# 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 7. BANKING AND SECURITIES

## PART 7. STATE SECURITIES BOARD

### CHAPTER 109. TRANSACTIONS EXEMPT FROM REGISTRATION

**7 TAC §§109.1 - 109.8, 109.11, 109.13, 109.14, 109.17**

The Texas State Securities Board adopts amendments to twelve rules in this chapter, §§109.1 - 109.8, 109.11, 109.13, 109.14, and 109.17, without changes to the proposed text as published in the March 29, 2024, issue of the *Texas Register* (49 TexReg 2021), and corrected in the April 12, 2024, issue of the *Texas Register* (49 TexReg 2348). The amended rules will not be republished.

The amended rules make nonsubstantive changes to the chapter. Specifically, the Board adopts amendments to §109.1, concerning Transactions Involving Existing Security Holders; §109.2, concerning Parent Subsidiary Transactions; §109.3, concerning Financial Institutions under the Texas Securities Act, §5.H; §109.4, concerning Securities Registration Exemption for Sales to Financial Institutions and Certain Institutional Investors; §109.5, concerning Dealer Registration Exemption for Sales to Financial Institutions and Certain Institutional Investors; §109.6, concerning Investment Adviser Registration Exemption for Investment Advice to Financial Institutions and Certain Institutional Investors; §109.7, concerning Secondary Trading Exemption under the Texas Securities Act, §5.O; §109.8, concerning Initial Offering Completed; §109.11, concerning Guarantee of Options; §109.13, concerning Limited Offering Exemptions; §109.14, concerning Oil, Gas, and Other Mineral Interests; and §109.17, concerning Banks under the Securities Act, §5.L.

The references to sections of the Texas Securities Act (Act) in §§109.1 - 109.8, 109.11, 109.13, 109.14, and 109.17 are updated to refer to the correct sections in the codified version of the Act in the Texas Government Code. The codification was adopted by HB 4171, 86th Legislature, 2019 Regular Session, and became effective January 1, 2022. The captions of §§109.3, 109.7, and 109.17 are also updated to refer to the codified version of the Act. The rest of the amendments make other nonsubstantive and cleanup changes.

Section 109.1 is amended to replace the references to the term "Securities and Exchange Commission" with "SEC" and to abbreviate a cite to the Code of Federal Regulations found in subsection (d). SEC and CFR are already defined terms in §107.2, concerning Definitions.

Sections 109.7(b), 109.8, 109.13, and 109.17 are amended to adjust the quotations to the Act in these provisions to be consistent with the codified Act.

Section 109.11 is amended to capitalize the term "Commissioner" for consistency.

Section 109.13 is amended to add a new definitions subsection in subsection (a) for use in this section, with the current text of that subsection being revised and reorganized into multiple paragraphs to incorporate the added definitions. Subsections (f), (g), and (h) of §109.13 are renamed with more descriptive and precise captions.

The references to the term "Securities and Exchange Commission" found in §109.13(f)(1) and (l)(3) are replaced with "SEC," which is already a defined term in §107.2, concerning Definitions.

Section 109.13(l) is amended to add "of this subsection" to paragraphs (3), (4), and (5) of that subsection. Cross references in this section are corrected and conformed to the other adopted changes to this section.

Statutory references are current and accurate and conform to the codified version of the Act; and terminology, quotations, and references are updated.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the authority of the Texas Government Code, §4002.151, as adopted by HB 4171, 86th Legislature, 2019 Regular Session, effective January 1, 2022 (HB 4171). Section 4002.151 provides the Board with the authority to adopt rules as necessary to implement the provisions of the Texas Securities Act, including rules governing registration statements, applications, notices, and reports; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Additionally, §§109.3, 109.4, 109.8, and 109.14 are also adopted under the authority of the Texas Government Code, §4005.024, as also adopted by HB 4171, which provides that the Board may prescribe new exemptions by rule. Finally, §109.5 and §109.6 are also adopted under the authority of the Texas Government Code, §4004.001, as also adopted by HB 4171, which provides the Board with the authority to prescribe new dealer, agent, investment adviser, or investment adviser representative registration exemptions by rule.

The adopted amendments to §§109.4, 109.13, and 109.14 affect the following sections of the Texas Securities Act: Texas Government Code Chapter 4003, Subchapters A, B, and C. The adopted amendments to §§109.5, 109.6, and 109.14 affect Chapter 4004 of the Act. The adopted amendments to §§109.1 - 109.4, 109.7, 109.8, 109.11, 109.13, 109.14, and 109.17 affect Chapter 4005, Subchapter A of the Act.

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 June 28, 2024.

TRD-202402888
Travis J. Iles
Securities Commissioner
State Securities Board
Effective date: July 18, 2024
Proposal publication date: March 29, 2024
For further information, please call: (512) 305-8303

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# TITLE 22. EXAMINING BOARDS

## PART 9. TEXAS MEDICAL BOARD

### CHAPTER 165. MEDICAL RECORDS

**22 TAC §§165.7 - 165.9**

The Texas Medical Board (Board) adopts new rules §165.7, Definitions, §165.8, concerning Abortion Ban Exception Performance and Documentation, and §165.9, concerning Complaints Regarding Abortions Performed. The new rules are being adopted with non-substantive changes to the proposed text as published in the April 5, 2024, issue of the *Texas Register* (49 TexReg 2164) and will be republished.

New §165.7, titled Definitions, describes the specific definitions and their sources for certain terms used in the new rules.

New §165.8, titled Abortion Ban Exception Performance and Documentation, explains that physicians must comply with all applicable laws, rules, and court opinions related to abortion in Texas. The rule also provides the minimum required information that must be included in the patient's medical record. The rule additionally makes clear that imminence of the threat to life or impairment of a major bodily function is not required to perform an abortion.

New §165.9, titled Complaints Regarding Abortions Performed, explains the procedures that the Board will utilize in the event a complaint is received. The rule also explains the limitation of any Board decision and that possible criminal or civil action under the law is separate and independent of any Board decision.

The Board received a significant number of comments. These comments included both written and oral comments. The oral comments were taken at the March 22, 2024, Board meeting and a stakeholder meeting held on May 20, 2024.

The majority of comments shared common concern over the proposed rules as published. There was uniform concern regarding the definitions in §165.7; most commenters felt the statutory definitions were not medically accurate. However, the Board does not have the authority to change statutory definitions, so no changes were made in response to these comments. Almost all commenters had concern over §165.8 as creating burdens and additional documentation that would adversely impact care, particularly the documentation of "adequate time to transfer" in §165.8(b)(5). The Board made changes in response to these comments to ensure no additional burdens were created for physicians caring for patients.

The Board received written comments regarding the proposed new rules from Steve and Amy Bresnen; Texas Medical Association (TMA); Texas Hospital Association (THA); Baylor Scott and White (BSW); Susan B. Anthony Society; Charolette Lozier Institute; Center for Reproductive Rights; Catholic Bishops Conference; Society of Maternal Fetal Medicine; American College of Obstetrics and Gynecology (ACOG); Public Rights Project; Texas Women's Health Caucus; individual physicians; and hundreds of private individuals, including use of form letters by two groups, "everyaction.com" and Texas Impact.

A summary of comments relating to the new rules and the Board's responses are as follows:

*Comment by Steve and Amy Bresnen:* The Bresnens filed a petition for rulemaking and a proposed rule. The Board declined the petition; however, the Board did proceed with proposing a rule it had drafted. The Bresnens opposed the Board's proposed rule and expressed a need for more definitions, as well as opposition to the documentation requirements as being onerous, delaying care, and without authority. They also expressed the need to begin the entire rule writing process again. The Bresnens filed several proposed new rules along with comments.

The first proposal included a completely new rule that created a "non-exhaustive" list of possible exceptions to the prohibition. It also included the creation of a "Panel on High-Risk Pregnancies" to develop a non-exhaustive list of conditions that may necessitate an abortion; the posting of this list of conditions by the Board (and provision of the list to the Texas Health and Human Services Commission [HHSC]); the posting of information of conditions to report to Department of State Health Services from abortion facilities; and finally, a completely new process for hearings on abortion exceptions and affirmative defenses, if Board action or a non-TMB action were brought against a physician.

The second and later proposal from the Bresnens was received during the comment period and provided for an extensive and exhaustive list of standards that would apply in a Board hearing if a case concerned abortion.

*Response:* TMB declines to accept either proposal on multiple grounds. Both proposals fundamentally change the informal hearing process and the statutorily created expert panel review process historically utilized by the Board.

The first proposal again asks for a non-exhaustive list of possible exceptions and conditions allowing abortions. The idea of any list is opposed by medical professionals and related associations, as well as by the Board. In medicine every patient and situation are unique and the intricacies of medicine and medical treatment that may accompany a patient cannot be captured by a list.

The entire process suggested in the first proposal goes beyond the disciplinary authority vested in the Board. The authority to enforce the majority of the provisions of Chapter 171 of the Health and Safety Code is vested in the HHSC Commissioner. See §171.005 of the Texas Health and Safety Code. Additionally, several provisions in Chapter 171 already allow for the hearing contemplated by this proposal, and the Board already has an exhaustive expert review and hearing process. Additionally, the proposal would create a redundant, duplicative, and completely unnecessary process. As to the proposed information gathering, reporting, and posting requirements, these items are already required and regulated by HHSC.

The Bresnens' second proposal includes a rebuttable presumption, application of the rules of evidence, and a clear and convincing standard in board hearings. This would transform the informal settlement conference into an evidentiary contested case hearing. The statutory standard in an informal board hearing is "to present facts that reasonably believe may be proven by competent evidence at a formal hearing." Additionally, the clear and convincing standard proposed alters the burden of proof well beyond the preponderance of evidence standard utilized for actual contested case hearings involving the board. The preponderance standard has been clearly established in multiple State Office of Administrative Hearings (SOAH) cases and substantial evidence reviews by state courts. The proposal exceeds any statutory authority of the Board, because it appears to set procedural and substantive rules for both SOAH hearings and civil courts reviewing a board action. For all these reasons, the Board declines to adopt these proposals.

*Comment by Texas Medical Association (TMA):* TMA opposed the Board's proposed rule. TMA asserted the need for more and medically accurate definitions, and they opposed the documentation requirements as being onerous, delaying care, and beyond the Board's authority. Generally, they stated the rule provided no help to physicians or patients and might lead to more confusion and uncertainty. They specifically objected to physicians having to follow all applicable court rulings as being burdensome and functionally difficult. TMA also asserted the rules could result in an inappropriate "checklist" approach to patient care.

*Response:* The Board cannot change statutory definitions and believes the definitions in the new rule are sufficient. Additionally, the Board does not believe that physicians being required to follow court rulings is burdensome and functionally difficult, as it is already a requirement under physician licensure. The Board also disagrees with TMA that rules could result in a "checklist" approach to patient care. However, the Board did make changes in response to the comment to documentation requirements to make clear that documentation is not required before a procedure can be performed and to clarify what items are required to be documented.

*Comment by Texas Hospital Association (THA):* THA opposed the Board's proposed rule. THA asserted the need for more and medically accurate definitions, and they opposed the documentation requirements as being onerous and delaying care. Generally, they stated the rule provided no help to physicians or patients. Further, THA implied that because a majority of these procedures take place in hospitals, the Board lacked authority to make rules related to the operation and regulation of hospitals.

*Response:* The Board cannot change statutory definitions and believes the definitions in the new rule are sufficient. The Board also disagrees that it lacks authority over physicians practicing in hospitals. However, the Board did make changes in response to the comment to documentation requirements to make clear that documentation is not required before a procedure can be performed and to clarify what items are required to be documented.

*Comment by Baylor Scott and White (BSW):* BSW opposed the Board's proposed rule. BSW asserted the need for expanded definitions, and they opposed the documentation requirements as being onerous, delaying care, and exceeding existing law related to documentation.

*Response:* The Board cannot change statutory definitions and believes the definitions in the new rule are sufficient. However, the Board did make changes in response to the comment to documentation requirements to make clear that documentation is not required before a procedure can be performed and to clarify what items are required to be documented.

*Comment by Susan B. Anthony Society:* The comment wanted more expanded definitions and explanation of certain statutory terms in the rule.

*Response:* The Board cannot change statutory definitions and believes the definitions in the new rule are sufficient. The Board declined to make any changes in response to this comment.

*Comment by Charolette Lozier Institute:* The comment expressed significant concerns which appeared to oppose the Board's proposed rule. The group asserted the need for expanded definitions; they asked for an explanation of the difference between a medically indicated separation and abortion. They also had concerns generally over certain documentation requirements.

*Response:* The Board cannot change statutory definitions and believes the definitions in the new rule are sufficient. However, the Board did make changes in response to the comment to documentation requirements to make clear that documentation is not required before a procedure can be performed and to clarify what items are required to be documented.

*Comment by Center for Reproductive Rights (CRR):* The comment opposed the Board's proposed rule. CRR asserted the need for more expanded and medically accurate definitions, and they opposed the documentation requirements as being onerous and delaying care. Generally, they stated the rule provided no help to physicians or patients. They further asserted that the documentation rules contradict existing law in the Texas Health and Safety Code and that the proposed rules are beyond Board's statutory authority.

*Response:* The Board cannot change statutory definitions and believes the definitions in the new rule are sufficient. However, the Board did make changes in response to the comment to documentation requirements to make clear that documentation is not required before a procedure can be performed and to clarify what items are required to be documented.

*Comment by Catholic Bishops Conference:* The comment generally favored the Board's proposed rule. The group, however, did assert the need to expand on the definition of ectopic pregnancy. They also opposed the documentation requirements as unnecessary. The group suggested current recordkeeping requirements in existing laws were adequate.

*Response:* The Board cannot change statutory definitions and believes the definitions in the new rule are sufficient. However, the Board did make changes in response to the comment to documentation requirements to make clear that documentation is not required before a procedure can be performed and to clarify what items are required to be documented.

*Comment by Society of Maternal Fetal Medicine:* The comment opposed the Board's proposed rule. The group asserted the need for more and medically accurate definitions, and they opposed the documentation requirements as being onerous and delaying care. Generally, they stated the rule provided no help to physicians or patients.

*Response:* The Board cannot change statutory definitions and believes the definitions in the new rule are sufficient. However, the Board did make changes in response to the comment to doc-

umentation requirements to make clear that documentation is not required before a procedure can be performed and to clarify what items are required to be documented.

*Comment by American College of Obstetrics and Gynecology (ACOG):* ACOG opposed the Board's proposed rule. ACOG asserted the definitions were redundant, and they opposed the documentation requirements as being onerous and delaying care. Generally, they stated the rule provided no help to physicians or patients. They also opposed creating any lists or "checklist" approach as advocated by some groups.

