

---

# TEXAS REGISTER

*Volume 49 Number 17*

*April 26, 2024*

*Pages 2587 - 2848*

---



# TEXAS REGISTER

a section of the  
Office of the Secretary of State  
P.O. Box 12887  
Austin, Texas 78711  
(512) 463-5561  
FAX (512) 463-5569

<https://www.sos.texas.gov>  
[register@sos.texas.gov](mailto:register@sos.texas.gov)

***Texas Register***, (ISSN 0362-4781, USPS 12-0090), is published weekly (52 times per year) for \$340.00 (\$502.00 for first class mail delivery) by Matthew Bender & Co., Inc., 3 Lear Jet Lane Suite 104, P. O. Box 1710, Latham, NY 12110.

Material in the *Texas Register* is the property of the State of Texas. However, it may be copied, reproduced, or republished by any person without permission of the *Texas Register* director, provided no such republication shall bear the legend *Texas Register* or "Official" without the written permission of the director.

The *Texas Register* is published under the Government Code, Title 10, Chapter 2002. Periodicals Postage Paid at Easton, MD and at additional mailing offices.

**POSTMASTER:** Send address changes to the *Texas Register*, 4810 Williamsburg Road, Unit 2, Hurlock, MD 21643.

***Secretary of State*** - Jane Nelson

***Director*** - Je T'aime Swindell

***Editor-in-Chief*** - Jill S. Ledbetter

**Editors**

Leti Benavides

Jay Davidson

Briana Franklin

Belinda Kirk

Laura Levack

Joy L. Morgan

Matthew Muir

Breanna Mutschler

# IN THIS ISSUE

## **GOVERNOR**

Appointments.....	2593
Proclamation 41-4102.....	2593
Proclamation 41-4103.....	2593
Proclamation 41-4104.....	2593

## **PROPOSED RULES**

### **PUBLIC UTILITY COMMISSION OF TEXAS**

#### RULES FOR ADMINISTRATIVE SERVICES

16 TAC §27.21.....	2596
16 TAC §27.31.....	2597
16 TAC §27.65, §27.69.....	2597
16 TAC §§27.81, 27.83, 27.85, 27.87, 27.89, 27.91, 27.93, 27.97, 27.99.....	2598
16 TAC §§27.111, 27.113, 27.115, 27.117, 27.121, 27.123, 27.125, 27.127.....	2600
16 TAC §27.143, §27.145.....	2601
16 TAC §27.161.....	2602

### **TEXAS DEPARTMENT OF LICENSING AND REGULATION**

#### COMBATIVE SPORTS

16 TAC §61.10, §61.110.....	2603
-----------------------------	------

#### AIR CONDITIONING AND REFRIGERATION

16 TAC §75.110.....	2605
---------------------	------

### **TEXAS EDUCATION AGENCY**

#### EDUCATIONAL PROGRAMS

19 TAC §§102.1091, 102.1093, 102.1095.....	2608
19 TAC §102.1091.....	2608
19 TAC §102.1097.....	2611

### **DEPARTMENT OF STATE HEALTH SERVICES**

#### HOSPITAL LICENSING

25 TAC §133.46.....	2612
---------------------	------

#### AMBULATORY SURGICAL CENTERS

25 TAC §135.4.....	2614
--------------------	------

#### BIRTHING CENTERS

25 TAC §137.39.....	2616
---------------------	------

#### ABORTION FACILITY REPORTING AND LICENSING

25 TAC §139.60.....	2618
---------------------	------

#### FOOD AND DRUG

25 TAC §229.144.....	2620
----------------------	------

### **HEALTH AND HUMAN SERVICES COMMISSION**

#### SPECIAL CARE FACILITIES

26 TAC §506.37.....	2622
---------------------	------

#### END STAGE RENAL DISEASE FACILITIES

26 TAC §507.50.....	2623
---------------------	------

#### FREESTANDING EMERGENCY MEDICAL CARE FACILITIES

26 TAC §509.67.....	2624
---------------------	------

#### PRIVATE PSYCHIATRIC HOSPITALS AND CRISIS STABILIZATION UNITS

26 TAC §510.45.....	2626
---------------------	------

#### LIMITED SERVICES RURAL HOSPITALS

26 TAC §511.75.....	2627
---------------------	------

#### TREATMENT FACILITIES FOR INDIVIDUALS WITH SUBSTANCE-RELATED DISORDERS

26 TAC §564.28.....	2629
---------------------	------

#### MINIMUM STANDARDS FOR SCHOOL-AGE AND BEFORE OR AFTER-SCHOOL PROGRAMS

26 TAC §744.123.....	2633
----------------------	------

26 TAC §744.605.....	2636
----------------------	------

26 TAC §§744.1301, 744.1309, 744.1311, 744.1318.....	2637
--	------

26 TAC §744.1403.....	2638
-----------------------	------

26 TAC §744.1613.....	2639
-----------------------	------

26 TAC §§744.1901, 744.1907, 744.1911, 744.1913.....	2639
--	------

26 TAC §744.2601.....	2640
-----------------------	------

26 TAC §744.3351.....	2640
-----------------------	------

26 TAC §§744.3401, 744.3409 - 744.3411, 744.3415.....	2640
---	------

#### LICENSING

26 TAC §745.31, §745.37.....	2644
------------------------------	------

26 TAC §745.9051.....	2644
-----------------------	------

26 TAC §§745.9053, 745.9055, 745.9057, 745.9059, 745.9061, 745.9063, 745.9065.....	2645
--	------

26 TAC §§745.9067, 745.9069, 745.9071, 745.9073.....	2646
--	------

26 TAC §745.9075.....	2648
-----------------------	------

26 TAC §745.9077.....	2648
-----------------------	------

26 TAC §§745.9085, 745.9087, 745.9089, 745.9091, 745.9093, 745.9095, 745.9097.....	2649
--	------

#### MINIMUM STANDARDS FOR CHILD-CARE CENTERS

26 TAC §746.123.....	2652
----------------------	------

26 TAC §746.605.....	2655
----------------------	------

26 TAC §§746.1301, 746.1309, 746.1325.....	2656
--	------

26 TAC §746.1403.....	2657
-----------------------	------

26 TAC §746.1801 .....	2658
26 TAC §§746.2101, 746.2105, 746.2109, 746.2113, 746.2115 ...	2658
26 TAC §746.2103 .....	2659
26 TAC §746.3701 .....	2659
26 TAC §746.4971 .....	2660
26 TAC §§746.5001, 746.5009, 746.5011, 746.5013, 746.5017 ...	2660
<b>MINIMUM STANDARDS FOR CHILD-CARE HOMES</b>	
26 TAC §747.123 .....	2663
26 TAC §747.605 .....	2666
26 TAC §§747.1303, 747.1305, 747.1309, 747.1323 .....	2667
26 TAC §§747.2001, 747.2005, 747.2009, 747.2013, 747.2015 ...	2669
26 TAC §747.3501 .....	2670
26 TAC §747.4751 .....	2670
26 TAC §§747.4801, 747.4811 - 747.4813, 747.4817 .....	2671
<b>MINIMUM STANDARDS FOR GENERAL RESIDENTIAL OPERATIONS</b>	
26 TAC §748.61 .....	2674
26 TAC §§748.4801, 748.4803, 748.4805, 748.4807, 748.4809 ...	2675
26 TAC §§748.4821, 748.4823, 748.4825 .....	2676
26 TAC §748.4831, §748.4833 .....	2676
26 TAC §§748.4841, 748.4843, 748.4845, 748.4847 .....	2677
26 TAC §748.4851 .....	2678
26 TAC §§748.4861, 748.4863, 748.4865, 748.4867, 748.4869 ...	2678
26 TAC §748.4881 .....	2680
<b>TEXAS WATER DEVELOPMENT BOARD</b>	
<b>RURAL WATER ASSISTANCE FUND</b>	
31 TAC §§365.2, 365.3, 365.5 .....	2682
31 TAC §§365.21 - 365.23 .....	2684
31 TAC §§365.41, 365.43 - 365.45 .....	2686
<b>TEXAS DEPARTMENT OF PUBLIC SAFETY</b>	
<b>VEHICLE INSPECTION</b>	
37 TAC §23.55 .....	2688
37 TAC §23.62 .....	2690
<b>TEXAS DEPARTMENT OF MOTOR VEHICLES</b>	
<b>COMPLIANCE AND INVESTIGATIONS [DIVISION]</b>	
43 TAC §§223.1 - 223.3 .....	2692
43 TAC §223.5 .....	2693
43 TAC §223.101 .....	2694
<b>ADOPTED RULES</b>	
<b>DEPARTMENT OF STATE HEALTH SERVICES</b>	

<b>GENERAL SANITATION</b>	
25 TAC §265.190 .....	2695
<b>TEXAS DEPARTMENT OF PUBLIC SAFETY</b>	
<b>LICENSE TO CARRY HANDGUNS</b>	
37 TAC §6.17 .....	2696
<b>TEXAS DEPARTMENT OF MOTOR VEHICLES</b>	
<b>MANAGEMENT</b>	
43 TAC §206.1, §206.2 .....	2698
43 TAC §206.22, §206.23 .....	2699
43 TAC §206.41 .....	2700
43 TAC §§206.61 - 206.73 .....	2700
43 TAC §§206.92, 206.93, 206.101 .....	2701
43 TAC §206.111 .....	2702
43 TAC §206.131 .....	2702
43 TAC §206.151 .....	2704
<b>MOTOR VEHICLE DISTRIBUTION</b>	
43 TAC §215.1, §215.2 .....	2717
43 TAC §§215.21 - 215.24, 215.27, 215.29, 215.30, 215.32, 215.34 - 215.49, 215.55, 215.56, 215.58 - 215.63 .....	2718
43 TAC §§215.82 - 215.85, 215.87, 215.89 .....	2719
43 TAC §§215.101 - 215.106, 215.108 - 215.111, 215.113, 215.115 - 215.117, 215.120, 215.121 .....	2720
43 TAC §215.112 .....	2726
43 TAC §§215.131 - 215.135, 215.137 - 215.141, 215.143 - 215.145, 215.147 - 215.152, 215.154, 215.155, 215.160, 215.161 .....	2726
43 TAC §215.146 .....	2739
43 TAC §§215.171, 215.173 - 215.180 .....	2740
43 TAC §§215.201 - 215.210 .....	2744
43 TAC §§215.242, 215.244, 215.249, 215.250, 215.257, 215.261, 215.264, 215.268, 215.270 .....	2745
43 TAC §§215.301 - 215.303, 215.305 - 215.308, 215.310, 215.311, 215.314 - 215.317 .....	2747
43 TAC §215.500 .....	2747
43 TAC §§215.501, 215.502, 215.505 .....	2748
<b>VEHICLE TITLES AND REGISTRATION</b>	
43 TAC §217.56 .....	2749
43 TAC §217.63 .....	2752
<b>MOTOR CARRIERS</b>	
43 TAC §218.10, §218.16 .....	2754
43 TAC §218.33 .....	2756
43 TAC §218.64 .....	2756
43 TAC §§218.70 - 218.72 .....	2757

43 TAC §§218.73, 218.75 - 218.78 .....	2758
<b>OVERSIZE AND OVERWEIGHT VEHICLES AND LOADS</b>	
43 TAC §219.82.....	2759
43 TAC §§219.120, 219.121, 219.126.....	2759
43 TAC §§219.122, 219.124, 219.127.....	2760
<b>SALVAGE VEHICLE DEALERS</b>	
43 TAC §221.1, §221.2.....	2765
43 TAC §§221.11, 221.13 - 221.20.....	2767
43 TAC §§221.41 - 221.47, 221.49 - 221.54 .....	2767
43 TAC §221.48.....	2769
43 TAC §§221.71 - 221.73 .....	2769
43 TAC §§221.91 - 221.96 .....	2770
43 TAC §§221.111, 221.112, 221.115 .....	2771
<b>ADJUDICATIVE PRACTICE AND PROCEDURE</b>	
43 TAC §§224.1, 224.3, 224.5, 224.7, 224.9, 224.11, 224.13, 224.15, 224.17, 224.19, 224.21, 224.23, 224.25, 224.27, 224.29, 224.31 .....	2780
43 TAC §§224.50, 224.52, 224.54, 224.56, 224.58, 224.60, 224.62, 224.64 .....	2780
43 TAC §§224.80, 224.82, 224.84, 224.86, 224.88, 224.90, 224.92, 224.94 .....	2783
43 TAC §§224.110, 224.112, 224.114 - 224.116, 224.118, 224.120, 224.122, 224.124, 224.126, 224.128, 224.130 .....	2784
43 TAC §§224.150, 224.152, 224.154, 224.156, 224.158, 224.162, 224.164, 224.166 .....	2785
43 TAC §§224.190, 224.192, 224.194, 224.196, 224.198, 224.200, 224.202, 224.204, 224.206 .....	2786
43 TAC §§224.230, 224.232, 224.234, 224.236, 224.238, 224.240, 224.242, 224.244, 224.246, 224.248, 224.250, 224.252, 224.254, 224.256, 224.258, 224.260, 224.262, 224.264, 224.266, 224.268 .....	2788
<b>RULE REVIEW</b>	
<b>Proposed Rule Reviews</b>	
Texas State Library and Archives Commission.....	2789
Public Utility Commission of Texas .....	2789
Texas Health and Human Services Commission .....	2790
Texas Department of Motor Vehicles .....	2790
<b>Adopted Rule Reviews</b>	
Texas Health and Human Services Commission .....	2790
Texas Education Agency.....	2790
Department of State Health Services .....	2791
Texas Health and Human Services Commission .....	2791
Texas Commission on Environmental Quality .....	2791
Department of Aging and Disability Services .....	2792

Texas Department of Motor Vehicles .....	2794
<b>TABLES AND GRAPHICS</b>	
.....	2795
<b>IN ADDITION</b>	
<b>Office of the Attorney General</b>	
Texas Water Code and Texas Health and Safety Code Settlement Notice.....	2815
Texas Water Code and Texas Health and Safety Code Settlement Notice.....	2815
<b>Comptroller of Public Accounts</b>	
Certification of the Average Closing Price of Gas and Oil - March 2024.....	2815
Notice of Coastal Protection Fee Reinstatement .....	2816
<b>Office of Consumer Credit Commissioner</b>	
Notice of Rate Ceilings.....	2816
<b>Credit Union Department</b>	
Application of Out of State Branch .....	2816
Application to Expand Field of Membership.....	2816
Notice of Final Action Taken.....	2817
<b>Texas Commission on Environmental Quality</b>	
Agreed Orders.....	2817
Enforcement Orders .....	2820
Enforcement Orders .....	2821
Notice of Application and Public Hearing for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Proposed Air Quality Registration Number 175607.....	2822
Notice of Application and Public Hearing for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Proposed Air Quality Registration Number 175708.....	2822
Notice of District Petition .....	2823
Notice of District Petition .....	2824
Notice of District Petition .....	2824
Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions .....	2825
Notice of Public Meeting for TPDES Permit for Municipal Wastewater New Permit No. WQ0016336001 .....	2826
Notice of Receipt of Application and Intent to Obtain Municipal Solid Waste Permit Amendment .....	2827
<b>General Land Office</b>	
Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program .....	2828
<b>Texas Health and Human Services Commission</b>	
Correction of Error.....	2829

Notice of Public Hearing on Proposed Updates to Medicaid Payment Rates.....2829

Updated - Texas State Hospital Long-Range Planning Report Meetings.....2830

**Texas Department of Housing and Community Affairs**

Aviso del Período de Comentarios Públicos y Audiencias Públicas Sobre el Borrador del Plan Estatal del Programa de Asistencia Energética para Hogares de Bajos Ingresos para 2025 .....2831

Notice of Public Comment Period and Public Hearings on the Draft 2025 Low Income Home Energy Assistance Program State Plan.2832

Youth and Young Adult Homeless Program Notice of Funding Availability .....2832

**Texas Lottery Commission**

Scratch Ticket Game Number 2569 "DOUBLE DOUBLER" .....2832

**Motor Vehicle Crime Prevention Authority**

Fiscal Year 2025 Request for Applications - Taskforce Grants.....2839

**Public Utility Commission of Texas**

Notice of Application for Approval of the Provision of Non-Emergency 311 Service.....2843

**Supreme Court of Texas**

Order Setting Public Deliberations on Amendments to the Texas Disciplinary Rules of Professional Conduct and the Texas Rules of Disciplinary Procedure .....2844

# THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

## Appointments

### Appointments for April 16, 2024

Appointed to the Texas Holocaust, Genocide and Antisemitism Advisory Commission for a term to expire February 1, 2027, Adam C. Blum of Austin, Texas (replacing Roger P. Nober of Fort Worth, who resigned).

Appointed to the Texas Holocaust, Genocide and Antisemitism Advisory Commission for a term to expire February 1, 2027, Cara L. Mendelsohn of Dallas, Texas (replacing Rabbi Ilan S. Emanuel of Corpus Christi, who resigned).

Greg Abbott, Governor  
TRD-202401624



### Proclamation 41-4102

#### TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, GREG ABBOTT, Governor of the State of Texas, do hereby certify that the severe storms and flooding event that began on April 9, 2024, and that included heavy rainfall, flash flooding, large hail, and hazardous wind gusts are causing widespread and severe property damage, injury, or loss of life in Hardin, Jasper, Jefferson, Newton, Panola, Shelby, and Tyler Counties;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby declare a state of disaster in the previously listed counties.

Pursuant to Section 418.017 of the Texas Government Code, I authorize the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster.

Pursuant to Section 418.016 of the Texas Government Code, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder, or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor. However, to the extent that the enforcement of any state statute or administrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to protect life or property threatened by this declared disaster, I hereby authorize the suspension of such statutes and rules for the duration of this declared disaster.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 15th day of April, 2024.

Greg Abbott, Governor  
TRD-202401637



### Proclamation 41-4103

#### TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, GREG ABBOTT, Governor of the State of Texas, issued a disaster proclamation on July 8, 2022, as amended and renewed in a number of subsequent proclamations, certifying that exceptional drought conditions posed a threat of imminent disaster in several counties; and

WHEREAS, the Texas Division of Emergency Management has confirmed that those same drought conditions continue to exist in these and other counties in Texas, with the exception of Guadalupe and Uvalde Counties;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby amend and renew the aforementioned proclamation and declare a disaster in Bandera, Bell, Bexar, Blanco, Burnet, Calhoun, Cameron, Colorado, Comal, Comanche, Concho, Coryell, Culberson, Eastland, El Paso, Erath, Gillespie, Hays, Hidalgo, Hudspeth, Irion, Jeff Davis, Karnes, Kendall, Kerr, Lampasas, Llano, Matagorda, Maverick, McLennan, Medina, Presidio, Tom Green, Travis, Wharton, Willacy, Williamson, and Wilson Counties.

Pursuant to Section 418.017 of the Texas Government Code, I authorize the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster.

Pursuant to Section 418.016 of the Texas Government Code, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder, or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor. However, to the extent that the enforcement of any state statute or administrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to protect life or property threatened by this declared disaster, I hereby authorize the suspension of such statutes and rules for the duration of this declared disaster.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 16th day of April, 2024.

Greg Abbott, Governor  
TRD-202401638



### Proclamation 41-4104

#### TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on May 31, 2021, certifying under Section 418.014 of the Texas Government Code that the surge of individuals unlawfully crossing the Texas-Mexico border posed an ongoing and imminent threat of disaster for a number of Texas counties and for all state agencies affected by this disaster; and

WHEREAS, I amended the aforementioned proclamation in a number of subsequent proclamations, including to modify the list of affected counties and therefore declare a state of disaster for those counties and for all state agencies affected by this disaster; and

WHEREAS, the certified conditions continue to exist and pose an ongoing and imminent threat of disaster as set forth in the prior proclamations;

WHEREAS, a disaster has been declared at the local level by Coleman County;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby renew the aforementioned proclamation and declare a disaster for Aransas, Atascosa, Bee, Brewster, Brooks, Caldwell, Cameron, Chambers, Coleman, Colorado, Crane, Crockett, Culberson, DeWitt, Dimmit,

Duval, Edwards, El Paso, Frio, Galveston, Goliad, Gonzales, Hidalgo, Hudspeth, Jackson, Jeff Davis, Jim Hogg, Jim Wells, Kenedy, Kerr, Kimble, Kinney, Kleberg, La Salle, Lavaca, Live Oak, Mason, Maverick, McCulloch, McMullen, Medina, Menard, Midland, Pecos, Presidio, Real, Refugio, San Patricio, Schleicher, Shackelford, Sutton, Terrell, Throckmorton, Uvalde, Val Verde, Victoria, Webb, Wharton, Wilbarger, Wilson, Zapata, and Zavala Counties and for all state agencies affected by this disaster. All orders, directions, suspensions, and authorizations provided in the Proclamation of May 31, 2021, as amended and renewed in subsequent proclamations, are in full force and effect.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 16th day of April, 2024.

Greg Abbott, Governor

TRD-202401639





# 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 16. ECONOMIC REGULATION

### PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

#### CHAPTER 27. RULES FOR ADMINISTRATIVE SERVICES

The Public Utility Commission of Texas (commission) proposes rule amendments to §§27.21, 27.31, 27.65, 27.69, 27.81, 27.83, 27.85, 27.87, 27.89, 27.91, 27.93, 27.97, 27.99, 27.111, 27.113, 27.115, 27.117, 27.121, 27.123, 27.125, 27.127, 27.143, 27.145 and 27.161, of Chapter 27 Substantive Rules, Applicable to Administrative Services for consideration at the April 11, 2024 Open Meeting. The specific proposed amendments are detailed below.

##### Rule Review Stakeholder Recommendations

On August 4, 2023, commission staff filed a preliminary notice and request for comments in this project. No comments were received in response to the preliminary requests for comments. Based upon an internal review by commission staff, the commission proposes the following rule changes.

The Public Utility Commission of Texas (commission) proposes amendments to 16 Texas Administrative Code (TAC) §§27.21, relating to Commission Employee Training; 27.31, relating to Historically Underutilized Business Program; 27.65 relating to Definitions; 27.69 relating to Sovereign Immunity; 27.81 relating to Notice of Claim of Breach of Contract; 27.83 relating to Agency Counterclaim; 27.85 relating to Request for Voluntary Disclosure of Additional Information; 27.87 relating to Duty to Negotiate; 27.89 relating to Timetable; 27.91, relating to Conduct of Negotiations; 27.93 relating to Settlement Approval Procedures; 27.97, relating to Costs of Negotiation; 27.99, relating to Request for Contested Case Hearing; 27.111, relating to Mediation Timetable; 27.113, relating to Conduct of Mediation; 27.115, relating to Agreement to Mediate; 27.117, relating to Qualifications and Immunity of Mediator; 27.121, relating to Costs of Mediation; 27.123, relating to Settlement Approval Procedures; 27.125, relating to Initial Settlement Agreement; 27.127, relating to Final Settlement Agreement; 27.143, relating to Factors Supporting the Use of Assisted Negotiation Processes; 27.145, relating to Use of Assisted Negotiation Processes; 27.161, relating to Procedures for Resolving Vendor Protests.

##### Growth Impact Statement

The agency provides the following governmental growth impact statement for the proposed rules, as required by Texas Government Code §2001.0221. The agency has determined that for each year of the first five years that the proposed rules are in effect, the following statements will apply:

(1) the proposed rules will not create a government program and will not eliminate a government program;

(2) implementation of the proposed rules will not require the creation of new employee positions and will not require the elimination of existing employee positions;

(3) implementation of the proposed rules will not require an increase and will not require a decrease in future legislative appropriations to the agency;

(4) the proposed rules will not require an increase and will not require a decrease in fees paid to the agency;

(5) the proposed rules will not create a new regulation;

(6) the proposed rules will not expand, limit, or repeal an existing regulation;

(7) the proposed rules will not change the number of individuals subject to the rule's applicability; and

(8) the proposed rules will not affect this state's economy.

##### Fiscal Impact on Small and Micro-Businesses and Rural Communities

There is no adverse economic effect anticipated for small businesses, micro-businesses, or rural communities as a result of implementing the proposed rules. Accordingly, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002(c).

##### Takings Impact Analysis

The commission has determined that the proposed rules will not be a taking of private property as defined in chapter 2007 of the Texas Government Code.

##### Fiscal Impact on State and Local Government

Mr. Jay Stone, Program Administrator, Budget & Fiscal Oversight Division, has determined that for the first five-year period the proposed rules are in effect, there will be no fiscal implications for the state or for units of local government under Texas Government Code §2001.024(a)(4) as a result of enforcing or administering the sections.

##### Public Benefits

Mr. Stone has 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 section will be enhanced clarity on rules applicable to contracts and administrative services, and the amendment of rules that have become outdated. There will not be no probable economic cost to persons required to comply with the rules under Texas Government Code §2001.024(a)(5).

##### Local Employment Impact Statement

For each year of the first five years the proposed sections are in effect, there should be no effect on a local economy; therefore, no local employment impact statement is required under Texas Government Code §2001.022.

#### Costs to Regulated Persons

Texas Government Code §2001.0045(b) does not apply to this rulemaking because the commission is expressly excluded under §2001.0045(c)(7).

#### Public Hearing

The commission staff will conduct a public hearing on this rulemaking if requested in accordance with Texas Government Code §2001.029. The request for a public hearing must be received by Friday, May 17, 2024. If a request for public hearing is received, commission staff will file in this project a notice of hearing.

#### Public Comments

Interested persons may file comments electronically through the interchange on the commission's website. Comments must be filed by Friday, May 17, 2024. Comments should be organized in a manner consistent with the organization of the proposed rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rule. The commission will consider the costs and benefits in deciding whether to modify the proposed rules on adoption. All comments should refer to Project Number 55307.

Each set of comments should include a standalone executive summary as the last page of the filing. This executive summary must be clearly labeled with the submitting entity's name and should include a bulleted list covering each substantive recommendation made in the comments.

## SUBCHAPTER A. GENERAL PROVISIONS

### 16 TAC §27.21

#### Statutory Authority

The amendments are proposed under Public Utility Regulatory Act (PURA) §14.001, which grants the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by this title that is necessary and convenient to the exercise of that power and jurisdiction; §14.002 and §14.052, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure; § 14.0025, which requires the commission to develop and implement a policy to encourage the use of alternative dispute resolution.

Amended §27.21 is proposed under Texas Government Code Chapter 656, Subchapter C. §§656.041-656.104 which requires the commission to adopt rules relating to the eligibility of the commissioners and commission employees for training and education supported by the commission, and the obligations assumed by the commissioners and commission employees on receiving the training and education.

Amended §27.31 is proposed under Texas Government Code §2161.003, which requires the commission to adopt the Comptroller of Public Accounts rules for Historically Underutilized Businesses.

For rules relating to Negotiation and Mediation of Certain Contract Disputes under Chapter 27, Subchapter C

Texas Government Code Chapter 2260 and 2261, which relates to state agency contracting standards and oversight; Texas Government Code §2260.052(c) which requires each unit of state government with rulemaking authority to develop rules to govern the negotiation and mediation of a claim under this section which relates to the resolution of certain contract claims against the State of Texas; Civil Practices and Remedies Code Chapter 107 which governs resolutions granting permission to sue the State of Texas or a unit of state government; and Civil Practice and Remedies Code Chapter 154 which governs alternative dispute resolution procedures.

Amended §27.161 is proposed under Texas Government Code §2155.076, which requires the commission to develop and adopt protest procedures for vendors' protests concerning purchases that are consistent with the Texas Building and Procurement Commission rules on the same subject.

Cross Reference to Statute: Public Utility Regulatory Act §§14.001, 14.002, 14.0025, and 14.052; Texas Government Code §2155.076, §2260.052(c), and §2161.003; Texas Government Code Chapter 656, Subchapter C, §§656.041-656.104; Texas Government Code Chapters 2260 and 2261; and Civil Practice and Remedies Code Chapters 107 and 154.

#### §27.21. Commission Employee Training.

(a) "Training," as used in this section, means instruction, teaching, or other education received by a commission employee that is not normally received by all commission employees and that is designed to enhance the ability of the employee to perform the employee's job.

(1) The term includes a course of study at an institution of higher education, as defined by Texas Education Code §61.003(8), if the commission spends money to assist the employee to meet the expense of the course of study or pays salary to the employee to undertake the course of study as an assigned duty.

(2) The term does not include instruction, teaching, or other education that is required either by state or federal law or that is determined necessary by the commission and offered to all commission employees performing similar jobs.

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

(e) Requirements for eligibility and participation in training must [shall] be in accordance with this section and the commission's current employee handbook.

(f) Permission to participate in training, including commission-sponsored training, must [shall] not in any way affect an employee's at-will status or constitute a guarantee of continued employment, nor will [shall] it constitute a guarantee or indication of future employment in a prospective position.

(g) Permission to participate in any training may be denied or withdrawn at the discretion of the commission's executive director for any reason, including[, but not limited to,] a determination that participation may negatively impact the employee's job duties or performance.

(h) Permission to participate in any training may be contingent upon reasonable requirements set in writing in advance by the employee's supervisor. If pre-determined requirements are not met:

(1) Permission to participate or continue participating in the training may be denied or withdrawn; or [and/or]

(2) (No change.)

(i) For an authorized training program offered by an institution of higher education or a private or independent institution of higher education:

(1) the commission will [shall] only reimburse the tuition expenses for each [a] program course [course(s)] successfully completed by the employee at an accredited institution of higher education (including online courses or courses not credited towards a degree); and

(2) the commission's executive director must authorize the tuition reimbursement payment before the employee may be reimbursed.

(j) (No change.)

(k) The commission's executive director may require an employee who requests full or partial payment or reimbursement of tuition for training necessary to obtain a degree or certification to agree in writing before payment or reimbursement is made to pay the commission for any amounts paid if the employee voluntarily leaves employment with the commission within one year after the training is completed.

(1) Amounts paid by the commission will [shall] be prorated to credit any full calendar month of employment following completion of the training.

(2) (No change.)

(l) - (n) (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 April 11, 2024.

TRD-202401475  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Earliest possible date of adoption: May 26, 2024  
For further information, please call: (512) 936-7322



## SUBCHAPTER B. HISTORICALLY UNDERUTILIZED BUSINESSES

### 16 TAC §27.31

Statutory Authority

The amendments are proposed under Public Utility Regulatory Act (PURA) §14.001, which grants the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by this title that is necessary and convenient to the exercise of that power and jurisdiction; §14.002 and §14.052, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure; § 14.0025, which requires the commission to develop and implement a policy to encourage the use of alternative dispute resolution.

Cross Reference to Statute: Public Utility Regulatory Act §§14.001, 14.002, 14.0025, and 14.052; Texas Government Code §2155.076, §2260.052(c), and §2161.003; Texas Government Code Chapter 656, Subchapter C, §§656.041-656.104;

Texas Government Code Chapters 2260 and 2261; and Civil Practice and Remedies Code Chapters 107 and 154.

### §27.31. Historically Underutilized Business Program.

The commission adopts by reference the rules of the Comptroller of Public Accounts in 34 Texas Administrative Code (TAC) §§20.282, 20.284, 20.285, 20.296, and 20.297 [20.11, 20.13, 20.14, 20.26 and 20.27], relating to the Historically Underutilized Business Program.

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

Filed with the Office of the Secretary of State on April 11, 2024.

TRD-202401476  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Earliest possible date of adoption: May 26, 2024  
For further information, please call: (512) 936-7322



## SUBCHAPTER C. NEGOTIATION AND MEDIATION OF CERTAIN CONTRACT DISPUTES

### DIVISION 1. GENERAL

#### 16 TAC §27.65, §27.69

Statutory Authority

The amendments are proposed under Public Utility Regulatory Act (PURA) §14.001, which grants the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by this title that is necessary and convenient to the exercise of that power and jurisdiction; §14.002 and §14.052, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure; § 14.0025, which requires the commission to develop and implement a policy to encourage the use of alternative dispute resolution.

Cross Reference to Statute: Public Utility Regulatory Act §§14.001, 14.002, 14.0025, and 14.052; Texas Government Code §2155.076, §2260.052(c), and §2161.003; Texas Government Code Chapter 656, Subchapter C, §§656.041-656.104; Texas Government Code Chapters 2260 and 2261; and Civil Practice and Remedies Code Chapters 107 and 154.

### §27.65. Definitions.

The following words and terms, when used in this subchapter, [shall] have the following meaning, unless the context clearly indicates otherwise:

(1) Chief administrative officer--The executive director of the commission or his or her [his/her] designee.

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

(5) Counterclaim--A demand by the commission based upon the contractor's claim.

(6) Day--Calendar days, not working days, unless otherwise specified by this chapter [A calendar day. If an act is required

to occur on a day falling on a Saturday, Sunday, or holiday, the first working day which is not one of these days should be counted as the required day for purpose of this subchapter].

(7) Event--An act or omission or a series of acts or omissions giving rise to a claim. The following list contains illustrative examples of events, subject to the specific terms of the contract:

(A) Examples of events in the context of a contract for goods or services include:

(i) - (vi) (No change.)

(B) - (C) (No change.)

(8) Mediation--A voluntary form of dispute resolution in which an impartial person facilitates communication between parties to promote negotiation and settlement of disputed issues.

(9) Working day--A day on which the commission is open for the conduct of business.

(10) [(8)] Goods--Supplies, materials or equipment.

(11) [(9)] Parties--The contractor and the commission that have entered into a contract in connection with which a claim of breach of contract has been filed under this subchapter.

(12) [(10)] Project--As defined in Texas Government Code §2166.001, a building construction project that is financed wholly or partly by a specific appropriation, bond issue or federal money, including the construction of:

(A) a building, structure, or appurtenant facility or utility, including the acquisition and installation of original equipment and original furnishing; and

(B) an addition to, or alteration, modification, rehabilitation or repair of an existing building, structure, or appurtenant facility or utility.

(13) [(11)] Services--The furnishing of skilled or unskilled labor or consulting or professional work, or a combination thereof, excluding the labor of an employee of the commission.

(14) [(12)] Unit of state government or unit--The state or an agency, department, commission (including the Public Utility Commission), bureau, board, office, council, court, or other state entity that is in any branch of state government that is created by the Texas Constitution, or statute of this state, including a university system or institution of higher education. The term does not include:

(A) a county;

(B) municipality;

(C) court of a county or municipality;

(D) special purpose district; or

(E) other political subdivision of the state.

#### §27.69. *Sovereign Immunity.*

This subchapter does not waive the commission's sovereign or governmental immunity to suit or liability.

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 April 11, 2024.

TRD-202401477

Adriana Gonzales

Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: May 26, 2024

For further information, please call: (512) 936-7322



## DIVISION 2. NEGOTIATION OF CONTRACT DISPUTES

**16 TAC §§27.81, 27.83, 27.85, 27.87, 27.89, 27.91, 27.93, 27.97, 27.99**

Statutory Authority

The amendments are proposed under Public Utility Regulatory Act (PURA) §14.001, which grants the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by this title that is necessary and convenient to the exercise of that power and jurisdiction; §14.002 and §14.052, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure; § 14.0025, which requires the commission to develop and implement a policy to encourage the use of alternative dispute resolution.

Cross Reference to Statute: Public Utility Regulatory Act §§14.001, 14.002, 14.0025, and 14.052; Texas Government Code §2155.076, §2260.052(c), and §2161.003; Texas Government Code Chapter 656, Subchapter C, §§656.041-656.104; Texas Government Code Chapters 2260 and 2261; and Civil Practice and Remedies Code Chapters 107 and 154.

#### §27.81. *Notice of Claim of Breach of Contract.*

(a) A contractor asserting a claim of breach of contract under the Texas Government Code, Chapter 2260, must [shaH] file notice of the claim as provided by this section.

(b) The notice of claim must [shaH]:

(1) be in writing and signed by the contractor or the contractor's authorized representative;

(2) be delivered by hand, certified mail return receipt requested, or other verifiable delivery service, to the officer of the commission designated in the contract to receive a notice of claim of breach of contract under the Texas Government Code, Chapter 2260; if no person is designated in the contract, the notice must [shaH] be delivered to the commission's chief administrative officer, and

(3) (No change.)

(c) (No change.)

(d) The notice of claim must [shaH] be delivered no later than 180 days after the date of the event that the contractor asserts as the basis of the claim[; provided, however, that a contractor shall deliver notice of a claim that was pending before the commission on August 30, 1999, to the commission no later than February 26, 2000].

#### §27.83. *Agency Counterclaim.*

(a) The commission asserting a counterclaim under the Texas Government Code, Chapter 2260, will [shaH] file notice of the counterclaim as provided by this section.

(b) The notice of counterclaim will [shaH]:

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

(c) (No change.)

(d) The notice of counterclaim will shall be delivered to the contractor no later than 90 days after the commission's receipt of the contractor's notice of claim.

(e) (No change.)

§27.85. *Request for Voluntary Disclosure of Additional Information.*

(a) Upon the filing of a claim or counterclaim, a party parties may request to review and copy information in the possession or custody or subject to the control of the other party that pertains to the contract claimed to have been breached, including~~;~~ without limitation:

(1) (No change.)

(2) correspondence, including communications ~~;~~ without limitation, correspondence between the commission and outside consultants ~~the other party~~ it utilized in preparing its bid solicitation or any part thereof or in administering the contract, and correspondence between the contractor and its subcontractors, materialmen, and vendors;

(3) (No change.)

(4) any relevant internal memoranda of the other party; and ~~[the parties' internal memoranda;]~~

(5) documents created by the ~~other party~~ contractor in preparing its offer to the commission and documents created by the commission in analyzing the offers it received in response to a solicitation.

(b) Subsection (a) of this section applies to all information in the parties' possession regardless of the manner in which it is recorded, including~~;~~ without limitation, paper and electronic media.

(c) The contractor and the commission may seek additional information directly from third parties, including~~;~~ without limitation, the commission's third party consultants and the contractor's subcontractors.

(d) Nothing in this section requires any party to disclose the requested information or any matter that is privileged under Texas or federal law.

(e) Material submitted under ~~[pursuant to]~~ this subsection and claimed to be confidential by the contractor must shall be handled in accordance with ~~[pursuant to]~~ the requirements of the Public Information Act, Texas Government Code, Chapter 552.

§27.87. *Duty to Negotiate.*

The parties must shall negotiate in accordance with the timetable established by ~~[set forth in]~~ §27.89 of this title (relating to Timetable) to attempt to resolve all claims and counterclaims. No party is obligated to settle with the other party as a result of the negotiation.

§27.89. *Timetable.*

(a) Following receipt of a contractor's notice of claim, the chief administrative officer of the commission or other designated representative will shall review each claim of the contractor and each counterclaim of the commission ~~[the contractor's claim(s) and the commission's counterclaim(s);]~~ if any, and initiate negotiations with the contractor to attempt to resolve each claim and counterclaim ~~[the claim(s) and counterclaim(s)]~~.

(b) Subject to subsection (c) of this section, the parties must shall begin negotiations within a reasonable period of time, not to exceed 60 days following the later of:

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

(c) The commission may delay negotiations until ~~[after]~~ the 180th day after the date of the event giving rise to the claim of breach of contract by:

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

(d) The parties may conduct negotiations according to an agreed schedule as long as they begin negotiations no later than the deadlines prescribed by ~~[set forth in]~~ subsections (b) or (c) of this section, whichever is applicable.

(e) Subject to subsection (f) of this section, the parties must shall complete the negotiations that are required by this chapter as a prerequisite to a contractor's request for contested case hearing no later than 270 days from the date ~~[after]~~ the commission received ~~[receives]~~ the contractor's notice of claim.

(f) The parties may agree in writing to extend the time for negotiations on or before the 270th day after the commission receives the contractor's notice of claim. The agreement must shall be signed by representatives of the parties with authority to bind each respective party and must shall provide for the extension of the statutory negotiation period until a date certain. The parties may enter into a series of written extension agreements that comply with the requirements of this section.

(g) The contractor may request a contested case hearing before the State Office of Administrative Hearings (SOAH) in accordance with ~~[pursuant to]~~ §27.99 of this title (relating to Request for Contested Case Hearing) 270 days from the date ~~[after the 270th day after]~~ the commission received ~~[receives]~~ the contractor's notice of claim, or the expiration of any extension agreed to under subsection (f) of this section.

(h) The parties may agree to mediate the dispute at any time before 270 days from the date ~~[the 270th day after]~~ the commission received ~~[receives]~~ the contractor's notice of claim or before the expiration of any extension agreed to by the parties in accordance with ~~[pursuant to]~~ subsection (f) of this section. The mediation must shall be governed by Division 3 of this subchapter (relating to Mediation of Contract Disputes).

(i) Nothing in this section prohibits ~~[is intended to prevent]~~ the parties from agreeing to commence negotiations earlier than the deadlines established in subsections (b) and (c) of this section, or from continuing or resuming negotiations after the contractor requests a contested case hearing before SOAH.

§27.91. *Conduct of Negotiation.*

(a) Negotiation is a consensual bargaining process in which the parties attempt to resolve a claim and counterclaim. A negotiation under this subchapter may be conducted by any method, technique, or procedure authorized under the contract or agreed upon by the parties, including~~;~~ without limitation, negotiation in person, by telephone, by digital or physical mail correspondence, by video conference, or by any other method that permits the parties to identify their respective positions, discuss their respective differences, confer with their respective advisers, exchange offers of settlement, and settle.

(b) The parties may conduct negotiations with the assistance of one or more neutral third parties. If the parties choose to mediate their dispute, the mediation must shall be conducted in accordance with Division 3 of this subchapter (relating to Mediation of Contract Disputes). Parties may choose an assisted negotiation process other than mediation, including~~;~~ without limitation, processes such as those

described in Division 4 of this subchapter (relating to Assisted Negotiation Processes).

(c) To facilitate the meaningful evaluation and negotiation of each claim and, as applicable, each counterclaim ~~(the claim(s) and any counterclaim(s))~~, the parties may exchange relevant documents that support their respective claims, defenses, counterclaims or positions.

(d) Material submitted under ~~[pursuant to]~~ this subsection and claimed to be confidential by the contractor must ~~[shall]~~ be handled in accordance with ~~[pursuant to]~~ the requirements of the Public Information Act, Texas Government Code, Chapter 552.

*§27.93. Settlement Approval Procedures.*

The parties' settlement approval procedures must ~~[shall]~~ be disclosed prior to, or at the beginning of, negotiations. To the extent possible, the parties must ~~[shall]~~ select negotiators who are knowledgeable about the subject matter of the dispute, who are in a position to reach agreement, and who can credibly recommend approval of an agreement.

*§27.97. Costs of Negotiation.*

Unless the parties agree otherwise, each party is ~~[shall be]~~ responsible for its own costs incurred in connection with a negotiation, including ~~;~~ ~~without limitation,~~ the costs of attorney's fees, consultant's fees and expert's fees.

*§27.99. Request for Contested Case Hearing.*

(a) A contractor may file a request with the commission for a contested case hearing before the State Office of Administrative Hearings (SOAH) if a claim for breach of contract is not resolved in its entirety through negotiation, mediation or other assisted negotiation process in accordance with this subchapter 270 days from the date: ~~[If a claim for breach of contract is not resolved in its entirety through negotiation, mediation or other assisted negotiation process in accordance with this subchapter on or before the 270th day after the commission receives the notice of claim, or after the expiration of any extension agreed to by the parties pursuant to §27.89(f) of this title (relating to Timetable), the contractor may file a request with the commission for a contested case hearing before the State Office of Administrative Hearings (SOAH).]~~

(1) the commission receives the notice of the claim; or

(2) the expiration of any extension agreed to by the parties in accordance with §27.89(f) of this title (relating to Timetable).

(b) A request for a contested case hearing must ~~[shall]~~ state the legal and factual basis for the claim, and must ~~[shall]~~ be delivered to the chief administrative officer of the commission or other officer designated in the contract to receive notice within a reasonable time after the 270th day or the expiration of any written extension agreed to in accordance with ~~[pursuant to]~~ §27.89(f) of this title.

(c) The commission must ~~[shall]~~ forward the contractor's request for contested case hearing to SOAH within a reasonable period of time, not to exceed thirty days, after receipt of the request.

(d) The parties may agree to submit the case to SOAH 270 days from the date ~~[before the 270th day after]~~ the notice of claim is received by the commission if they have achieved a partial resolution of the claim or if an impasse has been reached in the negotiations and proceeding to a contested case hearing would serve the interests of justice.

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 April 11, 2024.

TRD-202401478

Adriana Gonzales

Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: May 26, 2024

For further information, please call: (512) 936-7322



### DIVISION 3. MEDIATION OF CONTRACT DISPUTES

**16 TAC §§27.111, 27.113, 27.115, 27.117, 27.121, 27.123, 27.125, 27.127**

#### Statutory Authority

The amendments are proposed under Public Utility Regulatory Act (PURA) §14.001, which grants the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by this title that is necessary and convenient to the exercise of that power and jurisdiction; §14.002 and §14.052, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure; § 14.0025, which requires the commission to develop and implement a policy to encourage the use of alternative dispute resolution.

Cross Reference to Statute: Public Utility Regulatory Act §§14.001, 14.002, 14.0025, and 14.052; Texas Government Code §2155.076, §2260.052(c), and §2161.003; Texas Government Code Chapter 656, Subchapter C, §§656.041-656.104; Texas Government Code Chapters 2260 and 2261; and Civil Practice and Remedies Code Chapters 107 and 154.

*§27.111. Mediation Timetable.*

(a) The contractor and commission may agree to mediate the dispute at any time 270 days from the date ~~[before the 270th day after]~~ the commission receives a notice of claim of breach of contract, or before the expiration of any extension agreed to by the parties in writing.

(b) A contractor and the commission may mediate the dispute even after the case has been referred to the State Office of Administrative Hearings (SOAH) for a contested case. SOAH may also refer a contested case for mediation in accordance with ~~[pursuant to]~~ its own rules and guidelines, regardless of whether ~~[or not]~~ the parties have previously attempted mediation.

*§27.113. Conduct of Mediation.*

(a) Mediation is a consensual process in which an impartial third party, the mediator, facilitates communication between the parties to promote reconciliation, settlement, or understanding among them. A mediator may not impose their ~~[his/her]~~ own judgment on the issues for that of the parties. The mediator must be acceptable to both parties.

(b) The mediation is subject to the provisions of the Governmental Dispute Resolution Act, Texas Government Code, Chapter 2009. ~~[For purposes of this subchapter, "mediation" is assigned the meaning set forth in the Civil Practice and Remedies Code, §154.023.]~~

(c) To facilitate a meaningful opportunity for settlement, the parties must ~~[shall]~~, to the extent possible, select representatives who are knowledgeable about the dispute, who are in a position to reach agreement, or who can credibly recommend approval of an agreement.

*§27.115. Agreement to Mediate.*

(a) (No change.)

(b) Any agreement to mediate must [should] include consideration of the following factors:

(1) The source of the mediator. Potential sources of mediators include governmental officers or employees who are qualified as mediators under Civil Practice and Remedies Code, §154.052, private mediators, the State Office of Administrative Hearings (SOAH), the Center for Public Policy Dispute Resolution at The University of Texas School of Law, an alternative dispute resolution system created under Civil Practice and Remedies Code, Chapter 152, or another state or federal agency or through a pooling agreement with several state agencies. Before naming a mediator source in a contract, the parties must [will] contact the mediator source to be sure that it is willing to serve in that capacity. In selecting a mediator, the parties must [will] use the qualifications set forth in subsection §27.117 of this title (relating to Qualifications and Immunity of the Mediator).

(2) The time period for the mediation. The parties must [will] allow enough time in which to make arrangements with the mediator and attending parties to schedule the mediation, to attend and participate in the mediation, and to complete any settlement approval procedures necessary to achieve final settlement. While this time frame can vary according to the needs and schedules of the mediator and parties, it is important that the parties allow adequate time for the process.

(3) The location of the mediation, including whether the mediation will be held in-person or through a digital medium.

(4) Allocation of costs of the mediator.

(5) The identification of each representative [representatives] who will attend the mediation on behalf of the parties, if possible, by name or position within the commission or contracting entity.

(6) (No change.)

§27.117. *Qualifications and Immunity of the Mediator.*

(a) The mediator must [shall] possess the qualifications required under Civil Practice and Remedies Code, §154.052, be subject to the standards and duties prescribed by Civil Practice and Remedies Code, §154.053, and have the qualified immunity prescribed by Civil Practice and Remedies Code, §154.055, if applicable.

(b) The parties must [will] decide whether, and to what extent, knowledge of the subject matter and experience in mediation would be advisable for the mediator.

(c) The parties must [will] obtain from the prospective mediator the ethical standards that will govern the mediation.

§27.121. *Costs of Mediation.*

Unless the contractor and the commission agree otherwise, each party is [shall be] responsible for its own costs incurred in connection with the mediation, including costs of document reproduction for documents requested by such party, attorney's fees, and consultant or expert fees. The costs of the mediation process itself must [shall] be divided equally between the parties.

§27.123. *Settlement Approval Procedures.*

The parties prior to the mediation must [shall] disclose the parties' settlement approval procedures. To the extent possible, the parties must [shall] select representatives who are knowledgeable about the subject matter of the dispute, who are in a position to reach agreement, and who can credibly recommend approval of an agreement.

§27.125. *Initial Settlement Agreement.*

Any settlement agreement reached during the mediation must [shall] be signed by the representatives of the contractor and the commission.

The agreement [; and] must describe any procedures required to be followed by the parties in connection with final approval of the agreement.

§27.127. *Final Settlement Agreement.*

(a) A final settlement agreement reached during[;] or as a result of mediation[;] that resolves an entire claim or any designated and severable portion of a claim must be: [shall]

(1) [be] in writing; and

(2) signed by representatives of the contractor and the commission who have authority to bind each respective party.

(b) If the settlement agreement does not resolve all issues raised by each [the] claim and, as applicable, each counterclaim, the agreement must [shall] identify each issue that is [the issues that are] not resolved.

(c) (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 April 11, 2024.

TRD-202401479

Adriana Gonzales

Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: May 26, 2024

For further information, please call: (512) 936-7322



## DIVISION 4. ASSISTED NEGOTIATION PROCESSES

### 16 TAC §27.143, §27.145

#### Statutory Authority

The amendments are proposed under Public Utility Regulatory Act (PURA) §14.001, which grants the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by this title that is necessary and convenient to the exercise of that power and jurisdiction; §14.002 and §14.052, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure; § 14.0025, which requires the commission to develop and implement a policy to encourage the use of alternative dispute resolution.

Cross Reference to Statute: Public Utility Regulatory Act §§14.001, 14.002, 14.0025, and 14.052; Texas Government Code §2155.076, §2260.052(c), and §2161.003; Texas Government Code Chapter 656, Subchapter C, §§656.041-656.104; Texas Government Code Chapters 2260 and 2261; and Civil Practice and Remedies Code Chapters 107 and 154.

§27.143. *Factors Supporting the Use of Assisted Negotiation Processes.*

The following factors may help parties decide whether one or more assisted negotiation processes could help resolve their dispute:

(1) (No change.)

(2) The expense of proceeding to contested case hearing at the State Office of Administrative Hearings [(SOAH)] is substantial and may [might] outweigh any potential recovery.

- (3) The parties seek [~~want~~] an expedited resolution of the dispute.
- (4) The ultimate outcome of the dispute is uncertain.
- (5) - (7) (No change.)
- (8) There is an existing [~~on-going~~] relationship [~~that exists~~] between the parties.
- (9) - (13) (No change.)

§27.145. *Use of Assisted Negotiation Processes.*

Any of the following methods, or a combination of these methods, or any assisted negotiation process agreed to by the parties, may be used in seeking resolution of disputes or other controversy arising under Texas Government Code, Chapter 2260. If the parties agree to use an assisted negotiation procedure, they must [~~should~~] agree in writing to a detailed description of the process prior to engaging in the process.

- (1) (No change.)
- (2) Early evaluation by a neutral third-party [~~neutral~~].
  - (A) - (C) (No change.)
- (3) Neutral fact-finding by an expert.
  - (A) (No change.)

(B) The parties may agree in writing that the fact-finding will be binding on them in later proceedings [~~and, if the matter proceeds to contested case hearing~~, entered into as a stipulation in the dispute [~~if the matter proceeds to contested case hearing~~], or that it will be advisory in nature, to be used only in further settlement discussions between representatives of the parties. This process may be particularly helpful when:

- (i) - (iii) (No change.)
- (4) Mini-trial.
  - (A) - (B) (No change.)

(C) At the hearing, representatives of the parties present a summary of the anticipated evidence and any legal issues that must be decided before the case can be resolved. The third-party neutral presides over the presentation and may question witnesses and counsel, as well as comment on the arguments and evidence. Each party may agree to put on abbreviated direct and cross-examination testimony. [~~The hearing generally takes no longer than one - two days.~~]

- (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 April 11, 2024.

TRD-202401480

Adriana Gonzales

Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: May 26, 2024

For further information, please call: (512) 936-7322



## SUBCHAPTER D. VENDOR PROTESTS

### 16 TAC §27.161

Statutory Authority

The amendments are proposed under Public Utility Regulatory Act (PURA) §14.001, which grants the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by this title that is necessary and convenient to the exercise of that power and jurisdiction; §14.002 and §14.052, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure; § 14.0025, which requires the commission to develop and implement a policy to encourage the use of alternative dispute resolution.

Cross Reference to Statute: Public Utility Regulatory Act §§14.001, 14.002, 14.0025, and 14.052; Texas Government Code §2155.076, §2260.052(c), and §2161.003; Texas Government Code Chapter 656, Subchapter C, §§656.041-656.104; Texas Government Code Chapters 2260 and 2261; and Civil Practice and Remedies Code Chapters 107 and 154.

§27.161. *Procedures for Resolving Vendor Protests.*

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

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

(3) Interested parties - All vendors who have submitted bids or proposals for the provision of goods or services in accordance with [~~pursuant to~~] a solicitation for a contract with the commission.

(b) Protest procedures. Any actual or prospective bidder, offeror [~~offerer~~], proposer or contractor who considers himself to have been aggrieved in connection with the commission's solicitation, evaluation, or award of a contract may formally protest to the purchasing officer. Such protests must be made in writing and received by the purchasing officer within ten working days after the protesting party knows, or should have known, of the occurrence of the action that is protested. Protests must conform to the requirements of this subsection and subsection (d) of this section, and must [~~shall~~] be resolved through use of the procedures that are described in subsections (e) - (j) of this section. The protesting party must [~~shall~~] mail or deliver copies of the protest to the purchasing officer and other interested parties.

(c) Stay of contract award. In the event of a timely protest under this section, the commission will [~~shall~~] not proceed further with the solicitation or award of the contract unless the executive director, after consultation with the purchasing officer and the general counsel, makes a written determination that the contract must be awarded without delay, to protect the best interests of the commission.

(d) Protest requirements. A protest must be sworn and contain:

- (1) (No change.)

(2) a specific description of each action by the commission that the protesting party alleges to be a violation of the statutory or regulatory provision that the protesting party has identified in accordance with [~~pursuant to~~] paragraph (1) of this subsection;

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

(e) Purchasing officer's role and responsibilities. The purchasing officer will [~~shall~~] conduct a review of issues raised by the protesting parties and will [~~shall~~] have the following role and responsibilities in resolving the protest issues among the parties:

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

(4) If the purchasing officer determines that no violation of statutory or regulatory provisions has occurred, then the purchasing officer must [~~shall~~] inform the protesting party, the executive director,



and other interested parties by letter that states the reasons for the determination.

(5) If the purchasing officer determines that a violation of any statutory or regulatory provisions may have occurred in a situation in which a contract has not been awarded, then the purchasing officer must [shall] inform the protesting party, the executive director, and other interested parties of that determination by letter that states the reasons for the determination and the appropriate remedy.

(6) If the purchasing officer determines that a violation of any statutory or regulatory provisions may have occurred in a situation in which a contract has been awarded, then the purchasing officer must [shall] inform the protesting party, the executive director, and other interested parties of that determination by letter that states the reasons for the determination. This letter may include a declaration that the contract is void.

(f) Appeal from purchasing officer determination. The protesting party may appeal a determination of a protest by the purchasing officer to the executive director of the commission. An appeal of the purchasing officer's determination must be in writing and received in the executive director's office no later than ten working days from [after] the date [on which] the purchasing officer issued [has sent] written notice of his determination. The scope of the appeal is [shall be] limited to a review of the purchasing officer's determination. The protesting party must [shall] mail or deliver to the purchasing officer and all other interested parties a copy of the appeal, which must contain a certified statement that such copies have been provided.

(g) Executive director review or reference of appeal. The executive director will [shall] confer with general counsel in the review of the matter appealed. The executive director may consider any documents that the commission staff or interested parties may have submitted. At the discretion of the executive director, the matter may be referred to the commissioners for their consideration in a regularly scheduled open meeting or the executive director may issue a written decision on the protest.

(h) Appeals referred to commission. The following requirements [shall] apply to a protest that the executive director has referred to the commissioners:

(1) The executive director will [shall] deliver copies of the appeal and any responses by interested parties to the commissioners.

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

(4) The commissioners' determination of the appeal will [shall] be made on the record and reflected in the minutes of the open meeting, and will [shall] be final.

(i) Written determination of appeal. A determination issued either by the commissioners in open meeting, or in writing by the executive director, will [shall] be the final administrative action of the commission.

(j) Protest or appeal [Protest/appeal] not timely filed. A protest or appeal that is not filed timely will [shall] not be considered unless good cause for delay is shown or the executive director determines that an appeal raises issues that are significant to commission procurement practices or procedures in general.

(k) Document retention. The commission will [shall] maintain all documentation on the purchasing process that is the subject of a protest or appeal in accordance with the commission's retention schedule.

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 April 11, 2024.

TRD-202401481

Adriana Gonzales

Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: May 26, 2024

For further information, please call: (512) 936-7322



## PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

### CHAPTER 61. COMBATIVE SPORTS

#### 16 TAC §61.10, §61.110

The Texas Department of Licensing and Regulation (Department) proposes amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 61, §61.10 and §61.110, regarding the Combative Sports program. These proposed changes are referred to as "proposed rules."

#### EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 61, implement Texas Occupations Code, Chapter 2052, Combative Sports.

Slap fighting is a novel combative sports discipline that is growing in popularity in the United States and internationally. The Department has determined that slap fighting meets the statutory definitions of a "combative sport" and "martial art" set out in Texas Occupations Code, Chapter 2052.

The proposed rules recognize slap fighting as a martial arts discipline. This formal recognition allows the Department to extend the licensure and bonding requirements in Texas Occupations Code, Chapter 2052, to promoters and contestants of slap fighting events.

The proposed rules add a definition in 16 TAC, Chapter 61, §61.10, to define the discipline of slap fighting. Additionally, the proposed rules add provisions to 16 TAC, Chapter 61, §61.110, to recognize that slap fighting is subject to the Department's regulatory authority. Lastly, the proposed rules allow contestants in slap fighting events to participate without gloves.

#### SECTION-BY-SECTION SUMMARY

The proposed rules add new §61.10(16) to add the definition of "slap fighting" and renumber the remaining definitions.

The proposed rules add new §61.110(d) to recognize slap fighting as a martial arts discipline, and to allow slap fighting contestants to compete without gloves.

#### FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rules are in effect, there will be an impact to state costs and revenues associated with enforcing or administering the proposed rules, but there are no foreseeable implications relating to costs or revenues of local governments.

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, enforcing or administering the proposed rules will impose costs to the State of \$44,400 per fiscal year. These costs are calculated by multiplying the anticipated number of events per year by the cost of the anticipated number of contactors needed to adequately staff each event.

Mr. Couvillon has also determined that for each year of the first five fiscal years the proposed rules are in effect, there will be an increase of revenue to the State associated with enforcing or administering the proposed rules. The increase in revenue will be approximately \$160,000 per fiscal year, attributable to the gross receipts tax paid by the promoter for each event held, with 20 events per fiscal year anticipated. Revenue will also be generated through the license fees received from new contestants. The additional revenue from licenses issued in the first fiscal year would be \$6,100, with revenues of \$5,700 in each subsequent fiscal year.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

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

#### PUBLIC BENEFITS

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, the public will benefit as the proposed rules will ensure the integrity and safety of slap fighting events. Gross receipts taxes generated from these events will also add to the state's revenue.

#### PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

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

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

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

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

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

#### GOVERNMENT GROWTH IMPACT STATEMENT

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

1. The proposed rules do not create or eliminate a government program.
2. Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions.
3. Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency.
4. The proposed rules do not require an increase or decrease in fees paid to the agency.
5. The proposed rules do not create a new regulation.
6. The proposed rules expand, limit, or repeal an existing regulation. The proposed rules expand an existing regulation by including slap fighting as a recognized combative sport.
7. The proposed rules increase the number of individuals subject to the rules' applicability. The proposed rules increase the number of individuals subject to the rule's applicability by recognizing slap fighting as a combative sport and thus making the rules applicable to those who participate in slap fighting.
8. The proposed rules do not positively or adversely affect this state's economy.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENTS

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

#### STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code, Chapters 51 and 2052, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 51 and 2052. No other statutes, articles, or codes are affected by the proposed rules.

#### §61.10. Definitions.

The following words and terms have the following meanings:

- (1) - (15) (No change.)
- (16) Slap Fighting--A combative sport in which contestants take turns striking each other in the face with an open hand.
- (17) [(46)] Technical Zone--An alcohol free area located between the ring and a department-approved barrier with access re-

stricted to designated medical personnel and equipment; working officials including, managers, ring officials, contestants, seconds, the promoter, promoter representatives and assignees, round card staff, department staff, assigned contract inspectors, authorized members of the media, authorized members of the event's sanctioning bodies, and security personnel; and regulatory oversight authorities.

(18) [(17)] Timekeeper--A person who is the official timer of the length of rounds/heats and the intervals between rounds/heats and counts when a contestant is down.

§61.110. *Martial Arts.*

(a) All full-contact martial arts are forms of a combative sport.

(b) All rules stated herein apply to martial art competitions with the exception of §§61.106, 61.107, 61.108, and 61.112, unless this section conflicts with another rule stated herein. If a conflict occurs, this section prevails.

(c) If a contest or exhibition of a martial art is not conducted pursuant to §61.111 or §61.112 of these rules, it must be conducted pursuant to the official rules for the particular art, which must be filed with and approved by the Department. The sponsoring organization or promoter must file with and obtain permission of the Executive Director prior to holding the contest.

(d) Slap fighting is a martial arts discipline recognized by the Department. Rules for a slap fighting contest proposed under subsection (c) may allow contestants to compete without gloves.

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 April 15, 2024.

TRD-202401573

Doug Jennings

General Counsel

Texas Department of Licensing and Regulation

Earliest possible date of adoption: May 26, 2024

For further information, please call: (512) 463-7750



## CHAPTER 75. AIR CONDITIONING AND REFRIGERATION

### 16 TAC §75.110

The Texas Department of Licensing and Regulation (Department) proposes amendments to an existing rule at 16 Texas Administrative Code (TAC), Chapter 75, §75.110, regarding the Air Conditioning and Refrigeration Contractors Program. These proposed changes are referred to as the "proposed rule."

#### EXPLANATION OF AND JUSTIFICATION FOR THE RULE

The rules under 16 TAC, Chapter 75, implement Texas Occupations Code, Chapter 1302, Air Conditioning and Refrigeration Contractors.

The Air Conditioning and Refrigeration Contractor License Law, Texas Occupations Code, Chapter 1302, §1302.101(a), requires the Commission to adopt rules for the practice of air conditioning and refrigeration contracting that are at least as strict as the standards of the Uniform Mechanical Code and the International Mechanical Code. The codes define the standard of practice for air conditioning and refrigeration contracting and are used by Department staff to evaluate the mechanical integrity and proper

installation and service of air conditioning and refrigeration systems. Texas has also adopted the International Residential Code and the International Fuel Gas Code in accordance with Texas Occupations Code, Chapter 1301, Plumbers, §1301.255. The proposed rule amendments are necessary to align the program's regulations with these currently recognized national standards and to provide clarity and consistency for the Department's licensees.

The proposed rule updates the applicable code editions from 2018 to 2021 for the International Residential Code, International Mechanical Code, International Fuel Gas Code, and Uniform Mechanical Code.

#### Advisory Board Recommendations

The proposed rule was presented to and discussed by the Air Conditioning and Refrigeration Contractors Advisory Board at its meeting on March 27, 2024. The Advisory Board did not make any changes to the proposed rule. The Advisory Board voted and recommended that the proposed rule be published in the *Texas Register* for public comment.

#### SECTION-BY-SECTION SUMMARY

The proposed rule amends §75.110, Applicable Codes, subsection (a), to adopt the 2021 editions of the International Residential Code, International Mechanical Code, International Fuel Gas Code, and Uniform Mechanical Code.

The proposed rule amends §75.110, Applicable Codes, subsection (b), to state that the currently adopted code editions will remain in effect through August 31, 2024. Proposed subsection (b) states that air conditioning and refrigeration work permitted or started before September 1, 2024, may be performed in accordance with the 2018 edition of the applicable codes.

#### FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Couvillon, Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rule is in effect, there are no estimated additional costs or reductions in costs, and no estimated increase or loss in revenue, to state or local governments as a result of enforcing or administering the proposed rule.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

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

#### PUBLIC BENEFITS

Mr. Couvillon also has determined that for each year of the first five-year period the proposed rule is in effect, the public will benefit from enhanced safety, product reliability, equipment compatibility, and energy efficiencies in enhancing the installation practices of air conditioning and refrigeration contractors and their technicians, while taking advantage of technical advances.

#### PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSED RULE

Mr. Couvillon has determined that for each year of the first five-year period the proposed rule is in effect, there may be negligible economic costs to persons who are required to comply with it. Local governments adopt changes and updates to the codes on a timeline that is best for their specific needs and resources. Therefore, the State's adoption of the new codes, with

which most contractors are already required to comply, should not have an impact. For work in unincorporated areas that are subject to the State-adopted codes, the State adopts them one code-cycle (three years) after the codes' issuance to allow the industry, licensees, and the general public to become familiar with and prepare for any and all changes. Any additional minor cost increases for new technology requirements are expected to be offset by benefits from increased safety, product reliability, energy efficiency, and equipment compatibility going forward.

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

The Air Conditioning and Refrigeration Contractors Program regulates individuals who perform these services, some of whom could be categorized as small or micro-businesses. The Department anticipates that the adoption of the 2021 codes will not have any adverse economic effects on any small or micro-businesses because the majority of the new code requirements are consistent with the 2018 codes. Any costs will be minimal and will not have an overall effect on any business, regardless of its size.

The proposed rule has no anticipated adverse economic effect on rural communities because the rule adopting the revised codes will not decrease the availability of air conditioning and refrigeration services or increase the cost of those services. Additionally, for work in unincorporated areas that are subject to the State-adopted codes, the State adopts the updates one code cycle (three years) after the codes' issuance to allow the industry, licensees, and the general public to become familiar with any and all changes.

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

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

#### GOVERNMENT GROWTH IMPACT STATEMENT

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

1. The proposed rule does not create or eliminate a government program.
2. Implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions.
3. Implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency.
4. The proposed rule does not require an increase or decrease in fees paid to the agency.
5. The proposed rule does not create a new regulation.
6. The proposed rule expands an existing regulation in the sense that the rule adopts the 2021 code editions, which merely update some provisions of the 2018 editions of the codes. Therefore, the proposed rule modifies an existing regulation by changing

the versions of the codes with which individuals must comply. However, the proposed rule does not have an impact on government growth.

7. The proposed rule does not increase or decrease the number of individuals subject to the rules' applicability.
8. The proposed rule does not positively or adversely affect this state's economy.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENTS

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

#### STATUTORY AUTHORITY

The proposed rule is proposed under Texas Occupations Code, Chapters 51 and 1302, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department. The proposed rule is also proposed under Texas Occupations Code, Chapter 1301, Plumbers.

The statutory provisions affected by the proposed rule are those set forth in Texas Occupations Code, Chapters 51, 1301, and 1302. No other statutes, articles, or codes are affected by the proposed rule.

#### §75.110. *Applicable Codes.*

(a) Effective September 1, 2024 [~~January 1, 2024~~], the commission adopts the following applicable codes as referenced in the Act and this chapter:

- (1) 2021 [~~2018~~] International Residential Code;
- (2) 2021 [~~2018~~] International Mechanical Code;
- (3) 2021 [~~2018~~] International Fuel Gas Code; and
- (4) 2021 [~~2018~~] Uniform Mechanical Code.

(b) The 2018 [~~2015~~] codes shall remain in effect through August 31, 2024 [~~December 31, 2020~~]. All air conditioning and refrigeration work permitted or started before September 1, 2024 [~~January 1, 2024~~], may be completed in accordance with the 2018 [~~2015~~] code editions.

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 April 15, 2024.  
TRD-202401577



## TITLE 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

#### CHAPTER 102. EDUCATIONAL PROGRAMS

The Texas Education Agency (TEA) proposes the repeal of §§102.1091, 102.1093, and 102.1095 and new §102.1091, concerning college and career readiness school models. The proposed revisions would repeal provisions related to Texas Science, Technology, Engineering, and Mathematics (T-STEM) Academies as a result of the sunset of T-STEM programs in June 2023 and would consolidate information related to Early College High School (ECHS) and Pathways in Technology Early College High School (P-TECH) into one new section. The proposed new section would update ECHS programmatic requirements to align with the requirements of Senate Bill (SB) 1887, 88th Texas Legislature, Regular Session, 2023.

**BACKGROUND INFORMATION AND JUSTIFICATION:** Section 102.1091 defines early college terms and establishes requirements related to the application, operation, notification, evaluation, and authority of early college programs. Section 102.1095 defines P-TECH terms and provides requirements related to the application, operation, grants, incentives, evaluation, and authority of the P-TECH program.

The proposed revisions would repeal §102.1091 and §102.1095 and consolidate the definitions and programmatic requirements of ECHS and P-TECH programs into new §102.1091, College and Career Readiness School Models. The new rule would reflect revised ECHS and P-TECH programmatic blueprints released in June 2023. The revised blueprints align ECHS and P-TECH definitions and requirements, provide updated evaluation data indicators, and introduce a needs-improvement process. Specifically, the following provisions would be addressed.

Subsection (a) would include definitions related to ECHS and P-TECH programs as a result of new terms included in the ECHS and P-TECH revised blueprints.

Subsections (b)(2)-(4) would describe the different application processes for ECHS and P-TECH campuses based on the campus designation status.

Subsection (c) would establish the Needs Improvement campus designation status and needs-improvement processes for ECHS and P-TECH campuses.

Subsection (d) would include the notification process for P-TECH programs and add further detail on the notification processes for the new designation campus status as established in the ECHS and P-TECH 2023 blueprints.

Subsection (e) would add the program operation conditions for P-TECH programs and add further detail on ECHS and P-TECH operation requirements as outlined in the revised blueprints.

Subsection (f) would describe programs available to P-TECH campuses, including the P-TECH Year 5 and 6 programs.

Subsection (g) would add the evaluation criteria for P-TECH programs and update the evaluation criteria to be based upon ECHS and P-TECH outcomes-based measures, as established by the updated ECHS and P-TECH blueprints.

Subsection (h) would add P-TECH to factors resulting in the revocation of authority to operate a program.

In addition, the early college definitions would be updated to align with SB 1887, 88th Texas Legislature, Regular Session, 2023, which updated early college program requirements in TEC, §29.908.

Section 102.1093 provides definitions and programmatic requirements of the T-STEM program. The proposed revisions would repeal §102.1093 following the sunset of the T-STEM program in June 2023.

Finally, the subchapter title would be changed to Commissioner's Rules Concerning Postsecondary Preparation Programs.

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

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

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

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

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

**GOVERNMENT GROWTH IMPACT:** TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would create a new regulation that adds definitions and requirements, provides updated evaluation data indicators, and introduces a needs-improvement process based on the revised ECHS and P-TECH programmatic blueprints released in June 2023. The proposed rulemaking would also repeal existing regulations to remove obsolete information related to the T-STEM program and to consolidate existing provisions into one new section.

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

**PUBLIC BENEFIT AND COST TO PERSONS:** Ms. Martinez has determined that for each year of the first five years the proposal

is in effect, the public benefit anticipated as a result of enforcing the proposal would be to consolidate rules for ECHS and P-TECH to provide additional clarity and consistency of expectations for school districts and charter schools. There is no anticipated economic cost to persons who are required to comply with the proposal.

**DATA AND REPORTING IMPACT:** The proposal would have a data and reporting impact. Information related to students participating in T-STEM programs is no longer required to be reported.

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

**PUBLIC COMMENTS:** The public comment period on the proposal begins April 26, 2024, and ends May 27, 2024. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on April 26, 2024. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About\\_TEA/Laws\\_and\\_Rules/Commissioner\\_Rules\\_\(TAC\)/Proposed\\_Commissioner\\_of\\_Education\\_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

## SUBCHAPTER GG. COMMISSIONER'S RULES CONCERNING COLLEGE AND CAREER READINESS SCHOOL MODELS

### 19 TAC §§102.1091, 102.1093, 102.1095

**STATUTORY AUTHORITY.** The repeal is proposed under Texas Education Code (TEC), §29.553, which requires the commissioner of education to establish and administer the Pathways in Technology Early College High School (P-TECH) program; TEC, §29.908, as amended by Senate Bill 1887, 88th Texas Legislature, Regular Session, 2023, which establishes the Early College High School (ECHS) program; and TEC, §29.908(g), which permits the commissioner to adopt rules as necessary to administer the program.

**CROSS REFERENCE TO STATUTE.** The repeal implements Texas Education Code, §29.553 and §29.908, as amended by Senate Bill 1887, 88th Texas Legislature, Regular Session, 2023.

§102.1091. *Early College High Schools.*

§102.1093. *Designation of Texas Science, Technology, Engineering, and Mathematics Academies.*

§102.1095. *Pathways in Technology Early College High School.*

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 April 15, 2024.

TRD-202401578

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: May 26, 2024

For further information, please call: (512) 475-1497



## SUBCHAPTER GG. COMMISSIONER'S RULES CONCERNING POSTSECONDARY PREPARATION PROGRAMS [COLLEGE AND CAREER READINESS SCHOOL MODELS]

### 19 TAC §102.1091

**STATUTORY AUTHORITY.** The new section is proposed under Texas Education Code (TEC), §29.553, which requires the commissioner of education to establish and administer the Pathways in Technology Early College High School (P-TECH) program; TEC, §29.908, as amended by Senate Bill 1887, 88th Texas Legislature, Regular Session, 2023, which establishes the Early College High School (ECHS) program; and TEC, §29.908(g), which permits the commissioner to adopt rules as necessary to administer the program.

**CROSS REFERENCE TO STATUTE.** The new section implements Texas Education Code, §29.553 and §29.908, as amended by Senate Bill 1887, 88th Texas Legislature, Regular Session, 2023.

§102.1091. *College and Career Readiness School Models.*

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

(1) Benchmarks--The standards for program implementation that are included in the blueprints.

(2) Blueprint--The document that outlines the College and Career Readiness School Models (CCRSM) requirements, including benchmarks, design elements, artifacts, and outcomes-based measures.

(3) Business or industry partner--Employers who enter into a formal agreement with a Pathways in Technology Early College High School (P-TECH) to support work-based learning (WBL).

(4) Design elements--The processes, structures, or services within each benchmark that a CCRSM campus must fulfill.

(5) Designated campus--A CCRSM campus with six or more years of implementation that has met outcomes-based measures (OBMs) necessary for designation.

(6) Designated with Distinction campus--A CCRSM campus with seven or more years of implementation that has met Designated with Distinction OBMs.

(7) Early College High School (ECHS)--A school established under Texas Education Code (TEC), §29.908, that enables a student in Grade 9, 10, 11, or 12 who is at risk of dropping out of school, as defined by TEC, §29.081, or who wishes to accelerate completion of high school to combine high school courses and college-level courses. An ECHS program must provide for a course of study that, on or before the fifth anniversary of a student's first day of high school, enables a participating student to receive both a high school diploma and either an applied or academic associate degree that is transferable toward a baccalaureate degree.

(8) Institution of higher education (IHE)--An institution of higher education has the meaning assigned by TEC, §61.003.

(9) Needs improvement campus--A CCRSM campus with six or more years of implementation that has not met OBMs necessary for designation.

(10) Optional Flexible School Day Program (OFSDP)--A program approved by the commissioner of education to provide flexible hours and days of attendance for eligible students in Grades 9-12, as

defined in §129.1027 of this title (relating to Optional Flexible School Day Program).

(11) Outcomes-based measures--The data indicators related to access, achievement, and attainment that a CCRSM campus is required to meet to achieve a status of Designated or Designated with Distinction.

(12) Pathways in Technology Early College High School--A school established under TEC, §29.553, that enables a student in Grades 9, 10, 11, or 12 who is at risk of dropping out of school, as defined by TEC, §29.081, or who wishes to accelerate completion of high school to combine high school and postsecondary courses. A P-TECH program must be open enrollment and provide for a course of study that, on or before the sixth anniversary of a student's first day of high school, enables a participating student to receive both a high school diploma and an associate degree, a two-year postsecondary certificate, or an industry certification, and must include a work-based education program.

(13) Planning campus--A CCRSM campus with zero years of implementation.

(14) Provisional campus--A CCRSM campus with one to five years of implementation.

(15) School district--For the purposes of this section, the definition of school district includes an open-enrollment charter school.

(16) Work-based education program--Practical, hands-on activities or experiences through which a learner interacts with industry professionals in a workplace that may be an in-person, virtual, or simulated setting. Learners prepare for employment or advancement along a career pathway by completing purposeful tasks that develop academic, technical, and employability skills. A work-based education program is also known as work-based learning.

(b) Conditions for approval of CCRSM status.

(1) Conditions for approval of a Planning campus.

(A) Applicant eligibility. Any school district may submit a separate application on behalf of each campus it requests to be considered as a Planning campus.

(B) Application process. A school district must submit each application in accordance with the program application cycle (PAC) procedures determined by the commissioner.

(C) Planning campus timeline. A planning campus shall be eligible to apply for Provisional campus status after the mandatory planning year.

(2) Conditions for approval of a Provisional campus.

(A) Applicant eligibility. Any Planning campus or approved provisional campus may submit an application to be considered as a Provisional campus.

(B) Application process. Any Planning campus or approved Provisional campus must submit each application in accordance with the PAC procedures determined by the commissioner.

(C) Provisional campus timeline. A Provisional campus shall be eligible to apply to renew its status as a Provisional campus yearly for up to five years.

(3) Conditions for approval of a Designated campus.

(A) Applicant eligibility. A Provisional campus entering its fifth year of operation may submit an application on behalf of the campus it requests to be considered as a Designated campus.

(B) Application process. A prospective Designated campus must submit each application in accordance with the PAC procedures determined by the commissioner. Campuses must meet access, achievement, and attainment OBM criteria and implement all design elements in order to receive CCRSM Designated status.

(C) Designated campus timeline. A Designated campus shall be eligible to apply to renew its status as a Designated campus yearly.

(4) Conditions for approval of a Designated with Distinction campus.

(A) Applicant eligibility. A Designated campus may qualify for Designated with Distinction status in one or more of the following OBM distinction criteria areas beginning in its seventh year of operation:

(i) access;

(ii) achievement; and

(iii) attainment.

(B) Application process. A prospective Designated with Distinction campus must submit each application in accordance with the PAC procedures determined by the commissioner. The campus application in the PAC will serve as the Designated with Distinction application. Campuses must meet access, achievement, and attainment designated with distinction OBM criteria and implement all design elements in order to receive CCRSM Designated with Distinction status.

(C) Designated with Distinction campus timeline. A Designated with Distinction campus shall qualify to renew its status as a Designated with Distinction campus yearly.

(c) Needs Improvement and revocation of CCRSM status.

(1) Determination of CCRSM Needs Improvement status. If the conditions of approval for CCRSM Designated status are not met, including failure to meet the required OBM designated criteria, the CCRSM campus will be classified as a CCRSM Needs Improvement campus.

(2) Needs Improvement campus timeline. A Needs Improvement campus is required to remain in the Needs Improvement status for a period of three school years following campus notification of the Needs Improvement status. During the three years of Needs Improvement status, the campus is required to complete the PAC for Needs Improvement progress reports.

(3) Needs Improvement progress monitoring. During the three years of Needs Improvement status, the campus will receive targeted technical assistance at no cost to the CCRSM to improve OBMs.

(4) Fulfillment of CCRSM Needs Improvement requirements. Following completion of the three-year Needs Improvement period and upon successfully meeting the OBM designation criteria, the CCRSM will move out of the Needs Improvement status and into the Designated or Designated with Distinction status.

(5) Revocation of CCRSM status. Following completion of the mandatory three years of Needs Improvement status, if a CCRSM does not successfully meet the OBM designation criteria, the authorization of the campus as a CCRSM will be revoked and the campus will be removed from the CCRSM network.

(d) Notification timeline. TEA will notify each applicant of its selection or non-selection as a CCRSM Planning, Provisional, Designated, Designated with Distinction, or Needs Improvement campus. The designation notification will be sent no later than the summer fol-

lowing the submission of the campus application in the PAC. Campuses selected for Planning, Provisional, Designated, and Designated with Distinction status will be publicly identified on TEA's website and will be identified as such in designation status notification to the district and to the IHE partner listed in the CCRSM PAC. Campuses in Needs Improvement status will not be publicly identified but will be identified as Needs Improvement in the designation status notification sent to the district and to the IHE partner listed in the CCRSM PAC.

(e) Conditions of CCRSM program operation.

(1) As established under TEC, §29.908, an ECHS must:

(A) enable a student in Grade 9, 10, 11, or 12 who is at risk of dropping out of school, as defined by TEC, §29.081, or who wishes to accelerate completion of high school to provide for a course of study that enables a participating student to combine high school courses and college-level courses;

(B) allow participating students to complete high school and enroll in a program at an IHE that will enable a student to, on or before the fifth anniversary of a student's first day of high school, receive a high school diploma and either an applied or academic associate degree that is transferable toward a baccalaureate degree at one or more general academic teaching institutions, as defined by TEC, §61.003;

(C) include articulation agreements with colleges, universities, and technical schools in Texas to provide a participating student access to postsecondary educational and training opportunities at a college, university, or technical school; and

(D) provide a participating student flexibility in class scheduling and academic mentoring.

(2) As established under TEC, §29.553, a P-TECH must:

(A) be open enrollment and enable a student in Grade 9, 10, 11, or 12 who is at risk of dropping out of school, as defined by TEC, §29.081, or who wishes to accelerate completion of high school to combine high school courses and postsecondary courses;

(B) provide for a course of study that, on or before the sixth anniversary of a student's first day of high school, enables a participating student to receive both a high school diploma and an associate degree, a two-year postsecondary certificate, or an industry certification and complete work-based training;

(C) include articulation agreements with colleges, universities, and technical schools in Texas to provide a participating student access to postsecondary educational and training opportunities at a college, university, or technical school;

(D) include a memorandum of understanding with regional business or industry partners to provide a participating student access to work-based training;

(E) include in each memorandum of understanding with a regional business or industry partner an agreement that the regional business or industry partner will give to a student who receives work-based training from the partner under the P-TECH program first priority in interviewing for any jobs for which the student is qualified that are available on the students' completion of the program; and

(F) provide a participating student flexibility in class scheduling and academic mentoring.

(3) The CCRSM must comply with all the requirements outlined in the CCRSM blueprints. If a CCRSM chooses to discontinue CCRSM operations, the CCRSM must ensure previously enrolled CCRSM students will have the opportunity to complete their course of

study. The CCRSM must notify TEA of its decision to discontinue operations and submit an official letter from the district superintendent with the district decision.

(4) A school district operating a CCRSM program must comply with all assurances included in the program application submitted through the PAC. If the CCRSM changes the location of the CCRSM, the CCRSM model, or the IHE partner outside of the PAC, the CCRSM must notify TEA of the change.

(5) CCRSM approval is valid for a maximum of one school year.

(6) The CCRSM program must be provided at no cost to CCRSM students. A student enrolled in a CCRSM program may not be required to pay for tuition, fees, or required textbooks for any coursework. The school district in which the student is enrolled shall pay for tuition, fees, and required textbooks, to the extent those charges are not waived by the IHE.

(7) P-TECH Year 5 and 6 students are not counted for accountability purposes.

(f) Programs available to an approved CCRSM.

(1) Approval as a CCRSM will allow a campus to access programs available to CCRSM programs.

(2) An approved CCRSM campus may access the OFSDP defined in §129.1027 of this title. An approved CCRSM campus is eligible for OFSDP but must apply separately in accordance with TEC, §29.0822, and procedures established by the commissioner.

(3) Approval as a P-TECH will allow a campus to access programs available to the P-TECH, including participation in a Year 5 and Year 6 P-TECH program.

(4) P-TECH Year 5 and 6 students are not counted for accountability purposes.

(g) Evaluation of a CCRSM program. Evaluation of the CCRSM program will occur through the PAC and using self-reported data provided by the campus to generate OBM data. Progress monitoring will also occur at the campus level through campus coaching provided through state-appointed technical assistance.

(h) Revocation of authority.

(1) The commissioner may deny renewal or revoke the authorization of a CCRSM program based on the following factors:

(A) noncompliance with application assurances and/or the provisions of this section;

(B) lack of program success as evidenced by progress reports and program OBM data;

(C) failure to meet performance standards specified in the application and/or CCRSM blueprints; or

(D) failure to provide accurate, timely, and complete information as required by TEA to evaluate the effectiveness of the CCRSM program.

(2) A decision by the commissioner to deny renewal or revoke authorization of a CCRSM is final and may not be appealed.

(3) The commissioner may impose sanctions on a school district as authorized by TEC, Chapters 39 and 39A, for failure to comply with the requirements of this section.

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



Filed with the Office of the Secretary of State on April 15, 2024.

TRD-202401579

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: May 26, 2024

For further information, please call: (512) 475-1497



### 19 TAC §102.1097

The Texas Education Agency (TEA) proposes new §102.1097, concerning postsecondary preparation programs. The proposed new section would implement House Bill (HB) 8, 88th Texas Legislature, Regular Session, 2023, by establishing provisions for the Financial Aid for Swift Transfer (FAST) program.

**BACKGROUND INFORMATION AND JUSTIFICATION:** HB 8, 88th Texas Legislature, Regular Session, 2023, established the FAST program to allow eligible students to enroll, at no cost to the student, in dual credit courses at participating institutions of higher education.

Proposed new §102.1097 would implement HB 8 by defining the requirements a school district must meet each school year to report educationally disadvantaged students for the purposes of the FAST program.

The proposal would add new subsection (a) to identify the purpose of the FAST program and new subsection (b) to include relevant definitions.

New subsections (c) and (d) would clarify the methods school districts and open-enrollment charter schools may use to determine student eligibility for the FAST program.

New subsection (e) would explain the relationship between the Community Eligibility Provision and determining individual student eligibility status.

New subsection (f) would establish the responsibility of school districts to obtain appropriate data needed from families to determine eligibility, verify information, and retain records.

New subsection (g) would state that the commissioner has the discretion to conduct an audit of data as it relates to the FAST program.

New subsection (h) would clarify that the eligibility of students participating in the FAST program would be based on Texas Student Data System Public Education Information Management System (TSDS PEIMS) data submissions.

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

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

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

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

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

**GOVERNMENT GROWTH IMPACT:** TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would create a new regulation to establish student eligibility requirements; the responsibility of school districts to obtain appropriate data needed from families to determine eligibility, verify information, and retain records; and TSDS PEIMS reporting requirements.

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

**PUBLIC BENEFIT AND COST TO PERSONS:** Ms. Martinez has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be to provide school districts with clarifications on the student eligibility of the FAST program. There is no anticipated economic cost to persons who are required to comply with the proposal.

**DATA AND REPORTING IMPACT:** The proposal would have no data and reporting impact. Economically disadvantaged student indicators in TSDS PEIMS will be used.

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

**PUBLIC COMMENTS:** The public comment period on the proposal begins April 26, 2024, and ends May 27, 2024. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on April 26, 2024. A form for submitting public comments is available on the TEA website at [https://tea.texas.gov/About\\_TEA/Laws\\_and\\_Rules/Commissioner\\_Rules\\_\(TAC\)/Proposed\\_Commissioner\\_of\\_Education\\_Rules/](https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/).

**STATUTORY AUTHORITY.** The new section is proposed under Texas Education Code (TEC), §28.0095(b), as added by House Bill 8, 88th Texas Legislature, Regular Session, 2023, which requires the Texas Education Agency and the Texas Higher Education Coordinating Board (THECB) to jointly establish the Financial Aid for Swift Transfer (FAST) program to allow eligible students to enroll, at no cost to the student, in dual credit courses at participating institutions of higher education. TEC, §28.0095(j), requires the commissioner and THECB to adopt rules as necessary to implement the FAST program.

CROSS REFERENCE TO STATUTE. The new section implements Texas Education Code, §28.0095(b) and (j), as added by House Bill 8, 88th Texas Legislature, Regular Session, 2023.

§102.1097. Financial Aid for Swift Transfer Program.

(a) Purpose. The Financial Aid for Swift Transfer (FAST) program is established to allow eligible students to enroll, at no cost to the student, in dual credit courses at participating institutions of higher education.

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

(1) Dual credit course--A course offered for joint high school and junior college credit under Texas Education Code (TEC), §130.008, or another course offered by an institution of higher education for which a high school student may earn credit toward satisfaction of:

(A) a requirement necessary to obtain an industry-recognized credential or certificate or an associate degree;

(B) a foreign language requirement at an institution of higher education;

(C) a requirement in the core curriculum, as that term is defined by TEC, §61.821, at an institution of higher education; or

(D) a requirement in a field of study curriculum developed by the Texas Higher Education Coordinating Board under TEC, §61.823.

(2) Institution of higher education--An institution of higher education has the meaning assigned by TEC, §61.003.

(c) Student eligibility. To be considered educationally disadvantaged, a student must meet the income requirements for eligibility under the National School Lunch Program (NSLP), authorized by 42 United States Code, §§1751, et seq. School districts and open-enrollment charter schools may use the following approved methods for determining student eligibility for the FAST program:

(1) parent certification, where the parent or guardian asserts meeting the income requirements for eligibility under this subsection;

(2) direct certification, where eligible children are certified for free meals without the need for a household application based on household participation in one or more federal assistance programs; or

(3) direct verification, where public records are used to verify a student's eligibility for free or reduced-price meals when verification of student eligibility is required.

(d) Student eligibility under an alternative method. School districts and open-enrollment charter schools with one or more campuses not participating in the NSLP may derive an eligible student count by an alternative method as determined by the Texas Education Agency (TEA).

(e) Community Eligibility Provision (CEP). School districts and open-enrollment charter schools with one or more campuses using the CEP must still determine each student's individual eligibility status under the income guidelines for the NSLP for purposes of the FAST program.

(f) Recordkeeping. School districts and open-enrollment charter schools that participate in the FAST program pursuant to this section are responsible for obtaining the appropriate data from families of potentially eligible students, verifying that information, and retaining records.

(g) Auditing procedures. TEA will conduct an audit of data submitted by school districts and open-enrollment charter schools that participate in the FAST program pursuant to this section at the discretion of the commissioner of education.

(h) Data source. The FAST program will be based on each eligible student submitted by school districts and open-enrollment charter schools in the Texas Student Data System Public Education Information Management System fall submission. An indicator must be submitted for every educationally disadvantaged student and each student coded with average daily attendance (ADA) eligibility, except those students who are homeless, not enrolled, or otherwise ineligible for ADA or who reside in a residential facility and whose parents live outside the district.

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 April 15, 2024.

TRD-202401580

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Earliest possible date of adoption: May 26, 2024

For further information, please call: (512) 475-1497



## TITLE 25. HEALTH SERVICES

### PART 1. DEPARTMENT OF STATE HEALTH SERVICES

#### CHAPTER 133. HOSPITAL LICENSING SUBCHAPTER C. OPERATIONAL REQUIREMENTS

##### 25 TAC §133.46

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §133.46, concerning Hospital Billing.

##### BACKGROUND AND PURPOSE

The proposal is necessary to implement Senate Bill (S.B.) 490, 88th Legislature, Regular Session, 2023.

S.B. 490 added new Texas Health and Safety Code (HSC) Chapter 185, which requires a health care provider to send a written, itemized bill of the alleged cost of each health care service and supply when the provider requests payment from a patient after providing the patient with a health care service or related supply.

HSC §185.003, as added by S.B. 490, requires HHSC to take disciplinary action against a provider that violates HSC Chapter 185 on or after September 1, 2023, as if the provider violated an applicable licensing law.

The proposed amendment is necessary to add information regarding these itemized-bill requirements.

##### SECTION-BY-SECTION SUMMARY

The proposed amendment to §133.46 adds paragraph (2) in subsection (a), which requires a hospital to comply with the itemized billing requirements in HSC Chapter 185. The title of the section

is revised to "Billing Requirements." Other minor stylistic edits are made to comply with current HHSC rulemaking guidelines, such as removing short titles to statutes, formatting punctuation and capitalization, and spelling out "HHSC."

#### FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years that the rule will be in effect, enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of state or local governments.

#### GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rule will be in effect:

- (1) the proposed rule will not create or eliminate a government program;
- (2) implementation of the proposed rule will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;
- (4) the proposed rule will not affect fees paid to HHSC;
- (5) the proposed rule will not create a new regulation;
- (6) the proposed rule will expand existing regulations;
- (7) the proposed rule will not change the number of individuals subject to the rule; and
- (8) the proposed rule will not affect the state's economy.

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because the proposed rule does not impose a cost or require small businesses, micro-businesses, or rural communities to alter their current business practices.

#### LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

#### COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule does not impose a cost on regulated persons and is necessary to implement legislation that does not specifically state that §2001.0045 applies to the rule.

#### PUBLIC BENEFIT AND COSTS

Stephen Pahl, Deputy Executive Commissioner for Regulatory Services, has determined that for each year of the first five years the rule is in effect, the public will benefit from receiving itemized bills from licensed acute health care providers that are seeking payment from them for health care services and supplies and the public will also benefit from rules that are consistent with statutory requirements.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the rule does not require persons subject to the rule to alter their current business practices; these entities are required to comply with the law as added by S.B. 490 and the proposed amendment only ensures consistency with current statutory requirements.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 701 W. 51st Street, Austin, Texas 78751; or emailed to HCR\_PRU@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R004" in the subject line.

#### STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; and HSC §241.026, which requires HHSC to develop, establish, and enforce standards for the construction, maintenance, and operation of licensed hospitals.

The amendment implements Texas Government Code §531.0055 and HSC Chapter 185.

§133.46. [~~Hospital~~] Billing Requirements.

(a) ~~Itemized statements. [A hospital shall adopt, implement, and enforce a policy to ensure that the hospital complies with the Health and Safety Code (HSC), §311.002 (Itemized Statement of Billed Services).]~~

(1) A hospital shall adopt, implement, and enforce a policy to ensure that the hospital complies with Texas Health and Safety Code (HSC) §311.002.

(2) A hospital shall comply with the itemized bill requirements under HSC §185.002.

(b) ~~Audits of billing. A hospital shall adopt, implement, and enforce a policy to ensure that the hospital complies with HSC [§] §311.0025(a) [(relating to Audits of Billing)].~~

(c) ~~Balance billing [Billing].~~

(1) A hospital may not violate a law that prohibits the hospital from billing a patient who is an insured, participant, or enrollee in a managed care plan an amount greater than an applicable copayment, coinsurance, and deductible under the insured's, participant's, or enrollee's managed care plan or that imposes a requirement related to that prohibition.

(2) A hospital shall comply with Senate Bill 1264, 86th Legislature, Regular Session, 2019, and with related Texas Department of Insurance rules at 28 TAC Chapter 21, Subchapter OO, §§21.4901 - 21.4904 (relating to Disclosures by Out-of-Network Providers) to the extent this subchapter applies to the hospital.

(d) ~~Complaint investigation procedures.~~

(1) A complaint submitted to the Texas Health and Human Services Commission's [HHSC's] Complaint and Incident Intake relating to billing must specify the patient for whom the bill was submitted.

(2) Upon receiving a complaint warranting an investigation, Texas Health and Human Services Commission (HHSC) [HHSC] shall send the complaint to the hospital requesting the hospital to conduct an internal investigation. Within 30 days of the hospital's receipt of the complaint, the hospital shall submit to HHSC:

(A) a report outlining the hospital's investigative process;

(B) the resolution or conclusions reached by the hospital with the patient, third party payor or complainant; and

(C) corrections, if any, in the hospital's policies or protocols which were made as a result of its investigative findings.

(3) In addition to the hospital's internal investigation, HHSC may also conduct an investigation to audit any billing and patient records of the hospital.

(4) HHSC shall inform in writing a complainant who identifies himself by name and address:

(A) of the receipt of the complaint;

(B) if the complainant's allegations are potential violations of the Act or this chapter warranting an investigation;

(C) whether the complaint will be investigated by HHSC;

(D) if the complaint was referred to the hospital for internal investigation;

(E) whether and to whom the complaint will be referred;

(F) of the results of the hospital's investigation and the hospital's resolution with the complainant; and

(G) of HHSC's findings if an on-site audit investigation was conducted.

(5) HHSC shall refer investigative reports of billing by health care professionals who have provided improper, unreasonable, or medically or clinically unnecessary treatments or billed for treatments which were not provided to the appropriate licensing agency.

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 April 10, 2024.

TRD-202401441

Karen Ray

Chief Counsel

Department of State Health Services

Earliest possible date of adoption: May 26, 2024

For further information, please call: (512) 834-4591



## CHAPTER 135. AMBULATORY SURGICAL CENTERS

## SUBCHAPTER A. OPERATING REQUIREMENTS FOR AMBULATORY SURGICAL CENTERS

### 25 TAC §135.4

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §135.4, concerning Ambulatory Surgical Center (ASC) Operation.

#### BACKGROUND AND PURPOSE

The proposal is necessary to implement Senate Bill (S.B.) 490, 88th Legislature, Regular Session, 2023.

S.B. 490 added new Texas Health and Safety Code (HSC) Chapter 185, which requires a health care provider to send a written, itemized bill of the alleged cost of each health care service and supply when the provider requests payment from a patient after providing the patient with a health care service or related supply.

HSC §185.003, as added by S.B. 490, requires HHSC to take disciplinary action against a provider that violates HSC Chapter 185 on or after September 1, 2023, as if the provider violated an applicable licensing law.

The proposed amendment is necessary to add information regarding these itemized-bill requirements.

#### SECTION-BY-SECTION SUMMARY

The proposed amendment to §135.4 adds subsection (n), which requires an ASC to comply with the itemized billing requirements in HSC Chapter 185. Other minor stylistic edits are made to comply with current HHSC rulemaking guidelines, such as deleting superfluous phrases, reorganizing paragraph (11)(B), adding "Texas" before a reference to a Texas statute, and deleting a lead-in phrase for consistency.

#### FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years that the rule will be in effect, enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of state or local governments.

#### GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rule will be in effect:

(1) the proposed rule will not create or eliminate a government program;

(2) implementation of the proposed rule will not affect the number of HHSC employee positions;

(3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;

(4) the proposed rule will not affect fees paid to HHSC;

(5) the proposed rule will not create a new regulation;

(6) the proposed rule will expand existing regulations;

(7) the proposed rule will not change the number of individuals subject to the rule; and

(8) the proposed rule will not affect the state's economy.

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because the proposed rule does not impose a cost or require small businesses, micro-businesses, or rural communities to alter their current business practices.

## LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

## COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule does not impose a cost on regulated persons and is necessary to implement legislation that does not specifically state that §2001.0045 applies to the rule.

## PUBLIC BENEFIT AND COSTS

Stephen Pahl, Deputy Executive Commissioner for Regulatory Services, has determined that for each year of the first five years the rule is in effect, the public will benefit from receiving itemized bills from licensed acute health care providers that are seeking payment from them for health care services and supplies and the public will also benefit from rules that are consistent with statutory requirements.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the rule does not require persons subject to the rule to alter their current business practices; these entities are required to comply with the law as added by S.B. 490 and the proposed amendment only ensures consistency with current statutory requirements.

## TAKINGS IMPACT ASSESSMENT

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

## PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 701 W. 51st Street, Austin, Texas 78751; or emailed to HCR\_PRU@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R004" in the subject line.

## STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; HSC §243.009, which requires HHSC to adopt rules for licensing of

ASCs; and HSC §243.010, which requires those rules to include minimum standards applicable to ASCs.

The amendment implements Texas Government Code §531.0055 and HSC Chapter 185.

### §135.4. Ambulatory Surgical Center (ASC) Operation.

(a) The ASC shall have a governing body that sets policy and assumes full legal responsibility for the total operation of the ASC.

(b) The governing body shall be responsible for assuring that medical staff bylaws are current and on file.

(c) The governing body shall address and is fully responsible, either directly or by appropriate professional delegation, for the operation and performance of the ASC. Governing body responsibilities include[; but are not limited to]:

(1) determining the mission, goals, and objectives of the ASC;

(2) assuring that facilities and personnel are adequate and appropriate to carry out the mission;

(3) establishing an organizational structure and specifying functional relationships among the various components of the ASC;

(4) adopting bylaws or similar rules and regulations for the orderly development and management of the ASC;

(5) adopting policies or procedures necessary for the orderly conduct of the ASC;

(6) assuring that the quality of care is evaluated and that identified problems are addressed;

(7) reviewing all legal and ethical matters concerning the ASC and its staff and, when necessary, responding appropriately;

(8) maintaining effective communication throughout the ASC;

(9) establishing a system of financial management and accountability that includes an audit appropriate to the ASC;

(10) developing, implementing, and enforcing a policy on the rights of patients;

(11) approving all major contracts or arrangements affecting the medical care provided under its auspices, including[; but not limited to,] those concerning:

(A) the employment of health care practitioners;

(B) an effective procedure for the immediate transfer to a hospital of patients requiring emergency care beyond the capabilities of the ASC[; The ASC shall have a written transfer agreement with a hospital or all physicians performing surgery at the ASC shall have admitting privileges at a local hospital];

(i) the ASC shall have a written transfer agreement with a hospital; or

(ii) all physicians performing surgery at the ASC shall have admitting privileges at a local hospital;

(C) the use of external laboratories;

(D) an effective procedure for obtaining emergency laboratory, radiology, and pharmaceutical services if laboratory, X-ray, and pharmacy services are not provided on site; and

(E) the provision of education to students and postgraduate trainees if the ASC participates in such programs;

(12) formulating long-range plans in accordance with the mission, goals, and objectives of the ASC;

(13) operating the ASC without limitation because of race, creed, sex, or national origin;

(14) assuring that all marketing and advertising concerning the ASC does not imply that it provides care or services which it is not capable of providing; and

(15) developing a system of risk management appropriate to the ASC including[; but not limited to]:

(A) periodic review of all litigation involving the ASC, its staff, and health care practitioners regarding activities in the ASC;

(B) periodic review of all incidents reported by staff and patients;

(C) review of all deaths, trauma, or adverse reactions occurring on premises; and

(D) evaluation of patient complaints.

(d) The governing body shall provide for full disclosure of ownership to the department.

(e) The governing body shall meet at least annually and keep such minutes or other records as may be necessary for the orderly conduct of the ASC.

(f) If the governing body elects, appoints, or employs officers and administrators to carry out its directives, the authority, responsibility, and functions of all such positions shall be defined.

(g) When a majority of its members are physicians, the governing body, either directly or by delegation, shall make (in a manner consistent with state law and based on evidence of the education, training, and current competence of the physician) initial appointments, reappointments, and assignment or curtailment of medical privileges. When a majority of the members of the governing body are not physicians, the ASC's bylaws or similar rules and regulations shall specify a procedure for establishing medical review for the purpose of making (in a manner consistent with state law and based on evidence of the education, training, and current competence of the physician) initial appointments, reappointments, and assignment or curtailment of medical privileges.

(h) The governing body shall provide (in a manner consistent with state law and based on evidence of education, training, and current competence) for the initial appointment, reappointment, and assignment or curtailment of privileges and practice for nonphysician health care personnel and practitioners.

(i) The governing body shall encourage personnel to participate in continuing education that is relevant to their responsibilities within the ASC.

(j) The governing body shall adopt, implement, and enforce written policies to ensure compliance with Texas Health and Safety Code[,] Chapter 324[; ~~Consumer Access to Health Care Information~~].

(k) The governing body shall adopt, implement, and enforce written policies to ensure compliance with applicable state laws.

(l) An ASC that performs abortions shall adopt, implement, and enforce a policy to ensure compliance with Texas Health and Safety Code[,] Chapters 245 and 171, Subchapters A and B [~~(relating to Abortion and Informed Consent)~~].

(m) An ASC shall comply with the following balance billing requirements. [~~Balance Billing.~~]

(1) An ASC may not violate a law that prohibits the ASC from billing a patient who is an insured, participant, or enrollee in a managed care plan an amount greater than an applicable copayment, coinsurance, and deductible under the insured's, participant's, or enrollee's managed care plan or that imposes a requirement related to that prohibition.

(2) An ASC shall comply with Senate Bill 1264, 86th Legislature, Regular Session, 2019, and with related Texas Department of Insurance rules at 28 TAC Chapter 21, Subchapter OO, §§21.4901 - 21.4904 (relating to Disclosures by Out-of-Network Providers) to the extent this subchapter applies to the ASC.

(n) An ASC shall comply with the itemized bill requirements under Texas Health and Safety Code §185.002.

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 April 10, 2024.

TRD-202401442

Karen Ray

Chief Counsel

Department of State Health Services

Earliest possible date of adoption: May 26, 2024

For further information, please call: (512) 834-4591



## CHAPTER 137. BIRTHING CENTERS SUBCHAPTER D. OPERATIONAL AND CLINICAL STANDARDS FOR THE PROVISION AND COORDINATION OF TREATMENT AND SERVICES

### 25 TAC §137.39

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §137.39, concerning General Requirements for the Provision and Coordination of Treatment and Services.

#### BACKGROUND AND PURPOSE

The proposal is necessary to implement Senate Bill (S.B.) 490, 88th Legislature, Regular Session, 2023.

S.B. 490 added new Texas Health and Safety Code (HSC) Chapter 185, which requires a health care provider to send a written, itemized bill of the alleged cost of each health care service and supply when the provider requests payment from a patient after providing the patient with a health care service or related supply.

HSC §185.003, as added by S.B. 490, requires HHSC to take disciplinary action against a provider that violates HSC Chapter 185 on or after September 1, 2023, as if the provider violated an applicable licensing law.

The proposed amendment is necessary to add information regarding these itemized-bill requirements.

#### SECTION-BY-SECTION SUMMARY

The proposed amendment to §137.39 adds subsection (j), which requires a birthing center to comply with the itemized billing requirements in HSC Chapter 185. Other minor stylistic edits are

made to comply with current HHSC rulemaking guidelines, such as deleting the lead-in phrase in subsection (i) for consistency.

#### FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years that the rule will be in effect, enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of state or local governments.

#### GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rule will be in effect:

- (1) the proposed rule will not create or eliminate a government program;
- (2) implementation of the proposed rule will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;
- (4) the proposed rule will not affect fees paid to HHSC;
- (5) the proposed rule will not create a new regulation;
- (6) the proposed rule will expand existing regulations;
- (7) the proposed rule will not change the number of individuals subject to the rule; and
- (8) the proposed rule will not affect the state's economy.

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because the proposed rule does not impose a cost or require small businesses, micro-businesses, or rural communities to alter their current business practices.

#### LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

#### COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule does not impose a cost on regulated persons and is necessary to implement legislation that does not specifically state that §2001.0045 applies to the rule.

#### PUBLIC BENEFIT AND COSTS

Stephen Pahl, Deputy Executive Commissioner for Regulatory Services, has determined that for each year of the first five years the rule is in effect, the public will benefit from receiving itemized bills from licensed acute health care providers that are seeking payment from them for health care services and supplies and the public will also benefit from rules that are consistent with statutory requirements.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the rule does not require persons subject to the rule to alter their current business practices; these entities are required to comply with the law as added by S.B. 490 and the proposed amendment only ensures consistency with current statutory requirements.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 701 W. 51st Street, Austin, Texas 78751; or emailed to HCR\_PRU@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R004" in the subject line.

#### STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; HSC §244.009, which requires HHSC to adopt rules for licensing of birthing centers; and HSC §244.010, which requires those rules to include minimum standards applicable to birthing centers.

The amendment implements Texas Government Code §531.0055 and HSC Chapter 185.

*§137.39. General Requirements for the Provision and Coordination of Treatment and Services.*

(a) A center shall develop, implement, and enforce policies for the provision and coordination of treatment and services.

(b) The center is responsible for all care provided to center clients on its licensed premises.

(c) A center and the client shall have a written agreement for services. The center shall obtain an acknowledgment of receipt of the agreement. The center shall comply with the terms of the agreement. The written agreement shall include[,] the following:

- (1) services to be provided;
- (2) who will provide the services; and
- (3) charges for services rendered.

(d) When services are provided through a contract, a center must assure that these services are also provided in a safe and effective manner. If a center utilizes independent contractors, there shall be a written agreement between such independent contractors (i.e., per hour, per visit) and the center. The agreement shall be enforced by the center and clearly designate:

- (1) that clients are accepted for care only by the center;
- (2) the services to be provided by both parties;
- (3) the necessity to conform to the Act, this chapter, and all applicable center policies, including personnel qualifications; and
- (4) the manner in which services will be coordinated and evaluated by the center.

(e) A center shall not commit an intentional or negligent act that adversely affects the health or safety of a client.

(f) A center must ensure that its licensed health care professionals practice within the scope of their practice and within the constraints of applicable state laws and regulations governing their practice and must follow the facility's written policies and procedures.

(g) A center may accept student midwives to provide them with clinical experience.

(h) If a center has a contract or agreement with an accredited school of health care to use their center for a portion of a student's clinical experience, those students may provide care under the following conditions.

(1) Students may be used in centers, provided the instructor gives classroom supervision and assumes responsibility for all student activities occurring within the center.

(2) A student may administer medications only if:

(A) on assignment as a student enrolled in [ef] their school of health care; and

(B) the birth attendant within their licensed scope of practice is on the premises and directly supervises the administration of medication by the student.

(3) Students shall not be considered when determining staffing needs required by the center.

(i) A center shall comply with the following balance billing requirements. [~~Balance Billing.~~]

(1) A center may not violate a law that prohibits the center from billing a patient who is an insured, participant, or enrollee in a managed care plan an amount greater than an applicable copayment, coinsurance, and deductible under the insured's, participant's, or enrollee's managed care plan or that imposes a requirement related to that prohibition.

(2) A center shall comply with Senate Bill 1264, 86th Legislature, Regular Session, 2019, and with related Texas Department of Insurance rules at 28 TAC Chapter 21, Subchapter OO, §§21.4901 - 21.4904 (relating to Disclosures by Out-of-Network Providers) to the extent this subchapter applies to the center.

(j) A center shall comply with the itemized bill requirements under Texas Health and Safety Code §185.002.

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 April 10, 2024.

TRD-202401443

Karen Ray

Chief Counsel

Department of State Health Services

Earliest possible date of adoption: May 26, 2024

For further information, please call: (512) 834-4591



CHAPTER 139. ABORTION FACILITY  
REPORTING AND LICENSING  
SUBCHAPTER D. MINIMUM STANDARDS  
FOR LICENSED ABORTION FACILITIES

**25 TAC §139.60**

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §139.60, concerning Other State and Federal Compliance Requirements.

**BACKGROUND AND PURPOSE**

The proposal is necessary to implement Senate Bill (S.B.) 490, 88th Legislature, Regular Session, 2023.

S.B. 490 added new Texas Health and Safety Code (HSC) Chapter 185, which requires a health care provider to send a written, itemized bill of the alleged cost of each health care service and supply when the provider requests payment from a patient after providing the patient with a health care service or related supply.

HSC §185.003, as added by S.B. 490, requires HHSC to take disciplinary action against a provider that violates HSC Chapter 185 on or after September 1, 2023, as if the provider violated an applicable licensing law.

The proposed amendment is necessary to add information regarding these itemized-bill requirements.

**SECTION-BY-SECTION SUMMARY**

The proposed amendment to §139.60 adds subsection (o), which requires an abortion facility to comply with the itemized billing requirements in HSC Chapter 185. Other minor stylistic edits are made to comply with current HHSC rulemaking guidelines, such as formatting punctuation, removing short titles to statutes, adding "Texas" before a reference to a Texas statute, removing a lead-in phrase in subsection (n) for consistency, and abbreviating "Code of Federal Regulations." The subsections are renumbered to account for the addition of a subsection.

**FISCAL NOTE**

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years that the rule will be in effect, enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of state or local governments.

**GOVERNMENT GROWTH IMPACT STATEMENT**

HHSC has determined that during the first five years that the rule will be in effect:

- (1) the proposed rule will not create or eliminate a government program;
- (2) implementation of the proposed rule will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;
- (4) the proposed rule will not affect fees paid to HHSC;
- (5) the proposed rule will not create a new regulation;
- (6) the proposed rule will expand existing regulations;
- (7) the proposed rule will not change the number of individuals subject to the rule; and
- (8) the proposed rule will not affect the state's economy.

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



Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because the proposed rule does not impose a cost or require small businesses, micro-businesses, or rural communities to alter their current business practices.

#### LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

#### COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule does not impose a cost on regulated persons and is necessary to implement legislation that does not specifically state that §2001.0045 applies to the rule.

#### PUBLIC BENEFIT AND COSTS

Stephen Pahl, Deputy Executive Commissioner for Regulatory Services, has determined that for each year of the first five years the rule is in effect, the public will benefit from receiving itemized bills from licensed acute health care providers that are seeking payment from them for health care services and supplies, and the public will also benefit from rules that are consistent with statutory requirements.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the rule does not require persons subject to the rule to alter their current business practices; these entities are required to comply with the law as added by S.B. 490 and the proposed amendment only ensures consistency with current statutory requirements.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 701 W. 51st Street, Austin, Texas 78751; or emailed to HCR\_PRU@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R004" in the subject line.

#### STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; HSC §245.009, which requires HHSC to adopt rules for licensing of abortion facilities; and HSC §245.010, which requires those rules to include minimum standards to protect the health and

safety of a patient of an abortion facility and comply with HSC Chapter 171.

The amendment implements Texas Government Code §531.0055 and HSC Chapter 185.

#### §139.60. Other State and Federal Compliance Requirements.

(a) A licensed abortion facility shall be in compliance with all state and federal laws pertaining to handling of drugs.

(b) A licensed abortion facility that provides laboratory services shall meet the Clinical Laboratory Improvement Amendments of 1988, 42 United States Code[;] §263a, Certification of Laboratories (CLIA 1988). CLIA 1988 applies to all facilities with laboratories that examine human specimens for the diagnosis, prevention, or treatment of any disease or impairment of, or the assessment of the health of, human beings.

(c) A licensed abortion facility shall ensure that its physicians comply with the Medical Practice Act, Texas Occupations Code[;] Chapters 151 - 160 and 162 - 165, while functioning in his or her capacity at or for the facility.

(d) A licensed abortion facility utilizing physician assistant services [~~the services of a physician assistant(s)~~] shall ensure that its physician assistants comply with the Physician Assistant Licensing Act, Texas Occupations Code[;] Chapter 204, while functioning in his or her capacity at or for the facility.

(e) A licensed abortion facility utilizing registered nurse services [~~the services of a registered nurse~~] shall ensure that its registered nurses comply with the Nursing Practice Act, Texas Occupations Code[;] Chapters 301 and 304, while functioning in his or her capacity at or for the facility.

(f) A licensed abortion facility utilizing licensed vocational nurse services [~~the services of a licensed vocational nurse(s)~~] shall ensure that its vocational nurses [~~nurse(s)~~] comply with the Nursing Practice Act, Texas Occupations Code[;] Chapters 301 and 304, while functioning in his or her capacity at or for the facility.

(g) A licensed abortion facility that provides pharmacy services shall obtain a license as a pharmacy if required by the Texas Pharmacy Act, Texas Occupations Code[;] Chapters 551 - 569.

(h) A licensed abortion facility shall comply with the following federal Occupational Safety and Health Administration requirements:

(1) 29 Code of Federal Regulations (CFR), Subpart E, §1910.38[; concerning emergency action plan] and §1910.39[; concerning fire prevention plans];

(2) 29 CFR [Code of Federal Regulations], Subpart I, §1910.132[; concerning general requirements for personal protective equipment];

(3) 29 CFR [Code of Federal Regulations], Subpart I, §1910.133[; concerning eye and face protection];

(4) 29 CFR [Code of Federal Regulations], Subpart I, §1910.138[; concerning hand protection];

(5) 29 CFR [Code of Federal Regulations], Subpart K, §1910.151[; concerning medical services and first aid];

(6) 29 CFR [Code of Federal Regulations], Subpart L, §1910.157[; concerning portable fire extinguishers];

(7) 29 CFR [Code of Federal Regulations], Subpart Z, §1910.1030[; concerning bloodborne pathogens]; and

(8) 29 CFR [Code of Federal Regulations], Subpart Z, §1910.1200, Appendices A - E[, concerning hazard communication (hazardous use of chemicals)].

(i) A licensed abortion facility shall not use adulterated or misbranded drugs or devices in violation of the Texas Health and Safety Code[§] §431.021. Adulterated drugs and devices are described in Texas Health and Safety Code[§] §431.111. Misbranded drugs or devices are described in Texas Health and Safety Code[§] §431.112.

(j) A licensed abortion facility shall not commit a false, misleading, or deceptive act or practice as that term is defined in the Deceptive Trade Practices-Consumer Protection Act, Business and Commerce Code[§] §17.46.

(k) A licensed abortion facility shall comply with the requirements of the Texas Family Code[§] §33.002[, relating to a Consent Form].

(l) A licensed abortion facility shall comply with the requirements of Texas Health and Safety Code[§] Chapter 171[, the Woman's Right to Know Act].

(m) A licensed abortion facility shall comply with the requirements of Texas Occupations Code[§] Chapter 102[, Solicitation of Patients].

(n) A licensed abortion facility shall comply with the following balance billing requirements. [~~Balance Billing.~~]

(1) A licensed abortion facility may not violate a law that prohibits the licensed abortion facility from billing a patient who is an insured, participant, or enrollee in a managed care plan an amount greater than an applicable copayment, coinsurance, and deductible under the insured's, participant's, or enrollee's managed care plan or that imposes a requirement related to that prohibition.

(2) A licensed abortion facility shall comply with Senate Bill 1264, 86th Legislature, Regular Session, 2019, and with related Texas Department of Insurance rules at 28 TAC Chapter 21, Subchapter OO, §§21.4901 - 21.4904 (relating to Disclosures by Out-of-Network Providers) to the extent this subchapter applies to the licensed abortion facility.

(o) A licensed abortion facility shall comply with the itemized bill requirements under Texas Health and Safety Code §185.002.

(p) [~~(o)~~] A licensed abortion facility shall comply with human trafficking signage requirements in accordance with Texas Health and Safety Code §245.025 [~~(relating to Human Trafficking Signs Required)~~].

(q) [~~(p)~~] A licensed abortion facility shall not discriminate based on a patient's disability and shall comply with Texas Health and Safety Code Chapter 161, Subchapter S [~~(relating to Allocation of Kidneys and Other Organs Available for Transplant)~~].

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 April 10, 2024.

TRD-202401444

Karen Ray

Chief Counsel

Department of State Health Services

Earliest possible date of adoption: May 26, 2024

For further information, please call: (512) 834-4591



## CHAPTER 229. FOOD AND DRUG SUBCHAPTER J. MINIMUM STANDARDS FOR NARCOTIC TREATMENT PROGRAMS

### 25 TAC §229.144

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §229.144, concerning State and Federal Statutes and Regulations.

#### BACKGROUND AND PURPOSE

The proposal is necessary to implement Senate Bill (S.B.) 490, 88th Legislature, Regular Session, 2023.

S.B. 490 added new Texas Health and Safety Code (HSC) Chapter 185, which requires a health care provider to send a written, itemized bill of the alleged cost of each health care service and supply when the provider requests payment from a patient after providing the patient with a health care service or related supply.

HSC §185.003, as added by S.B. 490, requires HHSC to take disciplinary action against a provider that violates HSC Chapter 185 on or after September 1, 2023, as if the provider violated an applicable licensing law.

The proposed amendment is necessary to add information regarding these itemized-bill requirements.

#### SECTION-BY-SECTION SUMMARY

The proposed amendment to §229.144 adds new subsection (d), which requires a narcotic treatment program (NTP) to comply with the itemized billing requirements in HSC Chapter 185. Other minor stylistic edits are made to comply with current HHSC rulemaking guidelines, such as removing superfluous phrases, adding "Texas" before references to Texas statutes, removing short titles to statutes, formatting punctuation and removing a lead-in phrase for consistency. Subsections are renumbered to account for the addition of a subsection.

#### FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years that the rule will be in effect, enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of state or local governments.

#### GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rule will be in effect:

- (1) the proposed rule will not create or eliminate a government program;
- (2) implementation of the proposed rule will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;
- (4) the proposed rule will not affect fees paid to HHSC;
- (5) the proposed rule will not create a new regulation;
- (6) the proposed rule will expand existing regulations;
- (7) the proposed rule will not change the number of individuals subject to the rule; and
- (8) the proposed rule will not affect the state's economy.

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because the proposed rule does not impose a cost or require small businesses, micro-businesses, or rural communities to alter their current business practices.

## LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

## COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule does not impose a cost on regulated persons and is necessary to implement legislation that does not specifically state that §2001.0045 applies to the rule.

## PUBLIC BENEFIT AND COSTS

Stephen Pahl, Deputy Executive Commissioner for Regulatory Services, has determined that for each year of the first five years the rule is in effect, the public will benefit from receiving itemized bills from licensed acute health care providers that are seeking payment from them for health care services and supplies and the public will also benefit from rules that are consistent with statutory requirements.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the rule does not require persons subject to the rule to alter their current business practices; these entities are required to comply with the law as added by S.B. 490 and the proposed amendment only ensures consistency with current statutory requirements.

## TAKINGS IMPACT ASSESSMENT

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

## PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 701 W. 51st Street, Austin, Texas 78751; or emailed to HCR\_PRU@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R004" in the subject line.

## STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; and HSC §466.004, which authorizes HHSC to administer and enforce

rules to ensure the proper use of approved narcotic drugs in the treatment of persons with a narcotic drug dependency.

The amendment implements Texas Government Code §531.0055 and HSC Chapter 185.

## §229.144. State and Federal Statutes and Regulations.

(a) A permit holder shall assure that the narcotic treatment program (NTP) is in compliance with all State of Texas laws and rules regulating chemical dependency treatment facilities including ~~but not limited to,~~ the following laws: Texas Health and Safety Code ~~[,]~~ Chapters 464 and 466; the Medical Practice Act, Texas Occupations Code ~~[,]~~ Chapters 151-160 ~~[,]~~ and 162-165; the Nurse Practice Act, Texas Occupations Code ~~[,]~~ Chapter 301; the Texas Pharmacy Act, Texas Occupations Code ~~[,]~~ Chapters 551-566; and the Licensed Professional Counselor Act, Texas Occupations Code ~~[,]~~ Chapter 503.

(b) The permit holder shall assure the NTP is in compliance with Title 42, Code of Federal Regulations, Part 8, ~~[,]~~ ~~titled, "Opioid Drugs in Maintenance and Detoxification Treatment of Opiate Addiction."~~ To the extent that the Code of Federal Regulation conflicts with these sections, these sections shall prevail.

(c) An NTP shall comply with the following balance billing requirements. ~~[Balance Billing.]~~

(1) An NTP may not violate a law that prohibits the NTP from billing a patient who is an insured, participant, or enrollee in a managed care plan an amount greater than an applicable copayment, coinsurance, and deductible under the insured's, participant's, or enrollee's managed care plan or that imposes a requirement related to that prohibition.

(2) An NTP shall comply with Senate Bill 1264, 86th Legislature, Regular Session, 2019, and with related Texas Department of Insurance rules at 28 TAC Chapter 21, Subchapter OO, §§21.4901 -21.4904 (relating to Disclosures by Out-of-Network Providers) to the extent this subchapter applies to the NTP.

(d) An NTP shall comply with the itemized bill requirements under Texas Health and Safety Code §185.002.

(e) ~~[(d)]~~ All citations in these sections to statutes or regulations include those statutes or regulations as amended.

(f) ~~[(e)]~~ An NTP shall not discriminate based on a patient's disability and shall comply with Texas Health and Safety Code Chapter 161, Subchapter S ~~[(relating to Allocation of Kidneys and Other Organs Available for Transplant)].~~

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 April 10, 2024.

TRD-202401445

Karen Ray

Chief Counsel

Department of State Health Services

Earliest possible date of adoption: May 26, 2024

For further information, please call: (512) 834-4591

◆ ◆ ◆

## TITLE 26. HEALTH AND HUMAN SERVICES

### PART 1. HEALTH AND HUMAN SERVICES COMMISSION

# CHAPTER 506. SPECIAL CARE FACILITIES

## SUBCHAPTER C. OPERATIONAL REQUIREMENTS

### 26 TAC §506.37

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §506.37, concerning Balance Billing.

