time period will be for one year and will start on [with] the effective [“movement to begin”] date stated on the permit.

(C) The maximum width may not exceed 16 feet; maximum height may not exceed 16 feet; maximum length may not exceed 110 feet; and maximum weight may not exceed the limits stated in §219.11(d).

{(D) The permitted vehicle must travel in the outside traffic lane on multi-lane highways, when the width of the load exceeds 12 feet.}

(D) [(E)] The permitted vehicle must be registered in accordance with Transportation Code, Chapter 502, for maximum weight for the vehicle or vehicle combination, as set forth by Transportation Code, Chapter 621.

(3) Water well drilling machinery. The department may issue annual permits under Transportation Code, §623.071, for water well drilling machinery and equipment that fall within the definition of a nondivisible load or vehicle. [cannot be reasonably dismantled.] Permits issued under this paragraph are subject to the conditions described in paragraph (1) of this subsection.

(A) The fee for a permit issued under this paragraph is \$270, plus the highway maintenance fee specified in Transportation Code, §623.077 for an overweight load.

(B) A water well drilling machinery permit is valid for one year from the effective [“movement to begin”] date stated on the permit.

(C) The maximum dimensions may not exceed 16 feet wide, 14 feet 6 inches high, 110 feet long, and maximum weight may not exceed the limits stated in §219.11(d).

(D) The permitted vehicle must be registered in accordance with Transportation Code, Chapter 502, for the maximum weight of the vehicle, as set forth by Transportation Code, Chapter 621.

(E) A permit issued under this section authorizes a permitted vehicle to operate only on the state highway system.

(4) Envelope vehicle permits.

(A) The department may issue an annual permit under Transportation Code, §623.071(c), to a specific vehicle, for the movement of superheavy or oversize equipment that falls within the definition of a nondivisible load. This permit may not be used for a container, including a trailer or an intermodal container, loaded with divisible cargo. [cannot reasonably be dismantled.] Unless otherwise noted, permits issued under this paragraph are subject to the conditions described in paragraph (1) of this subsection.

(i) Superheavy or oversize equipment operating under an annual envelope vehicle permit may not exceed:

- (I) 12 feet in width;
- (II) 14 feet in height;
- (III) 110 feet in length; or
- (IV) 120,000 pounds gross weight.

(ii) Superheavy or oversize equipment operating under an annual envelope vehicle permit may not transport a load that has more than 25 feet front overhang, or more than 30 feet rear overhang.

(iii) The fee for an annual envelope vehicle permit is \$4,000, and is non-refundable.

(iv) The time period will be for one year and will start on [with] the effective ["~~movement to begin~~"] date stated on the permit.

(v) This permit authorizes operation of the permitted vehicle only on the state highway system.

(vi) The permitted vehicle must comply with §219.11(d)(2) and (3).

(vii) The permitted vehicle or vehicle combination must be registered in accordance with Transportation Code, Chapter 502, for maximum weight as set forth by Transportation Code, Chapter 621.

(viii) A permit issued under this paragraph is non-transferable between permittees.

(ix) A permit issued under this paragraph may be transferred from one vehicle to another vehicle in the permittee's fleet provided:

(I) the permitted vehicle is destroyed or otherwise becomes permanently inoperable, to an extent that it will no longer be utilized, and the permittee presents proof that the negotiable certificate of title or other qualifying documentation has been surrendered to the department; or

(II) the certificate of title to the permitted vehicle is transferred to someone other than the permittee, and the permittee presents proof that the negotiable certificate of title or other qualifying documentation has been transferred from the permittee.

(x) A single-trip permit, as described in §219.12 of this title (relating to Single-Trip Permits Issued Under Transportation Code, Chapter 623, Subchapter D), may be used in conjunction with an annual permit issued under this paragraph for the movement of vehicles or loads exceeding the height or width limits established in subparagraph (A) of this paragraph. The department will indicate the annual permit number on any single-trip permit to be used in conjunction with a permit issued under this paragraph, and permittees will be assessed a fee of \$60 for the single-trip permit.

(B) The department may issue an annual permit under Transportation Code, §623.071(d), to a specific motor carrier, for the movement of superheavy or oversize equipment that falls within the definition of a nondivisible load. This permit may not be used for a container, including a trailer or an intermodal container, loaded with divisible cargo. [~~cannot reasonably be dismantled.~~] Unless otherwise noted, permits issued under this paragraph are subject to the conditions described in paragraph (1) of this subsection and subparagraphs (A)(i)-(viii) of this paragraph. A permit issued under this paragraph may be transferred from one vehicle to another vehicle in the permittee's fleet provided:

(i) that no more than one vehicle is operated at a time; and

(ii) the original certified permit is carried in the vehicle that is being operated under the terms of the permit.

(C) An annual envelope permit issued under subparagraph (B) of this paragraph will be sent to the permittee via registered mail, or at the permittee's request and expense overnight delivery service. This permit may not be duplicated. This permit will be replaced only if:

(i) the permittee did not receive the original permit within seven business days after its date of issuance;

(ii) a request for replacement is submitted to the department within 10 business days after the original permit's date of issuance; and

(iii) the request for replacement is accompanied by a notarized statement signed by a principle or officer of the permittee acknowledging that the permittee understands the permit may not be duplicated and that if the original permit is located, the permittee must return either the original or replacement permit to the department.

(D) A request for replacement of a permit issued under subparagraph (B) of this paragraph will be denied if the department can verify that the permittee received the original.

(E) Lost, misplaced, damaged, destroyed, or otherwise unusable permits will not be replaced. A new permit will be required.

(5) Annual manufactured housing permit. The department may issue an annual permit for the transportation of new manufactured homes from a manufacturing facility to a temporary storage location, not to exceed 20 miles from the point of manufacture, in accordance with Transportation Code, §623.094. Permits issued under this paragraph are subject to the requirements of paragraph (1), subparagraphs (A), (B), (C), (D), (E), and (G), of this subsection.

(A) A permit shall contain the name of the company or person authorized to be issued permits by Transportation Code, Chapter 623, Subchapter E.

(B) The fee for a permit issued under this paragraph is \$1,500. Fees are non-refundable, and shall be paid in accordance with §219.11(f).

(C) The time period will be for one year from the effective ["~~movement to begin~~"] date stated on the permit.

~~[(D) A copy of the permit must be carried in the vehicle transporting a manufactured home.]~~

~~[(D) [(E)] The permitted vehicle must travel in the outside traffic lane on multi-lane highways when the width of the load exceeds 12 feet.~~

~~[(E) [(F)] The permitted vehicle must be registered in accordance with Transportation Code, Chapter 502.~~

~~[(E) [(G)] Authorized movement for a vehicle permitted under this section shall be valid during daylight hours only as defined by Transportation Code, §541.401.~~

~~[(G) [(H)] The permitted vehicle must be operated in accordance with the escort requirements described in §219.14(f) of this title (relating to Manufactured Housing, and Industrialized Housing and Building Permits).~~

~~[(H) [(H)] Permits issued under this section are non-transferable between permittees.~~

(6) Power line poles. An annual permit will be issued under Transportation Code, Chapter 622, Subchapter E, for the movement of poles required for the maintenance of electric power transmission and

distribution lines. Permits issued under this paragraph are subject to the conditions described in paragraph (1) of this subsection.

(A) The fee for the permit is \$120.

(B) The time period will be for one year and will start on [with] the effective ["movement to begin"] date stated on the permit.

(C) The maximum length of the permitted vehicle may not exceed 75 feet.