*Response:* The Board cannot change statutory definitions and believes the definitions in the new rule are sufficient. However, the Board did make changes in response to the comment to documentation requirements to make clear that documentation is not required before a procedure can be performed and to clarify what items are required to be documented. Additionally, the Board agrees that lists and "checklist" approaches advocated by some are not appropriate.

*Comment by Public Rights Project:* The comment opposed the Board's proposed rules. The group asserted the need for expanded definitions, and they opposed the requirements as being without statutory authority. Additionally, they believe the requirement for documentation goes beyond and conflicts with existing law such as Chapter 171 of the Health and Safety Code. Generally, they stated the rule provided no guidance to physicians.

*Response:* The Board cannot change statutory definitions and believes the definitions in the new rule are sufficient. However, the Board did make changes in response to the comment to documentation requirements to make clear that documentation is not required before a procedure can be performed and to clarify what items are required to be documented.

*Comment by Texas Women's Health Caucus:* The comment opposed TMB's proposed rule. The group asserted the need for more and medically accurate definitions, and they opposed the documentation requirements as being onerous and delaying care. Generally, they stated the rules provided no help to physicians or patients.

*Response:* The Board cannot change statutory definitions and believes the definitions in the new rule are sufficient. However, the Board did make changes in response to the comment to documentation requirements to make clear that documentation is not required before a procedure can be performed and to clarify what items are required to be documented.

There were a number of physicians that commented individually. They were generally opposed to the rule.

*Summary of Comments:* A majority of comments asked for further definitions of statutory terms and the addition of certain exceptions to the prohibition.

*Response:* The Board declines to make any changes in response to these comments. The Board has repeatedly clarified it cannot change the law or add exceptions for rape or incest. Nor can the Board add to statutory definitions. This is why the Board used references to existing statutes for certain terms such as "abortion," "reasonable medical judgment," and "major bodily function."

*Summary of Comments:* Numerous comments asserted that the definition of "abortion" was not medically accurate and that the use of the term "unborn child" was improper and instead should be "fetus."

*Response:* The Board declines to make changes in response to these comments because these are the statutory definitions, and any changes to the statutory definitions require legislative action.

*Summary of Comments:* Commenters wanted the definition of ectopic pregnancy to be expanded, added to, or examples included.

*Response:* In response, Board removed the proposed definition of ectopic pregnancy in §165.7. Many commenters asked that references to ectopic pregnancy more closely track with existing statutory references on the matter. Therefore, the Board made changes and the term "ectopic pregnancy" as used in §74.552 of the Texas Civil Practice & Remedies Code is now referenced in new §165.8(b)(6) and §165.9(e).

*Summary of Comments:* Almost every commenter said that Board needed to clarify that imminent risk of death to the patient is not required for an abortion.

*Response:* The Board made changes in response to this comment and clarified in new §165.8(d) that "imminence of death or impairment of a major bodily function is not required."

*Summary of Comments:* The comments asserted §165.8 overall added additional mandatory documentation requirements that were unnecessary. Several comments asked the Board to revise the rule to refer to documentation as set out in Chapter 171 of the Texas Health and Safety Code.

*Response:* The Board disagrees with these comments, and no changes were made in response to these comments. The rule does not change existing documentation requirements in §165.1. Rather, new §165.8 correlates with both existing rule (§165.1 of the Board's rules) and §171.008 of the Texas Health and Safety Code. Specifically, new §165.8 requires documentation of the medical emergency, while the corollary in §165.1 requires documentation of the reason for the visit and clinical assessment, and the corollary in §171.008 of the Texas Health and Safety Code requires documentation of the condition to be addressed. Section 165.8 requires documentation of the risk of death or substantial impairment of bodily function and why abortion was performed; the corollary in §165.1 requires relevant risk factors be identified and the treatment plan documented, and the corollary in §171.008 of the Texas Health and Safety Code requires documentation of the medical rationale for the abortion.

*Summary of Comments:* Commenters asserted they believed proposed §165.8 made documentation a requirement for physicians before performing an abortion on a patient experiencing a medical emergency.

*Response:* The Board disagrees with this assertion; documentation is not required before addressing an emergency. However, to ensure it is clear documentation can be done after the procedure, if the situation does not allow for documentation before the procedure, the Board added §165.8(c) to clarify the required documentation must be completed within 7 days of the procedure.

*Summary of Comments:* Virtually every commenter objected to proposed §165.8(b)(7). This provision stated a physician must document in the patient's medical record "whether there was adequate time to transfer the patient, by any means available to a facility or physician with a higher level of care or expertise to avoid performing an abortion." The concern was that every time a patient presented there would need to be documentation say-

ing why the physician did or did not transfer, and this would delay care.

*Response:* The Board disagrees that proposed §165.8(b)(7) was mandatory; as discussed previously, these considerations must be documented but only if applicable. However, due to the overwhelming concern stated, the Board removed this provision from §165.8 completely. In response, the Board revised subsection (c) of §165.9 to clarify that the existing statutory review process related to standard of care already considers relevant information including transfer decisions, if applicable, in any medical emergency situation being reviewed.

*§165.7. Definitions.*

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

(1) "Abortion" means the act of using or prescribing an instrument, a drug, a medicine, or any other substance, device, or means with the intent to cause the death of an unborn child of a woman known to be pregnant. The term does not include birth control devices or oral contraceptives. An act is not an abortion if the act is done with the intent to:

(A) save the life or preserve the health of an unborn child;

(B) remove a dead, unborn child whose death was caused by spontaneous abortion; or

(C) remove an ectopic pregnancy.

This definition is found at Chapter 245, §245.002(1) of the Texas Health and Safety Code.

(2) "Reasonable medical judgment" means medical judgment made by a reasonably prudent physician, knowledgeable about a case and the treatment possibilities for the medical conditions involved. This definition is found at Chapter 170A, §170A.001(4) of the Texas Health and Safety Code.

(3) "Medical emergency" means a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that, as certified by a physician, places the woman in danger of death or a serious risk of substantial impairment of a major bodily function unless an abortion is performed. This definition is found at Chapter 171, §171.002(3) of the Texas Health and Safety Code.

(4) "Major bodily function" includes but is not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. This definition is found at Chapter 21, §21.002(11-a) of the Texas Labor Code.

*§165.8. Abortion Ban Exception Performance and Documentation.*

(a) An abortion shall not be performed in this state unless it is performed in compliance with all provisions of Texas Health and Safety Code, Chapters 170, 170A, and 171, in addition to any other applicable federal and state statutes, rules, and court opinions.

(b) In addition to the requirements above, the physician must document in the patient's medical record:

(1) that the abortion is performed in response to a medical emergency;

(A) that places the woman in danger of death unless the abortion is performed or induced; or

(B) to prevent a serious risk of substantial impairment of a major bodily function of the patient unless the abortion is performed or induced;

(2) the major bodily function(s) at serious risk of substantial impairment;

(3) what placed the woman in danger of death, or what was the serious risk of substantial impairment;

(4) how the danger of death or serious risk was determined;

(5) if applicable, the rationale on why the abortion was performed pursuant to §170A.002 (b)(3) of the Texas Health and Safety Code; and

(6) if applicable, that the treatment was in response to an ectopic pregnancy at any location or a previable premature rupture of membranes, as those terms are used in §74.552 of the Texas Civil Practice and Remedies Code.

(c) The above documentation must be made before and/or after performing the procedure, but the initial documentation must be made within 7 days of the procedure.

(d) Imminence of the threat to life or impairment of a major bodily function is not required.

*§165.9. Complaints Regarding Abortions Performed.*

(a) The Texas Medical Board will review complaints and perform investigations regarding abortions using the Board's standard complaint process.

(b) If a complaint is determined to be jurisdictional to the Board, the Board will use independent expert physicians, as provided in §154.0561 of the Texas Occupations Code, to review the available information, including the patient's medical record.

(c) As done in other complaints, the independent expert physicians may review all relevant information including one or more of the following:

(1) how the decision was made to proceed with an abortion based on reasonable medical judgement including:

(A) what diagnostic imaging, test results, medical literature, second opinions, and/or medical ethics committees that were used or consulted; and

(B) what alternative treatments were attempted and failed or were ruled out; and

(2) whether there was adequate time to transfer the patient to a facility or physician with a higher level of care or expertise to avoid performing an abortion.

(d) Any decision by the Board, to either dismiss the complaint or discipline the physician who is the subject of a complaint, is separate and independent of any other possible criminal or civil action under the law. If the Board is aware the licensee is subject to a pending criminal or civil action, then the Board may defer or delay action. Depending on the outcome of criminal or civil action, the Board retains authority to investigate and potentially take disciplinary action.

(e) The Board shall not take any disciplinary action against a physician who exercised reasonable medical judgment in providing medical treatment to a pregnant woman as described by §74.552 of the Texas Civil Practice and Remedies Code.

The new rules are adopted under the authority of the Texas Occupations Code, §153.001, which provides authority for the Board to recommend and adopt rules and bylaws as necessary to govern its own proceedings and perform its duties.

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 June 27, 2024.

TRD-202402831
Scott Freshour
General Counsel
Texas Medical Board
Effective date: July 17, 2024
Proposal publication date: April 5, 2024
For further information, please call: (512) 305-7030

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# PART 41. TEXAS BEHAVIORAL HEALTH EXECUTIVE COUNCIL

## CHAPTER 882. APPLICATIONS AND LICENSING

## SUBCHAPTER A. LICENSE APPLICATIONS

### 22 TAC §882.2

The Texas Behavioral Health Executive Council adopts amendments to §882.2, relating to General Application File Requirements. Section 882.2 is adopted without changes to the proposed text as published in the April 12, 2024, issue of the *Texas Register* (49 TexReg 2249) and will not be republished.

Reasoned Justification.

The adopted amendments clarify what information Council staff can rely upon when verifying an applicant's out-of-state licensure. The amendments allow the Council to rely on official verifications received directly from the other jurisdiction, information reflected on a government website, or verbal or email verification directly from the other jurisdiction. The sources of verification will assist the Council in more efficiently and effectively verifying an applicant's out-of-state licensure.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

One commenter opposed the rule amendment on the grounds that they believe the Council should be eliminated and regulation returned solely to individual professional boards. Another commenter opposed the amendment on the grounds that the Council makes too many rule changes. A third commenter disagreed with the proposed amendment, but focused their comments on opposition to fingerprinting requirements.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

One commenter expressed enthusiastic support for the proposed change in the hopes that the amendment will help streamline the licensure process. Another commenter expressed neutrality toward the proposal but supported the overall goal of addressing upstream issues in the licensure process. One commenter supported the amendment but asked whether documentation of licensure requirements will be required to be submitted again when changing license types.

Agency Response.

The Council declines to not adopt the rule as requested by commenters. The proposed amendment is a necessary rule change to improve the process by with the Council approves license applications. In addition, the Council can neither abolish the agency nor eliminate fingerprinting requirements, both of which are required by statute.

The Council thanks commenters for their supportive comments, and notes one comment was received which neither supported nor opposed the rule change, but rather asked a question unrelated to the rule proposal.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

The Executive Council also adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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 June 26, 2024.

TRD-202402806
Darrel D. Spinks
Executive Director
Texas Behavioral Health Executive Council
Effective date: July 16, 2024
Proposal publication date: April 12, 2024
For further information, please call: (512) 305-7706

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# TITLE 30. ENVIRONMENTAL QUALITY

# PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

## CHAPTER 311. WATERSHED PROTECTION RULES

## SUBCHAPTER H. REGULATION OF QUARRIES IN THE JOHN GRAVES SCENIC RIVERWAY

### 30 TAC §§311.71 - 311.75, 311.77, 311.79 - 311.82

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendment to §§311.71 - 311.75, 311.77, and 311.79 - 311.82.

Section 311.71 is adopted with changes to the proposed text as published in the January 26, 2024, issue of the *Texas Register*

(49 TexReg 387), and therefore will be republished. Sections 311.72 - 311.75, 311.77, and 311.79 - 311.82 are adopted without changes to the proposed text and will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

House Bill (HB) 1688, 88th Texas Regular Legislative Session, amended Texas Water Code (TWC), Chapter 26 by revising Subchapter M (Water Quality Protection Areas); specifically, §§26.551 - 26.562, by expanding the Pilot Program originally established for quarries in the John Graves Scenic Riverway (Brazos River Basin) to include the "Coke Stevenson Scenic Riverway" (Colorado River Basin). The statute addresses permitting, financial responsibility, inspections, water quality sampling, enforcement, cost recovery, and interagency cooperation regarding quarry operations. The Coke Stevenson Scenic Riverway is defined as the South Llano River in Kimble County, located upstream of the river's confluence with the North Llano River at the City of Junction.

TCEQ is adopting amendments to 30 Texas Administrative Code (TAC) Chapter 311 (Watershed Protection Rules), Subchapter H (Regulation of Quarries in the John Graves Scenic Riverway), which implements TWC, §§26.551 - 26.554 and 26.562. The amendment to Subchapter H expands the permitting and financial assurance requirements for quarries to the new Coke Stevenson Scenic Riverway water quality protection area, continues the requirements in the John Graves Scenic Riverway water quality protection area, and extends the expiration date of the pilot program to September 1, 2027.

Section by Section Discussion

The adopted amendment to Chapter 311, Subchapter H, removes reference to "the John Graves Scenic Riverway" from the subchapter title and replaces it with "Certain Water Quality Protection Areas;" the amended title is "Regulation of Quarries in Certain Water Quality Protection Areas." This change is required to provide clarity that the applicability extends to all water quality protection areas identified in the subchapter.

Amended Chapter 311, Subchapter H removes references to "the John Graves Scenic Riverway" and replaces them with reference to "a water quality protection area" throughout the subchapter to encompass both the John Graves Scenic Riverway and Coke Stevenson Scenic Riverway water quality protection areas.

Amended §311.71 (Definitions) defines one new term and revises one term used within the subchapter to be consistent with the definitions found in HB 1688. The new term "Coke Stevenson Scenic Riverway" means the South Llano River in Kimble County, located upstream of the river's confluence with the North Llano River at the City of Junction. This definition is revised from proposal to remove the additional "and its contributing watershed" text which ensures the definition is consistent with the definition in HB 1688. The revised term "Water quality protection areas" means the Brazos River and its contributing watershed within Palo Pinto and Parker Counties, Texas, downstream from the Morris Shepard Dam on the Possum Kingdom Reservoir in Palo Pinto County, and extending to the county line between Parker and Hood Counties, Texas; and the South Llano River and its contributing watershed in Kimble County, located upstream of the river's confluence with the North Llano River at the City of Junction. The terms "responsible party" and "water body" are revised for clarity and to remove unnecessary language.