#### BACKGROUND AND PURPOSE

The proposal is necessary to implement Senate Bill (S.B.) 490, 88th Legislature, Regular Session, 2023.

S.B. 490 added new Texas Health and Safety Code (HSC) Chapter 185, which requires a health care provider to send a written, itemized bill of the alleged cost of each health care service and supply when the provider requests payment from a patient after providing the patient with a health care service or related supply.

HSC §185.003, as added by S.B. 490, requires HHSC to take disciplinary action against a provider that violates HSC Chapter 185 on or after September 1, 2023, as if the provider violated an applicable licensing law.

The proposed amendment is necessary to add information regarding these itemized-bill requirements.

#### SECTION-BY-SECTION SUMMARY

The proposed amendment to §506.37 adds new subsection (b), which requires a special care facility (SCF) to comply with the itemized billing requirements in HSC Chapter 185. The title of the section is updated to "Billing Requirements" and the section is reorganized for clarity.

#### FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years that the rule will be in effect, enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of state or local governments.

#### GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rule will be in effect:

- (1) the proposed rule will not create or eliminate a government program;
- (2) implementation of the proposed rule will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;
- (4) the proposed rule will not affect fees paid to HHSC;
- (5) the proposed rule will not create a new regulation;
- (6) the proposed rule will expand existing regulations;
- (7) the proposed rule will not change the number of individuals subject to the rule; and
- (8) the proposed rule will not affect the state's economy.

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural

communities because the proposed rule does not impose a cost or require small businesses, micro-businesses, or rural communities to alter their current business practices.

#### LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

#### COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule does not impose a cost on regulated persons and is necessary to implement legislation that does not specifically state that §2001.0045 applies to the rule.

#### PUBLIC BENEFIT AND COSTS

Stephen Pahl, Deputy Executive Commissioner for Regulatory Services, has determined that for each year of the first five years the rule is in effect, the public will benefit from receiving itemized bills from licensed acute health care providers that are seeking payment from them for health care services and supplies and the public will also benefit from rules that are consistent with statutory requirements.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the rule does not require persons subject to the rule to alter their current business practices; these entities are required to comply with the law as added by S.B. 490 and the proposed amendment only ensures consistency with current statutory requirements.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 701 W. 51st Street, Austin, Texas 78751; or emailed to HCR\_PRU@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R004" in the subject line.

#### STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; and HSC §248.006, which requires HHSC to adopt rules establishing minimum standards for special care facilities.

The amendment implements Texas Government Code §531.0055 and HSC Chapter 185.

§506.37. *[Balance] Billing Requirements.*

(a) A facility shall comply with the following balance billing requirements.

(1) A facility may not violate a law that prohibits the facility from billing a patient who is an insured, participant, or enrollee in a managed care plan an amount greater than an applicable copayment, coinsurance, and deductible under the insured's, participant's, or enrollee's managed care plan or that imposes a requirement related to that prohibition.

(2) [(b)] A facility shall comply with Senate Bill 1264, 86th Legislature, Regular Session, 2019, and with related Texas Department of Insurance rules at 28 TAC Chapter 21, Subchapter OO, §§21.4901 - 21.4904 (relating to Disclosures by Out-of-Network Providers) to the extent this subchapter applies to the facility.

(b) A facility shall comply with the itemized bill requirements under Texas Health and Safety Code §185.002.

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 April 10, 2024.

TRD-202401446

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: May 26, 2024

For further information, please call: (512) 834-4591



## CHAPTER 507. END STAGE RENAL DISEASE FACILITIES

### SUBCHAPTER D. OPERATIONAL REQUIREMENTS FOR PATIENT CARE AND TREATMENT

#### 26 TAC §507.50

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §507.50, concerning Balance Billing.

#### BACKGROUND AND PURPOSE

The proposal is necessary to implement Senate Bill (S.B.) 490, 88th Legislature, Regular Session, 2023.

S.B. 490 added new Texas Health and Safety Code (HSC) Chapter 185, which requires a health care provider to send a written, itemized bill of the alleged cost of each health care service and supply when the provider requests payment from a patient after providing the patient with a health care service or related supply.

HSC §185.003, as added by S.B. 490, requires HHSC to take disciplinary action against a provider that violates HSC Chapter 185 on or after September 1, 2023, as if the provider violated an applicable licensing law.

The proposed amendment is necessary to add information regarding these itemized-bill requirements.

#### SECTION-BY-SECTION SUMMARY

The proposed amendment to §507.50 adds new subsection (b), which requires an end stage renal disease (ESRD) facility to

comply with the itemized billing requirements in HSC Chapter 185. The title of the section is updated to "Billing Requirements" and the section is reorganized for clarity.

#### FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years that the rule will be in effect, enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of state or local governments.

#### GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rule will be in effect:

- (1) the proposed rule will not create or eliminate a government program;
- (2) implementation of the proposed rule will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;
- (4) the proposed rule will not affect fees paid to HHSC;
- (5) the proposed rule will not create a new regulation;
- (6) the proposed rule will expand existing regulations;
- (7) the proposed rule will not change the number of individuals subject to the rule; and
- (8) the proposed rule will not affect the state's economy.

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because the proposed rule does not impose a cost or require small businesses, micro-businesses, or rural communities to alter their current business practices.

#### LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

#### COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule does not impose a cost on regulated persons and is necessary to implement legislation that does not specifically state that §2001.0045 applies to the rule.

#### PUBLIC BENEFIT AND COSTS

Stephen Pahl, Deputy Executive Commissioner for Regulatory Services, has determined that for each year of the first five years the rule is in effect, the public will benefit from receiving itemized bills from licensed acute health care providers that are seeking payment from them for health care services and supplies and the public will also benefit from rules that are consistent with statutory requirements.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the rule does not require persons subject to the rule to alter their current business practices; these entities are required to comply with the law as added by S.B. 490 and the proposed amendment only ensures consistency with current statutory requirements.

## TAKINGS IMPACT ASSESSMENT

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

## PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 701 W. 51st Street, Austin, Texas 78751; or emailed to HCR\_PRU@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R004" in the subject line.

## STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, HSC §251.003, which requires HHSC to adopt rules for the issuance, renewal, denial, suspension, and revocation of a license to operate an ESRD facility; and HSC §251.014, which requires these rules to include minimum standards to protect the health and safety of a patient of an ESRD facility.

The amendment implements Texas Government Code §531.0055 and HSC Chapter 185.

§507.50. *[Balance] Billing Requirements.*

(a) A facility shall comply with the following balance billing requirements. [A facility may not violate a law that prohibits the facility from billing a patient who is an insured, participant, or enrollee in a managed care plan an amount greater than an applicable copayment, coinsurance, and deductible under the insured's, participant's, or enrollee's managed care plan or that imposes a requirement related to that prohibition.]

(1) A facility may not violate a law that prohibits the facility from billing a patient who is an insured, participant, or enrollee in a managed care plan an amount greater than an applicable copayment, coinsurance, and deductible under the insured's, participant's, or enrollee's managed care plan or that imposes a requirement related to that prohibition.

(2) A facility shall comply with Senate Bill 1264, 86th Legislature, Regular Session, 2019, and with related Texas Department of Insurance rules at 28 TAC Chapter 21, Subchapter OO, §§21.4901 - 21.4904 (relating to Disclosures by Out-of-Network Providers) to the extent this subchapter applies to the facility.

(b) A facility shall comply with the itemized bill requirements under Texas Health and Safety Code §185.002.

[(b) A facility shall comply with Senate Bill 1264, 86th Legislature, Regular Session, 2019, and with related Texas Department of Insurance rules at 28 TAC Chapter 21, Subchapter OO, §§21.4901 -

21.4904 (relating to Disclosures by Out-of-Network Providers) to the extent this subchapter applies to 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 April 26, 2024.

TRD-202401448

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: May 26, 2024

For further information, please call: (512) 834-4591



## CHAPTER 509. FREESTANDING EMERGENCY MEDICAL CARE FACILITIES SUBCHAPTER C. OPERATIONAL REQUIREMENTS

### 26 TAC §509.67

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §509.67, concerning Balance Billing.

#### BACKGROUND AND PURPOSE

The proposal is necessary to implement Senate Bill (S.B.) 490, 88th Legislature, Regular Session, 2023.

S.B. 490 added new Texas Health and Safety Code (HSC) Chapter 185, which requires a health care provider to send a written, itemized bill of the alleged cost of each health care service and supply when the provider requests payment from a patient after providing the patient with a health care service or related supply.

HSC §185.003, as added by S.B. 490, requires HHSC to take disciplinary action against a provider that violates HSC Chapter 185 on or after September 1, 2023, as if the provider violated an applicable licensing law.

The proposed amendment is necessary to add information regarding these itemized-bill requirements.

#### SECTION-BY-SECTION SUMMARY

The proposed amendment to §509.67 adds new subsection (b), which requires a freestanding emergency medical care (FEMC) facility to comply with the itemized billing requirements in HSC Chapter 185. The title of the section is updated to "Billing Requirements" and the section is reorganized for clarity.

#### FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years that the rule will be in effect, enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of state or local governments.

#### GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rule will be in effect:

(1) the proposed rule will not create or eliminate a government program;

(2) implementation of the proposed rule will not affect the number of HHSC employee positions;

(3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;

(4) the proposed rule will not affect fees paid to HHSC;

(5) the proposed rule will not create a new regulation;

(6) the proposed rule will expand existing regulations;

(7) the proposed rule will not change the number of individuals subject to the rule; and

(8) the proposed rule will not affect the state's economy.

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because the proposed rule does not impose a cost or require small businesses, micro-businesses, or rural communities to alter their current business practices.

#### LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

#### COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule does not impose a cost on regulated persons and is necessary to implement legislation that does not specifically state that §2001.0045 applies to the rule.

#### PUBLIC BENEFIT AND COSTS

Stephen Pahl, Deputy Executive Commissioner for Regulatory Services, has determined that for each year of the first five years the rule is in effect, the public will benefit from receiving itemized bills from licensed acute health care providers that are seeking payment from them for health care services and supplies and the public will also benefit from rules that are consistent with statutory requirements.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the rule does not require persons subject to the rule to alter their current business practices; these entities are required to comply with the law as added by S.B. 490 and the proposed amendment only ensures consistency with current statutory requirements.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 701 W. 51st Street, Austin, Texas 78751; or emailed to HCR\_PRU@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on

the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R004" in the subject line.

#### STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §254.101, which authorizes HHSC to adopt rules regarding FEMC facilities.

The amendment implements Texas Government Code §531.0055 and HSC Chapter 185.

#### §509.67. *[Balance] Billing Requirements.*

(a) A facility shall comply with the following balance billing requirements. [A facility may not violate a law that prohibits the facility from billing a patient who is an insured, participant, or enrollee in a managed care plan an amount greater than an applicable copayment, coinsurance, and deductible under the insured's, participant's, or enrollee's managed care plan or that imposes a requirement related to that prohibition.]

(1) A facility may not violate a law that prohibits the facility from billing a patient who is an insured, participant, or enrollee in a managed care plan an amount greater than an applicable copayment, coinsurance, and deductible under the insured's, participant's, or enrollee's managed care plan or that imposes a requirement related to that prohibition.

(2) A facility shall comply with Senate Bill 1264, 86th Legislature, Regular Session, 2019, and with related Texas Department of Insurance rules at 28 TAC Chapter 21, Subchapter OO §§21.4901 - 21.4904 (relating to Disclosures by Out-of-Network Providers) to the extent this subchapter applies to the facility.

(b) A facility shall comply with the itemized bill requirements under Texas Health and Safety Code §185.002.

~~{(b) A facility shall comply with Senate Bill 1264, 86th Legislature, Regular Session, 2019, and with related Texas Department of Insurance rules at 28 TAC Chapter 21, Subchapter OO §§21.4901 - 21.4904 (relating to Disclosures by Out-of-Network Providers) to the extent this subchapter applies to 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 April 10, 2024.

TRD-202401449

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: May 26, 2024

For further information, please call: (512) 834-4591



# CHAPTER 510. PRIVATE PSYCHIATRIC HOSPITALS AND CRISIS STABILIZATION UNITS

## SUBCHAPTER C. OPERATIONAL REQUIREMENTS

### 26 TAC §510.45

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §510.45, concerning Facility Billing.

#### BACKGROUND AND PURPOSE

The proposal is necessary to implement Senate Bill (S.B.) 490, 88th Legislature, Regular Session, 2023.

S.B. 490 added new Texas Health and Safety Code (HSC) Chapter 185, which requires a health care provider to send a written, itemized bill of the alleged cost of each health care service and supply when the provider requests payment from a patient after providing the patient with a health care service or related supply.

HSC §185.003, as added by S.B. 490, requires HHSC to take disciplinary action against a provider that violates HSC Chapter 185 on or after September 1, 2023, as if the provider violated an applicable licensing law.

The proposed amendment is necessary to add information regarding these itemized-bill requirements.

#### SECTION-BY-SECTION SUMMARY

The proposed amendment to §510.45 adds new paragraph (2) under subsection (a), which requires a private psychiatric hospital or crisis stabilization unit (CSU) to comply with the itemized billing requirements in HSC Chapter 185. The title of the section is revised to "Billing Requirements." Other minor stylistic edits are made to comply with current HHSC rulemaking guidelines, such as removing short titles to statutes, formatting punctuation and capitalization, and spelling out "HHSC."

#### FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years that the rule will be in effect, enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of state or local governments.

#### GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rule will be in effect:

- (1) the proposed rule will not create or eliminate a government program;
- (2) implementation of the proposed rule will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;
- (4) the proposed rule will not affect fees paid to HHSC;
- (5) the proposed rule will not create a new regulation;
- (6) the proposed rule will expand existing regulations;
- (7) the proposed rule will not change the number of individuals subject to the rule; and

(8) the proposed rule will not affect the state's economy.

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because the proposed rule does not impose a cost or require small businesses, micro-businesses, or rural communities to alter their current business practices.

#### LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

#### COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule does not impose a cost on regulated persons and is necessary to implement legislation that does not specifically state that §2001.0045 applies to the rule.

#### PUBLIC BENEFIT AND COSTS

Stephen Pahl, Deputy Executive Commissioner for Regulatory Services, has determined that for each year of the first five years the rule is in effect, the public will benefit from receiving itemized bills from licensed acute health care providers that are seeking payment from them for health care services and supplies and the public will also benefit from rules that are consistent with statutory requirements.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the rule does not require persons subject to the rule to alter their current business practices; these entities are required to comply with the law as added by S.B. 490 and the proposed amendment only ensures consistency with current statutory requirements.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 701 W. 51st Street, Austin, Texas 78751; or emailed to HCR\_PRU@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R004" in the subject line.

#### STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; and HSC



§577.010, which requires HHSC to adopt rules and standards necessary and appropriate to ensure the proper care and treatment of patients in a private mental hospital or mental health facility.

The amendment implements Texas Government Code §531.0055 and HSC Chapter 185.

*§510.45. [Facility] Billing Requirements.*

(a) Itemized statements.

(1) A facility shall adopt, implement, and enforce a policy to ensure that the facility complies with Texas [the] Health and Safety Code (HSC) [§] §311.002 [~~relating to Itemized Statement of Billed Services~~].

(2) A facility shall comply with the itemized bill requirements under HSC §185.002.

(b) Audits of billing. A facility shall adopt, implement, and enforce a policy to ensure that the facility complies with HSC [§] §311.0025(a) [~~relating to Audits of Billing~~].

(c) Complaint investigation procedures.

(1) A complaint submitted to the Texas Health and Human Services Commission's [HHSC's] Complaint and Incident Intake relating to billing must specify the patient for whom the bill was submitted.

(2) Upon receiving a complaint warranting an investigation, Texas Health and Human Services Commission (HHSC) [HHSC] shall send the complaint to the facility requesting the facility to conduct an internal investigation. Within 30 days of the facility's receipt of the complaint, the facility shall submit to HHSC:

(A) a report outlining the facility's investigative process;

(B) the resolution or conclusions reached by the facility with the patient, third party payor, or complainant; and

(C) corrections, if any, in the policies or protocols which were made as a result of its investigative findings.

(3) In addition to the facility's internal investigation, HHSC may also conduct an investigation to audit any billing and patient records of the facility.

(4) HHSC may inform [in writing] a complainant who identifies themselves by name and address in writing of the receipt and disposition of the complaint.

(5) HHSC shall refer investigative reports of billing by health care professionals who have provided improper, unreasonable, or medically or clinically unnecessary treatments or billed for treatments which were not provided to the appropriate licensing agency.

(d) Balance billing [Billing].

(1) A facility may not violate a law that prohibits the facility from billing a patient who is an insured, participant, or enrollee in a managed care plan an amount greater than an applicable copayment, coinsurance, and deductible under the insured's, participant's, or enrollee's managed care plan or that imposes a requirement related to that prohibition.

(2) A facility shall comply with Senate Bill 1264, 86th Legislature, Regular Session, 2019, and with related Texas Department of Insurance rules at 28 TAC Chapter 21, Subchapter OO, §§21.4901 - 21.4904 (relating to Disclosures by Out-of-Network Providers) to the extent this subchapter applies to 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 April 10, 2024.

TRD-202401450

Karen Ray  
Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: May 26, 2024

For further information, please call: (512) 834-4591



## CHAPTER 511. LIMITED SERVICES RURAL HOSPITALS

### SUBCHAPTER C. OPERATIONAL REQUIREMENTS

#### 26 TAC §511.75

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §511.75, concerning Limited Services Rural Hospital Billing.

#### BACKGROUND AND PURPOSE

The proposal is necessary to implement Senate Bill (S.B.) 490, 88th Legislature, Regular Session, 2023.

S.B. 490 added new Texas Health and Safety Code (HSC) Chapter 185, which requires a health care provider to send a written, itemized bill of the alleged cost of each health care service and supply when the provider requests payment from a patient after providing the patient with a health care service or related supply.

HSC §185.003, as added by S.B. 490, requires HHSC to take disciplinary action against a provider that violates HSC Chapter 185 on or after September 1, 2023, as if the provider violated an applicable licensing law.

The proposed amendment is necessary to add information regarding these itemized-bill requirements.

#### SECTION-BY-SECTION SUMMARY

The proposed amendment to §511.75 adds subsection (c), which requires a limited services rural hospital (LSRH) to comply with the itemized billing requirements in HSC Chapter 185. The title of the section is revised to "Billing Requirements." Other minor stylistic edits are made to comply with current HHSC rulemaking guidelines, such as removing short titles to statutes, spelling out "HHSC," and the section is renumbered for clarity.

#### FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years that the rule will be in effect, enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of state or local governments.

#### GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rule will be in effect:

(1) the proposed rule will not create or eliminate a government program;

(2) implementation of the proposed rule will not affect the number of HHSC employee positions;

(3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;

(4) the proposed rule will not affect fees paid to HHSC;

(5) the proposed rule will not create a new regulation;

(6) the proposed rule will expand existing regulations;

(7) the proposed rule will not change the number of individuals subject to the rule; and

(8) the proposed rule will not affect the state's economy.

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because the proposed rule does not impose a cost or require small businesses, micro-businesses, or rural communities to alter their current business practices.

#### LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

#### COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule does not impose a cost on regulated persons and is necessary to implement legislation that does not specifically state that §2001.0045 applies to the rule.

#### PUBLIC BENEFIT AND COSTS

Stephen Pahl, Deputy Executive Commissioner for Regulatory Services, has determined that for each year of the first five years the rule is in effect, the public will benefit from receiving itemized bills from licensed acute health care providers that are seeking payment from them for health care services and supplies and the public will also benefit from rules that are consistent with statutory requirements.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the rule does not require persons subject to the rule to alter their current business practices; these entities are required to comply with the law as added by S.B. 490 and the proposed amendment only ensures consistency with current statutory requirements.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 701 W. 51st Street, Austin, Texas 78751; or emailed to HCR\_PRU@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed be-

fore midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R004" in the subject line.

#### STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; and Texas Health and Safety Code §241.302(b), which provides that the Executive Commissioner of HHSC shall adopt rules to implement that section and establish minimum standards for LSRHs.

The amendment implements Texas Government Code §531.0055 and HSC Chapter 185.

#### §511.75. *[Limited Services Rural Hospital] Billing Requirements.*

(a) A limited services rural hospital (LSRH) shall adopt, implement, and enforce a policy to ensure that the hospital complies with ~~the~~ Texas Health and Safety Code (HSC) §311.002 ~~[(relating to Itemized Statement of Billed Services)]~~.

(b) An LSRH shall adopt, implement, and enforce a policy to ensure that the LSRH complies with HSC §311.0025 ~~[(relating to Audits of Billing)]~~.

(c) An LSRH shall comply with the itemized bill requirements under HSC §185.002.

~~[(c) An LSRH may not violate a law that prohibits the hospital from billing a patient who is an insured, participant, or enrollee in a managed care plan an amount greater than an applicable copayment, coinsurance, and deductible under the insured's, participant's, or enrollee's managed care plan or that imposes a requirement related to that prohibition.]~~

(d) An LSRH shall comply with the following balance billing requirements. [An LSRH shall comply with Senate Bill 1264, 86th Legislature, Regular Session, 2019, and with related Texas Department of Insurance rules at 28 Texas Administrative Code (TAC) Chapter 21, Subchapter OO (relating to Disclosures by Out-of-Network Providers) to the extent that subchapter applies to the LSRH.]

(1) An LSRH may not violate a law that prohibits the hospital from billing a patient who is an insured, participant, or enrollee in a managed care plan an amount greater than an applicable copayment, coinsurance, and deductible under the insured's, participant's, or enrollee's managed care plan or that imposes a requirement related to that prohibition.

(2) An LSRH shall comply with Senate Bill 1264, 86th Legislature, Regular Session, 2019, and with related Texas Department of Insurance rules at 28 TAC Chapter 21, Subchapter OO (relating to Disclosures by Out-of-Network Providers) to the extent that subchapter applies to the LSRH.

(e) A complaint submitted to the Texas Health and Human Services Commission's ~~[(HHSC's)]~~ Complaint and Incident Intake relating to billing must specify the patient for whom the bill was submitted.

(1) Upon receiving a complaint warranting an investigation, the Texas Health and Human Services Commission (HHSC) ~~[(HHSC)]~~ shall send the complaint to the LSRH and request the LSRH to conduct an internal investigation.

~~[(A) a report outlining the LSRH's investigative process;]~~

~~[(B) the resolution or conclusions reached by the LSRH with the patient, third party payor, or complainant; and]~~

~~[(C) corrections, if any, in the LSRH's policies or protocols that were made as a result of its investigative findings.]~~

(2) Within 30 days of the LSRH's receipt of the complaint, the LSRH shall submit to HHSC:

(A) a report outlining the LSRH's investigative process;

(B) the resolution or conclusions reached by the LSRH with the patient, third party payor, or complainant; and

(C) corrections, if any, in the LSRH's policies or protocols that were made as a result of its investigative findings.

(3) [(2)] In addition to the LSRH's internal investigation, HHSC may also conduct an investigation to audit any billing and patient records of the LSRH.

(4) [(3)] HHSC shall inform, in writing, a complainant who identifies him or herself by name and address:

(A) of the receipt of the complaint;

(B) if the complainant's allegations are potential violations of the Act or this chapter warranting an investigation;

(C) whether the complaint will be investigated by HHSC;

(D) if the complaint was referred to the LSRH for internal investigation;

(E) whether and to whom the complaint will be referred;

(F) of the results of the LSRH's investigation and the LSRH's resolution with the complainant; and

(G) of HHSC's findings if an on-site audit investigation was conducted.

(5) [(4)] HHSC shall refer investigative reports of billing by health care professionals who have provided improper, unreasonable, or medically or clinically unnecessary treatments or billed for treatments that were not provided to the appropriate licensing agency.

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 April 10, 2024.

TRD-202401453

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: May 26, 2024

For further information, please call: (512) 834-4591



## CHAPTER 564. TREATMENT FACILITIES FOR INDIVIDUALS WITH SUBSTANCE-RELATED DISORDERS

### SUBCHAPTER C. OPERATIONAL REQUIREMENTS

#### 26 TAC §564.28

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §564.28, concerning Balance Billing.

#### BACKGROUND AND PURPOSE

The proposal is necessary to implement Senate Bill (S.B.) 490, 88th Legislature, Regular Session, 2023.

S.B. 490 added new Texas Health and Safety Code (HSC) Chapter 185, which requires a health care provider to send a written, itemized bill of the alleged cost of each health care service and supply when the provider requests payment from a patient after providing the patient with a health care service or related supply.

HSC §185.003, as added by S.B. 490, requires HHSC to take disciplinary action against a provider that violates HSC Chapter 185 on or after September 1, 2023, as if the provider violated an applicable licensing law.

The proposed amendment is necessary to add information regarding these itemized-bill requirements.

#### SECTION-BY-SECTION SUMMARY

The proposed amendment to §564.28 adds new subsection (b), which requires a licensed chemical dependency treatment facility (CDTF) to comply with the itemized billing requirements in HSC Chapter 185. The title of the section is updated to "Billing Requirements" and the section is reorganized for clarity.

#### FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years that the rule will be in effect, enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of state or local governments.

#### GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rule will be in effect:

(1) the proposed rule will not create or eliminate a government program;

(2) implementation of the proposed rule will not affect the number of HHSC employee positions;

(3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;

(4) the proposed rule will not affect fees paid to HHSC;

(5) the proposed rule will not create a new regulation;

(6) the proposed rule will expand existing regulations;

(7) the proposed rule will not change the number of individuals subject to the rule; and

(8) the proposed rule will not affect the state's economy.

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because the proposed rule does not impose a cost or require small businesses, micro-businesses, or rural communities to alter their current business practices.

#### LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

## COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule does not impose a cost on regulated persons and is necessary to implement legislation that does not specifically state that §2001.0045 applies to the rule.

## PUBLIC BENEFIT AND COSTS

Stephen Pahl, Deputy Executive Commissioner for Regulatory Services, has determined that for each year of the first five years the rule is in effect, the public will benefit from receiving itemized bills from licensed acute health care providers that are seeking payment from them for health care services and supplies and the public will also benefit from rules that are consistent with statutory requirements.

Trey Wood has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the rule does not require persons subject to the rule to alter their current business practices; these entities are required to comply with the law as added by S.B. 490 and the proposed amendment only ensures consistency with current statutory requirements.

## TAKINGS IMPACT ASSESSMENT

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

## PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 701 W. 51st Street, Austin, Texas 78751; or emailed to HCR\_PRU@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R004" in the subject line.

## STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; and HSC §464.009, which authorizes the Executive Commissioner to adopt rules governing organization and structure, policies and procedures, staffing requirements, services, client rights, records, physical plant requirements, and standards for licensed CDTFs.

The amendment implements Texas Government Code §531.0055 and HSC Chapter 185.

§564.28. *[Balance] Billing Requirements.*

(a) A facility shall comply with the following balance billing requirements. [A facility may not violate a law that prohibits the facility from billing a patient who is an insured, participant, or enrollee in a managed care plan an amount greater than an applicable copay-

ment, coinsurance, and deductible under the insured's, participant's, or enrollee's managed care plan or that imposes a requirement related to that prohibition.]

(1) A facility may not violate a law that prohibits the facility from billing a patient who is an insured, participant, or enrollee in a managed care plan an amount greater than an applicable copayment, coinsurance, and deductible under the insured's, participant's, or enrollee's managed care plan or that imposes a requirement related to that prohibition.

(2) A facility shall comply with Senate Bill 1264, 86th Legislature, Regular Session, 2019, and with related Texas Department of Insurance rules at 28 TAC Chapter 21, Subchapter OO, §§21.4901 - 21.4904 (relating to Disclosures by Out-of-Network Providers) to the extent this subchapter applies to the facility.

(b) A facility shall comply with the itemized bill requirements under Texas Health and Safety Code §185.002.

[(b) A facility shall comply with Senate Bill 1264, 86th Legislature, Regular Session, 2019, and with related Texas Department of Insurance rules at 28 TAC Chapter 21, Subchapter OO, §§21.4901 - 21.4904 (relating to Disclosures by Out-of-Network Providers) to the extent this subchapter applies to 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 April 10, 2024.

TRD-202401454

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: May 26, 2024

For further information, please call: (512) 834-4591



## CHAPTER 744. MINIMUM STANDARDS FOR SCHOOL-AGE AND BEFORE OR AFTER-SCHOOL PROGRAMS

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §§744.123, 744.605, 744.1301, 744.1309, 744.1311, 744.1403, 744.1901, 744.1907, 744.1911, 744.1913, 744.2601, 744.3351, 744.3401, 744.3411, and 744.3415; new §§744.1318, 744.3409, and 744.3410; and repeal of §744.1613.

## BACKGROUND AND PURPOSE

The proposal is necessary to implement House Bill (H.B.) 59, 88th Legislature, Regular Session, 2023. H.B. 59 amended Texas Health and Safety Code (HSC), Subchapter D, Chapter 341, by adding §341.0646 to require certain organizations, including child day care facilities, to implement specific child water safety requirements if the operation authorizes a child to engage in an organized water activity.

HHSC Child Care Regulation (CCR) is proposing new and amended rules in Chapter 744 that will (1) add definitions and requirements related to water safety, including (A) water safety training for employees, substitutes, volunteers, and contractors, and (B) the use of a personal flotation device for children who access swimming pools via their licensed child-care operation;

and (2) update references to bodies of water and wading pools to be consistent with HSC §341.0646(a). CCR is also proposing to repeal one rule that established a grandfather clause related to child to caregiver ratios and group sizes because the need for the grandfather clause has expired.

#### SECTION-BY-SECTION SUMMARY

The proposed amendment to §744.123 (1) adds definitions for "body of water," "personal flotation device," "swimming pool," and "wading pool"; (2) updates the definition of "water activities" to remove the terms "splashing pools" and "bodies of water"; and (3) updates the numbering of the definitions accordingly.

The proposed amendment to §744.605 (1) moves requirements related to water activity participation to the end of the list of required admission information; (2) renumbers the rule accordingly; and (3) clarifies that if a child-care operation allows a child to access a swimming pool a parent is required to indicate at admission whether the child is (A) able to swim competently as defined by the American Red Cross, or (B) requires a personal flotation device because the child is unable to swim competently or is at risk of injury or death when swimming or otherwise accessing a body of water.

The proposed amendment to §744.1301 adds to the chart of training requirements for employees, caregivers, and directors (1) the word "safety" to the transportation training requirements to be consistent with the rule content for that training; and (2) a new water safety training requirement for a child-care operation that allows a child to access a swimming pool at or away from the operation. The chart specifies that the site director and program director or operation director and each employee who accompanies a child to a swimming pool must have water safety training prior to accompanying a child to a swimming pool and annually thereafter.

The proposed amendment to §744.1309 clarifies that water safety training is exclusive of the 15 clock hours of annual required training for caregivers and site directors.

The proposed amendment to §744.1311 clarifies that water safety training is exclusive of the 20 clock hours of annual required training for an operation director or a program director.

Proposed new §744.1318 adds a requirement for water safety training if a child-care operation allows a child to access a swimming pool at or away from the operation. The rule requires the training for each employee who accompanies a child to a swimming pool before the employee accompanies the child to a swimming pool and for each site director and program director or operation director. The rule also clarifies that water safety training is exclusive of any requirements for orientation, pre-service training, and annual training.

The proposed amendment to §744.1403 adds to the chart of training requirements for substitutes, volunteers, and contractors (1) the word "safety" to the transportation training requirements to be consistent with the rule content for that training; and (2) a new water safety training requirement for a child-care operation that allows a child to access a swimming pool at or away from the operation. The chart specifies that each substitute, volunteer, and contractor who accompanies a child to a swimming pool must have water safety training prior to accompanying a child to a swimming pool and annually thereafter.

The proposed repeal of §744.1613 deletes the rule as no longer necessary because the rule established a grandfather clause that is no longer necessary.

The proposed amendment to §744.1901 removes references to "splashing" in the rule title and within the rule.

The proposed amendment to §744.1907 (1) updates the rule title to reflect that a lifeguard must be on duty when children are swimming in 18 inches, rather than two feet, of water; and (2) updates language for better readability.

The proposed amendment to §744.1911 clarifies that each caregiver counted in the child to caregiver ratio for swimming in 18 inches or more of water must be able to swim and be prepared to do so in an emergency.

The proposed amendment to §744.1913 updates language for better readability.

The proposed amendment to §744.2601 (1) updates language for better readability; and (2) updates the list of vessels containing water that must be inaccessible to all children to (A) add wading pools, and (B) remove pools, ponds, and creeks as they are included in the definition of the previously listed "bodies of water."

The proposed amendment to §744.3351 updates the title of a cross-referenced subchapter.

The title of Subchapter O is updated to remove the term "splashing."

The proposed amendment to §744.3401 (1) updates the rule title; (2) updates the title of a rule reference; and (3) removes language indicating that a swimming pool has a depth of more than two feet of water.

Proposed new §744.3409 outlines the additional safety precautions a child-care operation must take for a child in care who is unable to swim competently or is at risk of injury or death when swimming. The rule requires the child-care operation to do the following before the child enters a swimming pool: (1) provide the child with a Type I, II, or III United States Coast Guard approved personal flotation device (PFD); (2) ensure the child is wearing the PFD; and (3) ensure the PFD is properly fitted and fastened for the child.

Proposed new §744.3410 clarifies that a child-care operation is not required to provide a PFD to a child who is unable to swim competently or at risk of injury or death when swimming or ensure the child is wearing a PFD if (1) the child is actively participating in swim instruction or a competition; and (2) the child-care operation ensures the child is supervised in accordance with §744.1205 during the instruction or competition.

The proposed amendment to §744.3411 (1) removes the term "splashing" from the rule; (2) removes language indicating that a wading pool has a depth of two feet or less; and (3) updates the title of a rule reference.

The proposed amendment to §744.3415 (1) updates the rule title; (2) updates language for better readability; (3) removes references to "lakes," "ponds," and "rivers" from the list of water bodies a child cannot swim in as they are included in the definition of a "body of water"; and (4) removes a reference to "wading pool" as a wading pool is not considered a "body of water".

#### FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of state or local governments.

## GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rules will be in effect:

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;
- (4) the proposed rules will not affect fees paid to HHSC;
- (5) the proposed rules will create a new regulation;
- (6) the proposed rules will expand and repeal existing regulations;
- (7) the proposed rules will not change the number of individuals subject to the rules; and
- (8) the proposed rules will not affect the state's economy.

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

Trey Wood has also determined that there will be an adverse economic effect on small businesses and micro-businesses, but there will not be an adverse economic effect on rural communities.

Texas Government Code Chapter 2006 defines a small business as one that is for-profit with fewer than 100 employees. A micro-business is one that is for-profit with fewer than 20 employees. Based on data obtained from the 2022 CCR Data Book, there are approximately 1,460 School-Age Programs and Before and After-School Programs required to comply with the rules. CCR conducted a survey of licensed child-care operations in 2019 to determine which operations met the definition of a small or micro-business and only received a response rate of approximately 1.5 percent of School-Age Programs and 1.1 percent of Before and After-School Programs, which is not statistically significant. However, data in July 2020 indicated that approximately 36.7 percent (536 programs) were for profit. In addition, based on a survey conducted in 2010 approximately 98 percent of those programs (525 programs) have less than 100 employees and qualify as small businesses and approximately 68 percent of those small businesses (357 programs) have less than 20 employees and qualify as micro-businesses.

There is a projected economic impact on small businesses and micro-businesses from proposed §744.3409. This economic impact, however, is limited to child-care operations that offer children access to a swimming pool, either onsite or during field trips where water activities take place. Based on data collected in November 2023 for Fiscal Year 2022, 55 child-care operations have a swimming pool on the premises and 227 child-care operations offer water activities (to include swimming pools, wading pools, and sprinkler play). However, CCR does not have data regarding how many of these child-care operations are a small business or a micro-business. With regards to water activities, CCR does not collect data regarding the type of water activities a child-care operation provides or whether those activities take place onsite or during field trips. Although HHSC can assume the 55 operations with a pool on the premises that are a small business or a micro-business will be required to comply with the proposed rule, HHSC is unable to determine the number of child-care operations whose water activities include ac-

cess to a swimming pool during field trips. Therefore, HHSC does not have enough information to determine the total number of child-care operations operating as a small business or micro-business that will be required to comply with the proposed rule.

Section 744.3409 requires a child-care operation to provide each child in care who is unable to swim competently or is at risk of injury or death when swimming or otherwise entering a swimming pool a properly fitted and fastened Type I, II, or III United States Coast Guard approved personal flotation device (PFD). A 2023 assessment of the average cost to purchase a single PFD revealed that a PFD costs between \$17 and \$45. However, the total cost to purchase PFDs will vary per child-care operation depending on the number of enrolled children who are unable to swim competently or at risk of injury or death when swimming and the type of PFD the operation elects to purchase. In addition, some child-care operations may choose to obtain PFDs through organizations that provide them at no cost. These factors, coupled with HHSC's inability to determine the number of child-care operations that offer access to a swimming pool during field trips, renders HHSC unable to determine economic costs for persons required to comply with the rule as proposed.

HHSC determined that alternative methods to achieve the purpose of the proposed rule for small businesses, micro-businesses, or rural communities would not be consistent with ensuring the health and safety of children who access swimming pools via their licensed child-care operation.

## LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

## COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

## PUBLIC BENEFIT AND COSTS

Rachel Ashworth-Mazerolle, Associate Commissioner for Child Care Regulation, has determined that for each year of the first five years the rules are in effect, the public benefit will be rules that (1) improve the safety of children enrolled in child-care operations who access swimming pools; and (2) rules that comply with state law.

Trey Wood has also determined that for the first five years the rules are in effect, persons who are required to comply with the proposed rules may incur economic costs because the rules require child-care operations to provide each child in care who is unable to swim competently or is at risk of injury or death when swimming or otherwise entering a body of water a properly fitted and fastened Type I, II, or III United States Coast Guard approved personal flotation device (PFD). A 2023 assessment of the average cost to purchase a single PFD revealed that a PFD costs between \$17 and \$45. However, the total cost to purchase PFDs will vary per child-care operation depending on the number of enrolled children who are unable to swim or at risk of injury or death when swimming and the type of PFD the operation elects to purchase. In addition, some child-care operations may choose to obtain PFDs through organizations that provide them at no cost. As a result, HHSC does not have sufficient information to determine economic costs for persons required to comply with the rules as proposed.

## TAKINGS IMPACT ASSESSMENT

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

### PUBLIC COMMENT

Questions about the content of this proposal may be directed to Aimee Belden by email at [Aimee.Belden@hhs.texas.gov](mailto:Aimee.Belden@hhs.texas.gov).

Written comments on the proposal may be submitted to Aimee Belden, Rules Writer, Child Care Regulation, Texas Health and Human Services Commission, E-550, P.O. Box 149030, Austin, Texas 78714-9030; or by email to [CCRRules@hhs.texas.gov](mailto:CCRRules@hhs.texas.gov).

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be post-marked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 23R074" in the subject line.

## SUBCHAPTER A. PURPOSE, SCOPE, AND DEFINITIONS

### DIVISION 3. DEFINITIONS

#### 26 TAC §744.123

#### STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of the Texas Government Code. In addition, Texas Human Resources Code (HRC) §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42.

The amendment affects Texas Government Code §531.0055 and HRC §42.042.

*§744.123. What do certain words and terms mean when used in this chapter?*

The words and terms used in this chapter have the meanings assigned to them under §745.21 of this title (relating to What do the following words and terms mean when used in this chapter?), unless another meaning is assigned in this section or another subchapter or unless the context clearly indicates otherwise. In addition, the following words and terms used in this chapter have the following meanings unless the context clearly indicates otherwise:

(1) **Activity plan**--A written plan that outlines the daily routine and activities in which a group of children will engage while in your care. The plan is designed to meet the children's cognitive, language, social, emotional, and physical developmental strengths and needs.

(2) **Activity space**--An area or room used for children's activities, including areas separate from a group's classroom.

(3) **Administrative and clerical duties**--Duties that involve the administration of an operation, such as bookkeeping, enrolling children, answering the telephone, and collecting fees.

(4) **Admission**--The process of enrolling a child in an operation. The date of admission is the first day the child is physically present at the operation.

(5) **Adult**--A person 18 years old and older.

(6) **Age-appropriate**--Activities, equipment, materials, curriculum, and environment, including the child's assigned classroom, that are developmentally consistent with the developmental or chronological age of the child being served.

(7) **Attendance**--When referring to a child's attendance, the physical presence of a child at the operation on any given day or at any given time, as distinct from the child's enrollment in the operation.

(8) **Before or after-school program**--An operation that provides care before and after or before or after the customary school day and during school holidays, for at least two hours a day, three days a week, to children who attend pre-kindergarten through grade six.

(9) **Body of water**--As defined by Texas Health and Safety Code, Chapter 341, Subchapter D (relating to Sanitation and Safety of Facilities Used by Public).

(10) [(9)] **Caregiver**--A person who is counted in the child to caregiver ratio, whose duties include the supervision, guidance, and protection of a child. As used in this chapter, a caregiver must meet the minimum education, work experience, and training qualifications required under Subchapter D of this chapter (relating to Personnel). A caregiver is usually an employee, but may also be a substitute, volunteer, or contractor, as outlined in paragraph (16) [(45)] of this section and Subchapter D, Division 5 of this chapter (relating to Substitutes, Volunteers, and Contractors).

(11) [(10)] **Certified Child-Care Professional Credential**--A credential given by the National Early Childhood Program Accreditation to a person working directly with children. The credential is based on assessed competency in several areas of child care and child development.

(12) [(11)] **Certified lifeguard**--A person who has been trained in life saving and water safety by a qualified instructor, from a recognized organization that awards a certificate upon successful completion of the training. The certificate is not required to use the term "lifeguard," but you must be able to document that the certificate is current, relevant to the type of water activity in which children will engage, and represents the type of training described.

(13) [(12)] **CEUs**--Continuing education units. A standard unit of measure for adult education and training activities. One CEU equals 10 clock hours of participation in an organized, continuing-education experience, under responsible, qualified direction and instruction. Although a person may obtain a CEU in many of the same settings as clock hours, the CEU provider must meet the criteria established by the International Association for Continuing Education and Training to be able to offer the CEU.

(14) [(13)] **Child Development Associate Credential**--A credential given by the Council for Professional Recognition to a person working directly with children. The credential is based on assessed competency in several areas of child care and child development.

(15) [(14)] **Clock hour**--An actual hour of documented:

(A) Attendance at instructor-led training, such as seminars, workshops, conferences, early childhood classes, and other planned learning opportunities, provided by an individual or individu-

als, as specified in §744.1319(a) of this chapter (relating to Must the training for my caregivers and the director meet certain criteria?); or

(B) Self-instructional training that was created by an individual or individuals, as specified in §744.1319(a) and (b) of this chapter, or self-study training.

(16) [(15)] Contract service provider--A person or entity contracting with the operation to provide a service, whether paid or unpaid. Also referred to as "contract staff" and "contractor" in this chapter.

(17) [(16)] Corporal punishment--The infliction of physical pain on a child as a means of controlling behavior. This includes spanking, hitting with a hand or instrument, slapping, pinching, shaking, biting, or thumping a child.

(18) [(17)] Days--Calendar days, unless otherwise stated.

(19) [(18)] Director--An adult you designate to have daily, on-site responsibility for your operation, including maintaining compliance with the minimum standards, rules, and laws. As this term is used in this chapter, a director may be an operation director, program director, or site director, unless the context clearly indicates otherwise.

(20) [(19)] Employee--A person an operation employs full-time or part-time to work for wages, salary, or other compensation. Employees are all of the operation staff, including caregivers, kitchen staff, office staff, maintenance staff, the assistant director, all directors, and the owner, if the owner is ever on site at the operation or transports a child.

(21) [(20)] Enrollment--The list of names or number of children who have been admitted to attend an operation for any given period of time; the number of children enrolled in an operation may vary from the number of children in attendance on any given day.

(22) [(21)] Entrap--A component or group of components on equipment that forms angles or openings that may trap a child's head by being too small to allow the child's body to pass through, or large enough for the child's body to pass through but too small to allow the child's head to pass through.

(23) [(22)] Field trips--Activities conducted away from the operation.

(24) [(23)] Food service--The preparation or serving of meals or snacks.

(25) [(24)] Frequent--More than two times in a 30-day period. Note: For the definition of "regularly or frequently present at an operation" as it applies to background checks, see §745.601 of this title (relating to What words must I know to understand this subchapter?).

(26) [(25)] Garbage--Waste food or items that when deteriorating cause offensive odors and attract rodents, insects, and other pests.

(27) [(26)] Governing body--A group of persons or officers of a corporation or other type of business entity having ultimate authority and responsibility for the operation.

(28) [(27)] Grounds--Includes any parcel of land where the operation is located and any building, other structure, body of water, play equipment, street, sidewalk, walkway, driveway, parking garage, or parking lot on the parcel. Also referred to as "premises" in this chapter.

(29) [(28)] Group activities--Activities that allow children to interact with other children in large or small groups. Group activities include storytelling, finger plays, show and tell, organized games, and singing.

(30) [(29)] Hazardous materials--Any substance or chemical that is a health hazard or physical hazard as determined by the Environmental Protection Agency. Also referred to as "toxic materials" and "toxic chemicals" in this chapter.

(31) [(30)] Health-care professional--A licensed physician, a licensed advanced practice registered nurse (APRN), a licensed vocational nurse (LVN), a licensed registered nurse (RN), or other licensed medical personnel providing health care to the child within the scope of the license. This does not include physicians, nurses, or other medical personnel who are not licensed in the United States or in the country in which the person practices.

(32) [(31)] Health check--A visual or physical assessment of a child to identify potential concerns about a child's health, including signs or symptoms of illness and injury, in response to changes in the child's behavior since the last date of attendance.

(33) [(32)] High school equivalent--

(A) Documentation of a program recognized by the Texas Education Agency (TEA) or other public educational entity in another state, which offers similar training on reading, writing, and math skills taught at the high school level, such as a General Educational Development (GED) certificate; or

(B) Confirmation that the person received homeschooling that adequately addressed basic competencies such as basic reading, writing, and math skills, which would otherwise have been documented by a high school diploma.

(34) [(33)] Individual activities--Opportunities for the child to work independently or to be away from the group but supervised.

(35) [(34)] Inflatable--An amusement ride or device, consisting of air-filled structures designed for use by children, as specified by the manufacturer, which may include bouncing, climbing, sliding, or interactive play. They are made of flexible fabric, kept inflated by continuous air flow by one or more blowers, and rely upon air pressure to maintain their shape.

(36) [(35)] Instructor-led training--Training characterized by the communication and interaction that takes place between the student and the instructor. The training must include an opportunity for the student to interact with the instructor to obtain clarifications and information beyond the scope of the training materials. For such an opportunity to exist, the instructor must communicate with the student in a timely fashion, including answering questions, providing feedback on skills practice, providing guidance or information on additional resources, and proactively interacting with students. Examples of this type of training include, classroom training, web-based on-line facilitated learning, video-conferencing, or other group learning experiences.

(37) [(36)] Janitorial duties--Those duties that involve the cleaning and maintenance of the operation's building, rooms, furniture, etc. Cleaning and maintenance include such duties as cleansing carpets, washing cots, and sweeping, vacuuming, or mopping a restroom or a classroom. Sweeping up after an activity or mopping up a spill in a classroom that is immediately necessary for the children's safety is not considered a janitorial duty.

(38) [(37)] Local sanitation official--A sanitation official designated by the city or county government.

(39) [(38)] Multi-site operations--Two or more operations owned by the same person or entity, but the operations have separate permits. These operations may have centralized business functions, record keeping, and leadership.



(40) [(39)] Natural environment--Settings that are natural or typical for all children of the same age without regard to ability or disability. For example, a natural environment for learning social skills is a play group of peers.

(41) [(40)] Nighttime care--Care given on a regular or frequent basis to children who are starting or continuing their night sleep, or to children who spend the night or part of the night at the operation between the hours of 9:00 p.m. and 6:00 a.m.

(42) [(41)] Operation--A person or entity offering a before or after-school program or school-age program that is subject to Licensing's regulation. An operation includes the grounds where the program is offered, any person involved in providing the program, and any equipment used in providing the program.

(43) [(42)] Operation director--A director at your operation who is not supervised by a program director. An operation that has an operation director cannot have a program director or a site director.

(44) [(43)] Owner--The sole proprietor, partnership, corporation, or other type of business entity who owns the operation.

(45) [(44)] Permit holder--The owner of the operation that is granted the permit.

(46) [(45)] Permit is no longer valid--For purposes of this chapter, a permit remains valid through the renewal process. A permit only becomes invalid when your:

(A) Operation voluntarily closes;

(B) Operation must close because of an enforcement action in Chapter 745, Subchapter L of this title (relating to Enforcement Actions);

(C) Permit expires according to §745.481 of this title (relating to When does my permit expire?); or

(D) Operation must close because its permit is automatically revoked according to Texas Human Resources Code §§42.048(e), 42.052(j), or 42.054(f).

(47) Personal flotation device (PFD)--A United States Coast Guard approved life jacket.

(48) [(46)] Physical activity (moderate)--Levels of activity for a child that are at intensities faster than a slow walk, but still allow the child to talk easily. Moderate physical activity increases heart rate and breathing rate.

(49) [(47)] Physical activity (vigorous)--Rhythmic, repetitive physical movement for a child that uses large muscle groups, causing the child to breathe rapidly and only enabling the child to speak in short phrases. Typically, the child's heart rate is substantially increased, and the child is likely to be sweating while engaging in the vigorous physical activity.

(50) [(48)] Pre-kindergarten age child--A child who is three or four years of age before the beginning of the current school year.

(51) [(49)] Premises--See the term "grounds" and its definition in this section.

(52) [(50)] Program--The services and activities provided by an operation.

(53) [(51)] Program director--A director who oversees your program at multi-site operations and supervises a site director at each operation.

(54) [(52)] Regular--On a recurring, scheduled basis. Note: For the definition of "regularly or frequently present at an operation" as it applies to background checks, see §745.601 of this title.

(55) [(53)] Safety belt--A lap belt and any shoulder straps included as original equipment on or added to a vehicle.

(56) [(54)] Sanitize--The use of a disinfecting product that provides instructions specific for sanitizing and is registered by the Environmental Protection Agency (EPA) to substantially reduce germs on inanimate objects to levels considered safe by public health requirements. Many bleach and hydrogen peroxide products are EPA-registered. You must follow the product's labelling instructions for sanitizing or disinfecting, depending on the surface (paying attention to any instructions regarding contact time and toxicity on surfaces likely to be mouthed by children). If you use bleach instead of an approved disinfecting product, you must follow these steps in order:

(A) Washing with water and soap;

(B) Rinsing with clear water;

(C) Soaking in or spraying on a bleach solution for at least two minutes;

(D) Rinsing with cool water only those items that children are likely to place in their mouths; and

(E) Allowing the surface or item to air-dry.

(57) [(55)] School-age child--A child who is five years of age and older and is enrolled in or has completed kindergarten.

(58) [(56)] School-age program--An operation that provides supervision and recreation, skills instruction, or skills training for at least two hours a day and three days a week to children who attend pre-kindergarten through grade six. A school-age program operates before or after the customary school day and may also operate during school holidays, the summer period, or any other time when school is not in session.

(59) [(57)] Screen time activity--An activity during which a child views media content on a cell or mobile phone, tablet, computer, television, video, film, or DVD. Screen time activities do not include video chatting with a child's family or assistive and adaptive computer technology used by a child with special care needs on a consistent basis.

(60) [(58)] Self-instructional training--Training designed to be used by one individual working alone and at the individual's own pace to complete lessons or modules. Lessons or modules commonly include questions with clear right and wrong answers. An example of this type of training is web-based training. Self-study training is also a type of self-instructional training.

(61) [(59)] Self-study training--Non-standardized training where an individual reads written materials, watches a training video, or listens to a recording to obtain certain knowledge that is required for annual training. Self-study training is limited to three hours of annual training per year.

(62) [(60)] Site director--A director who has on-site responsibility at a specific operation, but who is supervised by a program director.

(63) [(61)] Special care needs--A child with special care needs is a child who has:

(A) A chronic physical, developmental, behavioral, or emotional condition or a disability and who also requires assistance beyond that required by a child generally to perform tasks that are within the typical chronological range of development, including the

movement of large or small muscles, learning, talking, communicating, comprehension, emotional regulation, self-help, social skills, emotional well-being, seeing, hearing, and breathing; or

(B) A limitation due to an injury, illness, or allergy.

(64) [(62)] State or local fire authority--A fire official who is authorized to conduct fire safety inspections on behalf of the city, county, or state government, including certified fire inspectors. Also referred to as "fire marshal" in this chapter.

(65) Swimming Pool--An artificial body of water with a water depth of more than 18 inches that is maintained or used expressly for public or private recreational purposes, swimming, diving, aquatic sports or activities, or therapeutic purposes.

(66) [(63)] Universal precautions--An approach to infection control where all human blood and certain human bodily fluids are treated as if known to be infectious for HIV, HBV, and other blood-borne pathogens.

(67) Wading pool--As defined by Texas Health and Safety Code, Chapter 341, Subchapter D.

(68) [(64)] Water activities--Related to the use of swimming pools, [splashing pools,] wading pools, or sprinkler play[; or other bodies of water].

(69) [(65)] Weather permitting--Weather conditions that do not pose any concerns for health and safety, such as significant risk of frostbite or heat-related illness. This includes adverse weather conditions in which children may still play safely outdoors for shorter periods with appropriate adjustments to clothing and any necessary access to water, shade, or shelter.

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 April 12, 2024.

TRD-202401505

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: May 26, 2024

For further information, please call: (512) 438-3269



## SUBCHAPTER C. RECORD KEEPING DIVISION 1. RECORDS OF CHILDREN

### 26 TAC §744.605

#### STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of the Texas Government Code. In addition, Texas Human Resources Code (HRC) §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42.

The amendment affects Texas Government Code §531.0055 and HRC §42.042.

### §744.605. *What admission information must I obtain for each child?*

You must obtain at least the following information before admitting a child to the operation:

- (1) The child's name and birth date;
- (2) The child's home address and telephone number;
- (3) Date of the child's admission to the operation;
- (4) Name and address of parents [parent(s)];
- (5) Telephone numbers at which parents [parent(s)] can be reached while the child is in care;
- (6) Name, address, and telephone number of another responsible individual (friend or relative) who should be contacted in an emergency when the parent cannot be reached;
- (7) Names and telephone numbers of persons other than a parent to whom the child may be released;
- (8) Permission for transportation, if provided, including any authorized pick-up and drop-off locations;
- (9) Permission for field trips, if provided;
- [(10) Permission for participation in water activities, if provided, including whether the child is able to swim without assistance;]
- (10) [(11)] Name, address, and telephone number of the child's physician or an emergency-care facility;
- (11) [(12)] Authorization to obtain emergency medical care and to transport the child for emergency medical treatment;
- (12) [(13)] A statement of the child's special problems or special care needs, which must include:
  - (A) Any limitations or restrictions on the child's activities;
  - (B) Special care the child requires, including:
    - (i) Any reasonable accommodations or modifications;
    - (ii) Any adaptive equipment provided for the child, including instructions for how to use the equipment; and
    - (iii) Symptoms or indications of potential complications related to a physical, cognitive, or mental condition that may warrant prevention or intervention while the child is in care; and
  - (C) Any medications prescribed for continuous, long-term use.
- (13) [(14)] The name and telephone number of the school that a school-age child attends, unless the operation is located at the child's school;
- (14) [(15)] Permission for a school-age child to ride a bus, walk to or from school or home, or to be released to the care of a sibling under 18 years old, if applicable; [and]
- (15) [(16)] The child's allergies and a completed food allergy emergency plan for the child, if applicable; and[-]
- (16) Permission for participation in water activities, if provided. If you allow a child to access a swimming pool, the parent must also indicate whether the child:
  - (A) Is able to swim competently, as defined by the American Red Cross; or
  - (B) Requires a personal flotation device because the child is:

(i) Unable to swim competently, as defined by the American Red Cross; or

(ii) At risk of injury or death when swimming or otherwise accessing a body of water.

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 April 12, 2024.

TRD-202401506

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: May 26, 2024

For further information, please call: (512) 438-3269



## SUBCHAPTER D. PERSONNEL DIVISION 4. PROFESSIONAL DEVELOPMENT MENT

**26 TAC §§744.1301, 744.1309, 744.1311, 744.1318**

### STATUTORY AUTHORITY

The amendments and new section are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of the Texas Government Code. In addition, Texas Human Resources Code (HRC) §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42.

The amendments and new section affect Texas Government Code §531.0055 and HRC §42.042.

*§744.1301. What are the training requirements for employees, caregivers, and directors?*

(a) Employees, caregivers, and directors must complete the following training requirements.

Figure: 26 TAC §744.1301(a)

[Figure: 26 TAC §744.1301(a)]

(b) If a caregiver or employee does not yet have a current certificate in pediatric CPR, as required in (a)(4)(A) in Figure: 26 TAC §744.1301(a), at least one caregiver or employee with a current certificate must also be on the premises with the caregiver.

*§744.1309. What areas of training must the annual training for caregivers and site directors cover?*

(a) The 15 clock hours of annual training must:

(1) For a caregiver, be relevant to the age of the children for whom the caregiver provides care; or

(2) For a site director, be relevant to the age of the children for whom the operation provides care.

(b) At least six clock hours of the annual training hours must be in one or more of the following topics:

(1) Child growth and development;

(2) Guidance and discipline;

(3) Age-appropriate curriculum; and

(4) Teacher-child interaction.

(c) At least one clock hour of the annual training hours must focus on prevention, recognition, and reporting of child maltreatment, including:

(1) Factors indicating a child is at risk for abuse or neglect;

(2) Warning signs indicating a child may be a victim of abuse or neglect;

(3) Procedures for reporting child abuse or neglect; and

(4) Community organizations that have training programs available to employees, children, and parents.

(d) While there are no clock hour requirements for the topics in this subsection, the annual training hours must also include training on the following topics:

(1) Emergency preparedness;

(2) Preventing and controlling the spread of communicable diseases, including immunizations;

(3) Administering medication, if applicable, including compliance with §744.2653 of this chapter (relating to What authorization must I obtain before administering a medication to a child in my care?);

(4) Preventing and responding to emergencies due to food or an allergic reaction;

(5) Understanding building and physical premises safety, including identification and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic; and

(6) Handling, storing, and disposing of hazardous materials including compliance with §744.2523 of this chapter (relating to Must caregivers wear gloves when handling blood or bodily fluids containing blood?).

(e) The remaining annual training hours must be in one or more of the following topics:

(1) Care of children with special needs;

(2) Child health (for example, nutrition, and physical activity);

(3) Safety;

(4) Risk management;

(5) Identification and care of ill children;

(6) Cultural diversity for children and families;

(7) Professional development (for example, effective communication with families and time and stress management);

(8) Topics relevant to the particular age group the caregiver is assigned;

(9) Planning developmentally appropriate learning activities; and

(10) Minimum standards and how they apply to the caregiver.

(f) At least three of the 15 required annual training hours must be instructor-led training. The remaining 12 required annual training hours may come from self-instructional training, of which no more than three hours may come from self-study training.

(g) The 15 clock hours of annual training are exclusive of any requirements for orientation, pre-service training, pediatric first aid and pediatric CPR training, transportation safety training, water safety training, and high school child-care work-study classes.

§744.1311. *What areas of training must the annual training for an operation director or a program director cover?*

(a) The 20 clock hours of annual training must be relevant to the age of the children for whom the operation provides care.

(b) At least six clock hours of the annual training hours must be in one or more of the following topics:

- (1) Child growth and development;
- (2) Guidance and discipline;
- (3) Age-appropriate curriculum;
- (4) Teacher-child interaction; and
- (5) Serving children with special care needs.

(c) At least one clock hour of the annual training hours must focus on prevention, recognition, and reporting of child maltreatment, including:

- (1) Factors indicating a child is at risk for abuse or neglect;
- (2) Warning signs indicating a child may be a victim of abuse or neglect;
- (3) Procedures for reporting child abuse or neglect; and
- (4) Community organizations that have training programs available to employees, children, and parents.

(d) While there are no clock hour requirements for the topics in this subsection, the annual training hours must also include training on the following topics:

- (1) Emergency preparedness;
- (2) Preventing and controlling the spread of communicable diseases, including immunizations;
- (3) Administering medication, if applicable, including compliance with §744.2653 of this chapter (relating to What authorization must I obtain before administering a medication to a child in my care?);
- (4) Preventing and responding to emergencies due to food or an allergic reaction;
- (5) Understanding building and physical premises safety, including identification and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic; and
- (6) Handling, storing, and disposing of hazardous materials including compliance with §744.2523 of this chapter (relating to Must caregivers wear gloves when handling blood or bodily fluids containing blood?).

(e) An operation director or program director with:

- (1) Five or fewer years of experience as a designated operation director or program director must complete at least six clock hours of the annual training hours in management techniques, leadership, or staff supervision; or
- (2) More than five years of experience as a designated operation director or program director must complete at least three clock hours of the annual training hours in management techniques, leadership, or staff supervision.

(f) The remainder of the 20 clock hours of annual training must be selected from the training topics specified in §744.1309(e) of this division (relating to What areas of training must the annual training for caregivers and site directors cover?).

(g) An operation director or program director may obtain clock hours or CEUs from the same sources as caregivers.

(h) A director may not earn training hours by presenting training to others.

(i) At least four of the required 20 annual training hours must come from instructor-led training. The remaining 16 required annual training hours may come from self-instructional training, of which no more than three hours may come from self-study training.

(j) The 20 clock hours of annual training are exclusive of any requirements for orientation, pre-service training, pediatric first aid and pediatric CPR training, ~~and~~ transportation safety training, and water safety training.

§744.1318. *What additional training must an employee and director have if the operation allows a child to access a swimming pool at or away from the operation?*

(a) If the operation allows a child to access a swimming pool at or away from the operation, annual water safety training is required for:

- (1) Each employee prior to accompanying a child to a swimming pool; and
- (2) Each site director and program director or operation director.

(b) Water safety training is exclusive of any requirements for orientation, pre-service training, and annual training.

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 April 12, 2024.

TRD-202401508

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: May 26, 2024

For further information, please call: (512) 438-3269



## DIVISION 5. SUBSTITUTES, VOLUNTEERS, AND CONTRACTORS

### 26 TAC §744.1403

#### STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of the Texas Government Code. In addition, Texas Human Resources Code (HRC) §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42.

The amendment affects Texas Government Code §531.0055 and HRC §42.042.

§744.1403. *What are the training requirements for substitutes, volunteers, and contractors?*

(a) Substitutes, volunteers, and contractors must complete the following training requirements.

Figure: 26 TAC §744.1403(a)  
[Figure: 26 TAC §744.1403(a)]

(b) If a substitute, volunteer, or contractor who is counted in the child to caregiver ratio does not yet have a current certificate in pediatric CPR, as required in (a)(4)(A) in Figure: 26 TAC §744.1403(a), at least one caregiver or employee with a current certificate must also be on the premises with the substitute, volunteer, or contractor.

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 April 12, 2024.

TRD-202401512

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: May 26, 2024

For further information, please call: (512) 438-3269



## SUBCHAPTER E. CHILD/CAREGIVER

### RATIOS AND GROUP SIZES

#### DIVISION 2. CLASSROOM RATIOS AND

#### GROUP SIZES

##### 26 TAC §744.1613

###### STATUTORY AUTHORITY

The repeal is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of the Texas Government Code. In addition, Texas Human Resources Code (HRC) §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42.

The repeal affects Texas Government Code §531.0055 and HRC §42.042.

§744.1613. *Will I be given an opportunity to comply with changes in child/caregiver ratio and group sizes?*

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 April 12, 2024.

TRD-202401515

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: May 26, 2024

For further information, please call: (512) 438-3269

## DIVISION 5. RATIOS FOR WATER ACTIVITIES

### 26 TAC §§744.1901, 744.1907, 744.1911, 744.1913

#### STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of the Texas Government Code. In addition, Texas Human Resources Code (HRC) §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42.

The amendments affect Texas Government Code §531.0055 and HRC §42.042.

§744.1901. *Must I have additional caregivers for wading [~~splashing/wading~~] activities?*

You must comply with §746.2101 of this title (relating to Must I have additional caregivers for wading [~~splashing/wading~~] activities?).

§744.1907. *Must a certified lifeguard be on duty when children are swimming in more than 18 inches [~~two feet~~] of water?*

A [Yes. ~~When children are swimming in more than two feet of water,~~ a] certified lifeguard must be on duty at all times when children are swimming in more than 18 inches of water.

§744.1911. *Must persons who are counted in the child/caregiver ratio during swimming activities know how to swim?*

[Yes.] Each caregiver [~~person~~] included in the child/caregiver ratio for swimming in 18 inches [~~two feet~~] or more of water must be able to swim and must be prepared to do so in an emergency.

§744.1913. *May I include volunteers or child-care employees who do not meet minimum qualifications for caregivers in the child/caregiver ratio for water activities?*

You [Yes. ~~To meet the child/caregiver ratio for splashing/wading and swimming activities,~~ you] may include adult volunteers and employees of your operation who do not meet the minimum qualifications for caregivers specified in Subchapter D of this chapter (relating to Personnel) to meet the child/caregiver ratio for swimming and wading activities, provided that:

(1) You maintain at least the classroom child/caregiver ratios required in this subchapter with caregivers who do meet the minimum qualifications for caregivers;

(2) All persons included in the ratios for water activities must be able to swim and must be prepared to do so in an emergency; and

(3) You ensure compliance with all other minimum standards, including, but not limited to, standards relating to supervision, discipline, and guidance.

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 April 12, 2024.

TRD-202401517

Karen Ray  
Chief Counsel  
Health and Human Services Commission  
Earliest possible date of adoption: May 26, 2024  
For further information, please call: (512) 438-3269



SUBCHAPTER L. SAFETY PRACTICES  
DIVISION 1. SAFETY PRECAUTIONS

26 TAC §744.2601

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of the Texas Government Code. In addition, Texas Human Resources Code (HRC) §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42.

The amendment affects Texas Government Code §531.0055 and HRC §42.042.

§744.2601. *What safety precautions must I take to protect children in my operation?*

All areas accessible to a child must be free from hazards including[, but not limited to,] the following:

- (1) Electrical outlets accessible to a child younger than five years old must have childproof covers or safety outlets;
- (2) 220-volt electrical connections within a child's reach must be covered with a screen or guard;
- (3) Air conditioners, electric fans, and heaters must be mounted out of all children's reach or have safeguards that keep any child from being injured;
- (4) Glass in sliding doors must be clearly marked with decals or other materials placed at children's eye level;
- (5) Play materials and equipment must be safe and free from sharp or rough edges and toxic paints;
- (6) Poisonous or potentially harmful plants must be inaccessible to all children;
- (7) All storage chests, boxes, trunks, or similar items with hinged lids must be equipped with a lid support designed to hold the lid open in any position, be equipped with ventilation holes, and must not have a latch that might close and trap a child inside;
- (8) All bodies of water, wading pools [such as pools], hot tubs, [ponds, creeks,] birdbaths, fountains, buckets, and rain barrels must be inaccessible to all children; and
- (9) All televisions must be anchored, so they cannot tip over. A television may be anchored to a rolling cart, if [as long as] it is anchored in a way that the cart will not tip over.

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 April 12, 2024.

TRD-202401519  
Karen Ray  
Chief Counsel  
Health and Human Services Commission  
Earliest possible date of adoption: May 26, 2024  
For further information, please call: (512) 438-3269



SUBCHAPTER N. INDOOR AND OUTDOOR  
ACTIVE PLAY SPACE AND EQUIPMENT  
DIVISION 6. INFLATABLES

26 TAC §744.3351

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of the Texas Government Code. In addition, Texas Human Resources Code (HRC) §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42.

The amendment affects Texas Government Code §531.0055 and HRC §42.042.

§744.3351. *May I use inflatable active play equipment?*

You may use inflatable equipment both at and away from your operation if you follow these guidelines:

- (1) You use enclosed inflatables (such as bounce houses or moon walks) according to the manufacturer's instructions;
- (2) You use open inflatables (such as obstacle courses, slides, or games) according to the manufacturer's instructions; and
- (3) Inflatables that include water activity also comply with all applicable requirements in Subchapter O of this chapter [title] (relating to Swimming Pools, Wading [Wading/Splashing] Pools, and Sprinkler Play).

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 April 12, 2024.

TRD-202401520  
Karen Ray  
Chief Counsel  
Health and Human Services Commission  
Earliest possible date of adoption: May 26, 2024  
For further information, please call: (512) 438-3269



SUBCHAPTER O. SWIMMING POOLS,  
WADING/SPLASHING POOLS, AND  
SPRINKLER PLAY

26 TAC §§744.3401, 744.3409 - 744.3411, 744.3415

STATUTORY AUTHORITY

The amendments and new sections authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of the Texas Government Code. In addition, Texas Human Resources Code (HRC) §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42.

The amendments and new sections affect Texas Government Code §531.0055 and HRC §42.042.

*§744.3401. What safety precautions must I follow when a child [children] in my care uses [use] a swimming pool?*

In addition to complying with the child/caregiver ratios specified in §744.1905 of this chapter [title] (relating to What are the child/caregiver ratios for swimming activities?) and other safety requirements specified in §744.1907 of this chapter [title] (relating to Must a certified lifeguard be on duty when children are swimming in more than 18 inches [two feet] of water?) and §744.1911 of this chapter [title] (relating to Must persons who are counted in the child/caregiver ratio during swimming know how to swim?), you must comply with the following safety precautions when any child uses a swimming pool [(more than two feet of water)] both at and away from your operation:

- (1) A minimum of two life-saving devices must be available;
- (2) One additional life-saving device must be available for each 2,000 square feet of water surface;
- (3) Drain grates must be in place, in good repair, and must not be able to be removed without using tools;
- (4) Pool chemicals and pumps must be inaccessible to any child;
- (5) Machinery rooms must be locked when any child is present;
- (6) Employees must be able to clearly see all parts of the swimming area;
- (7) The bottom of the pool must be visible at all times;
- (8) An adult must be present who is able to immediately turn off the pump and filtering system when any child is in a pool; and
- (9) All indoor/outdoor areas must be free of furniture and equipment that any child could use to scale a fence or barrier or release a lock.

*§744.3409. What additional safety precautions must I take for a child in care who is unable to swim competently or who is at risk of injury or death when swimming?*

Before a child who is unable to swim competently or who is at risk of injury or death when swimming enters a swimming pool, you must:

- (1) Provide the child with a Type I, II, or III United States Coast Guard approved personal flotation device (PFD);
- (2) Ensure the child is wearing the PFD; and
- (3) Ensure the PFD is properly fitted and fastened for the child.

*§744.3410. Must I provide a personal flotation device (PFD) to a child in care who is unable to swim competently or who is at risk of injury or death when swimming when the child is participating in swim instruction or a competition?*

You are not required to provide the child with a PFD or ensure the child is wearing the device if:

(1) The child is actively participating in swim instruction or a competition; and

(2) You ensure that the child is supervised in accordance with §744.1205 of this chapter (relating to What responsibilities does a caregiver have when supervising a child or children?) during the instruction or competition.

*§744.3411. What are the safety requirements for wading pools?*

(a) Wading [Wading/splashing] pools [(two feet of water or less)] at your operation must be:

- (1) Stored out of children's reach when not in use;
- (2) Drained at least daily and sanitized; and
- (3) Stored so they do not hold water.

(b) You must comply with the safety precautions specified in §744.3401 of this subchapter [title] (relating to What safety precautions must I follow when a child [children] in my care uses [use] a swimming pool?) when using wading [wading/splashing] pools away from your operation.

*§744.3415. Can a child [children] in my care swim in a body of water other than a swimming pool[, such as a lake, pond, or river]?*

You [No, you] must not allow a child [children] to swim in a [lake, pond, river, or a] body of water other than a swimming pool [or wading pool] that complies with the rules specified in this subchapter.

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

Filed with the Office of the Secretary of State on April 12, 2024.

TRD-202401524

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: May 26, 2024

For further information, please call: (512) 438-3269



## CHAPTER 745. LICENSING

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §745.31 and §745.37; and new §§745.9051, 745.9053, 745.9055, 745.9057, 745.9059, 745.9061, 745.9063, 745.9065, 745.9067, 745.9069, 745.9071, 745.9073, 745.9075, 745.9077, 745.9085, 745.9087, 745.9089, 745.9091, 745.9093, 745.9095, and 745.9097, in Texas Administrative Code, Title 26, Chapter 745, Licensing, Subchapter B, Child Care and Other Operations That We Regulate, and new Subchapter O, Psychiatric Residential Youth Treatment Facility.

### BACKGROUND AND PURPOSE

The proposal is necessary to comply with House Bill (H.B.) 3121, 87th Legislature, Regular Session, 2021, which created Texas Health and Safety Code Chapter 577A, Psychiatric Residential Youth Treatment Facilities. Chapter 577A mandates HHSC Child Care Regulation (CCR) to create a voluntary process whereby a general residential operation (GRO) may be certified as a psychiatric residential youth treatment facility (PRYTF) to provide treatments and services to individuals 21

years of age or younger with a severe emotional disturbance. Section 577A.004 requires HHSC to adopt rules to implement the chapter. Accordingly, CCR is proposing amended rules in Chapter 745, Subchapter B to (1) clarify that CCR will also regulate PRYTFs that will care for young adults 18 to 21 years of age in addition to child care; and (2) update rules to meet current practice and to improve readability and understanding. In addition, CCR is proposing new rules in Chapter 745, Subchapter O to (1) define terms; (2) create an application process, including requiring accreditation and a current GRO license; (3) create a renewal process every two years; (4) establish application and renewal fees; (5) clarify how inspections, investigations, and confidentiality will apply to PRYTFs; and (6) establish the enforcement actions that HHSC may take against a PRYTF.

#### SECTION-BY-SECTION SUMMARY

The proposed amendment to §745.31 clarifies that for PRYTFs, CCR will regulate the GRO's care of young adults 18 to 21 years of age in addition to child care. CCR is also updating the rule to improve readability and understanding.

The proposed amendment to §745.37 (1) updates the charts specifying the types of operations that CCR regulates to be consistent with current practice; (2) improves the rule for readability and understanding; and (3) clarifies that a licensed GRO may apply for a PRYTF certificate to provide psychiatric health treatments and services to individuals 21 years of age and younger.

Proposed new §745.9051 defines the terms "individual," "psychiatric health treatments and services," "Psychiatric Residential Youth Treatment Facility (PRYTF)," and "severe emotional disturbance."

Proposed new §745.9053 lists the requirements that a GRO must meet before applying for a PRYTF certificate, including (1) having a current GRO license; (2) having CCR's approval to provide treatment services to children with an emotional disorder; and (3) being accredited.

Proposed new §745.9055 lists the requirements for a completed PRYTF application, including submitting (1) the application; (2) a GRO - Additional Operation Plan; (3) an updated GRO floor plan; (4) additional written policies; and (5) the PRYTF certificate application fee.

Proposed new §745.9057 requires the GRO that is applying for a PRYTF certificate to comply with the public notice and hearing requirements, which must include the capacity of the children and young adults the PRYTF will serve. CCR may deny the PRYTF certificate if the public notice and hearing requirements are not met.

Proposed new §745.9059 establishes that CCR has 21 calendar days to review a PRYTF application, after which CCR will notify the GRO (1) if there is good cause to delay the review of the application; (2) the operation is ineligible to receive the PRYTF certificate; (3) the application is complete and ready for processing; or (4) the application is incomplete and what must be done to complete the application. If the application is not complete by the first anniversary of the original submission, CCR will close the application and the GRO must reapply.

Proposed new §745.9061 establishes that CCR has two months after accepting an application to determine whether to issue the PRYTF certificate, unless there is good cause to exceed the timeframe. An applicant may also file a complaint regarding untimely determinations.

Proposed new §745.9063 lists the factors CCR will consider when evaluating a PRYTF application, including (1) the application and any information submitted with the application and the Additional Operation Plan; (2) the on-site inspection to determine compliance with statutes, rules, and minimum standards; and (3) any information gathered during the application process or the public hearing.

Proposed new §745.9065 establishes the reasons CCR may deny a PRYTF certificate when a public hearing is required, including (1) the community has insufficient resources to support the children or young adults that the GRO proposed to serve; (2) issuing the certificate would have an adverse impact on the children and young adults the PRYTF would serve: (A) by significantly increasing, in the local school district, the ratio of the students enrolled in a special education program to students enrolled in a regular education program; or (B) by significantly impacting the local school district; or (3) issuing the certificate would have a significant adverse impact on the community and limit opportunities for social interaction for the children and young adults the PRYTF would serve.

Proposed new §745.9067 (1) requires the PRYTF to renew the certificate every two years after the date it is issued; (2) requires a timely renewal even if there is a pending civil or administrative penalty or if the GRO or PRYTF is under an enforcement action; and (3) establishes the beginning and end date of the renewal period.

Proposed new §745.9069 lists the requirements for a completed PRYTF renewal application, including submitting (1) the application; (2) verification of controlling persons and the governing body; (3) a statement regarding waivers and variances; (4) a validation of the list of persons who require a background check; (5) verification of ongoing accreditation; and (6) the PRYTF certificate renewal fee.

Proposed new §745.9071 establishes that CCR (1) will evaluate whether (A) the renewal application is complete; (B) the GRO is still approved to provide treatment services to children with an emotional disorder; (C) any administrative penalties have not been paid; and (D) the PRYTF meets the statutory, rule, and minimum standard requirements; and (2) after evaluation will send the GRO written notice that CCR (A) has renewed the PRYTF certificate; (B) the PRYTF renewal application is incomplete and the reason why; or (C) CCR refuses to renew the PRYTF certificate and the bases for the refusal.

Proposed new §745.9073 establishes when a PRYTF certificate expires and what actions the GRO must take if it expires, including (1) informing the young adults and any guardians and the parents of the children of the expiration; (2) discharge and stop providing care to the young adults; and (3) either enroll a child into the GRO, as appropriate, or discharge a child to the parents.

Proposed new §745.9075 establishes the PRYTF Certificate Application Fee of \$890 and the PRYTF Certificate Renewal Fee of \$740.

Proposed new §745.9077 clarifies that the rules in Chapter 745, Subchapter K regarding inspections, investigations, and confidentiality apply to a PRYTF certificate in the same manner as the rules would apply to a GRO permit. Regarding confidentiality, the confidentiality rules relating to an applicant for a permit, a permit holder, or former permit holder also apply to an applicant for a PRYTF certificate, a holder of a PRYTF certificate, or a former PRYTF certificate holder.



Proposed new §745.9085 (1) lists the enforcement actions HHSC may impose against a PRYTF, including (A) a denial of a PRYTF certificate; (B) a refusal to renew a PRYTF certificate; (C) an administrative penalty; and (D) a civil penalty; and (2) clarifies that an enforcement action against a PRYTF certificate is separate from an action taken against a GRO license.

Proposed new §745.9087 establishes that HHSC may deny a PRYTF certificate for ineligibility based on (1) a provision in Texas Health and Safety Code Chapter 577A; or (2) HHSC's evaluation of an application under the criteria described in new §745.9063.

Proposed new §745.9089 establishes that HHSC may refuse to renew a PRYTF certificate for a reason listed under current §745.8605 or if: (1) the PRYTF did not submit a complete renewal application; (2) the PRYTF is not accredited; (3) the GRO does not have a current license to operate; (4) the GRO is not approved to provide treatment services to children with an emotional disorder; (5) the PRYTF has not paid an administrative penalty; (6) the PRYTF has not submitted the renewal fee; or (7) the PRYTF does not meet a statute, rule, or minimum standard.

Proposed new §745.9091 establishes (1) the meaning of an administrative review; (2) that an administrative review may be requested for the (A) denial of a PRYTF certificate; (B) refusal to renew a PRYTF certificate; or (C) citation of a deficiency; (3) that an administrative review may be requested according to Chapter 745, Subchapter M; and (4) the process for conducting an administrative review.

Proposed new §745.9093 (1) establishes that HHSC may impose and collect administrative penalties against a PRYTF for a violation of a statute, rule, or minimum standard; (2) clarifies that each day a violation continues is a separate violation for imposing a penalty; and (3) includes a chart that provides the maximum amount of the penalty based on the number of individuals under the care of the PRYTF when the violation occurred.

Proposed new §745.9095 establishes that HHSC may impose a civil penalty against a PRYTF for a violation of a statute, rule, or minimum standard.

Proposed new §745.9097 establishes that a PRYTF has the right to a due process hearing before the State Office of Administrative Hearings for the (1) denial of a PRYTF certificate; (2) refusal to renew a PRYTF certificate; or (3) imposition of an administrative penalty.

#### FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, enforcing or administering the rules do have foreseeable implications relating to costs of state government. The costs are for IT improvements to the Child Care Licensing Automated Support Systems to allow operations to apply for a PRYTF certificate, collect associated fees, issue a certificate, complete the required inspections, evaluate compliance with the rules annually, renew the certificate, issue administrative penalties, allow providers to submit certain information associated with the certificate in their online provider account, and identify on the Search Texas Child Care website whether a GRO has this certificate. Funds for these improvements were appropriated in the 88th Legislature, Regular Session, 2023.

The effect on state government for each year of the first five years the proposed rules are in effect is an estimated cost of

\$4,712,356 in fiscal year (FY) 2024, \$0 in FY 2025, \$0 in FY 2026, \$0 in FY 2027, and \$0 in FY 2028.

Trey Wood has also determined that for each year of the first five years that the rules will be in effect, there will be an estimated increase in revenue to state government as a result of enforcing and administering the rules as proposed. A GRO that chooses to apply for a PRYTF certificate must pay a \$890 initial application fee and then a \$740 renewal application fee. HHSC cannot estimate the increase in revenue because HHSC is unable to anticipate how many GROs will apply for a PRYTF certificate.

There are no foreseeable implications relating to costs or revenues of local government.

#### GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rules will be in effect:

- (1) the proposed rules will create a government program;
- (2) implementation of the proposed rules will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;
- (4) the proposed rules will require an increase in fees paid to HHSC;
- (5) the proposed rules will create a new regulation;
- (6) the proposed rules will expand existing regulations;
- (7) the proposed rules will not change the number of individuals subject to the rules; and
- (8) the proposed rules will not affect the state's economy.

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because the PRYTF program is voluntary and as such does not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rules.

#### LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

#### COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas; do not impose a cost on regulated persons because it is a voluntary program; and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

#### PUBLIC BENEFIT AND COSTS

Rachel Ashworth-Mazerolle, Associate Commissioner for Child Care Regulation, has determined that for each year of the first five years the rules are in effect, the public benefit will be the creation of a voluntary certificate program that will provide families with additional, quality options for youth in need of residential care in a non-psychiatric hospital setting. The new program will encourage existing providers to meet these voluntary standards while also incentivizing new facilities to open in Texas, thereby expanding capacity.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because the rules create a voluntary PRYTF program that does not mandate the imposition of fees, require a GRO to purchase curriculum or equipment, or require a GRO to alter current staffing patterns.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Questions about the content of this proposal may be directed to Gerry Williams by email at [Gerry.Williams@hhs.texas.gov](mailto:Gerry.Williams@hhs.texas.gov).

Written comments on the proposal may be submitted to Gerry Williams, Rules Writer, Child Care Regulation, Texas Health and Human Services Commission, E-550, P.O. Box 149030, Austin, Texas 78714-9030; or by email to [CCRRules@hhs.texas.gov](mailto:CCRRules@hhs.texas.gov).

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 23R072" in the subject line.

### SUBCHAPTER B. CHILD CARE AND OTHER OPERATIONS THAT WE REGULATE

#### 26 TAC §745.31, §745.37

##### STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of the Texas Government Code. In addition, the Texas Health and Safety Code §577A.004 requires HHSC to adopt rules to implement this chapter. Finally, amendments to current rules adopted under Texas Human Resources Code §42.042 are authorized under that section.

The amendments affect Texas Government Code §531.0055, Texas Health and Safety Code Chapter 577A, and Texas Human Resources Code Chapter 42.

*§745.31. What operations does [the] Licensing [Division] regulate?*

(a) We regulate child day care and residential child care, [including child-placing agencies,] unless we determine your operation is exempt from regulation.

(b) Residential child-care operations include:

(1) Child-placing agencies that verify foster homes and approve adoptive homes; and

(2) General residential operations, which we may also certify as a psychiatric residential youth treatment facility (PRYTF) as defined at §745.9051 of this chapter (relating to What do the following words and terms mean when used in this subchapter?).

(c) For a PRYTF, we regulate the operation's care of young adults 18 to 21 years of age in addition to child care.

*§745.37. What specific types of operations does Licensing regulate?*

The charts in paragraphs (1) and (2) [(1), (2), and (3)] of this section list the types of operations for child day care and residential child care that we regulate. [Child-placing agencies and foster homes verified by a child-placing agency are included in the residential child-care chart.]

[(1) Types of Child Day-Care Operations before September 1, 2003.]

[Figure: 40 TAC §745.37(1)]

(1) [(2)] Types of Child Day-Care Operations: [en and after September 1, 2003.]

Figure: 26 TAC §745.37(1)

[Figure: 40 TAC §745.37(2)]

(2) [(3)] Types of Residential Child-Care Operations:[.]

Figure: 26 TAC §745.37(2)

[Figure: 40 TAC §745.37(3)]

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 April 10, 2024.

TRD-202401455

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: May 26, 2024

For further information, please call: (512) 438-3269



### SUBCHAPTER O. PSYCHIATRIC RESIDENTIAL YOUTH TREATMENT FACILITY

#### DIVISION 1. DEFINITIONS FOR LICENSING

##### 26 TAC §745.9051

##### STATUTORY AUTHORITY

The new section is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of the Texas Government Code. In addition, the Texas Health and Safety Code §577A.004 requires HHSC to adopt rules to implement this chapter. Finally, amendments to current rules adopted under Texas Human Resources Code §42.042 are authorized under that section.

The new section affects Texas Government Code §531.0055, Texas Health and Safety Code Chapter 577A, and Texas Human Resources Code Chapter 42.

*§745.9051. What do the following terms mean when used in this subchapter?*

The following terms, when used in this subchapter, have the following meanings unless the context clearly indicates otherwise:

- (1) Individual--A person who is 21 years of age or younger.
- (2) Psychiatric health treatments and services--In addition to basic child-care services, a specialized type of child-care services provided by a certified psychiatric residential youth treatment facility to treat and support individuals who have a severe emotional disturbance.
- (3) Psychiatric Residential Youth Treatment Facility (PYRTF)--As defined at Texas Health and Safety Code §577A.001(3), a private facility that provides psychiatric health treatments and services in a residential, non-hospital setting exclusively to individuals and is licensed as a general residential operation.
- (4) Severe emotional disturbance--As defined at Texas Health and Safety Code §577A.001(4), a mental, behavioral, or emotional disturbance of sufficient duration to result in functional impairment that substantially interferes with or limits an individual's role or ability to function in family, school, or community activities.

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 April 10, 2024.

TRD-202401456

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: May 26, 2024

For further information, please call: (512) 438-3269



## DIVISION 2. APPLICATION PROCESS

**26 TAC §§745.9053, 745.9055, 745.9057, 745.9059, 745.9061, 745.9063, 745.9065**

### STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of the Texas Government Code. In addition, the Texas Health and Safety Code §577A.004 requires HHSC to adopt rules to implement this chapter. Finally, amendments to current rules adopted under Texas Human Resources Code §42.042 are authorized under that section.

The new sections affect Texas Government Code §531.0055, Texas Health and Safety Code Chapter 577A, and Texas Human Resources Code Chapter 42.

*§745.9053. What requirements must a general residential operation meet before applying for a psychiatric residential youth treatment facility (PRYTF) certificate?*

- (a) Before applying for a PRYTF certificate a general residential operation must:
  - (1) Have a current initial or full license as a general residential operation;
  - (2) Have Licensing's approval to provide treatment services to children with an emotional disorder, as provided in §748.63 of

this title (relating to Can I provide each type of service that Licensing regulates?); and

- (3) Be accredited by:
  - (A) The Joint Commission;
  - (B) The Commission on Accreditation of Rehabilitation Facilities;
  - (C) The Council on Accreditation; or
  - (D) Another accreditation organization whose standards relate to the care of children and young adults receiving mental health services in a residential setting and is approved by Licensing.

(b) To meet the accreditation requirement under subsection (a)(3) of this section, a general residential operation:

- (1) May obtain accreditation for:
  - (A) The entire general residential operation, including the PRYTF; or
  - (B) Only the part of the general residential operation where the PRYTF will operate;

(2) May have an initial, provisional, full, or other type of accreditation that is appropriate to the accreditation organization.

*§745.9055. What does a completed application for a psychiatric residential youth treatment facility (PRYTF) certificate include?*

- (a) A general residential operation must submit:
  - (1) A PRYTF certificate application (Form 2973, Psychiatric Residential Youth Treatment Facility Application);
  - (2) A General Residential Operations - Additional Operation Plan (Form 2960, Application for a License to Operate a Residential Child Care Facility, Attachment C) that describes and includes the capacity of the children to be served by the general residential operation, including any children and young adults that the PRYTF will serve;
  - (3) An updated floor plan of the building and surrounding space the entire operation will use, including dimensions of the indoor space and the specific areas to be used by the PRYTF;
  - (4) Additional written policies required in §748.4821 of this title (relating to What additional policies must I submit as part of the application process for a psychiatric residential youth treatment facility (PRYTF) certificate?); and
  - (5) The PRYTF certificate application fee.

(b) The operation may submit an updated General Residential Operations - Additional Operation Plan (Form 2960, Attachment C) if the operation is already licensed to provide treatment services to children with emotional disorders.

*§745.9057. How do the public notice and hearing requirements apply to an application for a psychiatric residential youth treatment facility (PRYTF) certificate?*

- (a) A general residential operation that is applying for a PRYTF certificate must comply with the rules in Subchapter D, Division 4 of this chapter (relating to Public Notice and Hearing Requirements for Residential Child-Care Operations).
- (b) The initial public notice and hearing, or a subsequent public notice and hearing, of the general residential operation must describe and include the capacity of the children and young adults the PRYTF will serve.

(c) If the general residential operation does not comply with the public notice and hearing requirements, we may deny the operation a PRYTF certificate.

§745.9059. How long does Licensing have to review an application for a psychiatric residential youth treatment facility (PRYTF) certificate?

(a) We have 21 calendar days after receiving your application for a PRYTF certificate to review the paperwork, unless there is good cause to exceed this timeframe.

(b) After we review your application, we will notify you in writing that:

(1) There is good cause to delay the timeframe for making a determination on your application, consistent with §745.327 of this chapter (relating to When does Licensing have good cause for exceeding its timeframes for processing my application?);

(2) Your operation is ineligible to receive a PRYTF certificate because it does not meet one or more of the requirements under §745.9053(a) of this division (relating to What requirements must a general residential operation meet before applying for a psychiatric residential youth treatment facility (PRYTF) certificate?);

(3) Your application is complete and accepted for processing; or

(4) Your application is incomplete. The notification letter will:

(A) Identify any application materials submitted that do not show compliance with relevant statutes, rules, or minimum standards; and

(B) Explain what the operation must do to complete the application.

(c) If your application is not complete by the first anniversary of the date you submitted your application for a PRYTF certificate, we will close your application and you must submit a new application, materials, and a PRYTF certificate application fee.

§745.9061. How long does Licensing have to determine whether to issue a psychiatric residential youth treatment facility (PRYTF) certificate after accepting my application?

(a) We determine whether to issue a PRYTF certificate no later than two months after we accept the application, unless there is good cause to exceed this timeframe consistent with §745.327 of this chapter (relating to When does Licensing have good cause for exceeding its timeframes for processing my application?).

(b) You may file a complaint regarding timeframes according to §745.325 of this chapter (relating to How do I file a complaint regarding timeframes for processing my application?).

§745.9063. What factors will Licensing consider when evaluating an application for a psychiatric residential youth treatment facility (PRYTF) certificate?

When we determine whether to issue a PRYTF certificate, we will consider:

(1) The application and any information submitted with the application, including:

(A) All parts of the Additional Operation Plan required in §745.9055(a)(2) of this division (relating to What does a completed application for a psychiatric residential youth treatment facility (PRYTF) certificate include?);

(B) Evidence of community support for, or opposition to, the general residential operation being certified as a PRYTF; and

(C) The impact statement from the school district likely to be affected by the population of children and young adults to be served by the PRYTF, including information relating to any financial impact on the district that may result from an increase in enrollment.

(2) The on-site inspection to determine compliance with relevant statutes, rules, and minimum standards;

(3) Any information that we gather through the application process, including any written comments and written information submitted to us during the process that we consider to be relevant to the decision to issue the PRYTF certificate; and

(4) If a public hearing is required in §745.273 of this chapter (relating to Which residential child-care operations must meet the public notice and hearing requirements?):

(A) Any written comments and written information that interested parties provide at a public hearing; and

(B) The Verbatim Record and summary Report of Public Comment from the Community, as required in §745.275 of this chapter (relating to What are the specific requirements for a public notice and hearing?).

§745.9065. For what reason may Licensing deny a psychiatric residential youth treatment facility (PRYTF) certificate based on the results of a required public hearing?

If a public hearing is required in §745.273 of this chapter (relating to Which residential child-care operations must meet the public notice and hearing requirements?), we may deny you a PRYTF certificate if we determine that:

(1) The community has insufficient resources to support the children or young adults that you propose to serve;

(2) Issuing the PRYTF certificate would adversely affect the children or young adults you propose to serve;

(A) By significantly increasing, in the local school district, the ratio of students enrolled in a special education program to students enrolled in a regular education program; or

(B) By significantly impacting the local school district;

or

(3) Issuing the PRYTF certificate would have a significant adverse impact on the community and limit opportunities for social interaction for the children or young adults that you propose to serve.

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 April 10, 2024.

TRD-202401458

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: May 26, 2024

For further information, please call: (512) 438-3269



DIVISION 3. RENEWALS

26 TAC §§745.9067, 745.9069, 745.9071, 745.9073

STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of the Texas Government Code. In addition, the Texas Health and Safety Code §577A.004 requires HHSC to adopt rules to implement this chapter. Finally, amendments to current rules adopted under Texas Human Resources Code §42.042 are authorized under that section.

The new sections affect Texas Government Code §531.0055, Texas Health and Safety Code Chapter 577A, and Texas Human Resources Code Chapter 42.

§745.9067. When do I need to apply to renew my psychiatric residential youth treatment facility (PRYTF) certificate?

(a) You must apply to renew your PRYTF certificate every two years after the date we issue the certificate.

(b) You must still timely apply to renew your PRYTF certificate, even if:

(1) There is a pending civil or administrative penalty against the PRYTF; or

(2) The general residential operation or PRYTF is under an enforcement action.

(c) During the year that you must renew your PRYTF certificate, your renewal period:

(1) Begins 60 calendar days before the anniversary of when we issued your PRYTF certificate; and

(2) Ends on the date of the anniversary.

(d) If you are late in applying for renewal of your PRYTF certificate, you have 30 additional calendar days after the renewal period to apply for renewal.

§745.9069. What does a completed renewal application for a psychiatric residential youth treatment facility (PRYTF) certificate include?

You must submit a completed PRYTF renewal application, which includes:

(1) Timely submitting a renewal application as required by §745.9067 of this division (relating to When do I need to apply to renew my psychiatric residential youth treatment facility (PRYTF) certificate?);

(2) Verification that the following information is current and accurate:

(A) The list of controlling persons at your operation; and

(B) The list of governing body's members, such as officers and owners, if applicable;

(3) A statement as to whether your operation continues to need any existing waivers and variances that you also want to apply to your care of children and young adults receiving psychiatric health treatments and services;

(4) Validation on your provider website the list of persons who require a background check because of their association with your operation;

(5) Verification of the ongoing accreditation of the PRYTF; and

(6) A PRYTF certificate renewal fee.

§745.9071. What happens after Licensing receives my renewal application?

(a) After receiving your renewal application, we evaluate whether:

(1) You completed the renewal application as required by §745.9069 of this division (relating to What does a completed renewal application for a psychiatric residential youth treatment facility (PRYTF) certificate include?);

(2) Your general residential operation license is current and approved to provide treatment services to children with emotional disorders;

(3) You have paid each administrative penalty that you owe after waiving or exhausting any due process provided under Texas Health and Safety Code §571.025; and

(4) The PRYTF meets the statutory, rule, and minimum standard requirements after we inspect your PRYTF.

(b) Within 30 calendar days of receiving your renewal application, we will send you written notice that:

(1) We have renewed your PRYTF certificate;

(2) Your PRYTF renewal application is incomplete because it did not meet one or more of the renewal application requirements in subsection (a) of this section; or

(3) We refuse to renew your PRYTF certificate because:

(A) You did not submit a completed PRYTF renewal application;

(B) Your PRYTF is no longer accredited as required by §748.4823(a) of this title (relating to When must I notify Licensing about accreditation changes regarding the psychiatric residential youth treatment facility (PRYTF)?);

(C) You do not have a general residential operation license;

(D) Your general residential operation is not approved to provide treatment services to children with emotional disorders;

(E) You did not pay the PRYTF certificate renewal fee;

(F) You did not pay an administrative penalty that you owe after waiving or exhausting any due process provided under Texas Health and Safety Code §571.025; or

(G) After inspecting the PRYTF, we determine that it does not meet the statute, rule, and minimum standard requirements.

(c) If your PRYTF renewal application is incomplete, the written notice will include:

(1) Our determination that you did not meet one or more of the renewal application requirements in subsection (a) of this section; and

(2) A list of the requirements that you must complete before we can renew the PRYTF certificate.

(d) If you submitted an incomplete PRYTF renewal application during the renewal period, you may attempt to submit the missing information until your PRYTF certificate expires.

(e) If you submitted an incomplete PRYTF renewal application during the late renewal period, you have 15 calendar days to submit a completed application from the date we determine that your renewal application was incomplete.

§745.9073. When does my psychiatric residential youth treatment facility (PRYTF) certificate expire?

(a) Your PRYTF certificate expires if:

(1) You do not submit your PRYTF renewal application during the renewal period or late renewal period;

(2) You submit your PRYTF renewal application during the renewal period, you were notified that your application was incomplete, and you do not submit a completed renewal application before the end of the late renewal period; or

(3) You submit your PRYTF renewal application during the late renewal period, you were notified that your application was incomplete, and you do not submit a completed renewal application within 15 calendar days after notification.

(b) If your PRYTF certificate expires:

(1) Within 24 hours, you must inform the following persons that your PRYTF certificate has expired:

(A) All parents of children receiving psychiatric health treatments and services; and

(B) Young adults and any guardians of the young adults receiving psychiatric health treatments and services;

(2) You must immediately:

(A) Discharge and stop providing care to the young adults 18 to 21 years of age receiving psychiatric health treatments and services unless the young adult meets the requirements of §748.1931 of this title (relating to After a child in my care turns 18 years old, may the person remain in my care?);

(B) For children receiving psychiatric health treatments and services:

(i) Enroll the child into your general residential operation, if appropriate; or

(ii) Discharge the child to the child's parents.

(3) Before you can operate again as a PRYTF, you must submit a new PRYTF application, materials, and PRYTF certificate application fee.

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

Filed with the Office of the Secretary of State on April 10, 2024.

TRD-202401459

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: May 26, 2024

For further information, please call: (512) 438-3269



## DIVISION 4. FEES

### 26 TAC §745.9075

#### STATUTORY AUTHORITY

The new section is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, as well

as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of the Texas Government Code. In addition, the Texas Health and Safety Code §577A.004 requires HHSC to adopt rules to implement this chapter. Finally, amendments to current rules adopted under Texas Human Resources Code §42.042 are authorized under that section.

The new section affects Texas Government Code §531.0055, Texas Health and Safety Code Chapter 577A, and Texas Human Resources Code Chapter 42.

§745.9075. What fees must I pay to apply for and maintain a psychiatric residential youth treatment facility (PRYTF) certificate?

In addition to the fees required by §745.509 of this chapter (relating to What fees must I pay to apply for and maintain a license for an operation?), the following chart contains non-refundable fees applicable to a PRYTF, when the fees are due, and the consequences for failure to pay on time:

Figure: 26 TAC §745.9075

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 April 10, 2024.

TRD-202401461

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: May 26, 2024

For further information, please call: (512) 438-3269



## DIVISION 5. INSPECTIONS, INVESTIGATIONS, AND CONFIDENTIALITY

### 26 TAC §745.9077

#### STATUTORY AUTHORITY

The new section is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of the Texas Government Code. In addition, the Texas Health and Safety Code §577A.004 requires HHSC to adopt rules to implement this chapter. Finally, amendments to current rules adopted under Texas Human Resources Code §42.042 are authorized under that section.

The new section affects Texas Government Code §531.0055, Texas Health and Safety Code Chapter 577A, and Texas Human Resources Code Chapter 42.

§745.9077. How do the provisions in Subchapter K of this chapter apply to a psychiatric residential youth treatment facility (PRYTF)?

The rules in Subchapter K of this chapter (relating to Inspections, Investigations, and Confidentiality) apply to a PRYTF certificate in the same manner as the rules would apply for a general residential operation permit, including:

(1) For an inspection or investigation in a PRYTF;

(2) Relating to confidentiality, which apply to an applicant for a PRYTF certificate, holder of a PRYTF certificate, or former holder of a PRYTF certificate as if a PRYTF certificate is a permit; and

(3) Technical assistance provided to a PRYTF.

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 April 10, 2024.

TRD-202401462

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: May 26, 2024

For further information, please call: (512) 438-3269



## DIVISION 6. ENFORCEMENT

**26 TAC §§745.9085, 745.9087, 745.9089, 745.9091, 745.9093, 745.9095, 745.9097**

### STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of the Texas Government Code. In addition, the Texas Health and Safety Code §577A.004 requires HHSC to adopt rules to implement this chapter. Finally, amendments to current rules adopted under Texas Human Resources Code §42.042 are authorized under that section.

The new sections affect Texas Government Code §531.0055, Texas Health and Safety Code Chapter 577A, and Texas Human Resources Code Chapter 42.

§745.9085. Overview of Enforcement Actions.

(a) The Texas Health and Human Services Commission may impose the following enforcement actions against a psychiatric residential youth treatment facility (PRYTF):

(1) A denial of a PRYTF certificate;

(2) A refusal to renew a PRYTF certificate;

(3) An administrative penalty under Texas Health and Safety Code §571.025; and

(4) A civil penalty under Texas Health and Safety Code §571.023.

(b) An enforcement action taken against a PRYTF certificate is separate from an action taken against a general residential operation license.

§745.9087. Denial of certificate.

The Texas Health and Human Services Commission (HHSC) may deny a psychiatric residential youth treatment facility (PRYTF) certificate if HHSC determines ineligibility based on:

(1) A provision in Texas Health and Safety Code Chapter 577A; or

(2) HHSC's evaluation of your application under the criteria described in §745.9063 of this subchapter (relating to What factors will Licensing consider when evaluating an application for a psychiatric residential youth treatment facility (PRYTF) certificate?).

§745.9089. Refusal To Renew.

The Texas Health and Human Services Commission (HHSC) may refuse to renew a psychiatric residential youth treatment facility (PRYTF) certificate for a reason listed in §745.8605 of this chapter (relating to When can Licensing recommend or impose an enforcement action against my operation) or if:

(1) The PRYTF did not submit a complete renewal application, timely or otherwise, according to §745.9069 of this subchapter (relating to What does a completed renewal application for a psychiatric residential youth treatment facility (PRYTF) certificate include?:)

(2) The PRYTF was not accredited at the time of the renewal;

(3) The general residential operation does not have a current license to operate at the time of the renewal, including if:

(A) HHSC revokes your license;

(B) HHSC refuses to renew your license;

(C) You voluntarily close your operation;

(D) HHSC suspends your license; or

(E) You voluntarily suspend your license;

(4) The general residential operation is not approved to provide treatment services to children with an emotional disorder at the time of renewal;

(5) The PRYTF has not paid an administrative penalty after waiving or exhausting any due process provided under Texas Health and Safety Code §571.025;

(6) The PRYTF has not timely submitted the renewal fee to HHSC; or

(7) The PRYTF does not meet:

(A) A provision in Texas Health and Safety Code Chapter 577A;

(B) A rule in this subchapter; or

(C) A minimum standard in Chapter 748, Subchapter W of this title (relating to Additional Requirements for Operations that Provide Psychiatric Health Treatments and Services).

§745.9091. Administrative Review.

(a) An administrative review is an informal review to determine whether a decision or action was appropriate under applicable laws and rules. An administrative review is not a formal hearing.

(b) An administrative review may be requested to dispute the following in relation to a psychiatric residential youth treatment facility (PRYTF) certificate:

(1) The denial of a PRYTF certificate;

(2) The refusal to renew a PRYTF certificate; or

(3) The citation of a deficiency of a statute, rule, or minimum standard.

(c) An administrative review must be requested in accordance with Subchapter M of this chapter (relating to Administrative Reviews and Due Process Hearings).

(d) The administrative review process and all administrative review requirements will be conducted in accordance with Subchapter M of this chapter.

§745.9093. Administrative Penalties.

(a) The Texas Health and Human Services Commission (HHSC) may impose and collect an administrative penalty against a psychiatric residential youth treatment facility (PRYTF) for a violation of:

(1) A provision in Texas Health and Safety Code Chapter 577A;

(2) A rule in this subchapter; or

(3) A minimum standard in Chapter 748, Subchapter W of this title (relating to Additional Requirements for Operations that Provide Psychiatric Health Treatments and Services).

(b) Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(c) HHSC imposes an administrative penalty based on the number of individuals under the care of the PRYTF when the violation occurred:

Figure: 26 TAC §745.9093(c)

§745.9095. Civil Penalties.

The Texas Health and Human Services Commission (HHSC) may impose a civil penalty against a psychiatric residential youth treatment facility (PRYTF) according to Texas Health and Safety Code §571.023 for a violation of:

(1) A provision in Texas Health and Safety Code Chapter 577A; or

(2) A rule adopted under Texas Health and Safety Code Chapter 577A, including:

(A) A rule in this subchapter; or

(B) A minimum standard in Chapter 748, Subchapter W of this title (relating to Additional Requirements for Operations that Provide Psychiatric Health Treatments and Services).

§745.9097. State Office of Administrative Hearings (SOAH).

A psychiatric residential youth treatment facility (PRYTF) has the right to a due process hearing before the SOAH in accordance with Subchapter M of this chapter (relating to Administrative Reviews and Due Process Hearings) for:

(1) The denial of a PRYTF certificate;

(2) The refusal to renew a PRYTF certificate; or

(3) The imposition of an administrative penalty.

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 April 10, 2024.

TRD-202401463

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: May 26, 2024

For further information, please call: (512) 438-3269



## CHAPTER 746. MINIMUM STANDARDS FOR CHILD-CARE CENTERS

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §§746.123, 746.605, 746.1301, 746.1309, 746.1403, 746.1801, 746.2101, 746.2105, 746.2109, 746.2113, 746.2115, 746.3701, 746.4971, 746.5001, 746.5013, and 746.5017; new §§746.1325, 746.5009, and 746.5011; and repeal of §746.2103.

### BACKGROUND AND PURPOSE

The proposal is necessary to implement House Bill (H.B.) 59, 88th Legislature, Regular Session, 2023. H.B. 59 amended Texas Health and Safety Code (HSC), Subchapter D, Chapter 341, by adding §341.0646 to require certain organizations, including child day care facilities, to implement specific child water safety requirements if the operation authorizes a child to engage in an organized water activity.

HHSC Child Care Regulation (CCR) is proposing new and amended rules in Chapter 746 that will (1) add definitions and requirements related to water safety, including (A) water safety training for employees, substitutes, volunteers, and contractors, and (B) the use of a personal flotation device for children who access swimming pools via their licensed child-care center; and (2) update references to bodies of water and wading pools to be consistent with HSC §341.0646(a). CCR is also proposing to repeal one rule that established a grandfather clause related to child to caregiver ratios for splashing and wading activities because the need for the grandfather clause has expired.

### SECTION-BY-SECTION SUMMARY

The proposed amendment to §746.123 (1) adds definitions for "body of water," "personal flotation device," "swimming pool," and "wading pool"; (2) adds the rule title to a reference in the definition of "caregiver"; (3) updates the definition of "water activities" to remove the terms "splashing pools" and "bodies of water"; and (4) updates the numbering of the definitions accordingly.

The proposed amendment to §746.605 (1) moves requirements related to water activity participation to the end of the list of required admission information; (2) renumbers the rule accordingly; and (3) clarifies that if a child-care center allows a child to access a swimming pool a parent is required to indicate at admission whether the child is (A) able to swim competently as defined by the American Red Cross, or (B) requires a personal flotation device because the child is unable to swim competently or is at risk of injury or death when swimming or otherwise accessing a body of water.

The proposed amendment to §746.1301 adds to the chart of training requirements for employees, caregivers, and directors (1) the word "safety" to the transportation training requirements to be consistent with the rule content for that training; and (2) a new water safety training requirement for a center that allows a child to access a swimming pool at or away from the center. The chart specifies that the director and each employee who accompanies a child to a swimming pool must have water safety training prior to accompanying a child to a swimming pool and annually thereafter.

The proposed amendment to §746.1309 clarifies that water safety training is exclusive of the 24 clock hours of annual required training for caregivers.



Proposed new §746.1325 adds a requirement for water safety training if a child-care center allows a child to access a swimming pool at or away from the center. The rule requires the training for each employee who accompanies a child to a swimming pool before the employee accompanies the child to a swimming pool and for each child-care center director. The rule also clarifies that water safety training is exclusive of any requirements for orientation, pre-service training, and annual training.

The proposed amendment to §746.1403 adds to the chart of training requirements for substitutes, volunteers, and contractors (1) the word "safety" to the transportation training requirements to be consistent with the rule content for that training; and (2) a new water safety training requirement for a center that allows a child to access a swimming pool at or away from the center. The chart specifies that each substitute, volunteer, and contractor who accompanies a child to a swimming pool must have water safety training prior to accompanying a child to a swimming pool and annually thereafter.

The proposed amendment to §746.1801 (1) updates language and reorganizes the rule for better readability; (2) updates a reference; and (3) replaces the title of rule references that include the language "splashing/wading" to "wading."

The proposed amendment to §746.2101 (1) removes references to "splashing" in the rule title and within the rule; (2) removes language indicating that a wading pool has a depth of two feet or less; (3) updates a reference; and (4) updates language for better readability.

The proposed repeal of §746.2103 deletes the rule as no longer necessary because the rule established a grandfather clause that is no longer necessary.

The proposed amendment to §746.2105 (1) removes language indicating that a swimming pool has a depth of more than two feet of water; and (2) updates a reference.

The proposed amendment to §746.2109 (1) updates the rule title to reflect that a lifeguard must be on duty when children are swimming in 18 inches, rather than two feet, of water; and (2) updates language for better readability.

The proposed amendment to §746.2113 clarifies that each caregiver counted in the child to caregiver ratio for swimming in 18 inches or more of water must be able to swim and be prepared to do so in an emergency.

The proposed amendment to §746.2115 updates language for better readability.

The proposed amendment to §746.3701 (1) updates language for better readability; and (2) updates the list of vessels containing water that must be inaccessible to all children to (A) add wading pools, and (B) remove pools, ponds, and creeks as they are included in the definition of the previously listed "bodies of water".

The proposed amendment to §746.4971 updates the title of a cross-referenced subchapter.

The title of Subchapter V is updated to remove the term "splashing."

The proposed amendment to §746.5001 (1) updates the rule title; (2) reorganizes rule references for better readability; and (3) removes language indicating that a swimming pool has a depth of more than two feet of water.

Proposed new §746.5009 outlines the additional safety precautions a child-care center must take for a child in care who is unable to swim competently or at risk of injury or death when swimming. The rule requires the child-care center to do the following before the child enters a swimming pool: (1) provide the child with a Type I, II, or III United States Coast Guard approved personal flotation device (PFD); (2) ensure the child is wearing the PFD; and (3) ensure the PFD is properly fitted and fastened for the child.

Proposed new §746.5011 clarifies that a child-care center is not required to provide a PFD to a child who is unable to swim competently or is at risk of injury or death when swimming or ensure the child is wearing a PFD if (1) the child is actively participating in swim instruction or a competition; and (2) the child-care center ensures the child is supervised in accordance with §746.1205 during the instruction or competition.

The proposed amendment to §746.5013 (1) removes the term "splashing" from the rule; (2) removes language indicating that a wading pool has a depth of two feet or less; and (3) updates the title of a rule reference.

The proposed amendment to §746.5017 (1) updates the rule title; (2) updates language for better readability; (3) removes references to "lakes," "ponds," and "rivers" from the list of water bodies a child cannot swim in as they are included in the definition of a "body of water"; and (4) removes a reference to "wading pool" as a wading pool is not considered a "body of water".

#### FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of state or local governments.

#### GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rules will be in effect:

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;
- (4) the proposed rules will not affect fees paid to HHSC;
- (5) the proposed rules will create a new regulation;
- (6) the proposed rules will expand and repeal existing regulations;
- (7) the proposed rules will not change the number of individuals subject to the rules; and
- (8) the proposed rules will not affect the state's economy.

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

Trey Wood has also determined that there will be an adverse economic effect on small businesses and micro-businesses, but there will not be an adverse economic effect on rural communities.

Texas Government Code Chapter 2006 defines a small business as one that is for-profit with fewer than 100 employees. A mi-

cro-business is one that is for-profit with fewer than 20 employees. Based on data obtained from the 2022 CCR Data Book, there are approximately 8,087 Licensed Child-Care Centers required to comply with the rules. CCR conducted a survey of licensed child-care operations in 2019 to determine which operations met the definition of a small or micro-business and received responses from approximately nine percent of Licensed Child-Care Centers. Based on the results from that survey, CCR estimates that 59 percent of the centers (or 4,771 centers) are for profit. Of those centers, approximately 99 percent of the centers (or 4,724 centers) have less than 100 employees and qualify as small businesses and approximately 77 percent of those small businesses (or 3,637 centers) have less than 20 employees and qualify as micro-businesses.

There is a projected economic impact on small businesses and micro-businesses from proposed §746.5009. This economic impact, however, is limited to child-care centers that offer children access to a swimming pool, either onsite or during field trips where water activities take place. Based on data collected in November 2023 for Fiscal Year 2022, 197 child-care centers have a swimming pool on the premises and 3,270 child-care centers offer water activities (to include swimming pools, wading pools, and sprinkler play). However, CCR does not have data regarding how many of these child-care centers are a small business or a micro-business. With regards to water activities, CCR does not collect data regarding the type of water activities a child-care center provides or whether those activities take place onsite or during field trips. Although HHSC can assume the 197 child-care centers with a pool on the premises that are a small business or a micro-business will be required to comply with the proposed rule, HHSC is unable to determine the number of child-care centers whose water activities include access to a swimming pool during field trips. Therefore, HHSC does not have enough information to determine the total number of child-care centers operating as a small business or micro-business that will be required to comply with the proposed rule.

Section 746.5009 requires a licensed child-care center to provide each child in care who is unable to swim competently or is at risk of injury or death when swimming or otherwise entering a swimming pool a properly fitted and fastened Type I, II, or III United States Coast Guard approved personal flotation device (PFD). A 2023 assessment of the average cost to purchase a single PFD revealed that a PFD costs between \$17 and \$45. However, the total cost to purchase PFDs will vary per child-care center depending on the number of enrolled children who are unable to swim competently or at risk of injury or death when swimming and the type of PFD the operation elects to purchase. In addition, some child-care centers may choose to obtain PFDs through organizations that provide them at no cost. These factors, coupled with HHSC's inability to determine the number of child-care centers that offer access to a swimming pool during field trips, renders HHSC unable to determine economic costs for persons required to comply with the rule as proposed.

HHSC determined that alternative methods to achieve the purpose of the proposed rule for small businesses, micro-businesses, or rural communities would not be consistent with ensuring the health and safety of children who access swimming pools via their licensed child-care center.

#### LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

#### COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

#### PUBLIC BENEFIT AND COSTS

Rachel Ashworth-Mazerolle, Associate Commissioner for Child Care Regulation, has determined that for each year of the first five years the rules are in effect, the public benefit will be rules that (1) improve the safety of children enrolled in licensed child-care centers who access swimming pools; and (2) rules that comply with state law.

Trey Wood has also determined that for the first five years the rules are in effect, persons who are required to comply with the proposed rules may incur economic costs because the rules require child-care centers to provide each child in care who is unable to swim competently or is at risk of injury or death when swimming or otherwise entering a body of water a properly fitted and fastened Type I, II, or III United States Coast Guard approved personal flotation device (PFD). A 2023 assessment of the average cost to purchase a single PFD revealed that a PFD costs between \$17 and \$45. However, the total cost to purchase PFDs will vary per child-care operation depending on the number of enrolled children who are unable to swim or at risk of injury or death when swimming and the type of PFD the operation elects to purchase. In addition, some child-care operations may choose to obtain PFDs through organizations that provide them at no cost. As a result, HHSC does not have sufficient information to determine economic costs for persons required to comply with the rules as proposed.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Questions about the content of this proposal may be directed to Aimee Belden by email at [Aimee.Belden@hhs.texas.gov](mailto:Aimee.Belden@hhs.texas.gov).

Written comments on the proposal may be submitted to Aimee Belden, Rules Writer, Child Care Regulation, Texas Health and Human Services Commission, E-550, P.O. Box 149030, Austin, Texas 78714-9030; or by email to [CCRRules@hhs.texas.gov](mailto:CCRRules@hhs.texas.gov).

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 23R074" in the subject line.

### SUBCHAPTER A. PURPOSE, SCOPE, AND DEFINITIONS

#### DIVISION 3. DEFINITIONS

##### 26 TAC §746.123

## STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of the Texas Government Code. In addition, Texas Human Resources Code (HRC) §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42.

The amendment affects Texas Government Code §531.0055 and HRC §42.042.

§746.123. *What do certain words and terms mean when used in this chapter?*

The words and terms used in this chapter have the meanings assigned to them under §745.21 of this title (relating to What do the following words and terms mean when used in this chapter?), unless another meaning is assigned in this section or another subchapter or unless the context clearly indicates otherwise. In addition, the following words and terms used in this chapter have the following meanings unless the context clearly indicates otherwise:

(1) **Activity plan**--A written plan that outlines the daily routine and activities in which a group of children will engage while in your care. The plan is designed to meet the children's cognitive, language, social, emotional, and physical developmental strengths and needs.

(2) **Activity space**--An area or room used for children's activities, including areas separate from a group's classroom.

(3) **Administrative and clerical duties**--Duties that involve the operation of a child-care center, such as bookkeeping, enrolling children, answering the telephone, and collecting fees.

(4) **Admission**--The process of enrolling a child in a child-care center. The date of admission is the first day the child is physically present in the center.

(5) **Adult**--A person 18 years old and older.

(6) **Age-appropriate**--Activities, equipment, materials, curriculum, and environment, including the child's assigned classroom, that are developmentally consistent with the developmental or chronological age of the child being served.

(7) **Alternate care program**--A program in which no child is in care for more than five consecutive days, and no child is in care for more than 15 days in one calendar month, regardless of the duration of each stay.

(8) **Attendance**--When referring to a child's attendance, the physical presence of a child at the child-care center's program on any given day or at any given time, as distinct from the child's enrollment in the child-care center.

(9) **Body of water**--As defined by Texas Health and Safety Code, Chapter 341, Subchapter D (relating to Sanitation and Safety of Facilities Used by Public).

(10) [(9)] **Bouncer seat**--A stationary seat designed to provide gentle rocking or bouncing motion by an infant's movement, or by battery-operated movement. This type of equipment is designed for an infant's use from birth until the child can sit up unassisted.

(11) [(10)] **Caregiver**--A person who is counted in the child to caregiver ratio, whose duties include the supervision, guidance, and

protection of a child. As used in this chapter, a caregiver must meet the minimum education, work experience, and training qualifications required under Subchapter D of this chapter (relating to Personnel). A caregiver is usually an employee, but may also be a substitute, volunteer, or contractor, as outlined in paragraph (20) [(19)] of this section and Subchapter D, Division 5 of this chapter (relating to Substitutes, Volunteers, and Contractors).

(12) [(11)] **Certified Child-Care Professional Credential**--A credential given by the National Early Childhood Program Accreditation to a person working directly with children. The credential is based on assessed competency in several areas of child care and child development.

(13) [(12)] **Certified lifeguard**--A person who has been trained in life saving and water safety by a qualified instructor, from a recognized organization that awards a certificate upon successful completion of the training. The certificate is not required to use the term "lifeguard," but the permit holder must be able to document that the certificate is current, relevant to the type of water activity in which children will engage, and represents the type of training described.

(14) [(13)] **CEUs--Continuing education units**. A standard unit of measure for adult education and training activities. One CEU equals 10 clock hours of participation in an organized, continuing-education experience, under responsible, qualified direction and instruction. Although a person may obtain a CEU in many of the same settings as clock hours, the CEU provider must meet the criteria established by the International Association for Continuing Education and Training to be able to offer the CEU.

(15) [(14)] **Child**--An infant, a toddler, a pre-kindergarten age child, or a school-age child.

(16) [(15)] **Child-care center**--A child-care facility that is licensed to care for seven or more children for less than 24 hours per day, at a location other than the permit holder's home. If you were licensed before September 1, 2003, the location of the center could be in the permit holder's home.

(17) [(16)] **Child-care program**--The services and activities provided by a child-care center.

(18) [(17)] **Child Development Associate Credential**--A credential given by the Council for Professional Recognition to a person working directly with children. The credential is based on assessed competency in several areas of child care and child development.

(19) [(18)] **Clock hour**--An actual hour of documented:

(A) Attendance at instructor-led training, such as seminars, workshops, conferences, early childhood classes, and other planned learning opportunities, provided by an individual or individuals as specified in §746.1317(a) of this chapter (relating to Must the training for my caregivers and the director meet certain criteria?); or

(B) Self-instructional training that was created by an individual or individuals, as specified in §746.1317(a) and (b) of this chapter, or self-study training.

(20) [(19)] **Contract service provider**--A person or entity contracting with the operation to provide a service, whether paid or unpaid. Also referred to as "contract staff" and "contractor" in this chapter.

(21) [(20)] **Corporal punishment**--The infliction of physical pain on a child as a means of controlling behavior. This includes spanking, hitting with a hand or instrument, slapping, pinching, shaking, biting, or thumping a child.

(22) [(21)] **Days**--Calendar days, unless otherwise stated.

(23) [(22)] Employee--A person a child-care center employs full-time or part-time to work for wages, salary, or other compensation. Employees are all of the child-care center staff, including caregivers, kitchen staff, office staff, maintenance staff, the assistant director, the director, and the owner, if the owner is ever on site at the center or transports a child.

(24) [(23)] Enrollment--The list of names or number of children who have been admitted to attend a child-care center for any given period of time; the number of children enrolled in a child-care center may vary from the number of children in attendance on any given day.

(25) [(24)] Entrap--A component or group of components on equipment that forms angles or openings that may trap a child's head by being too small to allow the child's body to pass through, or large enough for the child's body to pass through but too small to allow the child's head to pass through.

(26) [(25)] Field trips--Activities conducted away from the child-care center.

(27) [(26)] Food service--The preparation or serving of meals or snacks.

(28) [(27)] Frequent--More than two times in a 30-day period. Note: For the definition of "regularly or frequently present at an operation" as it applies to background checks, see §745.601 of this title (relating to What words must I know to understand this subchapter?).

(29) [(28)] Garbage--Waste food or items that when deteriorating cause offensive odors and attract rodents, insects, and other pests.

(30) [(29)] Grounds--Includes any parcel of land where the child-care center is located and any building, other structure, body of water, play equipment, street, sidewalk, walkway, driveway, parking garage, or parking lot on the parcel. Also referred to as "premises" in this chapter.

(31) [(30)] Group activities--Activities that allow children to interact with other children in large or small groups. Group activities include storytelling, finger plays, show and tell, organized games, and singing.

(32) [(31)] Hazardous materials--Any substance or chemical that is a health hazard or physical hazard, as determined by the Environmental Protection Agency. Also referred to as "toxic materials" and "toxic chemicals" in this chapter.

(33) [(32)] Health-care professional--A licensed physician, a licensed advanced practice registered nurse (APRN), a licensed vocational nurse (LVN), a licensed registered nurse (RN), or other licensed medical personnel providing health care to the child within the scope of the license. This does not include physicians, nurses, or other medical personnel who are not licensed in the United States or in the country in which the person practices.

(34) [(33)] Health check--A visual or physical assessment of a child to identify potential concerns about a child's health, including signs or symptoms of illness and injury, in response to changes in the child's behavior since the last date of attendance.