(D) The width, height and gross weight of the permitted vehicle may not exceed the limits set forth by Transportation Code, Chapter 621.

(E) Vehicles permitted under this paragraph may not travel over a load restricted bridge or load zoned road when exceeding posted limits.

(F) The permitted vehicle must be registered in accordance with Transportation Code, Chapter 502, for maximum weight as set forth by Transportation Code, Chapter 621.

(G) Movement will be between the hours of sunrise and sunset; however, the limitation on hours of operation does not apply to a vehicle being operated to prevent interruption or impairment of electric service, or to restore electric service that has been interrupted. When operated at night, a vehicle permitted under this subsection must be accompanied by a rear escort.

(H) The permitted vehicle may not travel during hazardous road conditions as stated in §219.11(1)(A) and (B) except to prevent interruption or impairment of electric service, or to restore electric service that has been interrupted.

(I) The speed of the permitted vehicle may not exceed 50 miles per hour.

(J) The permitted vehicle must display on the extreme end of the load:

(i) two red lamps visible at a distance of at least 500 feet from the rear;

(ii) two red reflectors that indicate the maximum width and are visible, when light is insufficient or atmospheric conditions are unfavorable, at all distances from 100 to 600 feet from the rear when directly in front of lawful lower beams of headlamps; and

(iii) two red lamps, one on each side, that indicate the maximum overhang, and are visible at a distance of at least 500 feet from the side of the vehicle.

(7) Cylindrically shaped bales of hay. An annual permit may be issued under Transportation Code, §623.017, [§624.017,] for the movement of vehicles transporting cylindrically shaped bales of hay. Permits issued under this paragraph are subject to the conditions described in paragraph (1) of this subsection.

(A) The permit fee is \$10.

(B) The time period will be for one year, and will start on [with] the effective ["movement to begin"] date stated on the permit.

(C) The maximum width of the permitted vehicle may not exceed 12 feet.

(D) The length, height, and gross weight of the permitted vehicle may not exceed the limits set forth by Transportation Code, Chapter 621.

(E) Movement is restricted to daylight hours only.

(F) The permitted vehicle must be registered in accordance with Transportation Code, Chapter 502, for maximum weight, as set forth by Transportation Code, Chapter 621.

(8) Overlength load or vehicles. An annual overlength permit may be issued for the transportation of a nondivisible overlength load or the movement of a nondivisible overlength vehicle or combination of vehicles under Transportation Code, §623.071(c-1). This permit is subject to the portions of subsections (a), (b), and (d) of this section that are not limited to the fee or duration for the 30, 60, and 90 day permits.

§219.14. *Manufactured Housing, and Industrialized Housing and Building Permits.*

(a) General information.

(1) A manufactured home that exceeds size limits for motor vehicles as defined by Transportation Code, Chapter 621, Subchapters B and C, must obtain a permit from the department.

(2) Pursuant to Transportation Code, Chapter 623, Subchapter E, a permit may be issued to persons registered as manufacturers, installers, or retailers with the Texas Department of Housing and Community Affairs or motor carriers registered with the department under Transportation Code, Chapter 643.

(3) The department may issue a permit to the owner of a manufactured home provided that:

(A) the same owner is named on the title of the manufactured home and towing vehicle;

(B) or the owner presents a lease showing that the owner of the manufactured home is the lessee of the towing vehicle.

(b) Application for permit.

(1) The applicant must complete the application and shall include the manufactured home's HUD label number, Texas seal number, or the complete identification number or serial number of the manufactured home, and the overall width, height, and length of the home and the towing vehicle in combination. If the manufactured home is being moved to or from a site in this state where it has been, or will be, occupied as a dwelling, the permit must also show the name of the owner of the home, the location from which the home is being moved, and the location to which the home is being delivered.

(2) A permit application for industrialized housing or industrialized building that does not meet the definition in Occupations Code, §1202.002 and §1202.003 shall be submitted in accordance with §219.11(c) of this title (relating to General Oversize/Overweight Permit Requirements and Procedures).

(c) Amendments to permit. Amendments can only be made to change intermediate points between the origination and destination points listed on the permit. [Permit issuance.]

~~{(1) Permit issuance is subject to the requirements of §219.11(e)(4)-}~~

~~{(2) Amendments can only be made to change intermediate points between the origination and destination points listed on the permit.}~~

(d) Payment of permit fee. The cost of the permit is \$40, payable in accordance with §219.11(f).

(e) Permit provisions and conditions.

(1) The overall combined length of the manufactured home and the towing vehicle includes the length of the hitch or towing device.

(2) The height is measured from the roadbed to the highest elevation of the manufactured home.

(3) The width of a manufactured home includes any roof or eaves extension or overhang on either side.

(4) A permit will be issued for a single continuous movement not to exceed five days.

(5) Movement must be made during daylight hours only and may be made on any day except New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

(6) The department may limit the hours for travel on certain routes because of heavy traffic conditions.

(7) The department will publish any limitations on movements during the national holidays listed in this subsection, or any limitations during certain hours of heavy traffic conditions, and will make such publications available to the public prior to the limitations becoming effective.

(8) The permit will contain the route for the transportation of the manufactured home from the point of origin to the point of destination.

(9) The route for the transportation must be the most practical route as described in §219.11(e), except where construction is in progress and the permitted vehicle's dimensions exceed the construction restrictions as published by the department, or where bridge or overpass width or height would create a safety hazard.

(10) The department will publish annually a map or list of all bridges or overpasses which, due to height or width, require an escort vehicle to stop oncoming traffic while the manufactured home crosses the bridge or overpass.

(11) A permittee may not transport a manufactured home with a void permit; a new permit must be obtained.

(f) Escort requirements.

(1) A manufactured home exceeding 12 feet in width must have a rotating amber beacon of not less than eight inches in diameter mounted somewhere on the roof at the rear of the manufactured home, or may have two five-inch flashing amber lights mounted approximately six feet from ground level at the rear corners of the manufactured home. The towing vehicle must have one rotating amber beacon of not less than eight inches in diameter mounted on top of the cab. These beacons or flashing lights must be operational and luminiferous during any permitted move over the highways, roads, and streets of this state.

(2) A manufactured home with a width exceeding 16 feet but not exceeding 18 feet must have a front escort vehicle on two-lane roadways and a rear escort vehicle on roadways of four or more lanes.

(3) A manufactured home exceeding 18 feet in width must have a front and a rear escort on all roadways at all times.

(4) The escort vehicle must:

(A) have one red 16 inch square flag mounted on each of the four corners of the vehicle;

(B) have a sign mounted on the front and rear of the vehicle displaying the words "WIDE LOAD" in black letters at least eight inches high with a brush stroke at least 1.41 inches wide against a yellow background;

(C) have an amber light or lights, visible from both front and rear, mounted on top of the vehicle in one of the following configurations:

(i) two simultaneously flashing lights or

(ii) one rotating beacon of not less than eight inches in diameter; and

(D) maintain two-way communications with the permitted vehicle and other escort vehicles involved with the movement of the permitted vehicle.

(5) Two transportable sections of a multi-section manufactured home, or two single section manufactured homes, when towed together in convoy, may be considered one home for purposes of the escort vehicle requirements, provided the distance between the two units does not exceed 1,000 feet.

(6) An escort vehicle must comply with the requirements in §219.11(k)(1) and §219.11(k)(7)(A).