Amended §311.72 (Applicability) identifies activities regulated by this subchapter and activities specifically excluded from regulation. Activities regulated by this subchapter include quarrying within a water quality protection area in the John Graves Scenic Riverway and Coke Stevenson Scenic Riverway, as identified in subsection (a). In addition, amended §311.72 specifies September 1, 2027, as the new expiration date for Chapter 311, Subchapter H, consistent with HB 1688.

Amended §311.73 (Prohibitions) identifies areas within the newly defined water quality protection area where quarrying is prohibited, consistent with HB 1688. The amendment to §311.73(a), consistent with existing regulations for the John Graves Scenic Riverway, prohibits the construction or operation of any new quarry, or the expansion of an existing quarry, located within 200 feet of any water body within the Coke Stevenson Scenic Riverway. Consistent with similar regulations for the John Graves Scenic Riverway, the construction or operation of any new quarry, or the expansion of an existing quarry, located between 200 feet and 1,500 feet of any water body in the Coke Stevenson Scenic Riverway is prohibited except where the requirements in §§311.75(2), 311.77, and 311.78(b) are met. For the purposes of this subchapter, a new quarry is any quarry that commenced operations after September 1, 2005. An existing quarry is any quarry that was in operation prior to September 1, 2005. Expansion of an existing quarry refers to any change to an existing quarry that results in additional disturbance, including the construction of additional processing areas.

Just as with the John Graves Scenic Riverway regulations, throughout this subchapter, prohibitions, application requirements, and performance criteria are established for quarries located in the Coke Stevenson Scenic Riverway based upon the quarry's location relative to a navigable water body (as defined in §311.71). Where location is established as the distance from a water body, the distance is measured from the gradient boundary. Federal Emergency Management Agency flood hazard maps identify the 100-year floodplain relative to a water body.

Amended §311.82, Existing Quarries, requires existing quarries that are subject to the adopted rule to seek and obtain an authorization in accordance with §311.74(b), if they have not done so before the effective date of this rule. The existing quarries in the John Graves Scenic Riverway that already obtained an authorization in accordance with §311.74(b) do not need to reapply for coverage under this rulemaking. However, any new or expanding quarries within the John Graves Scenic Riverway or the Coke Stevenson Scenic Riverway must apply for permit coverage. Paragraph (c) is modified to clarify that existing quarries located 200 to 1,500 feet of a water body in the Coke Stevenson Scenic Riverway must submit an application for permit coverage within 180 days of the effective date of the subchapter.

Final Regulatory Impact Determination

TCEQ reviewed the adopted rulemaking in consideration of the regulatory analysis of major environmental rules required by Texas Government Code (TGC), §2001.0225 and determined that the rulemaking is not subject to §2001.0225(a) because it does not meet the definition of a "Major environmental rule" as defined in §2001.0225(g)(3). The following is a summary of that review.

Section 2001.0225 applies to a "Major environmental rule" adopted by a state agency, the result of which is to exceed standards set by federal law, exceed express requirements

of state law, exceed requirements of delegation agreements between the state and the federal government to implement a state and federal program, or adopt a rule solely under the general powers of the agency instead of under a specific state law. A "Major environmental rule" is 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 or the state.

The 88th Texas Legislature enacted HB 1688, amending TWC, Chapter 26, Subchapter M (Water Quality Protection Areas) to include the Coke Stevenson Scenic Riverway, defined by HB 1688 as the South Llano River in Kimble County, located upstream of the river's confluence with the North Llano River at the City of Junction, in TCEQ's Pilot Program for water quality protection areas that the 79th Texas Legislature enacted through Senate Bill (SB) 1354 for a certain designated portion of the Brazos River. That designated portion of the Brazos River, defined by SB 1354 as the Brazos River Basin, and its contributing watershed, located downstream of the Morris Shepard Dam on the Possum Kingdom Reservoir in Palo Pinto County, Texas, and extending to the county line between Parker and Hood Counties, Texas, is designated as the John Graves Scenic Riverway and is subject to specific permitting and enforcement regulations that SB 1354 established. The Pilot Program created specific regulations for individual or general permits for quarries, depending on their proximity to any water body in the area designated as the John Graves Scenic Riverway. HB 1688 postpones the Pilot Program's end, and the expiration of provisions governing the Pilot Program, from September 1, 2025, to September 1, 2027, and reenacts provisions relating to the reclamation and restoration fund account.

As the Bill Analysis from the Natural Resources Committee of the Texas House of Representatives makes clear, the 88th Texas Legislature enacted HB 1688 with the aim of protecting the beds, bottoms, and banks of a stretch of the South Llano River from mining and quarrying activities. HB 1688 seeks to address this issue by amending the TWC to include the Coke Stevenson Scenic Riverway in the same Pilot Program as the John Graves Scenic Riverway. Specifically, HB 1688 amends Chapter 26 of the TWC by revising Subchapter M to make the Pilot Program requirements for the John Graves Scenic Riverway, related to permitting, financial responsibility, inspections, water quality sampling, enforcement, cost recovery, and interagency cooperation regarding quarry operations, applicable to the stretch of the South Llano River defined by HB 1688 as the Coke Stevenson Scenic Riverway.

Therefore, the specific intent of the adopted rulemaking is related to extending existing protections for certain designated portions of Texas rivers to additional designated portions of Texas rivers in accordance with HB 1688.

HB 1688 amends Chapter 26 of the TWC by revising Subchapter M (specifically §§26.551 - 26.562) and the adopted rulemaking amends TCEQ Watershed Protection Rules, found at 30 TAC Chapter 311, Subchapter H, which implements TWC, §§26.551 - 26.554 and 26.562. The amendment to Subchapter H expands the permitting and financial assurance requirements for quarries to the new Coke Stevenson Scenic Riverway, continues the requirements in the John Graves Scenic Riverway, and extends the expiration date of the Pilot Program to September 1, 2027.

Certain aspects of TCEQ's Watershed Protection Rules are intended to protect the environment or reduce risks to human health from environmental exposure. However, the adopted rulemaking will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs; nor will the adopted rulemaking adversely affect in a material way the environment, or the public health and safety of the state or a sector of the state. Therefore, the adopted rulemaking does not fit the TGC, §2001.0225 definition of "Major environmental rule".

Even if this rulemaking was a "Major environmental rule," this rulemaking meets none of the criteria in §2001.0225 for the requirement to prepare a full Regulatory Impact Analysis. First, this rulemaking is not governed by federal law. Second, it does not exceed state law but rather extends state law and TCEQ rules to adopted and effective state laws. Third, it does not come under a delegation agreement or contract with a federal program, and finally, is not being adopted under TCEQ's general rulemaking authority. This rulemaking is being adopted under a specific state statute enacted in HB 1688 of the Texas 2023 legislative session and implements existing state law found at TWC, §26.0135 that states that the commission must establish strategic and comprehensive monitoring of water quality and the periodic assessment of water quality in each watershed and river basin of the state. Because this adoption does not constitute a major environmental rule, a regulatory impact analysis is not required.

Therefore, the commission does not adopt the rule solely under the commission's general powers. The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received on the regulatory impact analysis determination.

Takings Impact Assessment

TCEQ evaluated the adopted rulemaking and performed an analysis of whether it constitutes a taking under TGC, Chapter 2007. The following is a summary of that analysis.

Under TGC, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Section 17 or 19, Article I, Texas Constitution; or a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action and is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

The specific purpose of the adopted rulemaking is to implement the legislative amendments to the TWC in HB 1688 by amending TCEQ's Watershed Protection Rules to extend existing protections for certain designated portions of Texas rivers to additional designated portions of Texas rivers. TCEQ's Watershed Protection Rules do not regulate property but instead regulate water quality in the specific watersheds. The adopted rulemaking will substantially advance this stated purpose by adopting new rule language that includes the Coke Stevenson Scenic Riverway in TCEQ's Watershed Protection Rules.

Promulgation and enforcement of the adopted rules will not be a statutory or constitutional taking of private real property because, as the commission's analysis indicates, TGC, Chapter 2007 does not apply to these adopted rules because these rules do not impact private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. Specifically, the adopted rulemaking does not apply to or affect any landowner's rights in any private real property because it does not burden (constitutionally), restrict, or limit any landowner's right to real property and reduce any property's value by 25% or more beyond that which would otherwise exist in the absence of the regulations. The primary purpose of the adopted rules is to implement HB 1688 by including the Coke Stevenson Scenic Riverway in the same TCEQ Pilot Program as the John Graves Scenic Riverway. The adopted rulemaking is reasonably taken to fulfill requirements of state law. Therefore, the adopted rulemaking will not cause a taking under TGC, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the amended rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §29.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §29.11(a)(6). Therefore, the adopted rules are not subject to the Texas Coastal Management Program.

The commission invited public comment regarding the consistency with the coastal management program during the public comment period. No comments were received regarding the Coastal Management Program.

Effect on Sites Subject to the Federal Operating Permits Program

This rulemaking has no effect on sites subject to the Federal Operating Permits Program.

Public Comment

The commission offered a public hearing on February 26, 2024. The 30-day comment period closed on February 26, 2024. The commission did not receive any comments.

Statutory Authority

The Texas Commission on Environmental Quality (the commission or TCEQ) adopts these amendments to TCEQ rules under the authority of Texas Water Code (TWC). TWC, §5.013 establishes the general jurisdiction of the commission, while TWC §5.102 provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC, §5.103. TWC §5.103 requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. TWC, §5.120 requires the commission to administer the law so as to promote judicious use and maximum conservation and protection of the environment and the natural resources of the state. Lastly, TWC, §26.0135 requires the commission to establish the strategic and comprehensive monitoring of water quality and the periodic assessment of water quality in each watershed and river basin of the state.

The adopted amendments implement House Bill 1688, 88th Texas Legislature (2023), TWC, §§5.013, 5.102, 5.103, 5.120, and 26.0135.

*§311.71. Definitions.*

The following words and terms, when used in the subchapter, have the following meanings.

(1) 25-year, 24-hour rainfall event--The maximum rainfall event with a probable recurrence interval of once in 25 years, with a duration of 24 hours, as defined by the National Weather Service and Technical Paper Number 40, "Rainfall Frequency Atlas of the U.S.," May 1961, and subsequent amendments; or equivalent regional or state rainfall information.

(2) Aggregates--Any commonly recognized construction material originating from a quarry or pit by the disturbance of the surface, including dirt, soil, rock asphalt, granite, gravel, gypsum, marble, sand, stone, caliche, limestone, dolomite, rock, riprap, or other nonmineral substance. The term does not include clay or shale mined for use in manufacturing structural clay products.

(3) Aquifer--A saturated permeable geologic unit that can transmit, store, and yield to a well, the quality and quantities of groundwater sufficient to provide for a beneficial use. An aquifer can be composed of unconsolidated sands and gravels; permeable sedimentary rocks, such as sandstones and limestones; and/or heavily fractured volcanic and crystalline rocks. Groundwater within an aquifer can be confined, unconfined, or perched.

(4) Best management practices--Any prohibition, management practice, maintenance procedure, or schedule of activity designed to prevent or reduce the pollution of water in the state. Best management practices include treatment, specified operating procedures, and practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage areas.

(5) Coke Stevenson Scenic Riverway -- The South Llano River in Kimble County, located upstream of the river's confluence with the North Llano River at the City of Junction.

(6) John Graves Scenic Riverway--That portion of the Brazos River Basin, and its contributing watershed, located downstream of the Morris Shepard Dam on the Possum Kingdom Reservoir in Palo Pinto County, Texas, and extending to the county line between Parker and Hood Counties, Texas.

(7) Natural hazard lands--Geographic areas in which natural conditions exist that pose or, as a result of quarry operations, may pose a threat to the health, safety, or welfare of people, property, or the environment, including areas subject to landslides, cave-ins, large or encroaching sand dunes, severe wind or soil erosion, frequent flooding, avalanches, and areas of unstable geology.

(8) Navigable--Designated by the United States Geological Survey (USGS) as perennial on the most recent topographic map(s) published by the USGS, at a scale of 1:24,000.

(9) Operator--Any person engaged in or responsible for the physical operation and control of a quarry.

(10) Overburden--All materials displaced in an aggregates extraction operation that are not, or reasonably would not be expected to be, removed from the affected area.

(11) Owner--Any person having title, wholly or partly, to the land on which a quarry exists or has existed.

(12) Pit--An open excavation from which aggregates have been, or are being, extracted with a depth of five feet or more below the adjacent and natural ground level.

(13) Quarry--The site from which aggregates for commercial sale are being, or have been, removed or extracted from the earth to form a pit, including the entire excavation, stripped areas, haulage ramps, and the immediately adjacent land on which the plant process-

ing the raw materials is located. The term does not include any land owned or leased by the responsible party not being currently used in the production of aggregates for commercial sale or an excavation to mine clay or shale for use in manufacturing structural clay products.

(14) Quarrying--The current and ongoing surface excavation and development without shafts, drafts, or tunnels, with or without slopes, for the extraction of aggregates for commercial sale from natural deposits occurring in the earth.

(15) Reclamation--The land treatment processes designed to minimize degradation of water quality, damage to fish or wildlife habitat, erosion, and other adverse effects from quarries. Reclamation includes backfilling, soil stabilization and compacting, grading, erosion control measures, appropriate revegetation, or other measures, as appropriate.

(16) Responsible party--Any owner, operator, lessor, or lessee who is primarily responsible for overall function and operation of a quarry located in a water quality protection area.

(17) Restoration--Those actions necessary to change the physical, chemical, and/or biological qualities of a receiving water body in order to return the water body to its background condition. Restoration includes on- and off-site stabilization to reduce or eliminate an unauthorized discharge, or substantial threat of an unauthorized discharge from the permitted site.

(18) Structural controls--Physical, constructed features that prevent or reduce the discharge of pollutants. Structural controls include, but are not limited to, sedimentation/detention ponds; velocity dissipation devices such as rock berms, vegetated berms, and buffers; and silt fencing.

(19) Tertiary containment--A containment method by which an additional wall or barrier is installed outside of the secondary storage vessel or other secondary barrier in a manner designed to prevent a release from migrating beyond the tertiary wall or barrier before the release can be detected.

(20) Water body--Any navigable watercourse, river, stream, or lake within a water quality protection area.

(21) Water quality protection areas--

(A) The portion of the Brazos River and its contributing watershed, located downstream of the Morris Shepard Dam on the Possum Kingdom Reservoir in Palo Pinto County, and extending to the county line between Parker and Hood Counties, Texas; and

(B) the South Llano River and its contributing watershed in Kimble County, located upstream of the river 's confluence with the North Llano River at the City of Junction.

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 June 28, 2024.