(35) [(34)] High school equivalent--

(A) Documentation of a program recognized by the Texas Education Agency (TEA) or other public educational entity in another state, which offers similar training on reading, writing, and math skills taught at the high school level, such as a General Educational Development (GED) certificate; or

(B) Confirmation that the person received home-schooling that adequately addressed basic competencies such as basic reading, writing, and math skills, which would otherwise have been documented by a high school diploma.

(36) [(35)] Individual activities--Opportunities for the child to work independently or to be away from the group but supervised.

(37) [(36)] Infant--A child from birth through 17 months.

(38) [(37)] Inflatable--An amusement ride or device, consisting of air-filled structures designed for use by children, as specified by the manufacturer, which may include bouncing, climbing, sliding, or interactive play. They are made of flexible fabric, kept inflated by continuous air flow by one or more blowers, and rely upon air pressure to maintain their shape.

(39) [(38)] Instructor-led training--Training characterized by the communication and interaction that takes place between the student and the instructor. The training must include an opportunity for the student to interact with the instructor to obtain clarifications and information beyond the scope of the training materials. For such an opportunity to exist, the instructor must communicate with the student in a timely fashion, including answering questions, providing feedback on skills practice, providing guidance or information on additional resources, and proactively interacting with students. Examples of this type of training include classroom training, web-based on-line facilitated learning, video-conferencing, or other group learning experiences.

(40) [(39)] Janitorial duties--Those duties that involve the cleaning and maintenance of the child-care center building, rooms, furniture, etc. Cleaning and maintenance include such duties as cleansing carpets, washing cots, and sweeping, vacuuming, or mopping a restroom or a classroom. Sweeping up after an activity or mopping up a spill in a classroom that is immediately necessary for the children's safety is not considered a janitorial duty.

(41) [(40)] Local sanitation official--A sanitation official designated by the city or county government.

(42) [(41)] Natural environment--Settings that are natural or typical for all children of the same age without regard to ability or disability. For example, a natural environment for learning social skills is a play group of peers.

(43) [(42)] Permit is no longer valid--For purposes of this chapter, a permit remains valid through the renewal process. A permit only becomes invalid when your center voluntarily closes or must close because of an enforcement action in Chapter 745, Subchapter L of this title (relating to Enforcement Actions).

(44) Personal flotation device (PFD)--A United States Coast Guard approved life jacket.

(45) [(43)] Physical activity (moderate)--Levels of activity for a child that are at intensities faster than a slow walk, but still allow the child to talk easily. Moderate physical activity increases the child's heart rate and breathing rate.

(46) [(44)] Physical activity (vigorous)--Rhythmic, repetitive physical movement for a child that uses large muscle groups, causing the child to breathe rapidly and only enabling the child to speak in short phrases. Typically, the child's heart rate is substantially increased, and the child is likely to be sweating while engaging in vigorous physical activity.

(47) [(45)] Pre-kindergarten age child--A child who is three or four years of age before the beginning of the current school year.

(48) [(46)] Premises--See the term "grounds" and its definition in this section.

(49) [(47)] Regular--On a recurring, scheduled basis. Note: For the definition of "regularly or frequently present at an operation" as it applies to background checks, see §745.601 of this title.

(50) [(48)] Restrictive device--Equipment that places the body of a child in a position that may restrict airflow or cause strangulation; usually, the child is placed in a semi-seated position. Examples of restrictive devices are car seats, swings, bouncy seats, and high chairs.

(51) [(49)] Safety belt--A lap belt and any shoulder straps included as original equipment on or added to a vehicle.

(52) [(50)] Sanitize--The use of a disinfecting product that provides instructions specific for sanitizing and is registered by the Environmental Protection Agency (EPA) to substantially reduce germs on inanimate objects to levels considered safe by public health requirements. Many bleach and hydrogen peroxide products are EPA-registered. You must follow the product's labeling instructions for sanitizing or disinfecting, depending on the surface (paying particular attention to any instructions regarding contact time and toxicity on surfaces likely to be mouthed by children, such as toys and crib rails). If you use bleach instead of an approved disinfecting product, you must follow these steps in order:

(A) Washing with water and soap;

(B) Rinsing with clear water;

(C) Soaking in or spraying on a bleach solution for at least two minutes;

(D) Rinsing with cool water only those items that children are likely to place in their mouths; and

(E) Allowing the surface or item to air-dry.

(53) [(51)] School-age child--A child who is five years of age and older and is enrolled in or has completed kindergarten.

(54) [(52)] Screen time activity--An activity during which a child views media content on a cell or mobile phone, tablet, computer, television, video, film, or DVD. Screen time activities do not include video chatting with a child's family or assistive and adaptive computer technology used by a child with special care needs on a consistent basis.

(55) [(53)] Self-instructional training--Training designed to be used by one individual working alone and at the individual's own pace to complete lessons or modules. Lessons or modules commonly include questions with clear right and wrong answers. An example of this type of training is web-based training. Self-study training is also a type of self-instructional training.

(56) [(54)] Self-study training--Non-standardized training where an individual reads written materials, watches a training video, or listens to a recording to obtain certain knowledge that is required for annual training. Self-study training is limited to three hours of annual training per year.

(57) [(55)] Special care needs--A child with special care needs is a child who has:

(A) A chronic physical, developmental, behavioral, or emotional condition or a disability and who also requires assistance

beyond that required by a child generally to perform tasks that are within the typical chronological range of development, including the movement of large or small muscles, learning, talking, communicating, comprehension, emotional regulation, self-help, social skills, emotional well-being, seeing, hearing, and breathing; or

(B) A limitation due to an injury, illness, or allergy.

(58) [(56)] State or local fire authority--A fire official who is authorized to conduct fire safety inspections on behalf of the city, county, or state government, including certified fire inspectors. Also referred to as "fire marshal" in this chapter.

(59) Swimming Pool--An artificial body of water with a water depth of more than 18 inches that is maintained or used expressly for public or private recreational purposes, swimming, diving, aquatic sports or activities, or therapeutic purposes.

(60) [(57)] Toddler--A child from 18 months through 35 months.

(61) [(58)] Universal precautions--An approach to infection control where all human blood and certain human bodily fluids are treated as if known to be infectious for HIV, HBV, and other blood-borne pathogens.

(62) Wading pool--As defined by Texas Health and Safety Code, Chapter 341, Subchapter D.

(63) [(59)] Water activities--Related to the use of swimming pools, ~~[splashing pools,]~~ wading pools, or sprinkler play~~;~~ ~~or other bodies of water~~.

(64) [(60)] Weather permitting--Weather conditions that do not pose any concerns for health and safety, such as a significant risk of frostbite or heat-related illness. This includes adverse weather conditions in which children may still play safely outdoors for shorter periods with appropriate adjustments to clothing and any necessary access to water, shade, or shelter.

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 April 12, 2024.

TRD-202401552

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: May 26, 2024

For further information, please call: (512) 438-3269



## SUBCHAPTER C. RECORD KEEPING DIVISION 1. RECORDS OF CHILDREN

### 26 TAC §746.605

#### STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of the Texas Government Code. In addition, Texas Human Resources Code (HRC) §42.042(a)

requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42.

The amendment affects Texas Government Code §531.0055 and HRC §42.042.

§746.605. *What admission information must I obtain for each child?* You must obtain at least the following information before admitting a child to care:

- (1) The child's name and birth date;
- (2) The child's home address and telephone number;
- (3) Date of the child's admission to the child-care center;
- (4) Name and address of parents [~~parent(s)~~];
- (5) Telephone numbers at which parents [~~parent(s)~~] can be reached while the child is in care;
- (6) Name, address, and telephone number of another responsible individual (friend or relative) who should be contacted in an emergency when the parent cannot be reached;
- (7) Names and telephone numbers of persons other than a parent to whom the child may be released;
- (8) Permission for transportation, if provided;
- (9) Permission for field trips, if provided;
- ~~[(10) Permission for participation in water activities, if provided, if provided, including whether the child is able to swim without assistance;]~~
- (10) ~~[(11)]~~ Name, address, and telephone number of the child's physician or an emergency-care facility;
- (11) ~~[(12)]~~ Authorization to obtain emergency medical care and to transport the child for emergency medical treatment;
- (12) ~~[(13)]~~ A statement of the child's special care needs, which must include:
  - (A) Any limitations or restrictions on the child's activities;
  - (B) Special care the child requires, including:
    - (i) Any reasonable accommodations or modifications;
    - (ii) Any adaptive equipment provided for the child, including instructions for how to use the equipment; and
    - (iii) Symptoms or indications of potential complications related to a physical, cognitive, or mental condition that may warrant prevention or intervention while the child is in care; and
  - (C) Any medications prescribed for continuous, long-term use;
- (13) ~~[(14)]~~ The name and telephone number of the school that a school-age child attends, unless the operation is located at the child's school;
- (14) ~~[(15)]~~ Permission for a school-age child to ride a bus, walk to or from school or home, or to be released to the care of a sibling under 18 years old, if applicable; ~~[and]~~
- (15) ~~[(16)]~~ The child's allergies and a completed food allergy emergency plan for the child, if applicable; ~~and~~ [-]
- (16) Permission for participation in water activities, if provided. If you allow a child to access a swimming pool, the parent must also indicate whether the child:

(A) Is able to swim competently, as defined by the American Red Cross; or

(B) Requires a personal flotation device because the child is:

(i) Unable to swim competently, as defined by the American Red Cross; or

(ii) At risk of injury or death when swimming or otherwise accessing a body of water.

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 April 12, 2024.

TRD-202401528

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: May 26, 2024

For further information, please call: (512) 438-3269



## SUBCHAPTER D. PERSONNEL DIVISION 4. PROFESSIONAL DEVELOPMENT

### 26 TAC §§746.1301, 746.1309, 746.1325

#### STATUTORY AUTHORITY

The amendments and new section are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of the Texas Government Code. In addition, Texas Human Resources Code (HRC) §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42.

The amendments and new section affect Texas Government Code §531.0055 and HRC §42.042.

§746.1301. *What are the training requirements for employees, caregivers, and directors?*

(a) Employees, caregivers, and directors must complete the following training requirements.

Figure: 26 TAC §746.1301(a)

[Figure: 26 TAC §746.1301(a)]

(b) If a caregiver or employee does not yet have a current certificate in pediatric CPR as required in (a)(4)(A) in Figure: 26 TAC §746.1301(a), at least one caregiver or employee with a current certificate must also be on the premises with the caregiver.

§746.1309. *What areas of training must the annual training for caregivers cover?*

(a) The 24 clock hours of annual training must be relevant to the age of the children for whom the caregiver provides care.

(b) At least six clock hours of the annual training hours must be in one or more of the following topics:

- (1) Child growth and development;

- (2) Guidance and discipline;
- (3) Age-appropriate curriculum; and
- (4) Teacher-child interaction.

(c) At least one clock hour of the annual training hours must focus on prevention, recognition, and reporting of child maltreatment, including:

- (1) Factors indicating a child is at risk for abuse or neglect;
- (2) Warning signs indicating a child may be a victim of abuse or neglect;
- (3) Procedures for reporting child abuse or neglect; and
- (4) Community organizations that have training programs available to employees, children, and parents.

(d) If a caregiver provides care for children younger than 24 months of age, one clock hour of the annual training hours must cover the following topics:

- (1) Recognizing and preventing shaken baby syndrome and abusive head trauma;
- (2) Understanding and using safe sleep practices and preventing sudden infant death syndrome (SIDS); and
- (3) Understanding early childhood brain development.

(e) While there are no clock hour requirements for the topics in this subsection, the annual training hours must also include training on the following topics:

- (1) Emergency preparedness;
- (2) Preventing and controlling the spread of communicable diseases, including immunizations;
- (3) Administering medication, if applicable, including compliance with §746.3803 of this chapter (relating to What authorization must I obtain before administering a medication to a child in my care?);
- (4) Preventing and responding to emergencies due to food or an allergic reaction;
- (5) Understanding building and physical premises safety, including identification and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic; and
- (6) Handling, storing, and disposing of hazardous materials including compliance with §746.3425 of this chapter (relating to Must caregivers wear gloves when handling blood or bodily fluids containing blood?).

(f) The remaining annual training hours must be in one or more of the following topics:

- (1) Care of children with special needs;
- (2) Child health (for example, nutrition and physical activity);
- (3) Safety;
- (4) Risk management;
- (5) Identification and care of ill children;
- (6) Cultural diversity for children and families;
- (7) Professional development (for example, effective communication with families and time and stress management);

(8) Topics relevant to the particular age group the caregiver is assigned (for example, caregivers assigned to an infant or toddler group should receive training on biting and toilet training);

- (9) Planning developmentally appropriate learning activities;
- (10) Observation and assessment;
- (11) Attachment and responsive care giving; and
- (12) Minimum standards and how they apply to the caregiver.

(g) At least five of the 24 required annual training hours must come from instructor-led training. The remaining 19 required annual training hours may come from self-instructional training, of which no more than three hours may come from self-study training.

(h) The 24 clock hours of annual training are exclusive of any requirements for orientation, pre-service training, pediatric first-aid [first aid] and pediatric CPR training, transportation safety training, water safety training, and high school child-care work-study classes.

§746.1325. What additional training must an employee and director have if the child-care center allows a child to access a swimming pool at or away from the center?

(a) If the child-care center allows a child to access a swimming pool at or away from the center, annual water safety training is required for:

- (1) Each employee prior to accompanying a child to a swimming pool; and
- (2) Each child-care center director.

(b) Water safety training is exclusive of any requirements for orientation, pre-service training, and annual training.

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 April 12, 2024.

TRD-202401529

Karen Ray  
Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: May 26, 2024

For further information, please call: (512) 438-3269



## DIVISION 5. SUBSTITUTES, VOLUNTEERS, AND CONTRACTORS

### 26 TAC §746.1403

#### STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of the Texas Government Code. In addition, Texas Human Resources Code (HRC) §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42.

The amendment affects Texas Government Code §531.0055 and HRC §42.042.

§746.1403. *What are the training requirements for substitutes, volunteers, and contractors?*

(a) Substitutes, volunteers, and contractors must complete the following training requirements.  
Figure 26 TAC §746.1403(a)  
[Figure 26 TAC §746.1403(a)]

(b) If the person does not complete the pre-service training within the 90-day period as specified in (a)(2)(C)(ii) in Figure: 26 TAC §746.1403(a), the person must cease performing any caregiver duties at the center until the person completes the pre-service training.

(c) If a substitute, volunteer, or contractor who is counted in the child to caregiver ratio does not yet have a current certificate in pediatric CPR, as required in (a)(4)(A) in Figure: 26 TAC §746.1403(a), at least one caregiver or employee with a current certificate must also be on the premises with the substitute, volunteer, or contractor.

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 April 12, 2024.

TRD-202401531

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: May 26, 2024

For further information, please call: (512) 438-3269



**SUBCHAPTER E. CHILD/CAREGIVER RATIOS AND GROUP SIZES**  
**DIVISION 4. RATIOS FOR FIELD TRIPS**  
**26 TAC §746.1801**

**STATUTORY AUTHORITY**

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of the Texas Government Code. In addition, Texas Human Resources Code (HRC) §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42.

The amendment affects Texas Government Code §531.0055 and HRC §42.042.

§746.1801. *Do I need additional caregivers when I take children away from the child-care center for field trips or walks?*

(a) When children are on a field trip and are mixing with children and adults who are not from your child-care center, such as during [including but not limited to,] trips to the skating rink, shopping center, public or amusement park, you must meet the following child/caregiver ratio:

Figure: 26 TAC §746.1801(a)

[Figure: 40 TAC §746.1801(a)]

(b) The child/caregiver ratio for a field trip to a location where children mix with non-center children and adults [trips] may include adult volunteers or child-care center employees who do not meet the minimum qualifications for caregivers specified in Subchapter D of this chapter (relating to Personnel) if [are not qualified as caregivers only for trips when children are mixing with non-center children and adults, as long as] you maintain at least the classroom child/caregiver ratio required in the following, as applicable:

(1) Division 2 of this subchapter (relating to Classroom Ratios and Group Sizes for Centers Licensed to Care for 13 or More Children); or

(2) Division 3 of this subchapter (relating to Classroom Ratios and Group Sizes for Centers When 12 or Fewer Children are in Care) [with qualified caregivers].

(c) When children are on a walk or field trip in an enclosed, controlled area, such as [including but not limited to,] specially arranged trips for children in your child-care center only to a [the] fire station, library, or museum [class for children in your child-care center only], you must maintain at least the classroom child/caregiver ratio. Refer to §746.2101 of this subchapter [title] (relating to Must I have additional caregivers for wading [splashing/wading] activities?) and §746.2105 of this subchapter [title] (relating to What are the child/caregiver ratios for swimming activities?) for child/caregiver ratios for wading [splashing/wading] and swimming activities when children are not mixing with other children and adults.

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 April 12, 2024.

TRD-202401534

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: May 26, 2024

For further information, please call: (512) 438-3269



**DIVISION 7. RATIOS FOR WATER ACTIVITIES**

**26 TAC §§746.2101, 746.2105, 746.2109, 746.2113, 746.2115**

**STATUTORY AUTHORITY**

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of the Texas Government Code. In addition, Texas Human Resources Code (HRC) §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42.

The amendments affect Texas Government Code §531.0055 and HRC §42.042.

§746.2101. *Must I have additional caregivers for wading [splashing/wading] activities?*

(a) The maximum number of children one caregiver can supervise while children use a [splashing or] wading pool [(two feet of



water or less)] is based on the age of the youngest child in the group and is specified in the following chart:

Figure: 26 TAC §746.2101(a)

[Figure: 40 TAC §746.2101(a)]

(b) When children are using a wading pool while mixing with children and adults who are not from your child-care center [during splashing or wading activities], you must follow the child/caregiver ratios for field trips as specified in §746.1801 of this subchapter [title] (relating to Do I need additional caregivers when I take children away from the child-care center for field trips or walks?) [must be followed].

§746.2105. *What are the child/caregiver ratios for swimming activities?*

(a) When your child-care center uses a swimming pool [~~more than two feet of water~~], there must be at least two caregivers supervising the children if four or more children are swimming.

(b) The maximum number of children one caregiver can supervise while children are swimming is based on the age of the youngest child in the group and is specified in the following chart:

Figure: 26 TAC §746.2105(b)

[Figure: 40 TAC §746.2105(b)]

§746.2109. *Must a certified lifeguard be on duty when children are swimming in more than 18 inches [~~two feet~~] of water?*

A [~~Yes. When children are swimming in more than two feet of water,~~ a] certified lifeguard must be on duty at all times when children are swimming in more than 18 inches of water.

§746.2113. *Must persons who are counted in the child/caregiver ratio during swimming know how to swim?*

[~~Yes.~~] Each caregiver [~~person~~] included in the child/caregiver ratio for swimming in 18 inches [~~two feet~~] or more of water must be able to swim and must be prepared to do so in an emergency.

§746.2115. *May I include volunteers or child-care employees who do not meet minimum qualifications for caregivers in the child/caregiver ratio for water activities?*

You [~~Yes. To meet the child/caregiver ratio for splashing/wading and swimming activities,~~ you] may include adult volunteers and adult child-care center employees who do not meet the minimum qualifications for caregivers specified in Subchapter D of this chapter (relating to Personnel) to meet the child/caregiver ratio for swimming and wading activities, provided that:

(1) You maintain at least the classroom child/caregiver ratios required in this subchapter with caregivers who do meet the minimum qualifications for caregivers;

(2) All persons included in the ratios for water activities must be able to swim and must be prepared to do so in an emergency; and

(3) You ensure compliance with all other minimum standards, including, but not limited to, standards relating to supervision, discipline and guidance.

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 April 12, 2024.

TRD-202401539

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: May 26, 2024

For further information, please call: (512) 438-3269



## 26 TAC §746.2103

### STATUTORY AUTHORITY

The repeal is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of the Texas Government Code. In addition, Texas Human Resources Code (HRC) §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42.

The repeal affects Texas Government Code §531.0055 and HRC §42.042.

§746.2103. *Will I be given an opportunity to comply with the minimum standards for splashing/wading activities, if my child-care center was licensed before September 1, 2003?*

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 April 12, 2024.

TRD-202401540

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: May 26, 2024

For further information, please call: (512) 438-3269



## SUBCHAPTER S. SAFETY PRACTICES

### DIVISION 1. SAFETY PRECAUTIONS

## 26 TAC §746.3701

### STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of the Texas Government Code. In addition, Texas Human Resources Code (HRC) §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42.

The amendment affects Texas Government Code §531.0055 and HRC §42.042.

§746.3701. *What safety precautions must I take to protect children in my child-care center?*

All areas accessible to a child must be free from hazards including[, but not limited to,] the following:

(1) Electrical outlets accessible to a child younger than five years must have childproof covers or safety outlets;

(2) 220-volt electrical connections within a child's reach must be covered with a screen or guard;

(3) Air conditioners, electric fans, and heaters must be mounted out of all children's reach or have safeguards that keep any child from being injured;

(4) Glass in sliding doors must be clearly marked with decals or other materials placed at children's eye level;

(5) Play materials and equipment must be safe and free from sharp or rough edges and toxic paints;

(6) Poisonous or potentially harmful plants must be inaccessible to all children;

(7) Bottle warmers must be inaccessible to all children and used only according to manufacturer instructions;

(8) All storage chests, boxes, trunks, or similar items with hinged lids must be equipped with a lid support designed to hold the lid open in any position, be equipped with ventilation holes, and must not have a latch that might close and trap a child inside;

(9) All bodies of water, wading pools [~~such as pools~~], hot tubs, [~~ponds, creeks,~~] birdbaths, fountains, buckets, and rain barrels must be inaccessible to all children; and

(10) All televisions must be anchored, so they cannot tip over. A television may be anchored to a rolling cart, if [~~as long as~~] it is anchored in a way that the cart will not tip over.

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 April 12, 2024.

TRD-202401541

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: May 26, 2024

For further information, please call: (512) 438-3269



## SUBCHAPTER U. INDOOR AND OUTDOOR ACTIVE PLAY SPACE AND EQUIPMENT DIVISION 7. INFLATABLES

### 26 TAC §746.4971

#### STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of the Texas Government Code. In addition, Texas Human Resources Code (HRC) §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42.

The amendment affects Texas Government Code §531.0055 and HRC §42.042.

### §746.4971. *May I use inflatable active play equipment?*

You may use inflatable equipment both at and away from your child-care center if you follow these guidelines:

(1) You use enclosed inflatables (such as bounce houses or moon bounces) according to the manufacturer's instructions;

(2) You use open inflatables (such as obstacle courses, slides, or games) according to the manufacturer's label and instructions for the user; and

(3) Inflatables that include water activity also comply with all applicable requirements in Subchapter V of this chapter (relating to Swimming Pools, Wading [~~Wading/Splashing~~] Pools, and Sprinkler Play).

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 April 12, 2024.

TRD-202401542

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: May 26, 2024

For further information, please call: (512) 438-3269



## SUBCHAPTER V. SWIMMING POOLS, WADING/SPLASHING POOLS, AND SPRINKLER PLAY

### 26 TAC §§746.5001, 746.5009, 746.5011, 746.5013, 746.5017 STATUTORY AUTHORITY

The amendments and new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of the Texas Government Code. In addition, Texas Human Resources Code (HRC) §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42.

The amendments and new sections affect Texas Government Code §531.0055 and HRC §42.042.

### §746.5001. *What safety precautions must I follow when a child [children] in my care uses [use] a swimming pool?*

In addition to complying with the child/caregiver ratios specified in §746.2105 of this chapter [~~title~~] (relating to What are the child/caregiver ratios for swimming activities?) and other safety requirements specified in §746.2109 of this chapter (relating to Must a certified lifeguard be on duty when children are swimming in more than 18 inches of water) and §746.2113 of this chapter [~~title~~] (relating to [~~Must a certified lifeguard be on duty when children are swimming in more than two feet of water?~~ and] Must persons who are counted in the child/caregiver ratio during swimming know how to swim?), you must comply with the following safety precautions when any child uses a swimming pool [~~(more than two feet of water)~~] both at and away from your child-care center:

- (1) A minimum of two life-saving devices must be available;
- (2) One additional life-saving device must be available for each 2,000 square feet of water surface;
- (3) Drain grates must be in place, in good repair, and must not be able to be removed without using tools;
- (4) Pool chemicals and pumps must be inaccessible to any child;
- (5) Machinery rooms must be locked when any child is present;
- (6) Employees must be able to clearly see all parts of the swimming area;
- (7) The bottom of the pool must be visible at all times;
- (8) An adult must be present who is able to immediately turn off the pump and filtering system when any child is in a pool; and
- (9) All indoor/outdoor areas must be free of furniture and equipment that any child could use to scale a fence or barrier or release a lock.

§746.5009. What additional safety precautions must I take for a child in care who is unable to swim competently or who is at risk of injury or death when swimming?

Before a child who is unable to swim competently or who is at risk of injury or death when swimming enters a swimming pool, you must:

- (1) Provide the child with a Type I, II, or III United States Coast Guard approved personal flotation device (PFD);
- (2) Ensure the child is wearing the PFD; and
- (3) Ensure the PFD is properly fitted and fastened for the child.

§746.5011. Must I provide a personal flotation device (PFD) to a child in care who is unable to swim competently or who is at risk of injury or death when swimming when the child is participating in swim instruction or a competition?

You are not required to provide the child with a PFD or ensure the child is wearing the device if:

- (1) The child is actively participating in swim instruction or a competition; and
- (2) You ensure that the child is supervised in accordance with §746.1205 of this chapter (relating to What responsibilities does a caregiver have when supervising a child or children?) during the instruction or competition.

§746.5013. What are the safety requirements for wading pools?

(a) Wading [Wading/splashing] pools [(two feet of water or less)] at your child-care center must be:

- (1) Stored out of children's reach when not in use;
- (2) Drained at least daily and sanitized; and
- (3) Stored so they do not hold water.

(b) You must comply with the safety precautions specified in §746.5001 of this subchapter [title] (relating to What safety precautions must I follow when a child [children] in my care uses [use] a swimming pool?) when using wading [wading/splashing] pools away from your child-care center.

§746.5017. Can a child [children] in my care swim in a body of water other than a swimming pool; such as a lake, pond, or river?

You [No, you] must not allow a child [children] to swim in a [lake, pond, river, or a] body of water other than a swimming pool [or wading pool] that complies with the rules specified in this subchapter.

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

Filed with the Office of the Secretary of State on April 12, 2024.

TRD-202401543

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: May 26, 2024

For further information, please call: (512) 438-3269



## CHAPTER 747. MINIMUM STANDARDS FOR CHILD-CARE HOMES

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §§747.123, 747.605, 747.1303, 747.1305, 747.1309, 747.2001, 747.2005, 747.2009, 747.2013, 747.2015, 747.3501, 747.4751, 747.4801, 747.4813, and 747.4817; and new §§747.1323, 747.4811 and 747.4812.

### BACKGROUND AND PURPOSE

The proposal is necessary to implement House Bill (H.B.) 59, 88th Legislature, Regular Session, 2023. H.B. 59 amended Texas Health and Safety Code (HSC), Subchapter D, Chapter 341, by adding §341.0646 to require certain organizations, including child day care facilities, to implement specific child water safety requirements if the operation authorizes a child to engage in an organized water activity.

HHSC Child Care Regulation (CCR) is proposing new and amended rules in Chapter 747 that will (1) add definitions and requirements related to water safety, including (A) water safety training for caregivers, and (B) the use of a personal flotation device for children who access swimming pools via their licensed or registered child-care home; and (2) update references to bodies of water and wading pools to be consistent with HSC §341.0646(a).

### SECTION-BY-SECTION SUMMARY

The proposed amendment to §747.123 (1) adds definitions for "body of water," "personal flotation device," "swimming pool," and "wading pool"; (2) updates the definition of "water activities" to remove the terms "splashing pools" and "bodies of water"; and (3) updates the numbering of the definitions accordingly.

The proposed amendment to §747.605 (1) moves requirements related to water activity participation to the end of the list of required admission information; (2) renumbers the rule accordingly; and (3) clarifies that if a child-care home allows a child to access a swimming pool a parent is required to indicate at admission whether the child is (A) able to swim competently as defined by the American Red Cross, or (B) requires a personal flotation device because the child is unable to swim competently or is at risk of injury or death when swimming or otherwise accessing a body of water.

The proposed amendment to §747.1303 (1) removes duplicative language; (2) updates punctuation; (3) updates a rule reference

to add the title of the rule; and (4) adds to the chart of training requirements for caregivers (A) the word "safety" to the transportation training requirements to be consistent with the rule content for that training, and (B) a new water safety training requirement for a child-care home that allows a child to access a swimming pool at or away from the home. The chart specifies that each primary caregiver and substitute or assistant caregiver who accompanies a child to a swimming pool must have water safety training prior to accompanying a child to a swimming pool and annually thereafter.

The proposed amendment to §747.1305 clarifies that water safety training is exclusive of the annual required training for substitute and assistant caregivers.

The proposed amendment to §747.1309 clarifies that water safety training is exclusive of the 30 clock hours of annual required training for the primary caregiver.

Proposed new §747.1323 adds a requirement for water safety training if a child-care home allows a child to access a swimming pool at or away from the home. The rule requires the training for each substitute or assistant caregiver who accompanies a child to a swimming pool before the caregiver accompanies the child to a swimming pool and for the primary caregiver. The rule also clarifies that water safety training is exclusive of any requirements for orientation, pre-service training, and annual training.

The proposed amendment to §747.2001 (1) removes references to "splashing" in the rule title and within the rule; (2) removes language indicating that a wading pool has a depth of two feet or less; and (3) updates a reference.

The proposed amendment to §747.2005 (1) removes language indicating that a swimming pool has a depth of more than two feet of water; and (2) updates a reference.

The proposed amendment to §747.2009 (1) updates the rule title to reflect that a lifeguard must be on duty when children are swimming in 18 inches, rather than two feet, of water; and (2) updates language for better readability.

The proposed amendment to §747.2013 clarifies that each caregiver counted in the child to caregiver ratio for swimming in 18 inches or more of water must be able to swim and be prepared to do so in an emergency.

The proposed amendment to §747.2015 updates language for better readability.

The proposed amendment to §747.3501 (1) updates language for better readability; and (2) updates the list of vessels containing water that must be inaccessible to all children to (A) add wading pools, and (B) remove pools, ponds, and creeks as they are included in the definition of the previously listed "bodies of water."

The proposed amendment to §747.4751 updates the title of a cross-referenced subchapter.

The title of Subchapter V is updated to remove the term "splashing."

The proposed amendment to §747.4801 (1) updates the rule title; (2) reorganizes rule references for better readability; and (3) removes language indicating that a swimming pool has a depth of more than two feet of water.

Proposed new §747.4811 outlines the additional safety precautions a child-care home must take for a child in care who is unable to swim competently or at risk of injury or death when swim-

ming. The rule requires the child-care home to do the following before the child enters a swimming pool: (1) provide the child with a Type I, II, or III United States Coast Guard approved personal flotation device (PFD); (2) ensure the child is wearing the PFD; and (3) ensure the PFD is properly fitted and fastened for the child.

Proposed new §747.4812 clarifies that a child-care home is not required to provide a PFD to a child who is unable to swim competently or is at risk of injury or death when swimming or ensure the child is wearing a PFD if (1) the child is actively participating in swim instruction or a competition; and (2) the child-care home ensures the child is supervised in accordance with §747.1503 during the instruction or competition.

The proposed amendment to §747.4813 (1) removes the term "splashing" from the rule; (2) removes language indicating that a wading pool has a depth of two feet or less; and (3) updates the title of a rule reference.

The proposed amendment to §747.4817 (1) updates the rule title; (2) updates language for better readability; (3) removes references to "lakes," "ponds," and "rivers" from the list of water bodies a child cannot swim in as they are included in the definition of a "body of water"; and (4) removes a reference to "wading pool" as a wading pool is not considered a "body of water".

#### FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of state or local governments.

#### GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rules will be in effect:

- (1) the proposed rules will not create or eliminate a government program;
- (2) implementation of the proposed rules will not affect the number of HHSC employee positions;
- (3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;
- (4) the proposed rules will not affect fees paid to HHSC;
- (5) the proposed rules will create a new regulation;
- (6) the proposed rules will expand existing regulations;
- (7) the proposed rules will not change the number of individuals subject to the rules; and
- (8) the proposed rules will not affect the state's economy.

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

Trey Wood has also determined that there will be an adverse economic effect on small businesses and micro-businesses, but there will not be an adverse economic effect on rural communities.

Texas Government Code Chapter 2006 defines a small business as one that is for-profit with fewer than 100 employees. A micro-business is one that is for-profit with fewer than 20 employees. Based on data obtained from the 2022 CCR Data Book, there are approximately 4,177 Licensed and Registered Child-Care Homes required to comply with the rules. These homes are lim-

ited to caring for a maximum of 12 children. CCR assumes that all Licensed and Registered Child-Care Homes (4,177 homes) are for-profit homes with less than 20 employees and qualify as small businesses and micro-businesses.

There is a projected economic impact on small businesses and micro-businesses from proposed §747.4811. This economic impact, however, is limited to child-care homes that offer children access to a swimming pool, either onsite or during field trips where water activities take place. Based on data collected in November 2023 for Fiscal Year 2022, 170 child-care homes have a swimming pool on the premises and 1,084 child-care homes offer water activities (to include swimming pools, wading pools, and sprinkler play). With regards to water activities, CCR does not collect data regarding the type of water activities a child-care home provides or whether those activities take place onsite or during field trips. Although HHSC can assume the 170 child-care homes with a pool on the premises will be required to comply with the proposed rule, HHSC is unable to determine the number of child-care homes whose water activities include access to a swimming pool during field trips. Therefore, HHSC does not have enough information to determine the total number of child-care homes operating as a small business or micro-business that will be required to comply with the proposed rule.

Section 747.4811 requires a child-care home to provide each child in care who is unable to swim competently or is at risk of injury or death when swimming or otherwise entering a swimming pool a properly fitted and fastened Type I, II, or III United States Coast Guard approved personal flotation device (PFD). A 2023 assessment of the average cost to purchase a single PFD revealed that a PFD costs between \$17 and \$45. However, the total cost to purchase PFDs will vary per child-care home depending on the number of enrolled children who are unable to swim competently or at risk of injury or death when swimming and the type of PFD the operation elects to purchase. In addition, some child-care homes may choose to obtain PFDs through organizations that provide them at no cost. These factors, coupled with HHSC's inability to determine the number of child-care homes that offer access to a swimming pool during field trips, renders HHSC unable to determine economic costs for persons required to comply with the rule as proposed.

HHSC determined that alternative methods to achieve the purpose of the proposed rule for small businesses, micro-businesses, or rural communities would not be consistent with ensuring the health and safety of children who access swimming pools via their licensed or registered child-care home.

#### LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

#### COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

#### PUBLIC BENEFIT AND COSTS

Rachel Ashworth-Mazerolle, Associate Commissioner for Child Care Regulation, has determined that for each year of the first five years the rules are in effect, the public benefit will be rules that (1) improve the safety of children enrolled in licensed and registered child-care homes who access swimming pools; and (2) rules that comply with state law.

Trey Wood has also determined that for the first five years the rules are in effect, persons who are required to comply with the proposed rules may incur economic costs because the rules require child-care homes to provide each child in care who is unable to swim competently or is at risk of injury or death when swimming or otherwise entering a body of water a properly fitted and fastened Type I, II, or III United States Coast Guard approved personal flotation device (PFD). A 2023 assessment of the average cost to purchase a single PFD revealed that a PFD costs between \$17 and \$45. However, the total cost to purchase PFDs will vary per child-care operation depending on the number of enrolled children who are unable to swim or at risk of injury or death when swimming and the type of PFD the operation elects to purchase. In addition, some child-care operations may choose to obtain PFDs through organizations that provide them at no cost. As a result, HHSC does not have sufficient information to determine economic costs for persons required to comply with the rules as proposed.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Questions about the content of this proposal may be directed to Aimee Belden by email at [Aimee.Belden@hhs.texas.gov](mailto:Aimee.Belden@hhs.texas.gov).

Written comments on the proposal may be submitted to Aimee Belden, Rules Writer, Child Care Regulation, Texas Health and Human Services Commission, E-550, P.O. Box 149030, Austin, Texas 78714-9030; or by email to [CCRRules@hhs.texas.gov](mailto:CCRRules@hhs.texas.gov).

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be post-marked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 23R074" in the subject line.

## SUBCHAPTER A. PURPOSE, SCOPE, AND DEFINITIONS

### DIVISION 3. DEFINITIONS

#### 26 TAC §747.123

#### STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of the Texas Government Code. In addition, Texas Human Resources Code (HRC) §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42.

The amendment affects Texas Government Code §531.0055 and HRC §42.042.

§747.123. *What do certain words and terms mean when used in this chapter?*

The words and terms used in this chapter have the meanings assigned to them under §745.21 of this title (relating to What do the following words and terms mean when used in this chapter?), unless another meaning is assigned in this section or another subchapter or unless the context clearly indicates otherwise. In addition, the following words and terms used in this chapter have the following meanings unless the context clearly indicates otherwise:

(1) **Activity plan**--A written plan that outlines the daily routine and activities in which a group of children will engage while in your care. The plan is designed to meet the children's [ ]cognitive, social, language, emotional, and physical developmental strengths and needs.

(2) **Activity space**--An area or room used for children's activities.

(3) **Administrative and clerical duties**--Duties that involve the operation of a child-care home, such as bookkeeping, enrolling children, answering the telephone, and collecting fees.

(4) **Admission**--The process of enrolling a child in a child-care home. The date of admission is the first day the child is physically present in the home.

(5) **Adult**--A person 18 years old and older.

(6) **After-school hours**--Hours before and after school, and days when school is not in session, such as school holidays, summer vacations, and teacher in-service days.

(7) **Age-appropriate**--Activities, equipment, materials, curriculum, and environment that are developmentally consistent with the developmental or chronological age of the child being served.

(8) **Attendance**--When referring to a child's attendance, the physical presence of a child at the child-care home on any given day or at any given time, as distinct from the child's enrollment in the child-care home.

(9) **Body of water**--As defined by Texas Health and Safety Code, Chapter 341, Subchapter D (relating to Sanitation and Safety of Facilities Used by Public).

(10) [(9)] **Bouncer seat**--A stationary seat designed to provide gentle rocking or bouncing motion by an infant's movement[;] or by battery-operated movement. This type of equipment is designed for an infant's use from birth until the child can sit up unassisted.

(11) [(10)] **Caregiver**--A person who is counted in the child to caregiver ratio, whose duties include the supervision, guidance, and protection of a child. As used in this chapter, a caregiver must meet the minimum education, work experience, and training qualifications required under Subchapter D of this chapter (relating to Personnel).

(12) [(11)] **Certified Child-Care Professional Credential**--A credential given by the National Early Childhood Program Accreditation to a person working directly with children. The credential is based on assessed competency in several areas of child care and child development.

(13) [(12)] **Certified lifeguard**--A person who has been trained in life saving and water safety by a qualified instructor, from a recognized organization that awards a certificate upon successful completion of the training. The certificate is not required to use the term "lifeguard," but you must be able to document that the certificate is current, relevant to the type of water activity in which children will engage, and representative of the type of training described.

(14) [(13)] **CEUs--Continuing education units**. A standard unit of measure for adult education and training activities. One CEU equals 10 clock hours of participation in an organized, continuing-education experience, under responsible, qualified direction and instruction. Although a person may obtain a CEU in many of the same settings as clock hours, the CEU provider must meet the criteria established by the International Association for Continuing Education and Training to be able to offer the CEU.

(15) [(14)] **Child**--An infant, a toddler, a pre-kindergarten age child, or a school-age child.

(16) [(15)] **Child-care home**--A registered or licensed child-care home, as specified in §747.113 of this chapter (relating to What is a registered child-care home?) or §747.115 of this chapter (relating to What is a licensed child-care home?). This term includes the program, home, grounds, furnishings, and equipment.

(17) [(16)] **Child-care program**--The services and activities provided by a child-care home.

(18) [(17)] **Child Development Associate Credential**--A credential given by the Council for Professional Recognition to a person working directly with children. The credential is based on assessed competency in several areas of child care and child development.

(19) [(18)] **Clock hour**--An actual hour of documented:

(A) Attendance at instructor-led training, such as seminars, workshops, conferences, early childhood classes, and other planned learning opportunities, provided by an individual or individuals as specified in §747.1315(a) of this chapter (relating to Must child-care training meet certain criteria?); or

(B) Self-instructional training that was created by an individual or individuals, as specified in §747.1315(a) and (b) of this chapter, or self-study training.

(20) [(19)] **Corporal punishment**--The infliction of physical pain on a child as a means of controlling behavior. This includes spanking, hitting with a hand or instrument, slapping, pinching, shaking, biting, or thumping a child.

(21) [(20)] **Days**--Calendar days, unless otherwise stated.

(22) [(21)] **Employee**--An assistant caregiver, substitute caregiver, or any other person a child-care home employs full-time or part-time to work for wages, salary, or other compensation, including kitchen staff, office staff, maintenance staff, or anyone hired to transport a child.

(23) [(22)] **Enrollment**--The list of names or number of children who have been admitted to attend a child-care home for any given period of time; the number of children enrolled in a child-care home may vary from the number of children in attendance on any given day.

(24) [(23)] **Entrap**--A component or group of components on equipment that forms angles or openings that may trap a child's head by being too small to allow the child's body to pass through, or large enough for the child's body to pass through but too small to allow the child's head to pass through.

(25) [(24)] **Field trips**--Activities conducted away from the child-care home.

(26) [(25)] **Food service**--The preparation or serving of meals or snacks.

(27) [(26)] **Frequent**--More than two times in a 30-day period. Note: For the definition of "regularly or frequently present at an operation" (child-care home) as it applies to background checks, see

§745.601 of this title (relating to What words must I know to understand this subchapter?).

(28) [(27)] Garbage--Waste food or items that when deteriorating cause offensive odors and attract rodents, insects, and other pests.

(29) [(28)] Grounds-- Includes any parcel of land where the home of the primary caregiver is located and any building, other structure, body of water, play equipment, street, sidewalk, walkway, driveway, parking garage, or parking lot on the parcel. Also referred to as "premises" in this chapter.

(30) [(29)] Group activities--Activities that allow children to interact with other children in large or small groups. Group activities include storytelling, finger plays, show and tell, organized games, and singing.

(31) [(30)] Hazardous materials--Any substance or chemical that is a health hazard or physical hazard, as determined by the Environmental Protection Agency. Also referred to as "toxic materials" and "toxic chemicals" in this chapter.

(32) Health check--A visual or physical assessment of a child to identify potential concerns about a child's health, including signs or symptoms of illness and injury, in response to changes in the child's behavior since the last date of attendance.

(33) [(31)] Health-care professional--A licensed physician, a licensed advanced practice registered nurse (APRN), a licensed vocational nurse (LVN), a licensed registered nurse (RN), or other licensed medical personnel providing health care to the child within the scope of the license. This does not include physicians, nurses, or other medical personnel who are not licensed in the United States or in the country in which the person practices.

(34) [(33)] High school equivalent--

(A) Documentation of a program recognized by the Texas Education Agency (TEA) or other public educational entity in another state, which offers similar training on reading, writing, and math skills taught at the high school level, such as a General Educational Development (GED) certificate; or

(B) Confirmation that the person received home-schooling that adequately addressed basic competencies such as basic reading, writing, and math skills, which would otherwise have been documented by a high school diploma.

(35) [(34)] Individual activities--Opportunities for the child to work independently or to be away from the group but supervised.

(36) [(35)] Infant--A child from birth through 17 months.

(37) [(36)] Inflatable--An amusement ride or device, consisting of air-filled structures designed for use by children, as specified by the manufacturer, which may include bouncing, climbing, sliding, or interactive play. They are made of flexible fabric, kept inflated by continuous air flow by one or more blowers, and rely upon air pressure to maintain their shape.

(38) [(37)] Instructor-led training--Training characterized by the communication and interaction that takes place between the student and the instructor. The training must include an opportunity for the student to interact with the instructor to obtain clarifications and information beyond the scope of the training materials. For such an opportunity to exist, the instructor must communicate with the student in a timely fashion, including answering questions, providing feedback on skills practice, providing guidance or information on additional resources, and proactively interacting with students. Examples of this

type of training include[.] classroom training, web-based online facilitated learning, video-conferencing, or other group learning experiences.

(39) [(38)] Janitorial duties--Those duties that involve the cleaning and maintenance of the child-care home, building, rooms, furniture, etc. Cleaning and maintenance include such duties as cleansing carpets, washing cots, and sweeping, vacuuming, or mopping a restroom or a classroom. Sweeping up after an activity or mopping up a spill in a classroom that is immediately necessary for the children's safety is not considered a janitorial duty.

(40) [(39)] Natural environment--Settings that are natural or typical for all children of the same age without regard to ability or disability. For example, a natural environment for learning social skills is a play group of peers.

(41) [(40)] Permit is no longer valid--For purposes of this chapter, a permit remains valid through the renewal process. A permit only becomes invalid when you:

(A) Home voluntarily closes;

(B) Home must close because of an enforcement action in Chapter 745, Subchapter L of this title (relating to Enforcement Actions);

(C) Permit expires according to §745.481 of this title (relating to When does my permit expire?); or

(D) Home must close because its permit is automatically revoked according to the Human Resources Code §§42.048(e), 42.052(i), or 42.054(f).

(42) Personal flotation device (PFD)--A United States Coast Guard approved life jacket.

(43) [(41)] Physical activity (moderate)--Levels of activity for a child that are at intensities faster than a slow walk, but still allow the child to talk easily. Moderate physical activity increases the child's heart rate and breathing rate.

(44) [(42)] Physical activity (vigorous)--Rhythmic, repetitive physical movement for a child that uses large muscle groups, causing the child to breathe rapidly and only enabling the child to speak in short phrases. Typically, the child's heart rate is substantially increased, and the child is likely to be sweating while engaging in vigorous physical activity.

(45) [(43)] Pre-kindergarten age child--A child who is three or four years of age before the beginning of the current school year.

(46) [(44)] Premises--See the term "grounds" and its definition in this section.

(47) [(45)] Regular--On a recurring, scheduled basis. Note: For the definition of "regularly or frequently present at an operation" (child-care home) as it applies to background checks, see §745.601 of this title.

(48) [(46)] Restrictive device--Equipment that places the body of a child in a position that may restrict airflow or cause strangulation; usually, the child is placed in a semi-seated position. Examples of restrictive devices are car seats, swings, bouncy seats, and high chairs.

(49) [(47)] Safety belt--A lap belt and any shoulder straps included as original equipment on or added to a vehicle.

(50) [(48)] Sanitize--The use of a disinfecting product that provides instructions specific for sanitizing and is registered by the En-

vironmental Protection Agency (EPA) to substantially reduce germs on inanimate objects to levels considered safe by public health requirements. Many bleach and hydrogen peroxide products are EPA-registered. You must follow the product's labelling instructions for sanitizing or disinfecting, depending on the surface (paying particular attention to any instructions regarding contact time and toxicity on surfaces likely to be mouthed by children, such as toys and crib rails). If you use bleach instead of an approved disinfecting product, you must follow these steps in order:

- (A) Washing with water and soap;
- (B) Rinsing with clear water;
- (C) Soaking in or spraying on a bleach solution for at least two minutes;
- (D) Rinsing with cool water only those items that children are likely to place in their mouths; and
- (E) Allowing the surface or item to air-dry.

(51) [(49)] School-age child--A child who is five years of age and older and is enrolled in or has completed kindergarten.

(52) [(50)] Screen time activity--An activity during which a child views media content on a cell or mobile phone, tablet, computer, television, video, film, or DVD. Screen time activities do not include video chatting with a child's family or assistive and adaptive computer technology used by a child with special care needs on a consistent basis.

(53) [(51)] Self-instructional training--Training designed to be used by one individual working alone and at the individual's own pace to complete lessons or modules. Lessons or modules commonly include questions with clear right and wrong answers. An example of this type of training is web-based training. Self-study training is also a type of self-instructional training.

(54) [(52)] Self-study training--Non-standardized training where an individual reads written materials, watches a training video, or listens to a recording to obtain certain knowledge that is required for annual training. Self-study training is limited to three hours of annual training per year.

(55) [(53)] Special care needs--A child with special care needs is a child who has:

(A) A chronic physical, developmental, behavioral, or emotional condition or a disability and who also requires assistance beyond that required by a child generally to perform tasks that are within the typical chronological range of development, including the movement of large or small muscles, learning, talking, communicating, comprehension, emotional regulation, self-help, social skills, emotional well-being, seeing, hearing, and breathing; or

(B) A limitation due to an injury, illness, or allergy.

(56) [(54)] State or local fire authority--A fire official who is authorized to conduct fire safety inspections on behalf of the city, county, or state government, including certified fire inspectors. Also referred to as "fire marshal" in this chapter.

(57) Swimming Pool--An artificial body of water with a water depth of more than 18 inches that is maintained or used expressly for public or private recreational purposes, swimming, diving, aquatic sports or activities, or therapeutic purposes.

(58) [(55)] Toddler--A child from 18 months through 35 months.

(59) [(56)] Universal precautions--An approach to infection control where all human blood and certain human bodily fluids are

treated as if known to be infectious for HIV, HBV, and other blood-borne pathogens.

(60) Wading pool--As defined by Texas Health and Safety Code, Chapter 341, Subchapter D.

(61) [(57)] Water activities--Related to the use of swimming pools, ~~splashing pools,~~ wading pools, or sprinkler play ~~or other bodies of water~~.

(62) [(58)] Weather permitting--Weather conditions that do not pose any concerns for health and safety such as significant risk of frostbite or heat-related illness. This includes adverse weather conditions in which children may still play safely outdoors for shorter periods with appropriate adjustments to clothing and any necessary access to water, shade, or shelter.

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 April 12, 2024.

TRD-202401544

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: May 26, 2024

For further information, please call: (512) 438-3269



## SUBCHAPTER C. RECORD KEEPING DIVISION 1. RECORDS OF CHILDREN

### 26 TAC §747.605

#### STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of the Texas Government Code. In addition, Texas Human Resources Code (HRC) §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42.

The amendment affects Texas Government Code §531.0055 and HRC §42.042.

§747.605. *What admission information must I obtain for each child?*

You must obtain at least the following information before admitting a child to the child-care home:

- (1) The child's name and birth date;
- (2) The child's home address and telephone number;
- (3) Date of the child's admission to the child-care home;
- (4) Name and address of parents [parent(s)];
- (5) Telephone numbers at which parents [parent(s)] can be reached while the child is in care;
- (6) Name, address, and telephone number of another responsible individual (friend or relative) who should be contacted in an emergency when the parent cannot be reached;



(7) Names and telephone numbers of persons other than a parent to whom the child may be released;

(8) Permission for transportation, if provided, including any authorized pick-up and drop-off locations;

(9) Permission for field trips, if provided;

~~[(10) Permission for participation in water activities, if provided, including whether the child is able to swim without assistance;]~~

(10) ~~[(11)]~~ Name, address, and telephone number of the child's physician or an emergency-care facility;

(11) ~~[(12)]~~ Authorization to obtain emergency medical care and to transport the child for emergency medical treatment;

(12) ~~[(13)]~~ A statement of the child's special care needs, which must include:

(A) Any limitations or restrictions on the child's activities;

(B) Special care the child requires, including:

(i) Any reasonable accommodations or modifications;

(ii) Any adaptive equipment provided for the child, including instructions for how to use the equipment; and

(iii) Symptoms or indications of potential complications related to a physical, cognitive, or mental condition that may warrant prevention or intervention while the child is in care; and

(C) Any medications prescribed for continuous, long-term use;

(13) ~~[(14)]~~ The name and telephone number of the school a school-age child attends;

(14) ~~[(15)]~~ Permission for a school-age child to ride a bus, walk to or from school or home, or to be released to the care of a sibling under 18 years old, if applicable; ~~[and]~~

(15) ~~[(16)]~~ The child's allergies and a completed food allergy emergency plan for the child, if applicable; ~~and~~ [-]

(16) Permission for participation in water activities, if provided. If you allow a child to access a swimming pool, the parent must also indicate whether the child:

(A) Is able to swim competently, as defined by the American Red Cross; or

(B) Requires a personal flotation device because the child is:

(i) Unable to swim competently, as defined by the American Red Cross; or

(ii) At risk of injury or death when swimming or otherwise accessing a body of water.

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 April 12, 2024.  
TRD-202401545

Karen Ray  
Chief Counsel  
Health and Human Services Commission  
Earliest possible date of adoption: May 26, 2024  
For further information, please call: (512) 438-3269

◆ ◆ ◆

## SUBCHAPTER D. PERSONNEL DIVISION 4. PROFESSIONAL DEVELOPMENT

### 26 TAC §§747.1303, 747.1305, 747.1309, 747.1323 STATUTORY AUTHORITY

The amendments and new section are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of the Texas Government Code. In addition, Texas Human Resources Code (HRC) §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42.

The amendments and new section affect Texas Government Code §531.0055 and HRC §42.042.

*§747.1303. What training must I ensure that my caregivers have within certain timeframes?*

You must make sure that each caregiver has the training within the timeframe required in the following chart:

Figure: 26 TAC §747.1303

~~[Figure: 26 TAC §747.1303]~~

*§747.1305. What areas of training must the annual training for substitute and assistant caregivers cover?*

(a) Each caregiver counted in the child/caregiver ratio on more than ten separate occasions in one training year, as specified in §747.1311 of this division (relating to When must the annual training be obtained?) must obtain annual training relevant to the age of the children for whom the caregiver provides care.

(b) At least six clock hours of the annual training hours must be in one or more of the following topics:

- (1) Child growth and development;
- (2) Guidance and discipline;
- (3) Age-appropriate curriculum; and
- (4) Teacher-child interaction.

(c) If your home provides care for a child younger than 24 months, one hour of the annual training hours must cover all the following topics:

- (1) Recognizing and preventing shaken baby syndrome and abusive head trauma;
- (2) Understanding and using safe sleep practices and preventing sudden infant death syndrome (SIDS); and
- (3) Understanding early childhood brain development.

(d) While there are no clock hour requirements for the topics in this subsection, the annual training hours must also include training on the following topics:

- (1) Emergency preparedness;
  - (2) Preventing and controlling the spread of communicable diseases, including immunizations;
  - (3) Administering medication, if applicable, including compliance with §747.3603 of this chapter (relating to What authorization must I obtain before administering a medication to a child in my care?);
  - (4) Preventing and responding to emergencies due to food or an allergic reaction;
  - (5) Understanding building and physical premises safety, including identification and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic; and
  - (6) Handling, storing, and disposing of hazardous materials including compliance with §747.3221 of this chapter (relating to Must caregivers wear gloves when handling blood or bodily fluids containing blood?).
- (e) The remaining annual training hours must be in one or more of the following topics:
- (1) Care of children with special needs;
  - (2) Child health (for example, nutrition and physical activity);
  - (3) Safety;
  - (4) Risk management;
  - (5) Identification and care of ill children;
  - (6) Cultural diversity for children and families;
  - (7) Professional development (for example, effective communication with families and time and stress management);
  - (8) Topics relevant to the particular ages of children in care (for example, caregivers working with infants or toddlers should receive training on biting and toilet training);
  - (9) Planning developmentally appropriate learning activities;
  - (10) Observation and assessment;
  - (11) Attachment and responsive care giving; and
  - (12) Minimum standards and how they apply to the caregiver.
- (f) For an assistant caregiver or substitute caregiver described in §747.1303(3)(B) of this division (relating to What training must I ensure that my caregivers have within certain timeframes?), at least three of the required 15 annual training hours must come from instructor-led training. The remaining 12 required annual training hours may come from self-instructional training, of which no more than three hours may come from self-study training.
- (g) For an assistant caregiver or substitute caregiver described in §747.1303(4)(B) of this division, at least five of the required 24 annual training hours must come from instructor-led training. The remaining 19 required annual training hours may come from self-instructional training, of which no more than three hours may come from self-study training.
- (h) Annual training is exclusive of any requirements for orientation, pediatric first aid and pediatric CPR training, transportation safety training, water safety training, and any training received through a high school child-care work-study program.

§747.1309. *What areas of training must the annual training for the primary caregiver cover?*

- (a) You must obtain at least 30 clock hours of training each year relevant to the age of the children for whom you provide care.
- (b) At least six clock hours of the annual training hours must be in one or more of the following topics:
  - (1) Child growth and development;
  - (2) Guidance and discipline;
  - (3) Age-appropriate curriculum; and
  - (4) Teacher-child interaction.
- (c) If your home provides care for children younger than 24 months, one hour of the annual training hours must cover all the following topics:
  - (1) Recognizing and preventing shaken baby syndrome;
  - (2) Understanding and using safe sleep practices and preventing sudden infant death syndrome (SIDS); and
  - (3) Understanding early childhood brain development.
- (d) While there are no clock hour requirements for the topics in this subsection, the annual training hours must also include training on the following topics:
  - (1) Emergency preparedness;
  - (2) Preventing and controlling the spread of communicable diseases, including immunizations;
  - (3) Administering medication, if applicable, including compliance with §747.3603 of this chapter (relating to What authorization must I obtain before administering a medication to a child in my care?);
  - (4) Preventing and responding to emergencies due to food or an allergic reaction;
  - (5) Understanding building and physical premises safety, including identification and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic; and
  - (6) Handling, storing, and disposing of hazardous materials including compliance with §747.3221 of this chapter (relating to Must caregivers wear gloves when handling blood or bodily fluids containing blood?).
- (e) If you have:
  - (1) Five or fewer years of experience as a primary caregiver in a licensed or registered child-care home, you must complete at least six of the annual training hours in management techniques, leadership, or staff supervision; or
  - (2) More than five years of experience as a primary caregiver in a licensed or registered child-care home, you must complete at least three of the annual training hours in management techniques, leadership, or staff supervision.
- (f) The remainder of annual training hours must be selected from the training topics specified in §747.1305(e) of this chapter (relating to What areas of training must the annual training for substitute and assistant caregivers cover?).
- (g) You may obtain clock hours or CEUs from the same sources as other caregivers.

(h) You may not earn training hours by presenting training to other caregivers.

(i) At least six of the required 30 annual training hours must come from instructor-led training. The remaining 24 required annual training hours may come from self-instructional training, of which no more than three hours may come from self-study training.

(j) The 30 clock hours of annual training are exclusive of any requirements for the Licensing pre-application course, pediatric first aid and pediatric CPR training, ~~and~~ transportation safety training, and water safety training.

§747.1323. What additional training must an employee and caregiver have if the child-care home allows a child to access a swimming pool at or away from the home?

(a) If the child-care home allows a child to access a swimming pool at or away from the home, annual water safety training is required for:

(1) Each substitute or assistant caregiver prior to accompanying a child to a swimming pool; and

(2) The primary caregiver.

(b) Water safety training is exclusive of any requirements for orientation, pre-service training, and annual training.

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 April 12, 2024.

TRD-202401546

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: May 26, 2024

For further information, please call: (512) 438-3269



## SUBCHAPTER E. CHILD/CAREGIVER RATIOS AND GROUP SIZES

### DIVISION 5. RATIOS FOR WATER ACTIVITIES

**26 TAC §§747.2001, 747.2005, 747.2009, 747.2013, 747.2015**

#### STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of the Texas Government Code. In addition, Texas Human Resources Code (HRC) §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42.

The amendments affect Texas Government Code §531.0055 and HRC §42.042.

*§747.2001. Must I have additional caregivers for wading [wading/splashing] activities?*

(a) Whenever children use a wading [or splashing] pool [~~two feet of water or less~~], you must use the child/caregiver ratio for wading [wading/splashing] activities for all children in care.

(b) If there is more than one child under 24 months in care, a second adult must be present.

(c) The maximum number of children one caregiver can supervise while children use a [splashing or] wading pool [~~two feet of water or less~~] is based on the age of the youngest child in the group and is specified in the following chart:

Figure: 26 TAC §747.2001(c)

[Figure: 40 TAC §747.2001(e)]

*§747.2005. What are the child/caregiver ratios for swimming activities?*

(a) When your child-care home uses a swimming pool [~~more than two feet of water~~] and four or more children are swimming, there must be at least two caregivers present supervising the children who are swimming.

(b) The maximum number of children one caregiver can supervise while children are swimming is based on the age of the youngest child in the group. You must use the following child/caregiver ratio for swimming activities:

Figure: 26 TAC §747.2005(b)

[Figure: 40 TAC §747.2005(b)]

*§747.2009. Must I have a certified lifeguard on duty when children are swimming in more than 18 inches [~~two feet~~] of water?*

A [Yes. When children are swimming in more than two feet of water, a] certified lifeguard must be on duty at all times when children are swimming in more than 18 inches of water.

*§747.2013. Must persons who are counted in the child/caregiver ratio during swimming know how to swim?*

[Yes.] Each caregiver [person] included in the child/caregiver ratio for swimming in 18 inches or more [~~two feet~~] of water [or more] must be able to swim and must be prepared to do so in an emergency.

*§747.2015. May I include volunteers or household members who do not meet minimum qualifications for caregivers in the child/caregiver ratio for water activities?*

You [Yes. To meet the child/caregiver ratio for splashing/wading and swimming activities, you] may include adult volunteers and adult household members who do not meet the minimum qualifications for caregivers specified in Subchapter D of this chapter (relating to Personnel) to meet the child/caregiver ratio for swimming and wading activities, provided that:

(1) You maintain at least the child/caregiver ratios required in Division 2 of this subchapter (relating to Regular Ratios and Group Sizes in the Registered Child-Care Home), or Division 3 of this subchapter (relating to Regular Ratios and Group Sizes in the Licensed Child-Care Home), as applicable, with caregivers who do meet the minimum qualifications for caregivers;

(2) All persons included in the ratios for water activities must be able to swim and must be prepared to do so in an emergency; and

(3) You ensure compliance with all other minimum standards, including, but not limited to, standards relating to supervision, discipline, and guidance.

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 April 12, 2024.

TRD-202401547

Karen Ray  
Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: May 26, 2024

For further information, please call: (512) 438-3269



SUBCHAPTER S. SAFETY PRACTICES  
DIVISION 1. SAFETY PRECAUTIONS

26 TAC §747.3501

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of the Texas Government Code. In addition, Texas Human Resources Code (HRC) §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42.

The amendment affects Texas Government Code §531.0055 and HRC §42.042.

§747.3501. *What safety precautions must I take to protect children in my child-care home?*

All areas accessible to a child must be free from hazards including[, but not limited to,] the following:

- (1) Electrical outlets accessible to a child younger than five years must have child-proof covers or safety outlets;
- (2) 220-volt electrical connections within any child's reach must be covered with a screen or guard;
- (3) Air conditioners, electric fans, and heaters must be mounted out of all children's reach or have safeguards that keep any child from being injured;
- (4) Glass in sliding doors must be clearly marked with decals or other materials placed at children's eye level;
- (5) Play materials and equipment must be safe and free from sharp or rough edges and toxic paints;
- (6) Poisonous or potentially harmful plants must be inaccessible to children;
- (7) Bottle warmers must be inaccessible to all children and used only according to manufacturer instructions;
- (8) All storage chests, boxes, trunks, or similar items with hinged lids must be equipped with a lid support designed to hold the lid open in any position, be equipped with ventilation holes, and must not have a latch that might close and trap a child inside; and
- (9) All bodies of water, wading pools [such as, pools], hot tubs, [ponds, creeks,] birdbaths, fountains, buckets, and rain barrels[,] must be inaccessible to children.

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 April 12, 2024.

TRD-202401548

Karen Ray  
Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: May 26, 2024

For further information, please call: (512) 438-3269



SUBCHAPTER U. INDOOR AND OUTDOOR  
ACTIVE PLAY SPACE AND EQUIPMENT  
DIVISION 5. INFLATABLES

26 TAC §747.4751

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of the Texas Government Code. In addition, Texas Human Resources Code (HRC) §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42.

The amendment affects Texas Government Code §531.0055 and HRC §42.042.

§747.4751. *May I use inflatable active play equipment?*

You may use inflatable equipment both at and away from your child-care home if you follow these guidelines:

- (1) You use enclosed inflatables (such as bounce houses or moon bounces/walks) according to the manufacturer's instructions;
- (2) You use open inflatables (such as obstacle courses, slides, or games) according to the manufacturer's label and instructions for the user; and
- (3) Inflatables that include water activity also comply with all applicable requirements in Subchapter V of this chapter (relating to Swimming Pools, Wading [Wading/Splashing] Pools, and Sprinkler Play).

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 April 12, 2024.

TRD-202401549

Karen Ray  
Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: May 26, 2024

For further information, please call: (512) 438-3269



SUBCHAPTER V. SWIMMING POOLS,  
WADING [WADING/SPLASHING] POOLS, AND  
SPRINKLER PLAY

STATUTORY AUTHORITY

The amendment and new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of the Texas Government Code. In addition, Texas Human Resources Code (HRC) §42.042(a) requires HHSC to adopt rules to carry out the requirements of HRC Chapter 42.

The amendment and new sections affect Texas Government Code §531.0055 and HRC §42.042.

*§747.4801. What safety precautions must I follow when a child [children] in my care uses [use] a swimming pool?*

In addition to complying with the child/caregiver ratios specified in §747.2005 of this chapter [title] (relating to What are the child/caregiver ratios for swimming activities?) and other safety requirements specified in §747.2009 of this chapter (relating to Must I have a certified lifeguard on duty when children are swimming in more than 18 inches of water?) and §747.2013 of this chapter [title] (relating to [Must I have a certified lifeguard on duty when children are swimming in more than two feet of water? and] Must persons who are counted in the child/caregiver ratio during swimming know how to swim?), you must comply with the following safety precautions when any child uses a swimming pool [(more than two feet of water)] both at and away from your child-care home:

- (1) A minimum of two life-saving devices must be available;
- (2) One additional life-saving device must be available for each 2,000 square feet of water surface;
- (3) Drain grates must be in place, in good repair, and must not be able to be removed without using tools;
- (4) Pool chemicals and pumps must be inaccessible to any child;
- (5) Machinery rooms must be locked when a child is present;
- (6) Caregivers must be able to clearly see all parts of the swimming area;
- (7) The bottom of the pool must be visible at all times; and
- (8) An adult must be present who is able to immediately turn off the pump and filtering system when a child is in a pool.

*§747.4811. What additional safety precautions must I take for a child in care who is unable to swim competently or who is at risk of injury or death when swimming?*

Before a child who is unable to swim competently or who is at risk of injury or death when swimming enters a swimming pool, you must:

- (1) Provide the child with a Type I, II, or III United States Coast Guard approved personal flotation device (PFD);
- (2) Ensure the child is wearing the PFD; and
- (3) Ensure the PFD is properly fitted and fastened for the child.

*§747.4812. Must I provide a personal flotation device (PFD) to a child in care who is unable to swim competently or who is at risk of*

*injury or death when swimming when the child is participating in swim instruction or a competition?*

You are not required to provide the child with a PFD or ensure the child is wearing the device if:

(1) The child is actively participating in swim instruction or a competition; and

(2) You ensure that the child is supervised in accordance with §747.1503 of this chapter (relating to What responsibilities does a caregiver have when supervising a child or children?) during the instruction or competition.

*§747.4813. What are the safety requirements for wading pools?*

(a) Wading [Wading/splashing] pools [(two feet of water or less)] used at your child-care home must be:

- (1) Stored out of children's reach when not in use;
- (2) Drained and sanitized at least daily; and
- (3) Stored so they cannot hold water.

(b) You must comply with the safety precautions specified in §747.4801 of this subchapter [title] (relating to What safety precautions must I follow when a child [children] in my care uses [use] a swimming pool?) when using wading [wading/splashing] pools away from your child-care home.

*§747.4817. Can a child [children] in my care swim in a body of water other than a swimming pool[, such as a lake, pond, or river]?*

You [No, you] must not allow a child [children] to swim in a [lake, pond, river, or a] body of water other than a swimming pool [or wading pool] that complies with the rules specified in this subchapter.

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

Filed with the Office of the Secretary of State on April 12, 2024.

TRD-202401550

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: May 26, 2024

For further information, please call: (512) 438-3269



## CHAPTER 748. MINIMUM STANDARDS FOR GENERAL RESIDENTIAL OPERATIONS

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §§748.61; and new §§748.4801, 748.4803, 748.4805, 748.4807, 748.4809, 748.4821, 748.4823, 748.4825, 748.4831, 748.4833, 748.4841, 748.4843, 748.4845, 748.4847, 748.4851, 748.4861, 748.4863, 748.4865, 748.4867, 748.4869, and 748.4881, in Texas Administrative Code, Title 26, Chapter 748, Minimum Standards for General Residential Operations, Subchapter B, Definitions and Services, and new Subchapter W, Additional Requirements for Operations that Provide Psychiatric Health Treatments and Services.

### BACKGROUND AND PURPOSE

The proposal is necessary to comply with House Bill (H.B.) 3121, 87th Legislature, Regular Session, 2021, which created Texas

Health and Safety Code Chapter 577A, Psychiatric Residential Youth Treatment Facilities. Chapter 577A mandates HHSC Child Care Regulation (CCR) to create a voluntary process whereby a general residential operation may be certified as a psychiatric residential youth treatment facility (PRYTF) to provide treatments and services to individuals 21 years of age or younger with a severe emotional disturbance. Section 577A.004 requires HHSC to adopt rules, including the establishment of application and renewal fees, to implement the chapter; and Section 577A.101 requires HHSC to adopt minimum standards for a certified PRYTF. Accordingly, CCR is proposing amended rules in Chapter 748, Subchapter B to update the types of services CCR regulates to include treatment services for individuals who are 21 of age or younger with a severe emotional disturbance that are admitted to a certified PRYTF. In addition, CCR is proposing new rules in Chapter 748, Subchapter W to (1) define terms and explain the scope of the rules; (2) add requirements for policies, notifications and postings, including requiring ongoing accreditation; (3) require a treatment director; (4) update the training requirements for a caregiver and certain employees; (5) update the child to caregiver ratio during night-sleeping hours; and (6) add admission criteria and specific requirements for plans of care.

#### SECTION-BY-SECTION SUMMARY

The proposed amendment to §748.61 adds individuals who are 21 years of age or younger with a severe emotional disturbance who are admitted to a certified PRYTF as a type of treatment service for children with emotional disorders.

Proposed new §748.4801 defines the terms "individual," "psychiatric health treatments and services," "psychiatric residential youth treatment facility (PRYTF)," and "severe emotional disturbance."

Proposed new §748.4803 clarifies that if an operation provides psychiatric health treatments and services as a certified PRYTF, the PRYTF must meet the additional rules in this subchapter.

Proposed new §748.4805 clarifies that an operation required to comply with the rules in this subchapter must also meet the other rules in this chapter that apply to all operations unless the rule has been replaced by a rule in §748.4809.

Proposed new §748.4807 clarifies that the rules in this chapter that apply to a PRYTF as noted in new §748.4805 also apply to the care of a young adult 18 to 21 years of age whom the general residential operation has admitted for psychiatric health treatments and services.

Proposed new §748.4809 provides an itemized list of rules in this subchapter that replace other rules in this chapter.

Proposed new §748.4821 describes the additional policies that a general residential operation must submit as a part of the application process for a PRYTF certificate, including (1) how the PRYTF will provide 24-hour medical and emergency services, including nursing services; and (2) how caregivers will supervise young adults sharing restrooms and indoor and outdoor activity areas with children in the general residential operation, including the PRYTF.

Proposed new §748.4823 requires a PRYTF to always meet accreditation requirements and notify CCR within two days of being informed that the accreditation requirements will no longer be met.

Proposed new §748.4825 requires a PRYTF to post the PRYTF certificate in a prominent and publicly accessible place.

Proposed new §748.4831 establishes that a PRYTF must have a treatment director that is a full-time employee of the general residential operation.

Proposed new §748.4833 describes the qualifications for a treatment director that provides or oversees psychiatric health treatments and services under this subchapter.

Proposed new §748.4841 establishes the pre-service experience requirements for a caregiver providing psychiatric health treatments and services, which requires 40 hours of certain relevant supervised caregiver experience before being the only caregiver responsible for the individual.

Proposed new §748.4843 requires an additional four hours of suicide prevention training for (1) caregivers, before the caregiver may be counted in the child to caregiver ratio if any individual in the group is receiving psychiatric health treatments and services; and (2) certain employees, within 90 days of beginning certain job duties related to individuals receiving psychiatric health treatments and services.

Proposed new §748.4845 requires each caregiver providing psychiatric health treatments and services to individuals to have first aid with rescue breathing and choking and pediatric and adult cardiopulmonary resuscitation (CPR) within 90 days of employment. At least one person counted in the child to caregiver ratio must be certified in first-aid and CPR at all times.

Proposed new §748.4847 requires (1) a caregiver providing psychiatric health treatments and services to complete 50 annual training hours; and (2) a caregiver providing psychiatric health treatments and services and an employee with job duties related to individuals receiving psychiatric youth treatments and services to have (A) five total hours of annual suicide prevention training; and (B) two hours of annual training on administering psychotropic medication.

Proposed new §748.4851 lowers the child to caregiver ratio during sleeping hours for operations that offer psychiatric health treatments and services from 15:1 (if the caregiver is awake) or 10:1 (if the caregiver is asleep) to 6:1 (and the caregiver must always remain awake). This ratio also applies to young adults 18 to 21 years of age that are receiving psychiatric health treatments and services.

Proposed new §748.4861 establishes the admission criteria for psychiatric health treatments and services, including requiring the individual to (1) be 21 years of age or younger; (2) be diagnosed with a severe emotional disturbance; (3) need residential psychiatric treatment under the direction of a physician; and (4) be referred to the PRYTF by a licensed mental health professional.

Proposed new §748.4863 establishes the requirements for when individuals receiving different types of services may live in the same living quarters. Compared to §748.1201, which this rule replaces as noted in new §748.4809, this rule requires that young adults 18 to 21 years of age receiving psychiatric health treatments and services that are not in the care of the Texas Department of Family and Protective Services and did not come immediately from another residential child-care operation must (1) receive therapeutic services separately from children admitted to the general residential operation, including the PRYTF; (2) have separate living quarters; and (3) not use other areas of the

operation, except restrooms and outdoor and indoor activity areas may be shared under a policy required by new §748.4821.

Proposed new §748.4865 adds requirements to the preliminary service plan for individuals receiving psychiatric health treatments and services, including (1) therapeutic needs; (2) family engagement activities; (3) plans to consult with qualified professionals; and (4) nursing care.

Proposed new §748.4867 adds requirements to the initial service plan for individuals receiving psychiatric health treatments and services, including (1) one-to-one therapy; (2) family engagement activities; (3) consultation services with qualified professionals; (4) 24-hour nursing services; and (5) direct care and supervision services, supportive services for daily living and safety, and positive behavior management services.

Proposed new §748.4869 establishes who should be involved in the development of an initial service plan. Compared to §748.1339, which this rule replaces as noted in new §748.4809, this rule requires the service planning team for individuals receiving psychiatric health treatment service to include a licensed psychiatrist or physician.

Proposed new §748.4881 establishes that after a child in the care of a PRYTF turns 18, the young adult may remain in care until the young adult's 22nd birthday.

#### FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, enforcing or administering the rules do have foreseeable implications relating to costs of state government. The costs are for IT improvements to the Child Care Licensing Automated Support Systems to allow operations to apply for a PRYTF certificate, collect associated fees, issue a certificate, complete the required inspections, evaluate compliance with the rules annually, renew the certificate, issue administrative penalties, allow providers to submit certain information associated with the certificate in their online provider account, and identify on the Search Texas Child Care website whether a general residential operation has this certificate. Funds for these improvements were appropriated in the 88th Legislature, Regular Session, 2023.

The effect on state government for each year of the first five years the proposed rules are in effect is an estimated cost of \$4,712,356 in fiscal year (FY) 2024, \$0 in FY 2025, \$0 in FY 2026, \$0 in FY 2027, and \$0 in FY 2028.

Trey Wood has also determined that for each year of the first five years that the rules will be in effect, there will be an estimated increase in revenue to state government as a result of enforcing and administering the rules as proposed. A general residential operation that chooses to apply for a PRYTF certificate must pay a \$890 initial application fee and then a \$740 renewal application fee. HHSC cannot estimate the increase in revenue because HHSC is unable to anticipate how many general residential operations will apply for a PRYTF certificate.

There are no foreseeable implications relating to costs or revenues of local government.

#### GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rules will be in effect:

(1) the proposed rules will create a government program;

(2) implementation of the proposed rules will not affect the number of HHSC employee positions;

(3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;

(4) the proposed rules will require an increase in fees paid to HHSC;

(5) the proposed rules will create a new regulation;

(6) the proposed rules will expand existing regulations;

(7) the proposed rules will not change the number of individuals subject to the rules; and

(8) the proposed rules will not affect the state's economy.

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

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because the PRYTF program is voluntary and as such does not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rules.

#### LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

#### COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas; do not impose a cost on regulated persons because it is a voluntary program; and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

#### PUBLIC BENEFIT AND COSTS

Rachel Ashworth-Mazerolle, Associate Commissioner for Child Care Regulation, has determined that for each year of the first five years the rules are in effect, the public benefit will be rules that will create of a voluntary certification program that will provide families with additional, quality options for youth in need of residential care in a non-psychiatric hospital setting. The new program will encourage existing providers to meet these voluntary standards while also incentivizing new facilities to open in Texas, thereby expanding capacity.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because the rules create a voluntary PRYTF program that does not mandate the imposition of fees, require a general residential operation to purchase curriculum or equipment, or require a general residential operation to alter current staffing patterns.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Questions about the content of this proposal may be directed to Gerry Williams by email at [Gerry.Williams@hhs.texas.gov](mailto:Gerry.Williams@hhs.texas.gov).

Written comments on the proposal may be submitted to Gerry Williams, Rules Writer, Child Care Regulation, Texas Health and Human Services Commission, E-550, P.O. Box 149030, Austin, Texas 78714-9030; or by email to CRRRules@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rules 23R072" in the subject line.

## SUBCHAPTER B. DEFINITIONS AND SERVICES

### DIVISION 2. SERVICES

#### 26 TAC §748.61

##### STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of the Texas Government Code. In addition, the Texas Health and Safety Code §577A.004 requires HHSC to adopt rules to implement this chapter and §577A.101 requires HHSC to adopt minimum standards for a PRYTF. Finally, amendments to current rules adopted under Texas Human Resources Code §42.042 are authorized under that section.

The amendment affects Texas Government Code §531.0055, Texas Health and Safety Code Chapter 577A, and Texas Human Resources Code Chapter 42.

§748.61. *What types of services does Licensing regulate?*

We regulate the following types of services:

(1) Child-Care Services--Services that meet a child's basic need for shelter, nutrition, clothing, nurture, socialization and interpersonal skills, care for personal health and hygiene, supervision, education, and service planning;

(2) Treatment Services--In addition to child-care services, a specialized type of child-care services designed to treat and [~~and/or~~] support children:

(A) With an Emotional Disorder [~~Disorders~~] who have a:

(i) Current Diagnostic and Statistical Manual of Mental Disorders, 5th Edition (DSM-5) [~~current DSM-5~~] diagnosis, such as mood disorders, psychotic disorders, or dissociative disorders, and demonstrate two or more of the following:

(I) [(†)] Major self-injurious actions, including a suicide attempt within the last 12 months;

(II) [(‡)] Difficulties that present a significant risk of harm to others, including frequent or unpredictable physical aggression; or

(III) [(‡‡)] An additional DSM-5 diagnosis of substance-related or [~~and/or~~] addictive disorder with severe impairment; or

(ii) Severe emotional disturbance as defined by §748.4801 of this chapter (relating to What do the following terms mean when used in this subchapter?) who are admitted to a certified psychiatric residential youth treatment facility also defined at §748.4801 of this chapter, in addition to young adults 18 to 21 years of age who also qualify for these services;

(B) With a DSM-5 diagnosis of Intellectual Disability that is characterized by prominent, severe deficits and pervasive impairment in one or more of the following areas:

(i) Conceptual, social, and practical adaptive skills to include daily living and self-care;

(ii) Communication, cognition, or expressions of affect;

(iii) Self-care activities or participation in social activities;

(iv) Responding appropriately to an emergency; or

(v) Multiple physical disabilities, including sensory impairments;

(C) With a DSM-5 diagnosis of Autism Spectrum Disorder that is characterized by prominent, severe deficits and pervasive impairment in one or more of the following areas of development:

(i) Conceptual, social, and practical adaptive skills to include daily living and self-care;

(ii) Communication, cognition, or expressions of affect;

(iii) Self-care activities or participation in social activities;

(iv) Responding appropriately to an emergency; or

(v) Multiple physical disabilities, including sensory impairments;

(D) With Primary Medical Needs, who cannot live without mechanical supports or the services of others because of life-threatening conditions, including:

(i) The inability to maintain an open airway without assistance, which [~~This~~] does not include the use of inhalers for asthma;

(ii) The inability to be fed except through a feeding tube, gastric tube, or a parenteral route;

(iii) The use of sterile techniques or specialized procedures to promote healing, prevent infection, prevent cross-infection or contamination, or prevent tissue breakdown; or

(iv) Multiple physical disabilities including sensory impairments; and

(E) Determined to be a trafficking victim, including a child:

(i) Determined to be a trafficking victim as the result of a criminal prosecution or who is currently alleged to be a trafficking victim in a pending criminal investigation or prosecution;

(ii) Identified by the parent or agency that placed the child in the operation as a trafficking victim; or



(iii) Determined by the operation to be a trafficking victim based on reasonably reliable criteria, including one or more of the following:

(I) The child's own disclosure as a trafficking victim;

(II) The assessment of a counselor or other professional; or

(III) Evidence that the child was recruited, harbored, transported, provided to another person, or obtained for the purpose of forced labor or commercial sexual activity; and

(3) Additional Programmatic Services, which include:

(A) Emergency Care Services--A specialized type of child-care services designed and offered to provide short-term child care to children who, upon admission, are in an emergency constituting an immediate danger to the physical health or safety of the child or the child's offspring;

(B) Transitional Living Program--A residential services program designed to serve children 14 years old or older for whom the service or treatment goal is basic life skills development toward independent living, which [A transitional living program] includes basic life skills training and the opportunity for children to practice those skills and [A transitional living program] is not an independent living program;

(C) Assessment Services Program--Services to provide an initial evaluation of the appropriate placement for a child to ensure that appropriate information is obtained [in order] to facilitate service planning;

(D) Therapeutic Camp Services--A camping program to augment an operation's treatment services with an experiential curriculum exclusively for a child with an emotional disorder who has difficulty functioning in his home, school, or community and is [Therapeutic camp services are] only available to children 13 years old and older; and

(E) Respite Child-Care Services--See §748.73 of this title (relating to What are respite child-care services?).

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 April 10, 2024.

TRD-202401464

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: May 26, 2024

For further information, please call: (512) 438-3269



SUBCHAPTER W. ADDITIONAL  
REQUIREMENTS FOR OPERATIONS  
THAT PROVIDE PSYCHIATRIC HEALTH  
TREATMENTS AND SERVICES  
DIVISION 1. DEFINITIONS AND SCOPE

26 TAC §§748.4801, 748.4803, 748.4805, 748.4807, 748.4809  
STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of the Texas Government Code. In addition, the Texas Health and Safety Code §577A.004 requires HHSC to adopt rules to implement this chapter and §577A.101 requires HHSC to adopt minimum standards for a PRYTF. Finally, amendments to current rules adopted under Texas Human Resources Code §42.042 are authorized under that section.

The new sections affect Texas Government Code §531.0055, Texas Health and Safety Code Chapter 577A, and Texas Human Resources Code Chapter 42.

§748.4801. What do the following terms mean when used in this subchapter?

In this subchapter, the following terms have the following meanings unless the context clearly indicates otherwise:

(1) Individual--A person who is 21 years of age or younger.

(2) Psychiatric health treatments and services--In addition to basic child-care services, a specialized type of child-care services provided by a certified psychiatric residential youth treatment facility to treat and support individuals who have a severe emotional disturbance.

(3) Psychiatric Residential Youth Treatment Facility (PYRTF)--As defined at Texas Health and Safety Code §577A.001(3), a private facility that provides psychiatric health treatments and services in a residential, non-hospital setting exclusively to individuals and is licensed as a general residential operation.

(4) Severe emotional disturbance--As defined at Texas Health and Safety Code §577A.001(4), a mental, behavioral, or emotional disturbance of sufficient duration to result in functional impairment that substantially interferes with or limits an individual's role or ability to function in family, school, or community activities.

§748.4803. When am I required to meet the additional rules of this subchapter?

If you provide psychiatric health treatments and services to individuals as a certified psychiatric residential youth treatment facility, you must meet the additional rules in this subchapter.

§748.4805. In addition to the rules in this subchapter, what other rules in this chapter apply to a psychiatric residential treatment facility (PRYTF)?

In addition to complying with the rules in this subchapter, a PRYTF must comply with all other rules in this chapter that apply to all operations, unless any such rule is replaced by a rule in this subchapter, as noted in §748.4809 of this division (relating to What rules in this subchapter replace other rules in this chapter?).

§748.4807. How do the rules in this subchapter apply to the care of a young adult 18 to 21 years of age at a psychiatric residential treatment facility (PRYTF)?

The rules in this chapter that apply to a PRYTF as noted in §748.4805 of this division (relating to In addition to the rules in this subchapter, what other rules in this chapter apply to a psychiatric residential youth treatment facility (PRYTF)?) also apply to the care of a young adult 18 to 21 years of age whom you have admitted for psychiatric health treatments and services.

§748.4809. What rules in this subchapter replace other rules in this chapter?

A psychiatric residential youth treatment facility (PRYTF) is not required to comply with other rules in this chapter if the rule has been replaced in this subchapter, as specified in this chart:

Figure: 26 TAC §748.4809

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 April 10, 2024.

TRD-202401465

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: May 26, 2024

For further information, please call: (512) 438-3269



## DIVISION 2. POLICIES, NOTIFICATIONS, AND POSTINGS

### 26 TAC §§748.4821, 748.4823, 748.4825

#### STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of the Texas Government Code. In addition, the Texas Health and Safety Code §577A.004 requires HHSC to adopt rules to implement this chapter and §577A.101 requires HHSC to adopt minimum standards for a PRYTF. Finally, amendments to current rules adopted under Texas Human Resources Code §42.042 are authorized under that section.

The new sections affect Texas Government Code §531.0055, Texas Health and Safety Code Chapter 577A, and Texas Human Resources Code Chapter 42.

§748.4821. What additional policies must I submit as part of the application process for a psychiatric residential youth treatment facility (PRYTF) certificate?

You must develop written policies that address:

(1) How your PRYTF will provide 24-hour medical and emergency services, including 24-hour nursing services.

(2) How caregivers will supervise young adults 18 to 21 years of age receiving psychiatric health treatments and services when sharing restrooms or indoor and outdoor activity areas with children in the general residential operation, including the PRYTF.

§748.4823. When must I notify Licensing about accreditation changes regarding the psychiatric residential youth treatment facility (PRYTF)?

(a) You must always meet the accreditation requirement of §745.9053 of this title (relating to What requirements must a general residential operation meet before applying for a psychiatric residential youth treatment facility (PRYTF) certificate?).

(b) You must notify us within two days if your accreditation organization informs you that it has taken or will take an action that will result in your PRYTF no longer meeting the accreditation require-

ment of §745.9053 of this title for any period. Such an action includes revoking, suspending, or refusing to renew your accreditation.

§748.4825. Where must I post the psychiatric residential youth treatment facility (PRYTF) certificate?

You must post your PRYTF certificate in a prominent and publicly accessible place where employees, children, young adults, parents, and others will be able to view it easily.

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 April 10, 2024.

TRD-202401466

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: May 26, 2024

For further information, please call: (512) 438-3269



## DIVISION 3. PERSONNEL

### 26 TAC §§748.4831, §748.4833

#### STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of the Texas Government Code. In addition, the Texas Health and Safety Code §577A.004 requires HHSC to adopt rules to implement this chapter and §577A.101 requires HHSC to adopt minimum standards for a PRYTF. Finally, amendments to current rules adopted under Texas Human Resources Code §42.042 are authorized under that section.

The new sections affect Texas Government Code §531.0055, Texas Health and Safety Code Chapter 577A, and Texas Human Resources Code Chapter 42.

§748.4831. Must a psychiatric residential youth treatment facility (PRYTF) have a treatment director?

A PRYTF must have a treatment director that is a full-time employee of the general residential operation.

§748.4833. What qualifications must a treatment director for a psychiatric residential youth treatment facility have?

A treatment director who provides or oversees psychiatric health treatments and services under this subchapter must:

(1) Be a licensed psychiatrist, psychologist, or physician;

(2) Have a master's degree in a human services field from an accredited college or university and three years of experience providing treatment services for children or young adults with an emotional disorder, including one year in a residential setting; or

(3) Be a licensed master social worker, licensed clinical social worker, licensed professional counselor, or licensed marriage and family therapist, and have three years of experience providing treatment services for children or young adults with an emotional disorder, including one year in a residential setting.

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 April 10, 2024.

TRD-202401468

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: May 26, 2024

For further information, please call: (512) 438-3269



## DIVISION 4. TRAINING

### 26 TAC §§748.4841, 748.4843, 748.4845, 748.4847

#### STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of the Texas Government Code. In addition, the Texas Health and Safety Code §577A.004 requires HHSC to adopt rules to implement this chapter and §577A.101 requires HHSC to adopt minimum standards for a PRYTF. Finally, amendments to current rules adopted under Texas Human Resources Code §42.042 are authorized under that section.

The new sections affect Texas Government Code §531.0055, Texas Health and Safety Code Chapter 577A, and Texas Human Resources Code Chapter 42.

§748.4841. What are the pre-service experience requirements for a caregiver providing psychiatric health treatments and services?

(a) A caregiver responsible for an individual receiving psychiatric health treatments and services must have a minimum of 40 hours of supervised caregiver experience in:

(1) Your operation providing treatment services to children with an emotional disorder;

(2) Another general residential operation providing treatment services to children with an emotional disorder;

(3) A psychiatric residential youth treatment facility providing psychiatric health treatments and services to children or young adults; or

(4) A residential or hospital setting providing direct care, supervision, guidance, and protection of children or young adults with a severe emotional disturbance.

(b) Until a caregiver has the minimum amount of supervised child-care experience as specified in subsection (a) of this section, the caregiver:

(1) May not be assigned as the only caregiver responsible for a group of individuals if any individual in the group is receiving psychiatric health treatments and services;

(2) Must be always supervised by another caregiver who has already satisfied the 40-hour experience requirement; and

(3) Must have their supervised child-care experience documented in the appropriate personnel record.

§748.4843. What additional pre-service training requirements apply to a caregiver or an employee at a psychiatric residential youth treatment facility (PRYTF)?

(a) In addition to the types of pre-service training and hours at §748.863(a) of this chapter (relating to What are the pre-service training requirements for a caregiver?), a caregiver must complete four hours of suicide prevention training before the caregiver may be counted in the child to caregiver ratio if any individual in the group is receiving psychiatric health treatments and services.

(b) In addition to the types of pre-service training and hours at §748.864(a) of this chapter (relating to What are the pre-service training requirements for an employee?), a child-care administrator, professional level service provider, treatment director, and case manager must complete four hours of suicide prevention training within 90 days of beginning job duties that include:

(1) Providing services to or planning services for individuals receiving psychiatric youth treatments and services; or

(2) Managing or overseeing employees that provide services to or plans services for individuals receiving psychiatric youth treatments and services.

(c) A caregiver or employee (child-care administrator, professional level service provider, treatment director, and case manager) does not have to complete the four hours of suicide prevention training if the caregiver or employee has documentation that it was completed during the last 12 months.

(d) You must document the exemption factor in the appropriate personnel record.

§748.4845. Who must have first-aid and CPR training in a psychiatric residential youth treatment facility (PRYTF)?

(a) Caregivers providing psychiatric health treatments and services to individuals must have a current certificate of training with an expiration or renewal date in:

(1) First-aid with rescue breathing and choking, which may be through instructor-led training or self-instructional training; and

(2) Pediatric and adult cardiopulmonary resuscitation (CPR).

(b) Each caregiver must be certified in first aid and CPR within 90 days of employment.

(c) At least one person counted in the child to caregiver ratio must be certified in first aid and CPR at all times.

§748.4847. What additional annual training requirements apply to a caregiver or an employee at a psychiatric residential youth treatment facility (PRYTF)?

(a) A caregiver providing psychiatric health treatments and services to an individual in a PRYTF must complete 50 annual training hours.

(b) In addition to the one hour of annual suicide prevention training required in §748.125(c) of this chapter (relating to What is the model suicide prevention, intervention, and postvention policy?):

(1) A caregiver must complete four additional hours of annual suicide prevention training for a total of five hours of annual suicide prevention training if the caregiver provides care to an individual receiving psychiatric health treatments and services; and

(2) A child-care administrator, professional level service provider, treatment director, and case manager must complete four additional hours of annual suicide prevention training for a total of five

hours of annual suicide prevention training if the employee is or will be:

(A) Providing services to or planning services for individuals receiving psychiatric youth treatments and services; or

(B) Managing or overseeing other employees that provide services to or plans services for individuals receiving psychiatric youth treatments and services.

(c) In addition to the specific types of annual training and hours required in §748.930(b) of this chapter (relating to What are the annual training requirements for a caregiver?), a caregiver providing psychiatric health treatments and services to an individual must complete two hours of annual training on administering psychotropic medication.

(d) In addition to the specific types of annual training and hours required in §748.931(b) and (c) of this chapter (relating to What are the annual training requirements for an employee), a child-care administrator, professional level service provider, treatment director, and case manager must complete two hours of annual training on administering psychotropic medication if the employee is or will be:

(1) Providing services to or planning services for individuals receiving psychiatric youth treatments and services; or

(2) Managing or overseeing other employees that provide services to or plans services for individuals receiving psychiatric youth treatments and services.

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 April 10, 2024.

TRD-202401469

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: May 26, 2024

For further information, please call: (512) 438-3269



## DIVISION 5. CHILD TO CAREGIVER RATIO

### 26 TAC §748.4851

#### STATUTORY AUTHORITY

The new section is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of the Texas Government Code. In addition, the Texas Health and Safety Code §577A.004 requires HHSC to adopt rules to implement this chapter and §577A.101 requires HHSC to adopt minimum standards for a PRYTF. Finally, amendments to current rules adopted under Texas Human Resources Code §42.042 are authorized under that section.

The new section affects Texas Government Code §531.0055, Texas Health and Safety Code Chapter 577A, and Texas Human Resources Code Chapter 42.

§748.4851. For purposes of the child to caregiver ratio, how many children can a single caregiver care for when a child receiving psychiatric health treatments and services is asleep at night?

(a) If any child in the group is receiving psychiatric health treatments and services, a single caregiver may care for a maximum of six children during the night-time sleeping hours.

(b) Caregivers must remain awake during night-time sleeping hours.

(c) This ratio also applies to any young adults 18 to 21 years of age who are receiving psychiatric health treatments and services under this subchapter.

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

Filed with the Office of the Secretary of State on April 10, 2024.

TRD-202401470

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: May 26, 2024

For further information, please call: (512) 438-3269



## DIVISION 6. ADMISSION AND SERVICE PLANS

### 26 TAC §§748.4861, 748.4863, 748.4865, 748.4867, 748.4869

#### STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of the Texas Government Code. In addition, the Texas Health and Safety Code §577A.004 requires HHSC to adopt rules to implement this chapter and §577A.101 requires HHSC to adopt minimum standards for a PRYTF. Finally, amendments to current rules adopted under Texas Human Resources Code §42.042 are authorized under that section.

The new sections affect Texas Government Code §531.0055, Texas Health and Safety Code Chapter 577A, and Texas Human Resources Code Chapter 42.

§748.4861. Whom may I admit for psychiatric health treatments and services?

You may only admit an individual for psychiatric health treatments and services who:

(1) Is 21 years of age or younger;

(2) Has been diagnosed with a severe emotional disturbance by a licensed mental health professional;

(3) Requires residential psychiatric treatment under the direction of a licensed physician to improve the individual's condition; and

(4) Was referred for treatment or services in a psychiatric residential youth treatment facility by a licensed mental health professional.

§748.4863. May individuals receiving different types of service live in the same living quarters?

(a) Except as provided by subsections (c) and (d) of this section, children receiving different types of service may reside in the same living quarters as long as:

(1) A professional level service provider completes an evaluation of the living quarters for each child that you place in the living quarters; and

(2) In each evaluation, the professional level service provider ensures that:

(A) There is no conflict of care with the best interests of any of the children placed in the living quarters;

(B) Placing the child with different service or treatment needs in the living quarters will not adversely impact the other children in the living quarters;

(C) The number of children in the living quarters is appropriate at all times based on the needs of all children in the living quarters;

(D) Caregivers can appropriately supervise all children in the living quarters at all times; and

(E) You can meet the needs of all children in the living quarters.

(b) If the treatment or service needs of any child in the living quarters changes, the professional level service provider must evaluate the needs of each child in the living quarters to ensure there is no conflict of care.

(c) Children admitted for emergency care services must receive any therapeutic services (such as group therapy or art therapy) separately from children admitted for non-emergency care and must have separate living quarters, such as a separate wing of an operation, or a separate cottage. You may combine children admitted for emergency care services with children in non-emergency care for meals, recreation, and transportation.

(d) Young adults 18 to 21 years of age receiving psychiatric health treatments and services that are not in the care of the Texas Department of Family and Protective Services and did not come immediately from another residential child-care operation:

(1) Must receive therapeutic services (such as group therapy or art therapy) separately from children admitted to the operation, including the psychiatric residential youth treatment facility (PRYTF);

(2) Must have separate living quarters, such as a separate wing of an operation, or a separate cottage; and

(3) Must not use an area of the general residential operation's building or grounds at the same time with children admitted to the operation, including the PRYTF, except restrooms and indoor and outdoor activity areas may be shared under a policy required by §748.4821 of this subchapter (relating to What additional policies must I submit as part of the application process for a psychiatric residential youth treatment facility (PRYTF) certificate?).

§748.4865. Are there additional requirements for a preliminary service plan when I admit an individual for psychiatric health treatments and services?

When you admit an individual for psychiatric health treatments and services, in addition to the requirements listed in §748.1331 of this chapter (relating to What are the requirements for a preliminary service plan?), the preliminary service plan for an individual receiving psychiatric health treatments and services must include:

(1) Therapeutic needs, including plans for psychiatric evaluation, the use of psychotropic medications, and one-to-one therapy;

(2) Family engagement activities;

(3) Plans to consult with qualified professionals, including case managers, primary care professionals, community-based mental health providers, school staff, and other support planners; and

(4) Nursing care.

§748.4867. Are there additional requirements for an initial service plan when I admit an individual for psychiatric health treatments and services?

(a) In addition to the requirements listed in (b)(2) in Figure: 26 TAC §748.1337(b) of this chapter (relating to What must a child's initial service plan include?), the initial service plan for an individual receiving psychiatric health treatments and services must include:

(1) One-to-one therapy;

(2) Family engagement activities;

(3) Consultation services with qualified professionals, including case managers, primary care professionals, community-based mental health providers, school staff, and other support planners;

(4) 24-hour nursing services, though services do not need to be onsite; and

(5) Direct care and supervision services, supportive services for daily living and safety, and positive behavior management services.

(b) You must document all professional consultations, examinations, recommendations, and treatment in the individual's record.

§748.4869. Who must be involved in developing an initial service plan?

(a) A service planning team must develop the service plan. The team must consist of:

(1) At least one of the individual's current caregivers;

(2) For a child, a person designated to make decisions regarding a child's participation in childhood activities; and

(3) At least one professional level service provider who provides direct services to the individual.

(b) Except as provided by subsection (c) of this section, if you are providing treatment services to a child, the team must also include two of the following professions:

(1) A licensed professional counselor;

(2) A psychologist;

(3) A psychiatrist or physician;

(4) A licensed registered nurse;

(5) A licensed masters level social worker;

(6) A licensed or registered occupational therapist; or

(7) Any other person in a related discipline or profession that is licensed or regulated in accordance with state law.

(c) If you are providing psychiatric health treatments and services to an individual, the team must include a licensed psychiatrist or physician and one of the following professionals:

(1) A licensed professional counselor;

(2) A psychologist;

- (3) A licensed registered nurse;
- (4) A licensed masters level social worker;
- (5) A licensed or registered occupational therapist; or
- (6) Any other person in a related discipline or profession that is licensed or regulated in accordance with state law.

(d) The individual and parents or guardian must be invited to a service planning meeting, so that they may participate and provide input into the development of the service plan.

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 April 10, 2024.

TRD-202401471

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: May 26, 2024

For further information, please call: (512) 438-3269



## DIVISION 7. PROVIDING CARE TO CHILDREN AND ADULTS

### 26 TAC §748.4881

#### STATUTORY AUTHORITY

The new section is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, as well as Texas Government Code §531.033, which requires the Executive Commissioner to adopt rules necessary to carry out HHSC's duties under Chapter 531 of the Texas Government Code. In addition, the Texas Health and Safety Code §577A.004 requires HHSC to adopt rules to implement this chapter and §577A.101 requires HHSC to adopt minimum standards for a PRYTF. Finally, amendments to current rules adopted under Texas Human Resources Code §42.042 are authorized under that section.

The new section affects Texas Government Code §531.0055, Texas Health and Safety Code Chapter 577A, and Texas Human Resources Code Chapter 42.

§748.4881. After a child in the care of a psychiatric residential youth treatment facility (PRYTF) turns 18 years old, may the young adult remain in care?

A child who turns 18 years old in the care of a PRYTF may remain in your care until the young adult's 22nd birthday.

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 April 10, 2024.

TRD-202401472

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: May 26, 2024

For further information, please call: (512) 438-3269



## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### PART 10. TEXAS WATER DEVELOPMENT BOARD

#### CHAPTER 365. RURAL WATER ASSISTANCE FUND

The Texas Water Development Board (TWDB) proposes amendments to 31 Texas Administrative Code (TAC) §§365.2, 365.3, 365.5, 365.21 - 365.23, 365.41, and §§365.43 - 365.45.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED AMENDMENT.

Chapter 365 contains the agency's programmatic rules related to the Rural Water Assistance Fund. The TWDB proposes to amend the rules to implement legislation and clarify the method in which interest rates will be set for loans when the source of funding is other than bond proceeds. Additionally, TWDB proposes to amend the rules to modernize the language, provide consistency with TWDB's general financial assistance programs' rules, and clarify requirements for borrowers.

Senate Bill 469, 88th R.S. (2023), amended Chapters 15 and 17 of the Water Code by adding a general definition of "rural political subdivision." This general definition replaces the current definition applicable to the Rural Water Assistance Fund. This rulemaking implements SB 469's definition of "rural political subdivision" applicable to the Rural Water Assistance Fund.

Senate Bill 28, 88th R.S. (2023), amended Chapter 15 of the Water Code to authorize the TWDB to use money in the Rural Water Assistance Fund to contract for outreach, financial, planning, and technical assistance to assist rural political subdivisions for a purpose described by Section 15.994 (Use of Fund), including obtaining and using financing from funds and accounts administered by TWDB. This rulemaking implements SB 28's expansion of allowable technical assistance applicable to the Rural Water Assistance Fund.

31 Texas Administrative Code §365.5 contains rules related to the setting of interest rates. The rule does not currently address how interest rates will be set for loans when the funding source is other than bond proceeds. This rulemaking proposes the Executive Administrator determine lending rate scales for loans funded by a source other than bond proceeds.

This rulemaking includes substantive and non-substantive changes and updates to make this chapter more consistent with TWDB rules and to clarify requirements for TWDB borrowers.

#### SECTION BY SECTION DISCUSSION OF PROPOSED AMENDMENTS.

Chapter 365 Rural Water Assistance Fund

Subchapter A. Introductory Provisions

Section 365.2. Definitions of Terms.

The proposed amendment revises the definition of rural political subdivision in §365.2(6) to implement SB 469. The rule proposes to include as a rural political subdivision those municipalities with a population of 10,000 or less.

While the definition in SB 469 excluded municipalities with a population of 10,000 or less no part of the service area of which is located in an urban area with a population of more than 50,000, the definition in SB 469 also includes an entity that "demonstrates in a manner satisfactory to the board that the entity is rural." (See Texas Water Code §15.001(14)(B)(i) and (D) as added by Acts 2023, 88th Leg., R.S., Ch. 1064 (SB 469)). The TWDB interprets these two pieces together to include all municipalities with a population of 10,000 or less in the definition of "rural political subdivision."

#### Section 365.3. Use of Funds.

The proposed amendment revises §365.3(c) to implement SB 28's technical assistance requirements applicable to the Rural Water Assistance Fund, which broadens the TWDB's authority to provide technical assistance.

#### Section 365.5. Interest Rates for Loans.

The proposed amendment seeks to address the setting of interest rates for loans funded by a source other than bond proceeds. For loans funded by a source other than bond proceeds the Executive Administrator will determine the lending rate scale.

#### Subchapter B. Application Procedures.

##### Section 365.21. Preapplication Meeting.

The proposed amendment requires an applicant to schedule a preapplication conference with board staff.

##### Section 365.22. Application for Assistance.

The proposed amendment modernizes the rule language, provides consistency with TWDB's general financial assistance programs' rules, and clarifies requirements for borrowers. The amendment proposes to remove the requirement that an application be in writing and replace it with the requirement that an application be in the form and numbers prescribed by the executive administrator. The amendment clarifies what application information is required for the application to be considered administratively complete. The proposed amendment clarifies that the executive administrator may return an incomplete application. The amendment proposes to require an additional statement in the required application affidavit that the applicant is, or will come into, compliance with all material contracts.

##### Section 365.23. Pre-design Funding Option.

The proposed amendment modernizes the rule language, provides consistency with TWDB's general financial assistance programs' rules, and corrects citations.

#### Subchapter C. Closing and Release of Funds

##### Section 365.41. Loan Closing.

The proposed amendment modernizes the rule language, provides consistency with TWDB's general financial assistance programs' rules, and clarifies requirements for borrowers. The amendment proposes to require the transcript of proceedings within 60 days of closing.

##### Section 365.43. Release of Funds.

The proposed amendment modernizes the rule language, provides consistency with TWDB's general financial assistance pro-

grams' rules, clarifies requirements for borrowers, and corrects citations. The amendment proposes that for release of funds for building purposes, prior executive administrator approval is required if the applicant is relying on evidence of its legal authority to complete necessary acquisitions. The amendment proposes that for projects constructed through one or more construction contracts, the executive administrator may approve the release of funds only for a construction contract that has been approved for construction.

##### Section 365.44. Loan Agreements for Nonprofit Water Supply or Sewer Service Corporations.

The proposed amendment deletes the current list of information required and cites to §15.996 of the Water Code for applicable requirements.

##### Section 365.45. Engineering Design Approvals.

The amendment proposes to modernize the rules language, deletes the current list of information required, and cites to 31 Texas Administrative Code §363.41 for applicable contract document requirements.

#### FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS (Texas Government Code §2001.024(a)(4))

Ms. Rebecca Trevino, Chief Financial Officer, has determined that there will be no fiscal implications for state or local governments as a result of the proposed rulemaking. For the first five years these rules are in effect, there is no expected additional cost to state or local governments resulting from their administration.

These rules are not expected to result in reductions in costs to either state or local governments. There is no change in costs for state or local governments as the rules are necessary to implement legislation and participation in TWDB's financial assistance programs is voluntary. These rules are not expected to have any impact on state or local revenues. The rules do not require any increase in expenditures for state or local governments as a result of administering these rules. Additionally, there are no foreseeable implications relating to state or local governments' costs or revenue resulting from these rules.

Because these rules will not impose a cost on regulated persons, the requirement included in Texas Government Code, §2001.0045 to repeal a rule does not apply. Furthermore, the requirement in §2001.0045 does not apply because these rules are necessary to implement legislation.

The TWDB invites public comment regarding this fiscal note. Written comments on the fiscal note may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

#### PUBLIC BENEFITS AND COSTS (Texas Government Code §2001.024(a)(5))

Ms. Rebecca Trevino also has determined that for each year of the first five years the proposed rulemaking is in effect, the public will benefit from the rulemaking as it clarifies eligibility, requirements, and methodology for TWDB borrowers. Ms. Rebecca Trevino also has determined that for each year of the first five years the proposed rulemaking is in effect, the rules will not impose an economic cost on persons required to comply with the rule as participation in TWDB financial assistance programs is voluntary.

ECONOMIC AND LOCAL EMPLOYMENT IMPACT STATEMENT (Texas Government Code §§2001.022, 2006.002); REGULATORY FLEXIBILITY ANALYSIS (Texas Government Code §2006.002)

The TWDB has determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect because it will impose no new requirements on local economies. The TWDB also has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of enforcing this rulemaking. The TWDB also has determined that there is no anticipated economic cost to persons who are required to comply with the rulemaking as proposed. Therefore, no regulatory flexibility analysis is necessary.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION (Texas Government Code §2001.0225)

The TWDB reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the rulemaking is not subject to Texas Government Code §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to clarify eligibility, requirements, and methodology for TWDB borrowers.

Even if the proposed rule were a major environmental rule, Texas Government Code §2001.0225 still would not apply to this rulemaking because Texas Government Code §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed any federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not proposed solely under the general powers of the agency, but rather Texas Water Code §15.995. Therefore, this proposed rule does not fall under any of the applicability criteria in Texas Government Code §2001.0225.

The TWDB invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

TAKINGS IMPACT ASSESSMENT (Texas Government Code §2007.043)

The TWDB evaluated this proposed rule and performed an analysis of whether it constitutes a taking under Texas Government

Code, Chapter 2007. The specific purpose of this rule is to clarify eligibility, requirements, and methodology for TWDB borrowers. The proposed rules would substantially advance this stated purpose by aligning the rule's definitions and permissible use of funds with Water Code, Chapter 15, clarifying how interest rates will be set for TWDB borrowers, and providing greater consistency between TWDB program rules.

The TWDB's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this proposed rule because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code §2007.003(b)(4). The TWDB is the agency that implements the Rural Water Assistance Fund Program.

Nevertheless, the TWDB further evaluated this proposed rule and performed an assessment of whether it constitutes a taking under Texas Government Code Chapter 2007. Promulgation and enforcement of this proposed rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulation does not affect a landowner's rights in private real property because this rulemaking does not burden, restrict, or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. In other words, this rule is merely an amendment to conform with statutory changes and clarify program methodology. It does not require regulatory compliance by any persons or political subdivisions. Therefore, the proposed rule does not constitute a taking under Texas Government Code, Chapter 2007.

GOVERNMENT GROWTH IMPACT STATEMENT (Texas Government Code §2001.0221)

The TWDB reviewed the proposed rulemaking in light of the government growth impact statement requirements of Texas Government Code §2001.0221 and has determined, for the first five years the proposed rule would be in effect, the proposed rule will not: (1) create or eliminate a government program; (2) require the creation of new employee positions or the elimination of existing employee positions; (3) require an increase or decrease in future legislative appropriations to the agency; (4) require an increase or decrease in fees paid to the agency; (5) create a new regulation; (6) expand, limit, or repeal an existing regulation; (7) increase or decrease the number of individuals subject to the rule's applicability; or (8) positively or adversely affect this state's economy.

SUBMISSION OF COMMENTS (Texas Government Code §2001.024(a)(7))

Written comments on the proposed rulemaking may be submitted by mail to Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by email to [rulescomments@twdb.texas.gov](mailto:rulescomments@twdb.texas.gov), or by fax to (512) 475-2053. Comments will be accepted until 5:00 p.m. of the 31st day following publication in the *Texas Register*. Include Chapter 365 in the subject line of any comments submitted.

## SUBCHAPTER A. INTRODUCTORY PROVISIONS

### 31 TAC §§365.2, 365.3, 365.5

STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

The amendment is proposed under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to



adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Texas Water Code §15.995.

This rulemaking affects Water Code, Chapter 15.

§365.2. *Definitions of Terms.*

Words and terms used in this chapter shall have the following meanings, unless the context clearly indicates otherwise. Words defined in Texas Water Code Chapter 15 or 17 and not defined here shall have the meanings provided by the appropriate Texas Water Code chapter.

(1) Applicant--A rural political subdivision, including a rural political subdivision which has entered into an agreement with a Federal Agency or State Agency for the purpose of submitting a joint application.

(2) District--A conservation or reclamation district created under Texas Constitution, Section 52, Article III, or Section 59, Article XVI.

(3) Federal agency--An agency or other entity of the United States, including the United States Department of Agriculture or an agency or entity that is acting through or on behalf of that department.

(4) Fund--The Rural Water Assistance Fund.

(5) Nonprofit water supply or sewer service corporation--A water or sewer service corporation operating under Texas Water Code, Chapter 67.

(6) Rural political subdivision--

(A) A nonprofit water supply or sewer service corporation created and operating under Chapter 67 of the Texas Water Code or a[ ] district[ ] or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, no part of the service area of [municipality with a service area of 10,000 or less in population or that otherwise qualifies for financing from a federal agency or a county in] which is located in an [no ] urban area with a population of more than [exceeds] 50,000 in population;

(B) a municipality;

(i) with a population of 10,000 or less; or

(ii) located wholly in a county in which no urban area has a population of more than 50,000;

(C) a county in which no urban area has a population of more than 50,000; or

(D) an entity that:

(i) is a nonprofit water supply or sewer service corporation created and operating under Chapter 67 of the Texas Water Code, a district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, a municipality, county, or other political subdivision of the state, or an interstate compact commission to which the state is a party; and

(ii) demonstrates in a manner satisfactory to the board that the entity is rural or the area to be served by the project is a wholly rural area despite not otherwise qualifying under subparagraph (A), (B), or (C) of this paragraph.

(7) State agency--An agency or other entity of the state, including the Texas Department of Agriculture and the Texas Department of Housing and Community Affairs and any agency or authority that is acting through or on behalf of the Texas Department of Agriculture or the Texas Department of Housing and Community Affairs.

§365.3. *Use of Funds.*

(a) The fund may be used to provide low-interest loans to rural political subdivisions for:

(1) water or water-related projects and for water quality enhancement projects, including but not limited to:

(A) the construction of infrastructure facilities for wholesale or retail water or sewer service;

(B) desalination projects;

(C) the purchase or lease of water well fields;

(D) property necessary for water well fields;

(E) the purchase or lease of rights to produce groundwater;

(F) onsite or wetland wastewater treatment facilities; and

(G) the interim financing of construction projects;

(2) water projects included in the state water plan or a regional water plan;

(3) development of groundwater sources and acquisition of water rights, including groundwater and surface water rights;

(4) the acquisition of retail public utilities as defined by §13.002 of the Texas Water Code;

(5) the acquisition of water supply or sewer services facilities or systems owned by municipalities or other political subdivisions;

(6) construction, acquisition, or improvement of water and wastewater projects to provide services to an economically distressed area;

(7) planning and design costs, permitting costs, and other costs associated with state or federal regulatory activities with respect to a project; and

(8) obtaining water or wastewater service supplied by other political subdivisions or financing the consolidation or regionalizing of neighboring political subdivisions, or both.

(b) The fund may be used to provide zero interest loans, negative interest loans, loan forgiveness, or grants for any purpose described in subsection (a) of this section under criteria developed by the board.

(c) The board may use money in the fund to contract for outreach, financial, planning, and technical assistance to assist rural political subdivisions [in obtaining and using financing from any source] for a purpose described by §15.994 of the Texas Water Code, including in obtaining and using financing from funds and accounts administered by the board.

(d) The fund may be used to buy down interest rates on loans.

(e) The fund may be used to finance a joint application submitted by a rural political subdivision and a federal agency, a state agency, or another rural political subdivision where the parties have entered into an agreement to submit a joint application for financial assistance.

(f) The fund may be used as a source of revenue for the repayment of principal and interest on water financial assistance bonds issued by the board if the proceeds of the sale of these bonds will be deposited into the fund.

§365.5. *Interest Rates for Loans.*

The procedure and method for setting fixed interest rates includes the following.

(1) The executive administrator will set fixed interest rates under this section for loans on a date that is five business days prior to the political subdivision's adoption of the ordinance or resolution authorizing its bonds and not more than 45 days before the anticipated closing of the loan from the board. After 45 days from the establishment of the interest rate of a loan, rates will be reconsidered, and may be extended only with the approval of the executive administrator.

(2) For loans from the Rural Water Assistance Fund, the executive administrator will set the interest rates in accordance with the following:

(A) to the extent that the source of funding is provided from bond proceeds issued through the Water Development Fund specifically designated for this fund, the lending rate scale(s) will be determined as provided under §363.33(b) of this title (relating to Interest Rates for Loans and Purchase of Board's Interest in State Participation Projects); [øf]

(B) for loans where the interest rates calculated in subparagraph (A) of this paragraph results in a true interest cost that is less than the minimum true interest cost of the lending rate scale established for those funds, interest will be calculated at a rate increased to match the minimum true interest costs so the board may recover all costs attributed to the bonds sold by the board; [øf]

(C) for loans funded by the board with proceeds of bonds, the interest for which is intended to be tax exempt for purposes of federal tax law, the executive administrator will limit the interest set pursuant to this subsection at no higher than the rate permitted under federal tax law to maintain the tax exemption for the interest on the board's bonds; or [-]

(D) for loans funded without bond proceeds, the lending rate scale(s) will be determined by the executive administrator.

(3) The board, at its discretion, may require applicants to receive a portion of the project funding from other board loan programs.

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 April 12, 2024.

TRD-202401507

Ashley Harden

General Counsel

Texas Water Development Board

Earliest possible date of adoption: May 26, 2024

For further information, please call: (512) 463-6072



## SUBCHAPTER B. APPLICATION PROCEDURES

### 31 TAC §§365.21 - 365.23

STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

The amendment is proposed under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Texas Water Code §15.995.

This rulemaking affects Water Code, Chapter 15.

#### §365.21. Preapplication Meeting.

An applicant seeking financial assistance must [~~should~~] schedule a preapplication conference with the board staff to obtain guidance and establish basic eligibility of the project and of the rural political subdivision for financial assistance.

#### §365.22. Application for Assistance.

(a) An [~~A rural political subdivision shall submit an~~] application must be in the form and numbers prescribed by the executive administrator [~~for financial assistance in writing~~].

(b) The executive administrator may request any additional information needed to evaluate the application and may return any incomplete applications.

(c) [~~(b)~~] The following information is required on all applications to the board for financial assistance to be considered an administratively complete application.

(1) General, fiscal and legal information required includes:

(A) the name and address of the rural political subdivision;

(B) a citation of the law under which the rural political subdivision operates and was created;

(C) the total cost of the project;

(D) the amount of financial assistance being requested;

(E) a description of the project;

(F) the name, address, email, and telephone number of the authorized representative, engineer, and any other consultant(s);

(G) the source of repayment and the status of legal authority to pledge selected revenues;

(H) the financing plan for repaying the total cost of the project;

(I) the rural political subdivision's default history;

(J) the most recent annual financial statements and latest monthly and year-to-date financial reports for the General Fund and Utility Fund of the political subdivision;

(K) a certified copy of a resolution of the rural political subdivision's governing body requesting financial assistance from the board, authorizing the submission of the application, and designating the authorized representative for executing the application, and for appearing before the board;

(L) a notarized affidavit from the authorized representative stating that:

(i) for a rural political subdivision, the decision to request financial assistance from the board was made in a public meeting held in accordance with the Open Meetings Act (Government Code, Chapter 551);

(ii) the information submitted in the application is true and correct according to the best knowledge and belief of the representative;

(iii) the applicant has no litigation or other proceedings pending or threatened against the applicant that would materially adversely affect the financial condition of the applicant or the ability of the applicant to issue debt;

(iv) the applicant has no pending, threatened, or outstanding judgments, orders, fines, penalties, taxes, assessment or

other enforcement or compliance issue of any kind or nature by EPA, the Texas Commission on Environmental Quality, Texas Comptroller, Texas Secretary of State, or any other federal, state or local government, except for such actions identified in the affidavit; ~~and~~

(v) the applicant is, or will become, in compliance with all material contracts; and

(vi) [(v)] the applicant is and must remain during the term of any financial assistance received from the board in compliance [with comply] with all applicable federal laws, rules, and regulations as well as the laws of this state and the rules and regulations of the board;

(M) any special request for repayment structure that reflects the particular needs of the rural political subdivision.

(2) Preliminary Engineering Feasibility Report [feasibility report]. An applicant must [shall] submit an engineering feasibility report in accordance with §363.13 of this title (relating to Preliminary Engineering Feasibility Report ~~Data~~).

(3) Environmental Assessment [assessment]. An applicant must [shall] submit an environmental assessment in accordance with §363.14 of this title (relating to Environmental Assessment).

(4) Required Water Conservation Plan [water conservation plan]. An applicant must [shall] submit a water conservation plan prepared in accordance with §363.15 of this title (relating to Required Water Conservation Plan).

(5) Funding from Other Sources [other sources]. If additional funds are necessary to complete the project, or if the applicant has applied for or ~~and/or~~ received a commitment from any other funding agency for the project or any aspect of the project, an applicant must [shall] submit a listing of those sources, including total project costs, financing terms, and current status of the funding requests.

(6) Additional Application Information [application information]. An applicant must [shall] submit any additional information requested by the executive administrator as necessary to complete the financial, legal, engineering, and environmental reviews.

(d) [(e)] A rural political subdivision may enter into an agreement with a federal agency, a state agency, or another rural political subdivision to submit a joint application for financial assistance under this subchapter.

#### §365.23. *Pre-design Funding Option.*

(a) This loan application option will provide an eligible applicant that meets all applicable board requirements an alternative to secure a commitment and close a loan for the pre-design, design or building costs associated with a project. Under this option, a loan may be closed and funds necessary to complete planning and design activities released. If planning requirements have not been satisfied, design and building funds will be held or escrowed and released in the sequence described in this section. Following completion of planning activities and environmental assessment, the executive administrator may require the applicant to make changes in order to proceed with the project. If the portion of a project associated with funds in escrow cannot proceed, the loan recipient must [shall] use the escrowed funds to pay off the obligations to the board in inverse order of maturity.

(b) The executive administrator may recommend to the board the use of this section if, based on available information, there appear to be no significant permitting, social, environmental, engineering, or financial issues associated with the project. An application for pre-design funding may be considered by the board despite a negative recommendation from the executive administrator.

(c) Applications for pre-design funding must include the following information:

(1) for loans including building cost, a preliminary engineering feasibility report which will include at minimum: a description and purpose of the project; area maps or drawings as necessary to fully locate the project area(s); a proposed project schedule; estimated project costs and budget including sources of funds; current and future populations and projected water needs and sources; alternatives considered; and a discussion of known permitting, social or environmental issues which may affect the alternatives considered and the implementation of the proposed project;

(2) contracts for engineering services, which may be in draft form;

(3) evidence that an approved water conservation plan will be adopted prior to the release of loan funds;

(4) all information required in §365.22 ~~[(§384.22(b)(1))]~~ of this title (relating to Application for Assistance); and

(5) any additional information the executive administrator may request to complete evaluation of the application.

(d) After board commitment and completion of all closing and release prerequisites as specified in §365.41 ~~[(§384.41)]~~ of this title (relating to Loan Closing), §365.42 ~~[(§384.42)]~~ of this title (relating to Deed of Trust and Other Required Documentation), and §365.43 ~~[(§384.43)]~~ of this title (relating to Release of Funds), funds will be released in the following sequence:

(1) for planning and permitting costs, after receipt of executed contracts for the planning or permitting phase;

(2) for design costs, after receipt of executed contracts for the design phase and upon approval of an engineering feasibility report as specified in §363.13 of this title (relating to Engineering Feasibility Data) and compliance with §363.14 of this title (relating to Environmental Assessment);

(3) for building costs, after issuance of any applicable permits, and after bid documents are approved and executed construction documents are contingently awarded.

(e) Board staff will use preliminary environmental data provided by the applicant, as specified in subsection (d) of this section and make a written report to the executive administrator on known or potential significant social or environmental concerns. Subsequently, these projects must have a favorable executive administrator's recommendation which is based upon a full environmental review during planning, as provided under §363.14 of this title.

(f) The executive administrator will advise the board concerning projects that involve major economic or administrative impacts to the applicant resulting from environmentally related special mitigative or precautionary measures from an environmental assessment under §363.14 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 April 12, 2024.

TRD-202401521



## SUBCHAPTER C. CLOSING AND RELEASE OF FUNDS

### 31 TAC §§365.41, 365.43 - 365.45

STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

The amendment is proposed under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Texas Water Code §15.995.

This rulemaking affects Water Code, Chapter 15.