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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For further information, please call: (512) 465-5665



SUBCHAPTER C. PERMITS FOR OVER AXLE AND OVER GROSS WEIGHT TOLERANCES

43 TAC §219.31

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the Board of the Texas Department of Motor Vehicles (board) with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code; and more specifically, Transportation Code, §§621.008, 622.002, and 623.002, which authorize the board to adopt rules that are necessary to implement and enforce Chapters 621, 622, and 623.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 621, 622, and 623.

§219.31. *Timber Permits.*

(a) Purpose. This section prescribes the requirements and procedures regarding the annual permit for the operation of a vehicle or combination of vehicles that will be used to transport unrefined timber, wood chips, or woody biomass, under the provisions of Transportation Code, Chapter 623, Subchapter Q.

(b) Application for permit.

(1) To qualify for a timber permit, a person must submit an application to the department.

(2) The application shall be in a form prescribed by the department and at a minimum, will require the following:

(A) name, [and] address, telephone number, and email address (if requested) of the applicant;

(B) name of contact person and telephone number or email address;

(C) vehicle information, including vehicle year, make, license plate number and state of issuance, and vehicle identification number; and

(D) a list of timber producing counties described in Transportation Code, §623.321(a), in which the vehicle or combination of vehicles will be operated.

(3) The application shall be accompanied by:

(A) the total annual permit fee required by statute; [of \$1,500;] and

(B) a blanket bond or irrevocable letter of credit as required by Transportation Code, §623.012, unless the applicant has a current blanket bond or irrevocable letter of credit on file with the department that complies with Transportation Code, §623.012.

(4) Fees for permits issued under this section are payable as required by §219.11(f) of this title (relating to General Oversize/Overweight Permit Requirements and Procedures).

(c) Issuance and placement of permit and windshield sticker; restrictions.

(1) A permit and a windshield sticker will be issued once the application is approved, and each will be mailed to the applicant at the address contained in the application.

(2) The windshield sticker shall be affixed to the inside of the windshield of the vehicle in accordance with the diagram printed on the back of the sticker and in a manner that will not obstruct the vision of the driver. Any attempt to remove the sticker from the windshield will render the sticker void and will require a new permit and sticker.

(3) A replacement sticker for a lost, stolen, or mutilated windshield sticker may be issued, provided that the permittee submits a request on a form approved by the department which shall include a statement, signed by the permittee, affirming that the sticker was lost, stolen, or mutilated. The replacement sticker shall only be valid for the permitted vehicle.

(d) Notification. The financially responsible party as defined in Transportation Code, §623.323(a), shall electronically file the notification document described by §623.323(b) with the department via the form on the department's website.

(e) Transfer of permit. An annual permit issued under this section is not transferable between vehicles.

(f) Amendments. An annual permit issued under this section will not be amended except in the case of department error.

(g) Termination of permit. An annual permit issued under this section will automatically terminate, and the windshield sticker must be removed from the vehicle:

(1) on the expiration of the permit;

(2) when the lease of the vehicle expires;

(3) on the sale or other transfer of ownership of the vehicle for which the permit was issued;

(4) on the dissolution or termination of the partnership, corporation, or other legal entity to which the permit was issued; or

(5) if the permittee fails to timely replenish the bond or letter of credit as required by Transportation Code, §623.012.

(h) Restrictions. Permits issued under this section are subject to the restrictions in §219.11(l) of this title.

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

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SUBCHAPTER D. PERMITS FOR OVERSIZE AND OVERWEIGHT OIL WELL RELATED VEHICLES

43 TAC §§219.41 - 219.43, 219.45

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the Board of the Texas Department of Motor Vehicles (board) with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code; and more specifically, Transportation Code, §§621.008, 622.002, and 623.002, which authorize the board to adopt rules that are necessary to implement and enforce Chapters 621, 622, and 623.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 621, 622, and 623.

§219.41. *General Requirements.*

(a) General information.

(1) Permits issued under this subchapter, with the exception of permits issued under §219.45 of this title (relating to Permits for Vehicles Transporting Liquid Products Related to Oil Well Production), are subject to the requirements of this section.

(2) Oil well related vehicles are eligible for:

(A) single-trip mileage permits;

(B) quarterly hubometer permits; and

(C) annual permits.

(b) Permit application. All applications shall be made on a form and in a manner prescribed by the department. An applicant shall provide all applicable information, including:

(1) name, address, telephone number, and email address (if requested) of the applicant;

(2) year and make of the unit;

(3) vehicle identification number of the unit;

(4) width, height, and length of the unit;

(5) unit axle and tire information, including number of axles, distance between axles, gauge per axle, axle weights, number of tires, and tire size; and

(6) any other information required by law.

~~[(b) Prerequisites to obtaining an oversize/overweight permit. A unit permitted under this subchapter must be registered under Transportation Code, Chapter 502, for the maximum gross weight applicable to the vehicle under Transportation Code, §621.101, or have the distinguishing license plates as provided by Transportation Code, §502.146, if applicable to the vehicle.]~~

(c) Payment of permit fees. Fees for permits issued under this subchapter are payable as described in §219.11(f) of this title (relating to General Oversize/Overweight Permit Requirements and Procedures).

(d) Restrictions.

(1) A vehicle permitted under this subchapter is subject to the restrictions specified in §219.11(l)(1), (3), and (4), and the permittee is responsible for obtaining information concerning current restrictions from the department.

(2) Vehicles permitted under this subchapter may not cross a load restricted bridge when exceeding the posted capacity of such. Vehicles permitted under this subchapter may travel on a load restricted road unless otherwise noted.

(3) A vehicle permitted under this subchapter may travel through highway construction or maintenance areas provided the dimensions do not exceed the construction restrictions as published by the department.

(4) A unit exceeding nine feet in width, 14 feet in height, or 65 feet in length is restricted to daylight movement only.

(e) Void permits. A permit will be voided when the department is informed by law enforcement that a citation has been issued for a violation of a permit's terms and conditions.

(f) Transferability. Unless otherwise noted, a permit issued under this subchapter may not be transferred between units or permittees.

(g) Records retention. A unit permitted under this section must keep the permit and any attachments to the permit in the unit until the day after the date the permit expires.

(h) Escort requirements. In addition to any other escort requirements specified in this subchapter, vehicles permitted under this subchapter are subject to the escort requirements specified in §219.11(k).

§219.42. *Single-Trip Mileage Permits.*

(a) General information.

(1) Permits issued under this section are subject to the requirements of §219.41 of this title (relating to General Requirements).

(2) A single-trip mileage permit:

(A) is limited to a maximum of seven consecutive days;

(B) routes the vehicle from the point of origin to the point of destination and has the route listed on the permit; and

(C) allows the unit to be returned to the point of origin on the same permit, provided the return trip is made within the time period stated in the permit.

(3) A unit exceeding 175,000 pounds gross weight must:

(A) have front and rear escort vehicles to prevent traffic from traveling beside the unit as it crosses a bridge;

(B) cross all multi-lane bridges by centering the unit on a lane line;

(C) cross all two-lane bridges in the center of the bridge; and

(D) cross each bridge at a speed not greater than 20 miles per hour.

(4) A unit exceeding 12 feet in width must be centered in the outside traffic lane of any highway that has paved shoulders.

(b) Maximum permit weight limits.

(1) The maximum permit weight for any single axle, not connected to another axle by a weight equalizing suspension system, must not exceed 30,000 pounds or 850 pounds per inch of tire width, whichever is less.

(2) The maximum permit weight for any group of axles on a unit will be determined by calculating the "W" weight for the group, using the formulas shown in Figure 2: 43 TAC §219.42(f), titled "Maximum Permit Weight Formulas," and comparing the calculated "W" weight with the corresponding "W" weight that is established in Figure 1: 43 TAC §219.42(f), titled "Maximum Permit Weight Table."