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Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
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Proposal publication date: January 26, 2024
For further information, please call: (512) 239-2678

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# TITLE 37. PUBLIC SAFETY AND CORRECTIONS

## PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

### CHAPTER 380. RULES FOR STATE-OPERATED PROGRAMS AND FACILITIES

The Texas Juvenile Justice Department (TJJD) adopts new 37 TAC §380.8597 (concerning certain actions by the executive director) and §380.9147 (concerning youth career and technical education advisory committee) without changes to the proposed text as published in the March 8, 2024, issue of the *Texas Register* (49 TexReg 1429). The new rules will not be republished.

SUMMARY OF CHANGES

The new §380.8597 establishes that TJJD tracks the frequency with which the executive director takes certain actions and reports the resulting data to the TJJD Board and the Sunset Advisory Committee; includes a list of actions and explain that TJJD must track the frequency the executive director takes those actions; and explains that TJJD must compile frequency data and provide that date to the Board and the Sunset Advisory Committee.

The new §380.9147 establishes the Youth Career and Technical Education Advisory Committee, which assists TJJD with overseeing and coordinating vocational training for youth in state custody; describes the duties and goals of the committee; describes the composition of the committee's membership and the appointment of the presiding officer; and includes the following: information pertaining to ex officio committee members, an explanation of what constitutes a quorum, term lengths of committee members, an explanation of how to fill vacancies on the committee, an explanation that the appearance of conflicts of interest should be avoided, a description of updates the advisory council's presiding officer provides to the Board; and information about other statutory requirements.

PUBLIC COMMENTS

TJJD received a public comment from Disability Rights Texas.

Comment: Language should be added stating that the executive director shall track the frequency of notification to the Texas Correctional Office on Offenders with Medical or Mental Impairments of planned discharges to the community.

Response: The proposed rule text is consistent with requirements that TJJD track certain actions to achieve compliance with state statute. TJJD welcomes the opportunity discuss this subject further to address potential gaps in information tracking of which the commenters are aware but does not believe it warrants inclusion in a rule which is designed specifically to achieve statutory requirements.

### SUBCHAPTER A. ADMISSION, PLACEMENT, RELEASE, AND DISCHARGE

**37 TAC §380.8597**

STATUTORY AUTHORITY

Section 380.8597 is adopted under §242.003, Human Resources Code, which requires the Board to adopt rules appropri-

ate to properly accomplish TJJD's functions and to adopt rules for governing TJJD schools, facilities, and programs.

The new section is also adopted under §203.002, Human Resources Code (as amended by SB 1727, 88th Legislature, Regular Session), which requires TJJD to track the frequency with which the executive director takes certain actions and to report the resulting data to the Board and the Sunset Advisory Commission.

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 June 25, 2024.

TRD-202402789
Jana L. Jones
General Counsel
Texas Juvenile Justice Department
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For further information, please call: (512) 490-7278

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## SUBCHAPTER C. PROGRAM SERVICES
## DIVISION 2. EDUCATION PROGRAMS

### 37 TAC §380.9147

STATUTORY AUTHORITY

Section 380.9147 is adopted under §242.003, Human Resources Code, which requires the Board to adopt rules appropriate to properly accomplish TJJD's functions and to adopt rules for governing TJJD schools, facilities, and programs.

The new section is also adopted under §203.0083, Human Resources Code (as enacted by SB 1727, 88th Legislature, Regular Session), which requires the Board to create a youth career and technical education advisory committee and to adopt rules on the committee's purpose, goals, and membership.

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 June 25, 2024.

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Jana L. Jones
General Counsel
Texas Juvenile Justice Department
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Proposal publication date: March 8, 2024
For further information, please call: (512) 490-7278

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# CHAPTER 380. RULES FOR STATE-OPERATED PROGRAMS AND FACILITIES

The Texas Juvenile Justice Department (TJJD) adopts amendments to §380.8767 (Crisis Stabilization Unit) and §380.9571 (Procedure for Mental-Health-Status Review Hearing) without changes to the proposed text as published in the March 8, 2024, issue of the *Texas Register* (49 TexReg 1431). The amended rules will not be republished.

SUMMARY OF CHANGES

The amendments to §380.8767 clarify that a mental-health-status review hearing must be held for each youth within 72 hours (rather than 96 hours) after the youth's arrival at the stabilization unit.

The amendments to §380.9571 clarify that: 1) a mental-health-status review hearing must be held for each youth within 72 hours (rather than 96 hours) after the youth's arrival at the stabilization unit; and 2) if the hearing manager determines an unavoidable absence would prevent a key witness or party from attending the hearing, the hearing may be rescheduled to the earliest possible time but not later than 72 hours (rather than 96 hours) from the original scheduled hearing.

PUBLIC COMMENTS

TJJD did not receive any public comments on the proposed rulemaking action.

## SUBCHAPTER B. TREATMENT
## DIVISION 2. PROGRAMMING FOR YOUTH WITH SPECIALIZED TREATMENT NEEDS

### 37 TAC §380.8767

STATUTORY AUTHORITY

The amended section is adopted under §242.003, Human Resources Code, which requires the Board to adopt rules appropriate to properly accomplish TJJD's functions and to adopt rules for governing TJJD schools, facilities, and programs.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Jana L. Jones
General Counsel
Texas Juvenile Justice Department
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## SUBCHAPTER E. BEHAVIOR MANAGEMENT AND YOUTH DISCIPLINE
## DIVISION 2. DUE PROCESS HEARINGS

### 37 TAC §380.9571

STATUTORY AUTHORITY

The amended section is adopted under §242.003, Human Resources Code, which requires the Board to adopt rules appropriate to properly accomplish TJJD's functions and to adopt rules for governing TJJD schools, facilities, and programs.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Jana L. Jones
General Counsel
Texas Juvenile Justice Department
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For further information, please call: (512) 490-7278

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## SUBCHAPTER C. PROGRAM SERVICES
## DIVISION 4. HEALTH CARE SERVICES

### 37 TAC §380.9188

The Texas Juvenile Justice Department (TJJD) adopts amendments to Texas Administrative Code, Chapter 380, Subchapter C, §380.9188 without changes to the proposed text as published in the February 2, 2024, issue of the *Texas Register* (49 TexReg 492). The amended section will not be republished.

SUMMARY OF CHANGES

The amendments to §380.9188, concerning Suicide Alert for High-Restriction Facilities, change the requirement for mental health professionals at high-restriction TJJD facilities to consult with the designated mental health professional (i.e., the local clinical director) when determining whether changes will be made to a youth's observation level or suicide precautions to apply only when: (1) the assessing mental health professional is not licensed to practice independently, and (2) the youth's observation level or precautions would be lowered. The amendments also specify that, when a youth on suicide alert is transferred to another high-restriction TJJD facility, the mental health professional at the receiving facility communicates (rather than consults) with the designated mental health professional or designee regarding the plan for treatment and assessment.

PUBLIC COMMENTS

TJJD received public comments from Disability Rights Texas.

Comment: Regarding the requirement in subsection (f)(1) for a staff member to provide constant observation or a higher observation level, language should be added to clarify that the observation be conducted in person rather than remotely.

Response: The rule containing definitions, §380.9187, defines the requirements for providing supervision on each of the different observation levels. TJJD believes these definitions sufficiently address the possibility of remote observation as the assigned staff must be within a pre-defined physical distance during waking hours and document in-room status checks where no cameras are present.

Comment: Regarding the requirement in subsection (f)(1) for a staff member to begin a log to document status checks of the youth, language should be added providing the frequency of the documentation of status checks.

Response: The rule containing definitions, §380.9187, defines the frequency of documenting status checks. The time interval for observation levels that would be possible in this context would not exceed five minutes.

Comment: Regarding the requirement in subsection (g)(2) to notify a youth's parent or guardian of the youth's placement on suicide alert, we recommend that the notification occur no later than 24 hours after the youth is placed on suicide alert.

Response: TJJD agrees that this information should be provided timely to the family or guardian. TJJD's internal procedures require that this notification be made within one workday.

Comment: Regarding subsection (h)(1), about searching a youth's room or personal area. To avoid complaints where a search has occurred without the individual present and then questions arising about certain belongings, we recommend that the youth be present when the search occurs, the items removed be documented and the youth asked to sign the document. Any refusal to sign should be documented.

Response: TJJD agrees with the sentiment that youth should be present when personal belongings are search, to the extent possible. All items removed from a youth's room would be required to be documented by the staff member removing it, creating a chain of custody, limited the potential for hearsay about personal belongings. There are certain operational limitations that TJJD would need to analyze carefully, such as potential implications for investigations, avoiding delays in searching rooms that make create unsafe environments, or youth being unable to be physically present due to safety. TJJD will analyze internal procedures to determine the appropriateness of such provisions.

STATUTORY AUTHORITY

The amended section is adopted under §242.003, Human Resources Code, which requires the TJJD Board to adopt rules appropriate to properly accomplish TJJD's functions and to adopt rules for governing TJJD schools, facilities, and programs.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Jana L. Jones
General Counsel
Texas Juvenile Justice Department
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For further information, please call: (512) 490-7278

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## SUBCHAPTER E. BEHAVIOR MANAGEMENT AND YOUTH DISCIPLINE
## DIVISION 1. BEHAVIOR MANAGEMENT

### 37 TAC §§380.9503, 380.9504, 380.9510

The Texas Juvenile Justice Department (TJJD) adopts amendments to 37 TAC §380.9503 (concerning rules and consequences for residential facilities) and §380.9504 (concerning rules and consequences for youth on parole) with changes to the proposed text as published in the March 8, 2024, issue of the *Texas Register* (49 TexReg 1434). The amended rules will be republished.

The Texas Juvenile Justice Department (TJJD) adopts amendments to 37 TAC §380.9510 (concerning intervention program) without changes to the proposed text as published in the March

8, 2024, issue of the *Texas Register* (49 TexReg 1434). The amended rule will not be republished.

BACKGROUND AND JUSTIFICATION

The new amendments to §380.9503 and §380.9504 are the same: deleting the phrase *for the first ten days* from the requirement that a youth must remain at the approved placement while on electronic monitoring.

SUMMARY OF CHANGES

In addition to the new amendment listed above, the amendments to §380.9503 include adding that a Level II hearing will be requested for any youth not on parole status who allegedly commits a first- or second-degree felony unless TJJD determines, given all circumstances, a hearing would not be appropriate. Such a decision must be documented. TJJD will review the youth for placement in the most restrictive setting appropriate, including the intervention program in Section 380.9510, if the allegation is proved.

The amendments to §380.9503 also include: 1) adding a new rule violation entitled *Failure to Comply with Electronic Monitoring Program Conditions*, which applies only to youth in medium-restriction facilities and includes failing to comply with any of the specific electronic monitoring conditions listed in the rule; and 2) changing the definition of the rule violation entitled *Participating in a Major Disruption of Facility Operations* to no longer require that a youth must participate with two or more persons.

In addition to the new amendment listed above, the amendments to §380.9504 include adding that a parole revocation hearing will be requested for any youth who allegedly commits a first- or second-degree felony while on parole, although it may not be held if a deferral is requested by local prosecutors or TJJD determines that, given all circumstances, a hearing would not be appropriate. The amendments also added that TJJD shall review the youth for placement in the most restrictive setting appropriate if the youth's parole is revoked.

The amendments to §380.9504 also include adding the following to the list of parole rule violations: 1) *Failure to Comply with Electronic Monitoring Program Conditions,* which includes failing to comply with any of the specific conditions listed in the rule; and 2) *Participating in a Major Disruption of Facility Operations*, which is conduct that poses a threat to persons or property and substantially disrupts the performance of facility operations or programs (only for youth on parole status in medium-restriction facilities).

The amendments to §380.9510 include: 1) adding first- or second-degree felony to the list of violations that require a youth in a high-restriction facility to be reviewed for possible placement in the intervention program; and 2) adding that youth whose parole has been revoked and youth who are transferred from a medium-restriction facility to a high-restriction facility may be reviewed for placement in the intervention program. This review is mandatory if the return to a high-restriction facility is due to a first- or second-degree felony.

The amendments to §380.9510 also include several changes relating to the primary level of the intervention program: 1) adding that youth in this level of the program move around campus for non-program-related activities in a manner generally comparable to the general campus population; 2) removing a provision stating that youth in this level of the program continue to sleep at their assigned dorm but engage in other activities at the site of the program; and 3) removing a reference that states which staff divisions are involved in reviewing youth for possible placement in this level of the intervention program.

PUBLIC COMMENTS

TJJD received public comments from Disability Rights Texas.

Comment: Language should be added to specify under what circumstances a Level II hearing is deemed inappropriate.

Response: TJJD appreciates the sentiment of this comment, but believes creating an exhaustive list of circumstances is not possible and would have negative unintended consequences. Namely, enumerating inappropriate circumstances may inadvertently limit instances where a hearing is deemed inappropriate to only those listed in the rule. TJJD currently uses training, legal consultation, and internal procedures to guide staff further in making these determinations.

Comment: Regarding actions that are prohibited as disciplinary consequences, language should be added to prohibit inappropriate or excessive use of manual, mechanical or chemical restraints.

Response: Using force in any manner as a disciplinary consequence is already prohibited. Doing so would constitute corporal or unusual punishment or subjecting a youth to humiliation, harassment, or physical or mental abuse, which are expressly prohibited by the rule text. Additionally, TJJD's rule that addresses use of force, 37 TAC §380.9723, contains an exhaustive list of the allowable uses of force. Disciplinary consequences are not listed and therefore are prohibited as a means of imposing discipline.

Comment: Regarding the requirement in subsection (e)(5) for staff to tell the youth which rule violation was allegedly committed, what information staff has that establishes the youth committed it, and disciplinary consequences being considered - this information should be conveyed verbally and in writing and the same information should be conveyed to the legally authorized representative or family.

Response: This section is not describing a Level II hearing or another formal legal process but rather a procedure detailing an informal process designed to ensure due process requirements are met in imposing a disciplinary consequence that do not substantially alter a youth's living conditions. Formal notice is provided for due process hearings, which consider dispositions that may substantially alter a youth's living conditions.

STATUTORY AUTHORITY

The amended sections are adopted under §242.003, Human Resources Code, which requires the board to adopt rules appropriate to properly accomplish TJJD's functions and to adopt rules for governing TJJD schools, facilities, and programs.

The amended sections are also adopted under §243.001, Human Resources Code (as amended by SB 1727, 88th Legislature, Regular Session), which requires the board to adopt rules establishing procedures to determine the appropriate placement for youth pending prosecution for an alleged first- or second-degree felony committed while in TJJD custody.