#### §365.41. *Loan Closing.*

(a) Instruments Needed [needed] for Closing [closing]. The documents which shall be required at the time of closing [shall] include the following:

(1) if not closing under the pre-design funding option, evidence that requirements and regulations of all identified local, state and federal agencies having jurisdiction have been met, including but not limited to permits and authorizations;

(2) a certified copy of the bond ordinance, order or resolution adopted by the governing body authorizing the issuance of debt to be sold to the board, or an executed promissory note and loan agreement, that is acceptable to the executive administrator and which must [shall] have sections providing as follows:

(A) if loan proceeds are to be deposited into an escrow account, at the closing on all or a portion of the loan or grant, then an escrow account must [shall] be created that must [shall] be separate from all other accounts and funds, as follows:

(i) the account must [shall] be maintained by an escrow agent as defined in §363.2 of this title (relating to Definitions of Terms);

(ii) funds must [shall] not be released from the escrow account without written approval by the executive administrator;

(iii) upon request of the executive administrator, the escrow account statements must [shall] be provided to the executive administrator;

(iv) the investment of any loan or grant proceeds deposited into an escrow account must [shall] be handled in a manner that complies with the Public Funds Investment Act, Texas Government Code, Chapter 2256; and

(v) the escrow account must [shall] be adequately collateralized in a manner sufficient to protect the board's interest in the project and that complies with the Public Funds Collateral Act, Texas Government Code, Chapter 2257;

(B) that a construction account must [shall] be created, which must [shall] be separate from all other accounts and funds of the applicant;

(C) that a final accounting be made to the board of the total sources and authorized use of project funds within 60 days of the completion of the project and that any surplus loan funds be used in a manner as approved by the executive administrator;

(D) that an annual audit of the rural political subdivision, prepared in accordance with generally accepted auditing standards by a certified public accountant or licensed public accountant be provided annually to the executive administrator;

(E) that the rural political subdivision must [shall] fix and maintain rates and collect charges to provide adequate operation, maintenance and insurance coverage on the project in an amount sufficient to protect the board's interest;

(F) that the rural political subdivision must [shall] document the adoption and implementation of an approved water conservation program for the duration of the loan, in accordance with §363.15 of this title;

(G) that the rural political subdivision must [shall] maintain current, accurate and complete records and accounts in accordance with generally accepted accounting principles necessary to demonstrate compliance with financial assistance related legal and contractual provisions;

(H) that the rural political subdivision covenants to abide by the board's rules and relevant statutes, including the Texas Water Code, Chapters 15 and 17;

(I) that the rural political subdivision or an obligated person for whom financial or operating data is presented, will undertake, either individually or in combination with other issuers of the rural political subdivision's obligations or obligated persons, in a written agreement or contract to comply with requirements for continuing disclosure on an ongoing basis substantially in the manner required by Securities and Exchange Commission (SEC) rule 15c2-12 and determined as if the board were a Participating Underwriter within the meaning of such rule, such continuing disclosure undertaking being for the benefit of the board and the beneficial owner of the rural political subdivision's obligations, if the board sells or otherwise transfers such obligations, and the beneficial owners of the board's obligations if the rural political subdivision is an obligated person with respect to such obligations under rule 15c2-12;

(J) that all payments must [shall] be made to the board via wire transfer or in a manner acceptable to the Executive Administrator at no cost to the board;

(K) that the partial redemption of bonds or other authorized securities be made in inverse order of maturity;

(L) that insurance coverage be obtained and maintained in an amount sufficient to protect the board's interest in the project;

(M) that the rural political subdivision must [shall] establish a dedicated source of revenue for repayment; and

(N) any other recitals mandated by the executive administrator;

(3) evidence that the rural political subdivision has adopted a water conservation program in accordance with §363.15 of this title (relating to Required Water Conservation Plan);

(4) an unqualified approving opinions of the attorney general of Texas and a certification from the comptroller of public accounts that such debt has been registered in that office;

(5) if obligations are issued, an unqualified approving opinion by a recognized bond attorney acceptable to the executive admin-

istrator, or if a promissory note and loan agreement is used, an opinion from the corporation's attorney which is acceptable to the executive administrator;

(6) executed escrow agreement entered into by the entity and an escrow agent satisfactory to the executive administrator, in the event that funds are escrowed, or a certificate of trust as defined in §363.2 of this title, if applicable; and

(7) other or additional data and information, if deemed necessary by the executive administrator.

(b) Certified Transcript [transcript]. Within 60 days of closing, [At such time as available following the final release of funds] the rural political subdivision must [shall] submit a transcript of proceedings relating to the debt purchased by the board which must [shall] contain those instruments normally furnished a purchaser of debt.

(c) Additional Closing Requirements [closing requirements] for Bonds [bonds]. A rural political subdivision will [shall] be required to comply with the following closing requirements if the applicant issues obligations that are purchased by the board:

(1) all bonds must [shall] be closed in book-entry-only form;

(2) the rural political subdivision must [shall] use a paying agent/registrant that is a depository trust company (DTC) participant;

(3) the rural political subdivision must [shall] be responsible for paying all DTC closing fees assessed to the rural political subdivision by the board's custodian bank directly to the board's custodian bank;

(4) the rural political subdivision must [shall] provide evidence to the board that one fully registered bond has been sent to the DTC or to the rural political subdivision's paying agent/registrant prior to closing; and

(5) the rural political subdivision must [shall] provide a private placement memorandum containing a detailed description of the issuance of debt to be sold to the board that is acceptable to the executive administrator.

#### §365.43. *Release of Funds.*

(a) Release of Funds for Planning, Design, and Permits [funds for planning, design and permits]. Prior to the release of funds for planning, design, and permits, the rural political subdivision must [shall] submit for approval to the executive administrator the following documents:

(1) a statement as to sufficiency of funds to complete the activity;

(2) certified copies of each contract under which revenues for repayment of the rural political subdivision's debt will accrue;

(3) executed consultant contracts relating to services provided for planning, design, and [and/or] permits;

(4) unless funds are released under the pre-design funding option, evidence that the requirements and regulations of all identified local, state, and federal agencies having jurisdiction have been met, including but not limited to permits and authorizations; and

(5) other such instruments or documents as the board or executive administrator may require.

(b) Pre-design Funding [funding]. The funds needed for the total estimated cost of the engineering, planning, and design cost if the engineering feasibility report required under §363.13 of this title (relating to Preliminary Engineering Feasibility Data) and the environ-

mental assessment required under §363.14 of this title (relating to Environmental Assessment) have been approved, the cost of issuance associated with the loan, and any associated capitalized interest will be released to the loan recipient and the remaining funds will be escrowed to the escrow agent until all applicable requirements in subsections (a) and (c) of this section and §365.23 [§384.23] of this title (relating to Pre-design Funding Option) have been met.

(c) Release of Funds for Building Purposes [funds for building purposes]. Prior to the release of funds for building purposes, the rural political subdivision must [shall] submit for approval to the executive administrator the following documents:

(1) a tabulation of all bids received and an explanation for any rejected bids or otherwise disqualified bidders;

(2) one executed original copy of each construction contract the effectiveness and validity of which is contingent upon the receipt of board funds;

(3) evidence that the necessary acquisitions of land, leases, easements and rights-of-way have been completed or, with prior approval by the executive administrator if all acquisitions have not been completed, evidence that the applicant has the legal authority necessary to complete the acquisitions;

(4) a statement as to sufficiency of funds if additional funds are necessary to complete the project;

(5) certified copies of each contract under which revenues to the project will accrue;

(6) evidence that all requirements and regulations of all identified local, state, and federal agencies having jurisdiction have been met, including permits and authorizations; and

(7) other such instruments or documents as the board or executive administrator may require.

(d) Water Rights Certification [rights certification]. Prior to release of construction funds, the executive administrator shall make a written finding that the applicant:

(1) has the necessary water rights authorizing the applicant to appropriate and use the water that the project will provide, if the applicant is proposing surface water development; or

(2) has the right to use water that the project will provide, if the applicant is proposing groundwater development.

(e) Release of Funds for Projects Constructed Through One or More Construction Contracts [funds for projects constructed through one or more construction contracts]. For projects constructed through one or more construction contracts, the executive administrator may approve the release of funds for all or a portion of the estimated project cost, provided all requirements of subsection (c) of this section have been met, only for the construction contract that has been approved for construction. [for at least one of the construction contracts.]

(f) Escrow of Funds [funds]. The executive administrator may require the escrow of an amount of project funding related to contracts which have not met the requirements of subsection (c) of this section at the time of loan closing.

(g) Release of Funds in Installments [funds in installments]. Funds may be released to rural political subdivisions in installments and pursuant to the provisions of this section.

#### §365.44. *Loan Agreements for Nonprofit Water Supply or Sewer Service Corporations.*

[(a)] The board may provide financial assistance to [an applicant that is] a nonprofit water supply or sewer service corporation by

entering into a loan agreement in accordance with §15.996 of the Water Code. [with the nonprofit water supply or sewer service corporation.]

[(b) In addition to executing a loan agreement, the applicant must execute a promissory note in the full amount of the loan.]

[(c) An applicant which utilizes the loan agreement option is not required to engage the services of a bond counsel or a financial advisor.]

[(d) The applicant must provide the board with an attorney's opinion as to the authority of the rural political subdivision to incur the debt.]

§365.45. *Engineering Design Approvals.*

A rural political subdivision must [shall] obtain executive administrative approval of contract documents, including engineering plans and specifications, prior to receiving bids and awarding the contract. The contract documents must [shall] be consistent with the engineering information submitted with the application and must contain the requirements in §363.41 of this title (relating to Engineering Design Approvals). [following:]

[(1) provisions assuring compliance with the board's rules and all relevant statutes;]

[(2) provisions providing for the rural political subdivision to retain a minimum of 5.0% of the progress payments otherwise due to the contractor until the building of the project is substantially complete and a reduction in retainage is authorized by the executive administrator;]

[(3) a contractor's act of assurance form to be executed by the contractor which shall warrant compliance by the contractor with all laws of the state and all rules and published policies of the board; and]

[(4) any additional information or conditions that may be requested by the executive administrator.]

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 April 12, 2024.

TRD-202401523

Ashley Harden

General Counsel

Texas Water Development Board

Earliest possible date of adoption: May 26, 2024

For further information, please call: (512) 463-6072



## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

#### CHAPTER 23. VEHICLE INSPECTION SUBCHAPTER E. VEHICLE EMISSIONS INSPECTION AND MAINTENANCE PROGRAM 37 TAC §23.55

The Texas Department of Public Safety (the department) proposes amendments to §23.55, concerning Certified Emissions

Inspection Station and Inspector Requirements, by adding language which makes clear that emissions testing equipment must stay at the department-approved location and requiring that certified emissions inspection stations obtain and maintain a single static Internet Protocol (IP) address for purposes of the submission of vehicle emissions inspection results to the Texas Information Management System (TIMS) vehicle identification database. Requiring the use of a single static IP address will provide greater security and stability, decrease the potential for the interruption of service, reduce the potential for fraud, and enhance the department's oversight of the emissions inspection program.

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. There is no anticipated negative impact on local employment.

Ms. Whittenton has determined that the proposed amendments may result in additional costs for small business and micro-business emission testing stations required to comply with the section as proposed, but there will be no adverse economic effect on rural communities.

The estimated number of licensed emissions inspection stations as of January 22, 2024, is 5,205. There are at least 109 inspection stations with more than 20 licensed vehicle inspectors; the remaining 5,096 stations have fewer than 20 inspectors. It is not possible, however, to provide a definite number of employees as this number does not reflect the number of unregulated employees in addition to the licensed inspectors. The department has no data on the annual gross receipts of these businesses. Therefore, it is assumed that the majority of licensed emissions inspection stations are micro-businesses rather than small businesses, with 109 small businesses and 5,096 micro-businesses likely subject to the new rule. The department has tried to minimize costs to licensed emissions inspection stations businesses. The new proposed requirements are designed to be the minimum standard that will provide greater security and stability, decrease the potential for the interruption of service, reduce the potential for fraud, and protect the public health, safety, and environmental welfare of the state. The estimated economic impact for a single static IP address as an add-on to an existing internet service provider contract is \$15-\$20 per month. Assuming \$20 per month, the two year fiscal impact would be \$480 per inspection station.

Under Government Code §2006.002, the department must perform a regulatory flexibility analysis. The department considered alternatives such as not adopting amendments, gradually phasing in the requirement, or creating exceptions for smaller stations such as single owner/operator inspection stations. However, the department has rejected these three options for the following reasons. First, requiring a single, static IP address for the inspection stations prevents one method by which certain emissions inspection stations engage in fraudulent vehicle emissions inspections. Second, any delay in implementing this change enables the continuation of fraudulent activity, interferes with the administration of the emissions inspection program, and negatively affects air quality and public health. Finally, the inspection stations found to be committing fraudulent emissions inspections are disproportionately small, single owner stations with very few employees. The department, therefore, does not believe it is feasible to waive or limit the requirements of the proposed amendments for small or micro-business emission inspection stations. The economic impact of \$15-20 per month to

the small and micro-businesses is negligible in comparison to the benefit of the program and public health. In addition, Government Code §2006.002(c-1) does not require the department to consider alternatives that might minimize possible adverse impacts on small businesses, micro-businesses, or rural communities if the alternatives would not be protective of the health, safety, and environmental welfare of the state.

Ms. Whittenton has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of this rule will be enhanced administrative enforcement against vehicle inspectors and inspection station owners responsible for fraudulent vehicle emissions inspections and improved public health and safety, all while carefully considering potential costs to emission inspection stations consistent with department responsibilities.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks 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 the 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.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require the creation of new employee positions nor eliminate current employee positions; will not require an increase or decrease in future legislative appropriations to the agency; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create a new regulation. The proposed rulemaking does expand an existing regulation. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years the proposed rule is in effect, the proposed rule should not impact positively or negatively the state's economy.

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Texas Department of Public Safety, P.O. Box 4087, MSC 0240, Austin, Texas 78773-0240, or by email to [RSD.Rule.Comments@dps.texas.gov](mailto:RSD.Rule.Comments@dps.texas.gov). Email submission only is preferred. 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 Transportation Code, §548.002, which authorizes the Department of Public Safety to adopt rules to enforce Chapter 548; and Texas Transportation Code, §548.258, which authorizes the Department of Public Safety to adopt rules to require an inspection station to use the state electronic Internet portal.

Texas Government Code, §411.004(3), and Texas Transportation Code §548.002, §548.003, §548.258, §548.301, §548.303, and §548.304 are affected by this proposal.

*§23.55. Certified Emissions Inspection Station and Inspector Requirements.*

(a) To be certified by the department as an emissions inspection station for purposes of the emissions inspection and maintenance (I/M) program, the station must:

(1) be certified by the department as an official vehicle inspection station;

(2) comply with this chapter, the DPS Training and Operations Manual for Vehicle Inspection Stations and Certified Inspectors, Texas Transportation Code, Chapter 547 and Chapter 548, and regulations of the department;

(3) complete all applicable forms and reports as required by the department;

(4) purchase or lease emissions testing equipment currently certified by the Texas Commission on Environmental Quality (TCEQ) to emissions test vehicles and maintain existing emissions testing equipment to meet the certification requirements of the TCEQ at the department-approved location unless otherwise authorized by the department;

(5) obtain and maintain in working order a secure internet connection with a single static Internet Protocol (IP) address to be used by all vehicle emissions analyzers at each department-approved location, connected to the Texas Information Management System (TIMS) vehicle identification database at all times for the purposes of performing [have a dedicated data transmission line for each vehicle emissions analyzer to be used to perform] vehicle emissions tests; and

(6) enter into and maintain a business arrangement with the TIMS [Texas Information Management System] contractor to obtain a telecommunications link to the TIMS [Texas Information Management System] vehicle identification database for each vehicle emissions analyzer to be used to inspect vehicles as described in the Texas I/M State Implementation Plan (SIP).

(b) All public certified emissions inspection stations in affected counties shall offer the onboard diagnostic (OBD) test.

(c) The fee for an emissions test must provide for one free retest for each failed initial emissions inspection, provided that the motorist has the retest performed at the same vehicle inspection station where the vehicle originally failed and the retest is conducted within 15 calendar days of the initial emissions test, not including the date of the initial emissions test.

(d) To qualify as a certified emissions inspector, an applicant must:

(1) be certified by the department as an official vehicle inspector;

(2) complete the training required for the vehicle emissions inspection program and receive the department's certification for such training;

(3) comply with the DPS Training and Operations Manual for Official Vehicle Inspection Stations and Certified Inspectors, this chapter, and other applicable rules, regulations and notices of the department; and

(4) complete all applicable forms and reports as required by the department.

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

Filed with the Office of the Secretary of State on April 12, 2024.

TRD-202401497

D. Phillip Adkins  
General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: May 26, 2024

For further information, please call: (512) 424-5848



## SUBCHAPTER F. VIOLATIONS AND ADMINISTRATIVE PENALTIES

### 37 TAC §23.62

The Texas Department of Public Safety (the department) proposes an amendment to §23.62, concerning Violations and Penalty Schedule. The proposed rule amendment adds a violation to the administrative penalty schedule to conform with the proposed changes to §23.55, concerning Certified Emissions Inspection Station and Inspector Requirements.

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, micro-businesses, or rural communities required to comply with the section 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.

Ms. Whittenton has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of this rule will be the enhancement of administrative enforcement against the vehicle inspectors and inspection station owners responsible for fraudulent vehicle emissions inspections.

The department has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks 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 the 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.

The department prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program; will not require the creation of new employee positions nor eliminate current employee positions; will not require an increase or decrease in future legislative appropriations to the agency; nor will it require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create a new regulation. The proposed rulemaking does expand an existing regulation. The

proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years the proposed rule is in effect, the proposed rule should not impact positively or negatively the state's economy.

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Texas Department of Public Safety, P.O. Box 4087, MSC 0240, Austin, Texas 78773-0240, or by email to RSD.Rule.Comments@dps.texas.gov. Email submission only is preferred. 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 Transportation Code, §548.002, which authorizes the Department of Public Safety to adopt rules to enforce Chapter 548; and Texas Transportation Code, §548.405, which authorizes the Public Safety Commission to deny, revoke, or suspend a license.

Texas Government Code, §411.004(3), and Texas Transportation Code §548.002, §548.003, §548.301, §548.303, §548.304, and §548.405 are affected by this proposal.

#### §23.62. *Violations and Penalty Schedule.*

- (a) - (b) (No change.)
- (c) Violation categories are as follows:
  - (1) - (2) (No change.)
  - (3) Category C.
    - (A) - (M) (No change.)

(N) Failing to maintain compliance with the requirements of §23.55 of this title (relating to Certified Emissions Inspection Station and Inspector Requirements) at all times.

(4) - (5) (No change.)

(d) - (j) (No change.)

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

Filed with the Office of the Secretary of State on April 12, 2024.

TRD-202401500

D. Phillip Adkins  
General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: May 26, 2024

For further information, please call: (512) 424-5848



## TITLE 43. TRANSPORTATION

### PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

#### CHAPTER 223. COMPLIANCE AND INVESTIGATIONS [DIVISION]

INTRODUCTION. The Texas Department of Motor Vehicles (department) proposes amendments to 43 Texas Administrative



Code (TAC) Chapter 223, Subchapter A, Fraud, Waste, or Abuse, §§223.1 - 223.3; new §223.5; and the repeal of Subchapter B, Risk-Based Monitoring and Preventing Fraudulent Activity, §223.101.

The proposed amendments would revise the title to Chapter 223 by removing the word "Division." The proposed amendments would also bring the rules into alignment with statute; clarify existing requirements; improve readability by using consistent terminology; update definitions, terms, and references; and more specifically describe the department's methods and procedures. Proposed new §223.5 is necessary to update the department's process for external risk-based monitoring regarding the external users of the department's Registration and Title System (RTS). Proposed new §223.5 would replace Subchapter B, §223.101.

**EXPLANATION.** The department is conducting a review of its rules in Chapter 223 in compliance with Government Code, §2001.039. Notice of the department's plan to review Chapter 223 is published in this issue of the *Texas Register*. As a part of the rule review, the department is proposing necessary revisions as detailed in the following paragraphs.

A proposed amendment would change the title to Chapter 223 to "Compliance and Investigations" by deleting the word "Division." In August of 2021, the department's Compliance and Investigations Division disbanded and became a part of the department's Enforcement Division.

#### Subchapter A. Fraud, Waste, or Abuse

Proposed amendments to §223.1 would clarify the purpose and scope of §223.3 and expand the scope of Subchapter A to include new §223.5 to replace §223.101, which is proposed for repeal. Section 223.3 authorizes county tax assessor-collectors and deputies to report to the department any suspected fraud, waste, or abuse relating to vehicle registration or titling; however, the deputies report suspected fraud, waste, or abuse to the county tax assessor-collector, who then reports it to the department. A proposed amendment to §223.1 would also delete subsection (b) because amended subsection (a) includes the necessary language regarding the purpose and scope of Subchapter A.

Proposed amendments to §223.2(b) would remove the definitions of "CID" and "Director" because both refer to the Compliance and Investigations Division, which has been disbanded and reorganized within the department's Enforcement Division. A proposed amendment to the definition of "county tax assessor-collector" in §223.2(b) would clarify the definition by referring to the person who serves as the assessor-collector of taxes for a Texas county under Article VIII, §14, of the Texas Constitution. A proposed amendment to the definition of "deputy" in §223.2(b) would clarify that Chapter 217 is in Title 43. A proposed amendment to the definition of "RTS" in §223.2(b) would replace the words "Texas Department of Motor Vehicle's" with the word "department's" because the word "department" is defined in Transportation Code, Chapter 501. Section 223.2(a) says the words and terms defined in Transportation Code, Chapter 501 have the same meaning when used in Chapter 223, with certain exceptions. Proposed amendments to §223.2(b) would also re-letter the subsection due to deletions.

A proposed amendment to §223.3(a) and (c) would delete the words "motor vehicle" from the term "motor vehicle dealer" because the word "dealer" is defined in Transportation Code, Chapter 501, but the term "motor vehicle dealer" is not defined in Chapter 501. Proposed amendments to §223.3 would replace

the acronym "CID" with the word "department" to reflect the reorganization within the department. Proposed amendments to §223.3(a) - (c) would remove the words "and possible investigation" as unnecessary. In addition to improving readability, proposed amendments to §223.3(b) would clarify and specify the information that must be included in the detailed narrative that a county tax assessor-collector must submit as part of a request to the department to review suspected fraud, waste, or abuse. A proposed amendment to §223.3(c) would add the word "possible" to be consistent with subsection (a), which includes the word "possible" when referring to suspected fraud, waste, or abuse. A proposed amendment to §223.3(c) would also delete an unnecessary comma. Proposed amendments to §223.3(d) would improve readability by using consistent terminology and removing unnecessary language.

Simultaneously with the proposed repeal of Subchapter B and §223.101, the department proposes new §223.5, which would rewrite, reorganize, clarify and specify the department's external risk-based monitoring system required by Transportation Code, §520.004(4). Proposed new §223.5 would subject all Texas county tax assessor-collectors, their contractor's staff, and their deputies, which are external RTS users, to periodic examination to determine whether to assign the RTS user a classification of priority or non-priority. Based on the examination, the department will classify each county tax assessor-collector, each of their contractor's staff, and each deputy as priority or non-priority for the purposes of prioritizing reviews to determine whether there is evidence of fraud by a county tax assessor-collector, their contractor's staff, or a deputy. This classification system will allow the department to determine how to use its limited resources most efficiently to investigate and prevent fraud.

Proposed new §223.5(a) would set out the factors the department considers in classifying a tax assessor-collector, their contractor's staff, or deputy as a priority or non-priority. These proposed factors would reflect the department's current practices in assessing whether to investigate a particular county tax assessor-collector, their contractor's staff, or deputy.

Proposed new §223.5(b) would document the department's goal that each county tax assessor-collector, each of their contractor's staff, or each deputy who is classified as a priority will be reviewed at least once per year; and if classified as a non-priority, a county tax assessor-collector, their contractor's staff person, or deputy will be reviewed at least once every two years. This goal would create predictability for the department, county tax assessor-collectors, their contractor's staff, and deputies; ensure that all county tax assessor-collectors, their contractor's staff, and deputies are reviewed regularly; and allow the department to prioritize its limited resources toward higher-priority reviews.

Proposed new §223.5(c) specifies that the examinations under this section may be virtual, on premises at the county tax assessor-collector's, their contractor's staff person's, or deputy's location, or a combination of both. Allowing virtual examinations would save the department resources and would be more convenient for county tax assessor-collectors.

Proposed new §223.5(d) would provide that the department may notify the county tax assessor-collector of possible fraudulent activity in the county tax assessor-collector's office when the department is authorized by law enforcement. This would clarify the limitations on the department's ability to update a county tax assessor-collector about a department investigation of their office.

## Subchapter B. External Risk-Based Monitoring System

The department proposes the repeal of Subchapter B, including §223.101, because the risk-based system of monitoring and preventing fraudulent activity relating to vehicle registration and titling falls within the scope of Subchapter A, which is titled "Fraud, Waste, or Abuse." Also, the definitions in §223.2 apply to the entire Chapter 223, even though §223.2 is contained in Subchapter A. Simultaneously with the repeal of Subchapter B and §223.101, the department proposes new §223.5, which would rewrite, reorganize, clarify, and specify the department's external risk-based system of monitoring and preventing fraudulent activity relating to vehicle registration and titling.

**FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Glenna Bowman, Chief Financial Officer, has determined that for each year of the first five years the proposed amendments, new section, and repeal are in effect, there will be no significant fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. Enforcement Division Director Corrie Thompson has determined that there will be no significant impact on local employment or the local economy as a result of the proposal.

**PUBLIC BENEFIT AND COST NOTE.** Ms. Thompson has also determined that for each year of the first five years the proposed amendments, new section, and repeal are in effect, the anticipated public benefit as a result of enforcing or administering the proposal will be the simplification, clarification, and streamlining of agency rules.

**Anticipated Cost to Comply with the Proposal.** Ms. Thompson anticipates that there will be no costs to comply with the proposed amendments, new section, and repeal.

**ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** As required by Government Code, §2006.002, the department has determined that the proposed amendments will not have an adverse economic impact on small businesses, micro-businesses, and rural communities because there are no anticipated economic costs for persons required to comply with the proposed amendments, new section, and repeal. Therefore, the department is not required to prepare a regulatory flexibility analysis under Government Code, §2006.002.

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

**GOVERNMENT GROWTH IMPACT STATEMENT.** The department has determined that each year of the first five years the proposed amendments, new section, and repeal are in effect, no government program would be created or eliminated. Implementation of the proposed revisions would not require the creation of new employee positions or elimination of existing employee positions. The proposed revisions would not require an increase or decrease in future legislative appropriations to the department or an increase or decrease of fees paid to the department. The proposed revisions do not create a new regulation; however, they expand an existing regulation regarding the department's external risk-based monitoring system of external users of RTS. The proposed revisions do not increase or decrease the number of

individuals subject to the rule's applicability. Lastly, the proposed revisions do not affect this state's economy.

**REQUEST FOR PUBLIC COMMENT.** If you want to comment on the proposal, submit your written comments by 5:00 p.m. CDT on May 28, 2024. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to [rules@txdmv.gov](mailto:rules@txdmv.gov) or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

## SUBCHAPTER A. FRAUD, WASTE, OR ABUSE

### 43 TAC §§223.1 - 223.3

#### STATUTORY AUTHORITY.

The proposed amendments are proposed under Transportation Code, §520.004, which requires the department by rule to establish a risk-based system of monitoring and preventing fraudulent activity related to vehicle registration and titling in order to efficiently allocate resources and personnel; Transportation Code, §520.010, which authorizes the department to perform an audit and investigation related to registration and titling services; and Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

#### CROSS REFERENCE TO STATUTE.

The proposed amendments would implement Transportation Code, §520.004, §520.010 and Chapter 1002.

#### §223.1. Purpose and Scope.

[(a)] The purpose of this subchapter is to establish the following:

(1) procedures for county tax assessor-collectors and deputies to report suspected fraud, waste, or abuse to the department relating to vehicle registration or titling; and[-]

(2) a risk-based monitoring system for the department to monitor county tax assessor-collectors and their deputies who use RTS.

[(b)] This subchapter applies to a county tax assessor-collector, an employee of a county tax assessor-collector, or a deputy, who wishes to report suspected fraud, waste, or abuse to the Texas Department of Motor Vehicles.]

#### §223.2. Definitions.

(a) The words and terms defined in Transportation Code, Chapter 501, have the same meaning when used in this chapter, except as otherwise provided by this chapter, unless the context clearly indicates otherwise.

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

[(1)] CID--the Compliance and Investigations Division of the Texas Department of Motor Vehicles.]

(1) [(2)] County tax assessor-collector--the person who serves as the assessor-collector of taxes for a Texas county under Article VIII, §14, of the Texas Constitution, as well as [includes] an employee of a county tax assessor-collector.

(2) [(3)] Deputy--a full service deputy under Chapter 217, Subchapter H of this title (relating to Vehicle Titles and Registration).

~~[(4) Director--the director of the Compliance and Investigations Division.]~~

(3) [(5)] RTS--the department's [Texas Department of Motor Vehicle's] registration and title system.

§223.3. *Submission of Request.*

(a) A county tax assessor-collector who suspects possible fraud, waste, or abuse by an employee, [motor vehicle] dealer, deputy, or any person transacting motor vehicle-related business for or with the county may submit a request to the department [CHD] for review [and possible investigation]. The department [CHD] may forward a submission to an appropriate law enforcement entity.

(b) To submit a request to the department [CHD] for review [and possible investigation], the county tax assessor-collector must:

(1) request a rejection of the suspected transaction through a department regional service center; and

(2) mail or e-mail the following documents and information, as applicable, to the department [CHD] in an envelope or e-mail message marked "Red Flag":

(A) the original transaction;

(B) a detailed narrative, including:

(i) the name of a contact person with the county tax assessor-collector, including email address and phone number;

(ii) the name of the employee submitting the request [transaction to the CHD];

(iii) a statement as to why the transaction is suspect [was flagged];

(iv) information about the employee or deputy [if the employee or deputy is] suspected of committing fraud, waste, or abuse;

(v) any statements made by the customer submitting the suspect transaction;

(C) any available video surveillance footage; and

(D) any other relevant evidence or information pertaining to the transaction.

(c) If a deputy suspects possible fraud, waste, or abuse[,] by an employee, [motor vehicle] dealer, or any person transacting motor vehicle-related business for or with the deputy, the deputy must report the suspected fraud, waste, or abuse to the county tax assessor-collector. The county tax assessor-collector may then submit a request to the department [CHD] for review [and possible investigation] in accordance with subsection (b) of this section.

(d) If the department [CHD] determines it will not open [conduet] an investigation after reviewing a submitted request [submitted by a county tax assessor-collector], the department [CHD] will notify [provide a notification to] the submitting county tax assessor-collector.

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 April 11, 2024.

TRD-202401483

Laura Moriarty

General Counsel

Texas Department of Motor Vehicles

Earliest possible date of adoption: May 26, 2024

For further information, please call: (512) 465-4160



**43 TAC §223.5**

**STATUTORY AUTHORITY.**

The new provision is proposed under Transportation Code, §520.004, which requires the department by rule to establish a risk-based system of monitoring and preventing fraudulent activity related to vehicle registration and titling in order to efficiently allocate resources and personnel; Transportation Code, §520.010, which authorizes the department to perform an audit and investigation related to registration and titling services; and Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

**CROSS REFERENCE.**

The proposed new provision would implement Transportation Code, §520.004, §520.010 and Chapter 1002.

§223.5. External Risk-Based Monitoring System.

(a) All county tax assessor-collectors, their contractor's staff, and the deputies who use RTS are subject to periodic examination by the department. As a result of the examination, the department will classify each county tax assessor-collector, each of their contractor's staff, and each deputy as priority or non-priority for the purposes of prioritizing reviews to determine whether there is evidence of fraud by the county tax assessor-collector, their contractor's staff, or a deputy. In classifying a county tax assessor-collector, their contractor's staff, or a deputy, the department may consider factors, including, but not limited to:

(1) referrals or complaints received from partner state agencies;

(2) referrals or complaints received from public safety agencies;

(3) the retirement, resignation, or impeachment of the county tax assessor-collector;

(4) a contingency that disrupted county motor vehicle title and registration operations, such as a natural disaster or the theft or the burglary of a county tax assessor-collector's premises;

(5) previous compliance review designations;

(6) previous instances of non-compliance; and

(7) a complaint filed through an internal reporting mechanism, such as a Red Flag referral, telephone call, or an email received by the department's Consumer Relations Division (CRD), or any other means of communication with the department.

(b) It is the department's goal to review each county tax assessor-collector, each of their contractor's staff, and each deputy as follows:

(1) if the county tax assessor-collector, their contractor's staff person, or deputy is classified as a priority, they will be reviewed at least once per year; or

(2) if the county tax assessor-collector, their contractor's staff person, or deputy is classified as a non-priority, they will be reviewed at least once every two years.

(c) Examinations under this section may be virtual, on premises at the county tax assessor-collector's, their contractor's staff person's, or deputy's location, or a combination of both.

(d) The department may notify the county tax assessor-collector of possible fraudulent activity in the county tax assessor-collector's office when the department is authorized by law enforcement.

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 April 11, 2024.

TRD-202401484

Laura Moriaty

General Counsel

Texas Department of Motor Vehicles

Earliest possible date of adoption: May 26, 2024

For further information, please call: (512) 465-4160



**SUBCHAPTER B. RISK-BASED  
MONITORING AND PREVENTING  
FRAUDULENT ACTIVITY**

**43 TAC §223.101**

STATUTORY AUTHORITY.

The repeal is proposed under Transportation Code, §520.004, which requires the department by rule to establish a risk-based system of monitoring and preventing fraudulent activity related to vehicle registration and titling in order to efficiently allocate resources and personnel; Transportation Code, §520.010, which authorizes the department to perform an audit and investigation related to registration and titling services; and Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. The proposed repeal would implement Transportation Code, §520.004, §520.010 and Chapter 1002.

*§223.101. External Risk-Based Monitoring System.*

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 April 11, 2024.

TRD-202401485

Laura Moriaty

General Counsel

Texas Department of Motor Vehicles

Earliest possible date of adoption: May 26, 2024

For further information, please call: (512) 465-4160



# ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

## TITLE 25. HEALTH SERVICES

### PART 1. DEPARTMENT OF STATE HEALTH SERVICES

#### CHAPTER 265. GENERAL SANITATION SUBCHAPTER L. PUBLIC SWIMMING POOLS AND SPAS

##### 25 TAC §265.190

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of State Health Services (DSHS), adopts an amendment to §265.190, concerning Safety Features for Pools and Spas.

Section 265.190 is adopted without changes to the proposed text as published in the January 19, 2024, issue of the *Texas Register* (49 TexReg 236). This rule will not be republished.

##### BACKGROUND AND JUSTIFICATION

The amendment is necessary to comply with Texas Health and Safety Code §341.0645, which requires DSHS adopt pool safety standards necessary to prevent drowning. The amendment revises the requirement for pool and spa signs to clarify that prohibiting persons under the age of 14 years from being in a pool or spa without adult supervision applies only to pools and spas where a lifeguard is not required or provided.

This long-standing provision was inadvertently removed during amendments to Texas Administrative Code (TAC), Title 25, Chapter 265, Subchapter L in 2021. The amendment restores the language that had been in place since at least 1999. The amendment also clarifies lighting requirements and makes editorial changes for clearer language.

##### COMMENTS

The 31-day comment period ended February 19, 2024.

During this period, DSHS received comments regarding the proposed rule from seven commenters, including Live Like Cati, Naomi's Grace, Fort Worth Park and Recreation, Houston Swim Club, Robert's Pool Service, Inc., National Drowning Prevention Alliance, and Fort Worth Drowning Prevention Coalition. A summary of comments relating to the rule and DSHS's responses follows.

Comment: All commenters suggested that the pool and spa sign revisions be reversed because the revision will allow parents of children under the age of 14 to drop their children off at pools and rely on lifeguards for supervision. Two commenters remarked that the lifeguards would be used as babysitters. Commenters were also concerned that this change would result in an

increase of accidents and drowning. One commenter mentioned that drowning is the leading cause of death for children between the ages of 1 - 4 years.

Response: DSHS respectfully disagrees and declines to revise the rule in response to these comments. As noted above, the language is being restored after it was inadvertently removed during a previous rule amendment.

The purpose of the Public Swimming Pools and Spas Rule under 25 TAC Chapter 265, Subchapter L is to establish minimum standards for swimming pools and spas concerning pool operation and management, water quality, safety standards unrelated to design and construction, signage, enclosures, and safety features. This is intended to reduce the possibility of drowning or injury to a practical minimum and provide guidance for safe pool operation consistent with best practices common to most states and the Model Aquatic Health Code.

In addition, the amended rule does not prohibit a local regulatory authority's ability to adopt more stringent requirements for pools and spas within their jurisdiction, as described in 25 TAC Subchapter L §265.181(g).

Comment: One commenter suggested adding a definition for "adult supervision."

Response: DSHS disagrees and declines to revise the rule in response to this comment. Texas recognizes 18 years as the age when residents are legally considered adults as provided in Texas Civil Practice and Remedies Code §129.001 and the use of "supervision" in the rule does not go beyond the common dictionary definition of the term.

##### STATUTORY AUTHORITY

The amendment is adopted under Texas Health and Safety Code §341.002, which authorizes the Executive Commissioner of HHSC to adopt rules and establish standards and procedures for the management and control of sanitation and for health protection measures; and Texas Government Code §531.0055 and Texas Health and Safety Code §1001.075, which authorize the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code Chapter 1001.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 12, 2024.

TRD-202401551

Cynthia Hernandez  
General Counsel  
Department of State Health Services  
Effective date: May 2, 2024  
Proposal publication date: January 19, 2024  
For further information, please call: (512) 834-6787

◆ ◆ ◆  
**TITLE 37. PUBLIC SAFETY AND CORRECTIONS**

**PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY**

**CHAPTER 6. LICENSE TO CARRY HANDGUNS**

**SUBCHAPTER B. ELIGIBILITY AND APPLICATION PROCEDURES FOR A LICENSE TO CARRY A HANDGUN**

**37 TAC §6.17**

The Texas Department of Public Safety (the department) adopts amendments to §6.17, concerning Designations. This rule is adopted without changes to the proposed text as published in the March 1, 2024, issue of the *Texas Register* (49 TexReg 1244) and will not be republished.

The proposed amendments add additional designations on a license to carry a handgun, clarifying the requirements for each designation, and renaming the rule accordingly as "Designations."

No comments were received regarding the adoption of this rule.

This rule is adopted 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 Government Code §411.197, which authorizes the director to adopt rules to administer this subchapter; and Texas Government Code §411.179, which authorizes the department to adopt the form of the license by rule, for which House Bill 918 and House Bill 2675, 87th Leg., R.S. (2021), added designations for individuals who have a protective order or are at-risk of becoming a victim of violence.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 12, 2024.

TRD-202401504  
D. Phillip Adkins  
General Counsel  
Texas Department of Public Safety  
Effective date: May 2, 2024  
Proposal publication date: March 1, 2024  
For further information, please call: (512) 424-5848

◆ ◆ ◆  
**TITLE 43. TRANSPORTATION**

**PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES**

**CHAPTER 206. MANAGEMENT**

**INTRODUCTION.** The Texas Department of Motor Vehicles (department) adopts amendments to 43 Texas Administrative Code (TAC) Chapter 206, Subchapter A, Organization and Responsibilities, §206.1 and §206.2; Subchapter B, Public Meetings and Hearings, §206.22 and §206.23; Subchapter C, Procedure for Petition to Adopt Rules, §206.41; Subchapter E, Advisory Committees, §206.92 and §206.93; Subchapter F, Department Vehicle Fleet Management, §206.111; Subchapter G, Electronic Signatures, §206.131; and Subchapter H, Risk-Based Monitoring and Preventing Fraudulent Activity, §206.151. In conjunction with these amendments, the department adopts the repeal of Subchapter D, Procedures in Contested Cases. In addition, the department adopts new §206.101 in Subchapter E.

The department adopts amendments to §§206.1, 206.41, and 206.111 without changes to the proposed text as published in the December 29, 2023, issue of the *Texas Register* (48 TexReg 8192) and will not be republished. The department adopts §§206.2, 206.22, 206.23, 206.92, 206.93, 206.101, 206.131 and 206.151 with changes to the proposed text as published in the December 29, 2023, issue of the *Texas Register* (48 TexReg 8192) and will be republished. In response to comments made by the Texas Independent Automobile Dealers Association (TIADA), the department made a nonsubstantive amendment to §206.2(a)(2)(C) to delete the word "and" at the end of the clause, and the department made a substantive amendment to §206.22(a)(1) to clarify that a person speaking before the board on an agenda item will be allowed an opportunity to speak prior to any motion by the board on the agenda item. The remainder of the changes made at adoption are described in the following paragraphs of this preamble.

**REASONED JUSTIFICATION.**

**Subchapter A. Organization and Responsibilities**

The adopted amendments to Subchapter A clarify the authority of the executive director and delete rule text that is redundant with statute. The adopted amendments to §206.1 cite the statutory provision from which the executive director receives authority to delegate certain functions to staff within the department and clarify that such delegation must be consistent with applicable law.

The adopted amendments to §206.2(a) clarify that the executive director hires and oversees the department's general counsel, and align the rule text with Transportation Code, §1001.041 and §1001.0411. In response to a comment from TIADA, the department adopts §206.2(a)(2)(C) with a change at adoption to remove the misplaced "and" after the semicolon at the end of the clause. The adopted amendment to §206.2(a)(3) removes unnecessary limitations on the executive director's powers to delegate to staff. The adopted amendment to §206.2(b) removes an unnecessary and redundant citation to the title of Government Code, Chapter 551. The adopted amendments strike §206.2(c) because it is duplicative of Transportation Code, §1001.004.

**Subchapter B. Public Meetings and Hearings**

In response to a comment from TIADA, the department adopts §206.22(a)(1) with a change at adoption to substitute the word "motion" for the word "vote" to require the board to take public comment on an agenda item before entertaining a motion on

that agenda item. This change will give the board members the benefit of any public comments on an agenda item, which may impact the board members' decisions regarding a proposed motion. Adopted amendments to §206.22 delete subsection (f) and remove a cross-reference to it because its provisions on contested cases are combined with the department's other rules on contested cases in new Chapter 224, Adjudicative Practice and Procedure, which is adopted in this issue of the *Texas Register*. Adopted amendments to §206.22(b) and (c) simplify and clarify the language, revise existing terminology for consistency with other department rules, and revise the rule text for consistency with current practice. Adopted amendments to §206.22(b)(3) and (d) clarify that public comments, rather than full presentations by the public, are allowed at board meetings. The department adopts §206.22(c) with changes at adoption to clarify that a person who has special communication or accommodation needs and who plans to attend a board meeting may contact the department's contact listed in the posted meeting agenda for the purpose of requests for auxiliary aids or services. At adoption, the department also deleted reference to contacting the department in Austin because the language was vague.

The department adopts amendments to §206.23(b) to clarify and streamline the language without changing its meaning. An adopted amendment to §206.23(c)(1) allows the executive director to designate another person to ask questions of speakers at a public hearing, to allow the executive director flexibility to delegate. The adopted amendments to §206.23(c)(4) clarify that the executive director or his designee may represent the department in a public hearing, as well as the board chair or presiding officer. Amendments to §206.23(d) are necessary to remove the term "with disabilities" and to clarify that anyone with special communication or accommodation needs who plans to attend public hearings under this section may contact the department to request auxiliary aids or services. The department adopts §206.23(d) with changes at adoption to clarify that a person who has special communication or accommodation needs and who plans to attend a public hearing under this section may contact the department's contact listed in the public hearing notice for the purpose of requests for auxiliary aids or services, regardless of whether the public hearing will be conducted by the board, the executive director, or the executive director's designee. There is no need to have a different process for a person to request auxiliary aids or services for a public hearing, depending on whether the public hearing will be conducted by the board or the executive director or designee. At adoption, the department also deleted reference to contacting the department in Austin because the language was vague.

#### Subchapter C. Procedure for Petition to Adopt Rules

The adopted amendments to Subchapter C, §206.41 streamline and clarify the procedure for submitting to the department a petition to adopt rules under Texas Government Code, §2001.021, clarify the required content of a petition, and remove unnecessary language.

#### Subchapter D. Procedures in Contested Cases

The department adopts the repeal of Subchapter D, Procedures in Contested Cases, to consolidate all of the department's contested case rules into new Chapter 224, Adjudicative Practice and Procedure, which the department adopts in this issue of the *Texas Register*. Adopted amendments also reletter the remaining subchapters in Chapter 206.

#### Subchapter E. Advisory Committees

An adopted amendment reletters Subchapter E to Subchapter D because the department adopts the repeal of current Subchapter D and reletters the subsequent subchapters accordingly.

An adopted amendment to §206.92 deletes the definition of "division director" because the term is not used elsewhere in the subchapter. An adopted amendment to §206.92 also renumbers the paragraphs accordingly due to the deletion of the definition of "division director."

The department adopts §206.92(1) with changes at adoption. The department decapitalized the word "committee" in §206.92(1) because the term "advisory committee" isn't capitalized in the subchapter, except when it is used as part of the name of an advisory committee. The department also added the word "to" before the words "the executive director" in §206.92(1).

The department adopts §206.93(a) with a change at adoption to indicate that the department is deleting the word "the" before the term "executive director." The department adopts amendments to §206.93(b) and the deletion of §206.93(c) to streamline and clarify the qualifications and appointment requirements for advisory committee members into one subsection. The department adopts §206.93(b) with a change at adoption to replace the reference to subsection (i) with a reference to subsection (h) of this section regarding the reporting of the advisory committee's recommendations to the board. The department also adopts the deletion of §206.93(c) to remove certain language that is redundant with statutory requirements. Adopted amendments to relettered §206.93(f) and (g), remove unnecessary statutory titles. The department adopts the deletion of subsection (i) because new §206.101 addresses public access to advisory committee meetings. The adopted amendments to relettered §206.93(i) clarify that both the executive director and the board shall consider an advisory committee's recommendations in developing policy, and remove an unnecessary reference to an advisory committee's reports. The adopted amendments delete §206.93(m) to remove unnecessary language that is duplicative of Texas Government Code, §2110.008. Adopted amendments reletter the subsections of §206.93 due to deletions of subsections.

Adopted new §206.101 clarifies the requirements and parameters for public comment during advisory committee meetings. Adopted new §206.101 closely parallels the requirements for public comments during board meetings in §206.22 (relating to Public Access to Board Meetings). Additionally, adopted new §206.101 allows each public commenter three minutes to comment on any advisory committee agenda item or in an open comment period on any topic within the scope of the specific advisory committee. The department adopts new §206.101(a)(1) with a change at adoption to clarify that a person speaking before the advisory committee on an agenda item will be allowed an opportunity to speak prior to any motion by the advisory committee on the agenda item. This change to new §206.101 will give the advisory committee members the benefit of any public comments on an agenda item, which may impact the advisory committee members' decisions regarding a proposed motion. This change to new §206.101(a)(1) makes the language consistent with §206.22(a)(1), which the department amends at adoption in response to a comment from TIADA that requested public comment be allowed prior to a board motion. The department adopts new §206.101(a)(1) with a change at adoption to clarify that a person who has special communication or accommodation needs and who plans to attend an advisory committee meeting

may contact the department's contact listed in the posted meeting agenda for the purpose of requests for auxiliary aids or services. This change at adoption is consistent with the changes the department made to §206.22(c) and §206.23(d). Adopted new §206.101(d) sets requirements for conduct and decorum at advisory committee meetings to assist the acting advisory committee chair in maintaining order; these requirements mirror the same requirements for conduct and decorum at board meetings under §206.22(d). Adopted new §206.101(e) allows the acting advisory committee chair flexibility to waive any requirements of §206.101 as necessary to allow the advisory committee or the department to perform their responsibilities. Adopted new §206.101 allows the acting advisory committee chairs to remain responsive to the need for public comment without unnecessarily encumbering the public comment process. Adopted new §206.101 does not allow written public comment for advisory committee meetings to streamline the process, provide a consistent method of receiving comments, and ensure that advisory committee members are able to ask follow-up questions of the commenters.

#### Subchapter F. Department Vehicle Fleet Management

An adopted amendment reletters Subchapter F to Subchapter E because the department adopts the repeal of current Subchapter D and reletters the subsequent subchapters accordingly.

An adopted amendment to §206.111 clarifies that a written documented finding must be signed by the executive director to support an assignment of a department fleet vehicle to an individual employee on an everyday basis.

#### Subchapter G. Electronic Signatures

An adopted amendment reletters Subchapter G to Subchapter F because the department adopts the repeal of current Subchapter D and reletters the subsequent subchapters accordingly. An adopted amendment to §206.131 also renames the title of the subchapter from "Electronic Signatures" to "Digital Certificates" for accuracy and consistency.

Adopted amendments to §206.131(d)(2)(A) clarify that a personal identification certificate with a photograph must be unexpired to qualify as an acceptable form of identity verification. An adopted amendment to §206.131(d)(2)(B) deletes a concealed handgun license as an acceptable form of identification because such license is no longer required by law. Adopted amendments to §206.131(d)(2)(E) and (G) correct the name of the federal agency that issues a Form I-94. An adopted amendment to §206.131(g) clarifies that the rule refers to digital certificates. The department adopts §206.131(h)(1) with a change at adoption to add the word "digital" before the word "certificate" for clarity. Adopted amendments to §206.131(i) substitute the word "certificate" for "signature" and reword the second sentence to increase consistency and accuracy.

#### Subchapter H. Risk-Based Monitoring and Preventing Fraudulent Activity

An adopted amendment reletters Subchapter H to Subchapter G because the department adopts the repeal of Subchapter D and reletters the subsequent subchapters accordingly.

Adopted amendments to §206.151 clarify and specify the department's internal risk-based monitoring system required by Transportation Code, §520.004(4). The department adopts §206.151(a) with changes at adoption to clarify that it applies to the department's users of the department's Registration and Title System (RTS), regardless of whether the department's

users are accessing RTS at the one of the department's offices or remotely from a non-department location. At adoption, the department moved the phrase "Texas Department of Motor Vehicles (department)" from the middle of the first sentence to the beginning portion of the first sentence after the word "All."

The adopted amendments to §206.151 will subject internal users of the department's RTS to periodic examination to determine whether to classify the user as priority or nonpriority. The adopted amendments to §206.151 are necessary to allow the department to prioritize those examinations based on each user's assigned classification of priority or non-priority. Adopted amendments to §206.151 set out the factors the department considers in classifying an internal RTS user as a priority or non-priority user. Additionally, the adopted amendments set minimum goals for frequency of inspections to create more predictability for RTS users, providing that RTS users who are classified as a priority will be inspected not less than twice per year, and that RTS users classified as a non-priority will be inspected not less than once per year. The adopted amendments further provide that the inspections may be virtual, on premises at the RTS user's location, or a combination of both, to give the department flexibility to conserve resources when possible.

Additional nonsubstantive amendments are adopted throughout Chapter 206 to correct punctuation, grammar, and capitalization; and to renumber or reletter as necessary.

#### SUMMARY OF COMMENTS.

The department received comments from TIADA.

Comment: TIADA recommended the deletion of the word "and" at the end of §206.2(a)(2)(C).

Response: The department agrees. The department adopts a change to the proposed text at adoption to remove the word "and" at the end of §206.2(a)(2)(C).

Comment: TIADA recommends that the department modify §206.22(a)(1) to ensure that public comment is allowed prior to board members making motions on an agenda item.

Response: The department agrees. The department adopts a change to the proposed text at adoption to replace the word "vote" with "motion" in §206.22(a)(1).

## SUBCHAPTER A. ORGANIZATION AND RESPONSIBILITIES

### 43 TAC §206.1, §206.2

#### STATUTORY AUTHORITY.

The department adopts amendments to Chapter 206 under Transportation Code, §1001.041, which requires the executive director to appoint deputies, assistants and other personnel, including a general counsel; Transportation Code, §1001.0411(b), which allows the executive director to delegate duties or responsibilities; Transportation Code, §1001.0411(c), which requires the executive director to hire and oversee a general counsel to advise the department; Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; and the statutory authority referenced throughout this preamble and in the rule text, which is incorporated by reference.



CROSS REFERENCE TO STATUTE. The adopted amendments implement Government Code, §2001.004; and Transportation Code, Chapters 1001 and 1002.

§206.2. *Texas Department of Motor Vehicles.*

(a) Executive director.

(1) To assist in discharging the duties and responsibilities of the executive director, the executive director may organize, appoint, and retain administrative staff.

(2) The executive director shall:

(A) serve the board in an advisory capacity, without vote;

(B) submit to the board quarterly, annually, and biennially, detailed reports of the progress of the divisions and a detailed statement of expenditures;

(C) hire, promote, assign, reassign, transfer, and, consistent with applicable law and policy, terminate staff necessary to accomplish the roles and missions of the department;

(D) hire and oversee a general counsel to advise the department; and

(E) perform other responsibilities as required by law or assigned by the board.

(3) The executive director may, consistent with applicable law, delegate one or more of the functions listed under paragraph (2) of this subsection to the staff of the department.

(b) Department staff. The staff of the department, under the direction of the executive director, is responsible for:

(1) implementing the policies and programs of the board by:

(A) formulating and applying operating procedures; and

(B) prescribing such other operating policies and procedures as may be consistent with and in furtherance of the roles and missions of the department;

(2) providing the chair and board members administrative support necessary to perform their respective duties and responsibilities;

(3) preparing an agenda under the direction of the chair and providing notice of board meetings and hearings as required by Government Code, Chapter 551; and

(4) performing all other duties as prescribed by law or as assigned by the board.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 12, 2024.

TRD-202401494

Laura Moriaty

General Counsel

Texas Department of Motor Vehicles

Effective date: June 1, 2024

Proposal publication date: December 29, 2023

For further information, please call: (512) 465-4160



## SUBCHAPTER B. PUBLIC MEETINGS AND HEARINGS

### 43 TAC §206.22, §206.23

#### STATUTORY AUTHORITY.

The department adopts amendments to Chapter 206 under Transportation Code, §1001.0411(b), which allows the executive director to delegate duties or responsibilities; Transportation Code, §1004.002, which requires the board and the department to develop and implement policies that provide the public with a reasonable opportunity to appear before the board or the department and to speak on any issue under the jurisdiction of the board or the department; Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; and the statutory authority referenced throughout this preamble and in the rule text, which is incorporated by reference.

CROSS REFERENCE TO STATUTE. The adopted amendments implement Government Code, §2001.004; and Transportation Code, Chapters 1001, 1002 and 1004.

§206.22. *Public Access to Board Meetings.*

(a) Posted agenda items. A person may speak before the board on any matter on a posted agenda by submitting a request, in a form and manner as prescribed by the department, prior to the matter being taken up by the board. A person speaking before the board on an agenda item will be allowed an opportunity to speak:

(1) prior to a motion by the board on the item; and

(2) for a maximum of three minutes, except as provided in subsections (d)(6) and (e) of this section.

(b) Open comment period.

(1) At each regular board meeting, the board shall allow an open comment period to receive public comment on any other matter that is under the jurisdiction of the board.

(2) A person wanting to speak to the board under this subsection shall complete a registration form, as provided by the department, prior to the beginning of the open comment period.

(3) Except as provided in subsections (d)(6) and (e) of this section, each person shall be allowed to speak for a maximum of three minutes in the order in which requests to speak were received.

(c) Disability accommodation. Persons who have special communication or accommodation needs and who plan to attend a meeting, may contact the department's contact listed in the posted meeting agenda for the purpose of requests for auxiliary aids or services. Requests shall be made at least two days before a meeting. The department shall make every reasonable effort to accommodate these needs.

(d) Conduct and decorum. The board shall receive public input as authorized by this section, subject to the following guidelines.

(1) Questioning of speakers shall be reserved to board members and the department's administrative staff.

(2) Organizations, associations, or groups are encouraged to present their commonly held views, and same or similar comments, through a representative member where possible.

(3) Comments shall remain pertinent to the issue being discussed.

(4) A person who disrupts a meeting shall leave the meeting room and the premises if ordered to do so by the chair.

(5) Time allotted to one speaker may not be reassigned to another speaker.

(6) The time allotted for comments under this section may be increased or decreased by the chair, or in the chair's absence, the vice chair, as may be appropriate to assure opportunity for the maximum number of persons to appear.

(e) Waiver. Subject to the approval of the chair, a requirement of this section may be waived in the public interest if necessary for the performance of the responsibilities of the board or the department.

*§206.23. Public Hearings.*

(a) The board may hold public hearings:

(1) to consider the adoption of rules;

(2) in accordance with the programs operated by the department; and

(3) to provide, when deemed appropriate by the board or when otherwise required by law, for public input regarding any other issue under the jurisdiction of the board.

(b) The executive director or designee may hold public hearings under subsection (a)(2) and (3) of this section.

(c) Public hearings shall be conducted in a manner that maximizes public access and input while maintaining proper decorum and orderliness, and shall be governed by the following guidelines:

(1) Questioning of those making presentations shall be reserved to board members, the executive director, the executive director's designee, or if applicable, the presiding officer.

(2) Organizations, associations, or groups are encouraged to present their commonly held views and same or similar comments through a representative member where possible.

(3) Presentations shall remain pertinent to the issue being discussed.

(4) A person who disrupts a public hearing shall leave the hearing room and the premises if ordered to do so by the chair, the executive director, the executive director's designee, or, if applicable, the presiding officer.

(5) Time allotted to one speaker may not be assigned to another speaker.

(d) Persons who have special communication or accommodation needs and who plan to attend a public hearing under this section may contact the department's contact listed in the public hearing notice for the purpose of requests for auxiliary aids of services. Requests shall be made at least two days before the hearing. The department shall make every reasonable effort to accommodate these needs.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 12, 2024.

TRD-202401495

Laura Moriaty

General Counsel

Texas Department of Motor Vehicles

Effective date: June 1, 2024

Proposal publication date: December 29, 2023

For further information, please call: (512) 465-4160

◆ ◆ ◆  
**SUBCHAPTER C. PROCEDURE FOR  
PETITION TO ADOPT RULES**

**43 TAC §206.41**

**STATUTORY AUTHORITY.**

The department adopts amendments to Chapter 206 under Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; Government Code, §2001.021(b), which requires state agencies to adopt rules that prescribe the form and procedures for a petition for rulemaking; Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; and the statutory authority referenced throughout this preamble and in the rule text, which is incorporated by reference.

**CROSS REFERENCE TO STATUTE.** The adopted amendments implement Government Code, §2001.021(b); and Transportation Code, Chapters 1001 and 1002.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 12, 2024.

TRD-202401496

Laura Moriaty

General Counsel

Texas Department of Motor Vehicles

Effective date: June 1, 2024

Proposal publication date: December 29, 2023

For further information, please call: (512) 465-4160

◆ ◆ ◆  
**SUBCHAPTER D. PROCEDURES IN  
CONTESTED CASES**

**43 TAC §§206.61 - 206.73**

**STATUTORY AUTHORITY.**

The department adopts repeals to Chapter 206 under Government Code, §2001.039 which requires state agencies to readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule; Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; and Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. The adopted repeals implement Government Code, §2001.004 and §2001.039; and Transportation Code, Chapters 1001 and 1002.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 12, 2024.

TRD-202401498

Laura Moriaty

General Counsel

Texas Department of Motor Vehicles

Effective date: June 1, 2024

Proposal publication date: December 29, 2023

For further information, please call: (512) 465-4160



## SUBCHAPTER D. ADVISORY COMMITTEES

### 43 TAC §§206.92, 206.93, 206.101

#### STATUTORY AUTHORITY.

The department adopts amendments to Chapter 206 and adopts new §206.101 under Transportation Code, §643.155, which authorizes the department to adopt rules to create a rules advisory committee consisting of the public, the department, and representatives of motor carriers transporting household goods using small, medium, and large equipment; Transportation Code, §1001.031, which requires the board to establish advisory committees; Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; Government Code, Chapter 2110, which sets out the requirements for advisory committees and requires that the agency make rules to establish the purpose and tasks of the committee and the manner in which the committee will report to the agency; and the statutory authority referenced throughout this preamble and in the rule text, which is incorporated by reference.

CROSS REFERENCE TO STATUTE. The adopted amendments implement Government Code, §2001.004 and Chapter 2110; and Transportation Code, §643.155 and Chapters 1001 and 1002.

#### §206.92. *Definitions.*

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

- (1) Advisory committee--Any committee created by the board to make recommendations to the board or to the executive director pursuant to Transportation Code, §1001.031 and §643.155.
- (2) Board--The board of the Texas Department of Motor Vehicles.
- (3) Department--The Texas Department of Motor Vehicles.
- (4) Executive director--The chief executive officer of the Texas Department of Motor Vehicles.

(5) Member--An appointed member of an advisory committee created under this subchapter.

(6) Presiding officer--The presiding officer of an advisory committee elected by the membership of the advisory committee created under this subchapter.

#### §206.93. *Advisory Committee Operations and Procedures.*

(a) Role of advisory committee. The role of an advisory committee under this subchapter is to provide advice and recommendations to the board or executive director. Advisory committees shall meet and carry out their functions upon a request from the department or board for advice and recommendations on any issues.

(b) Appointment and qualifications of advisory committee members. The board shall appoint members to an advisory committee in accordance with Transportation Code, §643.155 and §1001.031(b) by selecting potential members from a list provided to the board by the executive director. Board members shall not serve as advisory committee members. Each advisory committee shall elect from its members a presiding officer, who shall report the advisory committee's recommendations to the board or the executive director in accordance with subsection (h) of this section. The executive director may designate a division or divisions of the department to participate with, or to provide subject-matter expertise, guidance, or administrative support to the advisory committee as necessary.

(c) Composition of advisory committees. In making appointments to the advisory committees, the board shall, to the extent practical, ensure representation of members from diverse geographical regions of the state.

(d) Committee size and quorum requirements. An advisory committee shall be composed of a reasonable number of members not to exceed 24 as determined by the board. A simple majority of advisory committee members will constitute a quorum. An advisory committee may only deliberate on issues within the jurisdiction of the department or any public business when a quorum is present.

(e) Terms of service. Advisory committee members will serve terms of four years. A member will serve on the committee until the member resigns, is dismissed or replaced by the board, or the member's term expires.

(f) Member training requirements. Each member of an advisory committee must receive training regarding Government Code, Chapter 551; and Government Code, Chapter 552.

(g) Compliance with Open Meetings. The advisory committee shall comply with Government Code, Chapter 551.

(h) Reporting recommendations. Recommendations of the advisory committee shall be reported to the board at a board meeting prior to board action on issues related to the recommendations. The recommendations shall be in writing and include any necessary supporting materials. The presiding officer of the advisory committee or the presiding officer's designee may appear before the board to present the committee's advice and recommendations. This subsection does not limit the ability of the advisory committee to provide advice and recommendations to the executive director as necessary.

(i) Board and executive director use of advisory committee recommendations. In developing department policies, the board and the executive director shall consider the written recommendations submitted by advisory committees.

(j) Reimbursement. The department may, if authorized by law and the executive director, reimburse advisory committee members for reasonable and necessary travel expenses.

§206.101. *Public Access to Advisory Committee Meetings.*

(a) Posted agenda items. A person may speak before an advisory committee on any matter on a posted agenda by submitting a request, in a form and manner as prescribed by the department, prior to the matter being taken up by the advisory committee. A person speaking before an advisory committee on an agenda item will be allowed an opportunity to speak:

(1) prior to a motion by the advisory committee on the item; and

(2) for a maximum of three minutes, except as provided in subsections (d)(6) and (e) of this section.

(b) Open comment period.

(1) At each regular advisory committee meeting, the advisory committee shall allow an open comment period, not to exceed one hour, to receive public comment on any other matter that is within the scope of the specific advisory committee under §206.94(a) of this title (relating to Motor Vehicle Industry Regulation Advisory Committee (MVIRAC)), §206.95(a) of this title (relating to Motor Carrier Regulation Advisory Committee (MCRAC)), §206.96(a) of this title (relating to Vehicle Titles and Registration Advisory Committee (VTRAC)), §206.97(a) of this title (relating to Customer Service and Protection Advisory Committee (CSPAC)), or §206.98(a) of this title (relating to Household Goods Rules Advisory Committee (HGRAC)).

(2) A person wanting to make a comment under this subsection shall complete a registration form, as provided by the department, prior to the beginning of the open comment period.

(3) Except as provided in subsections (d)(6) and (e) of this section, each person shall be allowed to speak for a maximum of three minutes for each comment in the order in which the requests to speak were received.

(c) Disability accommodation. Persons who have special communication or accommodation needs and who plan to attend a meeting, may contact the department's contact listed in the posted meeting agenda for the purpose of requests for auxiliary aids or services. Requests shall be made at least two days before a meeting. The department shall make every reasonable effort to accommodate these needs.

(d) Conduct and decorum. An advisory committee shall receive public input as authorized by this section, subject to the following guidelines:

(1) questioning of speakers shall be reserved to advisory committee members and the department's administrative staff;

(2) organizations, associations, or groups are encouraged to present their commonly held views, and same or similar comments, through a representative member where possible;

(3) comments shall remain pertinent to the issue being discussed;

(4) a person who disrupts an advisory committee meeting shall leave the meeting room and the premises if ordered to do so by the acting advisory committee chair;

(5) time allotted to one speaker may not be reassigned to another speaker; and

(6) the time allotted for comments under this section may be increased or decreased by the acting advisory committee chair, as may be appropriate to assure opportunity for the maximum number of persons to appear.

(e) Waiver. Subject to the approval of the acting advisory committee chair, a requirement of this section may be waived in the public interest if necessary for the performance of the responsibilities of the advisory committee or the department.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 12, 2024.

TRD-202401499

Laura Moriaty

General Counsel

Texas Department of Motor Vehicles

Effective date: June 1, 2024

Proposal publication date: December 29, 2023

For further information, please call: (512) 465-4160



## SUBCHAPTER E. DEPARTMENT VEHICLE FLEET MANAGEMENT

### 43 TAC §206.111

#### STATUTORY AUTHORITY.

The department adopts amendments to Chapter 206 under Government Code, §2171.1045, which requires state agencies to adopt rules relating to the assignment and use of the agency's vehicles, including a requirement that an agency may assign a vehicle to an individual administrative or executive employee on a regular or everyday basis only if the agency makes a written documented finding that the assignment is critical to the needs and mission of the agency; Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; and Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

CROSS REFERENCE TO STATUTE. The adopted amendments implement Government Code, §2001.004 and §2171.1045; and Transportation Code, Chapters 1001 and 1002.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 12, 2024.

TRD-202401501

Laura Moriaty

General Counsel

Texas Department of Motor Vehicles

Effective date: June 1, 2024

Proposal publication date: December 29, 2023

For further information, please call: (512) 465-4160



## SUBCHAPTER F. DIGITAL CERTIFICATES

### 43 TAC §206.131

#### STATUTORY AUTHORITY.

The department adopts amendments to Chapter 206 under Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; Government Code, §2054.060, which authorizes a digital signature to be used to authenticate a written electronic communication sent to a state agency if the digital signature complies with rules adopted by the Texas Department of Information Resources; and Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. The adopted amendments implement Government Code, §2001.004 and §2054.060; and Transportation Code, Chapter 1002.

§206.131. *Digital Certificates.*

(a) General. This section prescribes the requirements that govern the issuance, use, and revocation of digital certificates issued by the Texas Department of Motor Vehicles (department) for electronic commerce in eligible department programs. The provisions of 1 TAC Chapter 203, Subchapter B govern this section in the event of a conflict between that subchapter and a provision of this section.

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

(1) Business entity--An entity recognized by law through which business is conducted with the department, including a sole proprietorship, partnership, limited liability company, corporation, joint venture, educational institution, governmental agency, or non-profit organization.

(2) Certificate holder--An individual to whom a digital certificate is issued.

(3) Digital certificate--A certificate, as defined by 1 TAC §203.1, issued by the department for purposes of electronic commerce.

(4) Digital signature--Has the same meaning assigned by 1 TAC §203.1.

(5) Division director--The chief administrative officer of a division of the department.

(c) Program authorization. A division director may authorize the use of digital signatures for a particular program based on whether the applicable industries or organizations are using such technology, the frequency of document submission, and the appropriateness for the program. The solicitation documentation for eligible programs will include the information that digital signatures may be used.

(d) Application and issuance of digital certificate.

(1) A request for a digital certificate shall be in writing and shall be signed by the individual authorized by the business entity to request a digital certificate.

(2) The department may request information necessary to verify the identity of the individual requestor or the identity of the individual to whom the certificate is to be issued. To verify identity under this paragraph a person shall present:

(A) an unexpired Texas driver's license or unexpired personal identification certificate with a photograph;

(B) an unexpired license to carry a handgun issued by the Texas Department of Public Safety under Government Code, Chapter 411, Subchapter H;

(C) an unexpired United States passport;

(D) a United States citizenship (naturalization) certificate with identifiable photograph;

(E) an unexpired United States Customs and Border Protection document that:

(i) was issued for a period of at least one year;

(ii) is valid for not less than six months from the date it is presented to the department with a completed application; and

(iii) contains verifiable data and an identifiable photograph;

(F) an unexpired United States military identification card for active duty, reserve, or retired personnel with an identifiable photograph; or

(G) a foreign passport with a valid or expired visa issued by the United States Department of State with an unexpired United States Customs and Border Protection Form I-94:

(i) that was issued for a period of at least one year, is marked valid for a fixed duration, and is valid for not less than six months from the date it is presented to the department with a completed application; or

(ii) that is marked valid for the duration of the person's stay and is accompanied by appropriate documentation.

(3) The department may take actions necessary to confirm that the individual who signed the request is authorized to act on behalf of the business entity, including requiring the individual requestor or the person authorizing the request to personally appear at the department location responsible for the issuing of the certificate.

(4) The department shall issue a digital certificate only to an individual. Information identifying the business entity that authorized the issuance of the certificate may be embedded in the digital certificate.

(e) Refusal to issue a digital certificate. The department shall not issue a digital certificate if the identity of the individual to whom the certificate is to be issued, or the identity of the individual requesting the certificate on behalf of a business entity, cannot be established. The department will not issue a digital certificate if the business entity on whose behalf the request is allegedly being made does not authorize its issuance.

(f) Responsibilities of certificate holder. A certificate holder shall:

(1) maintain the security of the digital certificate;

(2) use the certificate solely for the purpose for which it was issued; and

(3) renew the certificate in a timely manner, if continued use is intended.

(g) Responsibilities of business entity. A business entity is responsible for:

(1) determining what individual may request a certificate for the business entity;

(2) determining to what individual a certificate is to be issued; and

(3) requesting within a reasonable time the revocation of the business entity's digital certificate if the security of the certificate

has been compromised or if the business entity is changing its certificate holder.

(h) Revocation of certificate. The department shall revoke a digital certificate:

(1) upon receipt of a written request for revocation of the business entity's digital certificate, signed by an individual authorized to act on behalf of the business entity for which it was issued;

(2) for suspension or debarment of the individual or business entity; or

(3) if the department has reason to believe that continued use of the digital certificate would present a security risk.

(i) Use of digital certificate.

(1) A digital certificate issued by the department shall only be used for the purpose of digitally signing electronic documents filed with the department. Use of a digital certificate is binding on the individual to whom the certificate was issued and the represented business entity, as if the document were signed manually.

(2) The department may use the digital certificate to identify the certificate holder when granting or verifying access to secure computer systems used for electronic commerce.

(j) Forms. The department may prescribe forms to request, modify, or revoke a digital certificate.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 12, 2024.

TRD-202401502

Laura Moriaty

General Counsel

Texas Department of Motor Vehicles

Effective date: June 1, 2024

Proposal publication date: December 29, 2023

For further information, please call: (512) 465-4160



## SUBCHAPTER G. RISK-BASED MONITORING AND PREVENTING FRAUDULENT ACTIVITY

### 43 TAC §206.151

#### STATUTORY AUTHORITY.

The department adopts amendments to Chapter 206 under Transportation Code, §520.004, which requires the department by rule to establish a risk-based system of monitoring and preventing fraudulent activity related to vehicle registration and titling in order to efficiently allocate resources and personnel; Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; and Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

CROSS REFERENCE TO STATUTE. The adopted amendments implement Government Code, §2001.004; and Transportation Code, §520.004 and Chapters 1001 and 1002.

§206.151. *Internal Risk-Based Monitoring System.*

(a) All Texas Department of Motor Vehicle (department) users of the Registration and Title System (RTS) are subject to periodic examination by the department. As a result of the examination, the department will assign each RTS user a classification of priority or non-priority for the purposes of prioritizing inspections to determine whether there is evidence of fraud by the user. In classifying an RTS user, the department may consider factors including, but not limited to:

(1) the RTS user's transaction volume;

(2) the RTS user's past violations of the department's rules and procedures within the last five years;

(3) title error investigations performed by the department on titles issued by the RTS user;

(4) public complaints received by the department against the RTS user; and

(5) discrepancies in data reflecting the RTS user's transactions.

(b) It is the department's goal to inspect each RTS user as follows:

(1) if the RTS user is classified as priority, the RTS user will be inspected not less than twice per year; or

(2) if the RTS user is classified as non-priority, the RTS user will be inspected not less than once per year.

(c) Inspections under this section may be virtual, on premises at the RTS user's location, or a combination of both.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 12, 2024.

TRD-202401503

Laura Moriaty

General Counsel

Texas Department of Motor Vehicles

Effective date: June 1, 2024

Proposal publication date: December 29, 2023

For further information, please call: (512) 465-4160



## CHAPTER 215. MOTOR VEHICLE DISTRIBUTION

INTRODUCTION. The Texas Department of Motor Vehicles (department) adopts amendments to Subchapter A, General Provisions, §§215.1 and 215.2; repeal of Subchapter B, relating to Adjudicative Practice and Procedure, §§215.21 - 215.24, 215.27, 215.29, 215.30, 215.32, 215.35 - 215.49, 215.55, 215.56, 215.58 - 215.63; amendments to Subchapter C, Licenses, Generally, §§215.82 - 215.85, 215.87, and 215.89; in Subchapter D, Franchised Dealers, Manufacturers, Distributors, and Converters, amendments to §§215.101, 215.103 - 215.106, 215.108 - 215.111, 215.113, and 215.115 - 215.217, repeal of §215.112, and new §§215.102, 215.120, and 215.121; in Subchapter E, General Distinguishing Numbers, amendments

to §§215.131 - 215.133; 215.135, 215.137 - 215.141, 215.144, 215.145, 215.147 - 215.152, 215.154, 215.155, 215.160, and 215.161, repeal of §215.146, and new §215.134 and §215.143; amendments to Subchapter F, Lessors and Lease Facilitators, §§215.171, 215.173 - 215.180; repeal of Subchapter G, Warranty Performance Obligations, §§215.201 - 215.210; amendments to Subchapter H, Advertising, §§215.242, 215.244, 215.249, 215.250, 215.257, 215.261, 215.264, 215.268, and 215.270; repeal of Subchapter I, Practice and Procedure for Hearings Conducted by The State Office of Administrative Hearings, §§215.301 - 215.303, 215.305 - 215.308, 215.310, 215.311, 215.314 - 215.317; and in Subchapter J, Administrative Sanctions, amendments to §215.500, and repeal of §§215.501, 215.502, and 215.505.

The following amended sections are adopted without changes to the proposed text as published in the December 29, 2023, issue of the *Texas Register* (48 TexReg 8202) and will not be republished: §§215.2, 215.83 - 215.85, 215.89, 215.101, 215.103, 215.108, 215.110, 215.115 - 215.117, 215.131, 215.132, 215.137, 215.139, 215.143, 215.149 - 215.152, 215.155, 215.161, 215.171, 215.173, 215.177, 215, 215.180, 215.242, 215.244, 215.257, 215.261, 215.264, 215.268, 215.270, and 215.500.

The following sections are adopted with changes at adoption to the proposed text as published in the December 29, 2023, issue of the *Texas Register* (48 TexReg 8202) and will be republished: §§215.1, 215.82, 215.87, 215.102, 215.104, 215.105, 215.106, 215.109, 215.111, 215.113, 215.120, 215.121, 215.133, 215.134, 215.135, 215.138, 215.140, 215.141, 215.144, 215.145, 215.147, 215.148, 215.154, 215.160, 215.174, 215.175, 215.176, 215.178, 215.179, 215.249, and 215.250.

The following sections are adopted with substantive changes to the proposed text: §§215.82, 215.87, 215.102, 215.105, 215.111, 215.120, 215.121, 215.140, 215.141, 215.144, 215.175, and 215.178. Each substantive change is described in the Explanation of Adopted Amendments and Repeals below and some of these changes are also referenced in the department's response to comments.

The following sections are adopted with nonsubstantive changes to the proposed text: §§215.1, 215.82, 215.102, 215.104, 215.105, 215.106, 215.109, 215.111, 215.113, 215.120, 215.121, 215.133, 215.134, 215.135, 215.138, 215.140, 215.141, 215.144, 215.145, 215.147, 215.148, 215.154, 215.160, 215.174, 215.175, 215.176, 215.178, 215.179, 215.249, and 215.250. Each nonsubstantive change is described in the Explanation of Adopted Amendments and Repeals below.

#### Explanation of adopted amendments and repeals

##### Subchapter A. General Provisions

Adopted amendments to §215.1 and §215.2(a) delete a stray reference to Transportation Code, Chapter 1000, which does not exist. Adopted amendments to §215.1 delete an incomplete list of license types regulated by the department, delete the word "motor" from the phrase "motor vehicle," and add the word "industry" to more accurately reflect the scope of the department's responsibility which encompasses all vehicles including trailers and all license types under Occupations Code, Chapter 2301, and Transportation Code, Chapter 503. An adopted amendment to §215.1 clarifies the scope of the rules in Chapter 215, which is to describe licensing requirements and rules governing license holder operations. The missing phrase "the vehicle industry" is

added at adoption to the text of the last sentence in §215.1 because the proposed sentence was incomplete.

Adopted amendments to §215.2(b) delete definitions for terms used in contested cases because rules using those terms are adopted for repeal in this chapter and are included in adopted new Chapter 224, (relating to Adjudicative Practice and Procedure), which is published for adoption in this issue of the *Texas Register*. The deleted definitions include the terms ALJ, executive director, final order authority, hearing officer, motion for rehearing authority, and SOAH. The remaining definitions are renumbered accordingly. Adopted amendments in renumbered §215.2(b)(1) clarify that only a board member or a person employed by the department may be authorized to serve as a board delegate as provided under Occupations Code, §2301.154. An adopted amendment to renumbered §215.2(b)(2) adds a definition for "day" and for standardization and consistency throughout the chapter. Adopted amendments to §215.2(b)(3) substitute the term "division" for "department" to correctly refer to the responsible organizational unit in the department and substitute the term "department staff" for "personnel" for clarity and consistency. An adopted amendment to renumbered §215.2(b)(4) adds a reference to Transportation Code, Chapter 503, which defines the types of general distinguishing numbers that the department may issue. An adopted amendment to renumbered §215.2(b)(5) clarifies that any state agency other than the department is included in the definition of a governmental agency. Adopted §215.2(b)(6) adds a new definition for standard license plate. This definition is necessary to differentiate a standard license plate issued to a dealer under Transportation Code, §503.061 from a personalized prestige license plate issued to a dealer under Transportation Code, §503.0615, and recognizes that each plate has a different statutorily prescribed term and cost and is obtained from the department through a different process.

##### Subchapter B. (relating to Adjudicative Practice and Procedure)

The department adopts the repeals of all sections of Subchapter B, (relating to Adjudicative Practice and Procedure), in this same issue of the *Texas Register* because the substance of each rule and any amendments are incorporated into adopted new Chapter 224, (relating to Adjudicative Practice and Procedure), which is also published for adoption in this issue of the *Texas Register*. The adopted repeals include §§215.21 - 215.24, 215.27, 215.29, 215.30, 215.32, 215.35 - 215.49, 215.55, 215.56, and 215.58 - 215.63.

##### Subchapter C. Licenses, Generally

This subchapter is adopted to be relettered as Subchapter B because the department is adopting the repeal of former Subchapter B, (relating to Adjudicative Practice and Procedure).

The adopted amendment to the title of §215.82 replaces "Duplicate" from the proposed language with "Replacement Standard" to clarify the section's purpose. Adopted amendments delete §215.82(a) and (b) and reletter the remaining subsections as necessary, because §215.82(a) and (b) refer to an archaic process that the department no longer follows. A license holder may print a license copy on demand by accessing the department's electronic licensing system. Adopted amendments to §215.82(c) delete the subsection designation and substitute "standard" for "metal" to identify the plate type to which the replacement process applies. Adopted amendments to §215.82(c) clarify that the same process applies for obtaining a replacement sticker, and that a request for a replacement standard license plate or sticker must be submitted electronically in the depart-

ment-designated licensing system. In §215.82(c)(3), the department adopts a nonsubstantive change to the text at adoption to rephrase "system for licensing" to "licensing system" for improved readability.

In the adopted amendments §215.82 and §215.134, the proposed text is changed at adoption to move the license plate type descriptor "standard" before the term "license plate" for consistency.

Adopted amendments to §215.83(a)(1) and (d) modernize the rule by clarifying that an application for a new license, a license amendment, or a license renewal must be filed electronically. An adopted amendment to §215.83(a)(3) specifies which electronic payment forms are accepted. Paper checks are no longer accepted because fee payment must be completed before an application may be submitted and processed. An adopted amendment to §215.83(b) clarifies that an authorized representative who files an application on behalf of an applicant or license holder may be required to provide written proof of authority to act. An adopted amendment to §215.83(c) clarifies that a pending new license number will not be released to a person who is not an applicant, license holder, or authorized representative unless that person files a written request under Government Code, Chapter 552. Once a license is approved and issued, the license number may be published on the department's website or otherwise provided in response to an inquiry consistent with Government Code, §552.11765 and other requirements in Government Code, Chapter 552.

An adopted amendment to §215.83(d)(2) deletes an archaic reference to an envelope postmark for a renewal application to comport with §215.133(c), which requires a license application be submitted electronically in the department's designated licensing system.

Adopted amendments to §215.83(e) delete redundant language and combine the language in §215.83(e) and §215.83(f) for consistency and ease of understanding without changing the meaning. Other adopted amendments reletter the remaining subsections and internal references accordingly.

Adopted amendments to relettered §215.83(i) add the phrase "military service members or" in multiple places in subparagraphs (1), (2), and (3). These amendments implement Senate Bill (SB) 422, 88th Legislature, Regular Session (2023), which added military service members who hold out-of-state licenses as persons eligible for special business or occupational authorization or licensing consideration. An adopted amendment to relettered §215.83(i) clarifies that the requirements and procedures authorized under Texas law do not modify or alter rights under federal law.

In relettered §215.83(i)(1), adopted amendments delete two duplicative references to Occupations Code, §55.0041. Also, in relettered §215.83(i)(1), an adopted amendment substitutes the phrase "being stationed" for "residency" to clarify that eligibility for special licensing consideration for both the military member and military spouse is based on the military member being stationed in Texas, rather than on the spouse's residency.

Additional adopted amendments to relettered §215.83(i)(3) are adopted to implement SB 422 which amended certain provisions of Occupations Code, Chapter 55. Adopted amendments change the word "may" to "shall" and add the phrase "within 30 days" to set a deadline by which the department must issue a license to a military service member or spouse. This adopted amendment implements Occupations Code, §55.005(a), which

requires a state agency to issue a license no later than the 30th day after an application is filed and Occupations Code, §55.0041, which requires that the department confirm within 30 days that the military service member or military spouse is authorized to engage in the licensed business or occupation. Another adopted amendment to relettered §215.83(i)(3) adds the phrase "modified or" to recognize that provisions of Occupations Code, Chapter 55 may require the department to modify standard licensing processes when processing an application for a military service member or military spouse and to clarify that the department's licensing process for military service members and military spouses will be in accordance with all Occupations Code, Chapter 55 requirements.

An adopted amendment to relettered §215.83(j) adds a reference to Government Code, §2001.054 for ease of reference. An adopted amendment to relettered §215.83(k) increases the time from 10 to 15 days in which a license holder may dispute whether a renewal application was timely received by the department to provide a license holder.

Adopted amendments to relettered §215.83(n) substitute the term "standard" for "metal" to more accurately describe the type of dealer's license plate addressed in this subsection and add the phrase "is canceled" to clarify that a standard dealer's license plate expires on the date the dealer's General Distinguishing Number (GDN) is canceled under Transportation Code, §503.038.

An adopted amendment to §215.84(a) inserts an introductory paragraph with a statutory citation to Occupations Code, §2301.002 to enable a person to more easily determine whether the section applies and to clarify the basic statutory prohibition against brokering, and reletters the remaining subparagraphs accordingly. Adopted amendments to relettered §215.84(b) add two clarifying phrases "in the definition of broker" and "acting as a" for consistency with the statute and delete duplicate phrasing to improve readability. Adopted amendments to relettered §215.84(c) add the term "franchised" in §215.84(c)(3) to more accurately describe the type of dealer to which a buyer referral service, program, or club may refer a potential new vehicle buyer. The adopted amendments to §215.84(c) also correct punctuation in relettered §215.84(c), move a requirement from §215.84(d) regarding compliance with advertising rules to relettered §215.84(c)(7) for completeness and ease of reference, and update a reference to the relettered subchapter containing the advertising rules. Adopted amendments to relettered §215.84(d) clarify that §215.84 does not apply to a person who is not a broker as defined in Occupations Code, §2301.002, and delete a redundant phrase "or entity" as entities are included in the definition of "person" in Occupations Code, §2301.002. An adopted amendment deletes current §215.84(d) because the content of that subsection is incorporated into adopted relettered §215.84(c)(7).

Adopted amendments to §215.85(b) correct punctuation and move language from §215.85(c) to §215.85(b)(7) for completeness and clarity without changing the meaning. An adopted amendment to §215.85(c) deletes the redundant subsection moved to §215.85(b)(7). Adopted amendments to §215.85(d) reletter the subsection to (c) and delete redundant terms "licensed" and "independent motor vehicle" from this subsection.

Adopted amendments to §215.87 substitute the term "standard" for the phrase "metal dealer's" in the rule title and in §215.87(a)-(c) to more accurately describe the type of dealer's license plate addressed in this subsection. An adopted amend-



ment to §215.87(a) adds a list of license types eligible to request a standard license plate and is necessary for completeness and clarity. A proposed amendment to §215.87(b) clarified that a standard license plate expires when the associated license is canceled, and at adoption, the phrase "closed, or revoked" was added to clarify all the circumstances under which a license plate issued by the department to a license holder expired. An adopted amendment to §215.87(c) clarifies that a license holder may be required to pay tax when ordering a standard license plate as required under Tax Code, §152.027. Another adopted amendment creates new §215.87(d), which describes for clarity and ease of reference the process a dealer must use to apply for or renew a personalized prestige license plate issued under Transportation Code, §503.0615.

Adopted amendments to §215.89(a) and (b) delete the redundant "or department" because the word "board" is defined to include department staff to whom the board delegates a duty. An adopted amendment to §215.89(a)(2) adds a reference for clarity and ease of reference to Transportation Code, §503.034, which authorizes the department to deny a new or renewal application for a dealer general distinguishing number or a wholesale motor vehicle auction general distinguishing number if the applicant is guilty of conduct that would result in the cancellation of the general distinguishing number under Transportation Code, §503.038. An adopted amendment to §215.89(b)(6) adds the phrase "or other legal entity" for completeness because legal entities other than a corporation can fail to maintain authority to conduct business in Texas. Adopted amendments to §215.89(b)(10) add "final" and substitute "after" for "through" for clarity and consistency with department contested case procedures, and replace "citizens" with "residents" for consistency with statute and the rest of the chapter.

Subchapter D. Franchised Dealers, Manufacturers, Distributors, and Converters

This subchapter is adopted to be relettered as Subchapter C because the department has adopted the repeal of current Subchapter B in this issue of the *Texas Register*.

Adopted amendments to §215.101 delete an incorrect reference to a non-existent Transportation Code, Chapter 1000 and add the license types to which this subchapter applies for clarity.

Adopted new §215.102 sets out in one rule for clarity and ease of reference the application requirements for manufacturers, distributors, converters, and franchised dealers for new, renewal, and amendment license applications, including the requirement to attach documents, pay statutorily required fees, and submit applications electronically on a prescribed form in the department's designated licensing system. Occupations Code, §2301.257 and §2301.258 authorize the department to prescribe the application form and require any information necessary to determine the applicant's qualifications to adequately serve the public. Occupations Code, §2301.651(b) gives the board authority to deny an application for an act or omission by an officer, director, partner, trustee, or other person acting in a representative capacity that would be cause for denying a license. Adopted new §215.102(a)-(d) includes requirements that apply to all franchised dealers, manufacturers, distributors, and converters. Adopted new §215.102(c) requires a license holder renewing or amending a license to review current license information, update information that has changed, provide related supporting information or documents for any change or new requirement, and allows the department to implement its re-

sponsibilities under Occupations Code §§2301.251, 2301.252, 2301.256-2301.260, 2301.303, and 2301.304.

Adopted new §215.102(e)(1) describes the information that must be submitted in the application, denoting any differences by license type. In adopted new §215.102(e)(1)(L)(ii), the adopted text differs from the proposed text as an "and" was added at the end, and in §215.102(e)(1)(L)(iii), the adopted text differs from the proposed text as an "and" was deleted and a period substituted for a semicolon. These changes were necessary at adoption because the content of §215.102(e)(1)(L)(iv) "the terms of the contract under which the distributor will act for the manufacturer," was moved at adoption to §215.102(e)(1)(N)(iv) for clarity. Adopted §215.102(e)(1)(L) describes the information that an applicant must provide when applying for either a manufacturer's or a distributor's license. Not all manufacturers have a distributor, so for added clarity the requirement to provide terms of a distributor's contract is moved at adoption to §215.102(e)(1)(N) which describes the additional information that an applicant must provide when applying for a distributor's license. In adopted new §215.102(e)(1)(N)(iv), the adopted text differs from the proposed text as language in that provision duplicates the following language in §215.102(e)(1)(L)(iii): "if a franchise agreement for each line-make being applied for exists which states the obligations of a Texas franchised dealer to the applicant and the obligations of the applicant to the Texas franchised dealer." At adoption the department deleted the unnecessary duplicate language and replaced this language with "the terms of the contract under which the distributor will act for the manufacturer" for clarity. At adoption, the department changed the proposed text to replace "if" with "whether" in §215.102(e)(1)(P)(iii) for consistency. In adopted new §215.102(e)(1)(P)(v), the adopted text differs from the proposed text to correct a referenced section title, §215.133 to "GDN Application Requirements for a Dealer or a Wholesale Motor Vehicle Auction."

Adopted new §215.102(e)(2) describes the documents that must be attached to the application and denotes differences by license type. The adopted information and attachment requirements vary for each license type based on different statutory requirements and related consumer fraud or public safety considerations resulting from the applicant's operation, the applicant's business model, including distribution methods, and the specific new vehicle types manufactured, distributed, or offered for sale by the applicant. At adoption, the department changed the proposed text of §215.102(e)(2)(C) to remove the phrase "at least" because it is unnecessary. In adopted new §215.102(e)(2)(E)(i), the adopted text differs from the proposed text in that "offers for sale or sales of motor vehicle in Texas" is changed to "motor vehicle sales or offers to sell to Texas residents, "dealer" is changed to "dealer or person" or "dealer's or person's," and "product" is changed to "new motor vehicle" to add clarity and consistency. This adopted amendment to §215.102(e)(2)(E)(i) incorporates best practice recommendations from the American Association of Motor Vehicle Administrators (AAMVA) to prevent public harm that may result from sales to Texas residents by out-of-state dealers authorized by a manufacturer or distributor to sell new vehicles in Texas exclusively through an online sales model. In adopted new §215.102(e)(2)(G), the department changed the text at adoption to narrow the specific information or pages from the distribution agreement that the department requires an applicant for a distributor's license to provide, to avoid unnecessary disclosure of confidential business information. At adoption the department also clarified that if a completed questionnaire was provided, a manufacturer's authorized representative may sign

the questionnaire, however, the applicant or applicant's authorized representative may not sign on behalf of a manufacturer.

Adopted new §215.102(e)(3) describes the fees that must be paid when an applicant applies for a license. Adopted new §215.102(f) prohibits a license applicant from using a name or assumed name that could be confused with a governmental entity or could be deceptive or misleading to the public to prevent consumer fraud and abuse. Adopted new §215.102(g) describes the process through which a manufacturer or distributor may add a new line make to an existing license during the license period. The department adopts nonsubstantive changes to the text at adoption throughout §215.102 to change license type references to the singular possessive form "manufacturer's," "distributor's," "converter's," and "franchised dealer's" for consistency with Occupations Code, Chapter 2301 and in §215.120(f) to change "must" to "shall" for consistency within the subsection.

In §§215.102, 215.104, 215.105, 215.109, 215.111, 215.113, and 215.121, the department adopts a nonsubstantive change to the text at adoption to rephrase "system for licensing" to "licensing system" to improve readability. In adopted amendments to §§215.102(b), 215.104(g), and 215.105(e), a change to the text at adoption substitutes "must" for "shall" for consistency with drafting standards. In §215.104(c) and (d) a change to the text at adoption substitutes "must" for "is required to" for consistency in terminology. In adopted amendments to §§215.105(b), 215.106(b), 215.113(c)-(e), and 215.120(h), a change in the text at adoption substitutes "shall" for "will" for consistency in terminology. In §215.111(a) and §215.120(e), (f), and (i) adopted amendments substitute "shall" for "must" for consistency in terminology.

Adopted amendments to §215.103(a) substitute "performs" for the phrase "will only perform" and add the phrase "and not new motor vehicle sales" to clarify and emphasize that the franchised dealer activity that may not be performed at a service-only facility is new motor vehicle sales. The phrase "and nonwarranty" is deleted because the department does not license non-warranty repair services. Similarly, the last sentence in §215.103(a) is deleted in the adopted amendments because Occupations Code, Chapter 2301 does not require warranty repair services to be performed only at a licensed dealer location. Offsite sales are limited in Occupations Code, §2301.362, but no statutory provision limits the location in which warranty services may be provided. This change conforms the rule text with statutory language and provides franchised dealers with the flexibility allowed by statute to perform warranty repairs using mobile services managed out of a licensed location. Adopted amendments to §215.103(b) delete a redundant word and change the term "line" to "line-make" for consistency. An adopted amendment to §215.103(d) deletes the word "only" as this term is not required by statute and a franchised dealer may prefer to have contracting flexibility to obtain more attractive commercial terms.

Adopted amendments to §215.104(a) and §215.104(b)(3) delete unnecessary words to improve readability without changing the meaning. Adopted amendments throughout §215.104 update and modernize the license amendment process by requiring a franchised dealer to submit an amendment application electronically in the designated licensing system. An adopted amendment in §215.104(a)(1) clarifies and modernizes the rule by requiring that amendment application attachments must be legible and accurate electronic images. An adopted

amendment in §215.104(a)(2) adds a reference to new adopted Chapter 224, (relating to Adjudicative Practice and Procedure), which includes procedures related to processing protests of a franchised dealer's application and is published for adoption in this issue of the *Texas Register*. An adopted amendment in §215.104(b)(3) modernizes and standardizes the process through which a publicly held corporation informs the department of an ownership change by requiring that corporation to file an amendment application electronically when a person or entity acquires a 10% ownership share. An adopted amendment to §215.104(c)(5) deletes an archaic requirement for a franchised dealer to notify the department if the dealer's facsimile number has changed, and to renumber accordingly. An adopted amendment to §215.104(d)(1) substitutes "oversees" with "is in charge of" for consistency and clarity without changing the meaning of the provision. Adopted amendments to §215.104(e) and §215.104(f) add "franchised" and delete the phrase "licensed new motor vehicle" for consistency in describing a dealer under this subchapter and add the word "amendment" to describe the type of application required to process the referenced change to the franchised dealer's license.

In an adopted amendment to §215.105(b), the department changed the text at adoption to specify the forms of notice the department will use to notify a franchised dealer about an opportunity to protest an application, including certified mail and email. Adopted amendments to §215.105(b) and §215.105(c) add "franchised" and delete the phrase "licensed new motor vehicle" for consistency in describing a dealer under this subchapter. An adopted amendment to §215.105(d) clarifies and modernizes the process for a franchised dealer to file a protest by specifying that a franchised dealer with standing to protest must file a timely protest "electronically in the department-designated licensing system" and pay the required fee.

An adopted amendment to §215.106(a)(1) clarifies that a notice of protest must be received by 5:00 p.m. Central Time, which will be either Central Standard Time or Central Daylight Time as applicable, and clarifies that a notice of protest must be filed within 15 days after the date in the department's notice. An adopted amendment to §215.106(a)(2) modernizes the protest process by requiring the notice of protest to be filed in the department's designated electronic system, and an adopted amendment to §215.106(a)(3) clarifies that the fee must be paid at the time the application is submitted. An adopted amendment to §215.106(b)(2) clarifies that the protest will be rejected if payment is not made or is later dishonored.

Adopted amendments to §§215.108, 215.109, 215.110, and 215.113 add the word "franchised" and delete the phrase "licensed new motor vehicle," for consistency in describing a dealer under this subchapter.

An adopted amendment to §215.109(4) requires a franchised dealer to submit a dealership replacement application electronically in the designated department licensing system to modernize the process.

Adopted amendments to §215.110(a) split the subsection into three separate subsections lettered (a) through (c), modify internal references in relettered (b) and (c) from "subsection" to "section" to reflect the new organization, and reletter current subsection (b) to subsection (d) accordingly to improve readability. Adopted amendments in §215.110(a) remove unnecessary language and clarify that the applicant must submit legible and accurate electronic images of the franchise agreement pages that identify the parties, the parties' signatures, each line-make

listed in the application, and the address of the franchised dealership's physical location. An adopted amendment to relettered §215.110(b) clarifies that an applicant may submit temporary evidence of franchise electronically. Adopted amendments to relettered §215.110(c) clarify that an applicant is required to provide the designated franchise agreement pages to the department before a license may be issued.

Adopted amendments to §215.111 organize the existing language into two subsections to improve readability. An adopted amendment to new §215.111(a) clarifies that a manufacturer or distributor must provide notice of termination or discontinuation as required under Occupations Code, §2301.453 and removes language that duplicates the statute. Adopted amendments to new §215.111(b) require a franchised dealer to file a written notice of protest electronically in the department's designated licensing system. The department changed the text of §215.111(b) at adoption to add a clarifying reference to the minimum number of days that a manufacturer or distributor must provide a franchised dealer to file a protest before terminating or discontinuing a franchise agreement. The amendments to §215.111(b) modernize the process and conform the rule to the statute.

SB 604, 86th Legislature, Regular Session (2019) eliminated the department's authority to approve a vehicle show or exhibition under Occupations Code, §2301.358, effective September 1, 2019. As a result, §215.112 is adopted for repeal in this issue of the *Texas Register* because §215.112(a) expressly limits applicability of the rule to motor home shows requiring department approval.

An adopted amendment §215.113(a) replaces "new motor vehicle dealer" with "franchised dealer" as the statutory term in Occupations Code, §2301.002 is "franchised dealer." Adopted amendments to §215.113(a), (d), and (e) require the notice of protest to be filed electronically in the department's designated licensing system to modernize the process. Adopted amendments to §215.113(c) substitute the more general Occupations Code subchapter designation for the specific section series reference so that any future statutory changes will not require a rule change, and add a reference to the subchapter in adopted new Chapter 224, (relating to Adjudicative Practice and Procedure), which applies to this subsection and is published for adoption in this issue of the *Texas Register*. Adopted amendments to §215.113(f) add a reference to the subchapter in adopted new Chapter 224, (relating to Adjudicative Practice and Procedure), which applies to this subsection and is published for adoption in this issue of the *Texas Register*, delete archaic language as contested case hearing scheduling is determined by the State Office of Administrative Hearings (SOAH) and its procedural rules, and substitute the word "issued" for "rendered" for consistency.

An adopted amendment to the title of §215.115 adding the phrase "Vehicle Sales" describes the scope of the section more accurately. Adopted amendments to §215.115(a), (b), (d) and (f) delete the phrase "a representative of" as this phrase is unnecessary. Adopted amendments to §215.115(a), (b), and (f) add language to allow a record to be submitted to the department electronically upon request to modernize the process. Adopted amendments to §215.115(b) correct preposition use to improve readability without changing the meaning.

An adopted amendment to the title of §215.116 adds the term "Franchised Dealership" to describe the scope of this section more accurately. An adopted amendment to §215.116(a) adds

the descriptor "franchised" to the term dealer and deletes duplicate language without changing meaning.

Adopted amendments to §215.117 improve the readability of the section without changing the meaning.

The title of adopted new §215.120 was changed at adoption to add "Standard" to the adopted title as the title "Standard License Plates," describes the content of this section more accurately. Adopted new §215.120 creates a consolidated chapter for all the department's requirements related to the use of license plates by manufacturers, distributors, and converters for ease of reference and clarity. Adopted new §215.120(a) specifies when a manufacturer, distributor, or converter may apply for a standard license plate and adopted new §215.120(a) and (b) specify the type of vehicle and purposes for which a license plate may be used. Adopted new §215.120(c) explains where the license plate is to be placed on the license holder's vehicle. Adopted new §215.120(d) contains the recordkeeping requirements for these license plates. In adopted new §215.121(b)(10), the proposed text is changed at adoption to correct a subchapter reference from "Subchapter H" to "Subchapter F." The department changed the text of adopted new §215.120(d)(3) at adoption to add a clarifying phrase "if one has been assigned" because some vehicles that manufacturers register may not have an assigned Vehicle Identification Number (VIN) such as a prototype or concept vehicle. In adopted new §215.120(d)(4), the department made a change to the text at adoption to specify that the license plate record only needs to contain the identity of the person in control of the standard license plate. Adopted new §215.120(e) and (f) describe what a manufacturer, distributor or converter is required to do if a license plate is lost, stolen, or damaged. Adopted new §215.120(g) requires license plate records be available for inspection or review if requested by the department. Adopted new §215.120(h) specifies the criteria the department will use to evaluate a license holder's request for additional standard license plates. Adopted new §215.120(i) requires a manufacturer, distributor, or converter to return department-issued license plates to the department within 10 days of the associated license being closed, canceled, or revoked.

Adopted new §215.121 describes the powers of the board and department to sanction a manufacturer, distributor, or converter. This adopted new section provides these license holders with information about which violations may result in civil penalties or may affect licensing eligibility. Adopted new §215.121(a) describes existing administrative sanctions that the board or department may take if a manufacturer, distributor, or converter violates a law or rule enforced by the department. Adopted new §215.121(b) describes which acts or omissions may result in a sanction. A change to the proposed text of §215.121(b) at adoption removes the clause "a representative of" because it is unnecessary. A change to the proposed text for §215.121(b)(2) at adoption replaces the word "timely" with the more specific phrase "within 15 days" to specify the time period certain license holders have to provide records in response to a request by the department. In adopted new §215.121(b)(10), the proposed text is changed at adoption to correct a subchapter reference from "Subchapter H" to "Subchapter F," the relettered subchapter containing the advertising rules.

#### Subchapter E. General Distinguishing Numbers

This subchapter is adopted to be relettered as Subchapter D because the department has adopted the repeal of current Subchapter B in this issue of the *Texas Register* and the subsequent subchapters are adopted to be relettered accordingly. An

adopted amendment to the title of this subchapter adds in-transit licenses which are issued to drive-a-way operators under Transportation Code, §503.023.

Adopted amendments to §215.131 add a reference to Transportation Code, Chapters 1001-1005 and clarify that provisions in this subchapter apply to GDNs and drive-a-way operator in-transit licenses issued by the department.

Adopted amendments to §215.132 delete an unused definition for charitable organization, delete an unnecessary definition for license, and add a clarifying definition for municipality, which is defined by reference to Local Government Code, Chapter 1. Adopted amendments also renumber the remaining provisions accordingly.

An adopted amendment to §215.133 retitles the section to "GDN Application Requirements for a Dealer or a Wholesale Motor Vehicle Auction" to accurately reflect the scope of the section. Transportation Code, §503.022 requires a wholesale motor vehicle auction to hold a GDN for each business location, and Transportation Code, §503.030 requires an applicant to submit information required by the department in the application. A wholesale motor vehicle auction is not "a dealer" as defined in Transportation Code, §503.001(4). To clarify the scope of this section, which is intended to include all GDN application requirements, the phrase "or a Wholesale Motor Vehicle Auction" was added to the title and the application requirements are expanded to include this GDN category. An adopted amendment to §215.133(a) adds a reference to a wholesale motor vehicle auction to reflect the expanded scope of the rule and deletes a redundant word. Adopted amendments to §215.133(c) add multiple references to wholesale motor vehicle auction throughout to expand the requirements of the rule to include wholesale motor vehicle auction GDN holders, add a clarifying reference to §215.83, and clarify an existing requirement for a license holder to pay any outstanding civil penalties owed the department under a final order before renewing a GDN. Adopted amendments to §215.133(c)(1) clarify existing application requirements in §215.133(c)(1)(C); add new §215.133(c)(1)(D), which requires an applicant to provide a contact name and contact details for a person who can provide business information about the applicant so the department knows who to contact for related questions; reletter the remaining subparagraphs; add in §215.133(c)(1)(I) the requirement for a telephone number for a dealer's temporary tag database account administrator; and correct in §215.133(c)(1)(O) the name of a form. Adopted amendments to §215.133(c)(2) clarify §215.133(c)(2)(D) by adding "unexpired" and deleting "current" in the related clauses and substituting the modern phrase "military identification card" for "armed forces identification," and add the word "business" in §215.133(c)(2)(G) to clarify the phrase "premises photos." Adopted amendments to §215.133(c)(3) delete a redundant phrase in §215.133(c)(3)(A), add a clarifying reference in §215.133(c)(3)(B) to applicable taxes, and substitute "standard" for "metal" for a more precise description of a dealer's license plate. In §215.133(d), adopted amendments add a fingerprint requirement for wholesale motor vehicle auction GDNs to allow the department to evaluate the criminal histories of applicants to prevent and deter application fraud, and update the title of a referenced section. Adopted amendments to §215.133(e) delete "dealer" to clarify that all GDN applicants and holders must follow the assumed name requirements in that subsection and add the phrase "a name or" to denote that an applicant cannot use a business name or an assumed name that is confusing, deceptive, or otherwise misleading to the public. Adopted new

§215.133(j) clarifies that a person holding an independent motor vehicle GDN and performing salvage activities must apply for a National Motor Vehicle Title Information System Identification number and provide that number to the department in the application so the department can verify that the applicant meets federal registration requirements and is qualified to perform salvage activities. The next subsection, adopted §215.133(k), is relettered accordingly.

In the adopted amendments to §§215.133, 215.134, 215.135, 215.141, and 215.145, the department made a nonsubstantive change to the proposed text to rephrase "system for licensing" to "licensing system" for consistency and to improve readability. In the adopted amendments to §§215.133(c), 215.134(b), 215.138(a)(i), 215.140(a)(1)(A), 215.144(j)(3), and 215.160(d), the department substitutes "must" in the proposed text for "shall" at adoption for consistency with drafting standards. In adopted §215.133(c)(2)(D) and §215.134(e)(2)(C), the phrase "at least" is deleted at adoption as unnecessary. In §215.135(b) and (c), a change to the text at adoption substitutes "is required to" with "must" for consistency in terminology.

Transportation Code, §503.023 requires a drive-a-way operator who transports or drives a vehicle in Texas to hold a drive-a-way in-transit license. Transportation Code §503.031 requires an applicant for this license type to submit an application containing information required by the department. Adopted new §215.134 is necessary to define application requirements for a drive-a-way operator in-transit license. Adopted new §215.134(a) defines the requirement that a person have a drive-a-way operator license to engage in the business in Texas. Adopted new §215.134(b) defines the application process and requires an applicant to complete an application form prescribed by the department and submit the application through the department's designated electronic licensing system. Adopted new §215.134(c) requires a license holder renewing or amending a license to verify current information and provide related information and documents for any new requirements or changes to the license and pay required fees. Adopted new §215.134(d) instructs new applicants how to register in the department-designated licensing system. Adopted new §215.134(e)(1) describes the information that must be submitted in the application for a drive-a-way operator in-transit license. Adopted new §215.134(e)(2) describes the documents that must be attached to the application based on statutory requirements and related consumer fraud or public safety considerations resulting from the license holder's operation or business model. Adopted new §215.134(e)(3) describes the fees that must be paid when an applicant applies for a license. Adopted new §215.134(f) requires a license applicant to comply with fingerprint requirements to allow the department to confirm an applicant's identity and perform a more comprehensive review of the applicant's criminal record to deter and prevent application fraud. Adopted new §215.134(g) protects the public by prohibiting an in-transit license holder from using a business name or assumed name that is confusing, deceptive, or misleading. Adopted amendments to §215.135(a) and (b) substitute "municipality" for "city" as municipality is a defined term in the Local Government Code, Chapter 1, and is adopted as a defined term in §215.132. The department made a change to the proposed text at adoption to replace "city" with "municipality" in the adopted amendments to §215.135(c) as well, to create consistency. An adopted amendment to §215.135(a) updates a reference to align with the title of §215.140. Adopted amendments to §215.135(b) and (c) correct punctuation. The adopted amendment to §215.135(d) requires a GDN holder to notify the

department of a new, closed or relocated business location by filing an amendment electronically in the designated licensing system to modernize the process.

Adopted amendments to §215.137(a) substitute "GDN" for "license" and delete "dealership" for consistency in terminology. Adopted amendments to §215.137(c) rephrase a sentence for clarity and consistency without changing the meaning.

Adopted amendments to the title of §215.138 and throughout the section delete "metal" or "assigned metal dealer's" to describe a dealer's standard license plate for consistency in terminology. An adopted amendment to §215.138(a) deletes a requirement to attach a plate to a license plate holder, references §217.27, Vehicle Registration Insignia, for plate placement requirements, and is necessary for consistency. Adopted amendments to §215.138(b) replace the phrase "so that the receipt can be presented" with "to present" to add clarity without changing meaning. Adopted amendments combine the definition of light truck in §215.138(e) and rule language in §215.138(f) into relettered §215.138(e) to add clarity, and the remaining sections are relettered accordingly. Adopted amendments to relettered §215.138(h) clarify that a dealer must keep records of all license plates issued by the department for dealer use, including both standard and personalized prestige plates. Adopted amendments to relettered §215.138(i) and (j) clarify the procedures for reporting a license plate that is lost, stolen, or damaged. Adopted new §215.138(k) requires that a dealer's license plate records be available for inspection or to submit to the department electronically upon request to allow the department to investigate potential misuse of license plates. Adopted new §215.138(l) requires a dealer to return to the department all plates, stickers, and related receipts within 10 days, consistent with the requirements of Transportation Code, §503.038. At adoption, the phrase "standard or personalized prestige" is placed after "dealer" and before "license plate" throughout new adopted §215.138 to clarify that the requirements of this section apply to all dealer license plate types. In adopted relettered §215.138(j), the text was reorganized at adoption to add clarity and in §215.138(j)(2) "must" was deleted as this word is duplicative and unnecessary. In adopted new §215.138(l), the text is changed at adoption to substitute the term "dealer" in place of "license holder" and to replace "shall" with "must" for consistency of terminology.

Adopted amendments to the title of §215.139 and throughout the section and attached graphics delete "metal" and add "standard" to describe a dealer plate more accurately and consistently. In §215.139(d) and in §215.139(f)(2), adopted amendments remove passive verbs and thereby improve readability without changing the meaning. In the attached graphic to §215.139(f)(1), adopted amendments correct the number of plates that a dealer selling 50 to 99 vehicles during the previous 12 months is eligible to request and add a missing category for a dealer selling 100 to 200 vehicles during the previous 12 months. These adopted amendments correct inadvertent errors made when the graphic was last published. The adopted amendments delete §215.139(h) as an unnecessary disclaimer because other adopted amendments to §215.87(d) and §215.138(h) explicitly address procedures relating to personalized prestige dealer plates.

An adopted amendment to §215.140 adds a subsection letter (a) to distinguish premises requirements for GDN dealers from premises requirements for wholesale motor vehicle auctions, which are adopted in new subsection (b). Adopted amend-

ments to §215.140(a)(1)(B) and §215.140(a)(2) clarify that the dealer's business hours must be posted in a manner and location that is accessible to the public to meet the requirements of Transportation Code, §503.032. Adopted amendments to §215.140(a)(5)(F) clarify that an established and permanent location must be capable of receiving U.S. mail and must have an assigned emergency services property address to allow the department to verify the physical location and municipality in which the business is located. An adopted amendment to §215.140(a)(5)(F) deletes "metal" to describe the dealer's license plate more consistently. An adopted amendment to §215.140(a)(11)(B)(ii) clarifies that a display area must be reserved exclusively for the dealer's inventory. Adopted amendments to §215.140(a)(11)(B)(iv) and (vii) clarify that a barrier that cannot be readily removed is one that cannot be easily moved by one person and typically weighs more than 50 pounds. This weight guideline is consistent with Occupation Health and Safety Administration recommendations for the maximum weight that one person may safely lift without assistance. Adopted amendments to §215.140(a)(11)(C) replace "dealer" with "GDN holder." Adopted amendments to §215.140(a)(11)(C) include a change to the proposed text at adoption to replace the proposed requirement that a GDN holder disclose all storage lots in the license application process with a more limited requirement that a GDN holder disclose the location of a storage lot or location of a motor vehicle in inventory upon request by the department, so the department can inspect the lot to ensure compliance with department rules and investigate complaints. The adopted changes in §215.140(a)(11) prevent fraud and consumer abuse and protect public health and safety. An adopted amendment to §215.140(a)(12) deletes an exclusion for salvage pool operators because this exclusion is not consistent with public welfare as the public should not be misled about the status or condition of a salvage vehicle. If a dealer is selling both motor vehicles and salvage vehicles, each salvage vehicle must be clearly and conspicuously marked. An adopted amendment to §215.140(a)(14) moves to the end of the paragraph the requirement to post a dealer's GDN and bond notice in each location to improve clarity without changing the meaning.

Adopted new §215.140(b) adds premises requirements for wholesale motor vehicle auctions and implements the requirements of Transportation Code, §503.032. The text of adopted new §215.140(b)(6)(G) is changed at adoption to limit the requirement that a GDN holder disclose the address or location of a storage lot to be only upon request of the department, rather than as part of the license application. The text of adopted new §215.140(b)(7)(C)(ii) is changed at adoption to correct a reference by replacing "dealer" with "wholesale motor vehicle auction."

Adopted amendments to §215.141(a) reorder language for consistency with §215.141(b) and add a reference to a cease-and-desist order, which is an action the board is authorized to take under Occupations Code, §2301.153 and §2301.802. Adopted amendments to §215.141(b)(1) add a reference to the relevant statute and to the requirement to post a bond notice and delete an archaic reference to a bond amount. Adopted new §215.141(b)(2) addresses the failure of a license holder to meet or maintain the established and permanent place of business premises requirements as this failure is one of the most common violations requiring a sanction under this subchapter, and the remaining paragraphs are renumbered accordingly. Adopted amendments to renumbered §215.141(b)(4) clarify that a license holder under this subchap-

ter may be sanctioned for either failing to provide electronic records, or for refusing or failing to comply with a department request to review electronic or physical records at the licensed business location"the text is changed at adoption to add the phrase "electronic or physical" for additional clarity. An adopted amendment to renumbered §215.141(b)(4)(A) corrects the title to a cross-referenced section of rule. At adoption, text was added to renumbered §215.141(b)(4)(B) to delete an unnecessary "and" because additional language is being adopted in this subparagraph. Adopted new §215.141(b)(4)(D) adds the Certificate of Occupancy, Certificate of Compliance, business license or permit, or other official documentation confirming compliance with county and municipal laws or ordinances for a vehicle business at the licensed physical location as records the department may request to investigate compliance with Transportation Code requirements for an established and permanent place of business. Adopted amendments reletter the remaining subsections to accommodate adopted new §215.141(b)(4)(D). An adopted amendment to relettered §215.141(b)(6) deletes a redundant reference to §215.140 because a reference to that section is adopted in §215.141(b)(2) and removes subsection delineations within §215.141(b)(6) because they are unnecessary. Adopted amendments to relettered §215.141(b)(8) clarify that a license holder under this subchapter may be sanctioned if the license holder fails to submit a license amendment in the designated department electronic licensing system to change an address within 10 days of the change. The proposed text of §215.141(b)(8) is changed at adoption to align with changes made at adoption to §215.140, removing all reference to the proposed requirement for GDN applicants to disclose storage lots on the license application, which is removed from §215.140. An adopted amendment to relettered §215.141(b)(9) clarifies that a license holder under this subchapter may be sanctioned if a person fails to submit a license amendment in the designated department electronic licensing system to notify the department of a change in name or change in management or ownership within 10 days of the change. The adopted amendments to §215.141(b)(8) and (9) modernize the process with references to the electronic licensing system. Adopted amendments to relettered §215.141(b)(12) and (13) delete "metal" from the description of license plate consistent with statutory language in Transportation Code, Chapter 503. An adopted amendment to relettered §215.141(b)(16) deletes an incorrect reference to non-existent Transportation Code, Chapter 1000. An adopted amendment to relettered §215.141(b)(17) adds a clarifying reference to §211.3, Criminal Offense Guidelines. An adopted amendment to relettered §215.141(b)(20) clarifies that providing a false or forged document to the department may result in a sanction. In an adopted amendment to §215.141(b)(21), the text is changed at adoption to delete a stray reference to Transportation Code, Chapter 1000, which does not exist. An adopted amendment to relettered §215.141(b)(22) clarifies that providing a false or forged identity document, photograph, image, or document to the department is a material misrepresentation and may result in a sanction. Adopted new §215.141(b)(25) clarifies that a license holder's failure to comply with the requirements for dealer's issuance of temporary tags under §215.150 may result in a sanction. Adopted amendments to relettered §215.141(b)(28) delete an archaic effective date and add the title of a referenced statutory provision for clarity. The text of adopted relettered §215.141(b)(28) is changed at adoption to correct punctuation by removing an errant period. Adopted new §215.141(b)(29) adds failure to issue a refund as ordered by the board or department as an action that may result

in a sanction to ensure the board is able to enforce its refund orders. Adopted new §215.141(b)(30) adds failure to acquire or maintain a certificate, business license, permit, or other documents confirming compliance with county or municipal laws or ordinances for a vehicle business as an action that may result in a sanction because a license holder must comply with county and local laws to have and maintain an established and permanent place of business. An established and permanent place of business is a requirement for GDN holders under Transportation Code §503.032 and wholesale motor vehicle auctions under Transportation Code, §503.030.

Transportation Code, §503.035 requires the department to issue an in-transit license plate to a drive-a-way operator holding an in-transit license. Adopted new §215.143 describes the process for a drive-away operator to obtain an in-transit standard license plate and the requirements for using an in-transit standard license plate. Adopted new §215.143(a) specifies when and how a drive-a-way operator may apply for an in-transit standard license plate. Adopted new §215.143(b) describes when and where the license plate is to be placed on a vehicle. Adopted new §215.143(c) describes the recordkeeping requirements for in-transit standard license plates. Adopted §215.143(d) and (e) describe what a drive-a-way operator is required to do if a standard in-transit license plate is lost, stolen, or damaged. Adopted new §215.143(f) requires license plate records to be available for inspection or review if requested by the department to allow the department to investigate potential fraud or complaints. Adopted new §215.143(g) specifies the criteria the department will use to evaluate a request for additional in-transit standard license plates to ensure that the plate allocation is sufficient to meet but not exceed the licensee's legitimate needs so as to not increase the opportunity for plate fraud. Adopted new §215.143(h) requires a drive-a-way operator to return department-issued license plates to the department within 10 days of the associated license being closed, canceled, or revoked to prevent fraudulent use of in-transit standard license plates.

An adopted amendment to the title of §215.144 adds "Vehicle" to the title to describe the scope more accurately as pertaining to vehicle records. Adopted amendments to §215.144(a) add a reference to a wholesale motor vehicle auction and delete the redundant phrase "a representative of"--the text is changed at adoption to include "of" in the deleted phrase and thereby correct an error in the proposed text. An adopted amendment to §215.144(b) adds a reference to records that must be kept by an independent mobility motor vehicle dealer for ease of reference, with a change in the text at adoption to remove an unnecessary "the." An adopted amendment to §215.144(c) deletes unnecessary punctuation. Adopted amendments to §215.144(d) clarify language regarding department records requests and correct a reference from "division" to "department" for consistency. Adopted amendments to §215.144(e)(7) delete an archaic reference to the title of a tax receipt form and substitute the general phrase "county tax assessor-collector receipt marked paid," because the receipt form may vary by county. Adopted amendments to §215.144(e)(8) improve sentence structure, clarify that records must be kept for both the purchase and the sale of a vehicle, delete a reference to an archaic form, and add requirements to keep a copy of the purchaser's photo identification, the odometer disclosure statement signed by the buyer unless the vehicle is exempt, and the rebuilt salvage disclosure, if applicable. A change to the proposed text of §215.144(e)(8)(M) at adoption adds the phrase "unless the vehicle is exempt" to the adopted text for clarity.

These additional record requirements in §215.144(e)(8)(L)-(N) prevent consumer harm and reduce potential for fraud. Adopted amendments to §215.144(e)(9) rephrase the existing requirement to improve readability without changing the meaning. Adopted amendments to §215.144(f)(2) add a reference to a statutory exemption and update the language consistent with current statutory requirements because any willing county tax assessor-collector may process a title or registration request. Adopted amendments to §215.144(f)(3) add clarity by changing the presumed reasonable time for a dealer to apply for a title and registration from 20 working days to 30 days and add references to title processing to clarify that the same presumed time limit applies to both titling and registration dealer responsibilities. An adopted amendment to §215.144(g)(1) adds clarity by changing the presumed reasonable time for a dealer to act for out-of-state sales from 20 working days to 30 days; the definition of "days" under §215.2(b)(2) is adopted to be calendar days. Adopted amendments to §215.144(h) update the language consistent with current statutory requirements because any willing county tax assessor-collector may process a title or registration request. Adopted amendments to §215.144(j) delete the unnecessary phrase "a representative of" to describe the department, simplify the language in §215.144(j)(2) regarding the requirement that a wholesale motor vehicle auction must reply within 15 days of receiving a department records request regardless of the method in which the department makes the request, and update a citation to the federal odometer disclosure requirements in §215.144(j)(3)(F). An adopted amendment to §215.144(k) deletes the unnecessary phrase "a representative of" in describing the department. Adopted amendments to §215.144(l) update the subsection title to refer to the department's electronic titling and registration system for clarity and delete unnecessary punctuation. In the adopted amendments to §215.144(a), (b), (d), (h), (j), and (l), the text is changed at adoption to substitute "shall" for "must" for consistency in terminology.

An adopted amendment to §215.145(a) deletes a duplicative word, and adopted amendments to §215.145(b) modernize the provision by requiring a dealer to submit a license amendment electronically in the department's designated licensing system. Adopted amendments to §215.145(c)-(f) remove redundant language or restate language to improve readability without changing the meaning. Another adopted amendment to §215.145(f) modernizes the provision by adding a reference to filing a GDN application electronically in the department's designated licensing system. An adopted amendment to §215.145(g) deletes unnecessary punctuation and corrects the title of a referenced statute.

The department adopts the repeal of the entirety of §215.146 in this issue of the *Texas Register* because the rule language is incorporated into new adopted §215.120, relating to Standard License Plates.

Adopted amendments to §215.147(a) correct a reference to a driver license and delete an archaic reference to a concealed handgun license. An adopted amendment to §215.147(b) substitutes "dealer's" for "license holder's" for consistency in terminology without changing the meaning. An adopted amendment to §215.147(c) adds "Vehicle" for consistency with an adopted title change to §215.144, relating to Vehicle Records. A change to the text at adoption §215.147(c) substitutes "must" with "shall" for consistency with drafting standards.

Adopted amendments to §215.148 add references to Transportation Code, Chapter 503 and adopted new Chapter 224

of this title (relating to Adjudicative Practice and Procedure), which is published for adoption in this issue of the *Texas Register*, update an adopted title change to §215.144, and remove redundant and unnecessary words and punctuation. A change to the text at adoption §215.148(a) substitutes "shall" for "must" and in §215.148(d) substitutes "must" for "shall" for consistency with drafting standards.

Adopted amendments to §215.149 change the title to "Sales of New Mobility Motor Vehicles" to accurately reflect the section scope and add references to "new" mobility motor vehicles for clarity.

An adopted amendment to §215.150(a) adds "or lease" to clarify that a dealer may issue a temporary tag for a leased vehicle. An adopted amendment to §215.150(b)(1) updates a reference to adopted new Chapter 224 of this title (relating to Adjudicative Practice and Procedure), which is published for adoption in this issue of the *Texas Register*. Adopted amendments to §215.150(c) change word order to "buyer's temporary tag" for consistency.

An adopted amendment to §215.151(a) adds "governmental agency" to the list of entities that must display temporary tags on the rear of a vehicle in operation. As a result, the deletion of §215.151(b) is adopted, and the remaining subsections are relettered accordingly. Adopted amendments to relettered §215.151(c) delete duplicate language from a referenced statute and add a statutory reference for allowed uses of a converter's temporary tag for completeness and ease of reference.