(3) The maximum permit weight per inch of tire width for axles that are steerable must not exceed 950 pounds, and the maximum permit weight per inch of tire width for axles that are not steerable must not exceed 850 pounds.

(4) A unit that does not have any group of axles that exceeds the limits established in Figure 1: 43 TAC §219.42(f), "Maximum Permit Weight Table," and Figure 2: 43 TAC §219.42(f), "Maximum Permit Weight Formulas" will be permitted with a single-trip mileage or quarterly hubometer permit for travel on any route that does not include a load restricted bridge.

(5) A unit that has any group of axles that exceeds the limits established by Figure 1: 43 TAC §219.42(f), "Maximum Permit Weight Table," and Figure 2: 43 TAC §219.42(f), "Maximum Permit Weight Formulas" will be eligible, on an individual case-by-case basis, for a single-trip mileage permit only; permit approval or denial will be based on a detailed route study and an analysis conducted by TxDOT of each bridge on the proposed travel route to determine if the road(s) [route] and bridges are capable of sustaining the movement.

(6) A road or bridge that has been analyzed and determined to be incapable of sustaining the unit will be excluded from the permit route.

(c) Permit application and issuance.

(1) Application for single-trip mileage permit.

(A) The applicant must submit the completed application to the department by telephone, facsimile, mail, or Internet. The application shall include, at a minimum, the following information:

(i) name, [and] address, telephone number, and email address (if requested) of the applicant;

(ii) origin and destination points of the unit;

(iii) make and model of the unit;

(iv) vehicle identification number of the unit;

(v) license plate number of the unit;

(vi) size and weight dimensions; and

(vii) any other information required by law.

(B) Upon receipt of the application, the department will review and verify unit size and weight information, check route and mileage to be traveled, compute the permit fee, and advise the applicant of the permit fee.

(2) Issuance of single-trip mileage permit. Upon receipt of the permit fee, the department will advise the applicant of the permit number, and will provide a copy of the permit to the applicant if requested to do so.

(d) Permit fees and refunds.

(1) Minimum fee. The minimum fee for a single-trip mileage permit is either the calculated permit fee or \$31, whichever is the greater amount.

(2) Permit fee calculation. The fee for a single-trip mileage permit is calculated by multiplying the number of miles traveled, the highway use factor, the total rate per mile, and the indirect cost share.

(A) Highway use factor. The highway use factor for a single trip mileage permit is 0.6.

(B) Total rate per mile. The total rate per mile is the combined mileage rates for width, height, and weight for the unit. For a trailer mounted unit, the total rate per mile is based on the overall width, overall height, and all axle weights, including the truck-tractor axles.

(i) The mileage rate for width is \$.06 per mile for each foot (or fraction thereof) above legal width.

(ii) The mileage rate for height is \$.04 per mile for each foot (or fraction thereof) above legal height.

(iii) The mileage rate for a single axle or any axle within a group that exceeds 20,000 pounds, but is less than or equal to 25,000 pounds, is calculated by multiplying \$.045 times the amount by which the axle or axle group weight exceeds the legal weight for the axle or axle group and dividing the resultant figure by 1,000 pounds.

(iv) The mileage rate for a single axle or any axle within a group that exceeds 25,000 pounds, but is less than or equal to 30,000 pounds, is calculated by multiplying \$.055 times the amount by which the axle or axle group weight exceeds the legal weight for the axle or axle group and dividing the resultant figure by 1,000 pounds.

(C) Indirect cost share. The indirect cost share is a prorated share of administering department activities, other than the direct cost of the activities, including the cost of providing statewide support services. The indirect cost share factor is based upon the previous year's expenditures.

(3) Permit fees for trailer mounted units.

(A) The permit fee for a trailer mounted unit is based on the overall width, overall height, and all axle weights, including the truck-tractor axles.

(B) A unit with two or more axle groups that do not have a spacing of at least 12 feet between the closest axles of the opposing groups must have the permit fee calculated by the following method.

(i) The axle group with the lowest weight will have the axle closest to the next axle group temporarily disregarded from its group in order to create a spacing of at least 12 feet between the two groups for fee calculation purposes.

(ii) An axle group will not have more than one axle disregarded.

(iii) The permit fee for the axle group with the temporarily disregarded axle must be based on the actual weight of the entire axle group minus the legal weight for the remaining axles of the group.

(4) Refunds. Fees for permits issued under this section are non-refundable.

(e) Amendments. A single-trip mileage permit may not be amended unless an exception is granted by the department.

(f) Weight table and formulas. The following table entitled "Maximum Permit Weight Table" is Figure 1: 43 TAC §219.42(f), and the list of formulas entitled, "Maximum Permit Weight Formulas," is Figure 2: 43 TAC §219.42(f).

Figure 1: 43 TAC §219.42(f) (No change.)

Figure 2: 43 TAC §219.42(f) (No change.)

§219.43. *Quarterly Hubometer Permits.*

(a) General information.

(1) Permits issued under this section are subject to the requirements of §219.41 of this title (relating to General Requirements).

(2) A quarterly hubometer permit:

(A) is effective for three consecutive months (for example, a permit issued with a beginning date of January 15 will terminate on April 14, or a permit issued with a beginning date of July 1 will terminate on September 30);

(B) allows the unit to travel on all state-maintained highways; and

(C) allows the unit to travel on a state-wide basis.

(3) A unit permitted under this subsection must not exceed any of the following dimensions:

(A) 12 feet in width;

(B) 14 feet, 6 inches in height; and

(C) 95 feet in length.

(4) With the exception of units that are overlength only, a unit operated with a permit issued under this section must be equipped with a hubometer. The permittee must maintain the hubometer in good working condition.

(5) A unit exceeding 175,000 pounds gross weight must:

(A) have front and rear escort vehicles to prevent traffic from traveling beside the unit as it crosses a bridge;

(B) cross all multi-lane bridges by centering the unit on a lane line;

(C) cross all two-lane bridges in the center of the bridge; and

(D) cross each bridge at a speed not greater than 20 miles per hour.

(b) Maximum permit weight limits.

(1) The maximum permit weight for any single axle, not connected to another axle by a weight equalizing suspension system, must not exceed 30,000 pounds or 850 pounds per inch of tire width, whichever is less.

(2) The maximum permit weight for any group of axles on a unit will be determined by calculating the "W" weight for the group, using the formulas in Figure 2: 43 TAC §219.42(f), "Maximum Permit Weight Formulas", and comparing the calculated "W" weight with

the corresponding "W" weight that is established in Figure 1: 43 TAC §219.42(f), "Maximum Permit Weight Table."

(3) The maximum permit weight per inch of tire width for axles that are steerable must not exceed 950 pounds, and the maximum permit weight per inch of tire width for axles that are not steerable must not exceed 850 pounds.

(4) A unit that does not have any group of axles that exceeds the limits established in Figure 1: 43 TAC §219.42(f), "Maximum Permit Weight Table," and Figure 2: 43 TAC §219.42(f), "Maximum Permit Weight Formulas" will be permitted with a single-trip mileage or quarterly hubometer permit for travel on any route that does not include a load restricted bridge.

(5) A unit that has any group of axles that exceeds the limits established by Figure 1: 43 TAC §219.42(f), "Maximum Permit Weight Table," and Figure 2: 43 TAC §219.42(f), "Maximum Permit Weight Formulas" will be eligible, on an individual case-by-case basis, for a single-trip mileage permit only; permit approval or denial will be based on a detailed route study and an analysis conducted by TxDOT of each bridge on the proposed travel route to determine if the road(s) ~~route~~ and bridges are capable of sustaining the movement.