TJJD certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

*§380.9503. Rules and Consequences for Residential Facilities.*

(a) Purpose. This rule establishes the actions that constitute violations of the rules of conduct for residential facilities. Violations of the rules may result in disciplinary consequences that are proportional

to the severity and extent of the violation. Appropriate due process, including a consideration of extenuating circumstances, shall be followed before imposing consequences.

(b) Applicability. This rule applies to youth assigned to residential facilities operated by the Texas Juvenile Justice Department (TJJD).

(c) Definitions. The following terms, as used in this rule, have the following meanings unless the context clearly indicates otherwise.

(1) Attempt to Commit--a youth, with specific intent to commit a rule violation, engages in conduct that amounts to more than mere planning that tends but fails to effect the commission of the intended rule violation.

(2) Bodily Injury--physical pain, illness, or impairment of physical condition. Fleeting pain or minor discomfort does not constitute bodily injury.

(3) Direct Someone to Commit--occurs when:

(A) a youth communicates with another youth;

(B) the communication is intended to cause the other youth to commit a rule violation; and

(C) the other youth commits or attempts to commit a rule violation.

(4) Possession--actual care, custody, control, or management. It does not require the item to be on or about the youth's person.

(d) General Provisions.

(1) Formal incident reports are completed for alleged rule violations as required by internal operational procedures.

(2) A formal incident report is not proof that a youth committed an alleged rule violation. Only rule violations that are proven through a Level I or Level II due process hearing in accordance with §380.9551 or §380.9555 of this chapter, respectively, are considered proven and are considered a part of a youth's disciplinary record. A formal incident report is not appealable or grievable; only disciplinary consequences may be appealed or grieved, as provided below.

(3) When a youth is found to be in possession of prohibited money as defined in this rule, a Level II hearing is required to seize the money. Seized money shall be placed in the student benefit fund in accordance with §380.9555 of this chapter.

(4) This paragraph applies only to youth not on parole status who are alleged to have engaged in conduct classified as a first- or second-degree felony while in a residential facility operated by or under contract with TJJD. A Level II hearing shall be requested on these youth unless it is determined that, given all circumstances, a Level II hearing is not appropriate. Such decision shall be documented. If a requested Level II hearing is held and the allegation is proved, the youth shall be reviewed for the most restrictive setting appropriate, including the intervention program described by §380.9510 of this chapter.

(e) Disciplinary Consequences.

(1) Disciplinary consequences shall be established in writing in TJJD's procedural manuals. Appropriate disciplinary consequences may be imposed only if the consequences are established in writing in TJJD's procedural manuals prior to the occurrence of the conduct for which the consequence is issued.

(2) Disciplinary consequences may include, but are not limited to, the following:

(A) suspension of privileges;

(B) restriction from planned activities;

(C) trust-fund restriction; and

(D) disciplinary transfer to a high-restriction facility (available only for youth on institutional status in a medium-restriction facility).

(3) The following are prohibited as disciplinary consequences:

(A) corporal or unusual punishment;

(B) subjecting a youth to humiliation, harassment, or physical or mental abuse;

(C) subjecting a youth to personal injury;

(D) subjecting a youth to property damage or disease;

(E) punitive interference with the daily functions of living, such as eating or sleeping;

(F) purposeless or degrading work, including group exercise as a consequence;

(G) placement in the intervention program under §380.9510 of this chapter;

(H) disciplinary isolation; and

(I) extending a youth's stay in a TJJD facility.

(4) A Level II hearing is required before imposing a disciplinary consequence that materially alters a youth's living conditions, including disciplinary transfer from a medium-restriction facility to a high-restriction facility. TJJD's procedural manuals will specify which disciplinary consequences require a Level II hearing. Disciplinary consequences requiring a Level II hearing are considered major consequences.

(5) If a Level II hearing is not required, the following must occur before imposing disciplinary consequences for a youth in a high-restriction facility:

(A) a written description of the incident must be prepared;

(B) staff must tell the youth which rule violation the youth allegedly committed and describe the information staff has that establishes the youth committed it;

(C) staff must tell the youth what disciplinary consequence(s) staff is considering imposing; and

(D) the youth must be given the opportunity to address the allegation, including providing any extenuating circumstances and information on the appropriateness of the intended consequence(s).

(6) If a Level II hearing is not required, a Level III hearing must occur before imposing disciplinary consequences for a youth in a medium-restriction facility, in accordance with §380.9557 of this chapter.

(f) Review and Appeal of Consequences.

(1) All disciplinary consequences shall be reviewed for policy compliance by the facility administrator or designee within three calendar days after issuance. The reviewing staff shall not be the staff who issued the discipline.

(2) The reviewing staff may remove or reduce any disciplinary consequence determined to be excessive or not validly related to the nature or seriousness of the conduct.

(3) Youth may appeal disciplinary consequences issued through a Level II hearing by filing an appeal in accordance with §380.9555 of this chapter.

(4) Youth in medium-restriction facilities may appeal disciplinary consequences issued through a Level III hearing by filing an appeal in accordance with §380.9557 of this chapter.

(5) Youth in high-restriction facilities may grieve disciplinary consequences issued without a Level II hearing by filing a grievance in accordance with §380.9331 of this chapter.

(g) Major Rule Violations. It is a violation to knowingly commit, attempt to commit, direct someone to commit, or aid someone else in committing any of the following:

(1) Assault of Another Youth (No Injury)--intentionally, knowingly, or recklessly engaging in conduct with the intent to cause bodily injury to another youth but the conduct does not result in bodily injury.

(2) Assault of Staff (No Injury)--intentionally, knowingly, or recklessly engaging in conduct with the intent to cause bodily injury to a staff member, contract employee, or volunteer with the intent to cause injury but the conduct does not result in bodily injury.

(3) Assault Causing Bodily Injury to Another Youth--intentionally, knowingly, or recklessly engaging in conduct that causes another youth to suffer bodily injury.

(4) Assault Causing Bodily Injury to Staff--intentionally, knowingly, or recklessly engaging in conduct that causes a staff member, contract employee, or volunteer to suffer bodily injury.

(5) Attempted Escape--committing an act with specific intent to escape that amounts to more than mere planning that tends but fails to effect an escape.

(6) Chunking Bodily Fluids--causing a person to contact the blood, seminal fluid, vaginal fluid, saliva, urine, and/or feces of another with the intent to harass, alarm, or annoy another person.

(7) Distribution of Prohibited Substances--distributing or selling any prohibited substances or items.

(8) Escape--leaving a high-restriction residential placement without permission or failing to return from an authorized leave.

(9) Extortion or Blackmail--demanding or receiving favors, money, actions, or anything of value from another in return for protection against others, to avoid bodily harm, or in exchange for not reporting a violation.

(10) Failure to Comply with Electronic Monitoring Program Conditions (for Youth in Medium-Restriction Residential Placement)--failing to comply with one of the following conditions required by the youth's electronic monitoring program conditions:

(A) remain at the address listed at all designated times;

(B) follow curfew restriction as stated in the youth's conditions of placement or conditions of parole;

(C) remain at the approved placement while on electronic monitoring, going only to school, approved activities, religious functions, and medical/psychological appointments and then return to the approved placement, in accordance with the schedule identified in the conditions of placement or conditions of parole;

(D) wear the electronic monitoring device 24 hours a day;

(E) allow a TJJD staff member to enter the youth's residence to install, maintain, and inspect the device if required;

(F) notify the electronic monitoring officer as soon as possible within 24 hours if the youth experiences any problems with the electronic monitoring system; and

(G) charge the device daily for a minimum of one hour continuously in the morning and one hour continuously in the evening.

(11) Fighting Not Resulting in Bodily Injury--engaging in a mutually instigated physical altercation with another person or persons that does not result in bodily injury.

(12) Fighting That Results in Bodily Injury--engaging in a mutually instigated physical altercation with another person or persons that results in bodily injury.

(13) Fleeing Apprehension--running from or refusing to come to staff when called and such act results in disruption of facility operations.

(14) Misuse of Medication--using medication provided to the youth by authorized personnel in a manner inconsistent with specific instructions for use, including removing the medication from the dispensing area.

(15) Participating in a Major Disruption of Facility Operations--intentionally engaging in conduct that poses a threat to persons or property and substantially disrupts the performance of facility operations or programs.

(16) Possessing, Selling, or Attempting to Purchase Ammunition--possessing, selling, or attempting to purchase ammunition.

(17) Possession of Prohibited Items--possessing the following prohibited items:

(A) cellular telephone;

(B) matches or lighters;

(C) jewelry, unless allowed by facility rules;

(D) money in excess of the amount or in a form not permitted by facility rules (see §380.9555 of this chapter for procedures concerning seizure of such money);

(E) pornography;

(F) items which have been fashioned to produce tattoos or body piercing;

(G) cleaning products when the youth is not using them for a legitimate purpose; or

(H) other items that are being used inappropriately in a way that poses a danger to persons or property or threatens facility security.

(18) Possessing, Selling, or Attempting to Purchase a Weapon--possessing, selling, or attempting to purchase a weapon or an item that has been made or adapted for use as a weapon.

(19) Possession or Use of Prohibited Substances and Paraphernalia--possessing or using any unauthorized substance, including controlled substances or intoxicants, medications not prescribed for the youth by authorized medical or dental staff, alcohol, tobacco products, or related paraphernalia such as that used to deliver or make any prohibited substance.

(20) Refusing a Drug Screen--refusing to take a drug screen when requested to do so by staff or tampering with or contaminating the urine sample provided for a drug screen. (Note: If the youth

says he/she cannot provide a sample, the youth shall be given water to drink and two hours to provide the sample.)

(21) Refusing a Search--refusing to submit to an authorized search of person or area.

(22) Repeated Non-Compliance with a Written, Reasonable Request of Staff (for Youth in Medium-Restriction Residential Placement)--failing on two or more occasions to comply with a specific written, reasonable request of staff. If the request requires the youth to do something daily or weekly, the two failures to comply must be within a 30-day period. If the request requires the youth to do something monthly, the two failures to comply must be within a 60-day period.

(23) Sexual Misconduct--intentionally or knowingly engaging in any of the following:

(A) causing contact, including penetration (however slight), between the penis and the vagina or anus; between the mouth and penis, vagina or anus; or penetration (however slight) of the anal or genital opening of another person by hand, finger, or other object;

(B) touching or fondling, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of another person;

(C) kissing for sexual stimulation;

(D) exposing the anus, buttocks, breasts, or genitals to another or exposing oneself knowing the act is likely to be observed by another person; or

(E) masturbating in an open and obvious way, whether or not the genitals are exposed.

(24) Stealing--intentionally taking property with an estimated value of $100 or more from another without permission.

(25) Tampering with Monitoring Equipment--a youth intentionally or knowingly tampers with monitoring equipment assigned to any youth.

(26) Tampering with Safety Equipment--intentionally tampering with, damaging, or blocking any device used for safety or security of the facility. This includes, but is not limited to, any locking device or item that provides security access or clearance, any fire alarm or fire suppression system or device, video camera, radio, telephone (when the tampering prevents it from being used as necessary for safety and/or security), handcuffs, or shackles.

(27) Tattooing/Body Piercing--engaging in tattooing or body piercing of self or others. Tattooing is defined as making a mark on the body by inserting pigment into the skin.

(28) Threatening Another with a Weapon--intentionally and knowingly threatening another with a weapon. A weapon is something that is capable of inflicting bodily injury in the manner in which it is being used.

(29) Unauthorized Absence--leaving a medium-restriction residential placement without permission or failing to return from an authorized leave.

(30) Vandalism--intentionally causing $100 or more in damage to state property or personal property of another.

(31) Violation of Any Law--violating a Texas or federal law that is not already defined as a major or minor rule violation.

(h) Minor Rule Violations. It is a violation to knowingly commit, attempt to commit, direct someone to commit, or aid someone else in committing any of the following:

(1) Breaching Group Confidentiality--disclosing or discussing information provided in a group session to another person not present in that group session.

(2) Disruption of Program--engaging in behavior that requires intervention to the extent that the current program of the youth and/or others is disrupted. This includes, but is not limited to:

(A) disrupting a scheduled activity;

(B) being loud or disruptive without staff permission;

(C) using profanity or engaging in disrespectful behavior toward staff or peers; or

(D) refusing to participate in a scheduled activity or abide by program rules.

(3) Failure to Abide by Dress Code--failing to follow the rules of dress and appearance as provided by facility rules.

(4) Failure to do Proper Housekeeping--failing to complete the daily chores of cleaning the living environment to the expected standard.

(5) Gang Activity--participating in an activity or behavior that promotes the interests of a gang or possessing or exhibiting anything related to or signifying a gang, such as, but not limited to, gang-related literature, symbols, or signs.

(6) Gambling or Possession of Gambling Paraphernalia--engaging in a bet or wager with another person or possessing paraphernalia that may be used for gambling.

(7) Horseplay--engaging in wrestling, roughhousing, or playful interaction with another person or persons that does not rise to the level of an assault. Horseplay does not result in any party getting upset or causing injury to another.

(8) Improper Use of Telephone/Mail/Computer--using the mail, a computer, or the telephone system for communication that is prohibited by facility rules, at a time prohibited by facility rules, or to inappropriately access information.

(9) Lending/Borrowing/Trading Items--lending or giving to another youth, borrowing from another youth, or trading with another youth possessions, including food items, without permission from staff.

(10) Lying/Falsifying Documentation/Cheating--lying or withholding information from staff, falsifying a document, and/or cheating on an assignment or test.

(11) Possession of an Unauthorized Item--possessing an item the youth is not authorized to have (possession of which is not a major rule violation), including items not listed on the youth's personal property inventory. This does not include personal letters or photographs.

(12) Refusal to Follow Staff Verbal Instructions--deliberately failing to comply with a specific reasonable verbal instruction made by a staff member.

(13) Stealing--intentionally taking property with an estimated value under $100 from another without permission.

(14) Threatening Others--making verbal or physical threats toward another person or persons.

(15) Unauthorized Physical Contact with Another Youth (No Injury)--intentionally making unauthorized physical contact with another youth without the intent to cause injury and that does not cause injury, such as, but not limited to, pushing, poking, or grabbing.

(16) Unauthorized Physical Contact with Staff (No Injury)--intentionally making unauthorized physical contact with a staff member, contract employee, or volunteer without the intent to cause injury and that does not cause injury, such as, but not limited to, pushing, poking, and grabbing.

(17) Undesignated Area--being in any area without the appropriate permission to be in that area.

(18) Vandalism--intentionally causing less than $100 in damage to state or personal property.

*§380.9504. Rules and Consequences for Youth on Parole.*

(a) Purpose. This rule establishes the actions that constitute violations of the rules of conduct youth are expected to follow while under parole supervision. Violations of the rules may result in disciplinary consequences, including revocation of parole, that are proportional to the severity and extent of the violation. Appropriate due process must be followed before imposing consequences.