Adopted amendments to §215.152(a) and (b) delete an unnecessary phrase as a governmental agency is defined in §215.2 to include federal, state, and local agencies. Adopted amendments in §215.152(f) increase the allotment of temporary tags for a franchised dealer from 600 to 1,000 based on the department's historical experience. Since the time that maximum tag limits were put in place, the department has been monitoring temporary tag usage and processing requests for additional temporary tags. The one dealer category that has consistently required more temporary tags to be allocated is a new franchised dealer. Increasing the initial amount allocated to this dealer type will help ensure a new franchised dealer has the requisite number of tags to support daily operations. Adopted amendments in §215.152(i) clarify the process and procedure for requesting additional temporary tags and for appealing a denial of a request, but do not change existing process or procedure. Another amendment to §215.152(l) clarifies that temporary tag allotments do not carry over to subsequent years.

An adopted amendment to §215.154(a) adds "or lease" to clarify that a dealer may issue a dealer's temporary tag for a vehicle the dealer is authorized to lease. An adopted amendment to §215.154(c) deletes "metal" and adds "standard or personalized prestige" to accurately describe the license plate types the dealer may use. In §215.154(d), changes to the text at adoption added punctuation to statutory references for consistency. An adopted amendment to §215.154(d)(2)(B) adds a reference to §215.138(d) for clarity and ease of reference. Adopted amendments to §215.154(e) and (g) delete these two subsections as the language in these subsections duplicates §215.138, to which a reference is adopted in §215.154(d)(2)(B), and the remaining subsections are relettered accordingly.

Adopted amendments to §215.155(a) clarify that a buyer's temporary tag may only be displayed on a vehicle from the selling dealer's inventory, reorganize and combine the content in

§215.155(a) and (b) in a numbered list for clarity and readability, and add "or lease" to clarify that a dealer may issue a dealer's temporary tag for a vehicle the dealer is authorized to lease. Adopted new §215.155(b) clarifies that in accordance with Texas Transportation Code, §503.063, a buyer's temporary tag must be issued and provided to a buyer of a vehicle that is to be titled but not registered and clarifies that the temporary tag must not be displayed on the vehicle in these circumstances. This clarification facilitates title-only vehicle sales for vehicles that will not be driven on Texas roads. An adopted amendment to §215.155(c) deletes "metal" for consistency. Adopted amendments to §215.155(e) delete unnecessary punctuation and phrasing without changing the meaning. Adopted amendments to §215.155(f) and adopted new §215.155(g) reorganize and rephrase language in §215.155(f) to improve clarity and readability without changing meaning.

The text of amended §215.160(a) and (b) changed at adoption, replacing redundant phrases "a regular title" and "issued a title" with "been titled" for clarity and readability without changing the meaning. The text of amended §215.160(a) changed at adoption to remove a redundant citation to Transportation Code, §501.100. An adopted amendment to §215.160(b) increases the required font size from 11-point to 14-point in the rebuilt vehicle acknowledgment or vehicle disclosure form to increase visibility. An adopted amendment in §215.160(c) requires a separate signature on the acknowledgment or disclosure form. Adopted amendments in §215.160(d) reorder language to improve clarity and update a referenced section title; the department also changed the proposed text in §215.160(d) at adoption to replace "shall" with "must" for consistency with drafting standards. The adopted amendments increasing the required font size and requiring a signature protect consumers and prevent consumer harm.

Adopted amendments to §215.161 update the title to add "Provider" for clarity because the requirements in this section relate to motor vehicle licensing education course providers. Adopted new §215.161(f) clarifies that the department does not offer an approved licensing education course.

#### Subchapter F. Lessors and Lease Facilitators

This subchapter is adopted to be relettered as Subchapter E as the department adopts the repeal of current Subchapter B in this issue of the *Texas Register* and the following subchapters are adopted to be relettered accordingly.

Adopted amendments to §215.171 update statutory references including references to relevant Transportation Code chapters.

Adopted amendments to §215.173(a) edit language and provide a statutory reference for clarity and to improve readability.

In the adopted amendments to §§215.174(a), 215.178(a), (d), and 215.179(b), the department changed the proposed text at adoption to substitute "shall" for "must" for consistency in terminology. In the adopted amendments to §§215.174, 215.175, and 215.179, the department changed the proposed text at adoption to replace "system for licensing" with "licensing system" to improve readability.

The adopted amendments to §215.174 modernize the provision by requiring use of the department's electronic licensing system. Adopted amendments to §215.174(a) add a reference to §215.83 and clarify that applications, including supporting documentation and fees, are to be submitted electronically in the designated department licensing system. Adopted new §215.174(b)

requires a license holder renewing or amending a license to verify current information and provide related information and documents for any changes to the license and pay required fees. These adopted amendments modernize the license renewal and amendment process. Adopted new §215.174(c) instructs a new applicant how to register in the department-designated licensing system. Adopted new §215.174(d) describes the information that must be submitted in the application, and the remaining subsections are relettered accordingly. The department changed the proposed text of §215.174(d) at adoption to delete extraneous brackets. Adopted amendments to relettered §215.174(e) specify the supporting documentation that an applicant for a vehicle lessor's license must provide so the department can investigate the applicant and its business practices prior to issuing a new or renewal license. The adopted amendments to relettered §215.174(e) clarify that a document submitted as part of a vehicle lessor's license application must be a legible and accurate electronic image, describe the business organization documents required, add current identity document requirements, and require a vehicle lessor not located in Texas to provide a list of vehicle lessor licenses in other states, if applicable, and any other information required to evaluate the application under current law. In adopted §215.174(e)(2), the introductory phrase "at least" in this paragraph is deleted at adoption as this phrase is unnecessary.

The department changed the proposed text at adoption in §215.174(e) and (f) to replace "must" with "shall" for consistency with drafting standards. Adopted amendments to relettered §215.174(f) specify the supporting documentation that an applicant for a vehicle lease facilitator's license must provide so the department can investigate the applicant and its business practices prior to issuing a new or renewal license. The adopted amendments to relettered §215.174(f) clarify that a document submitted as part of a vehicle lease facilitator's license application must be a legible and accurate electronic image, describe the business organization documents required, add current identity document requirements, delete a requirement for a vehicle lease facilitator to update a vehicle lessor list, and require a vehicle lease facilitator to provide any other information required to evaluate the application under current law. Adopted new §215.174(g) protects the public by prohibiting a vehicle lessor or vehicle lease facilitator from using a business name or assumed name that is confusing, deceptive, or misleading. Adopted new §215.174(h) clarifies an existing requirement that during the license term, a vehicle lessor or vehicle lease facilitator must update the list of authorized vehicle lease facilitators or vehicle lessors, as applicable, and notify the department within 10 days of a change by electronically submitting a license amendment in the designated licensing system.

Adopted amendments to §215.175(b)(5) and (6) clarify that a vehicle lessor or vehicle lease facilitator must notify the department of a change in address, name, assumed name, or change in management or ownership by electronically submitting a license amendment in the designated licensing system. An adopted amendment to §215.175(b)(7) updates a statutory reference. An adopted amendment to §215.175(b)(8) updates a subchapter designation to match the adopted relettering. The department changed the proposed text at adoption in §215.175(b)(10) to correct a citation to the department's rule that sets guidelines for the department's treatment of criminal offenses by license holders. Adopted amendments to §215.175(b)(13) delete the term "willfully" to make any omission of material information sanctionable conduct and clarify that a material misrepresentation includes



providing a false or forged identity document or a false or forged photograph, electronic image, or document. Adopted amendments to §215.175(c) and (d) modernize the provision to clarify that the vehicle lessor and the vehicle lease facilitator must notify the department by electronically submitting a license amendment in the designated licensing system.

An adopted amendment to §215.176 adds "business" to the title of the section to describe the section. An adopted amendment in §215.176(b) substitutes "municipality" for "city" for consistency with the term defined in §215.132. In §215.176(b) a change to the text at adoption substitutes "must" for "is required to" for consistency in terminology.

An adopted amendment to the title of §215.177 adds "Premises Requirements" to describe the scope of the section. An adopted amendment to §215.177(a) removes unnecessary words to improve readability. An adopted amendment to §215.177(a)(1)(A) sets minimum standards for a license holder's availability and responsiveness to the public and the department by adding a requirement that the business telephone be answered from 8:00 a.m. to 5:00 p.m. weekdays by a bona fide employee, owner, answering service, voicemail service, or answering machine, and that a caller must be able to speak to a natural person or leave a message during these hours. Adopted amendments to §215.177(a)(1)(B) clarify that "chairs" is interpreted as two chairs and clarify that a vehicle lessor or vehicle facilitator's office must have internet access to ensure a license holder has the minimum level of facilities to adequately serve the public. Adopted amendments to §215.177(a)(1)(C) further ensure that a vehicle lessor or vehicle facilitator's office meets minimum standards to serve the public by requiring the office to have a permanent roof, requiring the office to be in a building open to the public, requiring the physical address to have an assigned emergency services property address, and stating that the office may not be virtual or provided by a subscription for office space or office services. Adopted amendments to §215.177(a)(1)(E) and (F) remove unnecessary language without changing the meaning. Adopted amendments to §215.177(a)(2) protect the public from being misled or confused by a license holder's signage by adding "business" to clarify that the requirements are for a business sign, requiring that the business name used on the sign be substantially similar to the name of the licensed entity, and adding criteria to determine whether the sign is conspicuous and permanent. Adopted amendments to §215.177(a)(3) clarify premises lease requirements and modernize the language. The adopted amendments in §215.177(a) are consistent with the minimum requirements for a retail dealer and deter fraud and protect consumers. An adopted amendment deletes the requirements in §215.177(b) for out-of-state vehicle lessors who do not deal directly with the public as these requirements are unnecessary and unenforceable, and the remaining following subsections are relettered accordingly.

Adopted amendments to §215.178(a) clarify that the records kept by lessors and lease facilitators include vehicle purchase, leasing, and sales records. The adopted amendments to §215.178(a) include a change to the text at adoption to add the phrase "of leased vehicles" to align subsection (a) with subsection (a)(1) by clarifying that sales records relate to vehicles sold at the end of a lease, and that a lessor is required to keep records of leases as well as records of sales. The adopted amendments to §215.178(a) also include a change to the text at adoption to replace "must" with "shall" for consistency with drafting standards. Adopted amendments to §215.178(a)(1) add "complete" to describe records for consistency, delete

an archaic requirement to keep records for prior periods at a location in the same county or within 25 miles of the license location, and simplify the language regarding the requirement that a dealer must reply within 15 days of receiving a request for records from the department regardless of the method in which the department makes the request. Adopted amendments to §215.178(b) improve clarity and readability and revise the requirement for a vehicle lease facilitator to provide an employee's work address and not a home address. Adopted new §215.178(c) describes the vehicle lessor's recordkeeping requirements if a leased vehicle is later sold, and the subsequent subsections are relettered accordingly. Adopted amendments to relettered §215.178(d) consist of minor edits throughout to fix cross-references and improve clarity and readability, and do not change the meaning of the rule. Adopted amendments to relettered §215.178(f) delete redundant language and clarify that a letter of representation or appointment between a vehicle lessor and a vehicle lease facilitator must be executed and maintained by each party. Adopted amendments to relettered §215.178(g) modernize the provision by adding the option for a vehicle lessor or a vehicle lease facilitator to send records to the department electronically, and make minor edits to improve readability.

Adopted amendments throughout §215.179 modernize the rule by specifying that a vehicle lessor or vehicle facilitator must submit a notice of a change to a license electronically in the designated licensing system, remove redundant or unnecessary language, and update the title of a referenced section of this chapter.

An adopted amendment to §215.180 substitutes a subchapter designation for a list of sections so that a future statutory change will not require a rule change.

#### Subchapter G. Warranty Performance Obligations

The department adopts the repeal of all sections of Subchapter G, Warranty Performance Obligations, in this issue of the *Texas Register* because the substance of each rule and any adopted amendments are incorporated into adopted new Chapter 224, (relating to Adjudicative Practice and Procedure) which is also published for adoption in this issue of the *Texas Register*. The adopted repeal includes §§215.201-215.210.

#### Subchapter H. Advertising

This subchapter is adopted to be relettered as Subchapter F because the department adopts the repeal of current Subchapters B and G in this issue of the *Texas Register* and the remaining subchapters are adopted to be relettered accordingly.

An adopted amendment to §215.242 substitutes "deemed" for "considered" for consistency.

Adopted amendments to §215.244(11) delete an unnecessary definition for a license holder. As a result, adopted amendments to §215.244 renumber the remaining definitions and fix cross references accordingly. An adopted amendment to renumbered §215.244(17) clarifies that the communication referred to in the provision is a notice of opportunity to cure.

An adopted amendment to the title of §215.249 substitutes "or" for "/" for clarity and style consistency. An adopted amendment to §215.249(c) deletes "the State of" for consistency.

In §215.249(a) and §215.250(a) changes to the text at adoption substitutes "must" for "shall" for consistency in terminology.

Adopted amendments to §215.250(a) delete "new or used" as this phrase is unnecessary and add a requirement for a dealer to disclose a market adjustment if one is added to the sales price so that the public is aware of the pricing. Adopted amendments to §215.250(b)(3) add clarity that fees and charges expressly allowed by law do not have to be included in a featured sales price.

An adopted amendment to §215.257 clarifies that the term "authorized dealer" or similar term may not be used unless a dealer holds both a franchised dealer license and a franchised dealer GDN.

Adopted amendments to the title and text of §215.261 substitute "or" for "/" for clarity and style consistency.

An adopted amendment to §215.264(c) substitutes "other disclosure or deal term" for the lengthy list of disclosures and deal terms in this section for clarity and brevity. Adopted amendments to §215.264(f) and (h) delete references to specific paragraphs as the paragraph references are unnecessary.

Adopted amendments to §215.268 delete unnecessary language and substitute terms for consistency and clarity and do not change the meaning of the section.

Adopted amendments to §215.270(b) add clarity by identifying the referenced notice as an opportunity to cure and update a reference to the adopted new §224.56, Notice of Department Decision, which is adopted in this issue of the *Texas Register*.

Subchapter I. Practice and Procedure for Hearings Conducted by The State Office of Administrative Hearings

All sections of Subchapter I, Practice and Procedure for Hearings Conducted by The State Office of Administrative Hearings, are adopted for repeal in this issue of the *Texas Register* because the substance of each rule and any adopted amendments are incorporated into adopted new Chapter 224, (relating to Adjudicative Practice and Procedure) which is adopted in this issue of the *Texas Register*. The adopted repeal includes §§215.301 - 215.303, 215.305 - 215.308, 215.310, 215.311, and 215.314 - 215.317.

Subchapter J. Administrative Sanctions

This subchapter is adopted to be relettered as Subchapter G because the department adopts the repeal of current Subchapters B, G, and I in this issue of the *Texas Register* and the remaining subchapters are adopted to be relettered accordingly.

Adopted amendments to §215.500 delete "and Procedures" from the title and delete all of subsection (b) because the procedures from this section are adopted into new Chapter 224, (relating to Adjudicative Practice and Procedure), which is published for adoption in this issue of the *Texas Register*. Adopted amendments to §215.500(a) delete the (a) designation and correct a reference to a referenced section.

The remaining sections of Subchapter J, §§215.501, 215.502, and §215.505, are adopted for repeal in this issue of the *Texas Register* and are adopted for inclusion in new Chapter 224, (relating to Adjudicative Practice and Procedure), which is published for adoption in this issue of the *Texas Register*.

#### SUMMARY OF COMMENTS.

The department received nine written comments on the proposal.

The department received written comments from six individuals, the Texas Automobile Dealers Association (TADA), the Texas Independent Automobile Dealers Association (TIADA), and the Texas Recreational Vehicle Association (TRVA).

Comment: TADA requested that the proposed amendments to §§215.102, 215.103, 215.171, and 215.173 - 215.180 be withdrawn from consideration due to pending litigation.

Response: The department disagrees. The department does not believe that withdrawing these rules is necessary as these rules are not at issue in pending litigation, except as authority for regular ongoing enforcement activities.

Comment: TADA stated that the word "authorized" is unclear in §215.102(e)(2)(E)(i).

Response: The department disagrees. The department believes that "authorized" is a term that a manufacturer or distributor can reasonably interpret when applying for a license. The department modified other language in the sentence for clarity and consistency in response to this comment.

Comment: An individual commenter requested the department change the proposed amendments to §215.102 to clarify which specific terms in a distributor agreement must be disclosed to the department under Occupations Code, §2301.260 because a distribution agreement may contain confidential or proprietary information that is irrelevant to distributor licensing requirements.

Response: The department agrees. The department modified the proposed language in §215.102(e)(2)(g) at adoption to address this concern by specifying the contract terms that an applicant for a distributor license must provide the department.

Comment: Four individual commenters stated their full support for amendments to §215.103 and expressed the view that a franchised dealership's ability to offer mobile warranty repair services will enable franchised dealers to provide a higher level of service to the public and improve customer satisfaction.

Response: The department agrees.

Comment: An individual commenter requested that an electronic notice requirement be added to §215.105 and §215.106.

Response: The department agrees. Electronic notice is an efficient and preferred notice method. The department added language at adoption to §215.105 and §215.106 in response to this comment to require electronic notice in addition to notice by certified mail, return receipt requested.

Comment: TADA requested clarifying language be added to §215.111 regarding the minimum number of days that a manufacturer or distributor must provide a franchised dealer to file a protest before terminating or discontinuing a franchise.

Response: The department agrees. The department added language in §215.111(b) at adoption to clarify that the effective date of a franchise termination or discontinuance must not be less than 60 days after the franchised dealer receives notice.

Comment: TADA and TRVA requested the department not repeal §215.112.

Response: The department disagrees. The department lost statutory authority for §215.112 on September 1, 2019. This rule has been unenforceable for more than four years and must be repealed. The statutory limitations on sales such as prohibitions on weekend sales ("blue law") and off-site sales remain in effect and enforceable on their own, without any need for the depart-

ment to repeat them in rule. The department remains committed to working with stakeholders to propose a new rule for board consideration consistent with the department's current statutory authority.

Comment: TIADA stated that the department should not require license applicants to provide additional or specific forms of identification and recommended striking the words "at least" before the phrase "one of the following" in §215.133(c)(2)(D).

Response: The department agrees. The department does not require a natural person to provide more than one form of identification and a person may choose any form of identification from the list in §215.133(c)(2)(D). Some applicants have chosen to upload more than one type of identification to facilitate license processing due to concerns about scanned image quality. However, this situation has become less prevalent, and the department agrees that "at least" is unnecessary language and has deleted that phrase.

Comment: TIADA recommended simplifying the language in relettered §215.138(j).

Response: The department agrees. The department reorganized the language in relettered §215.138(j) at adoption to improve clarity.

Comment: TADA and TIADA had concerns about the proposed new requirement in §215.140(a)(11)(C) for a GDN applicant or holder to disclose the physical address of a storage lot.

Response: The department agrees. In response, the department changed the language of §215.140(a)(11)(C) at adoption to make the requirement less burdensome by only requiring a GDN holder or applicant to disclose the address of a storage lot or location of a vehicle in inventory upon department request, rather than through the license application or license amendment process.

Comment: TIADA questioned whether the minimum premises standards for wholesale motor vehicle auctions in §215.140(b)(6)(g) are appropriate.

Response: The department disagrees. The department proposed minimum standards based on the wholesale nature of this GDN type and believes these provisions are necessary to implement Transportation Code, §503.032. The department did not receive any comments from wholesale motor vehicle auction GDN holders regarding these minimum standards.

Comment: TIADA pointed out incorrect usage of the term "dealer" in §215.140(b)(6)(g).

Response: The department agrees. The department changed the language of §215.140(b)(6)(g) at adoption to replace "dealer" with "wholesale motor vehicle auction."

Comment: TIADA suggested adding "if applicable" to the odometer disclosure recordkeeping requirement in §215.144(e)(8)(M).

Response: The department agrees. The department changed the language of §215.144(e)(8)(M) at adoption to add a clarifying phrase.

Comment: TADA requested that license holders be allowed adequate time to reprint forms or reprogram systems to meet new font and format requirements in §215.160(b) and (c) to minimize financial impact to affected license holders.

Response: The department agrees. The department notes that it, too, must reprogram department systems to implement some of the adopted amendments. Accordingly, the department is recommending a future effective date of June 1, 2024, to the Board for all amendments.

## SUBCHAPTER A. GENERAL PROVISIONS

### 43 TAC §215.1, §215.2

STATUTORY AUTHORITY. The department adopts amendments to Chapter 215 under Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale, and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise that authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license holders, ensure that the distribution, sale, and lease of motor vehicles is conducted as required by statute and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles, and to enforce and administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651, which gives the board authority to deny an application for a license, revoke or suspend a license, place on probation, or reprimand a licensee if the applicant or license holder is unfit, makes a material misrepresentation, violates any law relating to the sale, distribution, financing, or insuring of motor vehicles, willfully defrauds a purchaser, or fails to fulfill a written agreement with a retail purchaser of a motor vehicle; Government Code, §411.122(d), which authorizes department access to criminal history record information maintained by DPS; Government Code, §411.12511, which authorizes the department to obtain criminal history record information from DPS and the FBI for license applicants, license holders, and representatives whose act or omission would be cause for denying, revoking, or suspending a general distinguishing number or license issued under Transportation Code, Chapter 503, or Occupations Code, Chapters 2301 and 2302; Occupations Code, §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code, Chapter 2302; Transportation Code, §503.002, which authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503; Transportation Code, §503.009, which authorizes the board to adopt rules for certain contested cases; Transportation Code, §503.0296, which requires the board to adopt a rule requiring that an applicant for an original or renewal general distinguishing number who adopts to be an independent motor vehicle dealer complete web-based education and training developed or approved by the department; Transportation Code, §503.033, which authorizes the board to adopt rules prescribe the form of the notice of a surety bond and the procedure by which a claimant may recover against the surety bond; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, §§503.0626, 503.0631, and 503.0632 which require the board to adopt rules necessary to implement and manage the department's temporary tag databases; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department, as well as the statutes referenced throughout this preamble.

The department also adopts amendments under the authority of Transportation Code, §501.0041 and §502.0021; and Government Code, §§2001.004, and 2001.039, and 2001.054, in addition to the statutory authority referenced throughout this preamble.

Transportation Code, §501.0041 authorizes the department to adopt rules to administer Transportation Code, Chapter 501. Transportation Code, §502.0021 authorizes the department to adopt rules to administer Transportation Code, Chapter 502.

Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. Government Code, §2001.039 requires state agencies to readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule. Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license.

**CROSS REFERENCE TO STATUTE.** These amendments implement Government Code, Chapters 411 and 2001; Occupations Code, Chapters 2301 and 2302; and Transportation Code, Chapters 501-503, 1001-1003, and 1005.

*§215.1. Purpose and Scope.*

Occupations Code, Chapter 2301 and Transportation Code, Chapters 503 and 1001-1005 require the Texas Department of Motor Vehicles to license and regulate the vehicle industry to ensure a sound system of distributing and selling vehicles; provide for compliance with manufacturers' warranties; and to prevent fraud, unfair practices, discrimination, impositions, and other abuses of the people of this state in connection with the distribution and sale of vehicles. This chapter describes licensing requirements and the rules governing the vehicle industry.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 12, 2024.

TRD-202401555

Laura Moriarty

General Counsel

Texas Department of Motor Vehicles

Effective date: June 1, 2024

Proposal publication date: December 29, 2023

For further information, please call: (512) 465-4160



## SUBCHAPTER B. ADJUDICATIVE PRACTICE AND PROCEDURE

**43 TAC §§215.21 - 215.24, 215.27, 215.29, 215.30, 215.32, 215.34 - 215.49, 215.55, 215.56, 215.58 - 215.63**

**STATUTORY AUTHORITY.** The department adopts repeals to Chapter 215 under Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale, and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise that authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license holders, ensure that the distribution, sale, and lease of motor vehicles is conducted as required by statute and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution

and sale of motor vehicles, and to enforce and administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651, which gives the board authority to deny an application for a license, revoke or suspend a license, place on probation, or reprimand a licensee if the applicant or license holder is unfit, makes a material misrepresentation, violates any law relating to the sale, distribution, financing, or insuring of motor vehicles, willfully defrauds a purchaser, or fails to fulfill a written agreement with a retail purchaser of a motor vehicle; Government Code, §411.122(d), which authorizes department access to criminal history record information maintained by DPS; Government Code, §411.12511, which authorizes the department to obtain criminal history record information from DPS and the FBI for license applicants, license holders, and representatives whose act or omission would be cause for denying, revoking, or suspending a general distinguishing number or license issued under Transportation Code, Chapter 503, or Occupations Code, Chapters 2301 and 2302; Occupations Code, §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code, Chapter 2302; Transportation Code, §503.002, which authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503; Transportation Code, §503.009, which authorizes the board to adopt rules for certain contested cases; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, §§503.0626, 503.0631, and 503.0632 which require the board to adopt rules necessary to implement and manage the department's temporary tag databases; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department, as well as the statutes referenced throughout this preamble.

The department also adopts repeals under the authority of Transportation Code, §501.0041 and §502.0021; and Government Code, §§2001.004, and 2001.039, and 2001.054, in addition to the statutory authority referenced throughout this preamble.

Transportation Code, §501.0041 authorizes the department to adopt rules to administer Transportation Code, Chapter 501. Transportation Code, §502.0021 authorizes the department to adopt rules to administer Transportation Code, Chapter 502.

Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. Government Code, §2001.039 requires state agencies to readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule. Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license.

**CROSS REFERENCE TO STATUTE.** These repeals implement Government Code, Chapters 411 and 2001; Occupations Code, Chapters 2301 and 2302; and Transportation Code, Chapters 501-503, 1001-1003, and 1005.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 12, 2024.



## SUBCHAPTER B. LICENSES, GENERALLY

### 43 TAC §§215.82 - 215.85, 215.87, 215.89

STATUTORY AUTHORITY. The department adopts amendments to Chapter 215 under Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale, and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise that authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license holders, ensure that the distribution, sale, and lease of motor vehicles is conducted as required by statute and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles, and to enforce and administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651, which gives the board authority to deny an application for a license, revoke or suspend a license, place on probation, or reprimand a licensee if the applicant or license holder is unfit, makes a material misrepresentation, violates any law relating to the sale, distribution, financing, or insuring of motor vehicles, willfully defrauds a purchaser, or fails to fulfill a written agreement with a retail purchaser of a motor vehicle; Government Code, §411.122(d), which authorizes department access to criminal history record information maintained by DPS; Government Code, §411.12511, which authorizes the department to obtain criminal history record information from DPS and the FBI for license applicants, license holders, and representatives whose act or omission would be cause for denying, revoking, or suspending a general distinguishing number or license issued under Transportation Code, Chapter 503, or Occupations Code, Chapters 2301 and 2302; Occupations Code, §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code, Chapter 2302; Transportation Code, §503.002, which authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503; Transportation Code, §503.009, which authorizes the board to adopt rules for certain contested cases; Transportation Code, §503.0296, which requires the board to adopt a rule requiring that an applicant for an original or renewal general distinguishing number who adopts to be an independent motor vehicle dealer complete web-based education and training developed or approved by the department; Transportation Code, §503.033, which authorizes the board to adopt rules prescribe the form of the notice of a surety bond and the procedure by which a claimant may recover against the surety bond; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, §§503.0626, 503.0631, and 503.0632 which require the board to adopt rules necessary to implement

and manage the department's temporary tag databases; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department, as well as the statutes referenced throughout this preamble.

The department also adopts amendments under the authority of Transportation Code, §501.0041 and §502.0021; and Government Code, §§2001.004, and 2001.039, and 2001.054, in addition to the statutory authority referenced throughout this preamble.

Transportation Code, §501.0041 authorizes the department to adopt rules to administer Transportation Code, Chapter 501. Transportation Code, §502.0021 authorizes the department to adopt rules to administer Transportation Code, Chapter 502.

Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. Government Code, §2001.039 requires state agencies to readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule. Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license.

CROSS REFERENCE TO STATUTE. These adopted revisions implement Government Code, Chapters 411 and 2001; Occupations Code, Chapters Occupations Code, Chapters 53, 55, 2301, and 2302; and Transportation Code, Chapters 501-503, 1001-1003, and 1005.

#### *§215.82. Replacement Standard License Plates and Stickers.*

A license holder may receive a replacement dealer's, converter's, drive-a-way in-transit, or manufacturer's standard license plate or assigned sticker, as applicable, at no charge if the license holder:

- (1) did not receive the applicable standard license plate or sticker;
- (2) makes the request within 45 days of the date the applicable standard license plate or sticker was mailed to the license holder; and
- (3) submits a request electronically in the licensing system designated by the department.

#### *§215.87. License and Standard License Plate Terms and Fees.*

(a) Except as provided by other law, the term of a license or standard license plate issued by the department to a dealer, converter, drive-a-way operator, distributor, or manufacturer under Occupations Code, Chapter 2301 or Transportation Code, Chapter 503 is two years.

(b) A standard license plate issued by the department expires on the date the associated license expires or is canceled, closed, or revoked.

(c) The fee for a license or standard license plate is computed by multiplying the applicable annual fee by the number of years of the license term. The entire fee including any tax owed under Tax Code §152.027 is due at the time of application for the license or license renewal.

(d) A dealer may apply for a personalized prestige plate issued under Transportation Code §503.0615 by completing a department form, providing a copy of a department-issued license, and submitting payment to a county tax assessor-collector. A personalized prestige plate may be renewed in an electronic system designated by the department.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 12, 2024.

TRD-202401557

Laura Moriarty

General Counsel

Texas Department of Motor Vehicles

Effective date: June 1, 2024

Proposal publication date: December 29, 2023

For further information, please call: (512) 465-4160



## SUBCHAPTER C. FRANCHISED DEALERS, MANUFACTURERS, DISTRIBUTORS, AND CONVERTERS

### 43 TAC §§215.101 - 215.106, 215.108 - 215.111, 215.113, 215.115 - 215.117, 215.120, 215.121

STATUTORY AUTHORITY. The department adopts amendments to Chapter 215 under Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale, and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise that authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license holders, ensure that the distribution, sale, and lease of motor vehicles is conducted as required by statute and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles, and to enforce and administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651, which gives the board authority to deny an application for a license, revoke or suspend a license, place on probation, or reprimand a licensee if the applicant or license holder is unfit, makes a material misrepresentation, violates any law relating to the sale, distribution, financing, or insuring of motor vehicles, willfully defrauds a purchaser, or fails to fulfill a written agreement with a retail purchaser of a motor vehicle; Government Code, §411.122(d), which authorizes department access to criminal history record information maintained by DPS; Government Code, §411.12511, which authorizes the department to obtain criminal history record information from DPS and the FBI for license applicants, license holders, and representatives whose act or omission would be cause for denying, revoking, or suspending a general distinguishing number or license issued under Transportation Code, Chapter 503, or Occupations Code, Chapters 2301 and 2302; Occupations Code, §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code, Chapter 2302; Transportation Code, §503.002, which authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503; Transportation Code, §503.009, which authorizes the board to adopt rules for certain contested cases; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, §§503.0626, 503.0631, and 503.0632

which require the board to adopt rules necessary to implement and manage the department's temporary tag databases; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department, as well as the statutes referenced throughout this preamble.

The department also adopts amendments under the authority of Transportation Code, §501.0041 and §502.0021; and Government Code, §§2001.004, and 2001.039, and 2001.054, in addition to the statutory authority referenced throughout this preamble.

Transportation Code, §501.0041 authorizes the department to adopt rules to administer Transportation Code, Chapter 501. Transportation Code, §502.0021 authorizes the department to adopt rules to administer Transportation Code, Chapter 502.

Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. Government Code, §2001.039 requires state agencies to readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule. Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license.

CROSS REFERENCE TO STATUTE. These adopted revisions implement Government Code, Chapters 411 and 2001; Occupations Code, Chapters Occupations Code, Chapters 53, 55, 2301, and 2302; and Transportation Code, Chapters 501-503, 1001-1003, and 1005.

#### §215.102. *Application Requirements.*

(a) No person may engage in business, serve in the capacity of, or act as a manufacturer, distributor, converter, or franchised dealer in Texas unless that person holds a license.

(b) A license application must be on a form prescribed by the department and properly completed by the applicant. A license application must include all required information, supporting documents, and fees and must be submitted to the department electronically in the licensing system designated by the department.

(c) A license holder renewing or amending its license must verify current license information, provide related information and documents for any new license requirements or changes to the license, and pay required fees including any outstanding civil penalties owed the department under a final order.

(d) An applicant for a new license must register for an account in the department-designated licensing system by selecting the licensing system icon on the dealer page of the department website. An applicant must designate the account administrator and provide the name and email address for that person, and provide the business telephone number, name, business type, and social security number or employer identification number, as applicable. The applicant's licensing account administrator must be an owner, officer, manager, or bona fide employee.

(e) Once registered, an applicant may apply for a new license and must provide the following:

(1) Required information:

(A) type of license requested;

(B) business information, including the name, physical and mailing addresses, telephone number, Secretary of State file number (as applicable), and website address as applicable;

(C) contact name, email address, and telephone number of the person submitting the application;

(D) contact name, email address, and telephone number of a person who can provide information about business operations and the motor vehicle products or services offered;

(E) the name, social security number, date of birth, identity document information, and ownership percentage for each owner, partner, member, beneficiary, or principal if the applicant is not a publicly traded company;

(F) the name, social security number, date of birth, and identity document information for each officer, director, manager, trustee, or other representative authorized to act on behalf of the applicant if the applicant is owned in full or in part by a legal entity;

(G) the name, employer identification number, ownership percentage, and non-profit or publicly traded status for each legal entity that owns the applicant in full or in part;

(H) criminal history record information under the laws of Texas, another state in the United States, the United States, and any foreign jurisdiction for each person listed in the application, including offense description, date, and location;

(I) military service status;

(J) licensing history required to evaluate fitness for licensure under §215.89 of this title (relating to Fitness);

(K) if applying for a manufacturer's, distributor's, or converter's license:

(i) financial resources, business integrity and experience, facilities and personnel for serving franchised dealers;

(ii) a description of the business model or business process and product and services used or offered sufficient to allow the department to determine if the license type applied for is appropriate under Texas law; and

(iii) number of standard license plates requested.

(L) if applying for a manufacturer's or distributor's license:

(i) if the applicant or any entity controlled by the applicant owns an interest in a Texas motor vehicle dealer or dealership, controls a Texas dealer or dealership, or acts in the capacity of a Texas dealer;

(ii) a statement regarding the manufacturer's compliance with Occupations Code Chapter 2301, Subchapter I and §§2301.451-2301.476; and

(iii) if a franchise agreement for each line-make being applied for exists which states the obligations of a Texas franchised dealer to the applicant and the obligations of the applicant to the Texas franchised dealer.

(M) if applying for a manufacturer's license, the line-make information including the world manufacturer identifier assigned by the National Highway Traffic Safety Administration, line-make name, and vehicle type;

(N) if applying for a distributor's license:

(i) the manufacturer for whom the distributor will act;

(ii) whether the manufacturer is licensed in Texas;

(iii) the person in this state who is responsible for compliance with the warranty covering the motor vehicles to be sold; and

(iv) the terms of the contract under which the distributor will act for the manufacturer.

(O) if applying for a converter's license:

(i) a name and description for each conversion package; and

(ii) the manufacturer or distributor and line-make of the underlying new motor vehicle chassis to be converted.

(P) if applying for a franchised dealer's license:

(i) reason for the new application;

(ii) dealership location on a system-generated map;

(iii) whether the dealership is under construction and expected completion date;

(iv) information about the performance of sales or warranty services at the location; and

(v) information necessary to obtain a franchised dealer GDN under §215.133 of this title (relating to GDN Application Requirements for a Dealer or a Wholesale Motor Vehicle Auction).

(Q) signed Certificate of Responsibility, which is a form provided by the department; and

(R) any other information required by the department to evaluate the application under current law and board rules.

(2) A legible and accurate electronic image of each applicable required document:

(A) the certificate of filing, certificate of incorporation, or certificate of registration on file with the Secretary of State, as applicable;

(B) each assumed name certificate on file with the Secretary of State or county clerk;

(C) one of the following unexpired identity documents for each natural person listed in the application:

(i) driver license;

(ii) Texas Identification Card issued by the Texas Department of Public Safety under Transportation Code, Chapter 521, Subchapter E;

(iii) license to carry a handgun issued by the Texas Department of Public Safety under Government Code, Chapter 411, Subchapter H;

(iv) passport; or

(v) United States armed forces identification.

(D) if applying for a manufacturer's, distributor's, or converter's license, a written description of the business model or business process and brochures, photos, or other documents describing products and services sufficient to allow the department to identify a motor vehicle product type and the appropriate license required under Texas law;

(E) if applying for a manufacturer's or distributor's license:

(i) a list of each franchised dealer in Texas including the dealer's name and physical address, or if motor vehicle sales or

offers to sell to Texas residents will solely be over the internet, a list of each out-of-state dealer or person authorized by the manufacturer or distributor to sell a new motor vehicle online to a Texas resident including the dealer's or person's name, physical address, and license number issued by the state in which the dealer or person is located; and

(ii) a list of motor vehicle product line-makes manufactured or distributed for sale.

(F) if applying for a manufacturer's license:

(i) a list of authorized distributors or representatives; and

(ii) a franchised dealer's preparation and delivery obligations before delivery of a new vehicle to a retail purchaser and the schedule of compensation to be paid to the franchised dealer;

(G) if applying for a distributor's license, either:

(i) pages of the executed distributor agreement containing at minimum the following:

(I) the legal business name of each party;

(II) authorized signature of each party;

(III) distribution territory;

(IV) distribution agreement effective date and

end date,

or written confirmation from the distributor and manufacturer that the distribution agreement is expected to be in effect for the entire license period;

(V) physical location, mailing address, and email address of each party;

(VI) distributor responsibilities under the agreement related to warranty matters under Occupations Code, Chapter 2301, and franchised dealer matters under Occupations Code, Chapter 2301, Subchapter H, Dealers, Subchapter I, Warranties: Reimbursement of Dealer, Subchapter J, Manufacturers, Distributors, and Representative, and Subchapter K, Mediation Between Dealer and Manufacturer or Distributor;

(VII) party or person responsible for providing warranty services; and

(VIII) motor vehicle line-makes and vehicle types included in the agreement; or

(ii) a completed department-provided questionnaire containing the information required in clause (i) signed by the applicant and the manufacturer as true and complete. An authorized representative for the manufacturer may sign the questionnaire, however, the applicant or applicant's representative may not sign the questionnaire on behalf of a manufacturer.

(H) if applying for a franchised dealer's license, pages of the executed franchise agreement containing at minimum the following:

(i) the legal business name of each party;

(ii) authorized signature of each party;

(iii) authorized dealership location;

(iv) list of motor vehicle line-makes and vehicle types to be sold or serviced; and

(v) a department Evidence of Relocation form signed by the manufacturer or distributor, if applicable; and

(I) any other documents required by the department to evaluate the application under current law and board rules.

(3) Required fees:

(A) the license fee as prescribed by law; and

(B) the fee as prescribed by law for each plate requested by the applicant.

(f) An applicant operating under a name other than the applicant shall use the name under which the applicant is authorized to do business, as filed with the Secretary of State or county clerk, and the assumed name of such legal entity shall be recorded by the applicant on the application using the letters "DBA." The applicant may not use a name or assumed name that may be confused with or is similar to that of a governmental entity or that is otherwise deceptive or misleading to the public.

(g) A manufacturer or distributor may add a new line-make to an existing license during the license period by submitting a license amendment application and providing brochures, photos, or other documents describing the new line-make sufficient to allow the department to identify the line-make and vehicle product type. A license amendment to add a line-make to a manufacturer's or distributor's license must be approved by the department before the new line-make may be added to a franchised dealer's license.

#### *§215.104. Changes to Franchised Dealer's License.*

(a) In accordance with Occupations Code, §2301.356, a franchised dealer must file an application to amend the franchised dealer's license to request an additional line-make at the dealer's currently licensed showroom. The amendment application must be filed electronically in the licensing system designated by the department.

(1) In accordance with §215.110 of this title (relating to Evidence of Franchise), the franchised dealer must attach to the amendment application a legible and accurate electronic image of:

(A) the executed franchise agreement;

(B) the required excerpt from the executed franchise agreement; or

(C) an evidence of franchise form completed by the manufacturer, distributor, or representative.

(2) The amendment application for an additional franchise at the showroom is considered an original application and is subject to protest, in accordance with Occupations Code, Chapter 2301, this chapter, and Chapter 224 of this title (relating to (relating to Adjudicative Practice and Procedure)).

(b) A franchised dealer may propose to sell or assign to another any interest in the licensed entity, whether a corporation or otherwise, provided the physical location of the licensed entity remains the same.

(1) The franchised dealer shall notify the department in writing within 10 days of the sale or assignment of interest by filing an application to amend the franchised dealer's license electronically in the licensing system designated by the department.

(2) If the sale or assignment of any portion of the business results in a change of business entity, then the purchasing entity or assignee must apply for and obtain a new license in the name of the new business entity.

(3) A publicly-held corporation must file an amendment application if one person or entity acquires 10% or greater interest in the licensed entity.



(c) A franchised dealer must file an amendment application electronically in the licensing system designated by the department within 10 days of a license change, including:

- (1) deletion of a line-make from the dealer's license;
- (2) a change of assumed name on file with the Office of the Secretary of State or county clerk;
- (3) a change of mailing address;
- (4) a change of telephone number; or
- (5) a change of email address.

(d) A franchised dealer must file a business entity amendment application electronically in the licensing system designated by the department within 10 days of an entity change, including:

- (1) a change in management, dealer principal, or change of other person who oversees a franchised dealer's business activities, including a managing partner, officer, director of a corporation, or similar person; or
- (2) a change of legal entity name on file with the Office of the Secretary of State.

(e) If a franchised dealer changes or converts from one type of business entity to another type of business entity without changing ownership of the dealership, the submission of a franchise agreement in the name of the new entity is not required in conjunction with an amendment application. The franchise agreement on file with the department prior to the change or conversion of the dealer's business entity type applies to the successor entity until the parties agree to replace the franchise agreement. This subsection does not apply to a sole proprietorship or general partnership.

(f) If a franchised dealer adopts a plan of conversion under a state or federal law that allows one legal entity to be converted into another legal entity, only an amendment application is necessary to be filed with the department. The franchise agreement on file with the department continues to apply to the converted entity. If a license holder becomes another legal entity by any means other than by conversion, a new application is required, subject to subsection (e) of this section.

(g) In addition to obtaining permission from the manufacturer or distributor, a franchised dealer must obtain department approval prior to opening a supplemental location or relocating an existing location by filing an amendment application electronically in the licensing system designated by the department. A franchised dealer must notify the department electronically in the licensing system designated by the department when closing an existing location.

*§215.105. Notification of License Application; Protest Requirements.*

(a) The provisions of this section are not applicable to an application filed with the department for a franchised dealer's license as a result of the purchase or transfer of an existing entity holding a current franchised dealer's license that does not involve a physical relocation of the purchased or transferred line-makes.

(b) Upon receipt of an application for a franchised dealer's license, including an application filed with the department by reason of the relocation of an existing dealership, the department shall give notice of the filing of the application to each franchised dealer that may have standing to protest the application. The department shall send notice electronically and by certified mail, return receipt requested, to the email address and mailing address in the franchised dealer's license record.

(c) If it appears to the department that there are no franchised dealers with standing to protest, then no notice shall be given.

(d) A person holding a franchised dealer's license for the sale of the same line-make of a new motor vehicle as proposed for sale in the subject application and that has standing to protest the application may file with the department a notice of protest opposing the granting of a license by timely filing a protest electronically in the licensing system designated by the department and paying the required fee.

(e) A franchised dealer that wishes to protest the application shall give notice in accordance with Occupations Code, Chapter 2301.

(1) The notice of protest must be in writing and shall be signed by an authorized officer or other official authorized to sign on behalf of the protesting dealer filing the notice.

(2) The notice of protest must state the statutory basis upon which the protest is made and assert how the protesting dealer meets the standing requirements under §215.119 of this title (relating to Standing to Protest) to protest the application.

(3) The notice of protest must state that the protest is not made for purposes of delay or for any other purpose except for justifiable cause.

(4) If a protest is filed against an application for the establishment of a dealership or for addition of a line-make at an existing dealership, the notice of protest must state under which provision of Occupations Code, Chapter 2301 the protest is made.

*§215.106. Time for Filing Protest.*

(a) A notice of protest must be:

(1) received by the department not later than 5:00 p.m. Central Time (CST or CDT, as applicable) on the 15th day after the department issued the notice as evidenced by the date in the notice;

(2) filed in the department's designated electronic filing system; and

(3) submitted with the filing fee paid.

(b) The department shall reject a notice of protest if:

(1) the complete notice of protest is not filed within 15 days from the date of mailing of the department's notification to the license holder of the filing of the application; or

(2) the required filing fee is not paid when the protest is submitted in the department's designated electronic filing system or is later dishonored.

*§215.109. Replacement Dealership.*

An application for a franchised dealer's license for a dealership intended as a replacement for a previously existing dealership shall be deemed an application for a "replacement dealership" required to be established in accordance with Occupations Code, §2301.453 and shall not be subject to protest under the provisions of §215.105 of this title (relating to Notification of License Application; Protest Requirements), provided that:

(1) the application states that the applicant is intended as a replacement dealership and identifies the prior dealership to be replaced;

(2) the manufacturer or distributor of the line-make gives notice to the department and to other dealers franchised for the same line-make that meet the provisions of Occupations Code, §2301.652(b) and (c);

(3) the notice under paragraph (2) of this subsection is given within 60 days following the closing of the prior dealership;

(4) the application is filed electronically in the licensing system designated by the department not later than one year following the closing of the prior dealership; and

(5) the location of the applicant's proposed dealership is not more than two miles from the location of the prior dealership.

*§215.111. Notice of Termination or Discontinuance of Franchise and Time for Filing Protest.*

(a) A manufacturer or distributor shall give notice of termination or discontinuance of a dealer's franchise to a franchised dealer and the department in accordance with Occupations Code, §2301.453.

(b) A dealer must file a written notice of protest of the franchise termination or discontinuance pursuant to Occupations Code, §2301.453 electronically in the licensing system designated by the department, prior to the effective date of the franchise termination or discontinuance stated in the notice from the manufacturer or distributor, which must not be less than 60 days after the franchised dealer receives the notice of termination or discontinuance.

*§215.113. Manufacturer Ownership of Franchised Dealer; Good Cause Extension; Dealer Development.*

(a) In the absence of a showing of good cause, an application for a franchised dealer's license of which a manufacturer or distributor owns any interest in or has control of the dealership entity must be submitted to the department electronically in the licensing system designated by the department no later than 30 days before:

- (1) the opening of the dealership;
- (2) close of the buy-sell agreement; or
- (3) the expiration of the current license.

(b) If a manufacturer or distributor applies for a franchised dealer's license of which the manufacturer or distributor holds an ownership interest in or has control of the dealership entity in accordance with Occupations Code, §2301.476(d) - (f), the license application must contain a sworn statement from the manufacturer or distributor that the dealership was purchased from a franchised dealer and is for sale at a reasonable price and under reasonable terms and conditions, and that the manufacturer or distributor intends to sell the dealership to a person not controlled or owned by the manufacturer or distributor within 12 months of acquiring the dealership, except as provided by subsection (h) of this section.

(c) A request for an extension of the initial 12-month period for manufacturer or distributor ownership or control of a franchised dealership, in accordance with Occupations Code, §2301.476(e), must be submitted to the department in accordance with subsection (a) of this section along with a sufficient application to renew the new motor vehicle dealer's license. The request must contain a detailed explanation, including appropriate documentary support, to show the manufacturer's or distributor's good cause for failure to sell the dealership within the initial 12-month period. The director shall evaluate the request and determine whether the license should be renewed for a period not to exceed 12 months or deny the renewal application. If the renewal application is denied, the manufacturer or distributor may request a hearing on the denial in accordance with Occupations Code, Chapter 2301, Subchapter O and the matter will be referred to SOAH for a hearing under Chapter 224, Subchapter C of this title (relating to Motor Vehicle, Salvage Vehicle, and Trailer Industry License Enforcement).

(d) Requests for extensions after the first extension is granted, as provided by Occupations Code, §2301.476(e), must be submitted at least 120 days before the expiration of the current license electronically in the licensing system designated by the department. Upon receipt of

a subsequent request, the department shall initiate a hearing in accordance with Occupations Code, Chapter 2301, Subchapter O, at which the manufacturer or distributor will be required to show good cause for the failure to sell the dealership. The manufacturer or distributor has the burden of proof and the burden of going forward on the sole issue of good cause for the failure to sell the dealership.

(e) The department shall give notice of the hearing described in subsection (d) of this section to all other franchised dealers holding franchises for the sale and service or service only of the same line-make of new motor vehicles that are located in the same county in which the dealership owned or controlled by the manufacturer or distributor is located or in an area within 15 miles of the dealership owned or controlled by the manufacturer or distributor. Such dealers, if any, will be allowed to intervene and protest the granting of the subsequent extension. Notices of intervention by dealers afforded a right to protest under Occupations Code, §2301.476(e) must be filed with the department electronically in the licensing system designated by the department within 15 days of the date of mailing of the notice of hearing, and a copy must be provided to the manufacturer or distributor. The department shall reject a notice of intervention if the notice is not filed at least 30 days before:

- (1) the opening of the dealership;
- (2) close of the buy-sell agreement; or
- (3) the expiration of the current license.

(f) A hearing under subsection (d) of this section will be referred to SOAH for a hearing under Chapter 224, Subchapter C of this title (relating to Contested Cases Between Motor Vehicle Industry License Holders or Applicants). The franchised dealer's license that is the subject of the hearing will continue in effect until a final decision on the request for a subsequent extension is issued by the board.

(g) The procedures described in subsections (d) - (f) of this section will be followed for all extensions requested by the manufacturer or distributor after the initial extension.

(h) An application for a new motor vehicle dealer's license of which a manufacturer or distributor owns any interest in the dealership entity in accordance with Occupations Code, §2301.476(g) must contain sufficient documentation to show that the applicant meets the requirements of Occupations Code, §2301.476(g).

*§215.120. Standard License Plates.*

(a) A manufacturer, distributor, or converter may apply for a manufacturer or converter standard license plate for use on a new unregistered vehicle of the same vehicle type assembled or modified in accordance with Transportation Code §503.064 or §503.0618, as applicable:

- (1) when applying for a new or renewal license, or
- (2) by submitting a standard license plate request application electronically in the system designated by the department.

(b) A manufacturer may use a manufacturer's standard license plate to test a prototype motor vehicle on a public street or highway including a commercial motor vehicle prototype designed to carry a load. A manufacturer's standard license plate may not be used on a commercial motor vehicle prototype or new commercial motor vehicle to carry a load for which the manufacturer or other person receives compensation.

(c) A manufacturer, distributor, or converter shall attach a standard license plate to the rear of a vehicle in accordance with §217.27 of this title (relating to Vehicle Registration Insignia).

(d) A manufacturer, distributor, or converter shall maintain a record of each standard license plate issued to the manufacturer, distributor, or converter by the department. The license plate record must contain:

- (1) the license plate number;
- (2) the year and make of the vehicle to which the license plate is affixed;
- (3) the VIN of the vehicle, if one has been assigned; and
- (4) the name of the person in control of the license plate.

(e) If a manufacturer, distributor, or converter cannot account for a standard license plate or a standard license plate is damaged, the manufacturer, distributor, or converter shall:

- (1) document the license plate as "void" in the license plate record in subsection (d); and
- (2) within three days of discovering that the license plate is missing or damaged, report the license plate as lost, stolen, or damaged electronically in the system designated by the department; and
- (3) if found after reported missing, cease use of the license plate.

(f) A standard license plate is no longer valid for use after the manufacturer, distributor, or converter reports to the department that the license plate is lost, stolen, or damaged. A manufacturer, distributor, or converter must render a void license plate unusable by permanently marking the front of the plate with the word "VOID" or a large "X" and once marked, shall destroy or recycle the license plate, or return the license plate to the department within 10 days.

(g) The license holder's license plate record must be available for inspection and copying by the department during normal business hours or be available to submit electronically to the department upon request.

(h) In evaluating requests for additional standard license plates, the department shall consider the business justification provided by a license holder including the following:

- (1) the number of vehicles assembled or modified;
- (2) the highest number of motor vehicles in inventory in the prior 12 months;
- (3) the size and type of business;
- (4) how the license holder typically uses standard licenses plates;
- (5) the license holder's record of tracking and reporting missing or damaged license plates to the department; and
- (6) any other factor the Department in its discretion deems necessary to support the number of license plates requested.

(i) a license holder shall return a department-issued license plate to the department within 10 days of the license holder closing the associated license or the associated license being revoked, canceled, or closed by the department.

*§215.121. Sanctions.*

(a) The board or department may take the following actions against a license applicant, a license holder, or a person engaged in business for which a license is required:

- (1) deny an application;
- (2) revoke a license;

- (3) suspend a license;
- (4) assess a civil penalty;
- (5) issue a cease and desist order; or
- (6) take other authorized action.

(b) The board or department may take action described in subsection (a) of this section if a license applicant, a license holder, or a person engaged in business for which a license is required:

- (1) fails to maintain records required under this chapter;
- (2) refuses or fails within 15 days to comply with a request for records made by a representative of the department;
- (3) sells or offers to sell a motor vehicle to a retail purchaser other than through a licensed or authorized dealer;
- (4) fails to submit a license amendment application in the electronic licensing system designated by the department to notify the department of a change of the license holder's physical address, mailing address, telephone number, or email address within 10 days of the change;
- (5) fails to timely submit a license amendment application in the electronic licensing system designated by the department to notify the department of a license holder's business or assumed name change, deletion of a line-make, or management or ownership change;
- (6) fails to notify the department or pay or reimburse a franchised dealer as required by law;
- (7) misuses or fails to display a license plate as required by law;
- (8) is a manufacturer or distributor and fails to provide a manufacturer's certificate for a new vehicle;
- (9) fails to remain regularly and actively engaged in the business of manufacturing, assembling, or modifying a new motor vehicle of the type and line make for which a license has been issued by the department;
- (10) violates a provision of Occupations Code, Chapter 2301; Transportation Code Chapters 501-503 or 1001-1005; a board order or rule; or a regulation of the department relating to the manufacture, assembly, sale, lease, distribution, financing, or insuring of vehicles, including advertising rules under Subchapter F of this chapter (relating to Advertising);
- (11) is convicted of an offense that directly relates to the duties or responsibilities of the occupation in accordance with §211.3 of this title (relating to Criminal Offense Guidelines);
- (12) is determined by the board or department, in accordance with §215.89 of this title (relating to Fitness), to be unfit to hold a license;
- (13) omits information or makes a material misrepresentation in any application or other documentation filed with the department including providing a false or forged identity document or a false or forged photograph, electronic image, or other document;
- (14) fails to remit payment as ordered for a civil penalty assessed by the board or department;
- (15) violates any state or federal law or regulation relating to the manufacture, distribution, modification, or sale of a motor vehicle;
- (16) fails to issue a refund as ordered by the board or department; or

(17) fails to participate in statutorily required mediation without good cause.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 12, 2024.

TRD-202401558

Laura Moriaty

General Counsel

Texas Department of Motor Vehicles

Effective date: June 1, 2024

Proposal publication date: December 29, 2023

For further information, please call: (512) 465-4160



### 43 TAC §215.112

STATUTORY AUTHORITY. The department adopts a repeal to Chapter 215 under Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale, and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise that authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license holders, ensure that the distribution, sale, and lease of motor vehicles is conducted as required by statute and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles, and to enforce and administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651, which gives the board authority to deny an application for a license, revoke or suspend a license, place on probation, or reprimand a licensee if the applicant or license holder is unfit, makes a material misrepresentation, violates any law relating to the sale, distribution, financing, or insuring of motor vehicles, willfully defrauds a purchaser, or fails to fulfill a written agreement with a retail purchaser of a motor vehicle; Government Code, §411.122(d), which authorizes department access to criminal history record information maintained by DPS; Government Code, §411.12511, which authorizes the department to obtain criminal history record information from DPS and the FBI for license applicants, license holders, and representatives whose act or omission would be cause for denying, revoking, or suspending a general distinguishing number or license issued under Transportation Code, Chapter 503, or Occupations Code, Chapters 2301 and 2302; Occupations Code, §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code, Chapter 2302; Transportation Code, §503.002, which authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503; Transportation Code, §503.009, which authorizes the board to adopt rules for certain contested cases; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, §503.0626, 503.0631, and 503.0632 which require the board to adopt rules necessary to implement and manage the department's temporary tag databases; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and

the duties of the department, as well as the statutes referenced throughout this preamble.

The department also adopts repeals under the authority of Transportation Code, §501.0041 and §502.0021; and Government Code, §§2001.004, and 2001.039, and 2001.054, in addition to the statutory authority referenced throughout this preamble.

Transportation Code, §501.0041 authorizes the department to adopt rules to administer Transportation Code, Chapter 501. Transportation Code, §502.0021 authorizes the department to adopt rules to administer Transportation Code, Chapter 502.

Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. Government Code, §2001.039 requires state agencies to readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule. Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license.

CROSS REFERENCE TO STATUTE. This repeal implements Government Code, Chapters 411 and 2001; Occupations Code, Chapters 2301 and 2302; and Transportation Code, Chapters 501-503, 1001-1003, and 1005.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 12, 2024.

TRD-202401559

Laura Moriaty

General Counsel

Texas Department of Motor Vehicles

Effective date: June 1, 2024

Proposal publication date: December 29, 2023

For further information, please call: (512) 465-4160



### SUBCHAPTER D. GENERAL DISTINGUISHING NUMBERS AND IN-TRANSIT LICENSES

#### 43 TAC §§215.131 - 215.135, 215.137 - 215.141, 215.143 - 215.145, 215.147 - 215.152, 215.154, 215.155, 215.160, 215.161

STATUTORY AUTHORITY. The department adopts amendments to Chapter 215 under Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale, and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise that authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license holders, ensure that the distribution, sale, and lease of motor vehicles is conducted as required by statute and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles, and to enforce and administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and to govern practice and procedure before the board;

Occupations Code, §2301.651, which gives the board authority to deny an application for a license, revoke or suspend a license, place on probation, or reprimand a licensee if the applicant or license holder is unfit, makes a material misrepresentation, violates any law relating to the sale, distribution, financing, or insuring of motor vehicles, willfully defrauds a purchaser, or fails to fulfill a written agreement with a retail purchaser of a motor vehicle; Government Code, §411.122(d), which authorizes department access to criminal history record information maintained by DPS; Government Code, §411.12511, which authorizes the department to obtain criminal history record information from DPS and the FBI for license applicants, license holders, and representatives whose act or omission would be cause for denying, revoking, or suspending a general distinguishing number or license issued under Transportation Code, Chapter 503, or Occupations Code, Chapters 2301 and 2302; Occupations Code, §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code, Chapter 2302; Transportation Code, §503.002, which authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503; Transportation Code, §503.009, which authorizes the board to adopt rules for certain contested cases; Transportation Code, §503.0296, which requires the board to adopt a rule requiring that an applicant for an original or renewal general distinguishing number who adopts to be an independent motor vehicle dealer complete web-based education and training developed or approved by the department; Transportation Code, §503.033, which authorizes the board to adopt rules prescribe the form of the notice of a surety bond and the procedure by which a claimant may recover against the surety bond; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, § 503.0626, 503.0631, and 503.0632 which require the board to adopt rules necessary to implement and manage the department's temporary tag databases; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department, as well as the statutes referenced throughout this preamble.

The department also adopts amendments under the authority of Transportation Code, §501.0041 and §502.0021; and Government Code, §§2001.004, and 2001.039, and 2001.054, in addition to the statutory authority referenced throughout this preamble.

Transportation Code, §501.0041 authorizes the department to adopt rules to administer Transportation Code, Chapter 501. Transportation Code, §502.0021 authorizes the department to adopt rules to administer Transportation Code, Chapter 502.

Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. Government Code, §2001.039 requires state agencies to readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule. Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license.

CROSS REFERENCE TO STATUTE. These adopted revisions implement Government Code, Chapters 411 and 2001; Occupations Code, Chapters Occupations Code, Chapters 53, 55, 2301, and 2302; and Transportation Code, Chapters 501-503, 1001-1003, and 1005.

*§215.133. GDN Application Requirements for a Dealer or a Wholesale Motor Vehicle Auction.*

(a) No person may engage in business as a dealer or as a wholesale motor vehicle auction unless that person has a valid GDN assigned by the department for each location from which the person engages in business. A dealer must also hold a GDN for a consignment location, unless the consignment location is a wholesale motor vehicle auction.

(b) Subsection (a) of this section does not apply to a person exempt from the requirement to obtain a GDN under Transportation Code §503.024.

(c) A GDN dealer or wholesale motor vehicle auction application must be on a form prescribed by the department and properly completed by the applicant as required under §215.83 of this title (relating to License Applications, Amendments, or Renewals). A GDN dealer or wholesale motor vehicle auction application must include all required information, required supporting documents, and required fees and must be submitted to the department electronically in the licensing system designated by the department. A GDN dealer or wholesale motor vehicle auction GDN holder renewing or amending its GDN must verify current license information, provide related information and documents for any new requirements or changes to the GDN, and pay required fees including any outstanding civil penalties owed the department under a final order. An applicant for a new dealer or wholesale motor vehicle auction GDN must provide the following:

(1) Required information:

(A) type of GDN requested;

(B) business information, including the name, physical and mailing addresses, telephone number, Secretary of State file number (as applicable), and website address, as applicable;

(C) contact name, email address, and telephone number of the person submitting the application;

(D) contact name, email address, and telephone number of a person who can provide information about business operations and the motor vehicle products or services offered;

(E) the name, social security number, date of birth, identity document information, and ownership percentage for each owner, partner, member, or principal if the applicant is not a publicly traded company;

(F) the name, social security number, date of birth, and identity document information for each officer, director, manager, trustee, or other representative authorized to act on behalf of the applicant if the applicant is owned in full or in part by a legal entity;

(G) the name, employer identification number, ownership percentage, and non-profit or publicly traded status for each legal entity that owns the applicant in full or in part;

(H) the name, social security number, date of birth, and identity document information of at least one manager or other bona fide employee who will be present at the established and permanent place of business if the owner is out of state or will not be present during business hours at the established and permanent place of business in Texas;

(I) if a dealer, the name, telephone number, and business email address of the temporary tag database account administrator designated by the applicant who must be an owner or representative listed in the application;

(J) criminal history record information under the laws of Texas, another state in the United States, the United States, and any

foreign jurisdiction for each person listed in the application, including offense description, date, and location;

(K) military service status;

(L) licensing history required to evaluate fitness for licensure under §215.89 of this title (relating to Fitness);

(M) information about the business location and business premises, including whether the applicant will operate as a salvage vehicle dealer at the location;

(N) history of insolvency, including outstanding or unpaid debts, judgments, or liens, unless the debt was discharged under 11 U.S.C. §§101 et seq. (Bankruptcy Act) or is pending resolution under a case filed under the Bankruptcy Act;

(O) signed Certification of Responsibility, which is a form provided by the department; and

(P) any other information required by the department to evaluate the application under current law and board rules.

(2) A legible and accurate electronic image of each applicable required document:

(A) proof of a surety bond if required under §215.137 of this title (relating to Surety Bond);

(B) the certificate of filing, certificate of incorporation, or certificate of registration on file with the Secretary of State, as applicable;

(C) each assumed name certificate on file with the Secretary of State or county clerk;

(D) at least one of the following unexpired identity documents for each natural person listed in the application:

(i) driver license;

(ii) Texas Identification Card issued by the Texas Department of Public Safety under Transportation Code, Chapter 521, Subchapter E;

(iii) license to carry a handgun issued by the Texas Department of Public Safety under Government Code, Chapter 411, Subchapter H;

(iv) passport; or

(v) United States military identification card.

(E) a certificate of occupancy, certificate of compliance, or other official documentation confirming the business location complies with municipal ordinances, including zoning, occupancy, or other requirements for a vehicle business;

(F) documents proving business premises ownership, or lease or sublease agreement for the license period;

(G) business premises photos and a notarized affidavit certifying that all premises requirements in §215.140 of this title (relating to Established and Permanent Place of Business Premises Requirements) are met and will be maintained during the license period;

(H) evidence of franchise if applying for a franchised motor vehicle dealer GDN;

(I) proof of completion of the dealer education and training required under Transportation Code §503.0296, if applicable; and

(J) any other documents required by the department to evaluate the application under current law and board rules.

(3) Required fees:

(A) the fee for each type of license requested as prescribed by law; and

(B) the fee, including applicable taxes, for each standard dealer plate requested by the applicant as prescribed by law.

(d) An applicant for a dealer or wholesale auction GDN must also comply with fingerprint requirements in §211.6 of this title (relating to Fingerprint Requirements for Designated License Types), as applicable.

(e) An applicant for a GDN operating under a name other than the applicant's business name shall use the assumed name under which the applicant is authorized to do business, as filed with the Secretary of State or county clerk, and the assumed name of such legal entity shall be recorded by the applicant on the application using the letters "DBA." The applicant may not use a name or assumed name that may be confused with or is similar to that of a governmental entity or that is otherwise deceptive or misleading to the public.

(f) A wholesale motor vehicle dealer GDN holder may sell or exchange vehicles with licensed or authorized dealers only. A wholesale motor vehicle dealer GDN holder may not sell or exchange vehicles at retail.

(g) An independent mobility motor vehicle dealer shall retain and produce for inspection all records relating to the license requirements under Occupations Code, §2301.002(17-b) and all information and records required under Transportation Code §503.0295.

(h) In evaluating a new or renewal GDN application or an application for a new GDN location, the department may require a site visit to determine if the business location meets the requirements in §215.140. The department will require the applicant or GDN holder to provide a notarized affidavit confirming that all premises requirements are met and will be maintained during the license period.

(i) A person holding an independent motor vehicle GDN does not have to hold a salvage vehicle dealer's license to:

(1) act as a salvage vehicle dealer or rebuilder; or

(2) store or display a motor vehicle as an agent or escrow agent of an insurance company.

(j) A person holding an independent motor vehicle GDN and performing salvage activities under subsection (i) must apply for a National Motor Vehicle Title Information System (NMVTIS) identification number and provide the number to the department in the GDN application.

(k) To be eligible for an independent motor vehicle GDN, a person must complete dealer education and training specified by the department, except as provided in this subsection:

(1) once a person has completed the required dealer education and training, the person will not have to retake the dealer education and training for subsequent GDN renewals, but may be required to provide proof of dealer education and training completion as part of the GDN renewal process;

(2) a person holding an independent motor vehicle GDN for at least 10 years as of September 1, 2019, is exempt from the dealer education and training requirement; and

(3) a military service member, military spouse, or military veteran will receive appropriate credit for prior training, education, and professional experience and may be exempted from the dealer education and training requirement.

§215.134. *Requirements for a Drive-a-way Operator In-Transit License.*

(a) No drive-a-way operator may engage in business in Texas unless that person has a currently valid drive-a-way operator in-transit license issued by the department.

(b) A drive-a-way operator in-transit application must be on a form prescribed by the department and properly completed by the applicant as required under §215.83 of this title (relating to License Applications, Amendments, or Renewals). A drive-a-way operator in-transit application must include all required information, required supporting documents, and required fees, and must be submitted to the department electronically in the licensing system designated by the department.

(c) A drive-a-way operator in-transit license holder renewing or amending its license must verify current license information, provide related information and documents for any new requirements or changes to the license, and pay required fees.

(d) An applicant for a new license must register for an account in the department-designated licensing system by selecting the licensing system icon on the dealer page of the department website. An applicant must designate the account administrator and provide the name and email address for that person, and provide the business telephone number, name, business type, and social security number or employer identification number, as applicable. The applicant's licensing account administrator must be an owner, officer, manager, or bona fide employee.

(e) Once registered, an applicant may apply for a new license and must provide the following:

(1) Required information:

(A) type of license requested;

(B) business information, including the name, physical and mailing addresses, telephone number, Secretary of State file number (as applicable), and website address, as applicable;

(C) contact name, email address, and telephone number of the person submitting the application;

(D) contact name, email address, and telephone number of a person who can provide information about business operations and the motor vehicle services offered;

(E) the name, social security number, date of birth, identity document information, and ownership percentage for each owner, partner, member, beneficiary, or principal if the applicant is not a publicly traded company;

(F) the name, social security number, date of birth, and identity document information for each officer, director, manager, trustee, or other representative authorized to act on behalf of the applicant if the applicant is owned in full or in part by a legal entity;

(G) the name, employer identification number, ownership percentage, and non-profit or publicly traded status for each legal entity that owns the applicant in full or in part;

(H) criminal history record information under the laws of Texas, another state in the United States, the United States, and any foreign jurisdiction for each person listed in the application, including offense description, date, and location;

(I) military service status;

(J) licensing history required to evaluate fitness for licensure under §215.89 of this title (relating to Fitness);

(K) signed Certification of Responsibility, which is a form provided by the department; and

(L) any other information required by the department to evaluate the application under current law and board rules.

(2) A legible and accurate electronic image of each applicable required document:

(A) the certificate of filing, certificate of incorporation, or certificate of registration on file with the Secretary of State, as applicable;

(B) each assumed name certificate on file with the Secretary of State or county clerk;

(C) one of the following unexpired identity documents for each natural person listed in the application:

(i) driver license;

(ii) Texas Identification Card issued by the Texas Department of Public Safety under Transportation Code, Chapter 521, Subchapter E;

(iii) license to carry a handgun issued by the Texas Department of Public Safety under Government Code, Chapter 411, Subchapter H;

(iv) passport; or

(v) United States military identification card;

(D) a list of manufacturers, distributors, dealers, or auctions for which the applicant provides drive-a-way services;

(E) a description of the business model or business process, transportation methods, compensation agreements, products, and services used or offered sufficient to allow department to determine if the license type applied for is appropriate under Texas law; and

(F) any other documents required by the department to evaluate the application under current law and board rules.

(3) Required fees:

(A) the license fee as prescribed by law; and

(B) the fee, including any taxes, for each drive-a-way in-transit standard license plate requested by the applicant as prescribed by law.

(f) An applicant for a drive-a-way operator in-transit license must also comply with fingerprint requirements in §211.6 of this title (relating to Fingerprint Requirements for Designated License Types).

(g) An applicant operating under a name other than the applicant's business name shall use the name under which the applicant is authorized to do business, as filed with the Secretary of State or county clerk, and the assumed name of such legal entity shall be recorded by the applicant on the application using the letters "DBA." The applicant may not use a name or assumed name that may be confused with or is similar to that of a governmental entity or that is otherwise deceptive or misleading to the public.

§215.135. *More than One Location.*

(a) A dealer that holds a GDN for a particular type of vehicle may operate from more than one location within the limits of a municipality, provided each location is operated by the same legal entity and meets the requirements of §215.140 of this title (relating to Established and Permanent Place of Business Premises Requirements).

(b) Additional locations not located within the limits of the same municipality of the initial dealership must:

(1) obtain a new GDN; and

(2) provide a new surety bond reflecting the additional location unless the licensed location is exempt by statute from the surety requirement.

(c) A dealer that relocates from a point outside the limits of a municipality or relocates to a point not within the limits of the same municipality of the initial location must:

(1) obtain a new GDN; and

(2) provide a new surety bond reflecting the new address unless the licensed location is exempt by statute from the surety requirement.

(d) A dealer shall notify the department in writing within 10 days of opening, closing, or relocating a licensed location by filing an amendment application electronically in the licensing system designated by the department. Each location must meet and maintain the requirements of §215.140.

(e) A dealer may not commence business at any location until the department issues a license specific to that location.

*§215.138. Use of Dealer's License Plates.*

(a) A dealer's standard or personalized prestige license plate must be attached to the rear of a vehicle in accordance with §217.27 of this title (relating to Vehicle Registration Insignia).

(b) A copy of the receipt for a dealer's standard or personalized prestige license plate issued by the department should be carried in the vehicle to present to law enforcement personnel upon request.

(c) A dealer's standard or personalized prestige license plate may not be displayed on:

(1) a laden commercial vehicle being operated or moved on the public streets or highways; or

(2) the dealer's service or work vehicle, except as provided by Transportation Code, §503.068(b-1).

(d) For purposes of this section, a dealer's service or work vehicle includes:

(1) a vehicle used for towing or transporting another vehicle;

(2) a vehicle, including a light truck, used in connection with the operation of the dealer's shops or parts department;

(3) a courtesy car on which a courtesy car sign is displayed;

(4) a rental or lease vehicle; and

(5) a boat trailer owned by a dealer or manufacturer that is used to transport more than one boat.

(e) For purposes of this section, a light truck as defined by Transportation Code, §541.201, is not considered a laden commercial vehicle when it is:

(1) mounted with a camper unit; or

(2) towing a trailer for recreational purposes.

(f) A dealer's standard or personalized prestige license plate may be displayed only on the type of vehicle for which the GDN is issued and for which a dealer is licensed to sell. A nonfranchised dealer may not display a dealer's standard or personalized prestige license plate on a new motor vehicle.

(g) A dealer's standard or personalized prestige license plate may be displayed only on a vehicle that has a valid inspection in accordance with Transportation Code, Chapter 548.

(h) A dealer shall maintain a record of each dealer's standard or personalized prestige license plate issued by the department to that dealer. The license plate record must contain:

(1) the license plate number;

(2) the year and make of the vehicle to which the dealer's license plate is affixed;

(3) the VIN of the vehicle; and

(4) the name of the person in control of the vehicle.

(i) If a dealer cannot account for a dealer's standard or personalized prestige license plate that the department issued to that dealer, the dealer shall:

(1) document the dealer's license plate as "void" in the dealer's license plate record;

(2) within three days of discovering that the dealer's license plate is missing or damaged, report the dealer's license plate as lost, stolen, or damaged in the electronic system designated by the department; and

(3) if found, cease use of the dealer's license plate.

(j) A dealer's standard or personalized prestige license plate is no longer valid for use after the dealer reports to the department that the dealer's license plate is lost, stolen, or damaged. A dealer shall:

(1) render a void plate unusable by permanently marking the front of the plate with the word "VOID" or a large "X"; and

(2) destroy or recycle the license plate or return the license plate to the department within 10 days.

(k) A dealer's license plate record must be available for inspection and copying by the department during normal business hours or be available to submit electronically to the department upon request.

(l) A dealer shall return a department-issued license plate, sticker, or receipt to the department within 10 days of the dealer closing the associated license or the department revoking or canceling the license.

*§215.140. Established and Permanent Place of Business Premises Requirements.*

(a) A dealer must meet the following requirements at each licensed location and maintain the requirements during the term of the license. If multiple dealers are licensed at a location, each dealer must maintain the following requirements during the entire term of the license.

(1) Business hours for retail dealers.

(A) A retail dealer's office must be open at least four days per week for at least four consecutive hours per day and may not be open solely by appointment.

(B) The retail dealer's business hours for each day of the week must be posted at the main entrance of the retail dealer's office in a manner and location that is accessible to the public. The owner or a bona fide employee of the retail dealer shall be at the retail dealer's licensed location during the posted business hours for the purposes of buying, selling, exchanging, or leasing vehicles. If the owner or a bona fide employee is not available to conduct business during the retail dealer's posted business hours due to special circumstances or emergencies, a separate sign must be posted indicating the date and



time the retail dealer will resume operations. Regardless of the retail dealer's business hours, the retail dealer's telephone must be answered from 8:00 a.m. to 5:00 p.m. weekdays by a bona fide employee, owner, answering service, voicemail service, or answering machine. A caller must be able to speak to a natural person or leave a message during these hours.

(2) Business hours for wholesale motor vehicle dealers. A dealer that holds only a wholesale motor vehicle dealer's GDN must post its business hours at the main entrance of the wholesale motor vehicle dealer's office in a manner and location that is accessible to the public. A wholesale motor vehicle dealer or bona fide employee shall be at the wholesale motor vehicle dealer's licensed location at least two weekdays per week for at least two consecutive hours per day. A wholesale motor vehicle dealer may not be open solely by appointment. Regardless of the wholesale motor vehicle dealer's business hours, the wholesale motor vehicle dealer's telephone must be answered from 8:00 a.m. to 5:00 p.m. weekdays by a bona fide employee, owner, answering service, voicemail service, or answering machine. A caller must be able to speak to a natural person or leave a message during these hours.

(3) Business sign requirements for retail dealers.

(A) A retail dealer must display a conspicuous, permanent sign with letters at least six inches in height showing the retail dealer's business name or assumed name substantially similar to the name reflected on the retail dealer's GDN under which the retail dealer conducts business. A business sign is considered conspicuous if it is easily visible to the public within 100 feet of the main entrance of the business office. A business sign is considered permanent only if it is made of durable, weather-resistant material.

(B) The sign must be permanently mounted at the physical address listed on the application for the retail dealer's GDN. A business sign is considered permanently mounted if bolted to an exterior building wall or bolted or welded to a dedicated sign pole or sign support permanently installed in the ground.

(C) A retail dealer may use a temporary sign or banner if that retail dealer can show proof that a sign that meets the requirements of this paragraph has been ordered and provides a written statement that the sign will be promptly and permanently mounted upon delivery.

(D) A retail dealer is responsible for ensuring that the business sign complies with municipal ordinances, and that any lease signage requirements are consistent with the signage requirements in this paragraph.

(4) Business sign requirements for wholesale motor vehicle dealers.

(A) Exterior Sign

(i) A wholesale motor vehicle dealer must display a conspicuous, permanent sign with letters at least six inches in height showing the wholesale motor vehicle dealer's business name or assumed name substantially similar to the name reflected on the wholesale motor vehicle dealer's GDN under which the wholesale motor vehicle dealer conducts business. Effective September 1, 2023, the sign must also include the statement that "Purchasers must be Licensed Dealers" in letters at least three inches in height. A business sign is considered conspicuous if it is easily visible to the public within 100 feet of the main entrance of the business office. A business sign is considered permanent only if it is made of durable, weather-resistant material.

(ii) The sign must be permanently mounted on the business property at the physical address listed on the application. A business sign is considered permanently mounted if bolted to an exte-

rior building wall or bolted or welded to a dedicated sign pole or sign support permanently installed in the ground. A wholesale motor vehicle dealer may use a temporary exterior sign or banner if the wholesale motor vehicle dealer can show proof that a sign that meets the requirements of this paragraph has been ordered and provides a written statement that the sign will be promptly and permanently mounted upon delivery.

(B) Interior Sign

(i) If the wholesale motor vehicle dealer's office is located in an office building with one or more other businesses and an outside sign is not permitted by the property owner, a conspicuous permanent business sign permanently mounted on or beside the main door to the wholesale motor vehicle dealer's office with letters at least two inches in height is acceptable. Effective September 1, 2023, the sign must also include the statement that "Purchasers must be Licensed Dealers" in letters at least one inch in height.

(ii) An interior business sign is considered conspicuous if it is easily visible to the public within 10 feet of the main entrance of the wholesale motor vehicle dealer's office. An interior sign is considered permanent if made from durable material and has lettering that cannot be changed. An interior sign is considered permanently mounted if bolted or otherwise permanently affixed to the main door or nearby wall. A wholesale motor vehicle dealer may use a temporary interior sign or banner if the wholesale motor vehicle dealer can show proof that a sign that meets the requirements of this paragraph has been ordered and provides a written statement that the sign will be promptly and permanently mounted upon delivery.

(C) A wholesale motor vehicle dealer is responsible for ensuring that the business sign complies with municipal ordinances and that any lease signage requirements are consistent with the signage requirements in this paragraph.

(5) Office requirements for a retail dealer and a wholesale motor vehicle dealer.

(A) A dealer's office must be located in a building with a permanent roof and connecting exterior walls on all sides.

(B) A dealer's office must comply with all applicable municipal ordinances, including municipal zoning ordinances. The dealer is responsible for obtaining a certificate of occupancy, certificate of compliance, or other required document issued by a municipal government to show compliance, including a new certificate or document when the building is altered or remodeled, or when the building use changes.

(C) A dealer's office may not be located in a residence, apartment, hotel, motel, rooming house, or any room or building not open to the public.

(D) A dealer's office may not be located in a restaurant, gas station, or convenience store, unless the office has a separate entrance door that does not require a dealer's customer to pass through the other business.

(E) A dealer's office may not be virtual or provided by a subscription for office space or office services. Access to an office space or office services is not considered an established and permanent location.

(F) The physical address of the dealer's office must be in Texas and recognized by the U.S. Postal Service, be capable of receiving U.S. mail, and have an assigned emergency services property address. The department will not mail a dealer's license plate to an out-of-state address.

(G) A portable-type office building may qualify as an office only if the building meets the requirements of this section and is not a readily moveable trailer or other vehicle.

(H) The dealer's office space must:

- (i) include at least 100 square feet of interior floor space, exclusive of hallways, closets, or restrooms;
- (ii) have a minimum seven-foot-high ceiling;
- (iii) accommodate required office equipment; and
- (iv) allow a dealer and customer to safely access the office and conduct business in private while seated.

(6) Required office equipment for a retail dealer and a wholesale motor vehicle dealer. At a minimum, a dealer's office must be equipped with:

- (A) a desk;
- (B) two chairs;
- (C) internet access; and
- (D) a working telephone number listed in the business name or assumed name under which the dealer conducts business.

(7) Number of retail dealers in one building. Not more than four retail dealers may be located in the same building. Each retail dealer located in the same building must meet the requirements of this section.

(8) Number of wholesale motor vehicle dealers in one office building. Not more than eight wholesale motor vehicle dealers may be located in the same office building. Each wholesale motor vehicle dealer located in the same office building must meet the requirements of this section.

(9) Office sharing prohibition for retail dealers and wholesale motor vehicle dealers. Unless otherwise authorized by the Transportation Code, a retail dealer and a wholesale motor vehicle dealer licensed after September 1, 1999, may not be located in the same building.

(10) Dealer housed with other business.

(A) If a person conducts business as a dealer in conjunction with another business owned by the same person and under the same name as the other business, the same telephone number may be used for both businesses. If the name of the dealer differs from the name of the other business, a separate telephone listing and a separate sign for each business are required.

(B) A person may conduct business as a dealer in conjunction with another business not owned by that person only if the dealer owns the property on which business is conducted or has a separate lease agreement from the owner of that property that meets the requirements of this section. The same telephone number may not be used by both businesses. The dealer must have separate business signs, telephone listings, and office equipment required under this section.

(C) A dealer's office must have permanent interior walls on all sides and be separate from any public area used by another business.

(11) Display area and storage lot requirements.

(A) A wholesale motor vehicle dealer is not required to have display space at the wholesale motor vehicle dealer's business premises.

(B) A retail dealer must have an area designated as display space for the retail dealer's inventory. A retail dealer's designated display area must comply with the following requirements.

(i) The display area must be located at the retail dealer's physical business address or contiguous to the retail dealer's physical address. The display area may not be in a storage lot.

(ii) The display area must be of sufficient size to display at least five vehicles of the type for which the GDN is issued. The display area must be reserved exclusively for the retail dealer's inventory and may not be used for customer parking, employee parking, general storage, or shared or intermingled with another business or a public parking area, a driveway to the office, or another dealer's display area.

(iii) The display area may not be on a public easement, right-of-way, or driveway unless the governing body having jurisdiction of the easement, right-of-way, or driveway expressly consents in writing to use as a display area. If the easement, right-of-way, or driveway is a part of the state highway system, use as a display area may only be authorized by a lease agreement.

(iv) If a retail dealer shares a display or parking area with another business, including another dealer, the dealer's vehicle inventory must be separated from the other business's display or parking area by a material object or barrier that cannot be readily removed. A barrier that cannot be readily removed is one that cannot be easily moved by one person and typically weighs more than 50 pounds. A material object or barrier must be in place on all sides except for the space necessary to allow for entry and exit of vehicle inventory.

(v) If a dealer's business location includes gasoline pumps or a charging station or includes another business that sells gasoline or has a charging station, the dealer's display area may not be part of the parking area for fuel or charging station customers and may not interfere with access to or from the gasoline pumps, fuel tanks, charging station, or fire prevention equipment.

(vi) The display area must be adequately illuminated if the retail dealer is open at night so that a vehicle for sale can be properly inspected by a potential buyer.

(vii) The display area may be located inside a building; however, if multiple dealers are displaying vehicles inside a building, each dealer's display area must be separated by a material object or barrier that cannot be readily removed. A barrier that cannot be readily removed is one that cannot be easily moved by one person and typically weighs more than 50 pounds. A material object or barrier must be in place on all sides except for the space necessary to allow for entry and exit of vehicle inventory.

(C) A GDN holder may maintain a storage lot only if the storage lot is not accessible to the public and no sales activity occurs at the storage lot. A sign stating the license holder's name, contact information, and the fact the property is a storage lot is permissible. A storage lot must be fenced or in an access-controlled location to be considered not accessible to the public. A GDN holder or applicant must disclose the address of a storage lot or the location of a vehicle in inventory upon request by the department.

(12) Dealers authorized to sell salvage motor vehicles. If an independent motor vehicle dealer offers a salvage motor vehicle for sale on the dealer's premises, the vehicle must be clearly and conspicuously marked with a sign informing a potential buyer that the vehicle is a salvage motor vehicle.

(13) Lease requirements. If the premises from which a dealer conducts business, including any display area, is not owned by the dealer, the dealer must maintain a lease that is continuous during

the period of time for which the dealer's license will be issued. The lease agreement must be on a properly executed form containing at a minimum:

(A) the name of the property owner as the lessor of the premises and the name of the dealer as the tenant or lessee of the premises;

(B) the period of time for which the lease is valid;

(C) the street address or legal description of the property, provided that if only a legal description of the property is included, a dealer must attach a statement verifying that the property description in the lease agreement is the physical street address identified on the application as the physical address for the established and permanent place of business;

(D) the signature of the property owner as the lessor and the signature of the dealer as the tenant or lessee; and

(E) if the lease agreement is a sublease in which the property owner is not the lessor, the dealer must also obtain a signed and notarized statement from the property owner including the following information:

(i) property owner's full name, email address, mailing address, and phone number; and

(ii) property owner's statement confirming that the dealer is authorized to sublease the location and may operate a vehicle sales business from the location.

(14) Dealer must display GDN and bond notice. A dealer must display the dealer's GDN issued by the department at all times in a manner that makes the GDN easily readable by the public and in a conspicuous place at each place of business for which the dealer's GDN is issued. A dealer required to obtain a surety bond must post a bond notice adjacent to and in the same manner as the dealer's GDN is displayed. The notice must include the bond company name, bond identification number, and procedure by which a claimant can recover under the bond. The notice must also include the department's website address and notify a consumer that a dealer's surety bond information may be obtained by submitting a request to the department. If the dealer's GDN applies to more than one location, a copy of the GDN and bond notice must be displayed in each supplemental location.

(b) Wholesale motor vehicle auction premises requirements. A wholesale motor vehicle auction must comply with the following premises requirements:

(1) a wholesale motor vehicle auction GDN holder must hold a motor vehicle auction on a regular periodic basis at the licensed location, and an owner or bona fide employee must be available at the business location during each auction and during posted business hours. If the owner or a bona fide employee is not available to conduct business during the posted business hours due to special circumstances or emergencies, a separate sign must be posted indicating the date and time operations will resume.

(2) the business telephone must be answered from 8:00 a.m. to 5:00 p.m. weekdays by a bona fide employee, owner, answering service, voicemail service, or answering machine. A caller must be able to speak to a natural person or leave a message during these hours.

(3) a wholesale motor vehicle auction GDN holder must display a business sign that meets the following requirements:

(A) The sign must be a conspicuous, permanent sign with letters at least six inches in height showing the business name or

assumed name substantially similar to the name reflected on the GDN under which the GDN holder conducts business. A business sign is considered conspicuous if it is easily visible to the public within 100 feet of the main entrance of the business office. A business sign is considered permanent only if it is made of durable, weather-resistant material.

(B) The sign must be permanently mounted at the physical address listed on the application for the wholesale motor vehicle auction GDN. A business sign is considered permanently mounted if bolted to an exterior building wall or bolted or welded to a dedicated sign pole or sign support permanently installed in the ground.

(C) An applicant may use a temporary sign or banner if the applicant can show proof that a sign that meets the requirements of this paragraph has been ordered and provides a written statement that the sign will be promptly and permanently mounted upon delivery.

(D) An applicant or holder is responsible for ensuring that the business sign complies with municipal ordinances, and that any lease signage requirements are consistent with the signage requirements in this paragraph.

(4) The business office of a wholesale motor vehicle auction GDN applicant and holder must meet the following requirements:

(A) The office must be located in a building with a permanent roof and connecting exterior walls on all sides.

(B) The office must comply with all applicable municipal ordinances, including municipal zoning ordinances. The wholesale motor vehicle auction is responsible for obtaining a certificate of occupancy, certificate of compliance, or other required document issued by a municipal government to show compliance, including a new certificate or document when the building is altered or remodeled, or when the building use changes.

(C) The office may not be located in a residence, apartment, hotel, motel, rooming house, or any room or building not open to the public.

(D) The office may not be located in a restaurant, gas station, or convenience store, unless the office has a separate entrance door that does not require a customer to pass through the other business.

(E) The office may not be virtual or provided by a subscription for office space or office services. Access to office space or office services is not considered an established and permanent location.

(F) The physical address of the office must be in Texas and recognized by the U.S. Postal Service, capable of receiving U.S. mail, and have an assigned emergency services property address.

(G) A portable-type office building may qualify as an office only if the building meets the requirements of this section and is not a readily moveable trailer or other vehicle.

(5) A wholesale motor vehicle auction GDN applicant and holder must have the following office equipment:

(A) a desk;

(B) a chair;

(C) internet access; and

(D) a working telephone number listed in the business name or assumed name under which business is conducted.

(6) A wholesale motor vehicle auction must meet the following display area and storage lot requirements:

(A) The area designated as display space for inventory must be located at the physical business address or contiguous to the physical address. The display area may not be in a storage lot.

(B) The display area must be of sufficient size to display at least five vehicles. Those spaces must be reserved exclusively for inventory and may not be used for customer parking, employee parking, general storage, or shared or intermingled with another business or a public parking area, or a driveway to the office.

(C) The display area may not be on a public easement, right-of-way, or driveway unless the governing body having jurisdiction of the easement, right-of-way, or driveway expressly consents in writing to use as a display area. If the easement, right-of-way, or driveway is a part of the state highway system, use as a display area may only be authorized by a lease agreement.

(D) If the business location includes gasoline pumps or a charging station or includes another business that sells gasoline or has a charging station, the display area may not be part of the parking area for fuel or charging station customers and may not interfere with access to or from the gasoline pumps, fuel tanks, charging station, or fire prevention equipment.

(E) The display area must be adequately illuminated if open at night so that a vehicle for sale can be properly inspected by a potential buyer.

(F) The display area may be located inside a building.

(G) A wholesale motor vehicle auction may maintain a storage lot only if the storage lot is not accessible to the public and no sales activity occurs at the storage lot. A sign stating the business name, contact information, and the fact the property is a storage lot is permissible. A storage lot must be fenced or in an access-controlled location to be considered not accessible to the public. A GDN holder or applicant must disclose the address of a storage lot or the location of a vehicle in inventory upon request by the department.

(7) A wholesale motor vehicle auction must meet the following lease requirements if the business premises, including any display area, is not owned by the wholesale motor vehicle auction:

(A) the applicant or holder must maintain a lease that is continuous during the period of time for which the GDN will be issued;

(B) The lease agreement must be on a properly executed form containing at a minimum:

(i) the name of the property owner as the lessor of the premises and the name of the GDN applicant or holder as the tenant or lessee of the premises;

(ii) the period of time for which the lease is valid;

(iii) the street address or legal description of the property, provided that if only a legal description of the property is included, a wholesale motor vehicle auction must attach a statement verifying that the property description in the lease agreement is the physical street address identified on the application as the physical address for the established and permanent place of business;

(iv) the signature of the property owner as the lessor and the signature of the applicant or holder as the tenant or lessee; and

(C) if the lease agreement is a sublease in which the property owner is not the lessor, the wholesale motor vehicle auction must also obtain a signed and notarized statement from the property owner including the following information:

(i) property owner's full name, email address, mailing address, and phone number; and

(ii) property owner's statement confirming that the wholesale motor vehicle auction is authorized to sublease the location and may operate a wholesale motor vehicle auction business from the location.

§215.141. *Sanctions.*

(a) The board or department may take the following actions against a license applicant, a license holder, or a person engaged in business for which a license is required:

- (1) deny an application;
- (2) revoke a license;
- (3) suspend a license;
- (4) assess a civil penalty;
- (5) issue a cease and desist order; or
- (6) or take other authorized action.

(b) The board or department may take action described in subsection (a) of this section if a license applicant, a license holder, or a person engaged in business for which a license is required:

(1) fails to maintain a good and sufficient bond or post the required bond notice if required under Transportation Code §503.033 (relating to Security Requirement);

(2) fails to meet or maintain the requirements of §215.140 (relating to Established and Permanent Place of Business Premises Requirements);

(3) fails to maintain records required under this chapter;

(4) refuses or fails to comply with a request by the department for electronic records or to examine and copy electronic or physical records during the license holder's business hours at the licensed business location:

(A) sales records required to be maintained by §215.144 of this title (relating to Vehicle Records);

(B) ownership papers for a vehicle owned by that dealer or under that dealer's control;

(C) evidence of ownership or a current lease agreement for the property on which the business is located; or

(D) the Certificate of Occupancy, Certificate of Compliance, business license or permit, or other official documentation confirming compliance with county and municipal laws or ordinances for a vehicle business at the licensed physical location.

(5) refuses or fails to timely comply with a request for records made by a representative of the department;

(6) holds a wholesale motor vehicle dealer's license and sells or offers to sell a motor vehicle to a person other than a licensed or authorized dealer;

(7) sells or offers to sell a type of vehicle that the person is not licensed to sell;

(8) fails to submit a license amendment application in the electronic licensing system designated by the department to notify the department of a change of the license holder's physical address, mailing address, telephone number, or email address within 10 days of the change;

(9) fails to submit a license amendment application in the electronic licensing system designated by the department to notify the department of a license holder's name change, or management or ownership change within 10 days of the change;

(10) except as provided by law, issues more than one buyer's temporary tag for the purpose of extending the purchaser's operating privileges for more than 60 days;

(11) fails to remove a license plate or registration insignia from a vehicle that is displayed for sale;

(12) misuses a dealer's license plate or a temporary tag;

(13) fails to display a dealer's license plate or temporary tag, as required by law;

(14) holds open a title or fails to take assignment of a certificate of title, manufacturer's certificate, or other basic evidence of ownership for a vehicle acquired by the dealer, or fails to assign the certificate of title, manufacturer's certificate, or other basic evidence of ownership for a vehicle sold;

(15) fails to remain regularly and actively engaged in the business of buying, selling, or exchanging vehicles of the type for which the GDN is issued by the department;

(16) violates a provision of Occupations Code, Chapter 2301; Transportation Code Chapters 503 and 1001-1005; a board order or rule; or a regulation of the department relating to the sale, lease, distribution, financing, or insuring of vehicles, including advertising rules under Subchapter F of this chapter (relating to Advertising);

(17) is convicted of an offense that directly relates to the duties or responsibilities of the occupation in accordance with §211.3 of this title (relating to Criminal Offense Guidelines);

(18) is determined by the board or department, in accordance with §215.89 of this title (relating to Fitness), to be unfit to hold a license;

(19) has not assigned at least five vehicles in the prior 12 months, provided the dealer has been licensed more than 12 months;

(20) files or provides a false or forged:

(A) title document, including an affidavit making application for a certified copy of a title; or

(B) tax document, including a sales tax statement or affidavit;

(21) uses or allows use of that dealer's license or location for the purpose of avoiding a provision of Occupations Code, Chapter 2301; Transportation Code, Chapters 503 and 1001 - 1005; or other laws;

(22) omits information or makes a material misrepresentation in any application or other documentation filed with the department including providing a false or forged identity document or a false or forged photograph, electronic image, or other document;

(23) fails to remit payment as ordered for a civil penalty assessed by the board or department;

(24) sells a new motor vehicle without a franchised dealer's license issued by the department;

(25) fails to comply with a dealer responsibility under §215.150 of this title (relating to Authorization to Issue Temporary Tags);

(26) utilizes a temporary tag that fails to meet the requirements of §215.153 of this title (relating to Specifications for All Temporary Tags);

(27) violates any state or federal law or regulation relating to the sale of a motor vehicle;

(28) knowingly fails to disclose that a motor vehicle has been repaired, rebuilt, or reconstructed and issued a title under Transportation Code, §501.100 (relating to Application for Regular Certificate of Title for Salvage Vehicle);

(29) fails to issue a refund as ordered by the board or department; or

(30) fails to acquire or maintain a required certificate of occupancy, certificate of compliance, business license or permit, or other official documentation for the licensed location confirming compliance with county or municipal laws or ordinances or other local requirements for a vehicle business.

*§215.144. Vehicle Records.*

(a) Purchases and sales records. A dealer and wholesale motor vehicle auction shall maintain a complete record of all vehicle purchases and sales for a minimum period of 48 months and make the record available for inspection and copying by the department during business hours.

(b) Independent mobility motor vehicle dealers. An independent mobility motor vehicle dealer shall keep a complete written record of each vehicle purchase, vehicle sale, and any adaptive work performed on each vehicle for a minimum period of 36 months after the date the adaptive work is performed on the vehicle. An independent mobility motor vehicle dealer shall also retain and produce for inspection all records relating to license requirements under Occupations Code, §2301.002(17-b) and all information and records required under Transportation Code §503.0295.

(c) Location of records. A dealer's record reflecting purchases and sales for the preceding 13 months must be maintained at the dealer's licensed location. Original titles are not required to be kept at the licensed location but must be made available to the agency upon reasonable request. A dealer's record for prior time periods may be kept off-site.

(d) Request for records. Within 15 days of receiving a request from a representative of the department, a dealer shall deliver a copy of the specified records to the address listed in the request. If a dealer has a concern about the origin of a records request, the dealer may verify that request with the department prior to submitting its records.

(e) Content of records. A dealer's complete record for each vehicle purchase or vehicle sale must contain:

(1) the date of the purchase;

(2) the date of the sale;

(3) the VIN;

(4) the name and address of the person selling the vehicle to the dealer;

(5) the name and address of the person purchasing the vehicle from the dealer;

(6) the name and address of the consignor if the vehicle is offered for sale by consignment;

(7) except for a purchase or sale where the Tax Code does not require payment of motor vehicle sales tax, a county tax assessor-collector receipt marked paid;

(8) a copy of all documents, forms, and agreements applicable to a particular sale, including a copy of:

(A) the title application;

(B) the work-up sheet;

(C) the front and back of the manufacturer's certificate of origin or manufacturer's statement of origin, unless the dealer obtains the title through the electronic title system;

(D) the front and back of the title for the purchase and the sale, unless the dealer enters or obtains the title through the electronic title system;

(E) the factory invoice, if applicable;

(F) the sales contract;

(G) the retail installment agreement;

(H) the buyer's order;

(I) the bill of sale;

(J) any waiver;

(K) any other agreement between the seller and purchaser;

(L) the purchaser's photo identification;

(M) the odometer disclosure statement signed by the buyer, unless the vehicle is exempt; and

(N) the rebuilt salvage disclosure, if applicable.

(9) the original manufacturer's certificate of origin, original manufacturer's statement of origin, or original title for a new motor vehicle offered for sale by a dealer which must be if the title transaction is entered into the electronic titling system by the dealer;

(10) the dealer's monthly Motor Vehicle Seller Financed Sales Returns, if any; and

(11) if the vehicle sold is a motor home or a towable recreational vehicle subject to inspection under Transportation Code, Chapter 548, a copy of the written notice provided to the buyer at the time of the sale, notifying the buyer that the vehicle is subject to inspection requirements.

(f) Title assignments.

(1) For each vehicle a dealer acquires or offers for sale, the dealer must properly take assignment in the dealer's name of any:

(A) title;

(B) manufacturer's statement of origin;

(C) manufacturer's certificate of origin; or

(D) other evidence of ownership.

(2) Unless not required by Transportation Code, §501.0234(b), a dealer must apply in the name of the purchaser of a vehicle for the title and registration, as applicable, of the vehicle with a county tax assessor-collector.

(3) To comply with Transportation Code, §501.0234(f), a registration is considered filed within a reasonable time if the registration is filed within:

(A) 30 days of the date of sale of the vehicle for a vehicle titled or registered in Texas; or

(B) 45 days of the date of sale of the vehicle for a dealer-financed transaction involving a vehicle that is titled or registered in Texas.

(4) The dealer is required to provide to the purchaser the receipt for the title and registration application.

(5) The dealer is required to maintain a copy of the receipt for the title and registration application in the dealer's sales file.

(g) Out-of-state sales. For a sale involving a vehicle to be transferred out of state, the dealer must:

(1) within 30 days of the date of sale, either file the application for certificate of title on behalf of the purchaser or deliver the properly assigned evidence of ownership to the purchaser; and

(2) maintain in the dealer's record at the dealer's licensed location a photocopy of the completed sales tax exemption form for out of state sales approved by the Texas Comptroller of Public Accounts.

(h) Consignment sales. A dealer offering a vehicle for sale by consignment must have a written consignment agreement or a power of attorney for the vehicle, and shall, after the sale of the vehicle, take assignment of the vehicle in the dealer's name and, pursuant to subsection (f), apply in the name of the purchaser for transfer of title and registration, if the vehicle is to be registered, with a county tax assessor-collector. The dealer must, for a minimum of 48 months, maintain a record of each vehicle offered for sale by consignment, including the VIN and the name of the owner of the vehicle offered for sale by consignment.

(i) Public motor vehicle auctions.

(1) A GDN holder that acts as a public motor vehicle auction must comply with subsection (h) of this section.

(2) A public motor vehicle auction:

(A) is not required to take assignment of title of a vehicle it offers for sale;

(B) must take assignment of title of a vehicle from a consignor prior to making application for title on behalf of the buyer; and

(C) must make application for title on behalf of the purchaser and remit motor vehicle sales tax within 20 working days of the sale of the vehicle.

(3) A GDN holder may not sell another GDN holder's vehicle at a public motor vehicle auction.

(j) Wholesale motor vehicle auction records. A wholesale motor vehicle auction license holder shall maintain, for a minimum of 48 months, a complete record of each vehicle purchase and sale occurring through the wholesale motor vehicle auction. The wholesale motor vehicle auction license holder shall make the record available for inspection and copying by the department during business hours.

(1) A wholesale motor vehicle auction license holder shall maintain at the licensed location a record reflecting each purchase and sale for at least the preceding 24 months. Records for prior time periods may be kept off-site.

(2) Within 15 days of receiving a department request, a wholesale motor vehicle auction license holder shall deliver a copy of the specified records to the address listed in the request.

(3) A wholesale motor vehicle auction license holder's complete record of each vehicle purchase and sale must, at a minimum, contain:

(A) the date of sale;

(B) the VIN;

(C) the name and address of the person selling the vehicle;

(D) the name and address of the person purchasing the vehicle;

(E) the dealer's license number of both the selling dealer and the purchasing dealer, unless either is exempt from holding a license;

(F) all information necessary to comply with the federal odometer disclosure requirements in 49 CFR Part 580;

(G) auction access documents, including the written authorization and revocation of authorization for an agent or employee, in accordance with §215.148 of this title (relating to Dealer Agents);

(H) invoices, bills of sale, checks, drafts, or other documents that identify the vehicle, the parties, or the purchase price;

(I) any information regarding the prior status of the vehicle such as the Reacquired Vehicle Disclosure Statement or other lemon law disclosures; and

(J) a copy of any written authorization allowing an agent of a dealer to enter the auction.

(k) Electronic records. A license holder may maintain a record in an electronic format if the license holder can print the record at the licensed location upon request by the department, except as provided by subsection (l) of this section.

(l) Use of department electronic titling and registration systems. A license holder utilizing the department's web-based title application known as webDEALER, as defined in §217.71 of this title (relating to Automated and Web-Based Vehicle Registration and Title Systems), shall comply with §217.74 of this title (relating to Access to and Use of webDEALER). Original hard copy titles are not required to be kept at the licensed location but must be made available to the department upon request.

*§215.145. Change of Dealer's Status.*

(a) A dealer's name change requires a new bond or a rider to the existing bond reflecting the new name, unless the dealer is not otherwise required to purchase a bond.

(b) A dealer shall notify the department in writing within 10 days of a change of ownership by submitting a license amendment application in the department-designated electronic licensing system. A licensed dealer that proposes to sell or assign to another any interest in the licensed entity, whether a corporation or otherwise, and provided the physical location of the licensed entity remains the same, shall notify the department in writing within 10 days of the change by filing an application to amend the license in the department-designated electronic licensing system. If the sale or assignment of any portion of the business results in a change of entity, then the new entity must apply for and obtain a new license. A publicly held corporation only needs to inform the department of a change in ownership if one person or entity acquires a 10% or greater interest in the licensed entity.

(c) Upon the death of a dealer operating as a sole proprietor, either the surviving spouse of the deceased dealer or other individual deemed qualified by the department shall submit to the department a bond rider adding the name of the surviving spouse or other qualifying person to the bond for the remainder of the bond and license term. The surviving spouse or other qualifying person may continue operating under the current dealer license until the end of the license term.

(d) For purposes of subsection (c) of this section, the sole proprietor's surviving spouse may change the ownership of the dealership at the time the license is renewed without applying for a new GDN. At the time the renewal application is filed, the sole proprietor's surviving spouse must submit to the department:

(1) an application to amend the business entity;

(2) a copy of the sole proprietor's certificate of death, naming the surviving spouse;

(3) the required ownership information; and

(4) if applicable, a bond in the name of the surviving spouse.

(e) For purposes of subsection (c) of this section, a qualifying person who is not the surviving spouse may operate the sole proprietorship business during the term of the license. The qualifying person must file with the department:

(1) an application to amend the business entity, identifying the qualifying person as the manager;

(2) an ownership information form, indicating that the qualifying person has no ownership interest in the business; and

(3) a bond rider adding the qualified person's name to the existing bond.

(f) For purposes of subsection (c) of this section, a qualifying person who is not the surviving spouse must file with the department an application for a new GDN on or before the expiration of the license term in the department-designated electronic licensing system.

(g) A determination made under this section does not impact a decision made by the board under Occupations Code, §2301.462 (relating to Succession Following Death of Franchised Dealer).

*§215.147. Export Sales.*

(a) Before selling a motor vehicle for export from the United States to another country, a dealer must obtain a legible photocopy of the buyer's government-issued photo identification document. The photo identification document must be issued by the jurisdiction where the buyer resides and be:

(1) a passport;

(2) a driver license;

(3) a license to carry a handgun issued by the Texas Department of Public Safety under Government Code, Chapter 411, Subchapter H;

(4) a national identification certificate or identity document; or

(5) other identification document containing the:

(A) name of the issuing jurisdiction;

(B) buyer's full name;

(C) buyer's foreign address;

(D) buyer's date of birth;

(E) buyer's photograph; and

(F) buyer's signature.

(b) A dealer that sells a vehicle for export from the United States shall place a stamp on the title that includes the words "For Export Only" and includes the dealer's GDN. The stamp must be legible, in black ink, at least two inches wide, and placed on the:

(1) back of the title in all unused dealer reassignment spaces; and

(2) front of the title in a manner that does not obscure any names, dates, mileage statements, or other information printed on the title.

(c) In addition to the records required to be maintained by §215.144 of this title (relating to Vehicle Records), a dealer shall maintain, for each motor vehicle sold for export, a sales file record. The sales file record shall be made available for inspection and copying upon request by the department. The sales file record of each vehicle sold for export must contain:

(1) a completed copy of the Texas Motor Vehicle Sales Tax Exemption Certificate for Vehicles Taken Out of State, indicating that the vehicle has been purchased for export to a foreign country;

(2) a copy of the front and back of the title of the vehicle, showing the "For Export Only" stamp and the GDN of the dealer; and

(3) if applicable, an Export-only Sales Record Form, listing each motor vehicle sold for export only.

(d) A dealer, at the time of sale of a vehicle for export, shall:

(1) enter the information required by Transportation Code, §503.061 in the temporary tag database;

(2) designate the sale as "For Export Only"; and

(3) issue a buyer's temporary tag, in accordance with Transportation Code, §503.063.

*§215.148. Dealer Agents.*

(a) A dealer shall provide written authorization to each person with whom the dealer's agent or employee will conduct business on behalf of the dealer, including to a person that:

(1) buys and sells motor vehicles for resale; or

(2) operates a licensed auction.

(b) If a dealer's agent or employee that conducts business on behalf of the dealer commits an act or omission that would be cause for denial, revocation, or suspension of a license in accordance with Occupations Code, Chapter 2301 or Transportation Code, Chapter 503, the board may:

(1) deny an application for a license; or

(2) revoke or suspend a license.

(c) The board may take action described in subsection (b) of this section after notice and an opportunity for hearing, in accordance with Occupations Code, Chapter 2301 and Chapter 224 of this title (relating to (relating to Adjudicative Practice and Procedure)).

(d) A dealer's authorization to an agent or employee must:

(1) be in writing;

(2) be signed by the dealer principal or person in charge of daily activities of the dealership;

(3) include the agent's or employee's name, current mailing address, and telephone number;

(4) include the dealer's business name, address, and dealer license number or numbers;

(5) expressly authorize buying or selling by the specified agent or employee;

(6) state that the dealer is liable for any act or omission regarding a duty or obligation of the dealer that is caused by that agent or employee, including any financial considerations to be paid for the vehicle;

(7) state that the dealer's authorization remains in effect until the recipient of the written authorization is notified in writing of the revocation of the authority; and

(8) be maintained as a required dealer's record and made available upon request by a representative of the department, in accordance with the requirements of §215.144 of this title (relating to Vehicle Records).

(e) A license holder, including a wholesale motor vehicle auction that buys and sells vehicles on a wholesale basis, including by sealed bid, is required to verify the authority of any person claiming to be an agent or employee of a licensed dealer who purports to be buying or selling a motor vehicle:

(1) on behalf of a licensed dealer; or

(2) under the written authority of a licensed dealer.

(f) A title to a vehicle bought by an agent or employee of a dealer shall be:

(1) reassigned to the dealer by the seller or by the auction; and

(2) shall not be delivered to the agent or employee but delivered only to the dealer or the dealer's financial institution.

(g) Notwithstanding the prohibitions in this section, an authorized agent or employee may sign a required odometer statement.

(h) In a wholesale transaction for the purchase of a motor vehicle, the seller may accept as consideration only:

(1) a check or a draft drawn on the purchasing dealer's account;

(2) a cashier's check in the name of the purchasing dealer; or

(3) a wire transfer from the purchasing dealer's bank account.

*§215.154. Dealer's Temporary Tags.*

(a) A dealer's temporary tag may be displayed only on the type of vehicle for which the GDN is issued and for which the dealer is licensed by the department to sell or lease.

(b) A wholesale motor vehicle auction license holder that also holds a dealer GDN may display a dealer's temporary tag on a vehicle that is being transported to or from the licensed auction location.

(c) When an unregistered vehicle is sold to another dealer, the selling dealer shall remove the selling dealer's temporary tag. The purchasing dealer may display its dealer's temporary tag or its dealer's standard or personalized prestige license plate on the vehicle.

(d) A dealer's temporary tag:

(1) may be displayed on a vehicle only as authorized in Transportation Code, §503.062; and

(2) may not be displayed on:

(A) a laden commercial vehicle being operated or moved on the public streets or highways;

(B) on the dealer's service or work vehicles as described in §215.138(d) of this chapter (relating to Use of Dealer's License Plates);

(C) a golf cart as defined under Transportation Code, Chapter 551; or

(D) an off-highway vehicle as defined under Transportation Code, Chapter 551A.



(e) For purposes of subsection (d) of this section, a vehicle bearing a dealer's temporary tag is not considered a laden commercial vehicle when the vehicle is:

(1) towing another vehicle bearing the same dealer's temporary tags; and

(2) both vehicles are being conveyed from the dealer's place of business to a licensed wholesale motor vehicle auction or from a licensed wholesale motor vehicle auction to the dealer's place of business.

(f) A dealer's temporary tag may not be used to operate a vehicle for the personal use of a dealer or a dealer's employee.

(g) A dealer's temporary tag must show its expiration date, which must not exceed 60 days after the date the temporary tag was issued.

(h) A dealer's temporary tag may be issued by a dealer to a specific motor vehicle in the dealer's inventory or to a dealer's agent who is authorized to operate a motor vehicle owned by the dealer.

(i) A dealer that issues a dealer's temporary tag to a specific vehicle must ensure that the following information is placed on the temporary tag:

(1) the vehicle-specific number from the temporary tag database;

(2) the year and make of the vehicle;

(3) the VIN of the vehicle;

(4) the month, day, and year of the temporary tag's expiration; and

(5) the name of the dealer.

(j) A dealer that issues a dealer's temporary tag to an agent must ensure that the following information is placed on the temporary tag:

(1) the specific number from the temporary tag database;

(2) the month, day, and year of the temporary tag's expiration; and

(3) the name of the dealer.

*§215.160. Duty to Identify Motor Vehicles Offered for Sale as Rebuilt.*

(a) For each motor vehicle a dealer displays or offers for retail sale and which the dealer knows has been a salvage motor vehicle as defined by Transportation Code, §501.091(15) and has subsequently been titled under Transportation Code, §501.100, a dealer shall disclose in writing that the motor vehicle has been repaired, rebuilt, or reconstructed. The written disclosure must:

(1) be visible from outside of the motor vehicle; and

(2) contain lettering that is reasonable in size, stating as follows: "This motor vehicle has been repaired, rebuilt or, reconstructed after formerly being titled as a salvage motor vehicle."

(b) Upon the sale of a motor vehicle which has been a salvage motor vehicle as defined by Transportation Code, §501.091(15) and subsequently titled under Transportation Code, §501.100, a dealer shall obtain the purchaser's signature on the vehicle disclosure form or on an acknowledgement written in fourteen point or larger font that states as follows: "I, (name of purchaser), acknowledge that at the time of purchase, I am aware that this vehicle has been repaired, rebuilt, or reconstructed and was formerly titled as a salvage motor vehicle."

(c) The purchaser's acknowledgement as required in subsection (b) of this section may be incorporated in a Buyer's Order, a Purchase Order, or other disclosure document. This disclosure requires a separate signature.

(d) An original signed acknowledgement or vehicle disclosure form required by subsection (b) of this section must be given to the purchaser and a copy of the signed acknowledgement or vehicle disclosure form shall be retained by the dealer in the records of motor vehicles sales required by §215.144 of this title (relating to Vehicle Records). If the acknowledgement is incorporated in a Buyer's Order, a Purchase Order, or other disclosure document, a copy of that document must be given to the purchaser and a copy retained in the dealer's records in accordance with §215.144.

(e) This section does not apply to a wholesale motor vehicle auction.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 12, 2024.

TRD-202401560

Laura Moriarty

General Counsel

Texas Department of Motor Vehicles

Effective date: June 1, 2024

Proposal publication date: December 29, 2023

For further information, please call: (512) 465-4160



**43 TAC §215.146**

STATUTORY AUTHORITY. The department adopts a repeal to Chapter 215 under Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale, and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise that authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license holders, ensure that the distribution, sale, and lease of motor vehicles is conducted as required by statute and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles, and to enforce and administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651, which gives the board authority to deny an application for a license, revoke or suspend a license, place on probation, or reprimand a licensee if the applicant or license holder is unfit, makes a material misrepresentation, violates any law relating to the sale, distribution, financing, or insuring of motor vehicles, willfully defrauds a purchaser, or fails to fulfill a written agreement with a retail purchaser of a motor vehicle; Government Code, §411.122(d), which authorizes department access to criminal history record information maintained by DPS; Government Code, §411.12511, which authorizes the department to obtain criminal history record information from DPS and the FBI for license applicants, license holders, and representatives whose act or omission would be cause for denying, revoking, or suspending a general distinguishing number or license issued under Transportation Code, Chapter 503, or Occupations Code, Chapters 2301 and 2302; Occupations

Code, §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code, Chapter 2302; Transportation Code, §503.002, which authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503; Transportation Code, §503.009, which authorizes the board to adopt rules for certain contested cases; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, §§503.0626, 503.0631, and 503.0632 which require the board to adopt rules necessary to implement and manage the department's temporary tag databases; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department, as well as the statutes referenced throughout this preamble.

The department also adopts repeals under the authority of Transportation Code, §501.0041 and §502.0021; and Government Code, §§2001.004, and 2001.039, and 2001.054, in addition to the statutory authority referenced throughout this preamble.

Transportation Code, §501.0041 authorizes the department to adopt rules to administer Transportation Code, Chapter 501. Transportation Code, §502.0021 authorizes the department to adopt rules to administer Transportation Code, Chapter 502.

Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. Government Code, §2001.039 requires state agencies to readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule. Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license.

CROSS REFERENCE TO STATUTE. This repeal implements Government Code, Chapters 411 and 2001; Occupations Code, Chapters 2301 and 2302; and Transportation Code, Chapters 501-503, 1001-1003, and 1005.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 12, 2024.

TRD-202401561

Laura Moriarty

General Counsel

Texas Department of Motor Vehicles

Effective date: June 1, 2024

Proposal publication date: December 29, 2023

For further information, please call: (512) 465-4160



## SUBCHAPTER E. LESSORS AND LEASE FACILITATORS

### 43 TAC §§215.171, 215.173 - 215.180

STATUTORY AUTHORITY. The department adopts amendments to Chapter 215 under Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale, and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise that authority; Occupations Code, §2301.152, which authorizes the board to

establish the qualifications of license holders, ensure that the distribution, sale, and lease of motor vehicles is conducted as required by statute and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles, and to enforce and administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651, which gives the board authority to deny an application for a license, revoke or suspend a license, place on probation, or reprimand a licensee if the applicant or license holder is unfit, makes a material misrepresentation, violates any law relating to the sale, distribution, financing, or insuring of motor vehicles, willfully defrauds a purchaser, or fails to fulfill a written agreement with a retail purchaser of a motor vehicle; Government Code, §411.122(d), which authorizes department access to criminal history record information maintained by DPS; Government Code, §411.12511, which authorizes the department to obtain criminal history record information from DPS and the FBI for license applicants, license holders, and representatives whose act or omission would be cause for denying, revoking, or suspending a general distinguishing number or license issued under Transportation Code, Chapter 503, or Occupations Code, Chapters 2301 and 2302; Occupations Code, §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code, Chapter 2302; Transportation Code, §503.002, which authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503; Transportation Code, §503.009, which authorizes the board to adopt rules for certain contested cases; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, §§503.0626, 503.0631, and 503.0632 which require the board to adopt rules necessary to implement and manage the department's temporary tag databases; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department, as well as the statutes referenced throughout this preamble.

The department also adopts amendments under the authority of Transportation Code, §501.0041 and §502.0021; and Government Code, §§2001.004, and 2001.039, and 2001.054, in addition to the statutory authority referenced throughout this preamble.

Transportation Code, §501.0041 authorizes the department to adopt rules to administer Transportation Code, Chapter 501. Transportation Code, §502.0021 authorizes the department to adopt rules to administer Transportation Code, Chapter 502.

Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. Government Code, §2001.039 requires state agencies to readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule. Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license.

CROSS REFERENCE TO STATUTE. These adopted revisions implement Government Code, Chapters 411 and 2001; Occupations Code, Chapters Occupations Code, Chapters 53, 55,

2301, and 2302; and Transportation Code, Chapters 501-503, 1001-1003, and 1005.

§215.174. *Application for a License.*

(a) An applicant for a vehicle lessor's or vehicle lease facilitator's license shall submit a sufficient application to the department as required under §215.83 of this title (relating to License Applications, Amendments, or Renewals). To be sufficient, the application must be on a form prescribed by the department, accompanied by all required supporting documentation, and required fees, and submitted to the department electronically in the licensing system designated by the department.

(b) A license holder renewing or amending a license must verify current license information, provide related information and documents for any new requirements or changes to the license, and pay required fees.

(c) An applicant for a new license must register for an account in the department-designated licensing system by selecting the licensing system icon on the dealer page of the department website. An applicant must designate the account administrator and provide the name and email address for that person, and provide the business telephone number, name, business type, and social security number or employer identification number, as applicable. The applicant's licensing account administrator must be an owner, officer, manager, or bona fide employee.

(d) Once registered, an applicant may apply for a new license and must provide the following:

- (1) type of license requested;
- (2) business information, including the name, physical and mailing addresses, telephone number, Secretary of State file number, as applicable, and website address, as applicable;
- (3) contact name, email address, and telephone number of the person submitting the application;
- (4) contact name, email address, and telephone number of a person who can provide information about business operations and the motor vehicle services offered;
- (5) the name, social security number, date of birth, identity document information, and ownership percentage for each owner, partner, member, beneficiary, or principal if the applicant is not a publicly traded company;
- (6) the name, social security number, date of birth, and identity document information for each officer, director, manager, trustee, or other representative authorized to act on behalf of the applicant if the applicant is owned in full or in part by a legal entity;
- (7) the name, employer identification number, ownership percentage, and non-profit or publicly traded status for each legal entity that owns the applicant in full or in part;
- (8) criminal history record information under the laws of Texas, another state in the United States, the United States, and any foreign jurisdiction for each person listed in the application, including offense description, date, and location;
- (9) military service status;
- (10) licensing history required to evaluate fitness for licensure under §215.89 of this title (relating to Fitness);
- (11) signed Certification of Responsibility, which is a form provided by the department; and

(12) any other information required by the department to evaluate the application under current law and board rules.

(e) The supporting documentation for a vehicle lessor's license application must include a legible and accurate electronic image of each applicable required document:

- (1) Certificate of incorporation, registration, or formation filed with the Texas Secretary of State;
- (2) one of the following current identity documents for each natural person listed in the application:
  - (A) driver license;
  - (B) Texas Identification Card issued by the Texas Department of Public Safety under Transportation Code Chapter 521, Subchapter E;
  - (C) license to carry a handgun issued by the Texas Department of Public Safety under Government Code Chapter 411, Subchapter H;
  - (D) passport; or
  - (E) United States military identification card;
- (3) a copy of each assumed name certificate on file with the appropriate recording entity, such as the Office of the Secretary of State or the county clerk;
- (4) a sample copy of the vehicle lease agreement between the vehicle lessor and a lessee;
- (5) a sample copy of the required fee disclosure statement regarding fees paid by the vehicle lessor to a vehicle lease facilitator for the facilitation of a vehicle lease or a statement that no such fees were or will be paid;
- (6) a list including the business name(s), DBA(s), and addresses of lease facilitators with whom the applicant conducts or intends to conduct business;

(7) a list of other satellite offices that conduct business in the State of Texas that includes the address, phone number, and name of the contact person for each location;

(8) if a vehicle lessor does not deal directly with the public to execute vehicle leases and has a licensed location in another state, a vehicle lessor must provide the jurisdiction name, licensed business address, and license number for each location that leases a motor vehicle to a Texas resident; and

(9) any other information required by the department to evaluate the application under current law and board rules.

(f) The supporting documentation for a vehicle lease facilitator's license application must include a legible and accurate electronic image of each applicable required document:

- (1) Certificate of incorporation, registration, or formation filed with the Texas Secretary of State;
- (2) one of the following unexpired identity documents for each natural person listed in the application:
  - (A) driver license;
  - (B) Texas Identification Card issued by the Texas Department of Public Safety under Transportation Code Chapter 521, Subchapter E;
  - (C) license to carry a handgun issued by the Texas Department of Public Safety under Government Code Chapter 411, Subchapter H;

- (D) passport; or
- (E) United States military identification card;

(3) a copy of each assumed name certificate on file with the appropriate recording entity, such as the Office of the Secretary of State or the county clerk;

(4) a sample copy of the vehicle lease agreement between each of the lessors the lease facilitator represents, and the lessee;

(5) a sample copy of the required fee disclosure statement regarding fees paid by a vehicle lessor to the vehicle lease facilitator for the facilitation of a vehicle lease or a statement that no such fees were or will be paid;

(6) a list of all vehicle lessors, including names and addresses, for whom any vehicle lease facilitator solicits or procures a lessee;

(7) a copy of the representation agreement between the vehicle lease facilitators and each lessor; and

(8) any other information required by the department to evaluate the application under current law and board rules.

(g) An applicant operating under a name other than the applicant's business name shall use the name under which the applicant is authorized to do business, as filed with the Secretary of State or county clerk, and the assumed name of such legal entity shall be recorded by the applicant on the application using the letters "DBA." The applicant may not use a name or assumed name that may be confused with or is similar to that of a governmental entity or that is otherwise deceptive or misleading to the public.

(h) During the term of a license, a vehicle lessor must add, delete, or update the previously submitted list of lease facilitators and a lease facilitator must add, delete, or update the previously submitted list of new vehicle lessors within 10 days by electronically submitting a license amendment in the licensing system designated by the department.