(6) A bridge that has been analyzed and determined to be incapable of sustaining the unit will be excluded from the permit route.

(c) Initial permit application and issuance.

(1) Initial permit application.

(A) The applicant for an initial quarterly hubometer permit must submit a completed application to the department by telephone, facsimile, mail, or Internet. The application shall include, at a minimum, the following information:

(i) name, ~~and~~ address, telephone number, and email address (if requested) of the applicant;

(ii) make and model of the unit;

(iii) vehicle identification number of the unit;

(iv) license plate number of the unit;

(v) size and weight dimensions; and

(vi) any other information required by law.

(B) Upon receipt of the initial quarterly hubometer permit application, the department will verify unit information, calculate the permit fee, and advise the applicant of the permit fee.

(2) Issuance of initial quarterly hubometer permit. Upon receipt of the permit fee, the department will provide the permit to the applicant if requested, and will also provide a renewal application form to the applicant.

(d) Permit renewals and closeouts.

(1) The applicant must complete and submit a renewal application form to the department for each permit that is to be renewed or closed out.

(2) Upon receipt of the renewal application, the department will verify unit information, check mileage traveled on the last permit, calculate the new permit fee, and advise the applicant of the permit fee.

(e) Permit fees and refunds.

(1) Minimum fee. The minimum fee for a quarterly hubometer permit is either the calculated permit fee or \$31, whichever is the greater amount.

(2) Fees for overlength units. A unit that is overlength only must obtain a quarterly hubometer permit with a fee of \$31, but is not required to have a hubometer.

(3) Quarterly hubometer permit fee calculation. The permit fee for a quarterly hubometer permit is calculated by multiplying the hubometer mileage, the highway use factor, the total rate per mile, and the indirect cost share.

(A) Hubometer mileage. Hubometer mileage for a quarterly hubometer permit is determined by an amount estimated by the applicant for the first quarterly hubometer permit, or from the unit's hubometer mileage reading from the previous quarterly hubometer permit.

(i) An applicant requesting a permit for a unit that has traveled in excess of the mileage stated in the previous quarterly hubometer permit must pay for the excess mileage traveled, in addition to the fee for the renewed quarterly hubometer permit.

(ii) An applicant requesting a permit for a unit that has traveled less than the mileage stated on the previous quarterly hubometer permit will receive a credit on the purchase price of the renewed quarterly hubometer permit for that unit or another unit.

(B) Highway use factor. The highway use factor for a quarterly hubometer permit is 0.3.

(C) Total rate per mile. The total rate per mile is the combined mileage rates for width, height, and weight for the unit. The rate per mile for a trailer mounted unit is based on the overall width, overall height, and all axle weights, including the truck-tractor axles.

(i) The mileage rate for width is \$.06 per mile for each foot (or fraction thereof) above legal width.

(ii) The mileage rate for height is \$.04 per mile for each foot (or fraction thereof) above legal height.

(iii) The mileage rate for a single axle or any axle within a group that exceeds 20,000 pounds, but is less than or equal to 25,000 pounds, is calculated by multiplying \$.045 times the amount by which the axle or axle group weight exceeds the legal weight for the axle or axle group and dividing the resultant figure by 1,000 pounds.

(iv) The mileage rate for a single axle or any axle within a group that exceeds 25,000 pounds, but is less than or equal to 30,000 pounds, is calculated by multiplying \$.055 times the amount by which the axle or axle group weight exceeds the legal weight for the axle or axle group and dividing the resultant figure by 1,000 pounds.

(D) Indirect cost share. The indirect cost share is a prorated share of administering department activities, other than the direct cost of the activities, including the cost of providing statewide support services. The indirect cost share factor is based upon the previous year's expenditures.

(4) Permit fees for trailer mounted units.

(A) The permit fee for a trailer mounted unit is based on the overall width, overall height, and all axle weights, including the truck-tractor axles.

(B) A unit with two or more axle groups that does not have a spacing of at least 12 feet between the closest axles of the opposing groups must have the permit fee calculated by the following method.

(i) The axle group with the lowest weight will have the axle closest to the next axle group temporarily disregarded from its group in order to create a spacing of at least 12 feet between the two groups for fee calculation purposes.

(ii) An axle group will not have more than one axle disregarded.

(iii) The permit fee for the axle group with the temporarily disregarded axle must be based on the actual weight of the entire axle group minus the legal weight for the remaining axles of the group.

(5) Refunds. A refund is made to the applicant when the quarterly hubometer permit process is stopped for all units listed in the applicant's account, provided the amount of the refund exceeds \$25.

(f) Amendments. A quarterly hubometer permit may be amended only to indicate:

- (1) a new hubometer serial number; or
- (2) a new license plate number.

§219.45. Permits for Vehicles Transporting Liquid Products Related to Oil Well Production.

(a) General provisions. This section applies to the following vehicles which may secure an annual permit issued under provisions of Transportation Code, Chapter 623, Subchapter G, to haul liquid loads over all state-maintained highways.

(1) A vehicle combination consisting of a truck-tractor and semi-trailer specifically designed with a tank and pump unit for transporting:

(A) liquid fracing products, liquid oil well waste products, or unrefined liquid petroleum products to an oil well; or

(B) unrefined liquid petroleum products or liquid oil well waste products from an oil well not connected to a pipeline.

(2) A permit issued under this section is effective for one year beginning on the effective ["movement to begin"] date.

(b) Application for permit.

(1) A request for an annual permit issued under Transportation Code, Chapter 623, Subchapter G, and this section, must be submitted to the department by telephone, facsimile, mail, or Internet.

(2) The permit request must be received by the department not more than 14 days prior to the date that the permit is to begin.

(c) Permit qualifications and requirements.

(1) The semi-trailer must be of legal size and weight.

(2) The semi-trailer must be registered for the maximum legal gross weight.

(3) Only one semi-trailer will be listed on a permit.

(4) The permit may be transferred from an existing trailer being removed from service and placed on a new trailer being added to the permittee's fleet, if the permittee supplies the department with:

- (A) the existing valid permit number;
- (B) the make and model of the new trailer;
- (C) the license number of the new trailer; and
- (D) a transfer fee of \$31 per permit to cover administrative costs.

(d) Fees. All fees associated with permits issued under this section are payable as described in §219.11(f) of this title (relating to General Oversize/Overweight Permit Requirements and Procedures).

(1) The permit fee is based on the axles of the semi-trailer and the drive axles of the truck-tractor. The fee for the permit, which includes the indirect cost share, is determined as follows:

(A) \$52 per axle--to haul liquid oil well waste products or unrefined liquid petroleum products from oil wells not connected by a pipeline and return empty;

(B) \$52 per axle--to haul liquid products related to oil well production to an oil well and return empty; and

(C) \$104 per axle--to haul liquid products related to oil well production to an oil well and return with liquid oil well waste products or unrefined liquid petroleum products from an oil well not connected to a pipeline.

(2) Each permittee will be charged a \$20 issuance fee in addition to the permit fee.

(e) Permit movement conditions. The permit load must not cross any load-restricted bridge when exceeding the posted capacity of such.

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

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SUBCHAPTER E, PERMITS FOR OVERSIZE AND OVERWEIGHT UNLADEN LIFT EQUIPMENT MOTOR VEHICLES

43 TAC §§219.61 - 219.63

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the Board of the Texas Department of Motor Vehicles (board) with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code; and more specifically, Transportation Code, §§621.008, 622.002, and 623.002, which authorize the board to adopt rules that are necessary to implement and enforce Chapters 621, 622, and 623.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 621, 622, and 623.