(b) Applicability.

(1) This rule applies to youth on parole status who are assigned to a home placement.

(2) For parole revocation purposes, this rule also applies to youth on parole status who are assigned to a residential placement as a home substitute. However, this rule does not apply to the daily rules of conduct for these youth. For the daily rules of conduct, see §380.9503 of this chapter.

(c) General Provisions.

(1) Conditions of parole are provided to the youth before release on parole.

(2) Conditions of parole, including the rules of conduct, are reviewed with youth when they initially meet with their parole officers and at other times as necessary.

(3) Repeated violations of any rule of conduct may result in more serious disciplinary consequences.

(d) Definitions. Possession--actual care, custody, control, or management. It does not require the item to be on or about the youth's person.

(e) Parole Rule Violations. It is a violation to knowingly commit, attempt to commit, or aid someone else in committing any of the following:

(1) Abscond--leaving a home placement or failing to return from an authorized leave when:

(A) the youth's parole officer did not give permission; and

(B) the youth's whereabouts are unknown to the youth's parole officer.

(2) Failure to Comply with Electronic Monitoring Program Conditions--failing to comply with one of the following conditions required by the youth's electronic monitoring program conditions:

(A) remain at the address listed at all designated times;

(B) follow curfew restriction as stated in the youth's conditions of placement or conditions of parole;

(C) remain at the approved placement while on electronic monitoring, going only to school, approved activities, religious functions, and medical/psychological appointments and then return to the approved placement, in accordance with the schedule identified in the conditions of placement or conditions of parole;

(D) wear the electronic monitoring device 24 hours a day;

(E) allow a TJJD staff member to enter the youth's residence to install, maintain, and inspect the device if required;

(F) notify the electronic monitoring officer as soon as possible within 24 hours if the youth experiences any problems with the electronic monitoring system; and

(G) charge the device daily for a minimum of one hour continuously in the morning and one hour continuously in the evening.

(3) Failure to Comply with Sex Offender Conditions of Parole--intentionally or knowingly failing to comply with one of the following conditions present in the youth's sex offender conditions of parole addendum:

(A) do not have unsupervised contact with children under the age specified by the conditions of parole;

(B) do not babysit or participate in any activity where the youth is responsible for supervising or disciplining children under the age specified by the conditions of parole; or

(C) do not initiate physical contact or touching of any kind with a child, victim, or potential victim.

(4) Failure to Report an Arrest or Citation--failing to report an arrest or receipt of a citation to the youth's parole officer within 24 hours of arrest or citation.

(5) Participating in a Major Disruption of Facility Operations--intentionally engaging in conduct that poses a threat to persons or property and substantially disrupts the performance of facility operations or programs. (This parole violation applies only to youth assigned to a residential placement as a substitute for home placement.)

(6) Possessing, Selling, or Attempting to Purchase Ammunition--possessing, selling, or attempting to purchase ammunition.

(7) Possessing, Selling, or Attempting to Purchase a Weapon--possessing, selling, or attempting to purchase a weapon or an item that has been made or adapted for use as a weapon.

(8) Refusing a Drug Screen--refusing to take a drug screen when requested to do so by staff or tampering with or contaminating the urine sample provided for a drug screen.

(9) Repeated Non-Compliance with a Written, Reasonable Request of Staff--failing on two or more occasions to comply with a specific condition of release under supervision and/or a specific written, reasonable request of staff. If the request requires the youth to do something daily or weekly, the two failures to comply must be within a 30-day period. If the request requires the youth to do something monthly, the two failures to comply must be within a 60-day period.

(10) Photos, Videos, or Social Media Posts with Weapon, Ammunition, or Unauthorized Substance--appearing in photos, videos, or other images, whether or not posted to social media, with any weapon, ammunition, or unauthorized substance or related paraphernalia, including any object that reasonably resembles a weapon, ammunition, or unauthorized substance or related paraphernalia. The term weapon includes, but is not limited to, guns, explosive devices, knives, blades, and clubs. The term related paraphernalia includes, but is not limited to, items used to make or deliver unauthorized substances.

(11) Tampering with Monitoring Equipment--a youth intentionally or knowingly tampers with monitoring equipment assigned to any youth.

(12) Unauthorized Absence--leaving a medium-restriction residential placement without permission or failing to return from an authorized leave.

(13) Possession or Use of Unauthorized Substances--possessing, ingesting, inhaling, or otherwise consuming any unauthorized substance, including controlled substances or intoxicants, medications not prescribed for the youth by authorized medical or dental staff, alcohol or tobacco products, or related paraphernalia such as that used to deliver or make any unauthorized substance.

(14) Violation of Any Law--violating a federal or state law or municipal ordinance.

(f) Possible Consequences.

(1) A parole rule violation may result in a Level I hearing or a Level III hearing conducted in accordance with §380.9551 or §380.9557 of this chapter, respectively.

(A) This subparagraph applies only to youth alleged to have engaged in conduct classified as a first- or second-degree felony while on parole. Except as provided by this subparagraph, a Level I hearing shall be requested on these youth. The hearing may be deferred when requested by local prosecutors, as provided in §380.9551 of this chapter. The designated staff person may determine that, given all circumstances, a Level I hearing is not appropriate. Such decision shall be documented. If a Level I hearing is held and the youth's parole is revoked, the youth shall be reviewed for the most restrictive setting appropriate, including the intervention program described by §380.9510 of this chapter.

(B) Parole officers are encouraged to be creative in determining a consequence appropriate to address and correct the youth's behavior. Staff should use evidence-based interventions that relate to the youth's risk, needs, and responsivity when appropriate. All assigned consequences should be related to the misconduct when possible.

(2) Consequences through a Level III hearing for a youth on parole include, but are not limited to:

(A) Verbal Reprimand--conference with a youth including a verbal reprimand that draws attention to the misbehavior and serves as a warning that continued misbehavior could result in more severe consequences.

(B) Curfew Restriction--an immediate change in existing curfew requirements outlined in the youth's conditions of parole.

(C) Community Service Hours--disciplinary assignment of a specific number of hours the youth is to perform community service in addition to the hours assigned when the youth was placed on parole. In no event may more than 20 community service hours be assigned through a Level III hearing.

(D) Increased Level of Supervision--an assigned increase in the number of primary contacts between the youth and parole officer in order to increase the youth's accountability.

(E) Electronic Tracking--assignment to a system that electronically tracks a youth's movement and location.

(F) Writing Assignment--an assignment designed for the youth to address the misbehavior and identify appropriate behavior in similar situations.

(3) Consequences through a Level I hearing for a youth on parole, including youth assigned to a residential placement as a home substitute, include:

(A) parole revocation and placement in any high- or medium-restriction program operated by or under contract with the Texas Juvenile Justice Department; and

(B) assignment of a length of stay consistent with §380.8525 of this chapter.

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 June 25, 2024.

TRD-202402784
Jana L. Jones
General Counsel
Texas Juvenile Justice Department
Effective date: July 15, 2024
Proposal publication date: March 8, 2024
For further information, please call:

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# CHAPTER 385. AGENCY MANAGEMENT AND OPERATIONS

## SUBCHAPTER B. INTERACTION WITH THE PUBLIC

### 37 TAC §385.8183

The Texas Juvenile Justice Department (TJJD) adopts amendments to 37 TAC §385.8183 (concerning advocacy, support group, and social services provider access) without changes to the proposed text as published in the May 3, 2024, issue of the *Texas Register* (49 TexReg 2994). The amended rule will not be republished.

SUMMARY OF CHANGES

The amendments to §385.8183 include adding that: 1) TJJD tracks the frequency with which the executive director finalizes appeals described elsewhere in the rule; 2) TJJD compiles frequency data on a quarterly basis; and 3) at the beginning of each quarter, TJJD provides the frequency data from the previous quarter to the TJJD Board and the Sunset Advisory Commission.

PUBLIC COMMENTS

TJJD did not receive any public comments on the proposed rulemaking action.

STATUTORY AUTHORITY

Section 385.9921 is adopted under §242.003, Human Resources Code, which requires the Board to adopt rules appropriate to properly accomplish TJJD's functions and to adopt rules for governing TJJD schools, facilities, and programs.

The amended section is also adopted under §242.102, Human Resources Code (as amended by SB 1727, 88th Legislature, Regular Session), which requires administrative investigative findings of the Office of the Inspector General to undergo a legal sufficiency review before being made public.

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 June 25, 2024.

TRD-202402791
Jana L. Jones
General Counsel
Texas Juvenile Justice Department
Effective date: July 15, 2024
Proposal publication date: May 3, 2024
For further information, please call: (512) 490-7278

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# PART 13. TEXAS COMMISSION ON FIRE PROTECTION

## CHAPTER 467. FIRE MARSHAL

The Texas Commission on Fire Protection (the Commission or agency) adopts amendments to 37 Texas Administrative Code Chapter 467 Fire Marshal, §467.1, Basic Fire Marshal Certification, §467.3 Minimum Standards for Basic Fire Marshal Certification, §467.5, Examination Requirement, §467.201, Intermediate Fire Marshal Certification, §467.301, Advanced Fire Marshal Certification, and §467.401.

The amended sections are adopted without changes to the text as published in the May 3, 2024, issue of the *Texas Register* (49 TexReg 2996).

The rule amendments are initiated because of a change in the examination requirements for Basic Fire Marshal as reflected in the amendment to §467.1 and §467.5. The rule amendments to §467.3, §467.201, §467.301, and §467.401 correct typographical errors.

No comments were received from the public regarding the adoption of the amendments.

## SUBCHAPTER A. MINIMUM STANDARDS FOR BASIC FIRE MARSHAL CERTIFICATION

### 37 TAC §§467.1, 467.3, 467.5

The amended sections are adopted under Texas Government Code, §419.008, which authorizes the commission to adopt or amend rules to perform the duties assigned to the commission. The rule is also adopted under Texas Government Code §419.032, which authorizes the commission to adopt rules establishing the requirements for fire protection personnel.

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 June 27, 2024.

TRD-202402817
Frank King
General Counsel
Texas Commission on Fire Protection
Effective date: July 17, 2024
Proposal publication date: May 3, 2024
For further information, please call: (512) 936-3824

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## SUBCHAPTER B. MINIMUM STANDARD FOR INTERMEDIATE FIRE MARSHAL CERTIFICATION

### 37 TAC §467.201

The section is adopted under Texas Government Code §419.008, which authorizes the commission to adopt or amend rules to perform the duties assigned to the commission. The rule is also adopted under Texas Government Code §419.032, which authorizes the commission to adopt rules establishing qualifications for fire personnel.

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 June 27, 2024.

TRD-202402818
Frank King
General Counsel
Texas Commission on Fire Protection
Effective date: July 17, 2024
Proposal publication date: May 3, 2024
For further information, please call: (512) 936-3824

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## SUBCHAPTER C. MINIMUM STANDARDS FOR ADVANCED FIRE MARSHAL CERTIFICATION

### 37 TAC §467.301

The amendment is adopted under Texas Government Code §419.008, which authorizes the commission to adopt or amend rules to perform the duties assigned to the commission. The rule is also adopted under Texas Government Code §419.032, which authorizes the commission to adopt rules establishing qualifications for fire personnel.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER D. MINIMUM STANDARDS FOR MASTER FIRE MARSHAL CERTIFICATION

### 37 TAC §467.401

The amendment is adopted under Texas Government Code §419.008, which authorizes the commission to adopt or amend

rules to perform the duties assigned to the commission. The rule is also adopted under Texas Government Code §419.032, which authorizes the commission to adopt rules establishing qualifications for fire personnel.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Frank King
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# TITLE 43. TRANSPORTATION

## PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

### CHAPTER 1. MANAGEMENT

### SUBCHAPTER A. ORGANIZATION AND RESPONSIBILITIES

#### 43 TAC §1.2

The Texas Department of Transportation (department) adopts the amendments to §1.2 concerning Organization and Responsibilities. The amendments to §1.2 are adopted without changes to the proposed text as published in the April 12, 2024 of the *Texas Register* (49 TexReg 2256) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

House Bill 3444, 88th Legislature, Regular Session, 2023, requires the Texas Transportation Commission (commission), by rule, to prescribe criteria for the classification of each district as metropolitan, urban, or rural and requires that a district with a population of more than one million be classified as metropolitan.

Amendments to §1.2, Texas Department of Transportation, adds subsection (d)(4), District Classification. The subsection defines a population-based classification of department districts. A district with a population of more than one million is classified as metropolitan. A district with a population between one million to 400,000 is classified as urban. A district with a population less than 400,000 is classified as rural. A district's population is determined using the most recent population information provided to the department by the Texas Demographic Center. After population data from each federal decennial census is released, the department will review the classification of the districts and recommend to the commission any changes to classification criteria that the department considers to be necessary. If the commission determines that changes are necessary, it will amend its rules to reflect those changes.

Additionally, as a housekeeping measure, the amendments delete the references to department offices in subsection (c) of the section because the department no longer uses the term "office" for the classification of headquarters operation groups.

COMMENTS

The department received a letter from several legislators and written comments from 53 others most of whom commented as representatives of various governmental entities.

The letter from the legislators was signed by Juan "Chuy" Hinojosa, State Senator, District 20; Judith Zaffirini, State Senator, District 21; Morgan LaMantia, State Senator, District 27; Terry Canales, State Representative, District 40; Ryan Guillen, State Representative, District 31; Oscar Longoria, State Representative, District 35; Sergio Munoz, Jr., State Representative, District 36; Janie Lopez, State Representative, District 37; Erin Gamez, State Representative, District 38; Armando "Mando" Martinez, State Representative, District 39; and R. D. "Bobby" Guerra, State Representative, District 41. They expressed support of the adoption of the rules and provided no suggested changes to the rules, as proposed. The letter urged the commission to increase the resources allocated for the administration and operation of the Pharr District and expressed concern that the Local Employment Impact Statement in the preamble of the proposed rules indicates minimal impact on local economies or employment from the proposed changes. The department thanks the legislators for their comments and insight and appreciates their support for the adoption of the rules. The Local Employment Impact Statement section of the preamble provides the best prediction of whether the rule, itself, (establishing the parameters for the classification of a district as metropolitan, urban, or rural) will have an impact on local economies. That determination is not an indication of, and does not restrict, the commission's future allocation of transportation funding or department resources.

The submissions received from other commenters are similar to one another. All support the adoption of the rules, and none suggested changes to the wording of the rules. The department thanks the commenters for their responses and appreciates their support.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §201.105(h), which requires the commission to prescribe criteria for the classification of each of the department's district as metropolitan, urban, or rural.