§215.175. *Sanctions.*

(a) The board or department may:

(1) deny a vehicle lessor or vehicle lease facilitator application;

(2) revoke or suspend a vehicle lessor or vehicle lease facilitator license; or

(3) assess a civil penalty or take other action on a vehicle lessor or vehicle lease facilitator applicant or license holder, or a person engaged in business for which a vehicle lessor or vehicle lease facilitator license is required.

(b) The board or department may take action described in subsection (a) of this section if a vehicle lessor or vehicle lease facilitator applicant or license holder, or a person engaged in business for which a vehicle lessor or vehicle lease facilitator license is required:

(1) fails to maintain an established and permanent place of business required by §215.177 of this title (relating to Established and Permanent Place of Business);

(2) fails to maintain records required under this subchapter;

(3) refuses or fails to comply with a request by a representative of the department to examine during the vehicle lessor's or vehicle lease facilitator's posted business hours at the vehicle lessor's or vehicle lease facilitator's licensed location:

(A) a vehicle leasing record required to be maintained by §215.178 of this title (relating to Records Required for Vehicle Lessors and Vehicle Lease Facilitators);

(B) ownership papers for a vehicle owned, leased, or under that vehicle lessor's or vehicle lease facilitator's control; or

(C) evidence of ownership or a current premises lease agreement for the property upon which the business is located;

(4) refuses or fails to timely comply with a request for records made by a representative of the department;

(5) fails to notify the department in writing by electronically submitting a license amendment in the licensing system designated by the department within 10 days of a change of the vehicle lessor or vehicle lease facilitator license holder's:

(A) mailing address;

(B) physical address;

(C) telephone number; or

(D) email address;

(6) fails to notify the department in writing by electronically submitting a license amendment in the licensing system designated by the department within 10 days of a change of the vehicle lessor or vehicle lease facilitator license holder's name, assumed name, management, or ownership;

(7) fails to comply with the fee restrictions or other requirements under Occupations Code, §2301.357 or Chapter 2301, Subchapter L. Vehicle Lessors and Vehicle Lease Facilitators;

(8) fails to maintain advertisement records or otherwise fails to comply with the advertising requirements of:

(A) §215.178; or

(B) Subchapter F of this chapter (relating to Advertising);

(9) violates any law relating to the sale, lease, distribution, financing, or insuring of motor vehicles;

(10) is convicted of an offense that, in accordance with Occupations Code, Chapter 53 and with §211.3 of this title (relating to Criminal Offense Guidelines), directly relates to the duties or responsibilities of the licensed occupation;

(11) is determined by the board or department, in accordance with §215.89 of this title (relating to Fitness), to be unfit to hold a vehicle lessor or vehicle lease facilitator license;

(12) uses or allows use of a vehicle lessor or vehicle lease facilitator license in violation of any law or for the purpose of avoiding any provision of Occupations Code, Chapter 2301; or

(13) omits material information or makes a material misrepresentation in any application or other documentation filed with the department including providing a false or forged identity document or a false or forged photograph, electronic image, or other document.

(c) The board or department may take action on a vehicle lessor's license or assess civil penalties for the vehicle lessor's failure to notify the department in writing by electronically submitting a license amendment in the licensing system designated by the department within 10 days of any change, addition, or deletion to the list of vehicle lease facilitators with whom the vehicle lessor conducts business, including any change to a vehicle lease facilitator's mailing address, physical address, telephone number, or email address.

(d) The board or department may take action on a vehicle lease facilitator's license or assess civil penalties for the failure to notify the department in writing within 10 days by electronically submitting a license amendment in the licensing system designated by the department of any change, addition, or deletion to the list of vehicle lessors for whom the vehicle lease facilitator conducts business, including any change to a vehicle lessor's mailing address, physical address, telephone number, or email address.

(e) The board or department may take action on a vehicle lessor's or vehicle lease facilitator's license if the vehicle lessor or vehicle lease facilitator accepts a fee from a dealer, directly or indirectly, for referring a customer who purchases or considers purchasing a motor vehicle.

*§215.176. More Than One Business Location.*

(a) A vehicle lease facilitator must be licensed separately for each business location.

(b) A vehicle lessor or vehicle lease facilitator that relocates from a point outside the limits of a municipality or relocates to a point not within the limits of the same municipality of the initial business location must obtain a new license.

(c) A vehicle lessor is required to obtain a license for the vehicle lessor's primary location. A vehicle lessor must provide the address, telephone number, and the name of a contact person for all other satellite offices that conduct business in the state of Texas.

*§215.178. Records Required for Vehicle Lessors and Vehicle Lease Facilitators.*

(a) Vehicle purchase, leasing, and sales records. A vehicle lessor or vehicle lease facilitator shall maintain a complete record of all vehicle purchases, leases, and sales of leased vehicles for at least one year after the expiration of the vehicle lease.

(1) Complete records reflecting vehicle lease transactions that occurred within the preceding 24 months must be maintained at the licensed location. Records for prior time periods may be kept off-site.

(2) Within 15 days of receipt of a request from a representative of the department, a vehicle lessor or vehicle lease facilitator shall deliver a copy of the specified records to the address listed in the request.

(b) Content of records for lease transaction. A complete record for a vehicle lease transaction must contain:

(1) the name, address, and telephone number of the vehicle lessor;

(2) the name, mailing address, physical address, and telephone number of each vehicle lessee;

(3) the name, address, telephone number, and license number of the lease facilitator;

(4) the name, work address, and telephone number of each employee of the vehicle lease facilitator that handled the transaction;

(5) a complete description of the vehicle involved in the transaction, including the VIN;

(6) the name, address, telephone number, and GDN of the dealer selling the vehicle, as well as the franchised dealer's license number if the vehicle is a new motor vehicle;

(7) the amount of fee paid to the vehicle lease facilitator or a statement that no fee was paid;

(8) a copy of the buyer's order and sales contract for the vehicle;

(9) a copy of the vehicle lease contract;

(10) a copy of all other contracts, agreements, or disclosures between the vehicle lease facilitator and the consumer lessee; and

(11) a copy of the front and back of the manufacturer's statement of origin, manufacturer's certificate of origin, or the title of the vehicle, as applicable.

(c) Content of records for sale of leased vehicle. A vehicle lessor's complete record for each vehicle sold at the end of a lease to a lessee, a dealer, or at a wholesale motor vehicle auction must contain:

(1) the date of the purchase;

(2) the date of the sale;

(3) the VIN;

(4) the name and address of the person selling the vehicle to the vehicle lessor;

(5) the name and address of the person purchasing the vehicle from the vehicle lessor;

(6) except for a purchase or sale where the Tax Code does not require payment of motor vehicle sales tax, a tax assessor-collector receipt marked paid;

(7) a copy of all documents, forms, and agreements applicable to a particular sale, including a copy of:

(A) the title application;

(B) the work-up sheet;

(C) the front and back of manufacturer's certificate of origin or manufacturer's statement of origin, unless the title is obtained through the electronic title system;

(D) the front and back of the title, unless the title is obtained through the electronic title system;

(E) the factory invoice;

(F) the sales contract;

(G) the retail installment agreement;

(H) the buyer's order;

(I) the bill of sale;

(J) any waiver;

(K) any other agreement between the seller and purchaser; and

(L) the purchaser's photo identification if sold to a lessee;

(8) a copy of the original manufacturer's certificate of origin, original manufacturer's statement of origin, or title for motor vehicle offered for sale, or a properly stamped original manufacturer's certificate of origin, original manufacturer's statement of origin, or original title for a title transaction entered into the electronic titling system by a dealer;

(9) the monthly Motor Vehicle Seller Financed Sales Returns, if any; and

(10) if the vehicle sold is a motor home or a towable recreational vehicle subject to inspection under Transportation Code, Chapter 548, a copy of the written notice provided to the buyer at the time of the sale, notifying the buyer that the vehicle is subject to inspection requirements.

(d) Records of advertising. A vehicle lessor or vehicle lease facilitator shall maintain a copy of all advertisements, brochures, scripts, or an electronically reproduced copy in whatever medium appropriate, of promotional materials for a period of at least 18 months. Each copy is subject to inspection upon request by the department at the business location during posted business hours.

(1) A vehicle lessor and a vehicle lease facilitator shall comply with all federal and state advertising laws and regulations, including Subchapter F of this chapter (relating to Advertising).

(2) A vehicle lessor's or vehicle lease facilitator's advertising or promotional materials may not state or infer, either directly or indirectly, that the business involves the sale of new motor vehicles.

(e) Title assignments. Each certificate of title, manufacturer's certificate of origin, or other evidence of ownership for a vehicle that has been acquired by a vehicle lessor for lease must be properly assigned from the seller in the vehicle lessor's name.

(f) Letters of representation or appointment. A letter of representation or appointment between a vehicle lessor and a vehicle lease facilitator must be executed by both parties and maintained by each party.

(g) Electronic records. Any record required to be maintained by a vehicle lessor or vehicle lease facilitator may be maintained in an electronic format, provided the electronic record can be printed at the licensed location or sent electronically upon department request.

*§215.179. Change of Vehicle Lessor or Vehicle Lease Facilitator Status.*

(a) Change of ownership. A vehicle lessor or vehicle lease facilitator that sells or assigns to another any interest in the licensed entity, whether a corporation or otherwise, provided the physical location of the licensed entity remains the same, shall notify the department in writing within 10 days by filing an application to amend the license in the electronic licensing system designated by the department. If the sale or assignment of any portion of the business results in a change of entity, then the purchasing or assignee entity must apply for and obtain a new license by submitting a new license application in the electronic licensing system designated by the department. A publicly held corporation licensed as a vehicle lessor or vehicle lease facilitator needs only inform the department of a change in ownership if one person or entity acquires 10% or greater interest in the licensed entity by submitting a license amendment application in the electronic licensing system designated by the department.

(b) Change of operating status of business location. A license holder shall obtain department approval prior to opening a satellite location or relocating an existing location, in accordance with §215.176 of this title (relating to More than One Business Location) by electronically submitting a new license application in the licensing system designated by the department and receiving electronic notice of approval prior to relocating or opening a satellite location. A license holder shall notify the department when closing an existing location or a satellite location by electronically submitting a license amendment to close the license or close the satellite location in the licensing system designated by the department.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 12, 2024.  
TRD-202401562

Laura Moriarty  
General Counsel  
Texas Department of Motor Vehicles  
Effective date: June 1, 2024  
Proposal publication date: December 29, 2023  
For further information, please call: (512) 465-4160

◆ ◆ ◆

## SUBCHAPTER G. WARRANTY PERFORMANCE OBLIGATIONS

### 43 TAC §§215.201 - 215.210

STATUTORY AUTHORITY. The department adopts repeals to Chapter 215 under Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale, and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise that authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license holders, ensure that the distribution, sale, and lease of motor vehicles is conducted as required by statute and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles, and to enforce and administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651, which gives the board authority to deny an application for a license, revoke or suspend a license, place on probation, or reprimand a licensee if the applicant or license holder is unfit, makes a material misrepresentation, violates any law relating to the sale, distribution, financing, or insuring of motor vehicles, willfully defrauds a purchaser, or fails to fulfill a written agreement with a retail purchaser of a motor vehicle; Government Code, §411.122(d), which authorizes department access to criminal history record information maintained by DPS; Government Code, §411.12511, which authorizes the department to obtain criminal history record information from DPS and the FBI for license applicants, license holders, and representatives whose act or omission would be cause for denying, revoking, or suspending a general distinguishing number or license issued under Transportation Code, Chapter 503, or Occupations Code, Chapters 2301 and 2302; Occupations Code, §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code, Chapter 2302; Transportation Code, §503.002, which authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503; Transportation Code, §503.009, which authorizes the board to adopt rules for certain contested cases; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, §§503.0626, 503.0631, and 503.0632 which require the board to adopt rules necessary to implement and manage the department's temporary tag databases; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department, as well as the statutes referenced throughout this preamble.

The department also adopts repeals under the authority of Transportation Code, §501.0041 and §502.0021; and Government Code, §§2001.004, and 2001.039, and 2001.054, in

addition to the statutory authority referenced throughout this preamble.

Transportation Code, §501.0041 authorizes the department to adopt rules to administer Transportation Code, Chapter 501. Transportation Code, §502.0021 authorizes the department to adopt rules to administer Transportation Code, Chapter 502.

Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. Government Code, §2001.039 requires state agencies to readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule. Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license.

CROSS REFERENCE TO STATUTE. These repeals implement Government Code, Chapters 411 and 2001; Occupations Code, Chapters 2301 and 2302; and Transportation Code, Chapters 501-503, 1001-1003, and 1005.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 12, 2024.

TRD-202401563

Laura Moriarty

General Counsel

Texas Department of Motor Vehicles

Effective date: June 1, 2024

Proposal publication date: December 29, 2023

For further information, please call: (512) 465-4160



## SUBCHAPTER F. ADVERTISING

### 43 TAC §§215.242, 215.244, 215.249, 215.250, 215.257, 215.261, 215.264, 215.268, 215.270

STATUTORY AUTHORITY. The department adopts amendments to Chapter 215 under Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale, and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise that authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license holders, ensure that the distribution, sale, and lease of motor vehicles is conducted as required by statute and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles, and to enforce and administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651, which gives the board authority to deny an application for a license, revoke or suspend a license, place on probation, or reprimand a licensee if the applicant or license holder is unfit, makes a material misrepresentation, violates any law relating to the sale, distribution, financing, or insuring of motor vehicles, willfully defrauds a purchaser, or fails to fulfill a written agreement with a retail purchaser of a motor vehicle; Government Code, §411.122(d), which

authorizes department access to criminal history record information maintained by DPS; Government Code, §411.12511, which authorizes the department to obtain criminal history record information from DPS and the FBI for license applicants, license holders, and representatives whose act or omission would be cause for denying, revoking, or suspending a general distinguishing number or license issued under Transportation Code, Chapter 503, or Occupations Code, Chapters 2301 and 2302; Occupations Code, §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code, Chapter 2302; Transportation Code, §503.002, which authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503; Transportation Code, §503.009, which authorizes the board to adopt rules for certain contested cases; Transportation Code, §503.0296, which requires the board to adopt a rule requiring that an applicant for an original or renewal general distinguishing number who adopts to be an independent motor vehicle dealer complete web-based education and training developed or approved by the department; Transportation Code, §503.033, which authorizes the board to adopt rules prescribe the form of the notice of a surety bond and the procedure by which a claimant may recover against the surety bond; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, § 503.0626, 503.0631, and 503.0632 which require the board to adopt rules necessary to implement and manage the department's temporary tag databases; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department, as well as the statutes referenced throughout this preamble.

The department also adopts amendments under the authority of Transportation Code, §501.0041 and §502.0021; and Government Code, §§2001.004, and 2001.039, and 2001.054, in addition to the statutory authority referenced throughout this preamble.

Transportation Code, §501.0041 authorizes the department to adopt rules to administer Transportation Code, Chapter 501. Transportation Code, §502.0021 authorizes the department to adopt rules to administer Transportation Code, Chapter 502.

Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. Government Code, §2001.039 requires state agencies to readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule. Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license.

CROSS REFERENCE TO STATUTE. These adopted revisions implement Government Code, Chapters 411 and 2001; Occupations Code, Chapters 2301 and 2302; and Transportation Code, Chapters 501-503, 1001-1003, and 1005.

§215.249. *Manufacturer's or Distributor's Suggested Retail Price.*

(a) Except as provided by subsection (b) of this section, the suggested retail price of a new motor vehicle advertised by a manufacturer or distributor must include all costs and charges for the motor vehicle advertised.

(b) The following costs and charges may be excluded if an advertisement described in subsection (a) of this section clearly and conspicuously states the costs and charges are excluded:

- (1) destination and dealer preparation charges;
- (2) registration, certificate of title, license fees, or an additional registration fee, if any;
- (3) taxes; and
- (4) other fees or charges that are allowed or prescribed by law.

(c) Except as provided by this subsection, if the price of a motor vehicle is stated in an advertisement placed with local media in Texas by a manufacturer or distributor and the names of the local dealers for the motor vehicles advertised are included in that advertisement, then the price must include all costs and charges for the motor vehicle advertised, including destination and dealer preparation charges. The only costs and charges that may be excluded from the price are:

- (1) registration, certificate of title, license fees, or an additional registration fee, if any;
- (2) taxes; and
- (3) other fees or charges that are allowed or prescribed by law.

*§215.250. Dealer Price Advertising; Savings Claims; Discounts.*

(a) When featuring a sales price of a motor vehicle in an advertisement, the dealer must be willing to sell the motor vehicle for that featured sales price to any retail buyer. The featured sales price must be the price before the addition or subtraction of any other negotiated items. Destination and dealer preparation charges and additional dealership markup, if any must be included in the featured sales price.

(b) The only costs and charges that may be excluded from the featured sales price are:

- (1) registration, certificate of title, or license fees;
- (2) taxes; and
- (3) other fees or charges that are expressly allowed by law.

(c) A qualification may not be used when featuring a sales price for a motor vehicle such as "with trade," "with acceptable trade," "with dealer-arranged financing," "rebate assigned to dealer," or "with down payment."

(d) Advertising an "internet price," "e-price," or using similar terms that indicate or create the impression that there is a different or unique sales price for an online or internet consumer or transaction is prohibited.

(e) A savings claim or discount offer is prohibited except to advertise a new motor vehicle. No person may advertise a savings claim or discount offer on a used motor vehicle.

(f) Statements such as "up to," "as much as," and "from" shall not be used by a dealer in connection with savings claims or discount offers.

(g) The savings claim or discount offer for a new motor vehicle, when advertised by a dealer, must be the savings claim or discount available to any and all members of the buying public.

(h) If an advertisement includes a savings claim or discount offer, the amount and type of each incentive that makes up the total amount of the savings claim or discount offer must be disclosed.

(1) If a savings claim or discount offer includes only a dealer discount, that incentive must be disclosed as a deduction from the MSRP/DSRP, as applicable. The following are acceptable formats for advertising a dealer discount with and without a sales price.  
Figure: 43 TAC §215.250(h)(1) (No change.)

(2) If a savings claim or discount offer includes only a customer rebate, that incentive must be disclosed as a deduction from the MSRP/DSRP, as applicable. The following are acceptable formats for advertising a customer rebate with and without a sales price.  
Figure: 43 TAC §215.250(h)(2) (No change.)

(3) If a savings claim or discount offer includes both a customer rebate and a dealer discount, the incentives must be disclosed as deductions from the MSRP/DSRP, as applicable. The following are acceptable formats for advertising both a customer rebate and a dealer discount with and without a sales price.  
Figure: 43 TAC §215.250(h)(3) (No change.)

(i) If a savings claim or discount offer includes an option package discount, that discount should be disclosed above, or prior to, the MSRP/DSRP, as applicable, with a total sales price of the motor vehicle before option discounts. Any additional savings or discounts should then be disclosed below the MSRP/DSRP, as applicable. The following are acceptable formats for advertising an option package discount with and without a sales price.  
Figure: 43 TAC §215.250(i) (No change.)

(j) Except as provided herein, the calculation of the featured sales price or featured savings claim or discount may not include a limited rebate. A limited rebate may be advertised by providing the amount of the limited rebate and explaining the conditions or restrictions on qualification for the limited rebate in a statement below the featured sales price or featured savings claim or discount.  
Figure: 43 TAC §215.250(j) (No change.)

(k) In an internet advertisement with multiple limited rebates available on an advertised new motor vehicle, a dealer may display each limited rebate separately allowing a potential buyer to "click" on the limited rebate to view the sales price after deducting the applicable limited rebate or applicable multiple rebates.  
Figure: 43 TAC §215.250(k) (No change.)

(l) If a dealer has added an option that was not obtained from the manufacturer or distributor of the motor vehicle, a dealer discount may not be advertised for that vehicle. If a dealer has added an option obtained from the manufacturer or distributor and disclosed that option and its suggested retail price on a dealership addendum, the dealer may advertise a dealer discount for that motor vehicle if the option is listed, and the difference is shown between the dealer's sales price and the MSRP/DSRP, as applicable, of the vehicle including the option obtained from the manufacturer or distributor.  
Figure: 43 TAC §215.250(l) (No change.)

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 12, 2024.  
TRD-202401564  
Laura Moriaty  
General Counsel  
Texas Department of Motor Vehicles  
Effective date: June 1, 2024  
Proposal publication date: December 29, 2023  
For further information, please call: (512) 465-4160

◆ ◆ ◆

**SUBCHAPTER I. PRACTICE AND  
PROCEDURE FOR HEARINGS CONDUCTED**



## BY THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

### **43 TAC §§215.301 - 215.303, 215.305 - 215.308, 215.310, 215.311, 215.314 - 215.317**

STATUTORY AUTHORITY. The department adopts repeals to Chapter 215 under Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale, and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise that authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license holders, ensure that the distribution, sale, and lease of motor vehicles is conducted as required by statute and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles, and to enforce and administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651, which gives the board authority to deny an application for a license, revoke or suspend a license, place on probation, or reprimand a licensee if the applicant or license holder is unfit, makes a material misrepresentation, violates any law relating to the sale, distribution, financing, or insuring of motor vehicles, willfully defrauds a purchaser, or fails to fulfill a written agreement with a retail purchaser of a motor vehicle; Government Code, §411.122(d), which authorizes department access to criminal history record information maintained by DPS; Government Code, §411.12511, which authorizes the department to obtain criminal history record information from DPS and the FBI for license applicants, license holders, and representatives whose act or omission would be cause for denying, revoking, or suspending a general distinguishing number or license issued under Transportation Code, Chapter 503, or Occupations Code, Chapters 2301 and 2302; Occupations Code, §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code, Chapter 2302; Transportation Code, §503.002, which authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503; Transportation Code, §503.009, which authorizes the board to adopt rules for certain contested cases; Transportation Code, §503.0296, which requires the board to adopt a rule requiring that an applicant for an original or renewal general distinguishing number who adopts to be an independent motor vehicle dealer complete web-based education and training developed or approved by the department; Transportation Code, §503.033, which authorizes the board to adopt rules prescribe the form of the notice of a surety bond and the procedure by which a claimant may recover against the surety bond; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, §§503.0626, 503.0631, and 503.0632 which require the board to adopt rules necessary to implement and manage the department's temporary tag databases; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department, as well as the statutes referenced throughout this preamble.

The department also adopts repeals under the authority of Transportation Code, §501.0041 and §502.0021; and Government Code, §§2001.004, and 2001.039, and 2001.054, in

addition to the statutory authority referenced throughout this preamble.

Transportation Code, §501.0041 authorizes the department to adopt rules to administer Transportation Code, Chapter 501. Transportation Code, §502.0021 authorizes the department to adopt rules to administer Transportation Code, Chapter 502.

Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. Government Code, §2001.039 requires state agencies to readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule. Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license.

CROSS REFERENCE TO STATUTE. These repeals implement Government Code, Chapters 411 and 2001; Occupations Code, Chapters 2301 and 2302; and Transportation Code, Chapters 501-503, 1001-1003, and 1005.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 12, 2024.

TRD-202401565

Laura Moriaty

General Counsel

Texas Department of Motor Vehicles

Effective date: June 1, 2024

Proposal publication date: December 29, 2023

For further information, please call: (512) 465-4160

## SUBCHAPTER G. ADMINISTRATIVE SANCTIONS

### **43 TAC §215.500**

STATUTORY AUTHORITY. The department adopts amendments to Chapter 215 under Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale, and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise that authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license holders, ensure that the distribution, sale, and lease of motor vehicles is conducted as required by statute and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles, and to enforce and administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651, which gives the board authority to deny an application for a license, revoke or suspend a license, place on probation, or reprimand a licensee if the applicant or license holder is unfit, makes a material misrepresentation, violates any law relating to the sale, distribution, financing, or insuring of motor vehicles, willfully defrauds a purchaser, or fails to fulfill a written agreement with a retail purchaser of a motor vehicle; Government Code, §411.122(d), which autho-

rizes department access to criminal history record information maintained by DPS; Government Code, §411.12511, which authorizes the department to obtain criminal history record information from DPS and the FBI for license applicants, license holders, and representatives whose act or omission would be cause for denying, revoking, or suspending a general distinguishing number or license issued under Transportation Code, Chapter 503, or Occupations Code, Chapters 2301 and 2302; Occupations Code, §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code, Chapter 2302; Transportation Code, §503.002, which authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503; Transportation Code, §503.009, which authorizes the board to adopt rules for certain contested cases; Transportation Code, §503.0296, which requires the board to adopt a rule requiring that an applicant for an original or renewal general distinguishing number who adopts to be an independent motor vehicle dealer complete web-based education and training developed or approved by the department; Transportation Code, §503.033, which authorizes the board to adopt rules prescribe the form of the notice of a surety bond and the procedure by which a claimant may recover against the surety bond; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, §§503.0626, 503.0631, and 503.0632 which require the board to adopt rules necessary to implement and manage the department's temporary tag databases; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department, as well as the statutes referenced throughout this preamble.

The department also adopts amendments under the authority of Transportation Code, §501.0041 and §502.0021; and Government Code, §§2001.004, and 2001.039, and 2001.054, in addition to the statutory authority referenced throughout this preamble.

Transportation Code, §501.0041 authorizes the department to adopt rules to administer Transportation Code, Chapter 501. Transportation Code, §502.0021 authorizes the department to adopt rules to administer Transportation Code, Chapter 502.

Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. Government Code, §2001.039 requires state agencies to readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule. Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license.

CROSS REFERENCE TO STATUTE. These amendments implement Government Code, Chapters 411 and 2001; Occupations Code, Chapters 2301 and 2302; and Transportation Code, Chapters 501-503, 1001-1003, and 1005.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 12, 2024.  
TRD-202401566

Laura Moriarty  
General Counsel  
Texas Department of Motor Vehicles  
Effective date: June 1, 2024  
Proposal publication date: December 29, 2023  
For further information, please call: (512) 465-4160



### 43 TAC §§215.501, 215.502, 215.505

STATUTORY AUTHORITY. The department adopts repeals to Chapter 215 under Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale, and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise that authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license holders, ensure that the distribution, sale, and lease of motor vehicles is conducted as required by statute and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles, and to enforce and administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651, which gives the board authority to deny an application for a license, revoke or suspend a license, place on probation, or reprimand a licensee if the applicant or license holder is unfit, makes a material misrepresentation, violates any law relating to the sale, distribution, financing, or insuring of motor vehicles, willfully defrauds a purchaser, or fails to fulfill a written agreement with a retail purchaser of a motor vehicle; Government Code, §411.122(d), which authorizes department access to criminal history record information maintained by DPS; Government Code, §411.12511, which authorizes the department to obtain criminal history record information from DPS and the FBI for license applicants, license holders, and representatives whose act or omission would be cause for denying, revoking, or suspending a general distinguishing number or license issued under Transportation Code, Chapter 503, or Occupations Code, Chapters 2301 and 2302; Occupations Code, §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code, Chapter 2302; Transportation Code, §503.002, which authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503; Transportation Code, §503.009, which authorizes the board to adopt rules for certain contested cases; Transportation Code, §503.0296, which requires the board to adopt a rule requiring that an applicant for an original or renewal general distinguishing number who adopts to be an independent motor vehicle dealer complete web-based education and training developed or approved by the department; Transportation Code, §503.033, which authorizes the board to adopt rules prescribe the form of the notice of a surety bond and the procedure by which a claimant may recover against the surety bond; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, §§503.0626, 503.0631, and 503.0632 which require the board to adopt rules necessary to implement and manage the department's temporary tag databases; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department, as well as the statutes referenced throughout this preamble.

The department also adopts repeals under the authority of Transportation Code, §501.0041 and §502.0021; and Government Code, §§2001.004, and 2001.039, and 2001.054, in addition to the statutory authority referenced throughout this preamble.

Transportation Code, §501.0041 authorizes the department to adopt rules to administer Transportation Code, Chapter 501. Transportation Code, §502.0021 authorizes the department to adopt rules to administer Transportation Code, Chapter 502.

Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. Government Code, §2001.039 requires state agencies to readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule. Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license.

CROSS REFERENCE TO STATUTE. These repeals implement Government Code, Chapters 411 and 2001; Occupations Code, Chapters 2301 and 2302; and Transportation Code, Chapters 501-503, 1001-1003, and 1005.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 12, 2024.

TRD-202401567

Laura Moriaty

General Counsel

Texas Department of Motor Vehicles

Effective date: June 1, 2024

Proposal publication date: December 29, 2023

For further information, please call: (512) 465-4160



## CHAPTER 217. VEHICLE TITLES AND REGISTRATION

### SUBCHAPTER B. MOTOR VEHICLE REGISTRATION

#### 43 TAC §217.56

INTRODUCTION. The Texas Department of Motor Vehicles (department) adopts amendments to 43 Texas Administrative Code (TAC) §217.56 regarding vehicle registration reciprocity agreements. The department adopts amendments to §217.56 with changes to the proposed text as published in the December 29, 2023, issue of the *Texas Register* (48 TexReg 8262). The rule will be republished.

The department adopts §217.56 with nonsubstantive changes. The department replaced the word "edition" with "version" in §217.56(c)(2)(B) to reference the International Registration Plan (IRP) and the IRP Audit Procedures Manual to be consistent with the terminology on the IRP website. Also, the department changed the order of the citations to adopted new Chapter 224 of this title (relating to Adjudicative Practice and Procedure) and Transportation Code, Chapter 502 in §217.56(c)(2)(J)(iii) for clarity.

The adopted amendments incorporate by reference the January 1, 2022, version of the IRP, clarify language, make the terminology consistent with other department rules, delete certain language regarding the process for an appeal under §217.56, and refer to adopted new Chapter 224 of this title for an appeal of the department's decision against a vehicle registrant regarding an assessment, cancellation, or revocation under §217.56. In this issue of the *Texas Register*, the department adopts new Chapter 224, which includes all department adjudicative practice and procedure rules.

REASONED JUSTIFICATION. An adopted amendment to §217.56(c)(2)(B) incorporates by reference the January 1, 2022, version of IRP. Texas is bound by IRP, which is a vehicle registration reciprocity agreement between the 48 contiguous states, the District of Columbia, and the Canadian provinces. Section 217.56 must incorporate IRP because it contains language regarding the nature and requirements of vehicle registration under IRP. Also, Government Code, §2001.004(1) requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. In addition, Texas is a member of IRP, as authorized by Transportation Code, §502.091 and 49 U.S.C. §31704, and must comply with IRP. The jurisdictions that are members of IRP amended the January 1, 2021, version of IRP as follows to create the January 1, 2022, version: added Section 601 (Uploading Data to the Repository), amended Section 1505 (Amendment Introduction Process), amended Section 1515 (Ballot Process), and amended Section 1520 (Effective Date of Plan Amendments).

An adopted amendment to §217.56(c)(2)(J) replaces the catch line for subparagraph (J) to provide a better description of the contents of subparagraph (J). The adopted amendment to §217.56(c)(2)(J)(ii) changes the word "ruling" to "decision" to be consistent with other department rules. An adopted amendment to §217.56(c)(2)(J)(iii) references adopted new §224.122 of this title (relating to Appeal of Decision Regarding Assessment, Cancellation, or Revocation Under §217.56), which prescribes the requirements for a vehicle registrant that wants to appeal a decision against the registrant under subparagraph (J) of an assessment (a financial penalty under §217.56(c)(2)(G)) or a cancellation or revocation of the registrant's apportioned registration under IRP. An adopted amendment to §217.56(c)(2)(J)(iii) states that an appeal will be governed by adopted new Chapter 224 of this title (relating to Adjudicative Practice and Procedure) and Transportation Code, Chapter 502. In addition, adopted amendments to §217.56(c)(2)(J)(iii) delete language regarding the prior procedure for an appeal under subparagraph (J), including the procedure under prior Chapter 206, Subchapter D of this title (relating to Procedures in Contested Cases). In this issue of the *Texas Register*, the department adopts amendments that repeal Subchapter D of Chapter 206 and replace it with provisions in adopted new Chapter 224.

#### SUMMARY OF COMMENTS.

No comments on the proposed amendments were received.

STATUTORY AUTHORITY. The department adopts amendments to §217.56 under Transportation Code, §502.091(b), which authorizes the department to adopt and enforce rules to carry out IRP; Transportation Code, §502.0021, which authorizes the department to adopt rules to administer Transportation Code, Chapter 502; Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and duties of the department;

Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; Government Code, §2001.054, which specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license; and the statutory authority referenced throughout this preamble and in the rule text, which is incorporated herein by reference.

CROSS REFERENCE TO STATUTE. These amendments implement Transportation Code, Chapter 502, and Government Code, Chapter 2001.

§217.56. *Registration Reciprocity Agreements.*

(a) Purpose. To promote and encourage the fullest possible use of the highway system and contribute to the economic development and growth of the State of Texas and its residents, the department is authorized by Transportation Code, §502.091 to enter into agreements with duly authorized officials of other jurisdictions, including any state of the United States, the District of Columbia, a foreign country, a state or province of a foreign country, or a territory or possession of either the United States or of a foreign country, and to provide for the registration of vehicles by Texas residents and nonresidents on an allocation or distance apportionment basis, and to grant exemptions from the payment of registration fees by nonresidents if the grants are reciprocal to Texas residents.

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

(1) Cab card--The apportioned vehicle registration receipt that contains, but is not limited to, the vehicle description and the registered weight at which the vehicle may operate in each jurisdiction.

(2) Department--The Texas Department of Motor Vehicles.

(3) Director--The director of the Motor Carrier Division, Texas Department of Motor Vehicles.

(4) Executive director--The chief executive officer of the department.

(5) Regional Service Center--A department office which provides specific services to the public, including replacement titles, bonded title rejection letters, and apportioned registration under the International Registration Plan (IRP).

(6) Temporary cab card--A temporary registration permit authorized by the department that allows the operation of a vehicle for 30 days subject to all rights and privileges afforded to a vehicle displaying apportioned registration.

(c) Multilateral agreements.

(1) Authority. The executive director may on behalf of the department enter into a multilateral agreement with the duly authorized officials of two or more other jurisdictions to carry out the purpose of this section.

(2) International Registration Plan.

(A) Applicability. The IRP is a registration reciprocity agreement among states of the United States and other jurisdictions providing for payment of registration fees on the basis of fleet distance operated in various jurisdictions. Its purpose is to promote and encourage the fullest possible use of the highway system by authorizing apportioned registration for commercial motor vehicles and payment of appropriate vehicle registration fees and thus contributing to the economic development and growth of the member jurisdictions.

(B) Adoption. The department adopts by reference the January 1, 2022, version of the IRP. The department also adopts by reference the January 1, 2016, version of the IRP Audit Procedures Manual. In the event of a conflict between this section and the IRP or the IRP Audit Procedures Manual, the IRP and the IRP Audit Procedures Manual control. Copies of the documents are available for review in the Motor Carrier Division, Texas Department of Motor Vehicles. Copies are also available on request.

(C) Application.

(i) An applicant must submit an application to the department on a form prescribed by the director, along with additional documentation as required by the director. An applicant shall provide the department with a copy of the applicant's receipt under the Unified Carrier Registration System Plan and Agreement under 49 U.S.C. §14504a (UCR) to prove the applicant is currently registered under UCR if the applicant is required to register under UCR.

(ii) Upon approval of the application, the department will compute the appropriate registration fees and notify the registrant.

(D) Fees. Upon receipt of the applicable fees in the form as provided by §209.23 of this title (relating to Methods of Payment), the department will issue one or two license plates and a cab card for each vehicle registered.

(E) Display of License Plates and Cab Cards.

(i) The department will issue one license plate for a tractor, truck-tractor, trailer, and semitrailer. The license plate issued to a tractor or a truck-tractor shall be installed on the front of the tractor or truck-tractor, and the license plate issued for a trailer or semitrailer shall be installed on the rear of the trailer or semitrailer.

(ii) The department will issue two license plates for all other vehicles that are eligible to receive license plates under the IRP. Once the department issues two license plates for a vehicle listed in this clause, one plate shall be installed on the front of the vehicle, and one plate shall be installed on the rear of the vehicle.

(iii) The cab card shall be carried at all times in the vehicle in accordance with the IRP. If the registrant chooses to display an electronic image of the cab card on a wireless communication device or other electronic device, such display does not constitute consent for a peace officer, or any other person, to access the contents of the device other than the electronic image of the cab card.

(iv) The authority to display an electronic image of the cab card on a wireless communication device or other electronic device does not prevent the Texas State Office of Administrative Hearings or a court of competent jurisdiction from requiring the registrant to provide a paper copy of the cab card in connection with a hearing, trial, or discovery proceeding.

(F) Audit. An audit of the registrant's vehicle operational records may be conducted by the department according to the IRP provisions and the IRP Audit Procedures Manual. Upon request, the registrant shall provide the operational records of each vehicle for audit in unit number order, in sequence by date, and including, but not limited to, a summary of distance traveled by each individual vehicle on a monthly, quarterly, and annual basis with distance totaled separately for each jurisdiction in which the vehicle traveled.

(G) Assessment. The department may assess additional registration fees of up to 100% of the apportionable fees paid by the registrant for the registration of its fleet in the registration year to which the records pertain, as authorized by the IRP, if an audit conducted under subparagraph (F) of this paragraph reveals that:

(i) the operational records indicate that the vehicle did not generate interstate distance in two or more member jurisdictions for the distance reporting period supporting the application being audited, plus the six-month period immediately following that distance reporting period;

(ii) the registrant failed to provide complete operational records; or

(iii) the distance must be adjusted, and the adjustment results in a shortage of registration fees due Texas or any other IRP jurisdiction.

(H) Refunds. If an audit conducted under subparagraph (F) of this paragraph reveals an overpayment of fees to Texas or any other IRP jurisdiction, the department will refund the overpayment of registration fees in accordance with Transportation Code, §502.195 and the IRP. Any registration fees refunded to a carrier for another jurisdiction will be deducted from registration fees collected and transmitted to that jurisdiction.

(I) Cancellation or revocation. The director or the director's designee may cancel or revoke a registrant's apportioned registration and all privileges provided by the IRP as authorized by the following:

(i) the IRP; or

(ii) Transportation Code, Chapter 502.

(J) Procedures for assessment, cancellation, or revocation.

(i) Notice. If a registrant is assessed additional registration fees, as provided in subparagraph (G) of this paragraph, and the additional fees are not paid by the due date provided in the notice or it is determined that a registrant's apportioned license plates and privileges should be canceled or revoked, as provided in subparagraph (I) of this paragraph, the director or the director's designee will mail a notice by certified mail to the last known address of the registrant. The notice will state the facts underlying the assessment, cancellation, or revocation; the effective date of the assessment, cancellation, or revocation; and the right of the registrant to request a conference as provided in clause (ii) of this subparagraph.

(ii) Conference. A registrant may request a conference upon receipt of a notice issued as provided by clause (i) of this subparagraph. The request must be made in writing to the director or the director's designee within 30 days of the date of the notice. If timely requested, the conference will be scheduled and conducted by the director or the director's designee at division headquarters in Austin and will serve to abate the assessment, cancellation, or revocation unless and until that assessment, cancellation, or revocation is affirmed or disaffirmed by the director or the director's designee. In the event matters are resolved in the registrant's favor, the director or the director's designee will mail the registrant a notice of withdrawal, notifying the registrant that the assessment, cancellation, or revocation is withdrawn, and stating the basis for that action. In the event matters are not resolved in the registrant's favor, the director or the director's designee will issue a decision reaffirming the department's assessment of additional registration fees or cancellation or revocation of apportioned license plates and privileges. The registrant has the right to appeal in accordance with clause (iii) of this subparagraph.

(iii) Appeal. If a conference held in accordance with clause (ii) of this subparagraph fails to resolve matters in the registrant's favor, the registrant may submit an appeal under §224.122 of this title (relating to Appeal of Decision Regarding Assessment, Cancellation, or Revocation Under §217.56). An appeal will be governed by Chapter

224 of this title (relating to Adjudicative Practice and Procedure) and Transportation Code, Chapter 502.

(K) Reinstatement.

(i) The director or the director's designee will reinstate apportioned registration to a previously canceled or revoked registrant if all applicable fees and assessments due on the previously canceled or revoked apportioned account have been paid and the applicant provides proof of an acceptable recordkeeping system for a period of no less than 60 days.

(ii) The application for the following registration year will be processed in accordance with the provisions of the IRP.

(L) Denial of apportioned registration for safety reasons. The department will comply with the requirements of the Performance and Registration Information Systems Management program (PRISM) administered by the Federal Motor Carrier Safety Administration (FMCSA).

(i) Denial or suspension of apportioned registration. Upon notification from the FMCSA that a carrier has been placed out of service for safety violations, the department will:

(I) deny initial issuance of apportioned registration;

(II) deny authorization for a temporary cab card, as provided for in subparagraph (M) of this paragraph;

(III) deny renewal of apportioned registration; or

(IV) suspend current apportioned registration.

(ii) Issuance after denial of registration or reinstatement of suspended registration. The director or the director's designee will reinstate or accept an initial or renewal application for apportioned registration from a registrant who was suspended or denied registration under clause (i) of this subparagraph upon presentation of a Certificate of Compliance from FMCSA, in addition to all other required documentation and payment of fees.

(M) Temporary cab card.

(i) Application. The department may authorize issuance of a temporary cab card to a motor carrier with an established Texas apportioned account for a vehicle upon proper submission of all required documentation, a completed application, and all fees for either:

(I) Texas title as prescribed by Transportation Code, Chapter 501 and Subchapter A of this chapter (relating to Motor Vehicle Titles); or

(II) registration receipt to evidence title for registration purposes only (Registration Purposes Only) as provided for in Transportation Code, §501.029 and §217.24 of this title (relating to Vehicle Last Registered in Another Jurisdiction).

(ii) Title application. A registrant who is applying for a Texas title as provided for in clause (i)(I) of this subparagraph and is requesting authorization for a temporary cab card, must submit to a Regional Service Center a photocopy of the title application receipt issued by the county tax assessor-collector's office.

(iii) Registration Purposes Only. A registrant who is applying for Registration Purposes Only under clause (i)(II) of this subparagraph and is requesting authorization for a temporary cab card, must submit an application and all additional original documents or copies of original documents required by the director to a Regional Service Center.

(iv) Department approval. On department approval of the submitted documents, the department will send notice to the registrant to finalize the transaction and make payment of applicable registration fees.

(v) Finalization and payment of fees. To finalize the transaction and print the temporary cab card, the registrant may compute the registration fees through the department's apportioned registration software application, TxIRP system, and:

(I) make payment of the applicable registration fees to the department as provided by §209.23 of this title; and

(II) afterwards, mail or deliver payment of the title application fee in the form of a check, certified cashier's check, or money order payable to the county tax assessor-collector in the registrant's county of residency and originals of all copied documents previously submitted.

(vi) Deadline. The original documents and payment must be received by the Regional Service Center within 72-hours after the time that the office notified the registrant of the approval to print a temporary cab card as provided in clause (iv) of this subparagraph.

(vii) Failure to meet deadline. If the registrant fails to submit the original documents and required payment within the time prescribed by clause (vi) of this subparagraph, the registrant's privilege to use this expedited process to obtain a temporary cab card will be denied by the department for a period of six months from the date of approval to print the temporary cab card.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 11, 2024.

TRD-202401486

Laura Moriaty

General Counsel

Texas Department of Motor Vehicles

Effective date: June 1, 2024

Proposal publication date: December 29, 2023

For further information, please call: (512) 465-4160



### 43 TAC §217.63

**INTRODUCTION.** The Texas Department of Motor Vehicles (department) adopts amendments to 43 Texas Administrative Code §217.63, concerning Digital License Plate Fees and Payment. The department adopts amendments to §217.63 with changes to the proposed text as published in the December 29, 2023, issue of the *Texas Register* (48 TexReg 8265). The rule will be republished.

#### REASONED JUSTIFICATION.

Adopted amendments to §217.63(a) reduce the digital license plate administrative fee from \$95 to \$45. The reduction in the fee addresses concerns from stakeholders that the administrative fee associated with the digital license plate is too high and does not incentivize Texans to adopt the new digital license plate technology. This fee reduction would provide an incentive for customers to choose a digital license plate over another type of specialty plate, which would result in the issuance of more digital license plates. Increased sales of digital license plates would

allow the department to recoup the costs of administering the digital license plate program more quickly than it will be able to achieve while relying on the current fees from slow sales of very few plates. Adopted amendments to §217.63(a)(1) also streamline the description of how the administrative fee is paid to more accurately reflect current practice.

Adopted amendments to §217.63(a)(2) clarify that the registration period of the digital license plate will be aligned with the vehicle registration period, and that the initial administrative fee will be prorated based on the remaining registration period. The amendments do not change the meaning of the provision but clarify it for the reader.

At adoption a nonsubstantive change in the text to §217.63(a)(3) corrected a citation to Transportation Code, §502.195 by deleting an extraneous space.

Adopted amendments to §217.63(b) clarify the purpose of the rule by amending the subsection title and language. Adopted amendments to §217.63(b)(2) correct the description of the payment process for digital license plate fees to clarify that the fees for issuance of digital license plates are paid directly to the state through the digital license plate provider and state systems, in accordance with current practices.

#### SUMMARY OF COMMENTS.

No comments on the proposed amendments were received.

**STATUTORY AUTHORITY.** The department adopts amendments to §217.63 under Transportation Code, §§504.151-504.157, which provides the board with rulemaking authority to implement the digital license plate statutory provisions including setting specifications and requirements for digital license plates and establishing a fee in an amount necessary to cover any administrative costs incurred that relate to the issuance of a digital license plate and exceed the administrative costs incurred for the issuance of a physical license plate. The department also adopts amendments under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

**CROSS REFERENCE TO STATUTE.** The adopted amendments implement Transportation Code, Chapter 504, Subchapter B-1 relating to Digital License Plates.

§217.63. *Digital License Plate Fees and Payment.*

(a) Fees.

(1) A person issued a digital license plate must pay an administrative fee of \$45 upon initial application for a digital license plate and on renewal of registration for a vehicle with a digital license plate.

(2) The registration period of the digital license plate will be aligned with the registration period for the vehicle and the administrative fee due under subsection (a) will be prorated to yield the appropriate fee based on the remaining registration period.

(3) A digital license plate administrative fee will be refunded only when registration fees are overcharged under Transportation Code, §502.195.

(b) Payment of fees.

(1) All state, county, local, and other applicable fees are due at the time of registration of a vehicle with a digital license plate.

(2) The fees for issuance of digital license plates will be paid directly to the state through the digital license plate provider and state systems.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 12, 2024.

TRD-202401492

Laura Moriaty

General Counsel

Texas Department of Motor Vehicles

Effective date: May 2, 2024

Proposal publication date: December 29, 2023

For further information, please call: (512) 465-4160



## CHAPTER 218. MOTOR CARRIERS

**INTRODUCTION.** The Texas Department of Motor Vehicles (department) adopts amendments to 43 Texas Administrative Code (TAC) Subchapter B, Motor Carrier Registration, §218.10 and §218.16; Subchapter C, Records and Inspections, §218.33; Subchapter E, Consumer Protection, §218.64; and Subchapter F, Enforcement, §§218.70 - 218.72. The department adopts §§218.16, 218.64, and 218.70 with changes to the proposed text as published in the December 29, 2023, issue of the *Texas Register* (48 TexReg 8267). Sections 218.16, 218.64, and 218.70 will be republished. The department adopts §§218.16, 218.64, and 218.70 with nonsubstantive changes: for clarity, the department changed the order of the citations to new adopted Chapter 224 of this title (relating to Adjudicative Practice and Procedure) and chapters in the Transportation Code.

The department adopts §§218.10, 218.33, 218.71, and 218.72 without changes to the proposed text as published in the December 29, 2023, issue of the *Texas Register* (48 TexReg 8267). These rules will not be republished.

The department adopts the repeal of 43 TAC Subchapter F, Enforcement, §§218.73 and 218.75 - 218.78.

The adopted amendments delete certain language regarding adjudicative practice and procedure and refer to new Chapter 224 of this title. In this issue of the *Texas Register*, the department adopts new Chapter 224, which includes all department adjudicative practice and procedure rules in one chapter. The adopted amendments also make the terminology consistent with statute and current practice.

**REASONED JUSTIFICATION.** The adopted amendment to §218.10 replaces the word "accident" with "accidental" to be consistent with the terminology in Transportation Code, §643.106.

An adopted amendment to §218.16(d)(6) replaces the reference to orders issued or adopted by the department regarding self-insured status with a reference to the department's approval letter. When the department grants an applicant self-insured status under §218.16(d) and Transportation Code, §643.102, the department issues an approval letter that contains the scope and terms of the approval, including maintenance requirements. Also, an adopted amendment to §218.16(d) clarifies the scope of the reasons for which self-insured status could be revoked by referring to the applicable requirements under §218.16, in-

stead of the requirements under §218.16(d)(6). In addition, an adopted amendment to §218.16(d)(6) states that the revocation of self-insured status will be governed by adopted new Chapter 224 of this title and Transportation Code, Chapter 643. The department adopts §218.16(d)(6) with nonsubstantive changes to the text at adoption that reverse the order of the citations in the last sentence for clarity and readability.

Adopted amendments to §218.16(d)(7) delete reference to revocation of self-insured status and modify the catch line to indicate this change because revocations are addressed in §218.16(d)(6). Revocations are treated differently than a denial of an application for self-insured status under adopted new Chapter 224 of this title. Government Code, §2001.054 authorizes this distinction between the two actions and the applicable procedures. An adopted amendment to §218.16(d)(7) also replaces the term "self-insurance status" with "self-insured status" to be consistent with the terminology in §218.16(d). In addition, adopted amendments to §218.16(d)(7) reference adopted new §224.126 of this title (relating to Appeal of a Denial of Self-Insured Status) regarding the filing of an appeal of a denial of an application for self-insured status, and clarify that the applicant must file an appeal, rather than a petition for an administrative hearing. Further, an adopted amendment to §218.16(d)(7) deletes the reference to Chapter 206, Subchapter D of this title (relating to Procedures in Contested Cases). In this issue of the *Texas Register*, the department adopts amendments that repeal Subchapter D of Chapter 206 and replace it with provisions in adopted new Chapter 224 of this title.

The adopted amendment to §218.16(h) replaces the word "accidents" with "collisions" to be consistent with terminology in Transportation Code, §643.105 as amended by House Bill 2190, 88th Texas Legislature, Regular Session (2023).

The adopted amendments to §218.33 replace the reference to Subchapter F of Chapter 218 with a reference to adopted new Chapter 224, which includes all department adjudicative practice and procedure rules in one chapter.

The adopted amendments to §218.64(c)(7) replace the prior procedure for the rejection of a collective ratemaking agreement under Transportation Code, §643.154 with a new procedure that is governed by adopted new Chapter 224. Department staff do not recall having any hearings in the history of the department regarding the rejection of a collective ratemaking agreement, which may be because the requirements for an acceptable collective ratemaking agreement are minimal. The adopted amendments to §218.64(c)(7) provide for greater flexibility in the procedure for these cases and make the procedure consistent with Transportation Code, §643.154 and other contested cases under Transportation Code, Chapter 643 to the extent applicable. The department adopts §218.64(c)(7) with nonsubstantive changes to the text at adoption that reverse the order of the citations for clarity and to improve readability.

The adopted amendment to the heading for Subchapter F of Chapter 218 makes the heading consistent with the amendments and repeals in Subchapter F that change the scope of the subchapter. Adopted amendments to §218.70 make the section consistent with the amendments to and repeals of sections within Subchapter F. Also, an adopted amendment to §218.70 references the assessment of civil penalties under §218.71 in certain cases under federal law regarding the interstate movement of household goods. In addition, an adopted amendment to §218.70 states that the enforcement actions under Chapter

218 are governed by adopted new Chapter 224 of this title and Transportation Code, Chapters 643 and 645, as applicable.

Further, an adopted amendment to §218.70 deletes reference to Transportation Code, Chapter 648 regarding foreign commercial motor transportation because the department enforces the insurance requirements under Transportation Code, Chapter 643, rather than Chapter 648. Transportation Code, §643.101(b) requires the department by rule to set the amount of liability insurance required for a motor carrier at an amount that does not exceed the amount required under a federal regulation adopted under 49 U.S.C. §13906(a)(1). The insurance requirements in 49 C.F.R. Part 387 were adopted under 49 U.S.C. §13906. The department adopted the insurance requirements in Subchapter G of Chapter 218 under Transportation Code, §643.101(b). Also, Transportation Code, Chapter 648 does not provide the department with enforcement authority. Sections in Transportation Code, Chapter 643 provide the department with enforcement authority, such as §§643.251, 643.252, 643.2525, 643.254, and 643.256. The department adopts §218.70 with nonsubstantive changes to the text at adoption that reverse the order of the citations in the last sentence for clarity and readability.

The adopted amendments to §218.71 delete subsections (b) and (d) and re-letter the section accordingly. In this issue of the *Texas Register*, the department adopts new Chapter 224, which includes new §224.115 of this title (relating to Administrative Penalty and Sanction Assessment; Probation of Suspension), which contains the language found in deleted §218.71(b). Chapter 224 also includes new §224.116 of this title (relating to Administrative Proceedings), which contains a modified version of deleted §218.71(d).

The adopted amendments to §218.72(a) add language regarding the department's authority to deny a certificate of registration to a motor carrier under Transportation Code, §643.252, as well as the department's authority to place on probation a motor carrier whose registration is suspended. Also, an adopted amendment to §218.72(a) changes the word "for" to "on."

Adopted amendments to §218.72 delete subsection (c) and re-letter the section accordingly. In this issue of the *Texas Register*, the department adopts new Chapter 224, which includes new §224.115 of this title (relating to Administrative Penalty and Sanction Assessment; Probation of Suspension), which contains a modified version of the language found in deleted §218.72(c) regarding the probation of any suspension ordered under Transportation Code, §643.252.

The department adopts the repeal of the following sections: §§218.73, 218.75, 218.76, 218.77, and 218.78. In this issue of the *Texas Register*, the department adopts new Chapter 224, which includes the language from these repealed sections with some modifications.

#### SUMMARY OF COMMENTS.

No comments on the proposed amendments and repeals were received.

### SUBCHAPTER B. MOTOR CARRIER REGISTRATION

#### 43 TAC §218.10, §218.16

**STATUTORY AUTHORITY.** The department adopts the amendments under Transportation Code, §643.003, which authorizes the department to adopt rules to administer Transportation Code, Chapter 643; Transportation Code, §643.101(b), which

requires the department by rule to set the amount of liability insurance required for a motor carrier at an amount that does not exceed the amount required under a federal regulation adopted under 49 U.S.C. §13906(a)(1); Transportation Code, §643.102, which authorizes a motor carrier to comply with the requirements under Transportation Code, §643.101 through self-insurance if it complies with the requirements; Transportation Code, §643.2525, which provides the administrative hearing process under Transportation Code, Chapter 643; Transportation Code, Section 648.102, which requires the department to adopt rules that conform with 49 C.F.R. Part 387 that require motor carriers operating foreign commercial motor vehicles in this state to maintain financial responsibility; Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code and other laws of this state; Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; Government Code, §2001.054, which specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license; and the statutory authority referenced throughout this preamble and in the rule text, which is incorporated herein by reference.

**CROSS REFERENCE TO STATUTE.** The amendments implement Transportation Code, Chapters 643 and 648; and Government Code, Chapter 2001.

#### §218.16. Insurance Requirements.

(a) Automobile liability insurance requirements. A motor carrier must file proof of commercial automobile liability insurance with the department on a form acceptable to the director for each vehicle required to be registered under this subchapter. The motor carrier must carry and maintain automobile liability insurance that is combined single limit liability for bodily injury to or death of an individual per occurrence, loss or damage to property (excluding cargo) per occurrence, or both. Extraneous information will not be considered acceptable, and the department may reject proof of commercial automobile liability insurance if it is provided in a format that includes information beyond what is required. Minimum insurance levels are indicated in the following table. However, a motor carrier that operates a foreign commercial motor vehicle must comply with the minimum level of financial responsibility in 49 C.F.R. Part 387 to the extent Part 387 prescribes a higher level of financial responsibility than the following table. The department adopts by reference 49 C.F.R. Part 387. Effective October 23, 2015, the department adopts by reference the amendments to 49 C.F.R. Part 387 with an effective date of October 23, 2015. Figure: 43 TAC §218.16(a) (No change.)

(b) Cargo insurance. Household goods carriers shall file and maintain with the department proof of financial responsibility.

(1) The minimum limits of financial responsibility for a household goods carrier for hire is \$5,000 for loss or damage to a single shipper's cargo carried on any one motor vehicle.

(2) The minimum limits of financial responsibility for a household goods carrier for hire is \$10,000 for aggregate loss or damage to multiple shipper cargo carried on any one motor vehicle. In cases in which multiple shippers sustain damage and the aggregate amount of cargo damage is greater than the cargo insurance in force, the insurance company shall prorate the benefits among the shippers in relationship to the damage incurred by each shipper.

(c) Workers' compensation or accidental insurance coverage.



(1) A motor carrier that is required to register under this subchapter and whose primary business is transportation for compensation or hire between two or more incorporated cities, towns, or villages shall provide workers' compensation for all its employees or accidental insurance coverage in the amounts prescribed in paragraph (2) of this subsection.

(2) Accidental insurance coverage required by paragraph (1) of this subsection shall be at least in the following amounts:

(A) \$300,000 for medical expenses and coverage for at least 104 weeks;

(B) \$100,000 for accidental death and dismemberment, including 70 percent of employee's pre-injury income for not less than 104 weeks when compensating for loss of income; and

(C) \$500 for the maximum weekly benefit.

(d) Qualification of motor carrier as self-insured.

(1) General qualifications. A motor carrier may meet the insurance requirements of subsections (a) and (b) of this section by filing an application, in a form prescribed by the department, to qualify as a self-insured. The application must include a true and accurate statement of the motor carrier's financial condition and other evidence that establishes its ability to satisfy obligations for bodily injury and property damage liability without affecting the stability or permanency of its business. The department may accept USDOT evidence of the motor carrier's qualifications as a self-insured.

(2) Applicant guidelines. In addition to filing an application as prescribed by the department, an applicant for self-insured status must submit materials that will allow the department to determine the following information.

(A) Applicant's net worth. An applicant's net worth must be adequate in relation to the size of its operations and the extent of its request for self-insurance authority. The applicant must demonstrate that it can and will maintain an adequate net worth.

(B) Self-insurance program. An applicant must demonstrate that it has established and will maintain a sound insurance program that will protect the public against all claims involving motor vehicles to the same extent as the minimum security limits applicable under this section. In determining whether an applicant is maintaining a sound insurance program, the department will consider:

- (i) reserves;
- (ii) sinking funds;
- (iii) third-party financial guarantees;
- (iv) parent company or affiliate sureties;
- (v) excess insurance coverage; and
- (vi) other appropriate aspects of the applicant's program.

(C) Safety program. An applicant must submit evidence of substantial compliance with the federal motor carrier safety regulations as adopted by the Texas Department of Public Safety and with Transportation Code, Chapter 644.

(3) Other securities or agreements. The department may accept an application for approval of a security or agreement if satisfied that the security or agreement offered will adequately protect the public.

(4) Periodic reports. An applicant shall file annual statements, semi-annual and quarterly reports, and any other reports re-

quired by the department reflecting the applicant's financial condition and the status of its self-insurance program while the motor carrier is self-insured.

(5) Duration and coverage of self-insured status. The department may approve an applicant as a self-insured for any specific time or for an indefinite time. An approved self-insured status only applies to the type of cargo that the applicant reported to the department in the application for self-insured status.

(6) Revocation of self-insured status. On receiving evidence that a self-insured motor carrier's financial condition has changed, that its safety program or record is inadequate, or that it is otherwise not in compliance with this subchapter, the department may at any time require the self-insured to provide additional information. On 10 days' notice from the department, the self-insured shall appear and demonstrate that it continues to have adequate financial resources to pay all claims involving motor vehicles for bodily injury and property damage liability. The self-insured shall also demonstrate that it remains in compliance with the requirements of this section and of any active self-insurance requirements included in the department's approval letter. If an applicant fails to comply with the applicable requirements under this section, its self-insured status may be revoked. The revocation of self-insured status will be governed by Chapter 224 of this title (relating to Adjudicative Practice and Procedure) and Transportation Code, Chapter 643.

(7) Appeal of denial of application for self-insured status. An applicant may appeal a denial of self-insured status by filing an appeal in accordance with §224.126 of this title (relating to Appeal of a Denial of Self-Insured Status).

(e) Filing proof of insurance with the department.

(1) Forms.

(A) A motor carrier shall file and maintain proof of automobile liability insurance for all vehicles required to be registered under this subchapter at all times. This proof shall be filed on a form acceptable to the director.

(B) A household goods carrier shall also file and maintain proof of cargo insurance for its cargo at all times. This proof shall be on a form acceptable to the director.

(2) Filing proof of insurance. A motor carrier's insurer shall file and maintain proof of insurance on a form acceptable to the director:

(A) at the time of the original application for motor carrier certificate of registration;

(B) on or before the cancellation date of the insurance coverage as described in subsection (f) of this section;

(C) when the motor carrier changes insurers;

(D) when the motor carrier asks to retain the certificate number of a revoked certificate of registration;

(E) when the motor carrier changes its name under §218.13(e)(2) of this title (relating to Application for Motor Carrier Registration);

(F) when the motor carrier, under subsection (a) of this section, changes the classification of the cargo being transported; and

(G) when replacing another active insurance filing.

(3) Filing fee. Each certificate of insurance or proof of financial responsibility filed with the department for the coverage required under this section shall be accompanied by a nonrefundable fil-

ing fee of \$100. This fee applies both when the carrier submits an original application and when the carrier submits a supplemental application when retaining a revoked certificate of registration number.

(4) Acceptable filings. The motor carrier's insurer must file proof of insurance with the department in a form prescribed by the department and approved by an authorized agent of the insurer.

(f) Cancellation of insurance coverage. Except when replaced by another acceptable form of insurance coverage or proof of financial responsibility approved by the department, no insurance coverage shall be canceled or withdrawn until 30 days after notice has been given to the department by the insurer in a form approved by the department. Nonetheless, proof of insurance coverage for a seven day or 90 day certificate of registration may be canceled by the insurer without 30 days' notice if the certificate of registration is expired, suspended, or revoked, and the insurer provides a cancellation date on the proof of insurance coverage.

(g) Replacement insurance filing. The department will consider a new insurance filing as the current record of financial responsibility required by this section if:

- (1) the new insurance filing is received by the department; and
- (2) a cancellation notice has not been received for previous insurance filings.

(h) Insolvency of insurance carrier. If the insurer of a motor carrier becomes insolvent or becomes involved in a receivership or other insolvency proceeding, the motor carrier must file an affidavit with the department. The affidavit must be executed by an owner, partner, or officer of the motor carrier and show that:

- (1) no collisions have occurred and no claims have arisen during the insolvency of the insurance carrier; or
- (2) all claims have been satisfied.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 12, 2024.

TRD-202401522

Laura Moriaty

General Counsel

Texas Department of Motor Vehicles

Effective date: June 1, 2024

Proposal publication date: December 29, 2023

For further information, please call: (512) 465-4160



## SUBCHAPTER C. RECORDS AND INSPECTIONS

### 43 TAC §218.33

STATUTORY AUTHORITY. The department adopts the amendments under Transportation Code, §643.003, which authorizes the department to adopt rules to administer Transportation Code, Chapter 643; Transportation Code, §643.251, which authorizes the department to impose an administrative penalty against a motor carrier required to register under Subchapter B of Transportation Code, Chapter 643 that violates Chapter 643 or a rule or order adopted under Chapter 643; Transportation Code, §643.252, which authorizes the department to

suspend, revoke, or deny a registration issued under Transportation Code, Chapter 643 or place on probation a motor carrier whose registration is suspended; Transportation Code, §643.2525, which provides the administrative hearing process under Transportation Code, Chapter 643; Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code and other laws of this state; Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; Government Code, §2001.054, which specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license; and the statutory authority referenced throughout this preamble and in the rule text, which is incorporated herein by reference.

CROSS REFERENCE TO STATUTE. The amendments implement Transportation Code, Chapters 643 and 645; and Government Code, Chapter 2001.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 12, 2024.

TRD-202401525

Laura Moriaty

General Counsel

Texas Department of Motor Vehicles

Effective date: June 1, 2024

Proposal publication date: December 29, 2023

For further information, please call: (512) 465-4160



## SUBCHAPTER E. CONSUMER PROTECTION

### 43 TAC §218.64

STATUTORY AUTHORITY. The department adopts the amendments under Transportation Code, §643.003, which authorizes the department to adopt rules to administer Transportation Code, Chapter 643; Transportation Code, §643.252, which authorizes the department to suspend, revoke, or deny a registration issued under Transportation Code, Chapter 643 or place on probation a motor carrier whose registration is suspended; Transportation Code, §643.2525, which provides the administrative hearing process under Transportation Code, Chapter 643; Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code and other laws of this state; Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; Government Code, §2001.054, which specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license; and the statutory authority referenced throughout this preamble and in the rule text, which is incorporated herein by reference.

CROSS REFERENCE TO STATUTE. The amendments implement Transportation Code, Chapter 643; and Government Code, Chapter 2001.

§218.64. Rates.

(a) **Rate-making.** A household goods carrier and/or its household goods agent shall set maximum rates and charges for services in its applicable tariff. The household goods carrier and/or its household goods agent shall disclose the maximum rates and charges to prospective shippers before transporting a shipment between two incorporated cities.

(b) **Prohibited charges and allowances.** A household goods carrier and/or its household goods agent shall not charge more than the maximum charges published in its tariff on file with the department for services associated with transportation between two incorporated cities.

(c) **Collective ratemaking agreements.**

(1) **Eligibility.** In accordance with Transportation Code, §643.154, a household goods carrier and/or its household goods agent may enter into collective ratemaking agreements between one or more other household goods carriers or household goods agents concerning the establishment and filing of maximum rates and charges, classifications, rules, or procedures.

(2) **Designation of collective ratemaking associations.** An approved association may be designated by a member household goods carrier as its collective ratemaking association for the purpose of filing a tariff containing maximum rates and charges required by §218.65 of this title (relating to Tariff Registration).

(3) **Submission.** In accordance with Transportation Code, §643.154, a collective ratemaking agreement shall be filed with the department for approval. The agreement shall include the following information:

(A) full and correct name, business address (street and number, city, state and zip code), and phone number of the association;

(B) whether the association is a corporation or partnership; and

(i) if a corporation, the government, state, or territory under the laws of which the applicant was organized and received its present charter; and

(ii) if an association or a partnership, the names of the officers or partners and date of formation;

(C) full and correct name and business address (city and state) of each household goods carrier on whose behalf the agreement is filed and whether it is an association, a corporation, an individual, or a partnership;

(D) the name, title, and mailing address of counsel, officer, or other person to whom correspondence in regard to the agreement should be addressed; and

(E) a copy of the constitution, bylaws, or other documents or writings, specifying the organization's powers, duties, and procedures.

(4) **Signature.** The collective ratemaking agreement shall be signed by all parties subject to the agreement or the association's executive officer.

(5) **Incomplete agreement.** If the department receives an agreement which does not comply with this subsection, the department will send a letter to the individual submitting the agreement. The letter shall identify the information that is missing and advise the association that the agreement will not be processed until the information is received.

(6) **Approval.** In accordance with Transportation Code, §643.154, the director or designee will approve a collective ratemaking agreement if the agreement provides that:

(A) all meetings are open to the public; and

(B) notice of meetings shall be sent to shippers who are multiple users of household good carriers.

(7) **Noncompliance.** If the director or the director's designee determines that an agreement does not comply with paragraph (6) of this subsection, the matter will be governed by Chapter 224 of this title (relating to Adjudicative Practice and Procedure) and Transportation Code, Chapter 643.

(8) **New parties to an agreement.** An updated agreement shall be filed with the department as new parties are added.

(9) **Amendments to approved agreements.** Amendments to approved agreements (other than as to new parties) may become effective only after approval of the department.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 12, 2024.

TRD-202401526

Laura Moriaty

General Counsel

Texas Department of Motor Vehicles

Effective date: June 1, 2024

Proposal publication date: December 29, 2023

For further information, please call: (512) 465-4160



## SUBCHAPTER F. ADMINISTRATIVE PENALTIES AND SANCTIONS

### 43 TAC §§218.70 - 218.72

**STATUTORY AUTHORITY.** The department adopts the amendments under Transportation Code, §643.003, which authorizes the department to adopt rules to administer Transportation Code, Chapter 643; Transportation Code, §643.251, which authorizes the department to impose an administrative penalty against a motor carrier required to register under Subchapter B of Transportation Code, Chapter 643 that violates Chapter 643 or a rule or order adopted under Chapter 643; Transportation Code, §643.252, which authorizes the department to suspend, revoke, or deny a registration issued under Transportation Code, Chapter 643 or place on probation a motor carrier whose registration is suspended; Transportation Code, §643.2525, which provides the administrative hearing process under Transportation Code, Chapter 643; Transportation Code, §643.2526, which authorizes an applicant to appeal the denial of an application for registration, renewal of registration, or reregistration under Transportation Code, Chapter 643; Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code and other laws of this state; Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; Government Code, §2001.054, which specifies the requirements regarding the grant, denial, renewal, revocation,

suspension, annulment, or withdrawal of a license; and the statutory authority referenced throughout this preamble and in the rule text, which is incorporated herein by reference.

CROSS REFERENCE TO STATUTE. The amendments implement Transportation Code, Chapters 643 and 645; and Government Code, Chapter 2001.

§218.70. Purpose.

The purpose of this subchapter is to provide for administrative penalties and sanctions under Transportation Code, Chapters 643 and 645, as well as the probation of the suspension of a motor carrier's certificate of registration. This subchapter also provides for the assessment of civil penalties in certain cases under federal law regarding the interstate movement of household goods. The enforcement actions under this chapter are governed by Chapter 224 of this title (relating to Adjudicative Practice and Procedure) and Transportation Code, Chapters 643 and 645, as applicable.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 12, 2024.

TRD-202401553

Laura Moriaty

General Counsel

Texas Department of Motor Vehicles

Effective date: June 1, 2024

Proposal publication date: December 29, 2023

For further information, please call: (512) 465-4160



## SUBCHAPTER F. ENFORCEMENT

### 43 TAC §§218.73, 218.75 - 218.78

STATUTORY AUTHORITY. The department adopts the repeals under Transportation Code, §643.003, which authorizes the department to adopt rules to administer Transportation Code, Chapter 643; Transportation Code, §643.251, which authorizes the department to impose an administrative penalty against a motor carrier required to register under Subchapter B of Transportation Code, Chapter 643 that violates Chapter 643 or a rule or order adopted under Chapter 643; Transportation Code, §643.252, which authorizes the department to suspend, revoke, or deny a registration issued under Transportation Code, Chapter 643 or place on probation a motor carrier whose registration is suspended; Transportation Code, §643.2525, which provides the administrative hearing process under Transportation Code, Chapter 643; Transportation Code, §643.2526, which authorizes an applicant to appeal the denial of an application for registration, renewal of registration, or reregistration under Transportation Code, Chapter 643; Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code and other laws of this state; Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; Government Code, §2001.054, which specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license; and the statutory authority referenced throughout this preamble and in the rule text, which is incorporated herein by reference.

CROSS REFERENCE TO STATUTE. The repeals implement Transportation Code, Chapters 643 and 645; and Government Code, Chapter 2001.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 12, 2024.

TRD-202401527

Laura Moriaty

General Counsel

Texas Department of Motor Vehicles

Effective date: June 1, 2024

Proposal publication date: December 29, 2023

For further information, please call: (512) 465-4160



## CHAPTER 219. OVERSIZE AND OVERWEIGHT VEHICLES AND LOADS

INTRODUCTION. The Texas Department of Motor Vehicles (department) adopts amendments to 43 Texas Administrative Code (TAC) Subchapter F, Compliance, §219.82; and Subchapter H, Enforcement, §§219.120, 219.121 and 219.126. The department adopts amendments to §§219.82, 219.120, 219.121 and 219.126 without changes to the proposed text as published in the December 29, 2023, issue of the *Texas Register* (48 TexReg 8274). The department also adopts the repeal of Subchapter H, Enforcement, §§219.122, 219.124 and 219.127 without changes. The rules will not be republished.

The adopted amendments and repeals delete certain language regarding adjudicative practice and procedure. In addition, amendments refer to adopted new Chapter 224 of this title (relating to Adjudicative Practice and Procedure), which the department adopts in this issue of the *Texas Register*. Adopted new Chapter 224 includes all department adjudicative practice and procedure rules in one chapter.

REASONED JUSTIFICATION. Adopted amendments to §219.82 delete the word "enforcement" and add a reference to adopted new Chapter 224, which applies to any adjudicative practice and procedure under the department's rules, including Chapter 219.

The adopted amendment to the heading for Subchapter H changes the heading from "Enforcement" to "Administrative Penalties and Sanctions." This amendment makes the heading for Subchapter H consistent with the rules under Subchapter H because the amendments and repeals change the contents of this subchapter.

The adopted amendments to §219.120 make the section consistent with the amendments to and repeals of sections within Subchapter H. An adopted amendment to §219.120 also states that the enforcement actions under this chapter are governed by adopted new Chapter 224 of this title (relating to Adjudicative Practice and Procedure) and Transportation Code, Chapters 621 through 623 for clarity and ease of reference.

Adopted amendments to §219.121 replace the language with a summary of the department's authority under Transportation Code, §623.271 to investigate and impose an administrative penalty or revoke an oversize or overweight permit. An adopted amendment to §219.121 deletes subsection (a) because it

repeats the language found in Transportation Code, §623.271. It is not necessary to repeat statutory language in rules. The adopted amendment to the title of §219.121 includes the word "sanctions" and a reference to Transportation Code, §623.271 to address the expanded scope of §219.121 due to the amendments and to distinguish §219.121 from §219.126 of this title (relating to Administrative Penalty for False Information on Certificate by a Shipper) regarding the administrative penalty under Transportation Code, §623.272.

An adopted amendment to §219.121 deletes subsection (b) regarding the calculation of administrative penalties under Transportation Code, §623.271. The language in deleted §219.121(b) is addressed in adopted new §224.115 of this title (relating to Administrative Penalty and Sanction Assessment; Probation of Suspension). In this issue of the *Texas Register*, the department adopts new Chapter 224 of this title (relating to Adjudicative Practice and Procedure).

Adopted amendments to §219.126 cite to Transportation Code, §623.272 and modify the language to summarize the department's authority to investigate and impose an administrative penalty under Transportation Code, §623.272. Also, an adopted amendment to §219.126 adds a comma to the citation to Transportation Code, §623.274(b) for consistency with other department rules. Further, an adopted amendment to §219.126 deletes subsection (b) because an amendment to §219.120 states that the enforcement actions under Chapter 219 are governed by adopted new Chapter 224 of this title (relating to Adjudicative Practice and Procedure) and Transportation Code, Chapters 621 through 623. In addition, an adopted amendment to §219.126 deletes subsection (c) regarding the calculation of an administrative penalty under §219.126. The language in deleted §219.126(c) is addressed in adopted new §224.115 of this title (relating to Administrative Penalty and Sanction Assessment; Probation of Suspension). In this issue of the *Texas Register*, the department adopts new Chapter 224 of this title (relating to Adjudicative Practice and Procedure). Due to the deletions of §219.126(b) and (c), an adopted amendment to §219.126 deletes "(a)" because there is only one subsection in §219.126.

The department adopts the repeal of §219.122. Section 219.122(a) repeats the language found in Transportation Code, §623.271. It is not necessary to repeat statutory language in rules. Section 219.122(b) was not expressly authorized under Transportation Code, Chapter 623.

The department also adopts the repeal of §219.124 and §219.127. In this issue of the *Texas Register*, the department adopts new Chapter 224, which includes the language from §219.124 and §219.127 with some modifications.

#### SUMMARY OF COMMENTS.

No comments on the proposed amendments and repeals were received.

### SUBCHAPTER F. COMPLIANCE

#### 43 TAC §219.82

STATUTORY AUTHORITY. The department adopts amendments under Transportation Code, §621.008, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 621; Transportation Code, §622.002, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 622, including Transportation Code, §622.051,

*et seq.*, which authorize the department to issue a permit for transporting poles required for the maintenance of electric power transmission and distribution lines; Transportation Code, §623.002, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 623; Transportation Code, §623.271, which authorizes the department to impose an administrative penalty or revoke an oversize or overweight permit issued under Transportation Code, Chapter 623, and states that the notice and hearing requirements under Transportation Code, §643.2525 apply to the imposition of an administrative penalty or the revocation of a permit under §623.271; Transportation Code, §623.272, which authorizes the department to impose an administrative penalty on a shipper who violates a provision under Transportation Code, §623.272 or §623.274, and states that the notice and hearing requirements under Transportation Code, §643.2525 apply to the imposition of an administrative penalty under §623.272; Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code and other laws of this state; Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; Government Code, §2001.054, which specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license; and the statutory authority referenced throughout the preamble and in the rule text, which is incorporated herein by reference.

CROSS REFERENCE TO STATUTE. The amendments implement Transportation Code, Chapters 621, 622, and 623; and Government Code, Chapter 2001.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 11, 2024.

TRD-202401488

Laura Moriaty

General Counsel

Texas Department of Motor Vehicles

Effective date: June 1, 2024

Proposal publication date: December 29, 2023

For further information, please call: (512) 465-4160

## SUBCHAPTER H. ADMINISTRATIVE PENALTIES AND SANCTIONS

#### 43 TAC §§219.120, 219.121, 219.126

STATUTORY AUTHORITY. The department adopts amendments under Transportation Code, §621.008, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 621; Transportation Code, §622.002, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 622, including Transportation Code, §622.051, *et seq.*, which authorize the department to issue a permit for transporting poles required for the maintenance of electric power transmission and distribution lines; Transportation Code, §623.002, which authorizes the board to adopt rules that are

necessary to implement and enforce Transportation Code, Chapter 623; Transportation Code, §623.271, which authorizes the department to impose an administrative penalty or revoke an oversize or overweight permit issued under Transportation Code, Chapter 623, and states that the notice and hearing requirements under Transportation Code, §643.2525 apply to the imposition of an administrative penalty or the revocation of a permit under §623.271; Transportation Code, §623.272, which authorizes the department to impose an administrative penalty on a shipper who violates a provision under Transportation Code, §623.272 or §623.274, and states that the notice and hearing requirements under Transportation Code, §643.2525 apply to the imposition of an administrative penalty under §623.272; Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code and other laws of this state; Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; Government Code, §2001.054, which specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license; and the statutory authority referenced throughout the preamble and in the rule text, which is incorporated herein by reference.

CROSS REFERENCE TO STATUTE. The amendments implement Transportation Code, Chapters 621, 622, and 623; and Government Code, Chapter 2001.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 11, 2024.

TRD-202401490

Laura Moriaty

General Counsel

Texas Department of Motor Vehicles

Effective date: June 1, 2024

Proposal publication date: December 29, 2023

For further information, please call: (512) 465-4160



## SUBCHAPTER H. ENFORCEMENT

### 43 TAC §§219.122, 219.124, 219.127

STATUTORY AUTHORITY. The department adopts the repeals under Transportation Code, §621.008, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 621; Transportation Code, §622.002, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 622, including Transportation Code, §622.051, *et seq.*, which authorize the department to issue a permit for transporting poles required for the maintenance of electric power transmission and distribution lines; Transportation Code, §623.002, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 623; Transportation Code, §623.271, which authorizes the department to impose an administrative penalty or revoke an oversize or overweight permit issued under Transportation Code, Chapter 623, and states that the notice and hearing requirements under Transportation Code, §643.2525 apply to

the imposition of an administrative penalty or the revocation of a permit under §623.271; Transportation Code, §623.272, which authorizes the department to impose an administrative penalty on a shipper who violates a provision under Transportation Code, §623.272 or §623.274, and states that the notice and hearing requirements under Transportation Code, §643.2525 apply to the imposition of an administrative penalty under §623.272; Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the Transportation Code and other laws of this state; Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; Government Code, §2001.054, which specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license; and the statutory authority referenced throughout the preamble and in the rule text, which is incorporated herein by reference.

CROSS REFERENCE TO STATUTE. The repeals implement Transportation Code, Chapters 621, 622, and 623; and Government Code, Chapter 2001.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 11, 2024.

TRD-202401489

Laura Moriaty

General Counsel

Texas Department of Motor Vehicles

Effective date: June 1, 2024

Proposal publication date: December 29, 2023

For further information, please call: (512) 465-4160



## CHAPTER 221. SALVAGE VEHICLE DEALERS

INTRODUCTION. The Texas Department of Motor Vehicles (department) adopts amendments to 43 Texas Administrative Code (TAC) Subchapter A, General Provisions, §§221.1 and §221.2; Subchapter B, Licensing, §§221.11, 221.13 - 221.20; Subchapter C, Licensed Operations, §§221.41 - 221.47 and 221.49 - 221.54; Subchapter D, Records, §§221.71 - 221.73; and Subchapter F, Administrative Sanctions, §§221.111, 221.112, and 221.115. The department also adopts the repeal of §221.48 and Subchapter E, Administrative Procedures, §§221.91 - 221.96. Subchapter F is also adopted for relettering as Subchapter E because the preceding subchapter is repealed.

Sections 221.1, 221.11, 221.14 - 221.20, 221.41, 221.43 - 221.46, 221.48, 221.49, 221.54, 221.72, 221.111, 221.112, and 221.115 are adopted without changes to the proposed text as published in the December 29, 2023, issue of the *Texas Register* (48 TexReg 8278) and will not be republished.

Section 221.13 is adopted with changes to the proposed text published in the December 29, 2023, issue of the *Texas Register* (48 TexReg 8278) and will be republished. Sections 221.2, 221.42, 221.47, 221.50 - 221.53, 221.71, and 221.73 are adopted with nonsubstantive changes to the proposed

text published in the December 29, 2023, issue of the *Texas Register* (48 TexReg 8278) and will be republished.

#### Explanation of adopted amendments and repeals

##### Subchapter A. General Provisions

Adopted conforming amendments to §221.1 are necessary to more completely describe the scope of the chapter to include holders of independent motor vehicle dealer's general distinguishing numbers (GDN) issued under Transportation Code, Chapter 503, who act as salvage vehicle dealers and to add a reference to persons exempt from licensure. House Bill (HB) 1667, 86th Legislature, Regular Session (2019), added Occupations Code, §2302.009 and amended Occupations Code, §2302.101, granting independent motor vehicle dealers the ability to perform salvage activities without obtaining a salvage vehicle dealer's license, but at the same time requiring these dealers to comply with Occupations Code, Chapter 2302 requirements. A second adopted amendment is necessary to add a reference to persons exempt from licensure as Occupations Code, Chapter 2302 contains exceptions for metal recyclers, insurance companies, and used automotive recyclers licensed under Occupations Code, Chapter 2309.

The adopted amendments to §221.2 add the following definitions for consistency: "day" in §221.2(4) to mean a calendar day, unless otherwise stated; "director" in §221.2(6) to mean the division director that regulates the distribution and sales of motor vehicles, including any department staff to whom the director delegates any duty assigned under this chapter; and "General Distinguishing Number (GDN)" in §221.2(7) to match the definition of the same term in Occupations Code, §2301.002(17). The phrase "or context clearly indicates otherwise" that was proposed in §221.2(4) was not adopted because it was duplicative of the first sentence in §221.2. The proposed citation to the Occupations Code in §221.2(7) was simplified at adoption to remove the subsection citation, to align it with the citation format used in §221.2(27). An adopted amendment to §221.2(8) is necessary to conform the definition of "license holder" to include an independent motor vehicle dealer GDN authorized to operate as a salvage vehicle dealer consistent with Occupations Code, §2302.009 and §2302.101. An adopted amendment to renumbered §221.2(15) is necessary to substitute the current definition of "person" for the definition in Occupations Code, §2301.002(27) for consistency. The adopted amendments to §221.2(4) removes the definition of "corporation" because a special definition for corporation is unnecessary. The adopted amendments to §221.2(6) remove the definition of "final order authority" because the sections of Chapter 221 that use the term "final order authority", §221.93 and §221.95, are repealed and are incorporated into new adopted Chapter 224 of this title (relating to Adjudicative Practice and Procedure). The adopted amendments remove the definitions of "major component part" in §221.2(8) and "minor component part" in §221.2(10) because these two terms are not referenced in Chapter 221. Adopted amendments also renumber the definitions to correspond with the adopted revisions.

##### Subchapter B. Licensing

The adopted amendment to §221.11(b) adds a reference to reflect that a motor vehicle is required to be both titled and registered to operate on public highways under Transportation Code, §502.040. Adopted amendments to §221.11(c) substitute a statutory reference to the Occupations Code for deleted rule

language that duplicated the statute, to ensure consistency with any future statutory changes.

An adopted amendment to §221.13(c) sets a \$25 license amendment fee. Occupations Code, §2302.052 assigns the board the duty of setting reasonable and necessary fees. Occupations Code, §2301.264(e) prescribes a \$25 license amendment fee for licenses issued under Occupations Code, Chapter 2301 and Transportation Code, Chapter 503. The department construes the fee amount prescribed in statute to be reasonable and necessary and adopts the same fee because department resources required to process license amendment are similar across all license types. The department added the following clarifying language to §221.13(c) at adoption to identify the specific types of license amendments to which the fee applies: "and applies to a license amendment changing a license holder's name, changing ownership or management, or when adding a new business address and assumed name."

An adopted amendment to §221.14(a) removes redundant language without changing the meaning of the rule. Occupations Code, §2302.103 requires an applicant to submit an application on a form prescribed by the department. Adopted amendments to §221.14(b) update the application requirements for a new salvage vehicle dealer license, license amendment, or license renewal to prevent and deter fraud. These adopted amendments include language consistent with current practices and new requirements to deter and prevent fraud in the application process, such as fingerprinting and site visits, that have proven to be successful in reducing fraud in the issuance of dealer GDNs, a related license type. Adopted amendments §221.14(b) require that the application must be on a department-approved form; completed by the applicant, license holder, or authorized representative who is an employee, a licensed attorney, or a certified public accountant; and accompanied by the required fee from an account held by the applicant or license holder, or from a trust account of the applicant or license holder, or from a trust account of the applicant's or license holder's attorney or certified public accountant. Adopted new §221.14(c) modernizes the application process by requiring license applications and fees to be submitted to the department electronically and paid for by credit card or electronic funds transfer. Adopted new §221.14(d) is intended to reduce application fraud by giving the department the option to require a site visit to determine whether a business location meets the requirements of Chapter 221. Adopted new §221.14(e) reduces application fraud by requiring salvage vehicle dealers applying for or renewing a license to comply with fingerprint requirements in §211.6 of Title 43 (relating to Fingerprint Requirements for Designated License Types). This adopted fingerprinting requirement is a one-time requirement if a person maintains an active license. Adopted new §221.14(f) clarifies that the department will not provide information regarding the status of an application, application deficiencies, or pending new license numbers to a person other than to the applicant, license holder, or authorized representative, unless the person files a written request under the Texas Public Information Act. These adopted revisions to §221.14 provide more clarity regarding the salvage vehicle dealer license application process and are necessary to deter and prevent fraud.

Adopted amendments to §221.15 clarify and update the information required on a salvage vehicle dealer application. Adopted new §221.15(a) clarifies the application process by providing information about the steps and information required for a new salvage dealer license applicant. These steps include registering for an account in the online licensing system, designating

an account administrator, providing the name and email address for that person, and providing the business telephone number, name, business type, and social security number or employer identification number, as applicable. Adopted new §221.15(a) specifies that the applicant's license account administrator must be an owner, officer, manager, or bona fide employee to reduce fraud and increase responsiveness and accountability by the applicant. The adopted amendments in §221.15(b) create a new subsection to include language currently in §221.15. Adopted amendments to §221.15(b)(1) require the applicant to provide the reason for the application and certain other business information. Adopted amendments to the existing language incorporated into adopted new §221.15(b)(2) remove surplus language and provides additional clarity and detail regarding required business information necessary to improve the department's ability to identify fraud and investigate applicants. These adopted amendments include clarifying that the business address is the physical address of the business and requiring the following information: business email address; telephone number; Texas Sales Tax Identification Number; National Motor Vehicle Title Information System Identification Number, if applicable; and Secretary of State filing number, if applicable. Adopted new §221.15(b)(2)(A) prohibits the business name or assumed name from being misleading to the public so that accurate information about the nature of the salvage business is disclosed to the public. Adopted amendments to §221.15(b)(3) require the applicant to provide an application contact name, email address, and telephone number to allow the department to easily contact the applicant and delete unnecessary language regarding the applicant's last known address. To improve readability, adopted amendments to the existing language incorporated into §221.15(b) consolidate previous subsections that set out separate requirements for the applicant to apply as a sole proprietor, a general partnership, or a limited partnership, limited liability company, or corporation. To allow the department to identify and investigate applicants, adopted amendments to §221.15(b)(4)-(7) require the applicant to provide: the name, social security number, date of birth, identity document information, and ownership percentage for each owner, partner, member, beneficiary, or principal if the applicant is not a publicly traded company; the name, social security number, date of birth, and identity document information for each officer, director, manager, trustee, or other representative authorized to act on behalf of the applicant if the applicant is owned in full or in part by a legal entity; the name, employer identification number, ownership percentage, and non-profit or publicly-traded status for each legal entity that owns the applicant in full or in part; the name, social security number, date of birth, and identity document information of at least one manager or other bona fide employee who will be present at the business location if the license holder is out of state or will not be present during business hours at the business location in Texas. To facilitate the department's evaluation of applicants and its efforts to protect the public from crime, adopted amendments to §221.15(b)(8) clarify that criminal history record information required for an application is criminal history record information under the laws of Texas, another state in the United States, the United States, and any foreign jurisdiction for each person listed in the application, and requires an applicant to provide a description of the criminal offense, the date, and location. Adopted amendments in §221.15(b)(9) clarify that applicants are required to provide their military service status to enable the department to determine eligibility for special licensing considerations provided under law to veterans. Adopted amendments incorporated in §221.15(b)(10) are necessary to facilitate department investigations of appli-

cants by clarifying the requirement for an applicant to provide information regarding previously submitted license applications, whether under this chapter or the laws of another jurisdiction, the result of previous applications, and whether the applicant has ever been the holder of a license issued by the department or another jurisdiction that was revoked, suspended, or subject of an order issued by the board or by another jurisdiction, or has an unpaid administrative penalty. These adopted requirements in §221.15(b) are necessary for the department to be able to discharge its responsibilities under Occupations Code, §2302.104, which prescribes information that must be obtained from an applicant, and Occupations Code, §2302.105, which requires the department to investigate an applicant's qualifications. Adopted amendments in §221.15(b)(11) require an applicant to provide information about each business location and the business premises sufficient to demonstrate compliance with related premises rules in Chapter 221, Subchapter C. Adopted amendments in §221.15(b)(12) require an applicant to provide a signed Certification of Responsibility, which is a department form signed by the applicant, in which the applicant certifies that the information provided or attached to the application is true, complete, and correct, and that the applicant has complied with all applicable state laws and ordinances. This certification is necessary to ensure that an applicant understands the applicant's responsibilities under Texas law and the consequences of providing incomplete or false information.

Adopted amendments in new §221.15(c) clarify that a salvage vehicle dealer renewing or amending its license must verify its current license information and provide information relating to any new requirements or changes to the license.

Adopted amendments to §221.16 require an applicant to attach a legible and accurate image of each required document. These amendments are necessary to allow the department to investigate and process the application as required under Occupations Code, Chapter 2302. Adopted amendments to §221.16 specify that required attachments include the certificate of filing, certificate of incorporation, or certificate of registration on file with the Secretary of State, if applicable; each assumed name certificate on file with the Secretary of State or county clerk; at least one identity document for each natural person listed in the application; documents proving premises ownership or a valid lease; business premises photos with a notarized affidavit; a Texas Use and Sales Tax Permit; a Franchise Tax Account Status issued by the Comptroller's Office; and any other documents required by the department to evaluate the application under current law and board rules. These adopted amendments consolidate previous separate requirements for sole proprietors, general partnerships, limited partnerships, limited liability companies, and corporations and are necessary to improve readability. The adopted amendments to §221.16(3) also update references to types of identification consistent with current usage and statutory changes. The adopted amendments to §§221.16(4) and (5) clarify and add requirements that the license application includes documents proving business premises ownership or a fully executed lease or sublease agreement for the license period, and business premises photos with a notarized affidavit certifying that all premises requirements in Subchapter C are met and will be maintained during the license period. These changes are necessary to prevent and deter fraud in the application process and to improve compliance with premises requirements in Chapter 221, Subchapter C. These requirements are consistent with GDN dealer requirements, which have proven successful in preventing and deterring fraud and improving com-



pliance with premises requirements. An adopted amendment to §221.16(8) authorizes the department to require any other documents necessary to evaluate the application to ensure that the department can comply with its statutory duty to investigate each license application as required under Occupations Code, §2302.105.

An adopted amendment to §221.17(a) exempts a license holder from any increased fee or penalty for failing to timely renew a license because the license holder was on active military duty. This amendment is necessary to conform to Occupations Code, §55.002. Adopted amendments to §221.17(b) would add the phrase "military service members or" in multiple places in subparagraphs (1), (2), and (3). These adopted amendments are necessary to implement Senate Bill (SB) 422, 88th Legislature, Regular Session (2023), which entitles military service members with out-of-state licenses to be eligible for special business or occupational authorization or licensing consideration that is already afforded for military spouses. Adopted amendments in §221.17(b)(1) delete duplicate references to Occupations Code, §55.0041 and substitute the phrase "being stationed" for "residency" to clarify that eligibility for special licensing consideration for both the military service member and military spouse is based on the military service member being stationed in Texas rather than residence in Texas. Three other amendments to §221.17(b)(3) are adopted to implement SB 422. Adopted amendments change the word "may" to "shall" and add the phrase "within 30 days" to set a deadline by which the department must issue a license to a military service member or spouse. This change is necessary to implement Occupations Code, §55.005(a), as amended by SB 422, which requires a state agency to issue a license no later than the 30th day after an application is filed. Issuing a license within 30 days would also fulfill the requirement of Occupations Code, §55.0041, as amended by SB 422, which requires that the department confirm within 30 days that the military service member or military spouse is authorized to engage in the licensed business or occupation. Another adopted amendment to §221.17(b)(3) adds the phrase "or modified" to recognize that provisions of Occupations Code, Chapter 55 may require the department to modify standard licensing processes when processing an application for a military service member or military spouse, and to clarify that the department's licensing process for military service members and military spouses will be in accordance with all Occupations Code, Chapter 55 requirements. Adopted new §221.17(c) clarifies that the requirements and procedures authorized under Texas law do not modify or alter rights under federal law.

Adopted amendments to §221.18(a)-(c) are necessary to modernize notification requirements by specifying that a license holder must notify the department if the license holder opens or closes an additional location by electronically submitting a license amendment in the department's designated licensing system. Adopted amendments to §221.18(a)(2) and §221.18(b)(2) remove surplus language. An adopted amendment to §221.18(c) clarifies the appropriate action a license holder must take when closing a location depending on the number of locations listed in the license. Adopted new §221.18(d) clarifies an existing requirement that a license holder must apply for a new license if the license holder is opening a new location not located in the same county.

Adopted amendments to §221.19 update the section title to reflect the scope of the section. Adopted amendments to §221.19(a) and (b) modernize the application process by requir-

ing the license holder to submit a license amendment application electronically in the department's designated licensing system. An adopted amendment to §221.19(a) clarifies that a license holder is required to submit a change in assumed name to the department to enable the department to investigate whether the assumed name is misleading, deceptive or otherwise violates a law or rule. Adopted new §221.19(b)(4) clarifies that a license holder must notify the department of a change in business email address, telephone number, mailing address, or license contact so that the department can communicate with the license holder. Another adopted amendment to §221.19(c) requires a license holder to provide the department with any information necessary for the department to fully evaluate a license amendment and is necessary to enable the department to conduct a thorough and efficient investigation before approving a license amendment consistent with the department's obligations under Occupations Code, §2302.105.

Adopted amendments to §221.20(a), (d), (e), (h), and relettered (j) simplify the language and improve readability without changing meaning. An adopted amendment substitutes "A" for "The" and corrects a verb to "is" from "are" for consistency and clarity. Adopted amendments to §221.20(c) change "salvage vehicle dealer's" to "license holder's" for clarity and consistency, and correct the time frame in which the department will provide notice of license expiration from 30 to 31 days consistent with Occupations Code, §2302.152. An adopted amendment to §221.20(d) adds "of expiration" to clarify a reference to a written notice. An adopted amendment to §221.20(e) adds "a" before "salvage vehicle dealer" and adds "license" after "salvage vehicle dealer" to clarify the description of a renewal fee. An adopted amendment to §221.20(i) clarifies that a license holder who timely submits a renewal application may continue to operate under the expired license until the status of the renewal application is determined by the department in accordance with Government Code, §2001.054. An adopted amendment reletters the language that previously appeared in §220.20(i) to §220.20(j).

#### Subchapter C. Licensed Operations

Adopted amendments to §221.41 simplify and modernize the language and add clarity without changing meaning. Adopted amendments to §221.41(1) add new requirements that apply if a salvage dealer leases or subleases property for a business location. Adopted new §221.41(1)(D) and (E) require a property owner signature or a signed and notarized statement from the property owner if the location is subleased and the property owner is not the lessor. The property owner statement must include the property owner's full name, email address, mailing address, and phone number and confirm that the dealer is authorized to sublease the location and to operate a salvage vehicle dealer business. These adopted changes are necessary to prevent fraud in the application process, to prevent consumer abuse, and to protect public health and safety. These provisions also protect salvage vehicle dealer applicants: the department has received applications from dealers with a signed sublease who are unable to operate a business because the property owner has not authorized a dealer to operate such a business on the property. Adopted amendments to §221.41(2) substitute "under" for "by" and "municipality" for "city" for clarity and consistency in use of these terms.

Adopted amendments to the title and language of §221.42 make minor wording changes to clarify and remove surplus wording.

Adopted amendments to §221.43(a) require a salvage vehicle dealer who sells to a retail customer to be open at least four

days per week for at least four consecutive hours per day and prohibit the office from being open solely by appointment. These adopted amendments create standard minimum business hours across the industry by requiring the office of a salvage pool operator selling only to a wholesale dealer to be open at least two weekdays per week for at least two consecutive hours per day, and not solely by appointment. Occupations Code, §2302.0015 requires a person to allow the department, law enforcement officers, and others to enter and inspect a business during normal business hours. Minimum normal business hours are not defined in statute or rule; therefore, these adopted amendments are necessary to establish these standards, and the board is authorized to do so under the rulemaking authority in Occupations Code, §2302.051. The adopted minimum standards for salvage vehicle dealers are consistent with current minimum requirements for GDN dealers in §215.140(1)(A) of this title (relating to Established and Permanent Place of Business Premises Requirements); the adopted minimum standards for salvage pool operators that only sell to wholesale dealers are consistent with current requirements for wholesale GDN dealers in §215.140(2) of this title (relating to Established and Permanent Place of Business Premises Requirements). These adopted minimum hours are necessary to deter and prevent fraud in the application process, prevent consumer harm, and ensure the department and others authorized by law have access to a salvage vehicle dealer's location for inspection purposes. Adopted amendments to §221.43(c) and (d) make minor word changes to add clarity. An additional adopted amendment to §221.43(d) gives license holders more flexibility by adding options for the office telephone to be answered by the owner or a voicemail service in addition to a bona fide employee, answering service, or answering machine.

Adopted amendments to §221.44(a) clarify that a permanent business sign must be made of durable, weather resistant material. Adopted amendments to §221.44(b) clarify that a sign will be considered permanently mounted if it is bolted to an exterior building wall or bolted or welded to a dedicated sign pole or a sign support permanently installed in the ground. Adopted new §221.44(c) authorizes a license holder to use a temporary sign or banner if that license holder can show proof that a business sign that meets the above requirements has been ordered and provides a written statement that the business sign will be promptly and permanently mounted upon delivery and is consistent with the flexibility provided to other license holders. This adopted amendment is necessary to allow a license holder to open their business without delay if all other department requirements are met. Adopted new §221.44(d) clarifies that a license holder is still responsible for ensuring that the business sign complies with applicable municipal ordinances and that any signage requirements in a lease comport with the requirements of this section.

An adopted amendment to §221.45(a) clarifies that a business must be located in a building that has a permanent roof. An adopted amendment to §221.45(c) clarifies that a business may not operate in a room or building not open to the public. Adopted new §221.45(e) clarifies that a business may not be virtual or provided by a subscription for office space or office services. Adopted new §221.45(f) requires the physical address of a business be in Texas, recognized by the U.S. Postal Service, and have an assigned emergency services property address, to ensure that both the public and department personnel can readily locate the place of business, and to confirm the municipality in which the property is located. Adopted new §221.45(g) modern-

izes the business access requirements by requiring the business to be equipped with internet access. These amendments are consistent with minimum standards for public health and safety and business operation, allow the department and the public access to the license holder, and are necessary to deter and prevent fraud in the licensing process.

Adopted amendments to §221.46 regarding the requirements to display a license make minor wording changes to simplify language without changing meaning and are necessary to add clarity.

An adopted amendment to §221.47 clarifies that a salvage vehicle dealer must properly process vehicle records in accordance with §217.86 of this title (relating to Dismantling, Scrapping, or Destruction of Motor Vehicles).

The department adopted the repeal of §221.48 because it duplicates §217.86 and therefore became redundant and unnecessary with the citation to §217.86 adopted in §221.47.

An adopted amendment to §221.49 adds a phrase from the title of the section to the body of this section for clarification.

Adopted amendments to §221.50(a) clarify that a sale or transfer of a flood-damaged vehicle must be in accordance with §217.88 of this title, (relating to Sale, Transfer, or Release of Ownership of a Non-repairable or Salvage Motor Vehicle). Adopted amendments to §221.50(b) make wording and format changes without changing the meaning and are necessary to clarify the language. Adopted amendments to §221.50(c) delete duplicative language that is also in §217.88.

Adopted amendments to §221.51(a) are necessary to clarify the language and comport with current practice. Adopted amendments to §221.51(c) and (d) remove the phrase "or any other state" to reflect that the department does not have jurisdiction over out-of-state highways. Adopted amendments to §221.51(f) allow flexibility for a salvage vehicle dealer who offers only salvage vehicles for sale to install a conspicuous permanent sign to provide the required notice to consumers under §221.51(a) and (c). An adopted amendment to §221.51(h) rephrases the existing requirement to recognize that a separate salvage pool license endorsement no longer exists in statute as salvage vehicle dealer license endorsements were eliminated by SB 604, 86th Legislature, Regular Session (2019).

The adopted amendment to §221.52(a) adds a reference to §217.88 of this title, (relating to Sale, Transfer, or Release of Ownership of a Non-repairable or Salvage Motor Vehicle) and is necessary for completeness. An adopted amendment to §221.52(b) removes duplicate language found in §217.88 of this title, and the remaining subsections are relettered. An adopted amendment to relettered §221.52(b) changes the retention period for a copy of a purchaser's photo identification from 48 to 36 months for consistency with §217.88. These amendments are necessary to add clarity and for consistency.

Adopted amendments to §221.53 reference §217.88 and delete redundant language found in §217.88 to add clarity.

Adopted amendments to §221.54 add "vehicle" for consistency in terminology and add two factors the department will consider in determining whether to conduct a site visit: if a business location fails to meet premises or operating requirements, and if records require further investigation by the department. Both factors are indicators of potential fraud and consumer harm and regularly arise in department complaint investigations.

At adoption, the department adopted a non-substantive amendment to §§221.42, 221.47, and 221.50-221.53 to change the proposed term "non-repairable" to "nonrepairable" for consistency with Occupations Code, Chapter 2302 and Transportation Code, Chapter 501.

#### Subchapter D. Records

Adopted amendments to §221.71 edit language to remove surplus language and improve grammar and clarity. An adopted amendment to §221.71(c) modernizes the rule by deleting a reference to a requestor being present at the business location and adding an option for records to be provided electronically upon request. An adopted amendment to §221.71(e) increases the deadline from 10 days to 15 days for a salvage vehicle dealer to provide copies of requested records to the department.

Adopted amendments to §221.72(b) clarify an existing requirement that a salvage vehicle dealer maintain a record of each vehicle that is dismantled, in addition to each vehicle scrapped or destroyed, and shorten the length of retention of these records from the fourth anniversary of the date the report was acknowledged as received by the department to the third anniversary for consistency with other sections. Lastly, adopted amendments to §221.72(c) add a word and remove a comma for clarity without changing the meaning of the rule.

Adopted amendments to §221.73 make wording changes to improve clarity and reflect current practice regarding both vehicle purchase and vehicle sales records. Adopted amendments add references to §221.52 and §217.89 (relating to Rebuilt Salvage Motor Vehicles) and remove redundant language in this section, related to unnecessary descriptors including various types of photo identification. The adopted amendments to §221.73(a) expand the list of records that may be applicable to a particular purchase or sale for clarification and consistency with other rules and because these records are necessary for the department to determine a dealer's compliance with existing laws and rules.

At adoption, the department made a non-substantive amendment to §221.71 and §221.73 to change "non-repairable" to "nonrepairable" for consistency with Occupations Code, Chapter 2302 and Transportation Code, Chapter 501.

#### Subchapter E. Administrative Procedures

The department adopted the repeal of all sections in Subchapter E. The substance of the rules from Subchapter E are incorporated into adopted new Chapter 224, Adjudicative Practice and Procedure, which is published in this issue of the *Texas Register*. The adopted repeal includes §§221.91 - 221.96.

#### Subchapter F. Administrative Sanctions

Adopted amendments to §221.111 delete unnecessary phrases without changing the meaning and update a citation to improve clarity. Additionally, an adopted amendment to §221.111(a)(5) removes the phrase "is unfit, ineligible for license" and an adopted amendment to §221.111(a)(6) removes the phrase "is unfit to hold the license, is ineligible for licensure" from the factors the department considers to determine denial of licensure because that language is not found in Occupations Code, Chapter 2302.

Adopted amendments to §221.112 delete unnecessary phrases without changing the meaning, add statutory and rule references and explanatory language, remove surplus language associated with those references, and renumber accordingly. These amendments are necessary to add clarity.

Adopted amendments to §221.115 remove the language stating that the department will not refund license fees in the case of a licensure denial, suspension, or revocation and substitute language that allows a refund with director approval unless a license application is withdrawn, denied, suspended, or revoked, or the license applicant or license holder is subject to an unpaid civil penalty imposed by a final order against the license applicant or license holder. This provision ensures that the department receives as much as possible of the assessed civil penalties, but also gives the department flexibility to refund an application fee in other circumstances. These adopted amendments are consistent with the refund process for other license types.

#### SUMMARY OF COMMENTS.

The department received one written comment on the proposal from the Texas Independent Automobile Dealers Association (TIADA) with recommendations for changes to §221.19 and §221.111.

Comment: TIADA recommended that in §221.19, a salvage vehicle dealer not be required to pay a \$25 license amendment fee to update a business email address, telephone number, mailing address or change in license contact.

Response: The department agrees that salvage vehicle dealers should not incur a \$25 amendment fee for changes that do not involve department processing time or expense. The department therefore added the following clarifying language to §221.13(c) at adoption to identify the specific types of license amendments to which the fee applies: "and applies to a license amendment changing a license holder's name, changing ownership or management, or when adding a new business address and assumed name."

With this revision at adoption, while a salvage vehicle dealer must submit a license amendment to report a change in business email address, telephone number, mailing address or license contact, the dealer will only incur a \$25 amendment fee for a change in business name, a change in ownership or management, or when adding a new business address and assumed name. This latter group of changes requires department processing time and expense and are consistent with when GDN dealers are charged an amendment fee.

Comment: TIADA recommended that the department amend §221.111 or add a new rule to describe the department's use of a licensing committee in reviewing applications, including the composition of the committee and deadlines for the committee's review and decision-making.

Response: The department disagrees. The Motor Vehicle Division's licensing committee is an internal management review process to help ensure consistency in application processing and does not place a new requirement on a license holder or affect a license holder's rights under Occupations Code, Chapter 2302. Therefore, a rule is not required under Government Code, Chapter 2001. The department does not want to place limitations on the composition of the committee or on the timelines for its decision-making to allow the department necessary flexibility to staff the committee and determine the length of its review as necessitated by the details and complexity of each specific application.

## SUBCHAPTER A. GENERAL PROVISIONS

### 43 TAC §221.1, §221.2

#### STATUTORY AUTHORITY.

The department adopts amendments to Chapter 221 under Government Code, §411.122(d)(24), which authorizes department access to criminal history record information maintained by DPS; Government Code, §411.12511, which authorizes the department to obtain criminal history record information from DPS and the FBI for license applicants, license holders, and representatives whose act or omission would be cause for denying, revoking, or suspending a license issued under Occupations Code, Chapter 2302; Occupations Code, §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code, Chapter 2302; Occupations Code, §2302.052, which assigns the board a duty to set reasonable and necessary application fees, license fees, renewal fees, and other fees as required to implement Chapter 2302; Occupations Code, §2302.103, which requires a salvage vehicle dealer to apply for a license on a form prescribed by the department and pay an application fee; Occupations Code, §2302.104, which prescribes content that must be included in an application; Occupations Code, §2302.105, which requires the department to complete an investigation of the applicant's qualifications before issuing a license; Occupations Code, §2302.108, which authorizes the department to deny, suspend, revoke, or reinstate a license issued under Chapter 2302 consistent with the requirements of Government Code, Chapter 2001; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

The department also adopts amendments under the authority of Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale, and lease of motor vehicles and to take any action that is necessary or convenient to exercise that authority; Transportation Code, §§501.0041, 502.0021, and 503.002; and Government Code, §§2001.004, and 2001.039, and 2001.054, in addition to the statutory authority referenced throughout this preamble.

Transportation Code, §501.0041 authorizes the department to adopt rules to administer Transportation Code, Chapter 501. Transportation Code, §502.0021 authorizes the department to adopt rules to administer Transportation Code, Chapter 502. Transportation Code, §503.002 authorizes the department to adopt rules to administer Transportation Code, Chapter 503.

Occupations Code, §55.002 requires a state agency that issues a license to adopt rules to exempt an individual license holder from incurring any increased fee or other penalty for failing to renew the license in a timely manner if the individual establishes that failure to timely renew the license is because the individual was serving as a military service member. Occupations Code, §55.004 requires a state agency that issues a license to adopt rules for the issuance of the license to an applicant who is a military service member, military veteran, or military spouse and holds a current license issued by another jurisdiction with substantially equivalent requirements or held a Texas license within the prior five years. Occupations Code, §55.0041 requires a state agency that issues a license to adopt rules to recognize equivalent out-of-state licenses for a military service member, military veteran, or military spouse within 30 days of application and issue a license or authorization. Occupations Code, §55.005 requires a state agency that issues a license to process an application and issue a license within 30 days for a military service member, military veteran, or military spouse.

Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature and requirements of all

available formal and informal procedures. Government Code, §2001.039 requires state agencies to readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule. Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license.

**CROSS REFERENCE TO STATUTE.** These rule adoptions implement Government Code, Chapters 411 and 2001; Occupations Code, Chapters 53, 55, 2301, and 2302; and Transportation Code, Chapters 501-503, 1001-1003, and 1005.

§221.2. *Definitions.*

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

- (1) Board--The Board of the Texas Department of Motor Vehicles.
- (2) Casual sale--A sale as defined by Transportation Code, §501.091.
- (3) Component part--As defined by Occupations Code, §2302.251.
- (4) Day--Means a calendar day unless otherwise stated.
- (5) Department--The Texas Department of Motor Vehicles.
- (6) Director--Means the division director that regulates the distribution and sales of motor vehicles, including any department staff to whom the director delegates any duty assigned under this chapter.
- (7) General Distinguishing Number (GDN)--As defined by Occupations Code, §2301.002.
- (8) License holder--A person that holds a salvage vehicle dealer license or an independent motor vehicle dealer GDN that authorizes the dealer to operate as a salvage vehicle dealer.
- (9) Metal recycler--As defined by Transportation Code, §501.091.
- (10) Nonrepairable motor vehicle--As defined by Transportation Code, §501.091.
- (11) Nonrepairable record of title--As defined by Transportation Code, §501.091.
- (12) Nonrepairable vehicle title--As defined by Transportation Code, §501.091.
- (13) Out-of-state buyer--As defined by Transportation Code, §501.091.
- (14) Out-of-state ownership document--As defined by Transportation Code, §501.091.
- (15) Person--As defined by Occupations Code, §2301.002.
- (16) Public highway--As defined by Transportation Code, §502.001.
- (17) Retail sale--As defined by Occupations Code, §2301.002.
- (18) Salvage motor vehicle--As defined by Transportation Code, §501.091.
- (19) Salvage record of title--As defined by Transportation Code, §501.091.
- (20) Salvage vehicle dealer--As defined by Transportation Code, §501.091.

(21) Salvage vehicle title--As defined by Transportation Code, §501.091.

(22) Used part--As defined by Transportation Code, §501.091.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 12, 2024.

TRD-202401509

Laura Moriaty

General Counsel

Texas Department of Motor Vehicles

Effective date: June 1, 2024

Proposal publication date: December 29, 2023

For further information, please call: (512) 465-4160



## SUBCHAPTER B. LICENSING

### 43 TAC §§221.11, 221.13 - 221.20

#### STATUTORY AUTHORITY.

The department adopts amendments to Chapter 221 under Government Code, §411.122(d)(24), which authorizes department access to criminal history record information maintained by DPS; Government Code, §411.12511, which authorizes the department to obtain criminal history record information from DPS and the FBI for license applicants, license holders, and representatives whose act or omission would be cause for denying, revoking, or suspending a license issued under Occupations Code, Chapter 2302; Occupations Code, §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code, Chapter 2302; Occupations Code, §2302.052, which assigns the board a duty to set reasonable and necessary application fees, license fees, renewal fees, and other fees as required to implement Chapter 2302; Occupations Code, §2302.103, which requires a salvage vehicle dealer to apply for a license on a form prescribed by the department and pay an application fee; Occupations Code, §2302.104, which prescribes content that must be included in an application; Occupations Code, §2302.105, which requires the department to complete an investigation of the applicant's qualifications before issuing a license; Occupations Code, §2302.108, which authorizes the department to deny, suspend, revoke, or reinstate a license issued under Chapter 2302 consistent with the requirements of Government Code, Chapter 2001; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

The department also adopts amendments and under the authority of Transportation Code, §§501.0041, 502.0021, and 503.002; and Government Code, §§2001.004, and 2001.039, and 2001.054, in addition to the statutory authority referenced throughout this preamble.

Transportation Code, §501.0041 authorizes the department to adopt rules to administer Transportation Code, Chapter 501. Transportation Code, §502.0021 authorizes the department to adopt rules to administer Transportation Code, Chapter 502. Transportation Code, §503.002 authorizes the department to adopt rules to administer Transportation Code, Chapter 503.

Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. Government Code, §2001.039 requires state agencies to readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule. Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license.

CROSS REFERENCE TO STATUTE. These rule adoptions implement Government Code, Chapters 411 and 2001; Occupations Code, Chapters 53, 55, 2301 and 2302; and Transportation Code, Chapters 501-503, 1001-1003, and 1005.

#### §221.13. License Terms and Fees.

(a) The term of a salvage vehicle dealer license issued by the department under Occupations Code, Chapter 2302, and this chapter, is two years. The fee for a salvage vehicle dealer license is \$190. The entire amount of the fee is due at the time of application for the license.

(b) The department may prorate the fee for a salvage vehicle dealer license to allow the salvage vehicle dealer license to expire on the same day as another license issued by the department under Occupations Code, Chapter 2301; Chapter 2302; or Transportation Code, Chapter 503.

(c) The fee for a license amendment is \$25 and applies to a license amendment changing a license holder's name, changing ownership or management, or when adding a new business address and assumed name.

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 April 12, 2024.

TRD-202401510

Laura Moriaty

General Counsel

Texas Department of Motor Vehicles

Effective date: June 1, 2024

Proposal publication date: December 29, 2023

For further information, please call: (512) 465-4160



## SUBCHAPTER C. LICENSED OPERATIONS

### 43 TAC §§221.41 - 221.47, 221.49 - 221.54

#### STATUTORY AUTHORITY.

The department adopts amendments and repeals to Chapter 221 under §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code, Chapter 2302; Occupations Code, §2302.108, which authorizes the department to deny, suspend, revoke, or reinstate a license issued under Chapter 2302 consistent with the requirements of Government Code, Chapter 2001; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

The department also adopts amendments and under the authority of Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale, and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise that authority; Transportation Code,

§§501.0041, 502.0021, and 503.002; and Government Code, §§2001.004, and 2001.039, and 2001.054, in addition to the statutory authority referenced throughout this preamble.

Transportation Code, §501.0041 authorizes the department to adopt rules to administer Transportation Code, Chapter 501. Transportation Code, §502.0021 authorizes the department to adopt rules to administer Transportation Code, Chapter 502. Transportation Code, §503.002 authorizes the department to adopt rules to administer Transportation Code, Chapter 503.

Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. Government Code, §2001.039 requires state agencies to readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule. Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license.

CROSS REFERENCE TO STATUTE. These new rules implement Government Code, Chapter 2001; Occupations Code, Chapters 2301 and 2302; and Transportation Code, Chapters 501-503, 1001-1003, and 1005.

*§221.42. Operations Only at Licensed Business Location.*

A salvage vehicle dealer may not sell or offer to sell a salvage motor vehicle or nonrepairable motor vehicle from any location other than a licensed business location.

*§221.47. Evidence of Ownership.*

A salvage vehicle dealer must receive a properly assigned salvage vehicle title, salvage record of title, nonrepairable vehicle title, nonrepairable record of title, or out-of-state ownership document, as applicable, when acquiring a nonrepairable motor vehicle or salvage motor vehicle in accordance with §217.86 of this title (relating to Dismantling, Scrapping, or Destruction of Motor Vehicles).

*§221.50. Restrictions on Sales of Flood Damaged Vehicles.*

(a) A motor vehicle that is a nonrepairable motor vehicle or salvage motor vehicle based solely on flood damage may be sold or transferred only as provided by this section and §217.88 of this title (relating to Sale, Transfer, or Release of Ownership of a Nonrepairable or Salvage Motor Vehicle).

(b) A salvage vehicle dealer may sell, transfer, or release a nonrepairable motor vehicle or salvage motor vehicle if the salvage vehicle dealer provides a written disclosure that the vehicle has been classified as a nonrepairable motor vehicle or salvage motor vehicle based solely on flood damage.

*§221.51. Duty to Identify Motor Vehicles Offered for Sale.*

(a) A salvage vehicle dealer shall place a notice on each salvage motor vehicle it displays or offers for sale that:

- (1) is visible from outside of the salvage motor vehicle;
- (2) contains lettering that is two inches or more in height identifying the vehicle is a salvage motor vehicle; and
- (3) states as follows: *"This is a salvage titled vehicle that cannot be operated on a public highway. If the salvaged vehicle is to be registered in Texas, the purchaser must apply to a county tax assessor-collector's office, surrender the salvage title, submit the required information on repairs that have been made to the vehicle and pay the applicable fees before the vehicle may be titled and/or registered to operate on the public highway."*

(b) Upon the sale of a salvage motor vehicle, a salvage vehicle dealer shall obtain the purchaser's signature to a disclosure statement

written in eleven point or larger font that states as follows: *"I, (name of purchaser), acknowledge that at the time of purchase, I am aware that: the vehicle is titled on a salvage title; if I intend to operate the vehicle on a public highway in Texas, I am responsible for applying for a title for this salvage vehicle through a Texas county tax assessor-collector's office accompanied by the required forms showing that repairs have been made to the vehicle; I am responsible for paying the applicable fees; and, I may not drive this salvage vehicle on a public highway until after a titled branded rebuilt salvage and registration have been issued."*

(c) A salvage vehicle dealer shall place a sign on each nonrepairable motor vehicle it displays or offers for sale that:

- (1) is visible from outside of the nonrepairable motor vehicle;
- (2) contains lettering that is two inches or more in height; and
- (3) states as follows: *"This is a nonrepairable titled motor vehicle that can never be operated on a public highway of this state."*

(d) Upon the sale of a nonrepairable motor vehicle, a salvage vehicle dealer shall obtain the purchaser's signature to a disclosure statement written in eleven point or larger font that states as follows: *"I, (name of purchaser), acknowledge that at the time of purchase, I am aware that the vehicle is a nonrepairable vehicle; this vehicle will never be able to operate on a public highway of this state and will never be registered to operate on a public highway of this state; and, before selling this nonrepairable vehicle I must have the nonrepairable vehicle titled in my name."*

(e) A salvage vehicle dealer shall maintain a copy of the written disclosures required by this section as part of its records of sales in accordance with §221.73 of this title (relating to Content of Records).

(f) The notice requirements of subsections (a) and (c) can be met if the salvage vehicle dealer conspicuously displays a permanent sign that all of the vehicles being offered for sale by the salvage vehicle dealer are salvage motor vehicles or non-repairable motor vehicles.

(g) If the salvage vehicle dealer conducts a sale of a salvage motor vehicle or a nonrepairable motor vehicle in Spanish or other foreign language, the notices and disclosures required by this section shall be in that language.

(h) This section does not apply to a vehicle that is displayed or offered for sale by a salvage vehicle dealer who operates solely as a salvage pool operator and only sells vehicles at wholesale.

*§221.52. Export-only Sales.*

(a) A license holder may sell a nonrepairable motor vehicle or a salvage motor vehicle to a person who resides in a jurisdiction outside the United States only as provided by Transportation Code, §501.099 and §217.88 of this title (relating to Sale, Transfer, or Release of Ownership of a Nonrepairable or Salvage Motor Vehicle).

(b) A legible copy of the purchaser's photo identification document must be maintained in the records of the license holder for a period of 36 months after the sale of a salvage motor vehicle or a nonrepairable motor vehicle for "export-only."

(c) The limitation on the number of casual sales that may be made to a person under §221.53 of this title (relating to Casual Sales) does not apply to sales to a person who resides in a jurisdiction outside the United States and who purchases salvage motor vehicles and nonrepairable motor vehicles for "export-only."

*§221.53. Casual Sales.*

(a) A license holder may not make more than five (5) casual sales of salvage motor vehicles or nonrepairable motor vehicles during a calendar year to the same person.

(b) A license holder must maintain records of each casual sale made in accordance with §217.88 of this title (relating to Sale, Transfer, or Release of Ownership of a Nonrepairable or Salvage Motor Vehicle).

(c) A person who purchases a salvage motor vehicle or a nonrepairable motor vehicle through a casual sale may not sell that salvage motor vehicle or nonrepairable motor vehicle until the salvage vehicle title, salvage record or title, nonrepairable vehicle title or nonrepairable record of title, as applicable, is in the person's name.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 12, 2024.

TRD-202401511

Laura Moriaty

General Counsel

Texas Department of Motor Vehicles

Effective date: June 1, 2024

Proposal publication date: December 29, 2023

For further information, please call: (512) 465-4160



### 43 TAC §221.48

#### STATUTORY AUTHORITY.

The department adopts the repeal to Chapter 221 under §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code, Chapter 2302; Occupations Code, §2302.108, which authorizes the department to deny, suspend, revoke, or reinstate a license issued under Chapter 2302 consistent with the requirements of Government Code, Chapter 2001; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

The department also adopts the repeal under the authority of Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale, and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise that authority; Transportation Code, §§501.0041, 502.0021, and 503.002; and Government Code, §§2001.004, 2001.054, and 2001.039 in addition to the statutory authority referenced throughout this preamble.

Transportation Code, §501.0041 authorizes the department to adopt rules to administer Transportation Code, Chapter 501. Transportation Code, §502.0021 authorizes the department to adopt rules to administer Transportation Code, Chapter 502. Transportation Code, §503.002 authorizes the department to adopt rules to administer Transportation Code, Chapter 503.

Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. Government Code, §2001.039 requires state agencies to readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule. Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license.

CROSS REFERENCE TO STATUTE. These repeal would implement Government Code, Chapter 2001; Occupations Code, Chapters 2301 and 2302; and Transportation Code, Chapters 501-503, 1001-1003, and 1005.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 12, 2024.

TRD-202401513

Laura Moriaty

General Counsel

Texas Department of Motor Vehicles

Effective date: June 1, 2024

Proposal publication date: December 29, 2023

For further information, please call: (512) 465-4160



### SUBCHAPTER D. RECORDS

#### 43 TAC §§221.71 - 221.73

#### STATUTORY AUTHORITY.

The department adopts amendments to Chapter 221 under §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code, Chapter 2302; Occupations Code, §2302.108, which authorizes the department to deny, suspend, revoke, or reinstate a license issued under Chapter 2302 consistent with the requirements of Government Code, Chapter 2001; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

The department also adopts amendments and under the authority of Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale, and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise that authority; Transportation Code, §§501.0041, 502.0021, and 503.002; and Government Code, §§2001.004, and 2001.039, and 2001.054, in addition to the statutory authority referenced throughout this preamble.