§219.61. General Requirements for Permits for Oversize and Overweight Unladen Lift Equipment Motor Vehicles.

(a) General information. Unless otherwise noted, permits issued under this subchapter are subject to the requirements of this section. Unladen lift equipment motor vehicles (cranes) permitted under this subchapter are eligible for:

(1) permit weight limits above those established by §219.11(d)(2) of this title (relating to General Oversize/Overweight Permit Requirements and Procedures);

- (2) single-trip mileage permits;
- (3) quarterly hubometer permits; and
- (4) annual permits.

(b) Permit application. An application shall be made on a form and in a manner prescribed by the department. The applicant shall provide all applicable information, including:

- (1) name, address, telephone number, and email address (if requested) of the applicant;
- (2) year and make of the crane;
- (3) vehicle identification number of the crane;
- (4) width, height, and length of the crane;
- (5) unit axle and tire information, including the number of axles, distance between axles, gauge per axle, axle weights, number of tires, and tire size; and
- (6) any other information required by law.

(c) [(b)] Payment of permit fees. Fees for permits issued under this subchapter are payable as described in §219.11(f).

(d) [(e)] Restrictions.

(1) A vehicle permitted under this subchapter is subject to the restrictions specified in §219.11(l)(1), (3), and (4), and the permittee is responsible for obtaining information concerning current restrictions from the department.

(2) A vehicle permitted under this subchapter may travel through highway construction or maintenance areas provided the dimensions do not exceed the construction restrictions as published by the department.

(e) [(d)] Void permits. A permit will be voided when the department is informed by law enforcement that a citation has been issued for a violation of a permit's terms and conditions.

(f) [(e)] Transferability. Unless otherwise noted, a permit issued under this subchapter may not be transferred between cranes or between permittees.

(g) [(f)] Records retention. A crane permitted under this section must keep the permit and any attachments to the permit in the crane until the day after the date the permit expires.

(h) [(g)] Escort requirements. In addition to any other escort requirements specified in this subchapter, cranes permitted under this subchapter are subject to the escort requirements specified in §219.11(k).

§219.62. Single Trip Mileage Permits.

(a) General information.

(1) Permits issued under this section are subject to the requirements of §219.61 of this title (relating to General Requirements for Permits for Oversize and Overweight Unladen Lift Equipment Motor Vehicles).

(2) A single-trip mileage permit:

- (A) is limited to a maximum of seven consecutive days;
- (B) is routed from the point of origin to the point of destination and has the route listed on the permit; and

(C) allows the crane to be returned to the point of origin on the same permit, provided the return trip is made within the time period stated in the permit.

(3) A crane permitted under Transportation Code, Chapter 623, Subchapter J, must be registered under Transportation Code, Chapter 502, for the maximum gross weight applicable to the vehicle under Transportation Code, Section 621.101 or have the distinguishing license plates as provided by Transportation Code, §502.146 if applicable to the vehicle.

(4) A crane exceeding 175,000 pounds gross weight must:

- (A) have front and rear escort vehicles to prevent traffic from traveling beside the crane as it crosses a bridge;
- (B) cross all multi-lane bridges by centering the crane on a lane line;
- (C) cross all two-lane bridges in the center of the bridge; and
- (D) cross each bridge at a speed not greater than 20 miles per hour.

(5) A crane exceeding 12 feet in width must be centered in the outside traffic lane of any highway that has paved shoulders.

(6) The permitted vehicle must not cross a load restricted bridge when exceeding the posted capacity of such.

(b) Maximum permit weight limits.

(1) The maximum permit weight for any single axle, not connected to another axle by a weight equalizing suspension system, must not exceed 30,000 pounds or 850 pounds per inch of tire width, whichever is less.

(2) The maximum permit weight for any group of axles on a crane is determined by calculating the "W" weight for the group, using the formulas shown in Figure 2: 43 TAC §219.62(f), "Maximum Permit Weight Formulas," and comparing the calculated "W" weight with the corresponding "W" weight that is established in Figure 1: 43 TAC §219.62(f), "Maximum Permit Weight Table."

(3) The maximum permit weight per inch of tire width for axles that are steerable must not exceed 950 pounds, and the maximum permit weight per inch of tire width for axles that are not steerable must not exceed 850 pounds.

(4) A crane that does not have any group of axles that exceeds the limits established in Figure 1: 43 TAC §219.62(f), "Maximum Permit Weight Table," and Figure 2: 43 TAC §219.62(f), "Maximum Permit Weight Formulas," will be permitted with a single-trip mileage permit or a quarterly hubometer permit for travel on any route that does not include a load restricted bridge.

(5) A crane that has any group of axles that exceeds the limits established by Figure 1: 43 TAC §219.62(f), "Maximum Permit Weight Table," and Figure 2: 43 TAC §219.62(f), "Maximum Permit Weight Formulas," will be eligible, on an individual case-by-case basis, for a single-trip mileage permit only. Permit approval or denial will be based on a detailed route study and an analysis conducted by TxDOT of each bridge on the proposed travel route to determine if the road(s) [route] and bridges are capable of sustaining the movement.

(6) A road or bridge that has been analyzed and determined to be incapable of sustaining the crane will be excluded from the permit route.

(c) Permit application and issuance.

- (1) Application for single-trip mileage permit.

(A) The applicant must submit the completed application to the department by telephone, facsimile, mail, or Internet. The application shall include, at a minimum, the following information:

- (i) name, [and] address, telephone number, and email address (if requested) of the applicant;
- (ii) origin and destination points of the crane;
- (iii) make and model of the crane;
- (iv) vehicle identification number of the crane;
- (v) license plate number of the crane;
- (vi) size and weight dimensions; and
- (vii) any other information required by law.

(B) Upon receipt of the application, the department will review and verify size and weight information, check the route and mileage to be traveled, compute the permit fee, and advise the applicant of the permit fee.

(2) Issuance of single-trip mileage permit. Upon receipt of the permit fee, the department will advise the applicant of the permit number, and will provide a copy of the permit to the applicant if requested to do so.

(d) Permit fees and refunds.

(1) Minimum fee. The minimum fee for a single-trip permit is either the calculated permit fee or \$31, whichever is the greater amount.

(2) Permit fee calculation. The permit fee for a single-trip mileage permit is calculated by multiplying the number of miles traveled, the highway use factor and the total rate per mile, and the indirect cost share.

(A) Highway use factor. The highway use factor for a single trip mileage permit is 0.6.

(B) Total rate per mile. The total rate per mile is the combined mileage rates for width, height, and weight for the unit. The rate per mile for a trailer mounted crane is based on the overall width, overall height, and all axle weights, including the truck-tractor axles.

(i) The mileage rate for width is \$.06 per mile for each foot (or fraction thereof) above legal width.

(ii) The mileage rate for height is \$.04 per mile for each foot (or fraction thereof) above legal height.

(iii) The mileage rate for a single axle or any axle within a group that exceeds 20,000 pounds, but is less than or equal to 25,000 pounds, is calculated by multiplying \$.045 times the amount by which the axle or axle group weight exceeds the legal weight for the axle or axle group and dividing the resultant figure by 1,000 pounds.

(iv) The mileage rate for a single axle or any axle within a group that exceeds 25,000 pounds, but is less than or equal to 30,000 pounds, is calculated by multiplying \$.055 times the amount by which the axle or axle group weight exceeds the legal weight for the axle or axle group and dividing the resultant figure by 1,000 pounds.