The authority for the proposed amendments is provided by H.B. 3444, 88th Regular Session, 2023. The primary author and the primary sponsor of that bill are Rep. Canales and Sen. Hinojosa, respectively.

CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING

Transportation Code, §201.105.

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 June 27, 2024.

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Becky Blewett
Deputy General Counsel
Texas Department of Transportation
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For further information, please call: (512) 463-8630

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# PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

## CHAPTER 219. OVERSIZE AND OVERWEIGHT VEHICLES AND LOADS

INTRODUCTION. The Texas Department of Motor Vehicles (department) adopts amendments to 43 Texas Administrative Code (TAC) Chapter 219, Oversize and Overweight Vehicles and Loads, Subchapter A, General Provisions, §219.1 and §219.2; Subchapter B, General Permits, §§219.11 - 219.15; Subchapter C, Permits for Over Axle and Over Gross Weight Tolerances, §§219.30 - 219.32 and 219.34 - 219.36; Subchapter D, Permits for Oversize and Overweight Oil Well Related Vehicles, §§219.41 - 219.45; Subchapter E, Permits for Oversize and Overweight Unladen Lift Equipment Motor Vehicles, §§219.60 - 219.64; Subchapter F, Compliance, §219.81; and Subchapter G, Records and Inspections, §219.102. The department also adopts new Subchapter A, §§219.5, 219.7 and 219.9. The department adopts the following sections without changes to the proposed text as published in the February 23, 2024, issue of the *Texas Register* (49 TexReg 1002) and will not be republished: §§219.1, 219.2, 219.5, 219.7, 219.9, 219.12 - 219.15, 219.30 - 219.32, 219.34 - 219.36, 219.41 - 219.45, 219.60, 219.61, 219.62, 219.64, 219.81 and 219.102. The department adopts §219.11 and §219.63 with changes to the proposed text as published in the February 23, 2024, issue of the *Texas Register* (49 TexReg 1002), and §219.11 and §219.63 will be republished. The department adopts §219.11 with changes to delay the end date through which the language in §219.11(l)(2) will be in effect regarding restrictions on the movement of certain oversize vehicles and loads on a holiday, and to separate the two sentences in paragraph (2) into subparagraphs (A) and (B). Also, the department adopts §219.63 with changes at adoption to remove the proposed deletion of a space and the proposed addition of a space in the references to Figure 1: 43 TAC §219.62(f). In addition, the department adopts the repeal of §§219.84, 219.86 and 219.123.

The department adopts amendments to document the department's processes and requirements in rule, to update the language to remove unnecessary or obsolete requirements, to delete language that is contained in statute, to delete repetitive language, to clarify the language, to update the language to be consistent with statutory changes; to update the language to be consistent with guidance from the Federal Highway Administration (FHWA), and to begin to organize the general provisions in Subchapter A of Chapter 219. The department also adopts the repeals to delete language that is obsolete or unnecessary; or exceeds the department's rulemaking authority. In addition, the department adopts amendments that renumber, re-letter, or remove cross-references within rule subdivisions due to the deletion of one or more subdivisions within the rules.

REASONED JUSTIFICATION.

Subchapter A. General Provisions

Adopted amendments to §219.1 clarify that Chapter 219 includes permits that authorize travel on certain public roadways in addition to the state highway system. For example, Transportation Code, §623.402 provides for the issuance of an overweight permit that authorizes the permittee to travel on certain county roads, municipal streets, and the state highway system to the extent the Texas Department of Transportation (TxDOT) approves such roads, streets, and state highways under Transportation Code, §623.405. An adopted amendment to §219.1 also clarifies that Chapter 219 includes the policies and procedures for filing surety bonds, including surety bonds that are required before an operator of certain vehicles that exceed certain axle weight limits is allowed to travel on municipal streets, county roads, or the state highway system. An adopted amendment to §219.1 also corrects an error by changing the word "insure" to "ensure."

Adopted amendments to §219.2(b) add a definition for the word "day" to define it as a calendar day for clarity; change the defined word "daylight" to "daytime" and modify the definition by referring to the definition in Transportation Code, §541.401 and deleting the definition, which was derived from §541.401; modify the definition for "hubometer" to replace the word "crane" with the term "unladen lift equipment motor vehicle" because that is the term used in Transportation Code, Chapter 623, Subchapter J; add the word "label" to the defined term "HUD number" so the term is consistent with the term used in §219.14 and Transportation Code, §623.093; amend the definition of "nighttime" to remove the portion of the definition contained in Transportation Code, §541.401 because the definition of "nighttime" refers to the definition in §541.401; amend the definition of "nondivisible load or vehicle" to be consistent with FHWA's interpretation of the term by adding language regarding properly secured components, adding the example from prior §219.61(g) for a crane traveling with properly secured components, and adding an example of a dozer traveling with the blade detached; amend the definition for "nondivisible load or vehicle" by adding a missing period at the end of the language regarding spent nuclear materials and re-lettering the subdivisions accordingly; amend the definition for "permit plate" to reference the definition for "oil well servicing, cleanout, or drilling machinery" as defined in Transportation Code, §502.001(29); add a hyphen between the words "trailer" and "mounted" because these words are compound modifiers for the defined term "trailer-mounted unit"; and add examples to the definition of "unladen lift equipment motor vehicle."

Adopted amendments to §219.2(b) also modify the definition for surety bond because the prior definition for surety bond only referenced the payment to TxDOT for damage to a highway and was therefore in conflict with Transportation Code, §622.134, which also requires payment to a county for damage to a county road and to a municipality for damage to a municipal street caused by the operation of the vehicle, and Transportation Code, §623.163, which also requires payment to a municipality for damage to a municipal street caused by the operation of the vehicle. In addition, an adopted amendment to the definition of surety bond in §219.2 removes language that said the surety bond expires at the end of the state fiscal year because §219.3(b) and §219.11(n) already include this language.

In addition, adopted amendments to §219.2(b) delete the following defined terms because the department adopted amendments that removed the defined terms from where they were used in Chapter 219: board, one-trip registration, temporary ve-

hicle registration, 72-hour temporary vehicle registration, and 144-hour temporary vehicle registration.

Further, adopted amendments to §219.2(b) delete the following terms, which do not appear in Chapter 219: credit card, district, district engineer, machinery plate, motor carrier registration (MCR), traffic control device, trunnion axle group, and variable load suspension axles. Lastly, adopted amendments to §219.2(b) delete the following terms, which are defined in Transportation Code, Chapter 621, 622, or 623: department and director. Section 219.2 says the definitions contained in Transportation Code, Chapter 621, 622, and 623 apply to Chapter 219. The adopted amendments renumber the paragraphs within §219.2(b) to accommodate the adopted deletions and additions to the rule.

Adopted new §219.5 describes the department's current general application requirements to obtain an oversize or overweight permit, including the requirements to provide the required information, submit the required documents, pay the required fees, and submit the application in the form and by the method prescribed by the department on its website. The department's website lists the methods by which an applicant can apply for each type of permit. For example, the department's webpage for 30/60/90-day permits under Transportation Code, Chapter 623, Subchapter D says the applicant can apply via the Texas Permitting and Routing Optimization System (TxPROS) or submit the Time Permit Application (Form MCD-302) by mail to the address listed on the application form. TxPROS is the department's designated permitting system.

Adopted new §219.5 also refers to the application requirements under Chapter 219; Transportation Code, Chapters 621, 622, and 623; and other applicable law. For example, to qualify for certain permits, Transportation Code, §§623.011(b)(1), 623.079, and 623.194 require the vehicle to be registered under Transportation Code, Chapter 502 for the maximum gross weight applicable to the vehicle under Transportation Code, §621.101, not to exceed 80,000 pounds. Adopted new §219.5 also describes the process for an applicant to obtain a customer identification number by setting up an account in TxPROS, as well as the process to authorize the department to obtain a customer identification number for the applicant via TxPROS.

Adopted new §219.7 expressly authorizes certain amendments to permits to be consistent with current practice. Adopted new §219.7(a) provides general amendment guidelines, which are subject to the specific provisions in adopted new §219.7(b). Adopted new §219.7 allows amendments necessary to correct errors made by department staff or the department's permitting system, and as necessary to keep the contact information up to date. Adopted new §219.7 expressly authorizes certain amendments to permits even though other sections in Chapter 219 limit the types of amendments that are allowed to certain types of permits.

Adopted new §219.9 clarifies that the provisions in Chapter 219 do not authorize the operation of a vehicle or vehicle combination on the following roadways in this state to the extent FHWA determines the vehicle or vehicle combination exceeds the applicable weight or size for such roadway under 23 U.S.C. §127, 49 U.S.C. §§31111 through 31114, or federal regulations prescribed under 23 U.S.C. §127 or 49 U.S.C. §§31111 through 31114: the federal-aid primary system, the federal-aid urban system, and the federal-aid secondary system, including the national system of interstate and defense highways. Although these federal laws and regulations do not directly apply to the vehicle operator, Texas complies with such federal laws and regulations through Texas laws and rules regarding maximum vehicle size and weight for the following reasons under the following authority: 1) 23 U.S.C. §127, 23 U.S.C. §141, 49 U.S.C. §31112, and the regulations prescribed under 23 U.S.C. §127, 23 U.S.C. §141, and 49 U.S.C. §31112, which enables Texas to avoid the risk of losing a portion of federal highway funding; and 2) 49 U.S.C. §§31111 through 31114, which enables Texas to avoid a civil action by the U.S. Attorney General for injunctive relief under 49 U.S.C. §31115.

Adopted new §219.9 also requires the department to post a notice on its website and to possibly send notice to permittees through the applicable email addresses on file with the department to the extent the department learns that FHWA generally determines a vehicle or vehicle combination exceeds the applicable weight or size for such roadway under 23 U.S.C. §127, 49 U.S.C. §§31111 through 31114, or federal regulations prescribed under 23 U.S.C. §127 or 49 U.S.C. §§31111 through 31114 in a way that may conflict with a provision in this chapter. This provision is not based on FHWA finding that a specific permittee has exceeded the applicable weight or size; it is based on FHWA's general interpretation of federal law. For example, an adopted amendment to the definition of "nondivisible load or a vehicle" in §219.2 makes the definition consistent with FHWA's current interpretation of this term. If a vehicle already exceeds legal weight without including the weight of the properly secured components, FHWA said the vehicle is considered to be nondivisible even if properly secured components are being transported with the vehicle. To the extent the department learns that FHWA changed its interpretation of the definition of a "nondivisible load or vehicle" under 23 C.F.R. §658.5 in a way that conflicts with the adopted amended definition in §219.2, the department will post a notice on its website regarding FHWA's interpretation and may provide notice to permittees through the applicable email addresses on file with the department.

Subchapter B. General Permits

An adopted amendment to §219.11(b) removes the vehicle registration requirements because the applicable vehicle registration requirements under Transportation Code, §623.079 do not apply to the permits under the following sections in Subchapter B of Chapter 219: §§219.13(e)(5) through (7), 219.14, and 219.15. Also, it is not necessary to repeat the statutory requirements in rule. Amendments throughout Chapter 219 that delete reference to vehicle registration requirements do not impact the applicable vehicle registration requirements under Transportation Code, Chapter 502; the amendments are based on the department's statutory authority under Transportation Code, Chapters 621, 622 and 623. An adopted amendment to §219.11(b) also removes the word "commercial" from the term "commercial motor carrier" to be consistent with the terminology in Transportation Code, Chapter 643 and Chapter 218 of this title (relating to Motor Carriers). In addition, adopted amendments to §219.11(b) restructure the subsection due to adopted amendments and deletions within the subsection.

An adopted amendment to §219.11(d)(1), (d)(1)(D), and (d)(1)(E) changes the term "non-TxDOT engineer" to "non-TxDOT licensed professional engineer" to be consistent with existing terminology in §219.11(d), which refers to a "TxDOT approved licensed professional engineer."

An adopted amendment to §219.11(d)(1)(F) and (d)(3)(H) restructures the sentences to clarify that the maximum permit weight on the axle groups is reduced by 2.5 percent for each foot less than 12 feet. Adopted amendments to §219.11(d)(2)

and (3) add hyphens to the compound modifiers regarding the axle groups and make the terms consistent with the terms in the text in §219.2. An adopted amendment to §219.11(e)(2)(A)(i) changes the word "weak" to "reduced capacity" to describe certain bridges more accurately.

An adopted amendment to §219.11(f) deletes paragraph (1) because the language regarding the payment of fees was added to adopted new §219.5 in Subchapter A, which applies to all permit applications under Chapter 219. An adopted amendment to §219.11(f) also removes the paragraph number and catch line for paragraph (2) because there would only be one paragraph in subsection (f) due to the adopted deletion of paragraph (1). An adopted amendment to the following sections removes the cross-reference to §219.11(f) regarding the payment of fees due to the adopted deletion of this language from §219.11(f), and renumber or re-letter accordingly as necessary: §§219.13, 219.14, 219.15, 219.30, 219.31, 219.32, 219.34, 219.35, 219.36, 219.41, 219.45 and 219.61.

An adopted amendment to §219.11(k)(7) deletes subparagraph (E) because it conflicts with Transportation Code, §547.382. Adopted amendments to §219.11(l)(1) change the word "daylight" to "daytime" and change the term "daylight hours" to "the daytime" because an adopted amendment to §219.2 changes the word "daylight" to "daytime." For this reason, the department also adopted similar amendments to the following sections: §§219.12, 219.13, 219.15, 219.41 and 219.61. An adopted amendment to renumbered and re-lettered §219.13(e)(5)(E) also deletes reference to Transportation Code, §541.401 for the definition of "daytime" because an adopted amendment to §219.2 defines "daytime" by referencing the definition in Transportation Code, §541.401. Adopted amendments to §219.11(l)(1) change the word "night" to "nighttime" to provide clarity because "nighttime" is defined in §219.2. For this reason, the department also adopted amendments to the following sections to change the word "night" to "nighttime": §§219.13, 219.34. 219.35, 219.36 and 219.44.

The department adopts §219.11 with changes at adoption to make the language in §219.11(l)(2) effective through January 10, 2025, regarding restrictions on the movement of certain oversize vehicles and loads on a holiday and to separate the two sentences in paragraph (2) into subparagraphs (A) and (B). The delay will give the Texas Transportation Commission additional time in case it wants to adopt a rule regarding the maximum size limits for a permit issued under Transportation Code, Chapter 623, Subchapter D for holiday movement. The Texas Transportation Commission has rulemaking authority under Transportation Code, §621.006 to impose restrictions on the weight and size of vehicles to be operated on state highways on certain holidays. In addition, TxDOT is responsible for providing the department with routing information necessary to complete a permit under Transportation Code, §623.003.