Transportation Code, §501.0041 authorizes the department to adopt rules to administer Transportation Code, Chapter 501. Transportation Code, §502.0021 authorizes the department to adopt rules to administer Transportation Code, Chapter 502. Transportation Code, §503.002 authorizes the department to adopt rules to administer Transportation Code, Chapter 503.

Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. Government Code, §2001.039 requires state agencies to readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule. Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license.

CROSS REFERENCE TO STATUTE. These new rules would implement Government Code, Chapter 2001; Occupations Code, Chapters 2301 and 2302; and Transportation Code, Chapters 501-503, 1001-1003, and 1005.

§221.71. *Records; Generally.*

(a) A salvage vehicle dealer shall maintain a record of each salvage motor vehicle and nonrepairable motor vehicle purchased, sold, or exchanged by the salvage vehicle dealer.

(b) A salvage vehicle dealer's records must be maintained at the licensed business location.

(c) Any records required to be maintained by a license holder may be maintained in an electronic format if the record can be reviewed and printed at the licensed business location or provided electronically upon request of the department.

(d) A salvage vehicle dealer must make records available for review and copying upon request by the department. The department may request records in person, by mail, or electronically from a department email or a department-designated system.

(e) A salvage vehicle dealer must provide copies of requested records to the department within 15 days of receipt of the request.

(f) Occupations Code, §2302.254, establishes the requirements that a salvage vehicle dealer maintain a record of an inventory of component parts purchased by or delivered to the salvage vehicle dealer.

§221.73. *Content of Records.*

(a) The records of a salvage vehicle dealer for purchases and sales shall include:

(1) the date the license holder purchased the salvage motor vehicle, or nonrepairable motor vehicle;

(2) the name and address of the person who sold the salvage motor vehicle or nonrepairable motor vehicle to the salvage vehicle dealer;

(3) if the person is not an insurance company or a license holder, a photocopy of the photo identification document of the person who purchased the salvage motor vehicle or nonrepairable motor vehicle from the salvage vehicle dealer or sold the salvage motor vehicle or nonrepairable motor vehicle to the salvage vehicle dealer;

(4) a description of the salvage motor vehicle or nonrepairable motor vehicle, including the model, year, make, and vehicle identification number, if applicable;

(5) the ownership document number and state of issuance of the salvage motor vehicle or nonrepairable motor vehicle ownership document, if applicable;

(6) a copy of the salvage record of title or nonrepairable record of title, if applicable, or a copy of the front and back of the ownership document for the salvage motor vehicle or nonrepairable motor vehicle;

(7) a copy of the form if the ownership document has been surrendered to the department;

(8) any evidence indicating that the motor vehicle was dismantled, scrapped, or destroyed;

(9) the sales contract or buyer's order;

(10) the salvage disclosure notice required under §221.51 of this title (relating to Duty to Identify a Motor Vehicle Offered for Sale);

(11) a copy of the photo identification document required for export sales under §221.52 (relating to Export-Only Sales);

(12) records for a casual sale as required under §221.53 (relating to Casual Sales); and

(13) any other records required under current rules in this title.

(b) If the salvage motor vehicle has been rebuilt, repaired, or reconstructed by the salvage vehicle dealer the salvage vehicle dealer's records must also include a form prescribed by the department in accordance with §217.89 of this title (relating to Rebuilt Salvage Motor Vehicles).

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 April 12, 2024.

TRD-202401514

Laura Moriaty

General Counsel

Texas Department of Motor Vehicles

Effective date: June 1, 2024

Proposal publication date: December 29, 2023

For further information, please call: (512) 465-4160



## SUBCHAPTER E. ADMINISTRATIVE PROCEDURES

### 43 TAC §§221.91 - 221.96

#### STATUTORY AUTHORITY.

The department adopts repeals to Chapter 221 under §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code, Chapter 2302; Occupations Code, §2302.108, which authorizes the department to deny, suspend, revoke, or reinstate a license issued under Chapter 2302 consistent with the requirements of Government Code, Chapter 2001; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

The department also adopts repeals under the authority of Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale, and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise that authority; Transportation Code, §§501.0041, 502.0021, and 503.002; and Government Code, §§2001.004, 2001.054, and 2001.039 in addition to the statutory authority referenced throughout this preamble.

Transportation Code, §501.0041 authorizes the department to adopt rules to administer Transportation Code, Chapter 501. Transportation Code, §502.0021 authorizes the department to adopt rules to administer Transportation Code, Chapter 502. Transportation Code, §503.002 authorizes the department to adopt rules to administer Transportation Code, Chapter 503.

Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. Government Code, §2001.039 requires state agencies to readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule. Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license.



CROSS REFERENCE TO STATUTE. These repeals would implement Government Code, Chapter 2001; Occupations Code, Chapters 2301 and 2302; and Transportation Code, Chapters 501-503, 1001-1003, and 1005.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 12, 2024.

TRD-202401516

Laura Moriaty

General Counsel

Texas Department of Motor Vehicles

Effective date: June 1, 2024

Proposal publication date: December 29, 2023

For further information, please call: (512) 465-4160



## SUBCHAPTER E. ADMINISTRATIVE SANCTIONS

### 43 TAC §§221.111, 221.112, 221.115

#### STATUTORY AUTHORITY.

The department adopts amendments to Chapter 221 under Government Code, §411.122(d), which authorizes department access to criminal history record information maintained by DPS; Government Code, §411.12511, which authorizes the department to obtain criminal history record information from DPS and the FBI for license applicants, license holders, and representatives whose act or omission would be cause for denying, revoking, or suspending a license issued under Occupations Code, Chapter 2302; Occupations Code, §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code, Chapter 2302; Occupations Code, §2302.052, which assigns the board a duty to set reasonable and necessary application fees, license fees, renewal fees, and other fees as required to implement Chapter 2302; Occupations Code, §2302.103, which requires a salvage vehicle dealer to apply for a license on a form prescribed by the department and pay an application fee; Occupations Code, §2302.104, which prescribes content that must be included in an application; Occupations Code, §2302.105, which requires the department to complete an investigation of the applicant's qualifications before issuing a license; Occupations Code, §2302.108, which authorizes the department to deny, suspend, revoke, or reinstate a license issued under Chapter 2302 consistent with the requirements of Government Code, Chapter 2001; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

The department also adopts amendments and under the authority of Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale, and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise that authority; Transportation Code, §§501.0041, 502.0021, and 503.002; and Government Code, §§2001.004, and 2001.039, and 2001.054, in addition to the statutory authority referenced throughout this preamble.

Transportation Code, §501.0041 authorizes the department to adopt rules to administer Transportation Code, Chapter 501.

Transportation Code, §502.0021 authorizes the department to adopt rules to administer Transportation Code, Chapter 502. Transportation Code, §503.002 authorizes the department to adopt rules to administer Transportation Code, Chapter 503.

Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. Government Code, §2001.039 requires state agencies to readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule. Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license.

CROSS REFERENCE TO STATUTE. These rule adoptions would implement Government Code, Chapters 411 and 2001; Occupations Code, Chapters 2301 and 2302; and Transportation Code, Chapters 501-503, 1001-1003, and 1005.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 12, 2024.

TRD-202401518

Laura Moriaty

General Counsel

Texas Department of Motor Vehicles

Effective date: June 1, 2024

Proposal publication date: December 29, 2023

For further information, please call: (512) 465-4160



## CHAPTER 224. ADJUDICATIVE PRACTICE AND PROCEDURE

INTRODUCTION. The Texas Department of Motor Vehicles (department) adopts new 43 Texas Administrative Code (TAC) Subchapter A, General Provisions, §§224.1, 224.3, 224.5, 224.7, 224.9, 224.11, 224.13, 224.15, 224.17, 224.19, 224.21, 224.23, 224.25, 224.27, 224.29, 224.31; Subchapter B, Motor Vehicle, Salvage Vehicle, and Trailer Industry Enforcement, §§224.50, 224.52, 224.54, 224.56, 224.58, 224.60, 224.62, 224.64; Subchapter C, Contested Cases Between Motor Vehicle Industry License Holders or Applicants, §§224.80, 224.82, 224.84, 224.86, 224.88, 224.90, 224.92, 224.94; Subchapter D, Motor Carrier and Oversize or Overweight Vehicle or Load Enforcement, §§224.110, 224.112, 224.114 - 224.116, 224.118, 224.120, 224.122, 224.124, 224.126, 224.128, 224.130; Subchapter E, Contested Cases Referred to SOAH, §§224.150, 224.152, 224.154, 224.156, 224.158, 224.162, 224.164, 224.166; Subchapter F, Board Procedures in Contested Cases, §§224.190, 224.192, 224.194, 224.196, 224.198, 224.200, 224.202, 224.204, 224.206; and Subchapter G, Lemon Law and Warranty Performance Claims, §§224.230, 224.232, 224.234, 224.236, 224.238, 224.240, 224.242, 224.244, 224.246, 224.248, 224.250, 224.252, 224.254, 224.256, 224.258, 224.260, 224.262, 224.264, 224.266, and 224.268.

The department adopts §§224.1, 224.3, 224.5, 224.7, 224.9, 224.11, 224.13, 224.15, 224.17, 224.19, 224.21, 224.23, 224.25, 224.27, 224.29, 224.31, 224.50, 224.56, 224.60, 224.62, 224.80, 224.82, 224.84, 224.86, 224.88, 224.92, 224.94, 224.110, 224.112, 224.114 - 224.116, 224.118, 224.120, 224.122, 224.124, 224.126, 224.128, 224.130, 224.150,

224.152, 224.154, 224.158, 224.162, 224.164, 224.166, 224.192, 224.194, 224.200, 224.202, 224.204, 224.206, 224.230, 224.232, 224.234, 224.236, 224.238, 224.240, 224.242, 224.244, 224.246, 224.248, 224.250, 224.252, 224.254, 224.256, 224.258, 224.260, 224.262, 224.264, 224.266, and 224.268 without changes to the proposed text as published in the December 29, 2023, issue of the *Texas Register* (48 TexReg 8298). These rules will not be republished.

The department adopts §§224.52, 224.54, 224.58, 224.64, 224.90, 224.115, 224.156, 224.190, 224.196, and 224.198 with changes to the proposed text as published in the December 29, 2023, issue of the *Texas Register* (48 TexReg 8298). The department adopts §§224.64, 224.90, 224.156, 224.190, and 224.198 with nonsubstantive changes as described below. The department adopts §§224.52, 224.54, 224.115, and 224.196 with substantive changes, which are described below in the department's response to comments. The department adopts §224.58 with a substantive change, which is described below.

**REASONED JUSTIFICATION.** In this issue of the *Texas Register*, the department adopts revisions that delete language regarding adjudicative practices and procedures in 43 TAC §217.56 and Chapters 206, 215, 218, 219, and 221. The department reorganized these rules into new Chapter 224 for easier reference and to add rules consistent with the department's authority and responsibility under Government Code, Chapter 2001; Occupations Code, Chapters 2301 and 2302; Transportation Code, Chapters 502, 503, 621-623, 643, 645, and 1001-1005; and rules promulgated by the State Office of Administrative Hearings (SOAH). New Chapter 224 is organized into seven subchapters.

To the extent the department's prior rules regarding adjudicative practices and procedures worked well and are currently authorized by law, the department incorporated the relevant language from those rules into new Chapter 224. The department did not change adjudicative practices and procedures unless there was a reason to do so. The department, prior parties, and the representatives for prior parties are familiar with the department's prior rules regarding adjudicative practices and procedures, which evolved over time to provide predictability and fairness to the parties.

To the extent the department's prior rules regarding adjudicative practices and procedures did not include language that is required by law, the department added the language to new Chapter 224. For example, Government Code, §2001.004, requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. Additional statutory requirements are summarized in this preamble in the sections regarding statutory authority. To the extent the department's prior rules regarding adjudicative practices and procedures did not include clarifications that would be helpful to parties and others involved in adjudicative practices and procedures, the department added clarifications to new Chapter 224.

#### Subchapter A. General Provisions

Adopted new §224.1 describes the purpose and scope of new Chapter 224, which includes all contested case matters in which the department has jurisdiction. Subchapter A applies to all contested case matters unless expressly excluded or limited in another subchapter. Language regarding the purpose or scope of contested case matters from the following sections of this title are incorporated into new Chapter 224: §206.61, relating to Scope and Purpose; §215.21, relating to Purpose and Scope; §215.201, relating to Purpose and Scope; §218.70, relating to

Purpose; and §219.120, relating to Purpose. These provisions are all adopted for repeal or amendment in this issue of the *Texas Register*.

Adopted new §224.3 includes definitions for terms used throughout Chapter 224. New §224.3 incorporates terms defined in relevant content from 1 TAC §155.5, relating to Definitions, which are definitions used by SOAH. Relevant contested case-related definitions from the following sections of this title are also incorporated into new §224.3: §215.2, relating to Definitions; Conformity with Statutory Requirements; §221.2, relating to Definitions; and §206.62, relating to Definitions.

Adopted new §224.5 addresses prohibited communication during a contested case, including *ex parte* communication, and incorporates the provisions of §215.22 of this title, relating to Prohibited Communications, which is repealed in this issue of the *Texas Register*.

Adopted new §224.7 addresses the appearance by an authorized representative, intervention in a contested case, and the invitation of a person who is not a contested case party to participate in mediation. Relevant content is incorporated into new §224.7 from 1 TAC §155.201, relating to Representation of Parties, as well as §215.23 of this title, relating to Appearances, which is repealed in this issue of the *Texas Register*.

Adopted new §224.9 provides guidance on computing time consistent with Government Code, §311.014. New §224.9 also incorporates relevant content from the provisions of §215.29 of this title, relating to Computing Time, which is repealed in this issue of the *Texas Register*.

Adopted new §224.11 provides general procedures related to filing and service of documents. New §224.11 incorporates relevant content from 1 TAC §155.101 (a-d), relating to Filing Documents. New §224.11 also incorporates other sections of this title—§215.30, relating to Filing of Documents, and §215.49, relating to Service of Pleading, Petitions, Briefs, and Other Documents—which are repealed in this issue of the *Texas Register*.

Adopted new §224.13 addresses discovery matters, including the requirement for cooperation between the contested case parties and criteria and processes for a party to request a commission or subpoena. New §224.13 incorporates relevant content from 1 TAC §155.259, relating to Discovery Motions. New §224.113 also incorporates content from §206.67 of this title, relating to Discovery, which is repealed in this issue of the *Texas Register*.

Adopted new §224.15 addresses hearing recording and transcription costs. New §224.15 incorporates relevant content from 1 TAC §155.423, relating to Making a Record of the Proceeding. New §224.15 also incorporates relevant content from §215.37(a-c) of this title, relating to Recording and Transcriptions of Hearing Cost, which are repealed in this issue of the *Texas Register*.

Adopted new §224.17 addresses when proceedings may be consolidated. New §224.17 incorporates relevant provisions from §215.38 of this title, relating to Consolidation of Proceedings, which is repealed in this issue of the *Texas Register*.

Adopted new §224.19 addresses the timing and criteria for informally disposing of a contested case. New §224.19 incorporates relevant content from §215.316 of this title, relating to Informal Disposition, which is repealed in this issue of the *Texas Register*.

Adopted new §224.21 addresses criteria for when a party may waive a hearing and consent to an agreed order. New §224.21 incorporates relevant content from §215.39 of this title, relating to Waiver of Hearing, which is repealed in this issue of the *Texas Register*.

Adopted new §224.23 requires a contested case hearing to be open to the public. New §224.23 incorporates content from §215.36 of this title, relating to Hearings To Be Public, which is repealed in this issue of the *Texas Register*.

Adopted new §224.25 addresses when a deadline may or may not be extended. New §224.25 incorporates content from §215.32 of this title, relating to Extension of Time, which is repealed in this issue of the *Texas Register*.

Adopted new §224.27 implements provisions of Government Code Chapter 2001, Subchapter F that govern the issuance of final orders and motions for rehearing. New §224.27 includes related content from the following sections of this title, which are repealed in this issue of the *Texas Register*: §215.55, relating to Final Decision, §215.501, relating to Final Decisions and Orders; Motions for Rehearing, §215.505, relating to Denial of Dealer or Converter Access to Temporary Tag System, and §221.93, relating to Final Decisions and Orders; Motions for Rehearing.

Adopted new §224.29 addresses delegation of final order authority in accordance with Occupations Code, §2301.154(c) and §2301.711; and Transportation Code, §1003.005(b), as applicable. New §224.29 incorporates relevant content from the following sections of this title, which are repealed in this issue of the *Texas Register*: §215.43, relating to Conduct and Decorum, §215.58, relating to Delegation of Final Order Authority, and §221.95, relating to Delegation of Final Order Authority.

Adopted new §224.31 addresses the cost of providing a contested case record for appeal purposes. New §224.31 incorporates relevant content from the following sections of this title, which are repealed in this issue of the *Texas Register*: §215.37(d), relating to Recording and Transcriptions of Hearing Cost, §218.75, relating to Cost of Preparing the Agency Record, and §219.127, relating to Cost of Preparing Agency Record.

Subchapter B. Motor Vehicle, Salvage Vehicle, and Trailer Industry Enforcement

Adopted new §224.50 addresses the purpose and scope of this subchapter and identifies the other subchapters that apply to these types of contested cases. New §224.50 incorporates relevant content from the following sections of this title, which are repealed in this issue of the *Texas Register*: §215.21, relating to Purpose and Scope, and §215.201, relating to Purpose and Scope.

Adopted new §224.52 addresses procedures related to cease and desist orders issued under Occupations Code, Chapters 2301 or 2302, including the notice and opportunity required for due process. New §224.52 also addresses the delegation of signature authority to the department's Enforcement Division Director to sign interlocutory cease-and-desist orders. New §224.52 incorporates relevant content from the following sections of this title, which are repealed in this issue of the *Texas Register*: §215.314, relating to Cease and Desist Orders, and §221.96, relating to Cease and Desist Order. The delegation of signature authority for an interlocutory cease-and-desist order is new text that was not contained in the department's sections of this title. The delegation of signature authority is

necessary to address a situation in which the facts warrant the issuance of an interlocutory cease-and-desist order as soon as possible. Additionally, new §224.52 clarifies the notice and opportunity to respond for an individual who may be subject to a cease-and-desist order, to ensure consistent due process. The department adopts §224.52(b)(2) with changes at adoption to correct the references from subsection (c) to subsection (b) of this section.

Adopted new §224.54 addresses criteria used by the department to assess a civil penalty or to revoke a license consistent with and under the authority of Occupations Code, §2301.801 and §2302.354; and Transportation Code, §503.095, as applicable. These criteria are currently reflected in the department's disciplinary matrix for motor vehicle dealers that is published on the department's website. Adopted new §224.54 also addresses the department's disciplinary matrix regarding the matters under Chapter 224, Subchapter B. The department adopts §224.54(e) with changes at adoption to add language to address concerns raised by the Texas Independent Automobile Dealers Association (TIADA) in a public comment described below. The text added at adoption clarifies that the disciplinary matrix published on the department's website at the time of the violation will be the applicable matrix for guiding the department's decisions on penalties and sanctions, but also notes that the disciplinary matrix does not limit either the department from seeking or the board from ordering penalties and sanctions that are outside the ranges recommended in the penalty matrix. The text added at adoption brings more predictability for license holders but still allows the department and the board to exercise discretion as necessary within statutory limits. New §224.54 creates clarity and ease of reference for license holders, administrative law judges, and board members seeking to determine the appropriate penalty in a contested case. At adoption the department also changed the title by adding "and Revocation" before "Assessment" to better reflect the scope of the rule.

Adopted new §224.56 addresses the requirements for a notice of department decision issued to a person who is alleged to have violated a statute or department rule. New §224.56 incorporates relevant content from the following: §215.500 of this title, regarding Administrative Sanctions and Procedures, which is amended in this issue of the *Texas Register*, and §221.91 of this title, regarding Notice of Department Decision, which is repealed in this issue of the *Texas Register*.

Adopted new §224.58 addresses the process for denying access to the temporary tag system as authorized under Transportation Code, §503.0632(f). New §224.58 incorporates content from §215.505 of this title, regarding Denial of Dealer or Converter Access to Temporary Tag System, which is repealed in this issue of the *Texas Register*. At adoption, the text "listed on the application" in §224.58(a)(5) was deleted, as the requirement to disclose a storage lot on the application was changed at adoption to a more limited requirement that a GDN holder disclose the location of a storage lot or location of a motor vehicle in inventory upon request by the department.

Adopted new §224.60 describes the process for filing and service of documents under this subchapter. New §224.60 incorporates relevant content from 1 TAC §155.101 (a-d), relating to Filing Documents, as well as the following sections of this title, which are repealed in this issue of the *Texas Register*: §215.30, relating to Filing of Documents, and §215.49, relating to Service of Pleading, Petitions, Briefs, and Other Documents.

Adopted new §224.62 addresses the process for referring a contested case under this subchapter to SOAH. New §224.62 incorporates relevant content from 1 TAC §155.51, relating to Jurisdiction, and §155.53, relating to Request to Docket Case, as well as §215.306 of this title, relating to Referral to SOAH, which is repealed in this issue of the *Texas Register*.

Adopted new §224.64 addresses the process for the department to issue a notice of hearing for contested cases under this subchapter. New §224.64 incorporates relevant content from the following sections of this title, which are repealed in this issue of the *Texas Register*: §215.34, relating to Notice of Hearing in Contested Case, and §221.92, relating to Notice of Hearing. The department adopts §224.64 with changes at adoption to replace the word "notifies" with "shall notify."

#### Subchapter C. Contested Cases Between Motor Vehicle Industry License Holders or Applicants

Adopted new §224.80 addresses the purpose and scope of this subchapter and identifies the other subchapters that apply to these types of contested cases for clarity and ease of reference. New §224.80 incorporates relevant content from the following sections of this title, which are repealed in this issue of the *Texas Register*: §215.21, relating to Purpose and Scope, and §215.201, relating to Purpose and Scope.

Adopted new §224.82 addresses the requirements for a franchised dealer to file a protest or complaint consistent with the department's responsibilities under Occupations Code, Chapter 2301. New §224.82 incorporates relevant content from §215.106 of this title, relating to Time for Filing Protest.

Adopted new §224.84 addresses how a protest, complaint, or other document must be filed, including the requirement to file any document electronically, and include all assigned docket numbers. New §224.84 incorporates relevant content from 1 TAC §155.101 (a-d), relating to Filing Documents, as well as the following sections of this title, which are repealed in this issue of the *Texas Register*: §215.24, relating to Petitions, §215.30, relating to Filing of Documents, §215.49, relating to Service of Pleading, Petitions, Briefs, and Other Documents, and §215.305, relating to Filing of Complaints, Protests, and Petitions; Mediation.

Adopted new §224.86 describes the process used by the department to review a protest or complaint to determine if the protest or complaint meets the minimum statutory requirements and is appropriate to refer to SOAH for a hearing at SOAH consistent with the department's responsibilities under Occupations Code, Chapter 2301.

Adopted new §224.88 describes the department's procedure for docketing a contested case under this subchapter, the issuance of a stay as authorized by Occupations Code, §2301.803, the notice to the parties, the opportunity for the parties to accept or decline a department mediator and retain a private mediator, and the deadline to notify the department regarding the mediator option chosen by the parties. Mediation is required under Occupations Code, Chapter 2301, Subchapter K and §2301.703.

Adopted new §224.90 describes the procedures related to mediation including the timeline for mediation, requirements if a private mediator is selected by the parties, the requirement for a mediator to submit a written report, and the department's actions upon receiving the report including notifying SOAH whether a party refused to participate in or attend mediation. New §224.90 allows a SOAH Administrative Law Judge (ALJ) to recommend a sanction in the final proposal for decision for refusal to attend

or participate in a statutorily required mediation. New §224.90 incorporates relevant content from §215.305 of this title, relating to Filing of Complaints, Protests, and Petitions; Mediation, which is repealed in this issue of the *Texas Register*. The department adopts §224.90 with the following nonsubstantive changes to the text at adoption: 1) changed the word "the" to "this" in subsections (g)(2) and (h)(4) to refer to "§224.88 of this title"; and 2) added the word "in" and changed the order of the words in subsection (m) to be consistent with the language in subsection (l)(3), which refers to a party who "refused to attend or participate in a mediation."

Adopted new §224.92 addresses the process for referring a contested case under this subchapter to SOAH. New §224.92 incorporates relevant content from 1 TAC §155.51, relating to Jurisdiction, and §155.53, relating to Request to Docket Case, as well as §215.306 of this title, relating to Referral to SOAH, which is repealed in this issue of the *Texas Register*.

Adopted new §224.94 addresses the process for the department to issue a notice of hearing for contested cases under this subchapter. New §224.94 incorporates relevant content from §215.34 of this title, relating to Notice of Hearing in Contested Cases, which is repealed in this issue of the *Texas Register*.

#### Subchapter D. Motor Carrier and Oversize or Overweight Vehicle or Load Enforcement

Adopted new §224.110 addresses the purpose and scope of this subchapter and identifies the other subchapters that apply to these types of contested cases. New §224.110 incorporates relevant content from the following sections of this title: §218.1, relating to Purpose, §218.70, relating to Purpose, §219.1, relating to Purpose and Scope, and §219.120, relating to Purpose.

Adopted new §224.112 references definitions used in statute and existing rules to avoid duplication and potential conflict when incorporating definitions from the Transportation Code, and the following sections of this title: §218.2, relating to Definitions, and §219.2, relating to Definitions.

Adopted new §224.114 addresses procedures related to cease-and-desist orders issued under Transportation Code, §643.256. New §224.114 incorporates relevant content from §218.77, relating to Cease and Desist Order, which is repealed in this issue of the *Texas Register*.

Adopted new §224.115 addresses criteria used by the department to assess an administrative penalty under Transportation Code, §§623.271, 623.272, and 643.251. Transportation Code, §643.251 provides the dollar caps for administrative penalties, as well as the factors on which the administrative penalty shall be based. Transportation Code, §623.271 and §623.272 state that the amount of an administrative penalty imposed under §623.271 and §623.272, respectively, is calculated in the same manner as the amount of an administrative penalty imposed under Transportation Code, §643.251. New §224.115 also addresses the criteria the department will use to determine whether to probate a suspension of a motor carrier's registration, as well as the length of the probation and the reporting requirements during the probation. Many of these criteria are currently reflected in the department's disciplinary matrix for motor carriers that is published on the department's website. Adopted new §224.115 also addresses the department's disciplinary matrix regarding the matters under Chapter 224, Subchapter D. The department's disciplinary matrix for motor carriers includes the factors on which the administrative penalty and sanction shall be based for the most common violations. Although an administra-

tive penalty may generally be called a sanction, Transportation Code, §643.252, which is titled "Administrative Sanctions," lists the factors for which the department may suspend, revoke, or deny a registration issued under Transportation Code, Chapter 643. Transportation Code, §643.251, which is titled "Administrative Penalty," addresses administrative penalties that the department may impose against a motor carrier.

The department adopts new §224.115(e) with changes at adoption to add language to address concerns raised by TIADA in a public comment described below. The text added at adoption clarifies that the disciplinary matrix published on the department's website at the time of the violation will be the applicable matrix for guiding the department's decisions on penalties and sanctions, but also notes that the disciplinary matrix does not limit either the department from seeking or the director from ordering penalties and sanctions that are outside the ranges recommended in the penalty matrix. The text added at adoption brings more predictability for motor carriers but still allows the department and the director to exercise discretion as necessary within statutory limits. The department also changed the title of §224.115 at adoption by adding "Sanction Assessment;" because §224.115 references the disciplinary matrix that the department will publish on its website to provide guidance to motor carriers on the penalties and sanctions that may be assessed for the most common violations.

Adopted new §224.115 creates clarity and provides ease of reference for motor carriers, administrative law judges, and the Motor Carrier Division Director seeking to determine the appropriate administrative penalty and sanction in a contested case. New §224.115 incorporates relevant content from §218.71, relating to Administrative Penalties; §218.72, relating to Administrative Sanctions; §219.121, relating to Administrative Penalties; and §219.126 relating to Administrative Penalty for False Information on Certificate by a Shipper, which are amended in this issue of the *Texas Register*.

Adopted new §224.116 addresses procedures when the department decides to take enforcement action under any of the following sections of this title: §218.16, relating to Insurance Requirements; §218.64, relating to Rates; §218.71, relating to Administrative Penalties; §218.72, relating to Administrative Sanctions; §219.121, relating to Administrative Penalties and Sanctions under Transportation Code, §623.271; or §219.126, relating to Administrative Penalty for False Information on Certificate by a Shipper. New §224.116 incorporates relevant content from the following sections of this title, which are amended or repealed in this issue of the *Texas Register*: §218.71, relating to Administrative Penalties; §218.73, relating to Administrative Proceedings; and §219.124, relating to Administrative Proceedings.

Adopted new §224.118 requires a person to file a document according to written instructions provided by the department as different systems and methods may be used depending on the party and type of enforcement action.

Adopted new §224.120 describes the procedures followed by the department upon receiving a final order issued under Family Code, §§232.003, 232.008, or 232.009, regarding child support enforcement. New §224.120 incorporates relevant content from §218.76 of this title, relating to Registration Suspension Ordered Under the Family Code, which is repealed in this issue of the *Texas Register*.

Adopted new §224.122 prescribes the requirements for a vehicle registrant that wants to appeal a decision against the registrant

of an assessment (a financial penalty under §217.56(c)(2)(G) of this title, relating to Registration Reciprocity Agreements) or a cancellation or revocation of the registrant's apportioned registration under the International Registration Plan (IRP). New §224.122 incorporates relevant content from §217.56(c)(2)(J)(iii) of this title, which is amended in this issue of the *Texas Register*.

Adopted new §224.124 describes the appeal process for a person who is denied registration under a new, renewal, or reregistration application under Transportation Code, Chapter 643. New §224.124 incorporates relevant content from §218.78 of this title, relating to Appeal of Denial, which is repealed in this issue of the *Texas Register*.

Adopted new §224.126 describes the appeal process for a person whose application for self-insured status is denied under §218.16(d), relating to Insurance Requirements. Relevant content is incorporated from §218.16(d), which is amended in this issue of the *Texas Register*.

Adopted new §224.128 addresses the process for referring a contested case under this subchapter to SOAH. Relevant content is incorporated from 1 TAC §155.51, relating to Jurisdiction, and §155.53, relating to Request to Docket Case.

Adopted new §224.130 addresses the process for the department to issue a notice of hearing for contested cases under this subchapter consistent with the statutory requirements under Government Code, Chapter 2001, and SOAH's rule regarding notice of hearing in 1 TAC §155.401, relating to Notice of Hearing.

#### Subchapter E. Contested Cases Referred to SOAH

Adopted new §224.150 describes the types of contested cases that are referred to SOAH, the transfer of jurisdiction from the department to SOAH, and the transfer of jurisdiction from SOAH back to the department. New §224.150 incorporates relevant content from the following sections of this title, which are repealed in this issue of the *Texas Register*: §215.21, relating to Purpose and Scope; §215.201, relating to Purpose and Scope; and §215.303, relating to Application of Board and SOAH Rules.

Adopted new §224.152 describes the department's procedures for referring a contested case to SOAH consistent with SOAH's rules. Relevant content is incorporated into new §224.152 from SOAH's related rules in 1 TAC §155.51, relating to Jurisdiction, and §155.53, relating to Request to Docket Case, as well as §215.306 of this title, relating to Referral to SOAH, which is repealed in this issue of the *Texas Register*.

Adopted new §224.154 addresses applicable notice of hearing requirements under Government Code, §2001.052; Occupations Code, §2301.705; 1 TAC §155.401, relating to Notice of Hearing; and Transportation Code, Chapters 623 and 643; provides for service on parties outside the United States to the extent authorized by applicable law; and addresses the amendment of a notice of hearing under Government Code, §2001.052(b). New §224.154 incorporates relevant content from SOAH's related rules in 1 TAC §155.401, as well as the following sections of this title, which are repealed in this issue of the *Texas Register*: §215.34, relating to Notice of Hearing in Contested Cases; §215.307, relating to Notice of Hearing; §218.73, relating to Administrative Proceedings; §219.124, relating to Administrative Proceedings; and §221.92, related to Notice of Hearing. Transportation Code, §643.2525(a) requires the department to give written notice to the motor carrier by first class mail for an enforcement action under Transportation

Code, §643.251 or §643.252 regarding administrative penalties and sanctions, respectively. Transportation Code, §623.271(b) and §623.272(b) state that the notice and hearing requirements under Transportation Code, §643.2525 apply to the imposition of an administrative penalty or revocation of a permit under §623.271 and the imposition of an administrative penalty under §623.272.

Adopted new §224.156 describes the process for a party to reply to a notice of hearing and the consequences for when a party does not appear at a hearing. New §224.156 incorporates relevant content from §215.308 of this title, relating to Reply to Notice of Hearing and Default Proceedings, which is repealed in this issue of the *Texas Register*. Adopted new §224.156 also incorporates applicable sections of SOAH's rules of procedure for contested cases within SOAH's jurisdiction, including 1 TAC §155.301 relating to Required Form of Pleadings, and §155.501, relating to Failure to Attend Hearing and Default Proceedings. The department adopts §224.156(a) with changes at adoption to replace the word "on" with the word "in" in the last clause of the second sentence.

Adopted new §224.158 describes the process and deadlines for an ALJ to consider an amicus brief. The new rule allows amicus briefs to be incorporated into the administrative record of the contested case for review and consideration by the ALJ, as well as the board, the board delegate, or the director responsible for issuing a final order in the case. New §224.158 incorporates relevant content from §215.311 of this title, relating to Amicus Briefs, which is repealed in this issue of the *Texas Register*.

Adopted new §224.162 addresses an ALJ's responsibilities to hear and rule on a request regarding a statutory stay and the right for a party to file an interlocutory appeal with the board. Adopted new §224.162 incorporates relevant content from §215.315 of this title, relating to Statutory Stay, which is repealed in this issue of the *Texas Register*.

Adopted new §224.164 describes the ALJ and party responsibilities relating to a proposal for decision in a contested case. New §224.164 incorporates relevant content from SOAH's related rule in 1 TAC §155.507, relating to Proposals for Decision; Exceptions and Replies, as well as §215.310 of this title, relating to Issuance of Proposals for Decision and Orders, which is repealed in this issue of the *Texas Register*.

Adopted new §224.166 describes the process by which jurisdiction transfers back to the board or board delegate for a final decision, consistent with the requirements of Government Code, Chapter 2001.

#### Subchapter F. Board Procedures in Contested Cases

Adopted new §224.190 describes the scope of the subchapter, which includes review and consideration of a contested case and issuance of a final order by the board or board delegate. New §224.190 incorporates relevant content from the following sections of this title, which are repealed in this issue of the *Texas Register*: §215.21, relating to Purpose and Scope, and §215.201, relating to Purpose and Scope. The department adopts §224.190 with changes at adoption to change the semicolons to commas at the end of paragraphs one and two.

Adopted new §224.192 describes the process for a person to appeal an interlocutory cease-and-desist or stay order authorized under Occupations Code, Chapter 2301, to comply with the statutory requirement that the board rule on appeals of such interlocutory orders. New §224.192 incorporates relevant con-

tent from the following sections of this title, which are repealed in this issue of the *Texas Register*: §215.314, relating to Cease and Desist Orders, and §221.96, relating to Cease and Desist Order. New §224.192 also clarifies the timelines and process through which a party would request to make an oral presentation or to provide written materials to the board when it reviews the appeal of the interlocutory order. New §224.192 also stipulates that the board's review of an appeal of an interlocutory order is limited to the review and changes allowed under Texas Government Code, §2001.058(e), to clarify the separate roles of the SOAH ALJ and the board in reviewing an interlocutory order issued by the department.

Adopted new §224.194 describes the process for scheduling the review of a contested case by the board or a board delegate and allows the decision-making authority to review the case during a public meeting to increase public insight into the decision-making process.

Adopted new §224.196 describes department's procedures, deadlines, and order of presentations, if a contested case party wants to make an oral presentation to the board as part of the board's consideration of the contested case. New §224.196 incorporates relevant content from §215.59 of this title, relating to Request for Oral Presentation, which is repealed in this issue of the *Texas Register*. New §224.196 complies with Transportation Code, §1004.002, which requires the board to develop policies that provide the public with a reasonable opportunity to appear before the board and speak on any issue under the jurisdiction of the board. A party that complies with the requirements under new §224.196 will be allowed a maximum of 15 minutes to make their oral presentation to the board unless the board chair increases this time under new §224.200. The department adopts §224.196(e) with a change at adoption to address a comment from TIADA, which is described in further detail below. The change to the text at adoption allows a party to speak as a public commenter on a contested case agenda item only if the party is not also making an oral presentation to the board. This will allow parties who failed to give the proper and timely notice necessary to make an oral presentation an opportunity to briefly address and answer questions from the board, so that a missed oral presentation deadline does not completely preclude a party from appearing before the board to defend its position in a contested case.

Adopted new §224.198 describes the responsibilities and deadlines for a party that wants to provide written materials to the board as part of the board's consideration of the contested case. New §224.198 incorporates relevant content from §215.60 of this title, relating to Written Materials and Evidence, which is repealed in this issue of the *Texas Register*. The department made a nonsubstantive change to §224.198(b) at adoption by changing the word "aren't" to "are not" for stylistic consistency.

Adopted new §224.200 describes the responsibilities and limitations for a party making an oral presentation as part of the board's consideration of the contested case. New §224.200 incorporates relevant content from the following sections of this title, which are repealed in this issue of the *Texas Register*: §206.22(f), relating to Public Access to Board Meetings, §215.61, relating to Limiting Oral Presentation and Discussion to Evidence in the Administrative Record, and §215.62, relating to Order of Presentations to the Board for Review of a Contested Case.

Adopted new §224.202 describes the order of presentations at the board meeting in which the board is considering a contested

case. New §224.202 incorporates relevant content from the following sections of this title, which are repealed in this issue of the *Texas Register*: §206.22(f), relating to Public Access to Board Meetings, and §215.62, relating to Order of Presentations to the Board for Review of a Contested Case.

Adopted new §224.204 addresses board member conduct while reviewing and considering a contested case. New §224.204 incorporates relevant content from §215.63 of this title, relating to Board Conduct and Discussion When Reviewing a Contested Case, which is repealed in this issue of the *Texas Register*.

Adopted new §224.206 describes the requirements for a final order issued by the board or a board delegate and when the order is final. New §224.206 incorporates relevant content from §215.501 of this title, relating to Final Decisions and Orders; Motions for Rehearing, which is repealed in this issue of the *Texas Register*.

#### Subchapter G. Lemon Law and Warranty Performance Claims

Adopted new §224.230 describes the scope of this subchapter, provides statutory references, and defines terms used in the subchapter. New §224.230 incorporates relevant content from the following sections of this title, which are repealed in this issue of the *Texas Register*: §215.21, regarding Purpose and Scope, and §215.201, regarding Purpose and Scope.

Adopted new §224.232 describes the requirements for a person to file a lemon law or warranty performance claim, the process, and the assistance available from the department to enable a person to do so. New §224.232 incorporates relevant content from the following sections of this title, which are repealed in this issue of the *Texas Register*: §215.27, relating to Complaints, and §215.202, relating to Filing of Complaints.

Adopted new §224.234 describes how the department reviews a complaint to determine if the department has jurisdiction and meets minimum statutory requirements. New §224.234 incorporates relevant content from §215.203 of this title, relating to Review of Complaints, which is repealed in this issue of the *Texas Register*.

Adopted new §224.236 describes the process regarding the notification to the manufacturer, distributor, or converter. New §224.236 incorporates relevant content from §215.204 of this title, relating to Notification to Manufacturer, Converter, or Distributor, which is repealed in this issue of the *Texas Register*.

Adopted new §224.238 describes the process for mediation, settlement, and referral for hearing with a hearings examiner. New §224.238 incorporates relevant content from §215.205 of this title, relating to Mediation; Settlement, which is repealed in this issue of the *Texas Register*.

Adopted new §224.240 describes the notice of hearing requirements consistent with Government Code, Chapter 2001. New §224.240 incorporates relevant content from §215.34 of this title, relating to Notice of Hearing in Contested Cases, which is repealed in this issue of the *Texas Register*.

Adopted new §224.242 describes the requirements for a party to make a motion, as well as the fact that a motion is not granted unless a hearings examiner makes a ruling. New §224.242 incorporates relevant content from §215.47 of this title, relating to Motions, which is repealed in this issue of the *Texas Register*.

Adopted new §224.244 describes the methods by which a document may be filed and served in this subchapter. New §224.244 incorporates relevant content from §215.49 of this title, relating

to Service of Pleading, Petitions, Briefs, and Other Documents, which is repealed in this issue of the *Texas Register*.

Adopted new §224.246 describes the role and powers of the hearings examiner and the recusal or substitution process. New §224.246 incorporates relevant content from §215.41 of this title, relating to Presiding Officials, which is repealed in this issue of the *Texas Register*.

Adopted new §224.248 describes the criteria for the granting of a continuance by a hearings examiner. New §224.248 incorporates relevant content from §215.40 of this title, relating to Continuance of Hearing, which is repealed in this issue of the *Texas Register*.

Adopted new §224.250 describes a party's rights during the hearing, provides guidance as to how a hearing will be conducted, and addresses participant conduct and decorum in a hearing. New §224.250 incorporates relevant content from the following provisions of this title, which are repealed in this issue of the *Texas Register*: §215.42, relating to Conduct of Hearing, and §215.43, relating to Conduct and Decorum.

Adopted new §224.252 addresses the procedure that will be followed during a hearing. New §224.252 incorporates related content from §215.206 of this title, relating to Hearings, which is repealed in this issue of the *Texas Register*.

Adopted new §224.254 addresses the standards and handling of evidence during a hearing. New §224.254 incorporates relevant content from the following sections of this title, which are repealed in this issue of the *Texas Register*: §215.44, relating to Evidence, and §215.45, relating to Stipulation of Evidence.

Adopted new §224.256 addresses how objections and exceptions may be handled during a hearing conducted by a hearings examiner. New §224.256 incorporates relevant content from §215.46 of this title, relating to Objections and Exceptions, which is repealed in this issue of the *Texas Register*.

Adopted new §224.258 specifies that the hearings examiner has final order authority in cases under this subchapter. New §224.258 incorporates relevant content from §215.55 of this title, relating to Final Decision, which is repealed in this issue of the *Texas Register*.

Adopted new §224.260 describes how lemon law relief decisions will be evaluated by a hearings examiner, the presumptions that may be applied, and how refunds may be calculated, in addition to other important criteria. New §224.260 incorporates content from §215.208 of this title, relating to Lemon Law Relief Decisions, which is repealed in this issue of the *Texas Register*. However, language in §215.208 requiring a different presumptive useful life calculation for a towable recreational vehicle that is lived in full-time was omitted as useful life may vary based on whether the towable recreational vehicle is at a fixed location or used for traveling. New §224.260 allows the hearings examiner to consider the evidence presented regarding usage and adjust the calculation accordingly.

Adopted new §224.262 details which incidental costs may be included in a final refund amount ordered by a hearings examiner. New §224.262 incorporates relevant content from §215.209 of this title, relating to Incidental Expenses, which is repealed in this issue of the *Texas Register*.

Adopted new §224.264 describes the requirements for a hearings examiner to issue a final order, the process for filing and considering a motion for rehearing, and notification to the par-

ties. New §224.264 incorporates relevant content from §215.207 of this title, relating to Contested Cases: Final Orders, which is repealed in this issue of the *Texas Register*.

Adopted new §224.266 describes the complainant's option to accept or reject the final order and the responsibilities of a manufacturer, distributor, or converter if a complainant accepts the final order. New §224.266 incorporates relevant content from §215.210 of this title, relating to Compliance with Order Granting Relief, which is repealed in this issue of the *Texas Register*.

Adopted new §224.268 describes the process for a party to appeal a final order in Travis County district court under Government Code, Chapter 2001, subject to Occupations Code, §2301.609. New §224.268 incorporates relevant content from §215.207(f) of this title, relating to Contested Cases: Final Orders, which is repealed in this issue of the *Texas Register*.

#### SUMMARY OF COMMENTS.

The department received two written comments on the proposal. The department received a written comment from an individual and TIADA.

#### §224.54

Comment: TIADA recommended that the department add a sentence to §224.54(e), stating the department will consider the disciplinary matrix published at the time of the offense and that the disciplinary matrix does not prevent the department from seeking sanctions above or below the recommended ranges. TIADA stated that an administrative law judge in a prior case was not certain which of two versions of the disciplinary matrix that were in effect during the pendency of the litigation should apply to that particular case.

Response: The department agrees with the comment. In response to the comment, the department added a modified version of the recommended language to §224.54 and §224.115.

The department added language to §224.54(e), stating the department will consider the disciplinary matrix published at the time of the violation, rather than at the time of the offense, to be consistent with the terminology used in §224.54 and the relevant statutes. In addition to stating the disciplinary matrix does not prevent the department from seeking administrative penalties and sanctions above or below the recommended ranges listed in the disciplinary matrix, the department added clarifying language that says the disciplinary matrix does not prevent the board or the board's delegate from ordering administrative penalties and sanctions above or below the recommended ranges listed in the disciplinary matrix. This clarifying language documents the current practice in which neither the board nor the board's delegate are bound by the published disciplinary matrix that applies to matters that fall within the scope of Chapter 224, Subchapter B of this title (relating to Motor Vehicle, Salvage Vehicle, and Trailer Industry Enforcement). The proposed text stated that the published disciplinary matrix provides guidance to license holders on the sanctions that may be assessed for the most common violations; however, it is preferable to provide more detail to license holders to explain what this text means. Also, the department amended the heading for §224.54 and added language to §224.54(e) to include the assessment regarding revocation because §224.54 also addresses factors regarding whether license revocation is appropriate.

Although the commenter did not cite to §224.115, the department also added language to §224.115(e), stating the department will consider the disciplinary matrix published at the time of the viola-

tion because §224.115 addresses the disciplinary matrix for contested cases under Chapter 224, Subchapter D of this title (relating to Motor Carrier and Oversize or Overweight Vehicle or Load Enforcement). In addition to stating the disciplinary matrix does not prevent the department from seeking penalties and sanctions above or below the recommended ranges listed in the disciplinary matrix, the department also added clarifying language that says the disciplinary matrix does not prevent the director from ordering administrative penalties and sanctions above or below the recommended ranges listed in the disciplinary matrix. The proposed text stated that the published disciplinary matrix provides guidance to motor carriers on the penalties and sanctions that may be assessed for the most common violations; however, it is preferable to provide more detail to motor carriers to explain what this text means. The added language references the director because the board delegated final order authority to the department's Motor Carrier Division director under §224.29(c) to the extent the director does not already have such authority under statutes, such as Transportation Code, §643.2525.

Also, the department amended the title of §224.115 at adoption to include the assessment of sanctions because §224.115 references the disciplinary matrix that the department will publish on its website to provide guidance to motor carriers on the penalties and sanctions that may be assessed for the most common violations. Although an administrative penalty may generally be called a sanction, Transportation Code, §643.252, which is titled "Administrative Sanctions," lists the factors for which the department may suspend, revoke, or deny a registration issued under Transportation Code, Chapter 643. Transportation Code, §643.251, which is titled "Administrative Penalty," addresses administrative penalties that the department may impose against a motor carrier.

#### §224.196

Comment: TIADA recommended that the department strike rule text that says if a party fails to timely submit a written request for an oral presentation, that party shall not make an oral presentation at the board meeting. TIADA says that most other tribunals do not require a party to notify the tribunal that the party will attend a scheduled hearing and that the department should follow those tribunals.

Response: The department agrees with the comment in part, with respect to the opportunity for a party to make a public comment even when it has failed to submit a timely request to make an oral presentation, and made certain changes to §224.196.

The department disagrees, however, that the board should follow the procedures used in tribunals. The board is not a tribunal. The board is not authorized to retry the contested case, and the board has limited authority under Government Code, §2001.058(e) to change a finding of fact or conclusion of law made by the SOAH ALJ. Also, the board is prohibited from considering evidence that is not contained within SOAH's administrative record, so the parties do not need to appear before the board to present new evidence. In addition, the board has access to the entire SOAH administrative record for each case and is able to review every exhibit, testimony transcript, and filing made in the case.

Since February 2021, the department has operated under §206.22(f) of this title, relating to Public Access to Board Meetings, and §215.59 of this title, relating to Request for Oral Presentation, which are repealed in this issue of the *Texas*



*Register*. Sections 206.22(f) and 215.59 only authorize a party to a contested case to make an oral presentation to the board if the party timely submitted a written request to make an oral presentation. However, if a party failed to timely submit a written request to make an oral presentation to the board, the board chairman authorized the party to make a public comment under §206.22(a) on the agenda item for the contested case. This process worked well for the two contested cases that the board considered at the December 2023 and February 2024 board meetings.

It is not fair to the party who timely submitted a written request if the board allows the other party to make an oral presentation without timely submitting a request. Also, Transportation Code, §1004.002 requires the board to develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the board and the rule to be adopted is consistent with this statutory requirement.

For these reasons, the department will retain the requirement under §224.196 for a party to timely submit a written request for an oral presentation before the party is allowed to make an oral presentation to the board under Chapter 224, Subchapter F (relating to Board Procedures in Contested Cases).

The department amended §224.196(e) to authorize a party to make a public comment regarding the party's contested case during the posted agenda item for the contested case under §206.22 of this title (relating to Public Access to Board Meetings); however, a party is not authorized to make a public comment regarding the party's contested case under §206.22 in addition to making an oral presentation regarding the party's contested case. If a party timely complies with the requirements to make an oral presentation under Subchapter F of Chapter 224, §224.196 authorizes the party to make an oral presentation to the board for up to 15 minutes unless the board chair increases the time under §224.200. Fifteen minutes is ample time for a party to make an oral presentation to the board, so a party does not need an additional three minutes to make a public comment regarding their contested case. Also, the time that a party spends answering board questions is not counted against their 15 minutes. In addition, if the board chair decides that the parties need more than 15 minutes to make an oral presentation, §224.200 authorizes the board chair to increase the oral presentation time. If a party fails to comply with the requirements to make an oral presentation, the party can attend the board meeting and make a public comment under §206.22 for up to three minutes unless the board chair increases the time.

#### §224.198

Comment: An individual recommended that the department add a sentence to §224.198 that says a proposed final order or a draft motion for possible board action are not counted against the 15-page limit under §224.198(d) for written materials. The individual stated that allowing the parties to a contested case to propose a final order or a motion for board action will assist board members in focusing on the key points in the case and will help them to reach a final decision.

Response: The department disagrees with the comment and declines to make the requested change. Adopted new §224.198-like §215.60 of this title (relating to Written Materials and Evidence), which is repealed in this issue of the *Texas Register* imposes a 15-page limit for written materials that a party can submit to the department to provide to the board. New §224.198

expressly allows a party to provide a proposed final order and a draft motion for possible board action if the party complies with the requirements under §224.198. The 15-page limit has been sufficient for prior contested cases that were submitted to the board for a final order under §215.60, which was adopted in February 2021. In at least one case, a party submitted a proposed three-page final order as part of their 15 pages of written materials under §215.60. Also, in the five contested cases in which the board issued a final order from April of 2023 to February of 2024, the longest final order was five pages, not including the Proposal for Decision that was incorporated into one of the final orders. The parties can choose to submit a proposed final order or motion as part of their 15 pages of written materials without using all 15 pages for the proposed final order or motion.

The commenter's requested change opens the door to allowing a party to submit an unlimited number of pages of written materials to the board, which is unnecessary because the board is not authorized to relitigate the case or to receive new evidence in the case. The board has limited authority under Government Code, §2001.058(e) to change a finding of fact or conclusion of law made by the SOAH ALJ. The board is prohibited from considering evidence not contained within SOAH's administrative record, and the board has access to the entire SOAH administrative record for each case and is able to review every exhibit, testimony transcript, and filing made in the case. Further, the department includes, at a minimum, the following materials in the board books provided to board members and published on the department's website, so the parties can direct board members to specific pages, rather than providing the materials to the board members again in written materials: 1) the SOAH ALJ's Proposal for Decision; 2) any exceptions that a party filed with SOAH regarding the ALJ's Proposal for Decision; and 3) the SOAH ALJ's exceptions letter regarding the Proposal for Decision. Finally, it is not necessary for a party to submit a proposed final order or a proposed motion for possible board action. If a board member needs assistance with drafting a proposed motion or proposed final order, the department's general counsel is available to assist the board member.

#### §224.202

Comment: TIADA recommended that the department strike the language in §224.202(b) and (c). TIADA also recommended that the department modify the order of oral presentations to the board to follow typical judicial procedure, which allows the party that brought the lawsuit to present first, rather than allowing the party that is adversely affected to present first.

Response: The department disagrees with the comment and declines to make the requested changes. The board is not a court. Also, requiring the adversely affected party to present first helps the board to focus on issues the board is authorized to address, and recognizes the SOAH ALJ's role in assessing the evidence, deciding fact issues, and making a recommendation in the Proposal for Decision.

Adopted new §224.202-like §215.62 of this title (relating to Order of Presentations to the Board for Review of a Contested Case), which is repealed in this issue of the *Texas Register* authorizes the party that is adversely affected by the ALJ's Proposal for Decision to make their oral presentation to the board first, followed by the party or parties that are not adversely affected. This process worked well under §215.62, which became effective in February 2021. Moreover, the board has already considered and decided this issue: when the department proposed §215.62, the board considered and addressed public comments regarding the

order of presentation, including comments requesting that the adversely affected party present first.

## SUBCHAPTER A. GENERAL PROVISIONS

**43 TAC §§224.1, 224.3, 224.5, 224.7, 224.9, 224.11, 224.13, 224.15, 224.17, 224.19, 224.21, 224.23, 224.25, 224.27, 224.29, 224.31**

### STATUTORY AUTHORITY.

The department adopts new Chapter 224 under Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; Government Code, §2001.054, which specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license; Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise that authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license holders; ensure that the distribution, sale and lease of motor vehicles is conducted as required by statute and board rules; to provide for compliance with warranties; to prevent fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles; and to enforce and administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and to govern practice and procedure before the board; Occupations Code, §2301.602, which requires the board to adopt rules for the enforcement and implementation of Subchapter M of Occupations Code, Chapter 2301; Occupations Code, §2301.651, which authorizes the board to deny an application for a license, revoke or suspend a license, place on probation a person whose license has been suspended, or reprimand a licensee; Occupations Code, §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code, Chapter 2302; Transportation Code, §502.0021, which authorizes the department to adopt rules to administer Transportation Code, Chapter 502; Transportation Code, §502.091(b), which authorizes the department to adopt and enforce rules to carry out the International Registration Plan (IRP); Transportation Code, §503.002, which authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503; Transportation Code, §621.008, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 621; Transportation Code, §622.002, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 622; Transportation Code, §623.002, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 623; Transportation Code, §623.271, which authorizes the department to impose an administrative penalty or revoke an oversize or overweight permit issued under Transportation Code, Chapter 623, and states that the notice and hearing requirements under Transportation Code, §643.2525 apply to the imposition of an administrative penalty or the revocation of a permit under §623.271; Transportation Code, §623.272, which authorizes the department to impose an administrative penalty on a shipper who violates a provision under §623.272, and states that the notice and hearing requirements under Transportation Code, §643.2525 apply to the imposition of an

administrative penalty under §623.272; Transportation Code, §643.003, which authorizes the department to adopt rules to administer Transportation Code, Chapter 643; Transportation Code, §643.102, which authorizes a motor carrier to comply with the requirements under Transportation Code, §643.101 through self-insurance if it complies with the requirements; Transportation Code, §643.251, which authorizes the department to impose an administrative penalty against a motor carrier required to register under Subchapter B of Transportation Code, Chapter 643 that violates Chapter 643 or a rule or order adopted under Chapter 643; Transportation Code, §643.252, which authorizes the department to suspend, revoke, or deny a registration issued under Transportation Code, Chapter 643 or place on probation a motor carrier whose registration is suspended; Transportation Code, §643.2525, which provides the process for an administrative hearing under Transportation Code, Chapter 643; Transportation Code, §643.2526, which authorizes an applicant to appeal the denial of an application for registration, renewal of registration, or reregistration under Transportation Code, Chapter 643; Transportation Code, §645.003, which authorizes the department to adopt rules providing for administrative penalties for a failure to register or submit information and documents under the unified carrier registration plan and agreement or for a violation of the unified carrier registration plan and agreement; Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and duties of the department; Transportation Code, §1003.005, which authorizes the board by rule to delegate any power relating to a contested case, including the power to issue a final order, to one or more board members or certain department staff; and the statutory authority referenced throughout this preamble and in the rule text, which is incorporated herein by reference.

**CROSS REFERENCE TO STATUTE.** These new rules implement Government Code, Chapter 2001; Occupations Code, Chapters 2301 and 2302; and Transportation Code, Chapters 502, 503, 621-623, 643, 645, and 1002-1005.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 12, 2024.

TRD-202401530

Laura Moriaty

General Counsel

Texas Department of Motor Vehicles

Effective date: June 1, 2024

Proposal publication date: December 29, 2023

For further information, please call: (512) 465-4160



## SUBCHAPTER B. MOTOR VEHICLE, SALVAGE VEHICLE, AND TRAILER INDUSTRY ENFORCEMENT

**43 TAC §§224.50, 224.52, 224.54, 224.56, 224.58, 224.60, 224.62, 224.64**

### STATUTORY AUTHORITY.

The department adopts new Chapter 224 under Government Code, §2001.004, which requires state agencies to adopt rules

of practice stating the nature and requirements of all available formal and informal procedures; Government Code, §2001.054, which specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license; Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise that authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license holders; ensure that the distribution, sale and lease of motor vehicles is conducted as required by statute and board rules; to prevent fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles; and to enforce and administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651, which authorizes the board to deny an application for a license, revoke or suspend a license, place on probation a person whose license has been suspended, or reprimand a licensee; Occupations Code, §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code, Chapter 2302; Transportation Code, §502.0021, which authorizes the department to adopt rules to administer Transportation Code, Chapter 502; Transportation Code, §503.002, which authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503; Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and duties of the department; Transportation Code, §1003.005, which authorizes the board by rule to delegate any power relating to a contested case, including the power to issue a final order, to one or more board members or certain department staff; and the statutory authority referenced throughout this preamble and in the rule text, which is incorporated herein by reference.

**CROSS REFERENCE TO STATUTE.** These new rules implement Government Code, Chapter 2001; Occupations Code, Chapters 2301 and 2302; and Transportation Code, Chapters 502, 503, 1002, and 1003.

*§224.52. Cease and Desist Order; Delegation of Authority.*

(a) When a person is alleged to be violating a provision of Occupations Code, Chapter 2301, or a board rule or order, the department may enter an interlocutory order requiring the person to cease and desist from the violation under the following procedures.

(1) In accordance with Occupations Code, §2301.154(c) and Transportation Code, §1003.005(b), the department's Enforcement Division director is delegated the authority to issue an interlocutory cease-and-desist order under the procedures established in this subsection.

(2) A person requesting an interlocutory cease-and-desist order must present a petition or complaint, verified by affidavit, containing a plain statement of the grounds for seeking the cease-and-desist order to the department's Enforcement Division director in accordance with the procedures set forth in §224.84 of this section (regarding Filing and Service of a Protest, Complaint, or Other Document). The department shall not issue an interlocutory cease-and-desist order without a verified petition or complaint that meets the requirements of this subsection.

(3) At least three days prior to entering an interlocutory order requiring a person to cease and desist, the department must send a

letter notifying the person of the allegations against them to all current addresses for the person in the department's records by both electronic service and certified mail, return receipt requested.

(4) The notice letter must include a statement of the alleged conduct that forms the basis for the interlocutory cease-and-desist order and must provide the person the opportunity to show cause in writing within three days why the department should not issue a cease-and-desist order.

(5) In considering whether to issue an interlocutory cease-and-desist order, the department must determine if the conditions set forth in Occupations Code, §2301.802(b) are present and consider the person's written response, if any, to the letter notifying the person of the alleged violations. The department shall email a copy of the department's decision to the person in addition to sending a copy by certified mail, return receipt requested.

(6) Each interlocutory cease-and-desist order must include:

(A) the date and hour of issuance;

(B) a statement of which of the conditions in Occupations Code, §2301.802(b) the department determined were present to necessitate the cease-and-desist order;

(C) a notice of hearing at SOAH to determine the validity of the order;

(D) the reasons for its issuance; and

(E) a description in reasonable detail of the act or acts to be restrained.

(7) If the ALJ determines after a hearing that the cease-and-desist order should remain in place during the pendency of the contested case, the ALJ shall issue an interlocutory cease-and-desist order.

(8) An interlocutory cease-and-desist order remains in effect until vacated or incorporated in a final order.

(9) A party may immediately appeal an interlocutory cease-and-desist order issued by an ALJ to the board under §224.192 of this title (relating to Appeal of an Interlocutory Order) while the contested case is at SOAH.

(b) The department may issue a final cease-and-desist order if a person who is not licensed under Occupations Code, Chapter 2302 is found, after notice and opportunity for a hearing, to have violated that chapter or a rule or order adopted under that chapter. The department may also issue a final cease-and-desist order under Occupations Code, Chapter 2301 to a person found, after notice and opportunity for a hearing, to have violated that chapter, a board rule, or an order.

(1) If the department decides to seek a cease-and-desist order under subsection (b) of this section, the department will send a letter notifying the person of the allegations against them to all current addresses for the person in the department's records by both electronic service and certified mail, return receipt requested. The notice letter will contain:

(A) a summary of the factual allegations;

(B) a description of the statutory provision, rule or order the person is alleged to have violated;

(C) a description in reasonable detail of the act or acts to be restrained by the cease-and-desist order;

(D) a statement regarding the person's right to request a hearing;

(E) the procedure to request a hearing, including the deadline for filing; and

(F) notice to the person that the department will issue a cease-and-desist order that will become final on the date specified if the person fails to timely request a hearing.

(2) A person to whom a cease-and-desist notice letter under subsection (b) is sent may file a written request for a hearing before a SOAH ALJ. The person must submit, in writing, a request for a hearing under this section to the department's contact listed in the notice letter provided under subsection (b)(1) of this section. The department must receive the request for a hearing within 26 days of the date the notice letter is mailed.

(3) If the person does not make a timely written request for a hearing within 26 days of the date the cease-and-desist letter is mailed, the allegations are deemed admitted on the 27th day and a final cease-and-desist order including sanctions may be issued by the final order authority.

(c) Once jurisdiction for the conduct of a contested case hearing transfers to SOAH, an ALJ may act on a party's motion regarding an existing cease-and-desist order issued by the department or consider a new motion for a cease-and-desist order by a party.

*§224.54. Civil Penalty and Revocation Assessment.*

(a) Occupations Code, §2301.801 and §2302.354, and Transportation Code, §503.095 govern the amount of a civil penalty that may be assessed by the department against a license holder.

(b) In determining the amount of civil penalty to assess the department will consider the following aggravating factors:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited act, and the harm or potential harm to the safety of the public;

(2) the economic damage to the public caused by the violation;

(3) any history of previous violations including whether the license holder previously entered into an agreed order with the department or otherwise received a warning or reduced penalty;

(4) the amount necessary to deter a future violation; and

(5) any other matter that justice may require, including:

(A) the number of violations or number of consumers harmed by violation(s);

(B) whether the consumer received a title;

(C) whether the license holder misused license plates or temporary tags;

(D) whether the license holder attempted to conceal a violation;

(E) whether the act constituting the violation was intentional, premeditated, knowing, or grossly negligent; and

(F) whether an order issued by the department was violated.

(c) In determining whether license revocation is appropriate, the department will consider the following factors:

(1) whether the license holder is unfit under standards governing the occupation, including qualifications for a license;

(2) whether the license holder made a material misrepresentation in any written communication or information provided to the department;

(3) whether the license holder willfully defrauded a purchaser;

(4) whether the license holder misused license plates or temporary tags, including whether the license holder attempted to use an internet-down tag to avoid inspection requirements;

(5) whether the license holder failed to fulfill a written agreement with a retail purchaser of a vehicle or motor vehicle; and

(6) whether the license holder failed to attend an approved dealer training seminar as ordered in an agreed final order

(d) The department will consider the following mitigating factors in determining the amount of civil penalty to assess or whether license revocation is appropriate:

(1) acknowledgment by the licensee of any wrongdoing;

(2) willingness to cooperate with the department; and

(3) efforts to correct a violation.

(e) The department will publish a disciplinary matrix on the department website to provide guidance to license holders on the administrative penalties and other sanctions that may be assessed for the most common violations. The department will consider the disciplinary matrix published at the time of the violation; however, the disciplinary matrix does not prevent the department from seeking administrative penalties and other sanctions above or below the recommended ranges listed in the disciplinary matrix. Also, the disciplinary matrix does not prevent the board or the board's delegate from ordering administrative penalties and other sanctions above or below the recommended ranges listed in the disciplinary matrix.

*§224.58. Denial of Dealer or Converter Access to Temporary Tag System.*

(a) In this section "fraudulently obtained temporary tags from the temporary tag database" means misuse by a dealer or converter account user of the temporary tag database authorized under Transportation Code, §503.0626 or §503.0631 to obtain:

(1) an excessive number of temporary tags relative to dealer sales;

(2) temporary tags for a vehicle or vehicles not in the dealer's or converter's inventory (a vehicle is presumed not to be in the dealer's or converter's inventory if the vehicle is not listed in the relevant monthly Vehicle Inventory Tax Statement);

(3) access to the temporary tag database for a fictitious user or person using a false identity;

(4) temporary tags for a vehicle or a motor vehicle when a dealer is no longer operating at a licensed location; or

(5) temporary tags issued for a vehicle or a motor vehicle not located at a licensed location or a storage lot.

(b) The department shall deny a dealer or converter access to the temporary tag database effective on the date the department sends notice electronically and by certified mail to the dealer or converter that the department has determined, directly or through an account user, that the dealer or converter has fraudulently obtained temporary tags from the temporary tag database. A dealer or converter may seek a negotiated resolution with the department by demonstrating the dealer or converter took corrective action or that the department's determination was incorrect.

(c) Notice shall be sent to the dealer's or converter's last known mailing address and last known email in the department-designated licensing system.

(d) A dealer or converter may request a hearing on the denial of access to the temporary tag database, as provided by Subchapter O, Chapter 2301, Occupations Code. The request must be in writing and the dealer or converter must request a hearing under this section. The department must receive the written request for a hearing within 26 days of the date of the notice denying access to the database. The request for a hearing does not stay the denial of access under subsection (b) of this section. A dealer or converter may continue to seek a negotiated resolution with the department after a request for hearing has been submitted under this subsection by demonstrating the dealer or converter took corrective action or that the department's determination was incorrect.

(e) The department may also issue a Notice of Department Decision stating administrative violations as provided in §224.56 of this title (relating to Notice of Department Decision) concurrently with the notice of denial of access under this section. A Notice of Department Decision may include notice of any violation, including a violation listed under subsection (a) of this section.

(f) A department determination and action denying access to the temporary tag database becomes final if the dealer or converter does not request a hearing or enter into a settlement agreement with the department within 26 days of the date of the notice denying access to a database.

*§224.64. Notice of Hearing.*

Once SOAH provides the department with the initial hearing date, time, and place, the department shall notify the parties. The contested case proceeds according to Subchapter E of this chapter (relating to Contested Cases Referred to SOAH).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 12, 2024.

TRD-202401532

Laura Moriaty

General Counsel

Texas Department of Motor Vehicles

Effective date: June 1, 2024

Proposal publication date: December 29, 2023

For further information, please call: (512) 465-4160



**SUBCHAPTER C. CONTESTED CASES  
BETWEEN MOTOR VEHICLE INDUSTRY  
LICENSE HOLDERS OR APPLICANTS**

**43 TAC §§224.80, 224.82, 224.84, 224.86, 224.88, 224.90,  
224.92, 224.94**

**STATUTORY AUTHORITY.**

The department adopts new Chapter 224 under Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; Government Code, §2001.054, which specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal

of a license; Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise that authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license holders, ensure that the distribution, sale and lease of motor vehicles is conducted as required by statute and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles, and to enforce and administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651, which authorizes the board to deny an application for a license, revoke or suspend a license, place on probation a person whose license has been suspended, or reprimand a licensee; Occupations Code, §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code, Chapter 2302; Transportation Code, §502.0021, which authorizes the department to adopt rules to administer Transportation Code, Chapter 502; Transportation Code, §503.002, which authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503; Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and duties of the department; Transportation Code, §1003.005, which authorizes the board by rule to delegate any power relating to a contested case, including the power to issue a final order, to one or more board members or certain department staff; and the statutory authority referenced throughout this preamble and in the rule text, which is incorporated herein by reference.

CROSS REFERENCE TO STATUTE. These new rules implement Government Code, Chapter 2001; Occupations Code, Chapter 2301; and Transportation Code, Chapters 502, 503, 1002, and 1003.

*§224.90. Mediation.*

(a) Except as provided by subsection (b), parties to a contested case filed under this subchapter are required to participate in mediation before the department will refer a contested case to SOAH for a hearing.

(b) This section does not limit the parties' ability to settle a case without mediation.

(c) The department will provide mediation services by a staff member qualified to serve as an impartial third party in accordance with Civil Practice and Remedies Code, Chapter 154.

(d) The mediation will conclude within 60 days of the date a contested case is assigned to a department mediator, unless the mediation deadline is extended. The department mediator may extend the mediation deadline based on a written request by a party or at the department mediator's discretion.

(e) If the parties do not agree on a mediation date within 30 days, the department mediator may set a date for mediation by notifying the parties in writing at least 10 days before the mediation date.

(f) At the discretion of the department mediator, a party may participate in scheduled mediation either in person or remotely using telephonic or videoconferencing technology.

(g) A party that declines to use the assigned department mediator shall:

- (1) confer with each contested case party; and

(2) within 30 days of receiving notice from the department under §224.88 of this title (relating to Docketing and Notice of a Protest or Complaint), file with the department a joint notice of intent to retain a private mediator.

(h) The joint notice of intent to retain a private mediator must include:

(1) the name, address, email address, and telephone number of the private mediator agreed upon by the parties;

(2) a statement that the parties have entered into an agreement with the private mediator regarding the mediator's rate, method of compensation, and party responsibility for fee payment;

(3) an affirmation that the private mediator qualifies for appointment as an impartial third party in accordance with Civil Practice and Remedies Code, Chapter 154;

(4) a statement that the mediation will conclude within 60 days of the department's notice under §224.88 of this title, unless the mediation deadline is extended at the department's discretion; and

(5) the signature of each party or authorized representative.

(i) All communication and documents provided by a contested case party or invited person in a mediation are confidential and subject to the Governmental Dispute Resolution Act, Government Code, §2009.054.

(j) An agreement reached by the contested case parties in mediation shall be reduced to writing and signed by the parties.

(k) Within 10 days of the conclusion of a mediation, a mediator shall provide to the department and to the parties a written report stating:

(1) whether the parties attended and participated in the mediation;

(2) whether the matter settled in part or in whole;

(3) any unresolved issues remaining in the contested case; and

(4) any other stipulations or matters the parties agree to report.

(l) Upon receipt of the mediator's report required under this section, the department shall:

(1) enter an order disposing of resolved issues;

(2) refer unresolved issues to SOAH for a hearing on the merits; and

(3) inform SOAH whether a party refused to attend or participate in a mediation.

(m) If a party refused to attend or participate in a mediation, an ALJ may recommend a sanction in the proposal for decision.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 12, 2024.

TRD-202401533

Laura Moriarty

General Counsel

Texas Department of Motor Vehicles

Effective date: June 1, 2024

Proposal publication date: December 29, 2023

For further information, please call: (512) 465-4160

◆ ◆ ◆

## SUBCHAPTER D. MOTOR CARRIER AND OVERSIZE OR OVERWEIGHT VEHICLE OR LOAD ENFORCEMENT

**43 TAC §§224.110, 224.112, 224.114 - 224.116, 224.118,  
224.120, 224.122, 224.124, 224.126, 224.128, 224.130**

### STATUTORY AUTHORITY.

The department adopts new Chapter 224 under Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; Government Code, §2001.054, which specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license; Transportation Code, §502.0021, which authorizes the department to adopt rules to administer Transportation Code, Chapter 502; Transportation Code, §502.091(b), which authorizes the department to adopt and enforce rules to carry out IRP; Transportation Code, §621.008, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 621; Transportation Code, §622.002, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 622; Transportation Code, §623.002, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 623; Transportation Code, §623.271, which authorizes the department to impose an administrative penalty or revoke an oversize or overweight permit issued under Transportation Code, Chapter 623, and states that the notice and hearing requirements under Transportation Code, §643.2525 apply to the imposition of an administrative penalty or the revocation of a permit under §623.271; Transportation Code, §623.272, which authorizes the department to impose an administrative penalty on a shipper who violates a provision under §623.272, and states that the notice and hearing requirements under Transportation Code, §643.2525 apply to the imposition of an administrative penalty under §623.272; Transportation Code, §643.003, which authorizes the department to adopt rules to administer Transportation Code, Chapter 643; Transportation Code, §643.102, which authorizes a motor carrier to comply with the requirements under Transportation Code, §643.101 through self-insurance if it complies with the requirements; Transportation Code, §643.251, which authorizes the department to impose an administrative penalty against a motor carrier required to register under Subchapter B of Transportation Code, Chapter 643 that violates Chapter 643 or a rule or order adopted under Chapter 643; Transportation Code, §643.252, which authorizes the department to suspend, revoke, or deny a registration issued under Transportation Code, Chapter 643 or place on probation a motor carrier whose registration is suspended; Transportation Code, §643.2525, which provides the process for an administrative hearing under Transportation Code, Chapter 643; Transportation Code, §643.2526, which authorizes an applicant to appeal the denial

of an application for registration, renewal of registration, or reregistration under Transportation Code, Chapter 643; Transportation Code, §645.003, which authorizes the department to adopt rules providing for administrative penalties for a failure to register or submit information and documents under the unified carrier registration plan and agreement or for a violation of the unified carrier registration plan and agreement; Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and duties of the department; and the statutory authority referenced throughout this preamble and in the rule text, which is incorporated herein by reference.

**CROSS REFERENCE TO STATUTE.** These new rules implement Government Code, Chapter 2001; and Transportation Code, Chapters 502, 621-623, 643, 645, 1002 and 1003.

§224.115. *Administrative Penalty and Sanction Assessment; Probation of Suspension*

(a) Amount of administrative penalty under Transportation Code, §623.271.

(1) Transportation Code, §623.271 governs the amount of an administrative penalty that the department may assess against a person or the holder of an oversize or overweight permit, as applicable.

(2) 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.

(3) 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 or 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.

(4) 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.

(5) Each day a violation continues or occurs is a separate violation for purposes of imposing an administrative penalty.

(b) Amount of administrative penalty under Transportation Code, §623.272.

(1) Transportation Code, §623.272 governs the amount of an administrative penalty that the department may assess against a shipper.

(2) The amount of an administrative penalty imposed under this subsection is calculated in the same manner as the amount of an administrative penalty imposed under subsection (a) of this section.

(c) Amount of administrative penalty under Transportation Code, §643.251.

(1) Transportation Code, §643.251 governs the amount of an administrative penalty that the department may assess against a motor carrier that is required to register under Subchapter B of Chapter 643 of the Transportation Code and violates Transportation Code, Chapter 643 or a rule or order adopted under Chapter 643.

(2) In an action brought by the department, the aggregate amount of administrative penalty shall not exceed \$5,000 unless it is found that the motor carrier knowingly committed a violation.

(3) In an action brought by the department, if it is found that the motor carrier 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.

(4) In an action brought by the department, if it is found that the motor carrier knowingly committed multiple violations, the aggregate amount of administrative penalty for the multiple violations shall not exceed \$30,000.

(5) Each day a violation continues or occurs is a separate violation for purposes of imposing an administrative penalty.

(d) Probation of suspension under Transportation Code, §643.252.

(1) Transportation Code, §643.252 authorizes the department to place on probation a motor carrier whose registration is suspended.

(2) In determining whether to probate a suspension of a motor carrier's registration, the department will consider the factors listed in Transportation Code, §643.251 regarding the amount of an administrative penalty.

(3) The department shall set the length of the probation based on the seriousness of the violation and previous violations by the motor carrier.

(4) The department will require that the motor carrier report monthly to the department any information necessary to determine compliance with the terms of the probation.

(e) The department will publish a disciplinary matrix on the department website to provide guidance to motor carriers on the penalties and sanctions that may be assessed for the most common violations. The department will consider the disciplinary matrix published at the time of the violation; however, the disciplinary matrix does not prevent the department from seeking administrative penalties and sanctions above or below the recommended ranges listed in the disciplinary matrix. Also, the disciplinary matrix does not prevent the director from ordering administrative penalties and sanctions above or below the recommended ranges listed in the disciplinary matrix.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 12, 2024.

TRD-202401535

Laura Moriaty

General Counsel

Texas Department of Motor Vehicles

Effective date: June 1, 2024

Proposal publication date: December 29, 2023

For further information, please call: (512) 465-4160



## SUBCHAPTER E. CONTESTED CASES REFERRED TO SOAH

**43 TAC §§224.150, 224.152, 224.154, 224.156, 224.158,  
224.162, 224.164, 224.166**

STATUTORY AUTHORITY.

The department adopts new Chapter 224 under Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; Government Code, §2001.054, which specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license; Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise that authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license holders; ensure that the distribution, sale and lease of motor vehicles is conducted as required by statute and board rules; to prevent fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles; and to enforce and administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651, which authorizes the board to deny an application for a license, revoke or suspend a license, place on probation a person whose license has been suspended, or reprimand a licensee; Occupations Code, §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code, Chapter 2302; Transportation Code, §502.0021, which authorizes the department to adopt rules to administer Transportation Code, Chapter 502; Transportation Code, §502.091(b), which authorizes the department to adopt and enforce rules to carry out IRP; Transportation Code, §503.002, which authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503; Transportation Code, §621.008, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 621; Transportation Code, §622.002, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 622; Transportation Code, §623.002, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 623; Transportation Code, §623.271, which authorizes the department to impose an administrative penalty or revoke an oversize or overweight permit issued under Transportation Code, Chapter 623, and states that the notice and hearing requirements under Transportation Code, §643.2525 apply to the imposition of an administrative penalty or the revocation of a permit under §623.271; Transportation Code, §623.272, which authorizes the department to impose an administrative penalty on a shipper who violates a provision under §623.272, and states that the notice and hearing requirements under Transportation Code, §643.2525 apply to the imposition of an administrative penalty under §623.272; Transportation Code, §643.003, which authorizes the department to adopt rules to administer Transportation Code, Chapter 643; Transportation Code, §643.102, which authorizes a motor carrier to comply with the requirements under Transportation Code, §643.101 through self-insurance if it complies with the requirements; Transportation Code, §643.251, which authorizes the department to impose an administrative penalty against a motor carrier required to register under Subchapter B of Transportation Code, Chapter 643 that violates Chapter 643 or a rule or order adopted under Chapter 643; Transportation Code, §643.252, which

authorizes the department to suspend, revoke, or deny a registration issued under Transportation Code, Chapter 643 or place on probation a motor carrier whose registration is suspended; Transportation Code, §643.2525, which provides the process for an administrative hearing under Transportation Code, Chapter 643; Transportation Code, §643.2526, which authorizes an applicant to appeal the denial of an application for registration, renewal of registration, or reregistration under Transportation Code, Chapter 643; Transportation Code, §645.003, which authorizes the department to adopt rules providing for administrative penalties for a failure to register or submit information and documents under the unified carrier registration plan and agreement or for a violation of the unified carrier registration plan and agreement; Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and duties of the department; and the statutory authority referenced throughout this preamble and in the rule text, which is incorporated herein by reference.

CROSS REFERENCE TO STATUTE. These new rules implement Government Code, Chapter 2001; Occupations Code, Chapters 2301 and 2302; and Transportation Code, Chapters 502, 503, 621-623, 643, 645, and 1002-1005.

§224.156. *Reply to Notice of Hearing and Default Proceedings.*

(a) A party may file a written reply or pleading to respond to all allegations. The written reply or responsive pleading must be filed with SOAH in accordance with SOAH rules and must identify the SOAH and department docket numbers, as reflected in the notice of hearing.

(b) Any party filing a reply or responsive pleading shall serve a copy of the reply or responsive pleading on each party or party's authorized representative in compliance with SOAH rules.

(c) A party may file an amended or supplemental reply or responsive pleading in accordance with SOAH rules.

(d) If a party properly noticed under this chapter does not appear at the hearing, a party appearing at the hearing may request that the ALJ dismiss the contested case from the SOAH docket. If the contested case is dismissed from the SOAH docket, the case may be presented to the final order authority for disposition pursuant to SOAH rules and §224.29 of this title (relating to Delegation of Final Order Authority).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 12, 2024.

TRD-202401536

Laura Moriaty

General Counsel

Texas Department of Motor Vehicles

Effective date: June 1, 2024

Proposal publication date: December 29, 2023

For further information, please call: (512) 465-4160



SUBCHAPTER F. BOARD PROCEDURES IN  
CONTESTED CASES

**43 TAC §§224.190, 224.192, 224.194, 224.196, 224.198,  
224.200, 224.202, 224.204, 224.206**

STATUTORY AUTHORITY.



The department adopts new Chapter 224 under Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; Government Code, §2001.054, which specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license; Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise that authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license holders; ensure that the distribution, sale and lease of motor vehicles is conducted as required by statute and board rules; to prevent fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles; and to enforce and administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651, which authorizes the board to deny an application for a license, revoke or suspend a license, place on probation a person whose license has been suspended, or reprimand a licensee; Occupations Code, §2301.709, which requires the board to adopt rules that establish standards for reviewing a case under Subchapter O of Chapter 2301 of the Occupations Code; Occupations Code, §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code, Chapter 2302; Transportation Code, §502.0021, which authorizes the department to adopt rules to administer Transportation Code, Chapter 502; Transportation Code, §502.091(b), which authorizes the department to adopt and enforce rules to carry out IRP; Transportation Code, §503.002, which authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503; Transportation Code, §621.008, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 621; Transportation Code, §622.002, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 622; Transportation Code, §623.002, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 623; Transportation Code, §623.271, which authorizes the department to impose an administrative penalty or revoke an oversize or overweight permit issued under Transportation Code, Chapter 623, and states that the notice and hearing requirements under Transportation Code, §643.2525 apply to the imposition of a permit under §623.271; Transportation Code, §623.272, which authorizes the department to impose an administrative penalty on a shipper who violates a provision under §623.272, and states that the notice and hearing requirements under Transportation Code, §643.2525 apply to the imposition of an administrative penalty under §623.272; Transportation Code, §643.003, which authorizes the department to adopt rules to administer Transportation Code, Chapter 643; Transportation Code, §643.251, which authorizes the department to impose an administrative penalty against a motor carrier required to register under Subchapter B of Transportation Code, Chapter 643 that violates Chapter 643 or a rule or order adopted under Chapter 643; Transportation Code, §643.252, which authorizes the department to suspend, revoke, or deny a registration issued under Transportation Code, Chapter 643 or place on probation

a motor carrier whose registration is suspended; Transportation Code, §643.2525, which provides the process for an administrative hearing under Transportation Code, Chapter 643; Transportation Code, §643.2526, which authorizes an applicant to appeal the denial of an application for registration, renewal of registration, or reregistration under Transportation Code, Chapter 643; Transportation Code, §645.003, which authorizes the department to adopt rules providing for administrative penalties for a failure to register or submit information and documents under the unified carrier registration plan and agreement or for a violation of the unified carrier registration plan and agreement; Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and duties of the department; Transportation Code, §1003.005, which authorizes the board by rule to delegate any power relating to a contested case, including the power to issue a final order, to one or more board members or certain department staff; and the statutory authority referenced throughout this preamble and in the rule text, which is incorporated herein by reference.

**CROSS REFERENCE TO STATUTE.** These new rules implement Government Code, Chapter 2001; Occupations Code, Chapters 2301 and 2302; and Transportation Code, Chapters 502, 503, 621-623, 643, 645, and 1002-1005.

*§224.190. Purpose and Scope.*

This subchapter describes procedures for the board to review and issue a final order in a contested case in which:

- (1) a SOAH ALJ has submitted a final proposal for decision for consideration by the board or board delegate with final order authority,
- (2) a party has appealed an interlocutory cease-and-desist order issued by an ALJ, or
- (3) a party affected by a statutory stay order issued by an ALJ requested a hearing to modify, vacate, or clarify the extent and application of the statutory stay order.

*§224.196. Request for Oral Presentation.*

(a) At least 30 days prior to the scheduled date of a board meeting, the department shall notify the parties regarding the opportunity to attend and provide an oral presentation concerning a proposal for decision before the board. The department will deliver notice electronically to the last known email address provided to the department by the party or party's authorized representative in accordance with §224.11 of this title (relating to Filing and Service of Documents).

(b) If a party wants to make an oral presentation at the board meeting, a party must submit a written request for an oral presentation to the department's contact listed in the notice provided under subsection (a) of this section and copy all other parties in accordance with §224.11 at least 14 days prior to the date of the board meeting at which the party's contested case will be reviewed.

(c) If more than one party was not adversely affected by the proposal for decision, such parties may agree on the order of their presentations in lieu of the order prescribed under §224.202 of this title (relating to Order of Oral Presentations to the Board). The order of presentations will be determined under §224.202 of this title if the parties who were not adversely affected by the proposal for decision do not timely provide the department and the other parties with notice under subsection (b) of this section regarding their agreed order of presentation.

(d) If a party timely submits a written request for an oral presentation, that party may make an oral presentation at the board meet-

ing. If a party fails to timely submit a written request for an oral presentation, that party shall not make an oral presentation at the board meeting.

(e) Section 206.22 of this title (relating to Public Access to Board Meetings) authorizes a party to speak as a public commenter regarding the party's contested case during the posted agenda item for the contested case; however, a party is not authorized to make a public comment regarding the party's contested case under §206.22 in addition to making an oral presentation regarding the party's contested case under this subchapter.

§224.198. *Written Materials and Evidence.*

(a) If a party wants to provide written materials at the board meeting, the party must provide the written materials to the department and all other parties in accordance with §224.11 of this title (relating to Filing and Service of Documents) at least 21 days prior to the date of the board meeting. If a party fails to timely provide written materials to the department or any other party, the department shall not provide the written materials to the board and the party shall not provide the written materials to the board at the board meeting. Non-parties are not authorized to provide written materials to the board.

(b) For the purposes of this section, written materials are defined as language or images including photographs or diagrams, that are contained in the SOAH administrative record and recorded in paper form except as stated otherwise in this subsection. The language or images in the written materials must be taken without changes from the SOAH administrative record; however, proposed final orders and draft motions for possible board action are allowed to be included in a party's written materials even if they contain arguments or requests that are not contained in the SOAH administrative record. Written materials shall be limited to evidence contained in the SOAH administrative record and consistent with the scope of the board's authority to act under Government Code, §2001.058(e) and Occupations Code, Chapters 2301 and 2302, and Transportation Code, Chapters 502, 503, 621-623, 643, 645, or 1001-1005, as applicable.

(c) All information in the written materials shall include a citation to the SOAH administrative record on all points to specifically identify where the information is located. The citations may be provided in an addendum to the written materials that is not counted against the 15-page limit under subsection (d) of this section; however, the addendum must not include any information other than a heading that lists the name of the party, the caption for the contested case, and text that lists the citations and page numbers.

(d) Written materials shall be 8.5 inches by 11 inches and single-sided. Written materials must be double-spaced and at least 12-point type if in text form. Written materials are limited to 15 pages per party. If a party provides the department with written materials that contain more pages than the maximum allowed, the department shall not provide the written materials to the board and a party shall not provide the written materials to the board at the board meeting.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 12, 2024.

TRD-202401537

Laura Moriaty

General Counsel

Texas Department of Motor Vehicles

Effective date: June 1, 2024

Proposal publication date: December 29, 2023

For further information, please call: (512) 465-4160

◆ ◆ ◆  
SUBCHAPTER G. LEMON LAW AND  
WARRANTY PERFORMANCE CLAIMS

**43 TAC §§224.230, 224.232, 224.234, 224.236, 224.238, 224.240, 224.242, 224.244, 224.246, 224.248, 224.250, 224.252, 224.254, 224.256, 224.258, 224.260, 224.262, 224.264, 224.266, 224.268**

STATUTORY AUTHORITY.

The department adopts new Chapter 224 under Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; Occupations Code, §2301.152, which authorizes the board to provide for compliance with warranties; Occupations Code, §2301.155, which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301; Occupations Code, §2301.602, which requires the board to adopt rules for the enforcement and implementation of Subchapter M of Occupations Code, Chapter 2301; Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and duties of the department; and the statutory authority referenced throughout this preamble and in the rule text, which is incorporated herein by reference.

CROSS REFERENCE TO STATUTE. These new rules implement Government Code, Chapter 2001; Occupations Code, Chapter 2301; and Transportation Code, Chapters 1002 and 1003.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 12, 2024.

TRD-202401538

Laura Moriaty

General Counsel

Texas Department of Motor Vehicles

Effective date: June 1, 2024

Proposal publication date: December 29, 2023

For further information, please call: (512) 465-4160

# REVIEW OF AGENCY RULES

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039.

Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

## Proposed Rule Reviews

Texas State Library and Archives Commission

### Title 13, Part 1

The Texas State Library and Archives Commission (commission) files this notice of its intent to review and consider for re adoption, revision, or repeal Texas Administrative Code, Title 13, Part 1, Chapter 4, concerning School Library Programs, in accordance with Texas Government Code §2001.039.

The review will include, at a minimum, an assessment of whether the reasons for initially adopting the rules continue to exist. The commission will accept comments regarding the review. The comment period will last for 30 days following the publication of this notice in the *Texas Register*. Comments regarding this review may be submitted to Sarah Swanson, General Counsel, Texas State Library and Archives Commission, 1201 Brazos Street, P.O. Box 12927, Austin, Texas 78711-2927 or to [rules@tsl.texas.gov](mailto:rules@tsl.texas.gov) with the subject line "Rule Review."

TRD-202401632

Sarah Swanson

General Counsel

Texas State Library and Archives Commission

Filed: April 17, 2024



The Texas State Library and Archives Commission (commission) files this notice of its intent to review and consider for re adoption, revision, or repeal Texas Administrative Code, Title 13, Part 1, Chapter 8, concerning TexShare Library Consortium, in accordance with Texas Government Code §2001.039.

The review will include, at a minimum, an assessment of whether the reasons for initially adopting the rules continue to exist. The commission will accept comments regarding the review. The comment period will last for 30 days following the publication of this notice in the *Texas Register*. Comments regarding this review may be submitted to Sarah Swanson, General Counsel, Texas State Library and Archives Commission, 1201 Brazos Street, P.O. Box 12927, Austin, Texas 78711-2927 or to [rules@tsl.texas.gov](mailto:rules@tsl.texas.gov) with the subject line "Rule Review."

TRD-202401633

Sarah Swanson

General Counsel

Texas State Library and Archives Commission

Filed: April 17, 2024



Public Utility Commission of Texas

### Title 16, Part 2

The Public Utility Commission of Texas (commission) publishes this notice of intention to review Chapter 27, Substantive Rules Applicable to Telecommunications Service Providers, in accordance with Texas Government Code §2001.039, Agency Review of Existing Rules. The text of the rule sections will not be published. The text of the rules may be found in the Texas Administrative Code, Title 16, Economic Regulation, Part 2, or through the commission's website at [www.puc.texas.gov](http://www.puc.texas.gov).

Texas Government Code §2001.039 requires that each state agency review and readopt, readopt with amendments, or repeal the rules adopted by that agency pursuant to Texas Government Code, Chapter 2001, Subchapter B, Rulemaking. As required by Texas Government Code §2001.039(e), this review is to assess whether the reasons for adopting or re adopting a rule continue to exist. The commission requests specific comments from interested persons on whether the reasons for adopting each rule section in Chapter 27 continue to exist.

The commission has conducted a review of the rules based on comments received in response to the preliminary notice published in the *Texas Register* on October 6, 2023 (48 TexReg 5867) and proposes amendments of several rules throughout the chapter. The commission contemporaneously proposes amendments in the Proposed Rules section of the *Texas Register*.

If it is determined during this review that any other section of Chapter 27 needs to be repealed or amended, the repeal or amendment will be initiated under a separate proceeding. Thus, this notice of intention to review Chapter 27 has no effect on the sections as they currently exist.

Interested persons may file comments on the review of Chapter 27 electronically through the interchange on the commission's website or may submit comments to the filing clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, by May 17, 2024. When filing comments, interested persons are requested to comment on the sections in the same order they are found in the chapter and to clearly designate which section is being commented upon. All comments should refer to Project Number 55307.

The notice of intention to review Chapter 27 is proposed for publication under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002, which provides the commission with the authority to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction and Texas Government Code §2001.039 which requires each state agency to review its rules every four years.

Cross Reference to Statutes: Texas Utilities Code Annotated, Title II, Public Utility Regulatory Act, §14.002; Texas Government Code §2001.039.

TRD-202401474  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: April 11, 2024



Texas Health and Human Services Commission

**Title 26, Part 1**

The Texas Health and Human Services Commission (HHSC) proposes to review and consider for reoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 26, Part 1, of the Texas Administrative Code:

Chapter 749, Minimum Standards for Child-Placing Agencies

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 749, Minimum Standards for Child-Placing Agencies, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to [CCRrules@hhs.texas.gov](mailto:CCRrules@hhs.texas.gov). When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 749" in the subject line. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register*.

The text of the rule sections being reviewed will not be published, but may be found in Title 26, Part 1, of the Texas Administrative Code or on the Secretary of State's website at State Rules and Open Meetings ([www.sos.texas.gov](http://www.sos.texas.gov)).

TRD-202401629  
Jessica Miller  
Director, Rules Coordination Office  
Texas Health and Human Services Commission  
Filed: April 17, 2024



Texas Department of Motor Vehicles

**Title 43, Part 10**

The Texas Department of Motor Vehicles (department) will review and consider whether to readopt, readopt with amendments, or repeal 43 Texas Administrative Code, Chapter 208, Employment Practices and Chapter 223, Compliance and Investigations Division. This review is being conducted pursuant to Government Code, §2001.039.

The board of the Texas Department of Motor Vehicles will assess whether the reasons for initially adopting these rules continue to exist and whether the rules should be repealed, readopted, or readopted with amendments.

If you want to comment on this rule review proposal, submit your written comments by 5:00 p.m. CDT on May 28, 2024. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to [rules@txdmv.gov](mailto:rules@txdmv.gov) or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

Any proposed changes to sections of this chapter will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day public comment period.

TRD-202401482  
Laura Moriaty  
General Counsel  
Texas Department of Motor Vehicles  
Filed: April 11, 2024



**Adopted Rule Reviews**

Texas Health and Human Services Commission

**Title 1, Part 15**

The Texas Health and Human Services Commission (HHSC) adopts the review of the chapter below in Title 1, Part 15, of the Texas Administrative Code (TAC):

Chapter 363, Texas Health Steps Comprehensive Care Program

Notice of the review of this chapter was published in the February 16, 2024, issue of the *Texas Register* (49 TexReg 881). HHSC received no comments concerning this chapter.

HHSC has reviewed Chapter 363 in accordance with Texas Government Code §2001.039, which requires state agencies to assess, every four years, whether the initial reasons for adopting a rule continue to exist. The agency determined that the original reasons for adopting all rules in the chapter continue to exist and readopts Chapter 363. Any amendments, if applicable, to Chapter 363 identified by HHSC in the rule review will be proposed in a future issue of the *Texas Register*.

This concludes HHSC's review of 1 TAC Chapter 363 as required by the Texas Government Code §2001.039.

TRD-202401618  
Jessica Miller  
Director, Rules Coordination Office  
Texas Health and Human Services Commission  
Filed: April 17, 2024



Texas Education Agency

**Title 19, Part 2**

The Texas Education Agency (TEA) adopts the review of 19 TAC Chapter 100, Charters, Subchapter AA, Commissioner's Rules Concerning Open-Enrollment Charter Schools, pursuant to Texas Government Code, §2001.039. The TEA proposed the review of 19 TAC Chapter 100, Subchapter AA, in the January 26, 2024 issue of the *Texas Register* (49 TexReg 424).

Relating to the review of Chapter 100, Subchapter AA, TEA finds that the reasons for the rules continue to exist. In the March 15, 2024 issue of the *Texas Register*, TEA proposed revisions to Subchapter AA to reorganize the subchapter as well as reflect changes to the Texas Education Code resulting from House Bill (HB) 1707, 88th Texas Legislature, Regular Session, 2023; Senate Bill (SB) 2032, 88th Texas Legislature, Regular Session, 2023; SB 879, 87th Texas Legislature, Regular Session, 2021; HB 189, 87th Texas Legislature, Regular Session, 2021; SB 1615, 87th Texas Legislature, Regular Session, 2021; and SB 2293, 86th Texas Legislature, 2019.

TEA received one comment related to the review of Subchapter AA. Following is the comment received related to the review of Subchapter AA and the corresponding response.

Comment. Manor ISD commented that the rules in Chapter 100, Subchapter AA, should continue to exist.

Response. The agency agrees.

TRD-202401621

Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

Filed: April 17, 2024



Department of State Health Services

### Title 25, Part 1

The Texas Health and Human Services Commission (HHSC), in its own capacity and on behalf of the Texas Department of State Health Services, adopts the review of the chapter below in Title 25, Part 1, of the Texas Administrative Code:

Chapter 27, Case Management for Children and Pregnant Women

Notice of the review of this chapter was published in the February 16, 2024, issue of the *Texas Register* (49 TexReg 882). HHSC received no comments concerning this chapter.

HHSC has reviewed Chapter 27 in accordance with Texas Government Code §2001.039, which requires state agencies to assess, every four years, whether the initial reasons for adopting a rule continue to exist. The agency determined that the original reasons for adopting all rules in the chapter continue to exist and readopts Chapter 27. Any amendments, if applicable, to Chapter 27 identified by HHSC in the rule review will be proposed in a future issue of the *Texas Register*.

This concludes HHSC's review of 25 TAC Chapter 27 as required by the Texas Government Code §2001.039.

TRD-202401601

Jessica Miller

Director, Rules Coordination Office

Department of State Health Services

Filed: April 15, 2024



Texas Health and Human Services Commission

### Title 26, Part 1

The Texas Health and Human Services Commission (HHSC) adopts the review of the chapter below in Title 26, Part 1, of the Texas Administrative Code (TAC):

Chapter 748, Minimum Standards for General Residential Operations

Notice of the review of this chapter was published in the February 9, 2024, issue of the *Texas Register* (49 TexReg 721). HHSC received no comments concerning this chapter.

HHSC has reviewed Chapter 748 in accordance with Texas Government Code §2001.039, which requires state agencies to assess, every four years, whether the initial reasons for adopting a rule continue to exist. The agency determined that the original reasons for adopting all rules in the chapter continue to exist and readopts Chapter 748. Any amendments, if applicable, to Chapter 748 identified by HHSC in the rule review will be proposed in a future issue of the *Texas Register*.

This concludes HHSC's review of 26 TAC Chapter 748 as required by the Texas Government Code §2001.039.

TRD-202401631

Jessica Miller

Director, Rules Coordination Office

Texas Health and Human Services Commission

Filed: April 17, 2024



The Texas Health and Human Services Commission (HHSC) adopts the review of the chapter below in Title 26, Part 1, of the Texas Administrative Code (TAC):

Chapter 900, Health and Specialty Care System

Notice of the review of this chapter was published in the February 9, 2024, issue of the *Texas Register* (49 TexReg 721). HHSC received no comments concerning this chapter.

HHSC has reviewed Chapter 900 in accordance with Texas Government Code §2001.039, which requires state agencies to assess, every four years, whether the initial reasons for adopting a rule continue to exist.

The agency determined that the original reasons for adopting all rules in the chapter continue to exist and readopts Chapter 900. Any amendments to Chapter 900 identified by HHSC in the rule review will be proposed in a future issue of the *Texas Register*.

This concludes HHSC's review of 26 TAC Chapter 900 as required by the Texas Government Code §2001.039.

TRD-202401625

Jessica Miller

Director, Rules Coordination Office

Texas Health and Human Services Commission

Filed: April 17, 2024



Texas Commission on Environmental Quality

### Title 30, Part 1

The Texas Commission on Environmental Quality (TCEQ) has completed its Rule Review of 30 Texas Administrative Code (TAC) Chapter 39, Public Notice, as required by Texas Government Code, §2001.039. Texas Government Code, §2001.039, requires a state agency to review and consider for re adoption, re adoption with amendments, or repeal each of its rules every four years. TCEQ published its Notice of Intent to Review these rules in the October 6, 2023, issue of the *Texas Register* (48 TexReg 5828).

The review assessed whether the initial reasons for adopting the rules continue to exist, and TCEQ has determined that those reasons exist. The rules in Chapter 39 are required because Chapter 39 implements various state statutes and federal regulations that prescribe the requirements for public notice of and public participation regarding applications for certain air quality; water quality; municipal, industrial and hazardous waste; underground injection control; and radioactive materials permits.

Public Comment

The public comment period closed on November 6, 2023. TCEQ did not receive comments on the rules review of this chapter.

As a result of the review, TCEQ finds that the reasons for adopting the rules in 30 TAC Chapter 39 continue to exist and readopts these sections in accordance with the requirements of Texas Government Code, §2001.039.

TRD-202401569

Charmaine Backens  
Deputy Director, Environmental Law Division  
Texas Commission on Environmental Quality  
Filed: April 12, 2024



The Texas Commission on Environmental Quality (TCEQ) has completed its Rule Review of 30 Texas Administrative Code (TAC) Chapter 50, Action on Applications and Other Authorizations, as required by Texas Government Code (TGC), §2001.039. TGC, §2001.039, requires a state agency to review and consider for re-adoption, re-adoption with amendments, or repeal each of its rules every four years. TCEQ published its Notice of Intent to Review these rules in the October 6, 2023, issue of the *Texas Register* (48 TexReg 5828).

The review assessed whether the initial reasons for adopting the rules continue to exist and TCEQ has determined that those reasons exist. The rules in Chapter 50 are required because Chapter 50 provides the procedures for action by the commission and by the executive director regarding applications for certain air quality; water quality; municipal, industrial and hazardous waste; underground injection control; and radioactive materials permits as well as water quality management plans.

#### Public Comment

The public comment period closed on November 6, 2023. TCEQ did not receive comments on the rules review of this chapter.

As a result of the review, TCEQ finds that the reasons for adopting the rules in 30 TAC Chapter 50 continue to exist and readopts these sections in accordance with the requirements of TGC, §2001.039.

TRD-202401570

Charmaine Backens  
Deputy Director, Environmental Law Division  
Texas Commission on Environmental Quality  
Filed: April 12, 2024



The Texas Commission on Environmental Quality (TCEQ) has completed its Rule Review of 30 Texas Administrative Code (TAC) Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment, as required by Texas Government Code (TGC), §2001.039. TGC, §2001.039, requires a state agency to review and consider for re-adoption, re-adoption with amendments, or repeal each of its rules every four years. TCEQ published its Notice of Intent to Review these rules in the October 6, 2023, issue of the *Texas Register* (48 TexReg 5829).

The review assessed whether the initial reasons for adopting the rules continue to exist, and TCEQ has determined that those reasons exist. The rules in Chapter 55 are required to provide the procedures for public meetings, responding to public comment and requests for contested case hearing regarding applications for certain air quality; water quality; municipal, industrial and hazardous waste; underground injection control; and water rights permits as well as priority groundwater management areas and groundwater conservation districts

#### Public Comment

The public comment period closed on November 6, 2023. TCEQ did not receive comments on the rules review of this chapter.

As a result of the review, TCEQ finds that the reasons for adopting the rules in 30 TAC Chapter 55 continue to exist and readopts these sections in accordance with the requirements of TGC, §2001.039.

TRD-202401572

Charmaine Backens  
Deputy Director, Environmental Law Division  
Texas Commission on Environmental Quality  
Filed: April 12, 2024



The Texas Commission on Environmental Quality (TCEQ) has completed its Rule Review of 30 Texas Administrative Code (TAC) Chapter 352, Coal Combustion Residuals Waste Management, as required by Texas Government Code (TGC), §2001.039. TGC, §2001.039, requires a state agency to review and consider for re-adoption, re-adoption with amendments, or repeal each of its rules every four years. TCEQ published its Notice of Intent to Review these rules in the October 6, 2023, issue of the *Texas Register* (48 TexReg 5829).

The review assessed whether the initial reasons for adopting the rules continue to exist and TCEQ has determined that those reasons exist. The rules in Chapter 352 are required to implement the requirements of 40 Code of Federal Regulations Part 257, Subpart D for management of coal combustion residuals (CCR) in landfills and surface impoundments and implement procedural requirements for the state's CCR registration and compliance monitoring programs. TCEQ administers an EPA-approved CCR program in Texas by application of the rules in Chapter 352.

#### Public Comment

The public comment period closed on November 6, 2023. TCEQ did not receive comments on the rules review of this chapter.

As a result of the review, TCEQ finds that the reasons for adopting the rules in 30 TAC Chapter 352 continue to exist and readopts these sections in accordance with the requirements of TGC, §2001.039.

TRD-202401571

Charmaine Backens  
Deputy Director, Environmental Law Division  
Texas Commission on Environmental Quality  
Filed: April 12, 2024



### Department of Aging and Disability Services

#### Title 40, Part 1

The Texas Health and Human Services Commission (HHSC), as the successor agency of the Texas Department of Aging and Disability Services (DADS), adopts the review of the chapter below in Title 40, Part 1, of the Texas Administrative Code (TAC):

#### Chapter 3, Responsibilities of State Facilities

Notice of the review of this chapter was published in the March 1, 2024, issue of the *Texas Register* (49 TexReg 1289). HHSC received no comments concerning this chapter.

HHSC has reviewed Chapter 3 in accordance with Texas Government Code §2001.039, which requires state agencies to assess, every four years, whether the initial reasons for adopting a rule continue to exist.

The agency determined that the original reasons for adopting all rules in the chapter continue to exist and readopts Chapter 3. Any amendments, if applicable, to Chapter 3 identified by HHSC in the rule review will be proposed in a future issue of the *Texas Register*.

This concludes HHSC's review of 40 TAC Chapter 3 as required by the Texas Government Code §2001.039.

TRD-202401623

Jessica Miller  
Director, Rules Coordination Office  
Department of Aging and Disability Services  
Filed: April 17, 2024



The Texas Health and Human Services Commission (HHSC), as the successor agency of the Texas Department of Aging and Disability Services (DADS), adopts the review of the chapter below in Title 40, Part 1, of the Texas Administrative Code (TAC):

Chapter 5, Provider Clinical Responsibilities--Intellectual Disability Services

Notice of the review of this chapter was published in the March 1, 2024, issue of the *Texas Register* (49 TexReg 1290). HHSC received no comments concerning this chapter.

HHSC has reviewed Chapter 5 in accordance with Texas Government Code §2001.039, which requires state agencies to assess, every four years, whether the initial reasons for adopting a rule continue to exist.

The agency determined that the original reasons for adopting rules in the chapter continue to exist and readopts Chapter 5 except for:

§5.13, References;

§5.14, Distribution;

§5.409, Documenting and Reporting Behavior Therapy Programs that Use Highly Restrictive Procedures;

§5.411, References; and

§5.412, Distribution.

The identified repeals and any amendments, if applicable, to Chapter 5 identified by HHSC in the rule review will be proposed in a future issue of the *Texas Register*.

This concludes HHSC's review of 40 TAC Chapter 5 as required by the Texas Government Code §2001.039.

TRD-202401626  
Jessica Miller  
Director, Rules Coordination Office  
Department of Aging and Disability Services  
Filed: April 17, 2024



The Texas Health and Human Services Commission (HHSC), as the successor agency to Texas Department of Aging and Disability Services (DADS), adopts the review of the chapter below in Title 40, Part 1, of the Texas Administrative Code:

Chapter 55, Contracting to Provide Home-Delivered Meals

Notice of the review of this chapter was published in the January 5, 2024, issue of the *Texas Register* (49 TexReg 62). HHSC received multiple comments from one commenter concerning this chapter. A summary of the comments and HHSC's response follows.

Comments: One commenter suggested updating and revising terminology; providing nutritional information to individuals quarterly instead of monthly and removing the annual requirement for a written plan for nutrition education; requiring the provider agency to give a copy of inspection results to the contract manager upon request instead of within five calendar days of receiving the results; using the Dietary Reference Intake (DRI) and removing the requirement for a menu to offer meals of varying temperatures; removing the requirement of physician's documentation of client needs; allowing frozen, chilled,

or shelf-stable meals at any time rather than only during emergency or inclement weather situations; removing the requirement for documentation of authorized services and revising service initiation and related process timeliness requirements; revising food delivery timeliness requirements and removing the requirement for the individual or responsible party to be available to accept the delivery; adding phone and email to the communication options the provider may use to notify HHSC or the case manager of an incident that prevents delivery of meals; removing the annual requirement for a client satisfaction survey and instead allowing the provider to determine the timeline and allowing the survey to be of a sample of clients; removing the annual requirement for the provider to monitor the food preparation site and only providing the monitoring results to HHSC upon request; allowing the provider to use phone or email to notify the individual's case manager of service suspension and removing the ability of the provider to suspend services for the client repeatedly not being available to accept the delivery; requiring HHSC to negotiate service termination dates with the provider; removing the requirement for the provider to donate towards the cost of a meal and expanding the scenarios under which HHSC must reimburse the provider agency for the cost of failed meal deliveries; and allowing providers to follow their own internal complaint procedures.

Response: HHSC will consider making these changes during a future amendment.

HHSC has reviewed Chapter 55 in accordance with Texas Government Code §2001.039, which requires state agencies to assess, every four years, whether the initial reasons for adopting a rule continue to exist. The agency determined that the original reasons for adopting all rules in the chapter continue to exist and readopts Chapter 55. Any amendments, if applicable, to Chapter 55 identified by HHSC in the rule review will be proposed in a future issue of the *Texas Register*.

This concludes HHSC's review of 40 TAC Chapter 55 as required by the Texas Government Code §2001.039.

TRD-202401583  
Jessica Miller  
Director, Rules Coordination Office  
Department of Aging and Disability Services  
Filed: April 15, 2024



The Texas Health and Human Services Commission (HHSC), as the successor agency to Texas Department of Aging and Disability Services, adopts the review of the chapter below in Title 40, Part 1, of the Texas Administrative Code:

Chapter 60, Contracting to Provide Programs of All-Inclusive Care for the Elderly (PACE)

Notice of the review of this chapter was published in the January 5, 2024, issue of the *Texas Register* (49 TexReg 63). HHSC received no comments concerning this chapter.

HHSC has reviewed Chapter 60 in accordance with Texas Government Code §2001.039, which requires state agencies to assess, every four years, whether the initial reasons for adopting a rule continue to exist. The agency determined that the original reasons for adopting all rules in the chapter continue to exist and readopts Chapter 60. Any amendments, if applicable, to Chapter 60 identified by HHSC in the rule review will be proposed in a future issue of the *Texas Register*.

This concludes HHSC's review of 40 TAC Chapter 60 as required by the Texas Government Code §2001.039.

TRD-202401581

Jessica Miller  
Director, Rules Coordination Office  
Department of Aging and Disability Services  
Filed: April 15, 2024



Texas Department of Motor Vehicles

**Title 43, Part 10**

The Texas Department of Motor Vehicles (department) files this notice of readoption of Title 43 Texas Administrative Code (TAC), Part 10, Chapter 206, Management; Chapter 215, Motor Vehicle Distribution; and Chapter 221, Salvage Vehicle Dealers, subject to the amendments and repeals in Chapters 206, 215, and 221 that are also published in this issue of the *Texas Register*. The review was conducted pursuant to Government Code, §2001.039.

Notice of the department's intention to review was published in the December 29, 2023, issue of the *Texas Register* (48 TexReg 8393). The department did not receive any comments on the rule reviews.

As a result of the review, the department readopts Chapters 206, 215, and 221 in accordance with the requirements of Government Code, §2001.039, with amendments and repeals in Chapters 206, 215, and 221 resulting from the rule review also published in this issue of the *Texas Register*. The department has determined that the reasons for initially adopting the readopted rules continue to exist.

This concludes the review of Chapters 206, 215, and 221.

TRD-202401493

Laura Moriaty  
General Counsel  
Texas Department of Motor Vehicles  
Filed: April 12, 2024





# TABLES & GRAPHICS

---

---

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

---

Figure: 26 TAC §744.1301(a)

<b>Type of training:</b>	<b>Who is required to take the training?</b>	<b>When must the training be completed?</b>
(1)(A) Orientation to your operation as required by §744.1303 of this division (relating to What must orientation for employees at my operation include?).	(B) Each employee.	(C) Within seven days of employment and before having unsupervised access to a child in care.
(2)(A) Eight clock hours of pre-service training as required by §744.1305 of this division (relating to What areas of training must the pre-service training for caregivers cover?).	(B) Each non-exempt caregiver. A caregiver may be exempt from pre-service training as specified in §744.1307 of this division (relating to Are any caregivers exempt from the pre-service training?).	(C) For non-exempt caregivers, within 90 days of employment and before being counted in the child/caregiver ratio.
(3)(A) Pediatric first aid with rescue breathing and choking as required by §744.1315(a) of this division (relating to Who must have pediatric first aid and pediatric CPR training?).	(B) Each caregiver, site director, program director, and operation director.	(C)(i) Within 90 days of employment and before having unsupervised access to a child in care; and  (C)(ii) The person must stay current in this training.
(4)(A) Pediatric CPR as required by §744.1315(b) of this division.	(B) Each caregiver, site director, program director, and operation director.	(C)(i) Within 90 days of employment; and  (C)(ii) The person must stay current in this training.
(5)(A) 15 clock hours of annual training as required by §744.1309 of this division (relating to What areas of training must the annual training for caregivers and site directors cover?).	(B) Each caregiver and site director.	(C)(i) Within 12 months of employment; and  (C)(ii) During each 12-month period, and as further required by §744.1313 of this division (relating to When must annual training for my caregivers and director be obtained?).

<p>(6)(A) 20 clock hours of annual training as required by §744.1311 of this division (relating to What areas of training must the annual training for an operation director or a program director cover?).</p>	<p>(B) Each program director or operation director.</p>	<p>(C)(i) Within 12 months of employment; and  (C)(ii) During each 12-month period, and as further required by §744.1313 of this division.</p>
<p>(7)(A) Two clock hours of transportation <u>safety</u> training as required by §744.1317 of this division (relating to What additional training must an employee and director have if the operation transports children?).</p>	<p>(B)(i) The site director, and program director or operation director, if the operation transports a child whose chronological or developmental age is younger than nine years old; and  (B)(ii) Each employee who transports a child whose chronological or developmental age is younger than nine years old.</p>	<p>(C)(i) Prior to transporting children; and  (C)(ii) Annually thereafter.</p>
<p>(8)(A) <u>Water safety training as required by §744.1318 of this division (relating to What additional training must an employee and director have if the operation allows a child to access a swimming pool at or away from the operation?)</u></p>	<p>(B)(i) <u>The site director, and program director or operation director, if the operation allows a child to access a swimming pool at or away from the operation; and</u>  (B)(ii) <u>Each employee who accompanies a child to a swimming pool at or away from the center.</u></p>	<p>(C)(i) <u>Prior to accompanying a child to a swimming pool; and</u>  (C)(ii) <u>Annually thereafter.</u></p>

Figure: 26 TAC §744.1403(a)

<b>Type of training:</b>	<b>Who is required to take the training?</b>	<b>When must the training be completed?</b>
(1)(A) Orientation to your child-care operation, as required by §744.1303 of this subchapter (relating to What must orientation for employees at my operation include?).	(B)(i) Each substitute;  (B)(ii) Each contractor; and  (B)(iii) Each volunteer, except as noted in §744.1401(d) of this division (relating to What minimum standards must substitutes, volunteers, or contractors comply with?).	(C) Before beginning the relevant duties.
(2)(A) Eight clock hours of pre-service training, as required by §744.1305 of this subchapter (relating to What areas of training must the pre-service training for caregivers cover?).	(B) Each substitute, volunteer, and contractor who is counted in the child to caregiver ratio, except as noted in §744.1401(d) of this division.	(C)(i) Before the substitute, volunteer, or contractor may be counted in the child to caregiver ratio; and  (C)(ii) Within 90 days of beginning the relevant caregiver duties.
(3)(A) Pediatric first aid with rescue breathing as required by 744.1315(a) of this subchapter (relating to Who must have pediatric first-aid and pediatric CPR training?).	(B) Each substitute, volunteer, and contractor who is counted in the child to caregiver ratio, except as noted in §744.1401(d) of this division.	(C)(i) Within 90 days of beginning the relevant caregiver duties and before having unsupervised access to a child in care; and  (C)(ii) The person must stay current in this training.
(4)(A) Pediatric CPR as required by §744.1315(b) of this subchapter.	(B) Each substitute, volunteer, and contractor who is counted in the child to caregiver ratio, except as noted in §744.1401(d) of this division.	(C)(i) Within 90 days of beginning the relevant caregiver duties; and  (C)(ii) The person must stay current in this training.

<p>(5)(A) 15 hours of annual clock training as required by §744.1309 of this subchapter (relating to What areas of training must the annual training for caregivers and site directors cover?).</p>	<p>(B) Each substitute, volunteer, and contractor who is counted in the child to caregiver ratio, except as noted in §744.1401(d) of this division.</p>	<p>(C)(i) Within 12 months of beginning the relevant caregiver duties; and</p> <p>(C)(ii) During each 12-month period, as further required by §744.1313 of this subchapter (relating to When must annual training for my caregivers and director be obtained?).</p>
<p>(6)(A) Two clock hours of transportation <u>safety</u> training as required by §744.1317 of this subchapter (relating to What additional training must an employee and director have if the operation transports children?).</p>	<p>(B) Each substitute, volunteer, and contractor who transports a child whose chronological or developmental age is younger than nine years old.</p>	<p>(C)(i) Prior to transporting children; and</p> <p>(C)(ii) Annually, thereafter.</p>
<p>(7)(A) <u>Water safety training as required by §744.1318 of this subchapter (relating to What additional training must an employee and director have if the operation allows a child to access a swimming pool at or away from the operation?).</u></p>	<p><u>(B) Each substitute, volunteer, and contractor who accompanies a child to a swimming pool at or away from the operation.</u></p>	<p><u>(C)(i) Prior to accompanying a child to a swimming pool; and</u></p> <p><u>(C)(ii) Annually thereafter.</u></p>

Figure: 26 TAC §745.37(1)

Types of Child Day-Care Operations	Description of Operation	Type of Permit
(A) Listed Family Home	<p>A caregiver at least 18 years old that provides care in <u>the caregiver's [her]</u> own home for compensation, for three or fewer children unrelated to the caregiver, birth through 13 years, for at least:</p> <p>(i) four hours a day, three or more days a week, for three or more consecutive weeks; or</p> <p>(ii) four hours a day for 40 or more days in a period of 12 months.</p> <p>The total number of children in care, including children related to the caregiver, may not exceed 12.</p>	Listing (A caregiver who is subject to regulation as a listed family home may instead become a registered family home.)
(B) Registered Child-Care Home	<p>The primary caregiver provides regular care in the <u>primary caregiver's own home [residence]</u> for <u>up to [not more than] six unrelated children</u> from birth through 13 years[7] and may provide care after school hours for not more than six additional elementary school children, <u>for at least:</u></p> <p><u>(i) four hours a day, three or more days a week, for three or more consecutive weeks; or</u></p> <p><u>(ii) four hours a day for 40 or more days in a period of 12 months.</u></p> <p>The total number of children in care at any given time, including the children related to the caregiver, must not exceed 12.</p>	Registration
(C) Licensed Child-Care Home	<p>The primary caregiver provides care in the <u>primary caregiver's own home [residence]</u> for <u>seven to twelve</u></p>	License

	<p>children from birth through 13 years, for less than 24 hours a day, but at least two hours a day, three or more days a week.</p> <p>The total number of children in care varies with the ages of the children, but the total number of children in care at any given time, including the children related to the caregiver, must not exceed 12.</p>	
(D) <u>Licensed</u> Child-Care Center	An operation providing care at a location other than the <del>[permit holder's]</del> home <u>of the director, owner, or operator,</u> for seven or more children under 14 years of age, for less than 24 hours <u>a [per] day,</u> but at least two hours a day, three or more days a week.	License
<del>[(E) Employer-Based Child Care]</del>	<del>[A small employer providing care for up to 12 of the employees' children that are under 14 years of age, for less than 24 hours per day. The care is located on the employer's premises and in the same building where the parents work.]</del>	<del>[Compliance Certificate]</del>
<del>[(F) Shelter Care]</del>	<del>[A child care program at a temporary shelter, such as a family violence or homeless shelter, providing care for seven or more children under 14 years of age while the resident parent is away from the shelter. The child care program operates for at least four hours a day three days a week.]</del>	<del>[Compliance Certificate]</del>
(E) <del>{G}</del> Before or After-School Program	An operation that provides care <u>to children who attend pre-kindergarten through grade six</u> <del>[before, or after, or before and after, the customary school day and during school holidays,]</del> for at least two hours a day, <del>[and]</del> <u>three or more days a week</u> <del>[, to children who attend pre-kindergarten through grade six].</del>  A program may operate before,	License

	<u>after, or before and after the customary school day and during school holidays.</u>	
<u>(F)[(H)] School-Age Program</u>	<p>An operation that provides supervision and recreation, skills instruction, or skills training <u>to children who attend pre-kindergarten through grade six</u> for at least two hours a day, <del>[and]</del> <u>three or more days a week</u> <del>[to children attending pre-kindergarten through grade six].</del></p> <p>A <del>[school-age]</del> <u>program may operate</u> <del>[operates]</del> <u>before, [or] after, or before and after</u> the customary school day and <del>[may also operate]</del> during school holidays, the summer period, or any other time when school is not in session.</p>	License
<u>(G) Employer-Based Child Care</u>	<u>A small employer providing care for up to 12 of the employees' children that are under 14 years of age, for less than 24 hours a day. The care is located on the employer's premises and in the same building where the parents work.</u>	<u>Compliance Certificate</u>
<u>(H) Shelter Care</u>	<u>A child-care program at a temporary shelter, such as a family violence or homeless shelter, providing care for seven or more children under 14 years of age while the resident parent is away from the shelter. The child-care program operates for at least four hours a day three or more days a week.</u>	<u>Compliance Certificate</u>



Figure: 26 TAC §745.37(2)

Types of Residential Child-Care Operations	Description	Type of Permit
<del>[(A) Foster Family Home (Independent)]</del>	<del>[An operation that provides care for six or fewer children up to the age of 18 years.]</del>	<del>[License]</del>
<del>[(B) Foster Group Home (Independent)]</del>	<del>[An operation that provides care for seven to 12 children up to the age of 18 years.]</del>	<del>[License]</del>
(A) <del>(C)</del> General Residential Operation	<p>An operation that provides <del>[child]</del> care for <u>seven</u> <del>[13]</del> or more children up to the age of 18 years. The care <u>must</u> <del>[may]</del> include <u>child-care services and may also include programmatic services or treatment services.</u></p> <p>Residential treatment centers are a type of general residential operation.</p> <p><u>After obtaining a license for a general residential operation, an operation may apply for a certificate for a psychiatric residential youth treatment facility (PRYTF) as defined at §745.9051 of this chapter (relating to What do the following words and terms mean when used in this subchapter?). A PRYTF may provide psychiatric health treatments and services to individuals 21 years of age and younger.</u></p>	License
(B) <del>(D)</del> Child-Placing Agency (CPA)	A person, agency, or organization, other than a parent, who places or plans for the placement of a child in an adoptive home, foster home, or other residential care setting.	License
(C) <del>(E)</del> <del>[Child-Placing Agency]</del> Foster	An operation that a CPA <u>verifies and regulates, is the primary</u>	<u>Verification that a CPA issues.</u> <del>[(The CPA</del>

[Family]Home (also known as a "foster family home" or an "agency foster home")	residence of the foster parents, and provides care for six or fewer children, up to the age of 18 years[ <del>-, under the regulation of a child placing agency].</del>	<del>issues this. A CPA regulates its own foster family homes.}</del>
[ <del>(F) Child Placing Agency Foster Group Home]</del>	<del>[An operation that provides care for seven to 12 children, up to the age of 18 years, under the regulation of a child placing agency.]</del>	<del>[Verification (The CPA issues this. A CPA regulates its own foster group homes.)]</del>

Figure: 26 TAC §745.9075

Type and Amount of Fee	When the Fee is Due	Consequences for Failure to Pay a Fee on Time
(1) PRYTF Certificate Application Fee: \$890	Before we accept your application.	We will return your application as incomplete.
(2) PRYTF Certificate Renewal Fee: \$740	On the biennial anniversary of the date we issued your certificate.	If you do not pay your fee when it is due, we will not renew your certificate.