(C) Indirect cost share. The indirect cost share is a prorated share of administering department activities, other than the direct cost of the activities, including the cost of providing statewide support services. The indirect cost share factor is based upon the previous year's expenditures.

(3) Exceptions to fee computations. A crane with two or more axle groups that does not have a spacing of at least 12 feet be-

tween the closest axles of the opposing groups must have the permit fee calculated by the following method.

(A) The axle group with the lowest weight will have the axle closest to the next axle group temporarily disregarded from its group in order to create a spacing of at least 12 feet between the two groups for fee calculation purposes.

(B) An axle group will not have more than one axle disregarded.

(C) The permit fee for the axle group with the temporarily disregarded axle must be based on the actual weight of the entire axle group minus the legal weight for the remaining axles of the group.

(4) Refunds. Fees for permits issued under this section are non-refundable.

(e) Amendments. A single-trip mileage permit issued under this section may not be amended unless an exception is granted by the department.

(f) Weight table and formulas. The following table entitled "Maximum Permit Weight Table" is Figure 1: 43 TAC §219.62(f), and the list of formulas entitled "Maximum Permit Weight Formulas," is Figure 2: 43 TAC §219.62(f).

Figure 1: 43 TAC §219.62(f) (No change.)

Figure 2: 43 TAC §219.62(f) (No change.)

§219.63. *Quarterly Hubometer Permits.*

(a) General information.

(1) Permits issued under this section are subject to the requirements of §219.61 of this title (relating to General Requirements for Permits for Oversize and Overweight Unladen Lift Equipment Motor Vehicles).

(2) A quarterly hubometer permit:

(A) is effective for three consecutive months (for example, a permit issued with a beginning date of January 15 will terminate on April 14, or a permit issued with a beginning date of July 1 will terminate on September 30);

(B) allows the vehicle to travel on all state-maintained highways; and

(C) allows the unit to travel on a state-wide basis.

(3) A crane permitted under this section must not exceed any of the following dimensions:

(A) 12 feet in width;

(B) 14 feet, 6 inches in height; or

(C) 95 feet in length.

(4) A crane permitted under this section must be registered under Transportation Code, Chapter 502, for the maximum gross weight applicable to the vehicle under Transportation Code, Section 621.101, or have the distinguishing license plates as provided by Transportation Code, §502.146, if applicable to the vehicle.

(5) With the exception of cranes that are overlength only, cranes operated with a quarterly hubometer permit must be equipped with a hubometer. The permittee must maintain the hubometer in good working condition.

(6) A crane exceeding 175,000 pounds gross weight must:

(A) have front and rear escort vehicles to prevent traffic from traveling beside the crane as it crosses a bridge;

(B) cross all multi-lane bridges by centering the crane on a lane line;

(C) cross all two-lane bridges in the center of the bridge; and

(D) cross each bridge at a speed not greater than 20 miles per hour.

(7) A crane exceeding 12 feet in width must be centered in the outside traffic lane of any highway that has paved shoulders.

(8) A crane will be permitted for night movement provided that it does not exceed 10 feet 6 inches in width, 14 feet in height, or 95 feet in length. A crane moving at night must be accompanied by a front and rear escort vehicle.

(9) The permitted vehicle must not cross a load restricted bridge when exceeding the posted capacity of such.

(10) The permit may be amended only to indicate:

(A) a new hubometer serial number; or

(B) a new license plate number.

(b) Maximum permit weight limits.

(1) The maximum permit weight for any single axle, not connected to another axle by a weight equalizing suspension system, must not exceed 30,000 pounds or 850 pounds per inch of tire width, whichever is less.

(2) The maximum permit weight for any group of axles on a crane will be determined by calculating the "W" weight for the group, using the formulas in Figure 2: 43 TAC §219.62(f), "Maximum Permit Weight Formulas," and comparing the calculated "W" weight with the corresponding "W" weight that is established in Figure 1: 43 TAC §219.62(f), "Maximum Permit Weight Table."

(3) The maximum permit weight per inch of tire width for axles that are steerable must not exceed 950 pounds, and the maximum permit weight per inch of tire width for axles that are not steerable must not exceed 850 pounds.

(4) A crane that does not have any group of axles that exceeds the limits established in Figure 1: 43 TAC §219.62(f), "Maximum Permit Weight Table," and Figure 2: 43 TAC §219.62(f), "Maximum Permit Weight Formulas," will be permitted with a single-trip mileage permit or a quarterly hubometer permit for travel on any route that does not include a load restricted bridge.

(5) A crane that has any group of axles that exceeds the limits established by Figure 1: 43 TAC §219.62(f), "Maximum Permit Weight Table," and Figure 2: 43 TAC §219.62(f), "Maximum Permit Weight Formulas," will be eligible, on an individual case-by-case basis, for a single-trip mileage permit only; permit approval or denial will be based on a detailed route study and an analysis conducted by TxDOT of each bridge on the proposed travel route to determine if the road(s) [route] and bridges are capable of sustaining the movement.

(6) A bridge that has been analyzed and determined to be incapable of sustaining the crane will be excluded from the permit route.

(c) Initial permit application and issuance.

(1) Initial permit application.

(A) A completed application for an initial quarterly hubometer permit must be submitted to the department by telephone, facsimile, mail, or Internet. The application shall include, at a minimum, the following information:

(i) name, [and] address, telephone number, and email address (if requested) of the applicant;

(ii) make and model;

(iii) the vehicle identification number;

(iv) license plate number of the vehicle;

(v) size and weight dimensions; and

(vi) any other information required by law.

(B) Upon receipt of the initial quarterly hubometer permit application, the department will verify vehicle information, calculate the permit fee, and advise the applicant of the permit fee.

(2) Issuance of initial quarterly hubometer permit. Upon receipt of the permit fee, the department will provide the permit to the applicant upon request, and will also provide a renewal application form to the applicant.

(d) Permit renewals and closeouts.

(1) The applicant must complete and submit a renewal application form to the department for each permit that is to be renewed or closed out.

(2) Upon receipt of the renewal application, the department will verify crane information, check mileage traveled on the last permit, calculate the new permit fee, and advise the applicant of the permit fee.

(e) Permit fees and refunds.

(1) Minimum fee. The minimum fee for a single-trip permit or time permit is either the calculated permit fee or \$31, whichever is the greater amount.

(2) Fees for overlength units. A crane that is overlength only must obtain a quarterly hubometer permit with a fee of \$31, and is not required to have a hubometer.

(3) Quarterly hubometer permit fee calculation. The permit fee for a quarterly hubometer permit is calculated by multiplying the hubometer mileage, the highway use factor, the total rate per mile, and the indirect cost share.

(A) Hubometer mileage. Mileage for a quarterly hubometer permit is determined by an amount estimated by the applicant for the first quarterly hubometer permit, or from the crane's hubometer mileage reading from the previous quarterly hubometer permit.

(i) An applicant requesting a permit for a crane that has traveled in excess of the mileage stated in the previous quarterly hubometer permit must pay for the excess mileage traveled, in addition to the fee for the renewed quarterly hubometer permit.

(ii) An applicant requesting a permit for a crane that has traveled less than the mileage stated on the previous quarterly hubometer permit will receive a credit on the purchase price of the renewed quarterly hubometer permit for that crane or another crane.

(B) Highway use factor. The highway use factor for a quarterly hubometer permit is 0.3.

(C) Total rate per mile. The total rate per mile is the combined mileage rates for width, height, and weight for the crane.

(i) The mileage rate for width is \$.06 per mile for each foot (or fraction thereof) above legal width.

(ii) The mileage rate for height is \$.04 per mile for each foot (or fraction thereof) above legal height.

(iii) The mileage rate for a single axle or any axle within a group that exceeds 20,000 pounds, but is less than or equal to 25,000 pounds, is calculated by multiplying \$.045 times the amount by which the axle or axle group weight exceeds the legal weight for the axle or axle group and dividing the resultant figure by 1,000 pounds.

(iv) The mileage rate for a single axle or any axle within a group that exceeds 25,000 pounds, but is less than or equal to 30,000 pounds, is calculated by multiplying \$.055 times the amount by which the axle or axle group weight exceeds the legal weight for the axle or axle group and dividing the resultant figure by 1,000 pounds.

(D) Indirect cost share. The indirect cost share is a prorated share of administering department activities, other than the direct cost of the activities, including the cost of providing statewide support services. The indirect cost share factor is based upon the previous year's expenditures.

(4) Special fee provisions. A crane with two or more axle groups that do not have a spacing of at least 12 feet between the closest axles of the opposing groups must have the permit fee calculated by the following method.

(A) The axle group with the lowest weight will have the axle closest to the next axle group temporarily disregarded from its group in order to create a spacing of at least 12 feet between the two groups for fee calculation purposes.

(B) An axle group will not have more than one axle disregarded.

(C) The permit fee for the axle group with the temporarily disregarded axle must be based on the actual weight of the entire axle group minus the legal weight for the remaining axles of the group.

(5) Refunds. The department will refund fees for permits issued under this section when the quarterly hubometer permit process is stopped for all cranes listed in the applicant's account, provided the amount of the refund exceeds \$25.

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

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SUBCHAPTER G. RECORDS AND INSPECTIONS

43 TAC §219.102

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the Board of the Texas Department of Motor Vehicles (board) with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code; and more specifically, Transportation Code, §§621.008, 622.002,

and 623.002, which authorize the board to adopt rules that are necessary to implement and enforce Chapters 621, 622, and 623.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 621, 622, and 623.

§219.102. Records.

(a) General records to be maintained. Each person who is subject to this chapter shall maintain the following records if information in such a record is necessary to verify the person's operation:

(1) operational logs, insurance certificates, and documents to verify the person's operations;

(2) complete and accurate records of services performed; and

(3) all certificate of title documents, shipper's certificate of weight, including information used to support the shipper's certificate of weight, weight tickets, permits for oversize or overweight vehicles and loads, dispatch records, load tickets, waybill or any other document that verify the operations of the vehicle to determine the actual weight, insurance coverage, size or capacity of the vehicle, and the size or weight of the commodity being transported.

(b) Evidence of permits.

(1) Except as stated otherwise in §219.13(e)(4)(B)(ii) of this title (relating to Time Permits), the original permit, a print copy of the permit, or an electronic copy of the permit must be kept in the permitted vehicle until the permit terminates or expires.

(2) Except as stated otherwise in §219.13(e)(4)(B)(ii), an operator of a vehicle operating under a permit issued under Transportation Code, Subtitle E, shall, on request, provide the original permit, a print copy of the permit, or an electronic copy of the permit to a department inspector or to a peace officer, as defined by Code of Criminal Procedure, Article 2.12.

(A) If the department provides a permit electronically, the vehicle operator may provide a legible and accurate image of the permit displayed on a wireless communication device.

(B) The display of an image that includes permit information on a wireless communication device under this paragraph does not constitute effective consent for a law enforcement officer, or any other person, to access the contents of the wireless communication device except to view the permit information.

(C) The authorization of the use of a wireless communication device to display permit information under this paragraph does not prevent the State Office of Administrative Hearings or a court of competent jurisdiction from requiring a person to provide a paper copy of the person's evidence of permit in a hearing or trial or in connection with discovery proceedings.

(D) A telecommunications provider, as defined by Utilities Code, §51.002, may not be held liable to the operator of the motor vehicle for the failure of a wireless communication device to display permit information under this paragraph.

[(b) Copies of permits. A copy of the oversize or overweight permit shall be maintained in the vehicle for which the permit was issued during the period that the permit is required. On demand by a department inspector or any other authorized government personnel, the driver of the vehicle shall present the permit to that person.]

(c) Preservation and destruction of records. Records required under this section shall be maintained for not less than two years, except

that drivers' time cards and logs shall be maintained for not less than six months.

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

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SUBCHAPTER H. ENFORCEMENT

43 TAC §219.121, §219.125

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the Board of the Texas Department of Motor Vehicles (board) with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code; and more specifically, Transportation Code, §§621.008, 622.002, and 623.002, which authorize the board to adopt rules that are necessary to implement and enforce Chapters 621, 622, and 623.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 621, 622, and 623.

§219.121. *Administrative Penalties.*

(a) Authority. The department, after notice and opportunity for hearing, may impose an administrative penalty against a person or the holder of the permit who:

(1) provides false information on a permit application or another form required by the department concerning the issuance of an oversize or overweight permit;

(2) violates this chapter or Transportation Code, Chapters 621, 622, or 623;

(3) violates an order adopted under this chapter or Transportation Code, Chapters 621, 622, or 623; or

(4) fails to obtain an oversize or overweight permit that is required under this chapter or Transportation Code, Chapters 621, 622, or 623.

(b) Amount of administrative penalty.

(1) In an action brought by the department, the aggregate amount of administrative penalty shall not exceed \$5,000 unless it is found that the person or the holder of the permit knowingly committed a violation.

(2) In an action brought by the department, if it is found that the person or the holder of the permit knowingly committed a violation, the aggregate amount of administrative penalty shall not exceed \$15,000. "Knowingly" means actual awareness of the act or practice that is the alleged violation, or acting with deliberate ignorance of or

reckless disregard for the violation involved. Actual awareness may be inferred from the conduct of the alleged violator or from the history of previous violations by the alleged violator. [A person or the holder of the permit acts knowingly if the person or the holder of the permit acts with knowledge that the act violates Transportation Code, Chapters 621, 622, or 623, or a rule or an order adopted under Transportation Code, Chapters 621, 622, or 623.]

(3) In an action brought by the department, if it is found that the person or the holder of the permit knowingly committed multiple violations, the aggregate amount of administrative penalty for the multiple violations shall not exceed \$30,000.

(4) Each day a violation continues or occurs is a separate violation for purposes of imposing an administrative penalty.

(5) Any recommendation that an administrative penalty should be imposed must be based on the following factors:

(A) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(B) the economic harm to property or the environment caused by the violation;

(C) the history of previous violations;

(D) the amount necessary to deter future violations;

(E) efforts made to correct the violation; and

(F) any other matters that justice may require.

§219.125. *Settlement Agreements.*

(a) The department and the alleged violator may enter into a compromise settlement agreement at any time before the issuance of a final decision. The compromise settlement agreement must provide that the alleged violator consents to the assessment of a specified administrative penalty or to the imposition of the specified administrative sanction by the department against the alleged violator and must be signed by the alleged violator and the director. ~~[A compromise agreement is not an admission of the alleged violation.]~~

(b) If the settlement agreement requires the payment of a penalty to the department, the alleged violator must submit the payment [a cashier's check or money order] to the department in the agreed amount before the agreement may be finalized. ~~[executed.]~~

(c) Upon the execution by the director of a settlement agreement, the administrative proceeding ends. The settlement agreement is a department order that is final.

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

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Texas Department of Motor Vehicles

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For further information, please call: (512) 465-5665