Figure: 26 TAC §745.9093(c)

Number of individuals in a PRYTF	Maximum amount of penalty
20 or less	\$100
21-40	\$150
41-60	\$200
61-80	\$250
81-100	\$375
More than 100	\$500

Figure: 26 TAC §746.1301(a)

<b>Type of training:</b>	<b>Who is required to take the training?</b>	<b>When must the training be completed?</b>
(1)(A) Orientation to your child-care center as required by §746.1303 of this division (relating to What must orientation for employees at my child-care center include?).	(B) Each employee.	(C) Within seven days of employment and before having unsupervised access to a child in care.
(2)(A) 24 clock hours of pre-service training as required by §746.1305 of this division (relating to What must be covered in pre-service training for caregivers?).	(B) Each nonexempt caregiver. A caregiver may be exempt from pre-service training as specified in §746.1307 of this division (relating to Are any caregivers exempt from the pre-service training?).	(C) For nonexempt caregivers:  (i) Eight hours before the caregiver may be counted in the child/caregiver ratio; and  (ii) 16 hours within 90 days of employment.
(3)(A) Pediatric first aid with rescue breathing as required by §746.1315(a) of this division (relating to Who must have pediatric first-aid and pediatric CPR training?).	(B) Each caregiver and child-care center director.	(C)(i) Within 90 days of employment and before having unsupervised access to a child in care; and  (C)(ii) The person must stay current in this training.
(4)(A) Pediatric CPR as required by §746.1315(b) of this division.	(B) Each caregiver and child-care center director.	(C)(i) Within 90 days of employment; and  (C)(ii) The person must stay current in this training.
(5) 24 clock hours of annual training as required by §746.1309 of this division (relating to What areas of training must the annual training for caregivers cover?).	(B) Each caregiver.	(C)(i) Within 12 months of employment; and  (C)(ii) During each 12-month period, and as further required by §746.1313 of this division (relating to When must annual

		training for my caregivers and director be obtained?).
(6)(A) 30 clock hours of annual training as required by §746.1311 of this division (relating to What areas of training must the annual training for my child-care center director cover?).	(B) A child-care center director.	(C)(i) Within 12 months of employment; and  (C)(ii) During each 12-month period, and as further required by §746.1313 of this division.
(7)(A) Two clock hours of transportation <u>safety</u> training as required by §746.1316 of this division (relating to What additional training must an employee and director have if the operation transports children?).	(B)(i) The child-care center director, if the center transports a child whose chronological or developmental age is younger than nine years old; and  (B)(ii) Each employee who transports a child whose chronological or developmental age is younger than nine years old.	(C)(i) Prior to transporting children; and  (C)(ii) Annually thereafter.
(8)(A) <u>Water safety training as required by §746.1325 of this division (relating to What additional training must an employee and director have if the child-care center allows a child to access a swimming pool at or away from the center?)</u>	(B)(i) <u>The child-care center director, if the center allows a child to access a swimming pool at or away from the center; and</u>  (B)(ii) <u>Each employee who accompanies a child to a swimming pool at or away from the center.</u>	(C)(i) <u>Prior to accompanying a child to a swimming pool; and</u>  (C)(ii) <u>Annually thereafter.</u>

Figure: 26 TAC §746.1403(a)

<b>Type of training:</b>	<b>Who is required to take the training?</b>	<b>When must the training be completed?</b>
(1)(A) Orientation to your child-care center as required by §746.1303 of this subchapter (relating to What must orientation for employees at my child-care center include?).	(B)(i) Each substitute;  (B)(ii) Each contractor; and  (B)(iii) Each volunteer, except as noted in §746.1401(d) of this division (relating to What minimum standards must substitutes, volunteers, or persons under contract with my center comply with?).	(C) Before beginning the relevant duties.
(2)(A) 24 clock hours of pre-service training as required by §746.1305 of this subchapter (relating to What must be covered in pre-service training for caregivers?).	(B) Each substitute, volunteer, and contractor who is counted in the child to caregiver ratio, except as noted in §746.1401(d) of this division.	(C)(i) 8 hours before the substitute, volunteer, or contractor may be counted in the child to caregiver ratio; and  (C)(ii) 16 hours within 90 days of beginning the relevant caregiver duties.
(3)(A) Pediatric first aid with rescue breathing, as required by 746.1315(a) of this subchapter (relating to Who must have pediatric first-aid and pediatric CPR training?).	(B) Each substitute, volunteer, and contractor who is counted in the child to caregiver ratio, except as noted in §746.1401(d) of this division.	(C)(i) Within 90 days of beginning the relevant caregiver duties and before having unsupervised access to a child in care; and  (C)(ii) The person must stay current in this training.

<p>(4)(A) Pediatric CPR as required by §746.1315(b) of this subchapter.</p>	<p>(B) Each substitute, volunteer, and contractor who is counted in the child to caregiver ratio, except as noted in §746.1401(d) of this division.</p>	<p>(C)(i) Within 90 days of beginning the relevant caregiver duties; and</p> <p>(C)(ii) The person must stay current in this training.</p>
<p>(5)(A) 24 hours of annual clock training, as required by §746.1309 of this subchapter (relating to What areas of training must the annual training for caregivers cover?).</p>	<p>(B) Each substitute, volunteer, and contractor who is counted in the child to caregiver ratio, except as noted in §746.1401(d) of this division.</p>	<p>(C)(i) Within 12 months of beginning the relevant caregiver duties; and</p> <p>(C)(ii) During each 12-month period, as further required by §746.1313 of this subchapter (relating to When must annual training for my caregivers and director be obtained?).</p>
<p>(6)(A) 2 clock hours of transportation <u>safety</u> training, as required by §746.1316 of this subchapter (relating to What additional training must an employee and director have if the operation transports children?).</p>	<p>(B) Each substitute, volunteer, and contractor who transports a child whose chronological or developmental age is younger than nine years old.</p>	<p>(C)(i) Prior to transporting children; and</p> <p>(C)(ii) Annually, thereafter.</p>
<p><u>(7)(A) Water safety training as required by §746.1325 of this subchapter (relating to What additional training must an employee and director have if the child-care center allows a child to access a swimming pool at or away from the center?).</u></p>	<p><u>(B) Each substitute, volunteer, and contractor who accompanies a child to a swimming pool at or away from the center.</u></p>	<p><u>(C)(i) Prior to accompanying a child to a swimming pool; and</u></p> <p><u>(C)(ii) Annually thereafter.</u></p>

Figure: 26 TAC §746.1801(a)

If the age of the youngest child in the group is...	Then you must have (number of caregivers) caregivers to supervise...	Every (number of children) children
0 - 23 months	1	1
2 years	1	2
3 years	1	6
4 years	1	8
5 years	1	10
6 years and older	1	12

Figure: 26 TAC §746.2101(a)

Ratio for [ <del>Splashing or</del> ] Wading Pools [ <del>(Two Feet Deep or Less)</del> ]		
If the age of the youngest child is...	Then you must have (number) adults to supervise...	Every (number) children.
0 - 23 months	1	1
	2	4
2 years	1	2
	2	5
3 years	1	6
4 years	1	16
5 years	1	20
6 - 8 years	1	22
9 years and older	1	25

Figure: 26 TAC §746.2105(b)

Ratio for Swimming Pools [ <del>(More Than Two Feet Deep)</del> ]		
If the age of the youngest child is...	Then you must have (number) adult to supervise...	Every (number) children.
0 - 23 months	1	1
2 years	1	2
3 years	1	6
4 years	1	8
5 years	1	10
6 years and older	1	12



Figure: 26 TAC §747.1303

<b>Type of training:</b>	<b>Who is required to take the training?</b>	<b>When must the training be completed?</b>
(1)(A) Orientation to your child-care home, as specified in §747.1301 of this division (relating to What must orientation for caregivers at my child-care home include?) <del>[7 within seven days of employment]</del> .	(B) Each caregiver.	(C) Within seven days of employment and before having unsupervised access to a child in care.
(2)(A) Pediatric first aid with rescue breathing and choking and pediatric CPR training, as specified in §747.1313 of this division (relating to Who must have pediatric first-aid and pediatric CPR training?).	(B) The primary caregiver, each substitute caregiver, and each assistant caregiver.	<p>(C)(i) For the primary caregiver, before we register or license the <u>child-care</u> <del>[child-care]</del> home, as required by §747.1003 <u>of this subchapter (relating to When must I meet qualifications to be a primary caregiver?)</u> and §747.1103 of this subchapter (relating to When must I meet qualifications to be a primary caregiver?);</p> <p>(C)(ii) For a substitute caregiver, before being counted in the child/caregiver ratio, as required by §747.1209 of this subchapter (relating to What minimum qualifications must a substitute caregiver meet?);</p> <p>(C)(iii) For an assistant caregiver, within 90 days of</p>

		employment; and  (C)(iv) Each caregiver must stay current in this training.
(3)(A) 15 clock hours of annual training, as specified in §747.1305 of this division (relating to What areas of training must the annual training for substitute and assistant caregivers cover?).	(B) Each substitute and assistant caregiver in a registered child-care home that is counted in the child/caregiver ratio on more than ten separate occasions in one training year.	(C)(i) Within 12 months of employment; and  (C)(ii) During each subsequent 12-month period, and as further required by §747.1311 of this division (relating to When must the annual training be obtained?).
(4)(A) 24 clock hours of annual training, as specified in §747.1305 of this division.	(B) Each substitute and assistant caregiver in a licensed child-care home that is counted in the child/caregiver ratio on more than ten separate occasions in one training year.	(C)(i) Within 12 months of employment; and  (C)(ii) During each subsequent 12-month period, and as further required by §747.1311 of this division.
(5)(A) 30 clock hours of annual training, as specified in §747.1309 of this division (relating to What areas of training must the annual training for the primary caregiver cover?).	(B) The primary caregiver.	(C)(i) Within 12 months of employment; and  (C)(ii) During each subsequent 12-month period, and as further required by §747.1311 of this division.
(6)(A) Two clock hours of transportation <u>safety</u> training as specified in §747.1314 of this division (relating to What additional training must an employee and caregiver have if the home transports children?).	(B)(i) The primary caregiver, if the operation transports a child whose chronological or developmental age is younger than nine years old; and  (B)(ii) Each substitute or assistant caregiver	(C)(i) Prior to transporting children and;  (C)(ii) Annually, thereafter.

	who transports a child whose chronological or developmental age is younger than nine years old.	
<u>(7)(A) Water safety training as required by §747.1323 of this division (relating to What additional training must an employee and caregiver have if the child-care home allows a child to access a swimming pool at or away from the home?)</u>	<u>(B)(i) The primary caregiver, if the home allows a child to access a swimming pool at or away from the home; and</u>  <u>(B)(ii) Each substitute or assistant caregiver who accompanies a child to a swimming pool at or away from the center.</u>	<u>(C)(i) Prior to accompanying a child to a swimming pool; and</u>  <u>(C)(ii) Annually thereafter.</u>

Figure: 26 TAC §747.2001(c)

Ratio for [ <del>Splashing or</del> ] Wading Pools [ <del>(Less Than Two Feet Deep)</del> ]		
If the age of the youngest child is...	Then you must have (number) adults to supervise...	A maximum of (number) children.
0 through 23 months	1	1
	2	6
2 years	1	5
	2	11
3 years	1	6
4 years	1	12
5 years	1	12
6 years and older	1	12

Figure: 26 TAC §747.2005(b)

Ratio for Swimming Pools [ <del>(More Than Two Feet Deep)</del> ]		
If the age of the youngest child in the group is...	Then you must have (number) adults to supervise...	Every (number) children.
0 through 23 months	1	1
2 years	1	2
3 years	1	6
4 years	1	8
5 years	1	10
6 years and older	1	12

Figure: 26 TAC §748.4809

<b>Topic</b>	<b>A PRYTF must comply with this rule:</b>	<b>Instead of this rule:</b>
Individuals Living in the Same Quarters	§748.4863 of this subchapter (relating to May individuals receiving different types of service live in the same living quarters?)	§748.1201 of this chapter (relating to May children receiving different types of service live in the same living quarters?)
Developing an Initial Service Plan	§748.4869 of this subchapter (relating to Who must be involved in developing an initial service plan?)	§748.1339 of this chapter (relating to Who must be involved in developing an initial service plan?)

# IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

## Office of the Attorney General

### Texas Water Code and Texas Health and Safety Code Settlement Notice

The State of Texas gives notice of the following proposed resolution of an environmental enforcement action under the Texas Water Code and the Texas Health and Safety Code. Before the State may enter into a voluntary settlement agreement, pursuant to section 7.110 of the Texas Water Code, the State shall permit the public to comment in writing. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreement if the comments disclose facts or considerations indicating that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the law.

Case Title and Court: *Harris County, Texas and the State of Texas v. Pasadena Refining System, Inc.*; Cause No. 2022-14296, in the 189th Judicial District, Harris County, Texas.

Background: Pasadena Refining System, Inc. (PRSI) owns and operates a petroleum refinery located at 111 Red Bluff Road, Pasadena, Harris County. On August 18, 2020, a fire at the refinery consumed a tank storing petroleum products, releasing plumes of smoke and creating detrimental conditions in the surrounding area. Additional emissions were released during the cleanup phase of the event. Harris County filed suit for PRSI's violations of Texas Clean Air Act and Texas Commission on Environmental Quality (TCEQ) rules promulgated thereunder. The State of Texas joined on behalf of the TCEQ, a necessary and indispensable party, against PRSI. PRSI implemented corrective actions via a TCEQ Corrective Action Plan, pursuant to TCEQ rules.

Proposed Settlement: The parties propose an Agreed Final Judgment that awards the payment of \$1,000,000 in civil penalties and \$80,000 in attorney's fees, to be equally divided between the State and Harris County, and post judgment interest at 8.5% per annum.

For a complete description of the proposed settlement, the Agreed Final Judgment should be reviewed in its entirety. Requests for copies of the proposed judgment and settlement, and written comments on the same, should be directed to Jake Marx, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, MC-066, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911, email: [Jake.Marx@oag.texas.gov](mailto:Jake.Marx@oag.texas.gov). Written comments must be received within 30 days of publication of this notice to be considered.

TRD-202401568  
Justin Gordon  
General Counsel  
Office of the Attorney General  
Filed: April 12, 2024



### Texas Water Code and Texas Health and Safety Code Settlement Notice

The State of Texas gives notice of the following proposed resolution of an environmental enforcement action under the Texas Water Code. Before the State may enter into a voluntary settlement agreement, pur-

suant to section 7.110 of the Texas Water Code, the State shall permit the public to comment in writing. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreement if the comments disclose facts or considerations indicating that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the law.

Case Title and Court: *Harris County, Texas and State of Texas, acting by and through the Texas Commission on Environmental Quality and the Department of State Health Services, Necessary and Indispensable Parties v. Mario Perez and Teresa Perez*; Cause No. 2019-63877, in the 55th Judicial District Court, Harris County, Texas.

Background: Defendants Mario Perez and Teresa Perez (collectively "Defendants") owned and operated a non-approved and malfunctioning on-site sewage system located at a residential property in Houston, Texas. Harris County, Texas filed suit against the Defendants for violations of the Texas Health and Safety Code and related regulations. The State of Texas, acting on behalf of the Texas Commission on Environmental Quality and the Department of State Health Services, joined the lawsuit as a necessary and indispensable party.

Proposed Settlement: The parties propose an Agreed Final Judgment, which assesses against the Defendants: \$8,000 in civil penalties, to be equally divided between Harris County, Texas and the State of Texas, and \$4,500 in attorney's fees to the State of Texas.

For a complete description of the proposed settlement, the Agreed Final Judgment should be reviewed in its entirety. Requests for copies of the proposed judgment and settlement, and written comments on the same, should be directed to Roel Torres, Assistant Attorney General, Office of the Attorney General of Texas, P.O. Box 12548, MC-066, Austin, Texas 78711-2548; (512) 463-2012; facsimile (512) 320-0911; email: [roel.torres@oag.texas.gov](mailto:roel.torres@oag.texas.gov). Written comments must be received within 30 days of publication of this notice to be considered.

TRD-202401603  
Justin Gordon  
General Counsel  
Office of the Attorney General  
Filed: April 15, 2024



## Comptroller of Public Accounts

### Certification of the Average Closing Price of Gas and Oil - March 2024

The Comptroller of Public Accounts, administering agency for the collection of the Oil Production Tax, has determined, as required by Tax Code, §202.058, that the average taxable price of oil for reporting period March 2024 is \$46.56 per barrel for the three-month period beginning on December 1, 2023, and ending February 29, 2024. Therefore, pursuant to Tax Code, §202.058, oil produced during the month of March 2024, from a qualified low-producing oil lease, is not eligible for credit on the oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined, as required

by Tax Code, §201.059, that the average taxable price of gas for reporting period March 2024 is \$1.16 per mcf for the three-month period beginning on December 1, 2023, and ending February 29, 2024. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of March 2024, from a qualified low-producing well, is eligible for a 100% credit on the natural gas production tax imposed by Tax Code, Chapter 201.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of West Texas Intermediate crude oil for the month of March 2024 is \$80.41 per barrel. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall not exclude total revenue received from oil produced during the month of March 2024, from a qualified low-producing oil well.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of gas for the month of March 2024 is \$1.75 per MMBtu. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall exclude total revenue received from gas produced during the month of March 2024, from a qualified low-producing gas well.

Inquiries should be submitted to Jenny Burleson, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

Issued in Austin, Texas, on April 17, 2024.

TRD-202401628  
Jenny Burleson  
Director, Tax Policy  
Comptroller of Public Accounts  
Filed: April 17, 2024



### Notice of Coastal Protection Fee Reinstatement

The Comptroller of Public Accounts, administering agency for the collection of the Coastal Protection Fee, has received certification from the Commissioner of the General Land Office that the balance in the Coastal Protection Fund has fallen below the minimum amount allowed by law.

Pursuant to the Natural Resources Code, §40.155 and §40.156, the comptroller hereby provides notice of the reinstatement of the coastal protection fee effective June 1, 2024.

The fee shall be collected on crude oil transferred to or from a marine terminal on or after June 1, 2024, until notice of the suspension of the fee is published in the *Texas Register*.

Inquiries should be submitted to Jenny Burleson, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

TRD-202401627  
Jenny Burleson  
Director, Tax Policy Division  
Comptroller of Public Accounts  
Filed: April 17, 2024



## Office of Consumer Credit Commissioner

### Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003, §303.009, and §304.003 Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 04/22/24 - 04/28/24 is 18.00% for consumer<sup>1</sup> credit.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 04/22/24 - 04/28/24 is 18.00% for commercial<sup>2</sup> credit.

The postjudgment interest rate as prescribed by §304.003 for the period of 05/01/24 - 05/31/24 is 8.50%.

<sup>1</sup> Credit for personal, family, or household use.

<sup>2</sup> Credit for business, commercial, investment, or other similar purpose.

TRD-202401616  
Leslie L. Pettijohn  
Commissioner  
Office of Consumer Credit Commissioner  
Filed: April 17, 2024



## Credit Union Department

### Application of Out of State Branch

Notice is given that the following applications have been filed with the Credit Union Department (Department) and are under consideration.

An application was received from Essential Credit Union, Baton Rouge, Louisiana to operate a Foreign (out of state) Branch Office to be located in Houston, Texas.

An application was received from Essential Credit Union, Baton Rouge, Louisiana to operate a Foreign (out of state) Branch Office to be located in Pasadena, Texas.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at <http://www.cud.texas.gov/page/bylaw-charter-applications>. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-202401622  
Michael S. Riepen  
Commissioner  
Credit Union Department  
Filed: April 17, 2024



### Application to Expand Field of Membership

Notice is given that the following applications have been filed with the Credit Union Department (Department) and are under consideration.

An application was received from Members Choice Credit Union #1, Houston, Texas, to expand its field of membership. The proposal would permit persons who live, worship, work, or attend school, and businesses and other legal entities located in Brazoria County, Texas, to be eligible for membership in the credit union.

An application was received from Members Choice Credit Union #2, Houston, Texas, to expand its field of membership. The proposal would permit persons who live, worship, work, or attend school, and busi-

nesses and other legal entities located in Montgomery County, Texas, to be eligible for membership in the credit union.

An application was received from Telco Plus Credit Union #1, Longview, Texas, to expand its field of membership. The proposal would permit persons who live or work in Rusk County, Texas, to be eligible for membership in the credit union.

An application was received from Telco Plus Credit Union #2, Longview, Texas, to expand its field of membership. The proposal would permit persons who live or work in Cherokee County, Texas, to be eligible for membership in the credit union.

An application was received from Telco Plus Credit Union #3, Longview, Texas, to expand its field of membership. The proposal would permit persons who live or work in Harrison County, Texas, to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at <http://www.cud.texas.gov/page/bylaw-charter-applications>. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-202401620  
Michael S. Riepen  
Commissioner  
Credit Union Department  
Filed: April 17, 2024



#### Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final action taken on the following applications:

Field of Membership - Approved

Texas Dow Employees Credit Union (Lake Jackson) - See *Texas Register* dated on January 26, 2024.

Texas Dow Employees Credit Union (Lake Jackson) - See *Texas Register* dated on February 9, 2024.

TRD-202401619  
Michael S. Riepen  
Commissioner  
Credit Union Department  
Filed: April 17, 2024



### Texas Commission on Environmental Quality

#### Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs.

TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **May 28, 2024**. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on **May 28, 2024**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission's enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: Alliance Residential Builders, LP; DOCKET NUMBER: 2023-1478-WQ-E; IDENTIFIER: RN111452124; LOCATION: Fulshear, Fort Bend County; TYPE OF FACILITY: construction site; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to maintain authorization to discharge stormwater associated with construction activities; PENALTY: \$5,625; ENFORCEMENT COORDINATOR: Monica Larina, (361) 881-6965; REGIONAL OFFICE: 500 North Shoreline Boulevard, Suite 500, Corpus Christi, Texas 78401, (361) 881-6900.

(2) COMPANY: Brazoria County; DOCKET NUMBER: 2023-0297-PWS-E; IDENTIFIER: RN101267029; LOCATION: Angleton, Brazoria County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(f)(3)(C) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.010 milligrams per liter for arsenic based on a running annual average; PENALTY: \$1,312; ENFORCEMENT COORDINATOR: Miles Caston, (512) 239-4593; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(3) COMPANY: BUCKHORN LAKE RESORT LLC; DOCKET NUMBER: 2024-0351-WR-E; IDENTIFIER: RN111792958; LOCATION: Kerrville, Kerr County; TYPE OF FACILITY: operator; RULE VIOLATED: TWC, §11.053, by failing to prevent any unauthorized diversions or use of state water where water diversion curtailments/suspensions have been ordered by the Executive Director; PENALTY: \$420; ENFORCEMENT COORDINATOR: Kolby Farren, (512) 239-2098; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(4) COMPANY: Camden Homes, LLC; DOCKET NUMBER: 2023-1797-WQ-E; IDENTIFIER: RN111810768; LOCATION: Cleveland, Liberty County; TYPE OF FACILITY: construction site; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(C), by failing to obtain authorization to discharge stormwater associated with construction activities; PENALTY: \$1,875; ENFORCEMENT COORDINATOR: Madison Stringer, (512) 239-1126; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(5) COMPANY: CENTRAL TRANSPORT LLC; DOCKET NUMBER: 2022-1066-PST-E; IDENTIFIER: RN100702653; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: fleet refueling facility; RULES VIOLATED: 30 TAC §334.49(a)(2) and (c)(2)(C) and TWC, §26.3475(d), by failing to ensure the underground storage tank system (UST) corrosion protection system is operated and maintained in a manner that will provide continuous corrosion protection to all underground metal components of the UST system; PENALTY: \$3,476; ENFORCEMENT COORDINATOR: Lauren Little, (817) 588-5888; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: Charles R. Gilley dba Whispering Oaks Water COOP; DOCKET NUMBER: 2023-0832-MLM-E; IDENTIFIER: RN101212181; LOCATION: Quinlan, Hunt County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §288.20(a) and §288.30(5)(B), and TWC, §11.1272(c), by failing to adopt a drought contingency plan which includes all elements for municipal use by a retail public water supplier; 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary control easement covering land within 150 feet of the facility's wells; 30 TAC §290.41(c)(3)(K), by failing to seal the wellhead by a gasket or sealing compound and provide a well casing vent for Well Number 2 that is covered with 16-mesh or finer corrosion-resistant screen, facing downward, elevated and located so as to minimize the drawing of contaminants into the well; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment; and 30 TAC §290.46(s)(1), by failing to calibrate the facility's Well Number 1 well meter at least once every three years; PENALTY: \$2,032; ENFORCEMENT COORDINATOR: Nick Lohret-Froio, (512) 239-4495; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(7) COMPANY: City of Charlotte; DOCKET NUMBER: 2023-0327-PWS-E; IDENTIFIER: RN101389880; LOCATION: Charlotte, Atascosa County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.43(c)(6), by failing to ensure that clearwells and potable water storage tanks, including associated appurtenances such as valves, pipes, and fittings, are thoroughly tight against leakage; PENALTY: \$250; ENFORCEMENT COORDINATOR: Daphne Greene, (903) 535-5157; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(8) COMPANY: City of Cisco; DOCKET NUMBER: 2023-0060-PWS-E; IDENTIFIER: RN101389104; LOCATION: Cisco, Eastland County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(d)(2)(B) and §290.110(b)(4) and Texas Health and Safety Code, §341.0315(c), by failing to maintain a disinfectant residual of at least 0.5 milligrams per liter of total chlorine throughout the distribution system; PENALTY: \$780; ENFORCEMENT COORDINATOR: Dalton Wallace, (512) 239-6704; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(9) COMPANY: CRANFORD, BLAKE AARON; DOCKET NUMBER: 2024-0339-WQ-E; IDENTIFIER: RN110839412; LOCATION: Gary, Panola County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$175; ENFORCEMENT COORDINATOR: Mark Gamble, (512) 239-2587; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(10) COMPANY: DASHIELL CORPORATION; DOCKET NUMBER: 2024-0484-WQ-E; IDENTIFIER: RN111877247; LOCATION: Edroy, San Patricio County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain authorization to discharge stormwater associated with construction activities;

PENALTY: \$875; ENFORCEMENT COORDINATOR: Nancy Sims, (512) 239-5053; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(11) COMPANY: DELHUR INDUSTRIES INCORPORATED; DOCKET NUMBER: 2024-0437-WQ-E; IDENTIFIER: RN111490058; LOCATION: Aspermont, Stonewall County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain authorization to discharge stormwater associated with construction activities; PENALTY: \$875; ENFORCEMENT COORDINATOR: Nancy Sims, (512) 239-5053; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(12) COMPANY: FIKES WHOLESALE INCORPORATED; DOCKET NUMBER: 2024-0422-WQ-E; IDENTIFIER: RN111550679; LOCATION: Snyder, Scurry County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain authorization to discharge stormwater associated with construction activities; PENALTY: \$875; ENFORCEMENT COORDINATOR: Mark Gamble, (512) 239-2587; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(13) COMPANY: Foxworth-Galbraith Lumber Company; DOCKET NUMBER: 2022-1036-AIR-E; IDENTIFIER: RN111330296; LOCATION: Whitesboro, Grayson County; TYPE OF FACILITY: lumber yard; RULES VIOLATED: 30 TAC §101.4 and Texas Health and Safety Code, §382.085(a) and (b), by failing to prevent nuisance dust conditions; PENALTY: \$3,375; ENFORCEMENT COORDINATOR: Mackenzie Mehlmann, (512) 239-2572; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(14) COMPANY: HallCore Construction Services, LLC; DOCKET NUMBER: 2023-1650-WR-E; IDENTIFIER: RN111796421; LOCATION: Magnolia, Montgomery County; TYPE OF FACILITY: construction site; RULES VIOLATED: 30 TAC §297.11 and TWC, §11.081 and §11.121, by failing to obtain authorization prior to diverting, impounding, storing, taking, or using state water; PENALTY: \$3,750; ENFORCEMENT COORDINATOR: Nancy Sims, (512) 239-5053; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(15) COMPANY: Inez Convenience Services LLC dba Smitty's; DOCKET NUMBER: 2023-0042-PWS-E; IDENTIFIER: RN111467221; LOCATION: Inez, Victoria County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(n)(1), by failing to maintain at the public water system accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank until the facility is decommissioned; PENALTY: \$510; ENFORCEMENT COORDINATOR: Nick Lohret-Froio, (512) 239-4495; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(16) COMPANY: Isomedix Operations Incorporated; DOCKET NUMBER: 2023-1374-AIR-E; IDENTIFIER: RN100739226; LOCATION: Grand Praire, Tarrant County; TYPE OF FACILITY: sterilization plant; RULES VIOLATED: 30 TAC §101.201(a)(1)(B) and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit an initial notification for a reportable emissions event no later than 24 hours after the discovery of an emissions event; and 30 TAC §116.115(c), New Source Review Permit Number 38690, Special Conditions Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$2,663; ENFORCEMENT COORDINATOR: Trenton White, (903) 535-5155; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.



(17) COMPANY: J Michael Design and Construction, LLC; DOCKET NUMBER: 2023-1246-WQ-E; IDENTIFIER: RN111363743; LOCATION: Chandler, Henderson County; TYPE OF FACILITY: construction site; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to maintain authorization to discharge stormwater associated with construction activities; and TWC, §26.121(a)(2), by failing to prevent an unauthorized discharge of sediment into or adjacent to any water in the state; PENALTY: \$7,500; ENFORCEMENT COORDINATOR: Nancy Sims, (512) 239-5053; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(18) COMPANY: Jerry A. Krogsgaard Jr.; DOCKET NUMBER: 2023-0874-WQ-E; IDENTIFIER: RN111585527; LOCATION: Victoria, Victoria County; TYPE OF FACILITY: construction site; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge stormwater associated with construction activities; PENALTY: \$1,875; ENFORCEMENT COORDINATOR: Mistie Gonzales, (254) 761-3056; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(19) COMPANY: LMAJ LLC; DOCKET NUMBER: 2024-0359-WQ-E; IDENTIFIER: RN111740163; LOCATION: Muenster, Cooke County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain authorization to discharge stormwater associated with construction activities; PENALTY: \$875; ENFORCEMENT COORDINATOR: Nancy Sims, (512) 239-5053; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(20) COMPANY: Motiva Enterprises LLC f/k/a Motiva Chemicals LLC; DOCKET NUMBER: 2022-1680-AIR-E; IDENTIFIER: RN100217389; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(a), 116.715(a), and 122.143(4), Flexible Permit Numbers 16989 and PSDTX794, Special Conditions Number 1, Federal Operating Permit (FOP) Number O1317, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 23, and Texas Health and Safety Code (THSC), §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §101.201(a)(1)(B) and §122.143(4), FOP Number O1317, GTC and STC Number 2.F, and THSC, §382.085(b), by failing to submit an initial notification for a reportable emissions event no later than 24 hours after the discovery of an emissions event; PENALTY: \$28,938; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$14,469; ENFORCEMENT COORDINATOR: Caleb Martin, (512) 239-2091; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(21) COMPANY: NOBLE UNDERGROUND LLC; DOCKET NUMBER: 2024-0567-WR-E; IDENTIFIER: RN111849279; LOCATION: Montgomery, Montgomery County; TYPE OF FACILITY: operator; RULES VIOLATED: TWC, §11.081 and §11.121, by failing to obtain authorization prior to appropriating any state water or beginning construction of any work designed for the storage, taking, or diversion of water; PENALTY: \$350; ENFORCEMENT COORDINATOR: Arti Patel, (512) 239-2514; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(22) COMPANY: PROPELL AMERICAN LLC; DOCKET NUMBER: 2024-0504-WQ-E; IDENTIFIER: RN111884201; LOCATION: Granbury, Hood County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a multi-sector general permit for stormwater discharges; PENALTY: \$875; ENFORCEMENT COORDINATOR: Nancy Sims, (512) 239-5053;

REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(23) COMPANY: ROSE CITY RESOURCES LLC; DOCKET NUMBER: 2024-0443-WR-E; IDENTIFIER: RN111726741; LOCATION: Linden, Cass County; TYPE OF FACILITY: operator; RULES VIOLATED: TWC, §11.081 and §11.121, by failing to obtain authorization prior to appropriating any state water or beginning construction of any work designed for the storage, taking, or diversion of water; PENALTY: \$875; ENFORCEMENT COORDINATOR: Arti Patel, (512) 239-2514; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(24) COMPANY: ROSE CITY RESOURCES LLC; DOCKET NUMBER: 2024-0552-WR-E; IDENTIFIER: RN111726725; LOCATION: Linden, Cass County; TYPE OF FACILITY: operator; RULES VIOLATED: TWC, §11.081 and §11.121, by failing to obtain authorization prior to appropriating any state water or beginning construction of any work designed for the storage, taking, or diversion of water; PENALTY: \$350; ENFORCEMENT COORDINATOR: Arti Patel, (512) 239-2514; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(25) COMPANY: SANTANA, JUAN GERARDO; DOCKET NUMBER: 2024-0528-WOC-E; IDENTIFIER: RN105015895; LOCATION: Copeville, Collin County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$175; ENFORCEMENT COORDINATOR: Nancy Sims, (512) 239-5053; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(26) COMPANY: Shamsuddin N. Khoja dba Chavez Food Mart; DOCKET NUMBER: 2022-0255-PST-E; IDENTIFIER: RN101330827; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b)(2), by failing to assure that all underground storage tank (UST) recordkeeping requirements are met; 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the UST in a manner which will detect a release at a frequency of at least once every 30 days, and failing to provide release detection for the pressurized piping associated with the UST system; and 30 TAC §334.606, by failing to maintain operator training certification records on-site and make them available for inspection upon request by agency personnel; PENALTY: \$5,969; ENFORCEMENT COORDINATOR: Amy Lane, (512) 239-2614; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(27) COMPANY: TEXAS DEPARTMENT OF TRANSPORTATION; DOCKET NUMBER: 2024-0442-WQ-E; IDENTIFIER: RN111490058; LOCATION: Apermont, Stonewall County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain authorization to discharge stormwater associated with construction activities; PENALTY: \$875; ENFORCEMENT COORDINATOR: Nancy Sims, (512) 239-5053; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(28) COMPANY: TGC CUSTOM HOMES LLC; DOCKET NUMBER: 2024-0410-WQ-E; IDENTIFIER: RN111750980; LOCATION: Sanger, Denton County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain authorization to discharge stormwater associated with construction activities; PENALTY: \$875; ENFORCEMENT COORDINATOR: Nancy Sims, (512) 239-5053; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(29) COMPANY: The Lubrizol Corporation; DOCKET NUMBER: 2023-1306-AIR-E; IDENTIFIER: RN100221589; LOCATION:

Deer Park, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Number 22046, Special Conditions Number 1, Federal Operating Permit Number O1932, General Terms and Conditions and Special Terms and Conditions Number 12, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$13,125; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: \$5,250; ENFORCEMENT COORDINATOR: Krystina Sepulveda, (956) 430-6045; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(30) COMPANY: TOP ROCKS LLC; DOCKET NUMBER: 2024-0572-WQ-E; IDENTIFIER: RN111455572; LOCATION: Woodlawn, Harrison County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a multi-sector general permit for stormwater discharges; PENALTY: \$875; ENFORCEMENT COORDINATOR: Nancy Sims, (512) 239-5053; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(31) COMPANY: Verdun Oil and Gas LLC, Solaris Oilfield Site Services Operating, LLC, and Universal Pressure Pumping, Incorporated; DOCKET NUMBER: 2022-0972-IHW-E; IDENTIFIER: RN111325437; LOCATION: Falls City, Karnes County; TYPE OF FACILITY: oil and gas production site; RULE VIOLATED: 30 TAC §327.3(g), by failing to immediately notify local emergency authorities of a spill or discharge that created an imminent health threat; PENALTY: \$5,206; ENFORCEMENT COORDINATOR: Eresha DeSilva, (512) 239-5084; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(32) COMPANY: Watson Lakes Water Supply Corporation; DOCKET NUMBER: 2023-0294-PWS-E; IDENTIFIER: RN101267326; LOCATION: Huntsville, Walker County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary control easement covering land within 150 feet of the facility's Well Numbers G2360024A and G2360024B; PENALTY: \$300; ENFORCEMENT COORDINATOR: Kaisie Hubschmitt, (512) 239-1482; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

TRD-202401604

Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: April 16, 2024



## Enforcement Orders

An agreed order was adopted regarding Equinix LLC, Docket No. 2023-0131-AIR-E on April 12, 2024 assessing \$13,703 in administrative penalties with \$2,740 deferred. Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Round Rock, the City of Cedar Park, and the City of Austin, Docket No. 2020-0964-MLM-E on April 12, 2024 assessing \$355,980 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Harley Hobson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding WIMBERLEY SPRINGS PARTNERS LTD., Docket No. 2023-0154-MLM-E on April 12, 2024 assessing \$21,762 in administrative penalties with \$4,352 deferred. Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Sralla MHP, LP, Docket No. 2021-1343-MWD-E on April 12, 2024 assessing \$53,625 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Monica Larina, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Galveston, Docket No. 2021-1589-MWD-E on April 12, 2024 assessing \$20,625 in administrative penalties with \$4,125 deferred. Information concerning any aspect of this order may be obtained by Kolby Farren, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding CNP Utility District, Docket No. 2021-1550-MWD-E on April 12, 2024 assessing \$29,975 in administrative penalties with \$5,995 deferred. Information concerning any aspect of this order may be obtained by contacting Mark Gamble, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of West, Docket No. 2021-1643-MWD-E on April 12, 2024 assessing \$56,250 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Madison Stringer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the City of Edna, Docket No. 2022-0381-MWD-E on April 12, 2024 assessing \$36,600 in administrative penalties with \$7,320 deferred. Information concerning any aspect of this order may be obtained by contacting Taylor Williamson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding the Town of Little Elm, Docket No. 2023-0339-MWD-E on April 12, 2024 assessing \$49,000 in administrative penalties with \$9,800 deferred. Information concerning any aspect of this order may be obtained by contacting Megan Crinklaw, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Quadvest, L.P., Docket No. 2023-0969-MWD-E on April 12, 2024 assessing \$11,875 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Monica Larina, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Dorothea Edmonds dba James Mini Mart Exxon, Docket No. 2022-1554-PST-E on April 12, 2024 assessing \$10,563 in administrative penalties with \$2,112 deferred. Information concerning any aspect of this order may be obtained by contacting Tiffany Chu, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding HINO GAS SALES, INCORPORATED dba Hino Gas, Docket No. 2023-0748-PST-E on April 12, 2024 assessing \$20,302 in administrative penalties with \$4,060 deferred. Information concerning any aspect of this order may be

obtained by contacting Tiffany Chu, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Heritage Acres, LLC dba EJ Water and David Michael Chandler dba EJ Water, Docket No. 2021-1526-PWS-E on April 12, 2024 assessing \$11,024 in administrative penalties with \$2,204 deferred. Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Red River Authority of Texas, Docket No. 2022-0590-PWS-E on April 12, 2024 assessing \$2,500 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ashley Lemke, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202401554

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: April 12, 2024



### Enforcement Orders

An agreed order was adopted regarding City of Trinity, Docket No. 2021-0717-PWS-E on April 16, 2024 assessing \$4,928 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Misty James, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Permian Basin Materials, LLC, Docket No. 2022-0237-WQ-E on April 16, 2024 assessing \$2,813 in administrative penalties with \$562 deferred. Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Homestead Enterprises, LLC, Docket No. 2022-0527-PWS-E on April 16, 2024 assessing \$6,065 in administrative penalties with \$1,213 deferred. Information concerning any aspect of this order may be obtained by contacting Miles Wehner, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding 7461 W. Vickery, LLC, Docket No. 2022-0761-PWS-E on April 16, 2024 assessing \$3,250 in administrative penalties with \$650 deferred. Information concerning any aspect of this order may be obtained by contacting Ashley Lemke, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding PALO PINTO WATER SUPPLY CORPORATION, Docket No. 2022-1048-PWS-E on April 16, 2024 assessing \$3,250 in administrative penalties with \$650 deferred. Information concerning any aspect of this order may be obtained by contacting Ilia Perez-Ramirez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding DAVIS MOTOR CRANE SERVICE, INC., Docket No. 2023-0020-PST-E on April 16, 2024 assessing \$2,556 in administrative penalties with \$511 deferred.

Information concerning any aspect of this order may be obtained by contacting Tiffany Chu, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Sai Arya Laxmi Inc dba Corner Mart, Docket No. 2023-0202-PST-E on April 16, 2024 assessing \$4,500 in administrative penalties with \$900 deferred. Information concerning any aspect of this order may be obtained by contacting Eunice Adegelu, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SUNNY'S HWY 59 CLEVELAND, INC. dba Pit Stop, Docket No. 2023-0409-PST-E on April 16, 2024 assessing \$3,493 in administrative penalties with \$698 deferred. Information concerning any aspect of this order may be obtained by contacting Tiffany Chu, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding BULLSEYE CONSTRUCTION, INC., Docket No. 2023-0711-WQ-E on April 16, 2024 assessing \$5,000 in administrative penalties with \$1,000 deferred. Information concerning any aspect of this order may be obtained by contacting Monica Larina, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding BUCK ENERGY SERVICES, L.L.C., Docket No. 2023-0814-SLG-E on April 16, 2024 assessing \$5,625 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Haz Mat Special Services LLC and Sysco USA I, Inc., Docket No. 2023-1051-MSW-E on April 16, 2024 assessing \$2,648 in administrative penalties with \$529 deferred. Information concerning any aspect of this order may be obtained by contacting Ramya Wendt, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Intercontinental Terminals Company LLC, Docket No. 2023-1149-AIR-E on April 16, 2024 assessing \$3,900 in administrative penalties with \$780 deferred. Information concerning any aspect of this order may be obtained by contacting Christina Ferrara, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Western Refining Terminals, LLC, Docket No. 2024-0175-AIR-E on April 16, 2024 assessing \$4,500 in administrative penalties with \$900 deferred. Information concerning any aspect of this order may be obtained by contacting Christina Ferrara, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202401647

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: April 17, 2024



Notice of Application and Public Hearing for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Proposed Air Quality Registration Number 175607

**APPLICATION.** Johnson County Pipe Inc, 800 County Road 209, Alvarado, Texas 76009-8028 has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Registration Number 175607 to authorize the operation of a concrete batch plant. The facility is proposed to be located at 800 County Road 209, Alvarado, Johnson County, Texas 76009. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application. <https://gisweb.tceq.texas.gov/LocationMapper/?marker=-97.157641,32.407483&level=13>. This application was submitted to the TCEQ on March 7, 2024. The primary function of this plant is to manufacture concrete by mixing materials including (but not limited to) sand, aggregate, cement and water. The executive director has determined the application was technically complete on March 27, 2024.

**PUBLIC COMMENT / PUBLIC HEARING.** Public written comments about this application may be submitted at any time during the public comment period. The public comment period begins on the first date notice is published and extends to the close of the public hearing. Public comments may be submitted either in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087, or electronically at [www14.tceq.texas.gov/epic/eComment/](http://www14.tceq.texas.gov/epic/eComment/). Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record.

A public hearing has been scheduled, that will consist of two parts, an informal discussion period and a formal comment period. During the informal discussion period, the public is encouraged to ask questions of the applicant and TCEQ staff concerning the application, but comments made during the informal period will not be considered by the executive director before reaching a decision on the permit, and no formal response will be made to the informal comments. During the formal comment period, members of the public may state their comments into the official record. **Written comments about this application may also be submitted at any time during the hearing.** The purpose of a public hearing is to provide the opportunity to submit written comments or an oral statement about the application. **The public hearing is not an evidentiary proceeding.**

**The Public Hearing is to be held:**

**Wednesday, May 22, 2024, at 6:00 p.m.**

**LaQuinta Inn Banquet Hall**

**1165 W Highway 67**

**Alvarado, Texas 76009**

**RESPONSE TO COMMENTS.** A written response to all formal comments will be prepared by the executive director after the comment period closes. The response, along with the executive director's decision on the application, will be mailed to everyone who submitted public comments and the response to comments will be posted in the permit file for viewing.

The executive director shall approve or deny the application not later than 35 days after the date of the public hearing, considering all comments received within the comment period, and base this decision on whether the application meets the requirements of the standard permit.

**CENTRAL/REGIONAL OFFICE.** The application will be available for viewing and copying at the TCEQ Central Office and the TCEQ Dallas/Fort Worth Regional Office, located at 2309 Gravel Dr., Fort Worth, Texas 76118-6951, during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, beginning the first day of publication of this notice.

**INFORMATION. If you need more information about this permit application or the permitting process, please call the Public Education Program toll free at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040.**

Further information may also be obtained from Johnson County Pipe, Inc., 800 County Road 209, Alvarado, Texas 76009-8028, or by calling Ms. Nickolet Blackstock, Environmental, Health and Safety Director at (817) 725-9219.

Notice Issuance Date: April 10, 2024

TRD-202401641

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: April 17, 2024



Notice of Application and Public Hearing for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Proposed Air Quality Registration Number 175708

**APPLICATION.** Ingram Readymix No. 1, LLC, 3580 Farm to Market Road 482, New Braunfels, Texas 78132-5012 has applied to the Texas Commission on Environmental Quality (TCEQ) for an Air Quality Standard Permit for a Concrete Batch Plant with Enhanced Controls Registration Number 175708 to authorize the operation of a permanent concrete batch plant with enhanced controls. The facility is proposed to be located at the following driving directions: drive north on State Highway 707 from the intersection of US Highway 277 and State Highway 707 for 0.86 miles and turn right on an unnamed road and drive 0.44 miles to the site located on the left side of the road, Abilene, Taylor County, Texas 79606. This application is being processed in an expedited manner, as allowed by the commission's rules in 30 Texas Administrative Code, Chapter 101, Subchapter J. This link to an electronic map of the site or facility's general location is provided as a public courtesy and not part of the application or notice. For exact location, refer to application <https://gisweb.tceq.texas.gov/LocationMapper/?marker=-99.843916,32.387766&level=13>. This application was submitted to the TCEQ on March 18, 2024. The primary function of this plant is to manufacture concrete by mixing materials including (but not limited to) sand, aggregate, cement and water. The executive director has determined the application was technically complete on April 9, 2024.

**PUBLIC COMMENT / PUBLIC HEARING.** Public written comments about this application may be submitted at any time during the public comment period. The public comment period begins on the first date notice is published and extends to the close of the public hearing. Public comments may be submitted either in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087, or electronically at [www14.tceq.texas.gov/epic/eComment/](http://www14.tceq.texas.gov/epic/eComment/). Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record.

A public hearing has been scheduled, that will consist of two parts, an informal discussion period and a formal comment period. During the

informal discussion period, the public is encouraged to ask questions of the applicant and TCEQ staff concerning the application, but comments made during the informal period will not be considered by the executive director before reaching a decision on the permit, and no formal response will be made to the informal comments. During the formal comment period, members of the public may state their comments into the official record. **Written comments about this application may also be submitted at any time during the hearing.** The purpose of a public hearing is to provide the opportunity to submit written comments or an oral statement about the application. **The public hearing is not an evidentiary proceeding.**

**The Public Hearing is to be held:**

**Tuesday, May 28, 2024, at 6:00 p.m.**

**MCM Elegante**

**Embassy Room**

**4250 Ridgemont Drive**

**Abilene, Texas 79606**

**RESPONSE TO COMMENTS.** A written response to all formal comments will be prepared by the executive director after the comment period closes. The response, along with the executive director's decision on the application, will be mailed to everyone who submitted public comments and the response to comments will be posted in the permit file for viewing.

The executive director shall approve or deny the application not later than 35 days after the date of the public hearing, considering all comments received within the comment period, and base this decision on whether the application meets the requirements of the standard permit.

**CENTRAL/REGIONAL OFFICE.** The application will be available for viewing and copying at the TCEQ Central Office and the TCEQ Abilene Regional Office, located at 1977 Industrial Boulevard, Abilene, Texas 79602-7833, during the hours of 8:00 a.m. to 5:00 p.m., Monday through Friday, beginning the first day of publication of this notice.

**INFORMATION. If you need more information about this permit application or the permitting process, please call the Public Education Program toll free at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040.**

Further information may also be obtained from Ingram Readymix No. 1, LLC 3580 Farm to Market Road 482, New Braunfels, Texas 78132-5012, or by calling Mr. Gary Johnson, Vice President at (830) 625-9156.

Notice Issuance Date: April 11, 2024

TRD-202401644

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: April 17, 2024



Notice of District Petition

Notice issued April 11, 2024

TCEQ Internal Control No. D-03202024-041; Boomerang Waxahachie, LLC, a Texas limited liability company (Petitioner), filed a revised petition (petition) for the creation of Palmetto Municipal Utility District No. 1 of Ellis County (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to

Article XVI, § 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner holds title to a majority in value of the land to be included in the proposed District; (2) there are no lienholders, on the property to be included in the proposed District; (3) the proposed District will contain approximately 192 acres of land located within Ellis County, Texas; and (4) none of the land to be included within the proposed District is located within the corporate limits or extraterritorial jurisdiction of any city. On November 20, 2023, the City of Waxahachie (City) granted an "ETJ Release Petition" by adopting Ordinance No. 3425, affirming the release of the property from the City's extraterritorial jurisdiction. The petition further states that the work to be done by the proposed District at the present time is to purchase, construct, acquire, improve, or extend inside or outside of its boundaries any and all works, improvements, facilities, plants, equipment, and appliances necessary or helpful to supply and distribute water for municipal, domestic, and commercial purposes; to collect, transport, process, dispose of and control domestic and commercial wastes; to gather, conduct, divert, abate, amend and control local storm water or other local harmful excesses of water in the District; to design, acquire, construct, finance, improve, operate, and maintain macadamized, graveled, or paved roads and turnpikes, or improvements in aid of those roads; and to purchase, construct, acquire, improve, or extend inside or outside of its boundaries such additional facilities, systems, plants, and enterprises as shall be consonant with the purposes for which the District is created, all as more particularly described in an engineer's report filed simultaneously with the filing of this Petition, to which reference is made for a more detailed description. It is further proposed that the District be granted road powers pursuant to Texas Water Code, Section 54.234. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners that the cost of said project will be approximately \$29,969,306 (\$24,017,651 for water, wastewater, and drainage plus \$5,951,655 for roads).

#### INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at [www.tceq.texas.gov/agency/cc/pub\\_notice.html](http://www.tceq.texas.gov/agency/cc/pub_notice.html) or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O.

Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at [www.tceq.texas.gov](http://www.tceq.texas.gov).

TRD-202401642

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: April 17, 2024



## Notice of District Petition

Notice issued April 12, 2024

TCEQ Internal Control No. D-12112023-010 Maple Grove Square, LLC, a Texas limited liability company and Maple Park Development, LLC, a Texas limited liability company (Petitioners), filed a petition for the creation of Waller County Municipal Utility District No. 54 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, § 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioners hold title to a majority in value of the land to be included in the proposed District; (2) Maple Grove Square, LLC represents that there are no lienholders on the property owned by Maple Grove Square, LLC and Maple Park Development, LLC, represents that there is one lienholder, Rosebrook Holdings, LLC, on the property owned by Maple Park Development, LLC and the aforementioned entity has consented to the creation of the District. All (petitioners) land to be included in the proposed District; (3) the proposed District will consist of two (2) land tracts containing approximately 170.523 (total) acres located within Waller County, Texas; and (4) all of the land within the proposed district is located within the extraterritorial jurisdiction of the City of Pattison, Texas and the extraterritorial jurisdiction of the City of Brookshire, Texas. By Ordinance No. 166-2023, passed, approved, and adopted on June 8, 2023, the City of Pattison gave its consent to the creation of the proposed District, pursuant to Texas Water Code §54.016. By Resolution No. 1434, passed and approved, on March 27, 2023, the City of Brookshire gave its consent to the creation of the proposed District, pursuant to Texas Water Code §54.016. The petition further states that the work to be done by the District at the present time is the purchase, design, construction, acquisition, maintenance, ownership, operation, repair, improvement and extension of a waterworks and sanitary sewer system for residential and commercial purposes, and the construction, acquisition, improvement, extension, maintenance and operation of works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the District, and to control, abate and amend local storm waters or other harmful excesses of waters, all as more particularly described in an engineer's report filed simultaneously with the filing of this petition, to which reference is hereby made for more detailed description, and such other purchase, construction, acquisition, maintenance, ownership, operation, repair, improvement and extension of such additional facilities, including roads, parks and recreation facilities, systems, plants and enterprises as shall be consistent with all of the purposes for which the District is created (the "Project"). According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioner that the cost of said project will be approximately \$46,600,000 (\$26,700,000 for water, wastewater, and

drainage, \$16,200,000 for roads and \$3,700,000 for park and recreational facilities).

## INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at [www.tceq.texas.gov/agency/cc/pub\\_notice.html](http://www.tceq.texas.gov/agency/cc/pub_notice.html) or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at [www.tceq.texas.gov](http://www.tceq.texas.gov).

TRD-202401643

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: April 17, 2024



## Notice of District Petition

Notice issued April 16, 2024

TCEQ Internal Control No. D-03052024-012 Caddo Mills Laguna Land Azure, LLC, a Wyoming limited liability company, ("Petitioner") filed a petition for creation of Mykonos Municipal Utility District of Hunt County (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article II, Section 52 and Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner is the owner of a majority of the assessed value of the land to be included in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 216.38 acres of land, located within Hunt County, Texas; (4) none of the land to be included in the proposed District is within the corporate limits of any municipality, but a portion of the land to be included in

the proposed District is within the extra-territorial jurisdiction of the City of Caddo Mills, Texas (City), and (5) although the City has not consented to creation of the District, the Petitioner has satisfied the requirements of Texas Water Code Section 54.016(b) and (c) and Texas Local Government Code Section 42.042, so that the authorization for inclusion of the land in the proposed District may be assumed pursuant to the cited statutes. The petition further states that the general nature of the proposed District is (1) the construction of a water distribution system for domestic purposes; (2) the construction of a sanitary sewer system; (3) the control, abatement and amendment of the harmful excess of waters and the reclamation and drainage of overflowed lands within the District; (4) the construction and financing of macadamized, graveled, or paved roads, or improvements in aid of those roads; (5) such other construction, installation, maintenance, purchase and operation of such additional facilities, systems, plants and enterprises as shall be consistent with the purposes for which the District is organized; and (6) it is proposed that the District be granted the authority to design, acquire, construct, finance, issue bonds for, operate, maintain, and convey to this state, a county, or a municipality for operation and maintenance, a road or any improvement in aid of the road, pursuant to Texas Water Code, Section 54.234. According to the petition, a preliminary investigation has been made to determine the cost of purchasing and constructing the project, and it is estimated by the Petitioner, from the information available at this time, that the cost of said project will be approximately \$80,310,000 (\$59,435,000 for water, wastewater and drainage and \$20,875,000 for roads).

#### INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at [www.tceq.texas.gov/agency/cc/pub\\_notice.html](http://www.tceq.texas.gov/agency/cc/pub_notice.html) or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at [www.tceq.texas.gov](http://www.tceq.texas.gov).

TRD-202401646

Laurie Gharis  
Chief Clerk  
Texas Commission on Environmental Quality  
Filed: April 17, 2024

#### Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **May 28, 2024**. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on May 28, 2024**. The designated attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: GREEN ACRES RV PARK & RENTALS LLC; DOCKET NUMBER: 2020-0945-PWS-E; TCEQ ID NUMBER: RN106171119; LOCATION: 1702 United States Highway 90A near Hallettsville, Lavaca County; TYPE OF FACILITY: public water supply; RULES VIOLATED: TCEQ Agreed Order Docket Number 2018-0050-PWS-E, Ordering Provision Number 2.a.ii., by failing to issue public notification and submit a copy of the public notification to the executive director regarding the failure to conduct routine coliform monitoring for the month of January 2016; and 30 TAC §290.109(d)(4)(B), by failing to collect, within 24 hours of notification of the routine distribution total coliform-positive samples on September 17, 2018, and October 11, 2018, at least one raw groundwater source *Escherichia coli* (or other approved fecal indicator) sample from the active groundwater source in use at the time the distribution coliform-positive samples were collected; PENALTY: \$758; STAFF ATTORNEY: William Hogan, Litigation, MC 175, (512) 239-5918; REGIONAL OFFICE: Corpus Christi Regional Office, 500 North Shoreline Boulevard, Suite 500, Corpus Christi, Texas 78401-0318, (361) 881-6900.

(2) COMPANY: SAGARMATHA GROUP INC. dba Everest Food Mart; DOCKET NUMBER: 2022-0256-PST-E; TCEQ ID NUMBER: RN101874840; LOCATION: 2810 Eastex Freeway, Beaumont, Jefferson County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.48(e), by

failing to ensure that all release detection equipment is maintained in good operating condition and functioning in accordance with agency practices and manufacturer's specification; TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every 30 days; TWC, §26.3475(a) and 30 TAC §334.50(b)(2)(A)(i)(III), by failing to provide release detection for the pressurized piping associated with the UST system; TWC, §26.3475(c)(2) and 30 TAC §334.48(g)(1)(A)(ii) and (2)(A)(i), by failing to test the spill prevention equipment and containment sumps at least once every three years; TWC, §26.3475(c)(2) and 30 TAC §334.48(h)(1)(A), by failing to inspect the overfill prevention and release detection equipment at least once every 30 days; TWC, §26.3475(c)(2) and 30 TAC §334.48(g)(1)(B), by failing to inspect the overfill prevention equipment every three years to ensure that overfill prevention equipment is set to activate at the correct level and will activate when a regulated substance reaches that level; and TWC, §26.3475(c)(2) and 30 TAC §334.48(h)(1)(B)(i), by failing to conduct the annual walkthrough inspection of the containment sumps for damage, leaks, or releases to the environment; PENALTY: \$5,979; STAFF ATTORNEY: Jennifer Peltier, Litigation, MC 175, (512) 239-0544; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-202401605

Gitanjali Yadav

Deputy Director, Litigation

Texas Commission on Environmental Quality

Filed: April 16, 2024



#### Notice of Public Meeting for TPDES Permit for Municipal Wastewater New Permit No. WQ0016336001

**APPLICATION.** Jireten, LLC, P.O. Box 140991, Irving, Texas 75014, has applied to the Texas Commission on Environmental Quality (TCEQ) for a new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016336001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 162,000 gallons per day. TCEQ received this application on April 28, 2023.

The facility will be located approximately 590 feet south of the intersection of Butcher Road and South Ring Road, in Ellis County, Texas 75165. The treated effluent will be discharged to an unnamed tributary, thence to an unnamed impoundment, thence to an unnamed tributary, thence to Lake Clopton, thence to an unnamed impoundment, thence to a series of ponds, thence to an unnamed tributary, thence to Red Oak Creek, thence to Upper Trinity River in Segment No. 0805 of the Trinity River Basin. The unclassified receiving water uses are limited aquatic life use for the unnamed tributary and high aquatic life use for Lake Clopton and the unnamed impoundments. The designated uses for Segment No. 0805 are primary contact recreation and high aquatic life use. In accordance with 30 Texas Administrative Code Section 307.5 and the TCEQ's *Procedures to Implement the Texas Surface Water Quality Standards* (June 2010), an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in Lake Clopton and the unnamed impoundments, which has been identified as having high aquatic life uses. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received. This link to an electronic map of the site or facility's general location is provided as a pub-

lic courtesy and is not part of the application or notice. For the exact location, refer to the application.

<https://gisweb.tceq.texas.gov/LocationMapper/?marker=-96.806388,32.456666&level=18>

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements.

**ALTERNATIVE LANGUAGE NOTICE.** Alternative language notice in Spanish is available at <https://www.tceq.texas.gov/permitting/wastewater/plain-language-summaries-and-public-notices>. El aviso de idioma alternativo en español está disponible en <https://www.tceq.texas.gov/permitting/wastewater/plain-language-summaries-and-public-notices>.

**PUBLIC COMMENT / PUBLIC MEETING.** A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. A written response to all timely, relevant and material, or significant comments will be prepared by the Executive Director. All formal comments will be considered before a decision is reached on the permit application. A copy of the written response will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

#### The Public Meeting is to be held:

**Thursday, May 30, 2024 at 7:00 p.m.**

**Waxahachie Civic Center**

**2000 Civic Center Lane**

**Waxahachie, Texas 75165**

**INFORMATION.** Members of the public are encouraged to submit written comments anytime during the meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at [www.tceq.texas.gov/goto/comment](http://www.tceq.texas.gov/goto/comment). If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040. *Si desea información en español, puede llamar (800) 687-4040.* General information about the TCEQ can be found at our web site at <https://www.tceq.texas.gov>.

The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at Nicholas P. Sims Library, 515 West Main Street, Waxahachie, Texas. Further information may also be obtained from Jireten, LLC at the address stated above or by calling Mr. Keith Davis, President, at (469) 616-9322.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300



or (800) RELAY-TX (TDD) at least five business days prior to the meeting.

Issuance Date: April 15, 2024

TRD-202401640

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: April 17, 2024



## Notice of Receipt of Application and Intent to Obtain Municipal Solid Waste Permit Amendment

Notice mailed on April 11, 2024 Proposed Permit No. 207C

Application. City of Del Rio has applied to the Texas Commission on Environmental Quality (TCEQ) for a permit amendment to authorize the expansion of the existing City of Del Rio landfill. The existing permit boundary and limit of waste will be expanded from 105.6 acres to 180.6 acres and 79 acres to 110.3 acres, respectively. In addition, the top deck of the landfill will be increased from 1113 ft-msl to 1124 ft-msl. The facility is located at 1897 Railway Avenue, Del Rio, 78840, in Val Verde County, Texas. The TCEQ received this application on March 7, 2024. The permit application is available for viewing and copying at the Del Rio Public Works, 114 W Martin Street, Del Rio, 78840, in the County of Val Verde, Texas and may be viewed online at <http://www.cypermits.com>. The following link to an electronic map of the site or facility general location is provided as a public courtesy and is not part of the application or notice: <https://arcg.is/uTj19>. For exact location, refer to application.

Alternative Language Notice/Aviso de idioma alternativo. Alternative language notice in Spanish is available at [www.tceq.texas.gov/goto/mswapps](http://www.tceq.texas.gov/goto/mswapps). La notificación en otro idioma en español está disponible en [www.tceq.texas.gov/goto/mswapps](http://www.tceq.texas.gov/goto/mswapps).

Additional Notice. TCEQ's Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments.

Public Comment/Public Meeting. You may submit public comments or request a public meeting on this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

Opportunity for a Contested Case Hearing. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments, and the Executive Director's decision on the application, will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting reconsideration of the Executive Director's decision and for requesting a contested case hearing. A person who may be affected by the facility is entitled to request a contested case hearing from the commission. A

contested case hearing is a legal proceeding similar to a civil trial in state district court. To Request a Contested Case Hearing, You Must Include The Following Items in Your Request: your name, address, phone number; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; a list of all disputed issues of fact that you submit during the comment period, and the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify by name and physical address an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose. Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. The Commission may only grant a request for a contested case hearing on issues the requestor submitted in their timely comments that were not subsequently withdrawn. If a hearing is granted, the subject of a hearing will be limited to disputed issues of fact or mixed questions of fact and law that are relevant and material to the Commission's decision on the application submitted during the comment period.

Mailing List. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. To be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

Information Available Online. For details about the status of the application, visit the Commissioners' Integrated Database (CID) at [www.tceq.texas.gov/goto/cid](http://www.tceq.texas.gov/goto/cid). Once you have access to the CID using the above link, enter the permit number for this application, which is provided at the top of this notice.

Agency Contacts and Information. All public comments and requests must be submitted either electronically at [www14.tceq.texas.gov/epic/eComment/](http://www14.tceq.texas.gov/epic/eComment/) or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record. For more information about this permit application or the permitting process, please call the TCEQ's Public Education Program, Toll Free, at (800) 687-4040 or visit their website at [www.tceq.texas.gov/goto/pep](http://www.tceq.texas.gov/goto/pep). Si desea información en español, puede llamar al (800) 687-4040. Further information may also be obtained from City of Del Rio at the mailing address 114 West Martin Street, Del Rio, Texas 78840 or by calling Mr. Alberto Quintanilla, Public Works Director at (830) 774-8525.

TRD-202401645

Laurie Gharis

Chief Clerk

Texas Commission on Environmental Quality

Filed: April 17, 2024

◆   ◆   ◆

## General Land Office

### Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 *Federal Register* pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 26. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of April 8, 2024 to April 12, 2024. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§30.20(f), 30.30(h), and 30.40(e), the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on Friday, April 19, 2024. The public comment period for this project will close at 5:00 p.m. on Sunday May 19, 2024.

Federal Agency Activities:

**Applicant:** Bureau of Ocean Energy Management (BOEM)

**Location:** The Gulf of Mexico (GOM) Outer Continental Shelf (OCS) Wind Energy Area (WEA) Lease Areas consist of OCS-G37962, OCS-G37963, OCS-G37964, and OCS-G37965.

**Project Description:** BOEM is proposing to issue commercial wind energy leases within WEAs following which site characterization and site assessment activities are expected to take place that would determine whether a lease is suitable for commercial-scale wind energy production. The leases would not authorize the lessee to construct or operate any wind energy project on the GOM OCS. Issuance of leases would allow lessees only the exclusive right to submit plans for BOEM's consideration and approval. The areas proposed for leasing total 410,060 acres.

**Type of Application:** BOEM proposed commercial wind energy lease sale.

**CMP Project No:** 24-1216-F2

Federal License and Permit Activities:

**Applicant:** Port of Port Mansfield

**Location:** The project site is located in the Port Mansfield Channel from STA 16+000 to STA -4+000, with the approximate 250-acre placement area within the surf zone of the Gulf of Mexico and along the Padre Island National Seashore (PINS) beach from the Port Mansfield North Jetty, extending 10,770 feet north (including all of the existing Corps Placement Area 2A), in Willacy County, Texas.

**Latitude and Longitude:** 26.563495, -97.276357

**Project Description:** The applicant proposes to conduct maintenance dredging of approximately 2 million cubic yards of beach quality sand (<1% silt and clay) from within the federal channel entrance (Port Mansfield Channel) performed in accordance with design drawings from USACE SWG-IWW-1175-276, from STA 16+000 to STA -4+000. Specific requested regulated actions include maintenance dredging of the Port of Port Mansfield federal channel entrance; beneficial use and placement of the dredged material within a 1,082-foot by 10,770-foot (approx. 250-acre) portion of PINS extending northward from the north channel jetty (including all of Corps Placement Area

2); and future maintenance dredging and beneficial use for beach nourishment at the beach nourishment placement site.

The sediment from the channel would be hydraulically dredged from the proposed dredge areas and pumped via floating and submerged dredge pipeline to the proposed placement area. Prior to placement, the shoreline would be evaluated to define current conditions and determine the optimal location for placement to best nourish the beach and avoid adverse impacts to species habitats. The fill would be placed in accordance with a preconfigured fill design template (see plan drawings) to avoid impact to sensitive habitats and prevent any escarpments that would be detrimental to sea turtle nesting activities from forming. The beach nourishment template will include a maximum cross shore slope of 5 degrees (~1H:11.4V) placed longshore in 500-yard long sections with 500-yard gaps in between sections, alternating sections for each event. The dredged material would be placed within an approximate 1,082-foot-wide cross-section and overall fill volume would not exceed an estimated 2 million cubic yards. Only beach-compatible material would be transferred to the shoreline.

The dredged material would be transferred from the channel to the placement area via pipeline, and the pipeline outfall would include an energy dissipator or diffuser to slow discharge velocity and prevent scour immediately beneath the discharge point. Dredging and placement would be coordinated with landowners and pertinent agencies and would be conducted in accordance with best practices to protect sea turtles and birds such as Piping Plover, Black Rail, and Rufa Red Knot (and other local species).

Emergency dredging, as needed, may occur outside of the Mid-October to March timeframe and would be smaller in magnitude (approximately 300,000 cubic yards per event), to allow for safe navigation through the channel after observed shoaling has occurred. During these events, PINS monitoring requirements would be followed by the contractor to allow for PINS personnel to be on site daily for monitoring. Beach closure signs shall be installed by the contractor at locations designated by the National Park Service with text approved in advance by PINS.

The applicant is also requesting a maintenance dredging time period of 10 years. No mitigation is proposed for this project.

**Type of Application:** U.S. Army Corps of Engineers permit application #SWG-2023-00289. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

**CMP Project No:** 24-1197-F1

**Applicant:** Bay LTD.

**Location:** The project site is located in wetlands adjacent to the Intra-coastal Waterway in Redfish Bay at 1124 County Road 4692, approximately 1.9 miles southeast of Ingleside, San Patricio County, Texas.

**Latitude and Longitude:** 27.863995, -97.173830

**Project Description:** The applicant proposes to expand an existing commercial facility. The proposed expansion project is located on approximately 15.0 acres of land owned by the applicant. Approximately 9.553 acres of wetlands would be filled using a variety of limestone, concrete, and earthen materials totaling approximately 57,653 cubic yards. The purpose of the expansion is to provide area for material storage, parking, and an approximately 300-foot x 100-foot warehouse.

The purpose of the proposed project would be to meet the ongoing and growing needs of the applicant's facility by providing additional parking and storage areas. A conceptual mitigation plan for the project is currently being developed by the applicant. Potential exists to utilize

permittee-responsible mitigation for compensatory mitigation for this project. The applicant has access to potential sites that are nearby, but not immediately adjacent to, the existing facility. The type of mitigation used will be determined during discussions with the Corps.

**Type of Application:** U.S. Army Corps of Engineers permit application #SWG-2023-00817. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

**CMP Project No:** 24-1213-F1

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection, may be obtained from the Texas General Land Office Public Information Officer at 1700 N. Congress Avenue, Austin, Texas 78701, or via email at [pialegal@glo.texas.gov](mailto:pialegal@glo.texas.gov). Comments should be sent to the Texas General Land Office Coastal Management Program Coordinator at the above address or via email at [federal.consistency@glo.texas.gov](mailto:federal.consistency@glo.texas.gov).

TRD-202401602

Mark Havens

Chief Clerk

General Land Office

Filed: April 15, 2024



## Texas Health and Human Services Commission

### Correction of Error

The Texas Health and Human Services Commission (HHSC) published notice of an administrative rule transfer in the April 12, 2024, issue of the *Texas Register* (49 TexReg 2321). Due to an error by HHSC, the notice included an incorrect chapter name. The correct chapter name for Title 26, Chapter 300 should be State Authority Responsibilities.

TRD-202401600

Jessica Miller

Director, Rules Coordination Office

Texas Health and Human Services Commission

Filed: April 15, 2024



### Notice of Public Hearing on Proposed Updates to Medicaid Payment Rates

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on May 21, 2024, at 9:00 a.m., to receive public comments on proposed updates to Medicaid payment rates resulting from Calendar Fee Reviews, Medical Policy Reviews, Legislative Reviews, and Healthcare Common Procedure Coding System (HCPCS) Reviews.

This hearing will be conducted both in-person and as an online event. To join the hearing from your computer, tablet, or smartphone, register for the hearing in advance using the following link:

Registration URL:

<https://attendee.gotowebinar.com/register/8064549891168508245>

After registering, you will receive a confirmation email containing information about joining the webinar. Instructions for dialing-in by phone will be provided after you register.

Members of the public may attend the rate hearing in person, which will be held in the Public Hearing Room 1.401, 1.402, 1.403 & 1.404

in the North Austin Complex located at 4601 W Guadalupe Street, Austin, Texas, or they may access a live stream of the meeting at <https://www.hhs.texas.gov/about/live-archived-meetings>. For the live stream, select the "North Austin Complex Live" tab. A recording of the hearing will be archived and accessible on demand at the same website under the "Archived" tab. The hearing will be held in compliance with Texas Human Resources Code section 32.0282, which requires public notice of and hearings on proposed Medicaid reimbursements.

Any updates to the hearing details will be posted on the HHSC website at <https://www.hhs.texas.gov/about/meetings-events>.

Proposal. The effective date of the proposed payment rates for the topics presented during the rate hearing will be as follows:

Effective January 1, 2024

Calendar Fee Review:

-Indian Health Services (IHS)

-Medical Transportation Program (MTP)

Effective September 1, 2024

Calendar Fee Review:

-Cardiovascular System Surgery

-Digestive System Surgery

-Eye and Ocular Adnexa Surgery

-Financial Management Services Agency (FMSA)

-Physician Administered Drugs - Non-Oncology

-Physician Administered Drugs - Oncology

-Physician Administered Drugs - Vaccines & Toxoids

-Proton Therapy

-R Codes

-Renal Dialysis Medication

-Respiratory System Surgery

-Support Consultation

-T Codes

-Urinary System Surgery

-Vision Devices

Medical Policy Review:

-Colonoscopy Code 45399

-FQHC/RHC Telemonitoring - G0511

-Physician Administered Drugs - Non-Oncology (J0131)

-Q codes - Skin Substitute products

-Renal Dialysis

-THSteps Ortho Dental (D8070 & D8080)

Quarterly HCPCS Updates:

-Q3 HCPCS Drugs

-Q4 HCPCS Drugs

Legislatively Mandated Review:

-Biomarkers (SB989)

Methodology and Justification. The proposed payment rates were calculated in accordance with Title 1 of the Texas Administrative Code:

Section 355.114, Consumer Directed Services Payment Option

Section 355.7001, Reimbursement Methodology for Telemedicine, Telehealth, and Home Telemonitoring Services;

Section 355.8001, Reimbursement for Vision Care Services;

Section 355.8023, Reimbursement Methodology for Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS);

Section 355.8061, Outpatient Hospital Reimbursement;

Section 355.8085, Reimbursement Methodology for Physicians and Other Practitioners;

Section 355.8441, Reimbursement Methodologies for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Services (also known as Texas Health Steps);

Section 355.8561, Billing (Reimbursement Methodology for the Medical Transportation Program);

Section 355.8610, Reimbursement for Clinical Laboratory Services;

Section 355.8620, Reimbursement Methodology for Services provided in Indian Health Service and Tribal Facilities; and

Section 355.8660, Renal Dialysis Reimbursement.

Rate Hearing Packet. A briefing packet describing the proposed payment rates will be made available at <https://pfd.hhs.texas.gov/rate-packets> on or after May 7, 2024. Interested parties may obtain a copy of the briefing packet on or after that date by contacting Provider Finance by telephone at (512) 730-7401; by fax at (512) 730-7475; or by e-mail at [PFDAcuteCare@hhs.texas.gov](mailto:PFDAcuteCare@hhs.texas.gov).

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the Texas Health and Human Services Commission, Attention: Provider Finance, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Provider Finance at (512) 730-7475; or by e-mail to [PFDAcuteCare@hhs.texas.gov](mailto:PFDAcuteCare@hhs.texas.gov). In addition, written comments may be sent by overnight mail to Texas Health and Human Services Commission, Attention: Provider Finance, Mail Code H-400, North Austin Complex, 4601 Guadalupe St, Austin, Texas 78751.

Preferred Communication. For quickest response please use e-mail or phone if possible for communication with HHSC related to this rate hearing.

Persons with disabilities who wish to participate in the hearing and require auxiliary aids or services should contact Provider Finance at (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-202401613

Karen Ray

Chief Counsel

Texas Health and Human Services Commission

Filed: April 16, 2024



Updated - Texas State Hospital Long-Range Planning Report Meetings

HHSC will conduct the next hybrid (in-person and virtual) meeting on May 13th, 2024, to receive public comment on the draft long-range planning report for the Texas State Hospitals. A draft report will be

available to the public on the HHS website on May 6th. The report will address:

- (1) projected future bed requirements for state hospitals;
- (2) documenting the methodology used to develop the projection of future bed requirements;
- (3) projected maintenance costs for institutional facilities;
- (4) recommended strategies to maximize the use of institutional facilities; and
- (5) how each state hospital will:
  - (A) serve and support the communities and consumers in its service area; and
  - (B) fulfill statewide needs for specialized services.

The initiatives outlined in this report will guide the Texas State Hospitals for the next six years. This report is developed under the authority of Texas Health and Safety Code §533.032.

**What:** Meeting on the Texas State Hospitals Long Range Plan

**When:** Monday, May 13th, 2024, at 10:30 a.m.

**Where:** John H. Winters Building - Room 125E

701 W. 51st St. Austin, Texas 78751

**Virtual:** <https://www.hhs.texas.gov/about/live-archived-meetings>

#### Virtual Oral Comments

Members of the public must pre-register to provide oral comments virtually during the meeting by completing a Public Comment Registration form for the May 13th public hearing. The form is located at <https://forms.office.com/r/DL7fFaUi3t>. The form must be completed and submitted no later than noon Friday, May 10th, 2024.

Please mark the correct box on the Public Comment Registration form and provide your name, either the organization you are representing or that you are speaking as a private citizen, and your direct phone number. If you have completed the Public Comment Registration form, you will receive an email the day before the meeting with instructions for providing virtual public comment. Public comment is limited to three minutes. Each speaker providing oral public comments virtually must ensure their face is visible and their voice audible to the other participants while they are speaking. Each speaker must state their name and for whom they are speaking (if anyone). If you pre-register to speak and wish to provide a handout before the meeting, please submit an electronic copy in accessible PDF format that will be distributed to the appropriate HHSC staff. Handouts are limited to two pages (paper size: 8.5" by 11", one side only). Handouts must be emailed to [SHS\\_Central\\_Administration@hhsc.state.tx.us](mailto:SHS_Central_Administration@hhsc.state.tx.us) immediately after pre-registering, but no later than noon Friday, May 10th, 2024 and must include the name of the person who will be commenting. Do not include health or other confidential information in your comments or handouts. Staff will not read handouts aloud during the hearing, but handouts will be provided to the appropriate HHSC staff.

#### In-Person Oral Comments

Members of the public may provide oral public comment during the hearing in person at the hearing location either by pre-registering using the form above or without pre-registering by completing a form at the entrance to the meeting room. Do not include health or other confidential information in your comments.

#### Written Comments

A member of the public who wishes to provide written public comments must either email the comments to [SHS\\_Central\\_Administration@hhsc.state.tx.us](mailto:SHS_Central_Administration@hhsc.state.tx.us) no later than noon Friday, May 10th, 2024, or send written comments via U.S. mail, overnight mail, special deliver mail, or hand delivery to the mailing address at the bottom of this notice. Please include your name and the organization you are representing or that you are speaking as a private citizen. Written comments are limited to two pages (paper size: 8.5" by 11", one side only). Do not include health or other confidential information in your comments. Staff will not read written comments aloud during the meeting, but comments will be provided to the appropriate HHSC staff.

#### **Additional Information for Written Comments**

Written comments, requests to review comments or both may be sent by U.S. mail, overnight mail, special delivery mail, hand delivery, fax or email.

#### **U.S. Mail**

Texas Health and Human Services Commission  
Health and Specialty Care System / Texas State Hospitals  
Attention: Terina McIntyre, Mail Code 2023  
Austin State Hospital  
4110 Guadalupe Street, Austin, Texas 78751

#### **Overnight Mail, Special Delivery Mail, or Hand Delivery**

Texas Health and Human Services Commission  
Health and Specialty Care System / Texas State Hospitals  
Attention: Terina McIntyre, Mail Code 2023  
Austin State Hospital  
4110 Guadalupe Street, Austin, Texas 78751

#### **Email**

[Terina.McIntyre01@hhs.texas.gov](mailto:Terina.McIntyre01@hhs.texas.gov)

#### **Contact**

**If you have any questions, please contact Terina McIntyre at (512) 574-3218 or [Terina.McIntyre01@hhs.texas.gov](mailto:Terina.McIntyre01@hhs.texas.gov)**

TRD-202401487  
Karen Ray  
Chief Counsel  
Texas Health and Human Services Commission  
Filed: April 11, 2024



### **Texas Department of Housing and Community Affairs**

#### **Aviso del Período de Comentarios Públicos y Audiencias Públicas Sobre el Borrador del Plan Estatal del Programa de Asistencia Energética para Hogares de Bajos Ingresos para 2025**

De acuerdo con los requisitos del Departamento de Salud y Servicios Humanos de los Estados Unidos para el Programa de Asistencia de Energía para Hogares de Bajos Ingresos (LIHEAP) y el Código de Gobierno de Texas, Capítulo 2105, Subcapítulo B, el Departamento de Vivienda y Asuntos Comunitarios de Texas (TDHCA) está abriendo una período de comentarios y realización de cuatro audiencias públicas para solicitar comentarios sobre el Borrador del Plan Estatal LIHEAP 2025.

El Borrador del Plan Estatal LIHEAP 2025 describe el uso y distribución propuestos de los fondos LIHEAP para 2025. LIHEAP proporciona fondos para el Programa Integral de Asistencia Energética (CEAP) y el Programa de Asistencia para la Climatización (WAP).

El Borrador del Plan Estatal LIHEAP 2025 fue presentado y aprobado por la Junta Directiva del TDHCA el 11 de abril de 2024. Como parte de los requisitos de información pública, consulta y audiencia pública para LIHEAP, la División de Asuntos Comunitarios del TDHCA ha publicado el Plan propuesto en el sitio web del TDHCA.

Visite el Centro de comentarios públicos del TDHCA en <https://www.tdhca.texas.gov/tdhca-public-comment-center> para acceder al Plan. Los documentos también se pueden obtener comunicándose con Gavin Reid en [gavin.reid@tdhca.texas.gov](mailto:gavin.reid@tdhca.texas.gov) o por teléfono al (512) 936-7828.

Las audiencias públicas para el Borrador del Plan Estatal LIHEAP 2025 se llevarán a cabo de la siguiente manera:

- martes, 14 de mayo, 2024, 5:30 pm - 6:00 p.m. en el edificio de Departamento de Vivienda y Asuntos comunitarios de Texas, 221 E. 11th Street, Floor #1, Austin, Texas 78701.

- jueves, 16 de mayo, 2024, 2:00 p.m. - 2:30 p.m. en las oficinas de BakerRipley, 1 piso en el Centro de Educación, 3838 Aberdeen Way, Houston, Texas 77025.

- jueves, 16 de mayo, 2024, 10:00 a.m.- 10:30 a.m. en el Centro Comunitario del Norte, 1100 NW 18th Street, Fort Worth, Texas 76164.

- jueves, 16 de mayo, 2024, 5:30 p.m. - 6:00 p.m. en la oficina de West Texas Opportunities, 1415 East 2nd Street, Odessa, Texas 79761

En cada una de las audiencias, se presentará el borrador del Plan LIHEAP para comentarios del público. Las personas pueden proporcionar comentarios sobre el Plan ya sea a través de testimonios orales o escritos. Un representante del TDHCA estará presente en la audiencia para explicar el proceso de planificación y recibir comentarios de ciudadanos interesados y grupos afectados sobre el Plan.

El período de comentarios públicos para aceptar comentarios sobre el Borrador del Plan LIHEAP estará abierto desde el 26 de abril de 2024 hasta el 21 de mayo de 2024 a las 5:00 p.m. Tiempo central. También se pueden enviar comentarios por escrito sobre los Planes al Departamento de Vivienda y Asuntos Comunitarios de Texas, a la atención de: Gavin Reid, P.O. Box 13941, Austin, Texas 78711-3941, o por correo electrónico a [gavin.reid@tdhca.texas.gov](mailto:gavin.reid@tdhca.texas.gov). Los comentarios deben enviarse a más tardar a las 5:00 p.m. Hora central, 21 de mayo de 2024.

Cualquier pregunta sobre el proceso de comentarios públicos puede dirigirse a Gavin Reid en la División de Asuntos Comunitarios al (512) 936-7828 o [gavin.reid@tdhca.texas.gov](mailto:gavin.reid@tdhca.texas.gov).

Las personas que requieran ayuda auxiliar, servicios o intérpretes de lenguaje de señas para las audiencias deben comunicarse con Rita Gonzales-Garza al (512) 475-3905 al menos tres días antes de la audiencia para que se puedan hacer los arreglos apropiados.

Las personas que no hablan inglés y que requieran intérpretes para la audiencia pública deben comunicarse con Rita Gonzales-Garza al (512) 475-3905 o por correo electrónico a [rita.garza@tdhca.texas.gov](mailto:rita.garza@tdhca.texas.gov) al menos tres días antes de la audiencia para que se puedan hacer los arreglos apropiados hecho.

Personas que hablan español y requieren un intérprete o ayudas auxiliares, favor de llamar a Rita Gonzales-Garza al siguiente número (512) 475-3905 o enviarle un correo electrónico a [rita.garza@tdhca.state.tx.us](mailto:rita.garza@tdhca.state.tx.us) por lo menos tres días antes de la junta para hacer los preparativos apropiados.

TRD-202401575  
Bobby Wilkinson  
Executive Director  
Texas Department of Housing and Community Affairs  
Filed: April 15, 2024

◆ ◆ ◆  
**Notice of Public Comment Period and Public Hearings on the Draft 2025 Low Income Home Energy Assistance Program State Plan**

In accordance with the U. S. Department of Health and Human Services' requirement for the Low Income Home Energy Assistance Program (LIHEAP) and Texas Government Code, Chapter 2105, Subchapter B, the Texas Department of Housing and Community Affairs (TDHCA) is opening a public comment period and conducting four public hearings to solicit comments on the Draft 2025 LIHEAP State Plan.

The Draft 2025 LIHEAP State Plan describes the proposed use and distribution of LIHEAP funds for 2025. LIHEAP provides funding for the Comprehensive Energy Assistance Program (CEAP) and the Weatherization Assistance Program (WAP).

The Draft 2025 LIHEAP State Plan was presented and approved by the TDHCA Board of Directors on April 11, 2024. As part of the public information, consultation, and public hearing requirements for LIHEAP, the Community Affairs Division of TDHCA has posted the proposed Plan on the TDHCA website.

Please visit the TDHCA Public Comment Center at <https://www.tdhca.texas.gov/tdhca-public-comment-center> to access the Plan.

The documents also may be obtained by contacting Gavin Reid at [gavin.reid@tdhca.texas.gov](mailto:gavin.reid@tdhca.texas.gov) or by phone at (512) 936-7828.

Public hearings for the Draft 2025 LIHEAP State Plan will be held as follows:

- Tuesday, May 14, 2024, 5:30 p.m. - 6:00 p.m. at Texas Department of Housing and Community Affairs, 221 East 11th Street, 1st Floor, Austin, Texas 78701.

- Thursday, May 16, 2024, at 2:00 p.m. - 2:30 p.m. at BakerRipley, First Floor Education Center, 3838 Aberdeen Way, Houston, Texas 77025.

- Thursday, May 16, 2024, at 10:00 a.m.- 10:30 a.m. at Northside Community Center, 1100 NW 18th Street, Fort Worth, Texas 76164.

- Thursday, May 16, 2024, at 5:30 p.m. - 6:00 p.m. at West Texas Opportunities, 1415 East 2nd Street, Odessa, Texas 79761.

At each of the hearings, the Draft LIHEAP Plan will be presented for public comment. Persons may provide comment on the Plan either through oral testimony or written testimony. A representative from TDHCA will be present at the hearing to explain the planning process and receive comments from interested citizens and affected groups regarding the Plan.

The public comment period to accept comments regarding the Draft LIHEAP Plan will be open from April 26, 2024 through May 21, 2024 at 5:00 p.m. Central time. Written comments concerning the Plans may also be submitted to the Texas Department of Housing and Community Affairs, Attn: Gavin Reid, P.O. Box 13941, Austin, Texas 78711-3941, or by email to [gavin.reid@tdhca.texas.gov](mailto:gavin.reid@tdhca.texas.gov). Comments are due no later than 5:00 p.m. Central time, May 21, 2024.

Any questions regarding the public comment process may be directed to Gavin Reid in the Community Affairs Division at (512) 936-7828 or [gavin.reid@tdhca.texas.gov](mailto:gavin.reid@tdhca.texas.gov).

Individuals who require auxiliary aids, services or sign language interpreters for the hearings should contact Rita Gonzales-Garza, at (512) 475-3905 at least three days before the hearing so that appropriate arrangements can be made.

Non-English speaking individuals who require interpreters for the public hearing should contact Rita Gonzales-Garza at (512) 475-3905 or by email at [rita.garza@tdhca.texas.gov](mailto:rita.garza@tdhca.texas.gov) at least three days before the hearing so that appropriate arrangements can be made.

Personas que hablan español y requieren un intérprete, favor de llamar a Rita Gonzales-Garza, al siguiente número (512) 475-3905 por lo menos cinco días antes de la junta para hacer los preparativos apropiados.

TRD-202401574  
Bobby Wilkinson  
Executive Director  
Texas Department of Housing and Community Affairs  
Filed: April 15, 2024

◆ ◆ ◆  
**Youth and Young Adult Homeless Program Notice of Funding Availability**

The Texas Department of Housing and Community Affairs (the Department) announces the availability of \$1,000,000 in funding for the Youth and Young Adult Homeless Program funds for the provision of housing and homeless services in Fort Bend County. The funds will be made available to eligible applicants as further described in the NOFA.

Applications for an award of funds may be submitted beginning Friday, April 26, 2024 in accordance with the NOFA. The NOFA will expire the date the Department's Governing Board of Directors awards all of the funds under the NOFA. In no event may funds be awarded after August 31, 2025. Amendments will be published on the TDHCA website.

Information is available on the Department's web site at <http://www.tdhca.state.tx.us/nofa.htm>. Questions regarding the NOFA may be addressed to the Rosy Falcon via email at [rosy.falcon@tdhca.state.tx.us](mailto:rosy.falcon@tdhca.state.tx.us).

TRD-202401576  
Bobby Wilkinson  
Executive Director  
Texas Department of Housing and Community Affairs  
Filed: April 15, 2024

◆ ◆ ◆  
**Texas Lottery Commission**

**Scratch Ticket Game Number 2569 "DOUBLE DOUBLER"**

**1.0 Name and Style of Scratch Ticket Game.**

A. The name of Scratch Ticket Game No. 2569 is "DOUBLE DOUBLER". The play style is "key symbol match".

**1.1 Price of Scratch Ticket Game.**

A. The price for Scratch Ticket Game No. 2569 shall be \$5.00 per Scratch Ticket.

**1.2 Definitions in Scratch Ticket Game No. 2569.**

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize.

Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: POT OF GOLD SYMBOL, CHERRY SYMBOL, HEART SYMBOL, MOON SYMBOL, CACTUS SYMBOL, LEMON SYMBOL, ELEPHANT SYMBOL, TREE SYMBOL, BANANA SYMBOL, RAINBOW SYMBOL, MELON SYMBOL, WISHBONE SYMBOL, GRAPES SYMBOL, WALLET SYMBOL, SUN SYMBOL, GOLD BAR SYMBOL, HORSESHOE SYMBOL, ANCHOR SYMBOL, SAILBOAT SYMBOL, LIGHTNING BOLT SYMBOL, DICE SYMBOL, SHELL SYMBOL, SPADE SYMBOL, CROWN SYMBOL, PINEAPPLE SYMBOL, BELL SYMBOL, UMBRELLA SYMBOL, DAISY SYMBOL, DIAMOND SYMBOL, HAT SYMBOL, BOOT

SYMBOL, BIRD SYMBOL, LADYBUG SYMBOL, BUTTERFLY SYMBOL, APPLE SYMBOL, CAKE SYMBOL, GIFT SYMBOL, BALLOONS SYMBOL, TREASURE CHEST SYMBOL, SAFE SYMBOL, MONEY BAG SYMBOL, \$5.00, \$10.00, \$20.00, \$40.00, \$100, \$200, \$1,000 and \$100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2569 - 1.2D

PLAY SYMBOL	CAPTION
POT OF GOLD SYMBOL	GOLD
CHERRY SYMBOL	CHERRY
HEART SYMBOL	HEART
MOON SYMBOL	MOON
CACTUS SYMBOL	CACTUS
LEMON SYMBOL	LEMON
ELEPHANT SYMBOL	ELEPHT
TREE SYMBOL	TREE
BANANA SYMBOL	BANANA
RAINBOW SYMBOL	RAINBW
MELON SYMBOL	MELON
WISHBONE SYMBOL	WSHBNE
GRAPES SYMBOL	GRAPES
WALLET SYMBOL	WALLET
SUN SYMBOL	SUN
GOLD BAR SYMBOL	BAR
HORSESHOE SYMBOL	HRSHOE
ANCHOR SYMBOL	ANCHOR
SAILBOAT SYMBOL	BOAT
LIGHTNING BOLT SYMBOL	BOLT
DICE SYMBOL	DICE
SHELL SYMBOL	SHELL
SPADE SYMBOL	SPADE
CROWN SYMBOL	CROWN
PINEAPPLE SYMBOL	PNAPLE
BELL SYMBOL	BELL
UMBRELLA SYMBOL	UMBRLA



DAISY SYMBOL	DAISY
DIAMOND SYMBOL	DMND
HAT SYMBOL	HAT
BOOT SYMBOL	BOOT
BIRD SYMBOL	BIRD
LADYBUG SYMBOL	LDYBUG
BUTTERFLY SYMBOL	BTRFLY
APPLE SYMBOL	APPLE
CAKE SYMBOL	CAKE
GIFT SYMBOL	GIFT
BALLOONS SYMBOL	BALOONS
TREASURE CHEST SYMBOL	TRCHEST
SAFE SYMBOL	SAFE
MONEY BAG SYMBOL	WINX4
\$5.00	FIV\$
\$10.00	TEN\$
\$20.00	TWY\$
\$40.00	FRTY\$
\$100	ONHN
\$200	TOHN
\$1,000	ONTH
\$100,000	100TH

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2569), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start

with 001 and end with 075 within each Pack. The format will be: 2569-0000001-001.

H. Pack - A Pack of the "DOUBLE DOUBLER" Scratch Ticket Game contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the Pack; the back of Ticket 075 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack. Every other Pack will reverse; i.e., reverse order will be: the back of Ticket 001 will be shown on the front of the Pack and the front of Ticket 075 will be shown on the back of the Pack.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does

not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "DOUBLE DOUBLER" Scratch Ticket Game No. 2569.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "DOUBLE DOUBLER" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose forty-five (45) Play Symbols. If a player matches any of the YOUR SYMBOLS Play Symbols to any of the LUCKY SYMBOLS Play Symbols that are not in the star, the player wins the prize for that symbol. If the player matches any of the YOUR SYMBOLS Play Symbols to the LUCKY SYMBOL Play Symbol that is in the star, the player wins DOUBLE the prize for that symbol. If the player reveals a "MONEY BAG" Play Symbol, the player wins 4 TIMES the prize for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

### 2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly forty-five (45) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The Scratch Ticket shall be intact;
6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;
8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The Scratch Ticket must not be counterfeit in whole or in part;
10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;
11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;
13. The Scratch Ticket must be complete and not miscut, and have exactly forty-five (45) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the forty-five (45) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the forty-five (45) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

### 2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

B. A Ticket can win as indicated by the prize structure.

C. A Ticket can win up to twenty (20) times.

D. On winning and Non-Winning Tickets, the top cash prizes of \$1,000 and \$100,000 will each appear at least once, except on Tickets winning twenty (20) times and with respect to other parameters, play action or prize structure.

E. No matching non-winning YOUR SYMBOLS Play Symbols will appear on a Ticket.

F. No matching LUCKY SYMBOLS Play Symbols will appear on a Ticket.

G. Non-winning Prize Symbols will not match a winning Prize Symbol on a Ticket.

H. On all Tickets, a Prize Symbol will not appear more than four (4) times, except as required by the prize structure to create multiple wins.

I. On Non-Winning Tickets, the LUCKY SYMBOLS Play Symbols will never match a YOUR SYMBOLS Play Symbol, including the LUCKY SYMBOLS Play Symbol in the star.

J. Tickets winning more than one (1) time will use as many LUCKY SYMBOLS Play Symbols as possible, excluding the LUCKY SYMBOLS Play Symbol in the star to create matches, unless restricted by other parameters, play action or prize structure.

K. On winning and Non-Winning Tickets, there will always be exactly one (1) LUCKY SYMBOLS Play Symbol in the star on a Ticket.

L. The location of the LUCKY SYMBOLS Play Symbol in the star will be fixed, according to the Ticket scene.

M. When read from left to right, the position of the LUCKY SYMBOLS Play Symbol in the star on each Ticket scene will be as follows:

- a. Scene 1 = the 1st LUCKY SYMBOLS Play Symbol position
- b. Scene 2 = the 3rd LUCKY SYMBOLS Play Symbol position
- c. Scene 3 = the 5th LUCKY SYMBOLS Play Symbol position
- d. Scene 4 = the 2nd LUCKY SYMBOLS Play Symbol position
- e. Scene 5 = the 4th LUCKY SYMBOLS Play Symbol position

N. A YOUR SYMBOLS Play Symbol will win DOUBLE the prize for that Play Symbol when matched with the LUCKY SYMBOLS Play Symbol in the star, as per the prize structure.

O. On Tickets that win with the LUCKY SYMBOLS Play Symbol in the star, there will be one (1) and only one (1) YOUR SYMBOLS Play Symbol that matches the LUCKY SYMBOLS Play Symbol in the star.

P. The "MONEY BAG" (WINX4) Play Symbol will never appear more than once on a Ticket.

Q. The "MONEY BAG" (WINX4) Play Symbol will win 4 TIMES the prize for that Play Symbol and will win as per the prize structure.

R. The "MONEY BAG" (WINX4) Play Symbol will never appear on a non-winning Ticket.

S. The "MONEY BAG" (WINX4) Play Symbol will never appear as a LUCKY SYMBOLS Play Symbol.

### 2.3 Procedure for Claiming Prizes.

A. To claim a "DOUBLE DOUBLER" Scratch Ticket Game prize of \$5.00, \$10.00, \$20.00, \$40.00, \$100, \$200 or \$400, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$40.00, \$100, \$200 or \$400 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "DOUBLE DOUBLER" Scratch Ticket Game prize of \$1,000 or \$100,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim

is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "DOUBLE DOUBLER" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is \$1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;
2. in default on a loan made under Chapter 52, Education Code;
3. in default on a loan guaranteed under Chapter 57, Education Code; or
4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under \$600 from the "DOUBLE DOUBLER" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "DOUBLE DOUBLER" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto.

Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 7,200,000 Scratch Tickets in Scratch Ticket Game No. 2569. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2569 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
\$5.00	752,000	9.57
\$10.00	672,000	10.71
\$20.00	208,000	34.62
\$40.00	96,000	75.00
\$100	29,000	248.28
\$200	4,200	1,714.29
\$400	4,020	1,791.04
\$1,000	58	124,137.93
\$100,000	6	1,200,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 4.08. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2569 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket

Game No. 2569, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202401617  
 Bob Biard  
 General Counsel  
 Texas Lottery Commission  
 Filed: April 17, 2024

◆ ◆ ◆

**Motor Vehicle Crime Prevention Authority**

## Fiscal Year 2025 Request for Applications - Taskforce Grants

April 12, 2024

### Notice of Request for Applications

The Motor Vehicle Crime Prevention Authority (MVCPA) authorized the issuance of the Fiscal Year 2025 Request for Applications (RFA). MVCPA is authorized in statute to provide grants to local law enforcement to combat motor vehicle theft, burglary from a motor vehicle and/or fraud-related motor vehicle crime. Eligible applicants may request funds for program operation by submission of an application consistent with the information, including the requirements and conditions stated in this RFA. This RFA is posted in the *Texas Register* as required by law for at least thirty (30) days prior to the due date for Applications.

All applications submitted will be for FY2025. If previously awarded an FY2024 grant the MVCPA may provide a FY2025 grant subject to availability of funding and grantees' positive program performance. The MVCPA will use the same FY2024 application and budget values as originally submitted for the additional period. Any ongoing program (scope) changes or budget changes will be submitted by grantees through the grant adjustment process after the creation of the second-year grants.

### Due Date

Grant Applications from eligible applicants must be completely submitted on-line at <https://MVCPA.tamu.edu> on or before 5:00 p.m., May 28, 2024. First time applicants must establish an account and perform account setup steps prior to an application being able to be submitted.

The required Resolution and any optional supporting documents must be scanned and submitted as attachments to the application at <https://MVCPA.tamu.edu> on or before 5:00 p.m., May 28, 2024.

### Applicable Authority and Rules

Motor Vehicle Crime Prevention Authority grant programs are governed by the following statutes, rules, standards and guidelines:

<https://statutes.capitol.texas.gov/Docs/TN/htm/TN.1006.htm>

[http://texreg.sos.state.tx.us/public/readtac\\$ext.View-TAC?tac\\_view=3&ti=43&pt=3](http://texreg.sos.state.tx.us/public/readtac$ext.View-TAC?tac_view=3&ti=43&pt=3)

<https://comptroller.texas.gov/purchasing/grant-management/>

[https://www.txdmv.gov/sites/default/files/body-files/MVCPA\\_FY20\\_Grant\\_Admin\\_Manual.pdf](https://www.txdmv.gov/sites/default/files/body-files/MVCPA_FY20_Grant_Admin_Manual.pdf)

This Request for Applications issued on April 12, 2024

### Eligible Applicants

Only Texas law enforcement agencies through their city or county are eligible to apply for Motor Vehicle Crime Taskforce Grants.

Applicants meeting the eligibility requirements may submit a new grant subject to the priority established by the MVCPA in the FY25 RFA.

New Grant - Available only to law enforcement agencies. These are annual grants that require a minimum cash match of 20% for the program described in the application. New applicants shall email MVCPA at [GrantsMVCPA@txdmv.gov](mailto:GrantsMVCPA@txdmv.gov) from an official governmental agency email account to request an account and access be established.

### Grant Type

Reimbursement - This is a total program budget reimbursement grant. Applicants that are awarded grants will expend local (agency) funds and then will be reimbursed quarterly, subject to compliance with standard and special conditions as contained in the Statement of Grant

Award (SGA), at the agreed rate for all allowable, reasonable, and necessary program costs incurred.

### Grant Term

The FY2025 grant cycle is a one (1) year funding cycle to begin on September 1, 2024, and end August 31, 2025. For those grantees you previously were awarded a FY2024 grant, subject to availability of funding and grantees' positive program performance the MVCPA may provide an FY2025 grant using the same on-line application systems and budget values as originally submitted. No obligations or expenses may be incurred or made outside of the grant period(s).

### Method of Application

Grant Applications from eligible applicants shall be completely submitted on-line at <https://MVCPA.tamu.edu> on or before 5:00 p.m., May 28, 2024. All forms will be completed on-line. The Resolution and all supporting documents must be submitted as attachments.

### Resolution Required

A Resolution (Order or Ordinance) by the applicant governing body is required to make application for these funds. The Resolution shall provide that the governing body applies for the funds for the purpose provided in statute (Texas Transportation Code, Chapter 1006) to return the grant funds in the event of loss or misuse and designate the officials that the governing body chooses as its agents to make uniform assurances and administer the grant if awarded.

Only the governing body submitting an application needs to adopt and submit a Resolution. Participating jurisdictions in multi-agency taskforces shall agree and commit to the grant through interagency agreements as provided under Texas Local Government Code Chapter 362, Texas Government Code Chapter 791 and TxGMS.

In the event a governing body has delegated the application authority to a city manager, chief of police, sheriff or other official then applicants must submit on-line a copy of the delegation order (documentation) along with the Resolution signed by the official. A sample Resolution is attached as Appendix A.

### Program Category

To be eligible for consideration for funding, a taskforce grant application must be designed to support one or more of the following MVCPA program categories (43 TAC §57.14):

Law Enforcement, Detection, and Apprehension - provide financial support to law enforcement agencies for economic motor vehicle theft and fraud-related motor vehicle crime enforcement teams (referred to as taskforces). Taskforces will develop organized methods to combat motor vehicle theft, burglary of a motor vehicle and fraud-related motor vehicle crime through the enforcement of law. This may include recovery of vehicles, clearance of cases, arrest of law violators, and disruption of organized motor vehicle crime. This category includes development of uniform programs to prevent stolen motor vehicles from entering into Mexico or being removed from Texas through outbound seaports.

Prosecution/Adjudication/Conviction - provide financial support for taskforces to work with prosecutors and the judiciary to implement programs designed to reduce the incidence of motor vehicle theft, burglary of a motor vehicle and fraud-related motor vehicle crime.

Prevention, Anti-Theft Devices and Automobile Registration - provide financial support for taskforces to work with organizations and communities to reduce the incidence of motor vehicle theft, burglary of a motor vehicle and/or fraud-related motor vehicle crime. The application shall demonstrate how the financial support will assist automobile

owners to reduce motor vehicle theft, burglary of a motor vehicle and fraud-related motor vehicle crime.

Reduction of the Sale of Stolen Vehicles or Parts - provide financial support for taskforces to work with businesses, organizations, and communities to reduce the sale of stolen vehicles or parts. Applicants will develop organized methods to combat the sale of stolen vehicles and parts using any of the following: vehicle identification number (VIN) inspection; inspections of motor vehicle part and component distribution enterprises; parts labeling and etching methods; and means to detect the fraudulent selling of stolen parts.

Educational Programs and Marketing - provide financial support for taskforces to work with individuals, businesses, organizations, and communities to assist automobile owners in preventing motor vehicle theft, burglary of a motor vehicle and fraud-related motor vehicle crime. Develop and provide specialized training or education program(s) to: the public on motor vehicle crime prevention, law enforcement on interdiction and prosecution, and government officials on fraud-related motor vehicle crime prevention, including title and registration fraud.

#### Priority Funding

The MVCPA enabling statute provides that "the authority shall allocate grant funds primarily based on the number of motor vehicles stolen in, or the motor vehicle burglary or theft rate across, and the number of fraud-related motor vehicle crimes committed in the state rather than based on geographic distribution." (TTC Section 1006.151, (c)). In addition, the following grant features will be given priority consideration in evaluating new grant applications:

Continuing Funded Programs in Compliance with MVCPA Grant Conditions - Applications that provide for the continuation of existing programs that currently meet the program and fiscal reporting conditions of the MVCPA. Applicants must provide ongoing need and evidence of their progress and impactful performance toward combatting motor vehicle theft, burglary of a motor vehicle and/or fraud-related motor vehicle crime. The applicant must describe the experience and qualifications of investigators used in the program and how utilization of current grant inventory and resources for continued operation of these specialized investigative grant programs are useful for the state and local governments.

Programs to Combat Organized Economic Crime - Applications for economic motor vehicle theft and fraud-related motor vehicle crime enforcement teams that introduce, increase, or expand efforts to combat organized crime.

Border and Port Security - Applications that provide specific initiatives to identify and prevent stolen vehicles from crossing the border using automatic license plate readers, training of local state and federal personnel in the identification of stolen vehicles, and bridge and port inspections.

Use of Technology - Applications that incorporate automatic license plate reader programs, surveillance equipment and other uses of technology to increase the number of stolen vehicles recovered and the number of persons arrested for motor vehicle crimes.

Theft of Parts from a Motor Vehicle - Applications that incorporate a reasonable, objective plan to combat and prevent the theft of catalytic converters.

Dedicated Prosecutors - Applications that incorporate a dedicated prosecutor to increase the priority of motor vehicle crime case prosecutions and decrease the number of repeat offenders through successful prosecution efforts.

#### Supporting Documents

Documents that provide evidence of local support or commitment from other officials or agencies for the application may be submitted following the same instructions as the Resolution. Interagency agreements shall be submitted prior to payments being authorized if an award is made. MVCPA recommends that interagency agreements be completed after award determinations are made to ensure correct amounts are reflected in those agreements. All interagency agreements must meet the conditions and elements required in the TxGMS.

#### Supplanting Prohibited

Grant funds provided by the Authority under this RFA shall not be used to supplant federal, state or local funds that otherwise would be available for the same purposes (Texas Administrative Code Title 43, §57.9). Supplanting means the replacement of other funds with MVCPA grant funds. This shall include using existing resources already available to a program activity as cash match.

#### Cash Match Requirement

All applications for programs must provide at least a twenty (20%) percent cash match (Texas Administrative Code Title 43 §57.36). Multijurisdictional agencies must provide details for the method of cash match in intergovernmental agreements (Texas Government Code, Chapter 791). Cash match must meet the requirements provided in TxGMS.

Formulas to calculate cash match:

Total MVCPA grant funds requested multiplied by percent of match required = Total Amount of Cash Match Required

Total Program Cost minus Total Cash Match Required = Total Authority Grant Request

NICB in Lieu of Cash - Applicants may enter into formal agreements with the National Insurance Crime Bureau (NICB) to work on grant funded activities. The amount of salary and other direct costs related to the work on grant activity provided by the NICB may be counted and reported as in lieu of cash match. Time certifications are required to be made by the employee for these positions as required by TXGMS. Applicants must meet the obligation expressed as cash match in the event NICB cannot meet its obligation.

#### In-Kind Match

Only include in-kind if necessary for the local jurisdiction. In-kind contributions shall not be considered cash match. In-kind match may be used to: 1) reflect the total level of jurisdictions' effort/costs to combat motor vehicle crime; 2) reflect how the grant program fits into jurisdictions' operation; 3) effectively operate a single program with multiple funding streams; and/or 4) contributions from the applicant or third parties that are for grant funded activity. Costs in detail line items shall not be split between in-kind match and cash match or grant funding. For example, the entire salary of an officer shall be placed in one expense type rather than split between grant/cash match costs and in-kind.

#### Reporting and Webinar Attendance Requirements

Applicants that are awarded grants will be required to provide:

Quarterly Progress Reports - The MVCPA requires submission of quarterly progress reports to demonstrate progress toward meeting goals and activities provided in the grant application. These include: 1) Monthly progress toward statutorily required performance measures; 2) Monthly progress recorded on the Goals, Strategies and Activities report; and 3) Quarterly Summary and Success section. Grantees designated as Border/Port Security grants are required to complete additional sections required by the Texas Legislature.

Quarterly Financial Reports - Reports of actual expenses are provided to request funds. All expenditures must be in accordance with local policies and procedures and grant requirements. Grantees shall review all expenditures, ensure all applicable regulations are followed, and maintain documentation that is accurate and complete. All expenses must be supported by appropriate documentation.

Webinar Attendance: One grant representative from the applicant agency will attend a monthly session via teleconference or webinar that includes information on MVCPA grant administration.

One law enforcement officer is required to attend the information sharing and networking sessions on law enforcement issues and other MVCPA issues critical to the successful operation of an MVCPA taskforce.

#### Funding Requirements and Conditions

State Funds Availability - All awards by the MVCPA are subject to availability of state funds.

Right of Refusal - The Authority reserves the right to reject any or all of the applications submitted.

Awards - Publishing the RFA does not legally obligate the Authority to fund any programs.

Partial Funding - The Authority may choose to offer funds for all or any portion of a program submitted in an application.

Substitution - The Authority may offer alternative funding sources, special conditions, or alternative program elements in response to submitted Applications.

Application Required - Registration for on-line access is required. The MVCPA is not responsible for applicants that cannot complete the registration and application process on-time.

No Alternative Application Submission - Paper applications and requests for funding are not accepted in lieu of the on-line grant application process.

Review Criteria - Authority staff and designated MVCPA Board member(s) will review each grant using subjective and objective tools and comparative analysis. The weight given to each section or combination of sections is at the sole discretion of the Authority.

Questions and Clarification - During the review period, the applicant may be contacted by Authority staff to ask questions or to seek clarification regarding information provided in the application. Failure to promptly respond will not disqualify an applicant, but information that is submitted after the review period may not be considered.

Final Selection - The Authority may select and award programs that best meet the statutory purposes and that reflect its current priorities. No appeal may be made from the Authority's decisions.

Changes in Application - If an applicant proposes changes to be made in the program type or participation of jurisdictions after an award is determined, then the Authority will review the changes and may make modifications (including the amount) or cancel the award as deemed appropriate to the Authority.

Delayed Start - An applicant that is awarded a grant and that does not begin operations within 45 days of the beginning of the grant term is considered terminated.

Application instructions - the MVCPA provides additional details and instructions in the on-line application system that are incorporated by reference as part of this RFA and must be followed during the application and award process.

Program Income - is defined in the TxGMS. Current grantees carrying forward program income from prior years will follow the new rules established by the Texas Comptroller and MVCPA Grant Administrative Manual. Budgeted use of Program Income should be specified in the grant budget detail, narrative, and source of income table for FY25.

TCOLE Certifications Required - All law enforcement agencies regulated by Chapter 1701, Occupations Code must certify that they are in compliance with the Texas Commission on Law Enforcement standards or provide a certification from the Texas Commission on Law Enforcement that states that the requesting agency is in the process of achieving compliance with said rules.

#### Selection Process:

Eligible applications will be reviewed. Grant award decisions by MVCPA are final and not subject to judicial review. Grants will be awarded on or before September 1, 2024.

Applications that do not meet the stated requirements of this RFA and that are not eligible for review will be notified ten (10) working days after the due date.

#### Application Workshop

Potential applicants are requested to attend the on-line "Motor Vehicle Crime Prevention Authority Grant Application Workshop" which has been scheduled for: May 8, 2024, from 9:00 a.m. to 11:00 a.m. Join by using the following links:

THIS MEETING WILL BE HELD REMOTELY VIA

Microsoft Teams Need help?

[https://teams.microsoft.com/l/meetup-join/19%3ameeting\\_ZD-MxMDc1NDktM2ZhZC00YmRkLWlxNjctZTBiYWUyZGJmYTU-3%40thread.v2/0?context=%7b%22Tid%22%3a%2272719f70-3533-46b3-9456-ec1235143768%22%2c%22Oid%22%3a%220514ac85-ebb6-4d6b-83c8-d095df91e59b%22%7d](https://teams.microsoft.com/l/meetup-join/19%3ameeting_ZD-MxMDc1NDktM2ZhZC00YmRkLWlxNjctZTBiYWUyZGJmYTU-3%40thread.v2/0?context=%7b%22Tid%22%3a%2272719f70-3533-46b3-9456-ec1235143768%22%2c%22Oid%22%3a%220514ac85-ebb6-4d6b-83c8-d095df91e59b%22%7d)

Meeting ID: 229 784 377 498

Passcode: K4pNom

Dial-in by phone

+1 737-787-8456,,929327163# United States, Austin

Find a local number

Phone conference ID: 929 327 163#

The informational session will provide details on the grant Application process including grant eligibility requirements, completing the various Application sections, and the grant cycle timeline. At least one representative of the potential grant applicant should be present at this workshop.

#### Contact Person

William Diggs, MVCPA Director,

Texas Motor Vehicle Crime Prevention Authority

4000 Jackson Avenue

Austin, Texas 78731

(512) 465-1485

GrantsMVCPA@txdmv.gov

Issued in Austin, Texas on April 12, 2024

Figure 1

### **MVCPA Application Checklist**

Each Applicant must:

- 1) Complete the on-line Application on or before **5:00 PM, May 28, 2024;**
- 2) Complete the Resolution with the city or county and attach with other supporting documents on or before **5:00 PM, May 28, 2024**



**Appendix A**  
**Updated Sample Motor Vehicle Crime Prevention Authority Resolution**

Applicants must use the language below to meet the minimum legal elements to execute an agreement with the MVCPA through the grant application process. Cities and counties not wanting to use the sample below must address all the legal elements contained herein.

2025 **Blank City/County** Resolution or Order or Ordinance  
**Motor Vehicle Crime Prevention Authority**  
2025 **Blank City/County** Resolution  
**Taskforce Grant Program**

WHEREAS, under the provisions of the Texas Transportation Code Chapter 1006 and Texas Administrative Code Title 43; Part 3; Chapter 57, entities are eligible to receive grants from the Motor Vehicle Crime Prevention Authority to provide financial support to law enforcement agencies for economic motor vehicle theft and fraud-related motor vehicle crime enforcement teams; and

WHEREAS, this grant program will assist this jurisdiction to combat motor vehicle theft, motor vehicle burglary and fraud-related motor vehicle crime; and

WHEREAS, BLANK has agreed that in the event of loss or misuse of the grant funds, BLANK assures that the grant funds will be returned in full to the Motor Vehicle Crime Prevention Authority.

NOW THEREFORE, BE IT RESOLVED and ordered that TITLE, is designated as the Authorized Official to apply for, accept, decline, modify, or cancel the grant application for the Motor Vehicle Crime Prevention Authority Grant Program and all other necessary documents to accept said grant; and

BE IT FURTHER RESOLVED that TITLE, is designated as the Program Director and TITLE, is designated as the Financial Officer for this grant.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
NAME  
TITLE: County Judge /Mayor/ City Manager

TRD-202401582  
David Richards  
MVCPA General Counsel  
Motor Vehicle Crime Prevention Authority  
Filed: April 15, 2024

◆ ◆ ◆  
**Public Utility Commission of Texas**

**Notice of Application for Approval of the Provision of Non-Emergency 311 Service**

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) for approval to provide non-emergency 311 services.

Docket Style and Number: Application of City of Kyle for Administrative Approval to Provide Non-Emergency 311 Service for the City of Kyle, Docket Number 56482.

The Application: On April 10, 2024, the City of Kyle filed an application with the commission under 16 Texas Administrative Code §26.127, for approval to provide non-emergency 311 service for the City of Kyle in Hays County. The City of Kyle seeks to provide non-emergency 311 service to residents within the limits of Kyle, Texas and portions of surrounding communities in the City of Kyle’s certificated service area.

Non-emergency 311 service is available to local governmental entities to provide to their residents an easy-to-remember number to call for access to non-emergency services. By implementing 311 service, communities can improve 911 response times for those callers with

true emergencies. Each local government entity that elects to implement 311 service will determine the types of non-emergency calls their 311-call center will handle.

Persons who wish to comment on this application should notify the commission by April 29, 2024. Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Customer Protection Division at (512) 936-7120 or toll free at (888) 782 8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All comments or motions to intervene should reference Docket Number 56482.

TRD-202401599

Andrea Gonzalez  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: April 15, 2024

◆ ◆ ◆  
**Supreme Court of Texas**

Order Setting Public Deliberations on Amendments to the Texas Disciplinary Rules of Professional Conduct and the Texas Rules of Disciplinary Procedure

# Supreme Court of Texas

---

---

Misc. Docket No. 24-9015

---

---

## Order Setting Public Deliberations on Amendments to the Texas Disciplinary Rules of Professional Conduct and the Texas Rules of Disciplinary Procedure

---

---

ORDERED that:

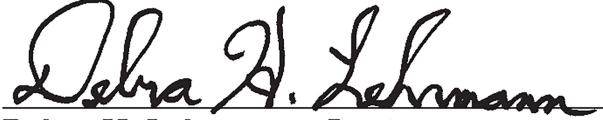
1. On October 6, 2023, in Misc. Dkt. No. 23-9080, the Court submitted proposed amendments to the Texas Disciplinary Rules of Professional Conduct and the Texas Rules of Disciplinary Procedure (“Proposed Rules”) to the State Bar of Texas members for a referendum.
2. Pursuant to Texas Government Code Section 81.0878, the referendum will occur between April 1, 2024, and April 30, 2024.
3. If one or more of the Proposed Rules are approved by a majority of the votes cast, the Court will deliberate on those Proposed Rules.
4. Pursuant to Texas Government Code Section 81.08791, the Court provides notice of deliberations, which will be held on May 6, 2024, from 3:00 p.m. to 5:00 p.m. in the Court’s courtroom. The public may view the Court’s deliberations in person or on the Court’s YouTube channel.
5. Pursuant to Texas Government Code Section 81.08793, the Court invites written public comments. Written comments should be sent to [rulescomments@txcourts.gov](mailto:rulescomments@txcourts.gov). The Court requests that comments be sent by May 1, 2024.
6. The Clerk is directed to:
  - a. file a copy of this Order with the Secretary of State;
  - b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;

- c. send a copy of this Order to each elected member of the Legislature;  
and
  - d. submit a copy of this Order for publication in the *Texas Register*.
7. The State Bar of Texas is directed to take all reasonable steps to notify members of the State Bar of Texas of this Order.

Dated: April 16, 2024.



Nathan L. Hecht, Chief Justice



Debra H. Lehrmann, Justice



Jeffrey S. Boyd, Justice



John P. Devine, Justice



James D. Blacklock, Justice



J. Brett Busby, Justice



Jane N. Bland, Justice



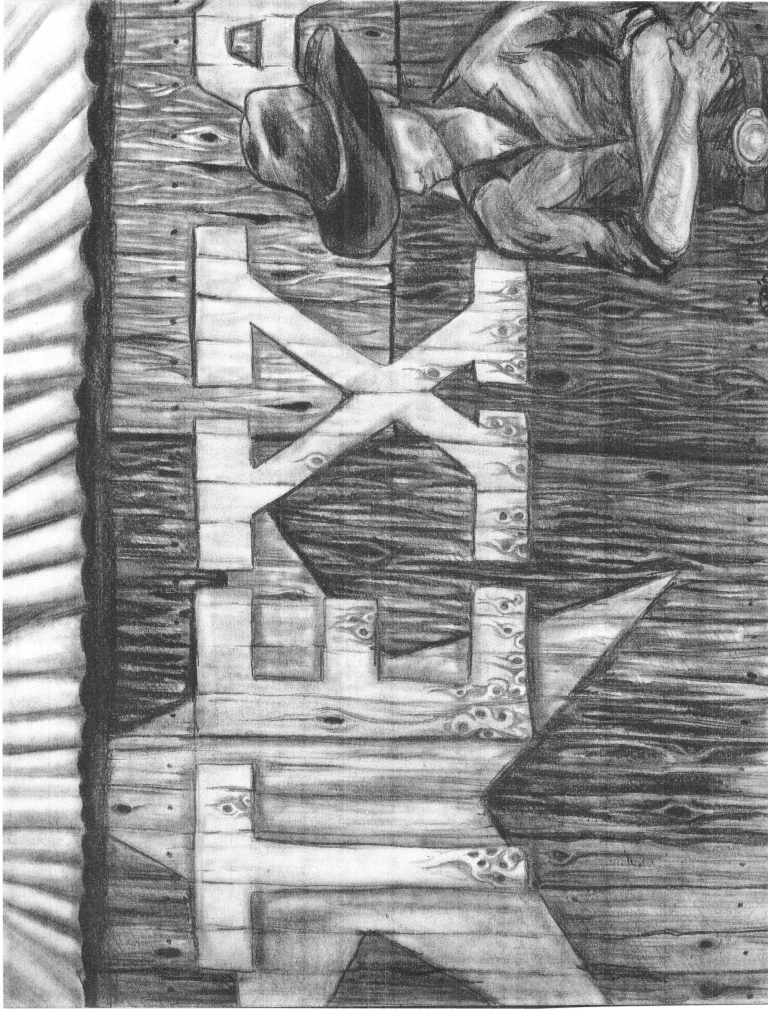
Rebeca A. Huddle, Justice



Evan A. Young, Justice

TRD-202401635  
Jaclyn Daumerie  
Rules Attorney  
Supreme Court of Texas  
Filed: April 17, 2024

◆ ◆ ◆



## How to Use the Texas Register

**Information Available:** The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

**Governor** - Appointments, executive orders, and proclamations.

**Attorney General** - summaries of requests for opinions, opinions, and open records decisions.

**Texas Ethics Commission** - summaries of requests for opinions and opinions.

**Emergency Rules** - sections adopted by state agencies on an emergency basis.

**Proposed Rules** - sections proposed for adoption.

**Withdrawn Rules** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

**Adopted Rules** - sections adopted following public comment period.

**Texas Department of Insurance Exempt Filings** - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

**Review of Agency Rules** - notices of state agency rules review.

**Tables and Graphics** - graphic material from the proposed, emergency and adopted sections.

**Transferred Rules** - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

**In Addition** - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

**How to Cite:** Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words “TexReg” and the beginning page number on which that document was published. For example, a document published on page 24 of Volume 49 (2024) is cited as follows: 49 TexReg 24.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written “49 TexReg 2 issue date,” while on the opposite page, page 3, in the lower right-hand corner, would be written “issue date 49 TexReg 3.”

**How to Research:** The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <http://www.sos.state.tx.us>. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

## Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State’s website at <http://www.sos.state.tx.us/tac>.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
26. Health and Human Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

**How to Cite:** Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

**How to Update:** To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule’s *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

### TITLE 1. ADMINISTRATION Part 4. Office of the Secretary of State Chapter 91. Texas Register

1 TAC §91.1.....950 (P)

## SALES AND CUSTOMER SUPPORT

Sales - To purchase subscriptions or back issues, you may contact LexisNexis Sales at 1-800-223-1940 from 7 a.m. to 7 p.m., Central Time, Monday through Friday. Subscription cost is \$502 annually for first-class mail delivery and \$340 annually for second-class mail delivery.

Customer Support - For questions concerning your subscription or account information, you may contact LexisNexis Matthew Bender Customer Support from 7 a.m. to 7 p.m., Central Time, Monday through Friday.

Phone: (800) 833-9844

Fax: (518) 487-3584

E-mail: [customer.support@lexisnexis.com](mailto:customer.support@lexisnexis.com)

Website: [www.lexisnexis.com/printedsc](http://www.lexisnexis.com/printedsc)



**LexisNexis**