An adopted amendment to §219.11(l)(2) clarifies that the department may apply restrictions imposed by TxDOT. An adopted amendment to §219.11(l)(3) clarifies that the curfew movement restrictions of a city or county do not apply unless the department publishes the curfew movement restrictions. The department only publishes the curfew movement restrictions if TxDOT approves the restrictions. Currently, the department publishes the curfew movement restrictions on the department's website. An adopted amendment to §219.11(l)(3) also deletes language regarding the curfew restrictions listed on the permit to make the language consistent throughout Chapter 219 regarding published curfew restrictions.

An adopted amendment to §219.11(m)(1) deletes subparagraph (B) because the department does not have statutory authority for the language in subparagraph (B). Also, an adopted amendment to §219.11(m)(1) deletes a reference in subparagraph (A) to subparagraph (B) and re-letters subparagraph (C) due to the deletion of subparagraph (B). In addition, an adopted amendment to re-lettered §219.11(m)(1)(B) clarifies that the restrictions in §219.11(m)(1)(A) and the definition of a "nondivisible load or vehicle" in §219.2 apply to a permit to haul a dozer and its detached blade. Further, an adopted amendment to re-lettered §219.11(m)(1)(B) replaces the word "non-dismantable" with "nondivisible" because "nondivisible load" is a defined term in §219.2, but "non-dismantable" is not defined in Chapter 219.

An adopted amendment to §219.12(b)(3)(C) clarifies that TxDOT, rather than the department, incurs a cost for analyses performed prior to issuing a superheavy permit under §219.12. An adopted amendment to §219.12(b)(6) deletes reference to an intermodal container because Transportation Code, §623.070 says that Subchapter D of Transportation Code, Chapter 623 does not apply to the transportation of an intermodal shipping container.

Adopted amendments to §219.12(b)(7) through (b)(9) combine the paragraphs into revised §219.12(b)(7) because the text covers a specific type of single-trip permit called a superheavy permit. The adopted amendments to §219.12(b)(7) include the requirements in prior §219.12(b)(7) through (b)(9) for the department to provide the applicant with a tentative route based on the physical size of the overdimension load excluding weight, as well as the requirement for the applicant to investigate the tentative route and acknowledge in writing to the department that the route is capable of accommodating the overdimension load. The adopted amendments to §219.12(b)(7) also describe the current process, including the requirement for the department to consult with TxDOT and the applicant as necessary to attempt to determine a tentative route that the applicant can acknowledge is capable of accommodating the overdimension load; the department's obligation to provide the tentative route to the applicant's TxDOT-certified, licensed professional engineering firm once the applicant acknowledges to the department that the tentative route is capable of accommodating the overdimension load; and the requirement under Chapter 28, Subchapter G of this title (relating to Oversize and Overweight Vehicles and Loads) for the applicant's TxDOT-certified, licensed professional engineering firm to provide TxDOT with a report that TxDOT uses to approve the department's tentative route for the movement of a superheavy load under Transportation Code, §623.071 as required by Transportation Code, §623.003. TxDOT relies on outside engineering firms to provide the initial review and analysis for the superheavy permit application prior to providing the department with approval for the tentative route, which the department provides to the applicant for superheavy loads.

The applicant for a superheavy permit must provide the TxDOT-certified, licensed professional engineering firm with the information and documents the engineering firm needs to provide TxDOT with a written report under §28.86 of this title (relating to Bridge Report). The adopted amendments to §219.12(b)(7) delete text found in prior §219.12(b)(7)(A) through (B) because the information and documents that the TxDOT-certified, licensed professional engineering firm needs to create a written report could vary, depending on the load

and the processes of each firm. Before TxDOT will provide the department with approval for the department's tentative route for the superheavy load, TxDOT must receive from the applicant's TxDOT-certified, licensed professional engineering firm a written report that includes a detailed structural analysis of the bridges on the proposed route demonstrating that the bridges and culverts on the route are capable of sustaining the load. The department will not issue a superheavy permit unless TxDOT provides the department with approval for the tentative route proposed by the department and acknowledged by the applicant as capable of accommodating the overdimension load.

Adopted amendments to §219.12(b)(7) also clarify that the reference to an overdimension load that is between 200,001 and 254,300 pounds is a reference to gross weight, which is defined in §219.2. In addition, adopted amendments to §219.12(b)(7) delete text found in prior §219.12(b)(7)(C) through (D) because the department no longer needs the referenced form and because the vehicle supervision fee is already addressed in §219.12(b)(3). Further, adopted amendments to §219.12(b)(7) modify the prior text in §219.12(b)(7)(E) to require the applicant to provide the department with the TxDOT-certified licensed, professional engineering firm's email address, instead of the firm's phone number and fax number.

Adopted amendments to §219.12(d) delete references to storage tanks to be consistent with the department's current practice. An adopted amendment to §219.12(d) also deletes prior paragraph (1) because there are no statutory limits on the size of a house under a permit to move a house. In addition, adopted amendments to §219.12(d) add hyphens between the words "two" and "axle" because these words are compound modifiers for the word "group." Further, adopted amendments to §219.12(d) and (e) delete the requirement for a permit applicant to provide a loading diagram to the department because the applicant must enter weight information into the department's designated permitting system, rather than providing the loading diagram. An adopted amendment to §219.12(d) requires the applicant to provide the department with the requested information regarding weights. Due to adopted deletions of subdivisions within §219.12(d), the remaining subdivisions are renumbered accordingly. With the adopted deletion of §219.12(e), subsection (f) is re-lettered accordingly.

An adopted amendment to §219.13(a) adds a citation to Transportation Code, Chapter 622 because permits for transporting poles required for the maintenance of electric power transmission and distribution lines (power line poles) are authorized under Transportation Code, Chapter 622, Subchapter E. Section 219.13(e)(6) provides the requirements regarding a permit for power line poles.

An adopted amendment to §219.13(b)(1) deletes the permit fee amounts because the fees are listed in Transportation Code, §623.076. An adopted amendment to §219.13(b) deletes prior paragraph (4), which said that time permits will not be issued to a vehicle or vehicle combination that is registered with temporary vehicle registration. Transportation Code, §623.079 says a permit issued under Subchapter D of Chapter 623 of the Transportation Code may only be issued if the vehicle is registered under Transportation Code, Chapter 502 for the maximum gross weight applicable to the vehicle under Transportation Code, §621.101 that is not heavier than 80,000 pounds overall gross weight. The vehicle registration requirements under Transportation Code, §623.079 do not apply to the permits under §219.13(e)(5) through (7). Also, for permits under §219.13 for which vehicle registration is required, temporary vehicle registration under Transportation Code, Chapter 502 qualifies as vehicle registration under Transportation Code, §623.079. With the adopted deletion of §219.13(b)(1) and (4), adopted amendments to §219.13(b) renumber the subsequent paragraphs within §219.13(b) accordingly.

Adopted amendments to §219.13(e)(4) delete references to an intermodal container because Transportation Code, §623.070 says that Subchapter D of Transportation Code, Chapter 623 does not apply to the transportation of an intermodal shipping container. An adopted amendment to §219.13(e)(4) also corrects an error by replacing the word "principle" with "principal."

An adopted amendment to §219.13(e)(5) deletes reference to §219.13(e)(1)(E) because an adopted amendment to §219.13(e)(1) deletes subparagraph (A) and re-letters the subsequent subparagraphs. An adopted amendment to §219.13(e)(5) also deletes reference to §219.13(e)(1)(G) because paragraph (1) does not contain a subparagraph (G). In addition, an adopted amendment to §219.13(e)(5) deletes subparagraph (E) because Transportation Code, Chapter 623 does not require the vehicle to be registered under Transportation Code, Chapter 502. Also, to the extent the permitted vehicle under §219.13(e)(5) falls within the definition of "manufactured housing" under Occupations Code, §1201.003, the vehicle is not subject to vehicle registration under Transportation Code, Chapter 502 according to Transportation Code, §502.142. Further, an adopted amendment to §219.13(e)(5) deletes subparagraph (G) because the escort requirements are contained in statute. Lastly, adopted amendments to §219.13(e)(5) re-letter subsequent subdivisions within the rule text due to deletions.

An adopted amendment to §219.13(e)(6) deletes subparagraph (F) because Transportation Code, Chapter 623 does not require the vehicle to be registered under Transportation Code, Chapter 502. An adopted amendment to §219.13(e)(6) re-letters subsequent subdivisions within the rule text due to the deletion of subparagraph (F).

An adopted amendment to §219.13(e)(7) deletes subparagraph (F) because Transportation Code, Chapter 623 does not require the vehicle to be registered under Transportation Code, Chapter 502.

An adopted amendment to §219.13(e)(8) removes reference to the fee under subsection (b) of §219.13 because an adopted amendment deletes the fee language in subsection (b).

An adopted amendment to §219.14 deletes subsection (d) because the permit fee is listed in Transportation Code, §623.096. An adopted amendment to §219.14 re-letters the subsequent subsections due to the deletion of subsection (d). An adopted amendment to re-lettered §219.14(d) deletes paragraph (5) because the language duplicates language found in Transportation Code, §623.100, and does not list all national holidays. An adopted amendment to re-lettered §219.14(d) renumbers the subsequent paragraphs due to the deletion of paragraph (5). An adopted amendment to re-lettered and renumbered §219.14(d)(6) deletes the clause "listed in this subsection" because an adopted amendment to re-lettered and renumbered §219.14(d) deletes the prior §219.14(e)(5) in which some of the national holidays were listed. An adopted amendment to re-lettered and renumbered §219.14(d)(8) adds the title for §219.11 for clarity. An adopted amendment to re-lettered §219.14(d) deletes prior §219.14(e)(10) because Transportation

Code, §623.099 requires TxDOT, rather than the department, to annually publish a map or list of all bridges or overpasses which, due to height or width, require an escort flag vehicle to stop oncoming traffic while the manufactured home crosses the bridge or overpass. An adopted amendment to re-lettered §219.14(d) renumbers the remaining paragraph due to the deletion of paragraph (10). Adopted amendments to §219.14 delete subsection (f) because the language is contained in statute.

An adopted amendment to §219.15(a)(2) deletes reference to the fee required by subsection (d) and replaces the language with a reference to the fee required by statute because an adopted amendment to subsection (d) removes fee language that duplicates language found in statute. An adopted amendment to §219.15(c) deletes reference to §219.11(b)(2) because the vehicle registration requirements under Transportation Code, §623.079 do not apply to a permit under §219.15 and an adopted amendment to §219.11(b) deletes the vehicle registration requirements. An adopted amendment to §219.15 deletes subsection (f) because the language regarding escort requirements is contained in statute.

Subchapter C. Permits for Over Axle and Over Gross Weight Tolerances

An adopted amendment to §219.30(a) removes an unnecessary sentence, which incorrectly references the requirements in Subchapter C of Chapter 219. An adopted amendment to §219.30(b) replaces the word "subchapter" with "section" because §219.30 is the only section in Subchapter C of Chapter 219 that provides for the issuance of a permit under Transportation Code, §623.011. An adopted amendment to §219.30(d)(3) removes reference to the vehicle's inspection sticker because vehicle inspection stickers are no longer issued in Texas. The vehicle inspection requirements in Texas are enforced through vehicle registration under Transportation Code, §502.047 and §548.256. An adopted amendment to §219.30(d) deletes paragraph (5) because the language is inconsistent with Transportation Code, §623.013, which was amended by Senate Bill 1814, 87th Legislature, Regular Session (2021). An adopted amendment to §219.30 deletes subsection (g) because most of the language is contained in Transportation Code, §621.508, which provides an affirmative defense to prosecution of, or an action under Transportation Code, Chapter 623, Subchapter F for the offense of operating a vehicle with a single axle weight or tandem axle weight heavier than the axle weight authorized by law. The adopted amendments to §219.30 re-letter the remaining subsection to address the removal of §219.30(g).

An adopted amendment to §219.32(k) deletes language that is contained in Transportation Code, §623.0171 because it is not necessary to repeat statutory language in rule. An adopted amendment to §219.32(k) also restructures the language due to the deletion of the paragraphs under subsection (k).

An adopted amendment to §219.35(a) updates the citation to the subchapter under which the fluid milk permit is located in Transportation Code, Chapter 623. The legislature redesignated the statutes for the fluid milk permit from Subchapter U to Subchapter V.

An adopted amendment to §219.36(a) deletes reference to the bill under which Transportation Code, §623.401, et seq. became law because Transportation Code, Chapter 623 currently only contains one Subchapter U. The legislature redesignated the statutes for the fluid milk permit from Subchapter U to Subchapter V.

Subchapter D. Permits for Oversize and Overweight Oil Well Related Vehicles

Adopted amendments to §219.42(d) add a hyphen between the words "trailer" and "mounted" because these words are compound modifiers for the term "trailer-mounted unit." An adopted amendment to §219.42(d)(3) also removes outdated language regarding the calculation of the fee for a single-trip permit for the movement of a trailer-mounted oil well servicing unit. Axles are no longer temporarily disregarded for the purposes of calculating fees for this single-trip permit. In addition, an adopted amendment to §219.42(d)(3) removes the subparagraph letter for prior subparagraph (A) due to the deletion of subparagraph (B), which was the only other subparagraph under prior §219.42(d)(3).

Adopted amendments to §219.43(e) add a hyphen between the words "trailer" and "mounted" because these words are compound modifiers for the term "trailer-mounted unit." An adopted amendment to §219.43(e)(4) also removes outdated language regarding the calculation of the fee for a quarterly hubometer permit for the movement of an oil well servicing unit. Axles are no longer temporarily disregarded for the purposes of calculating the fees for this quarterly hubometer permit.

An adopted amendment to §219.44(a)(1) deletes subparagraph (A) because Transportation Code, §502.146(b)(3) requires the applicant for a permit plate for oil well servicing or drilling machinery to submit proof that the applicant has a permit under Transportation Code, §623.142 before they can obtain a permit plate under Transportation Code, §502.146(b)(3). An adopted amendment to §219.44(a)(1) also removes the subparagraph letter for prior subparagraph (B) due to the deletion of subparagraph (A), which was the only other subparagraph under prior §219.44(a)(1).

An adopted amendment to §219.45(a) replaces the word "fracing" with "fracking," which is defined as "the injection of fluid into shale beds at high pressure in order to free up petroleum resources (such as oil or natural gas)." See Fracking, Merriam-Webster Online Dictionary (www.merriam-webster.com/dictionary/fracking) (last visited January 18, 2024). An adopted amendment to §219.45(c) deletes prior paragraph (2) because the vehicle registration requirements are specified in statute and are not required as part of the application process for a permit for a vehicle transporting liquid products related to oil well production. An adopted amendment to §219.45(c) renumbers the remaining paragraphs due to the deletion of prior paragraph (2). An adopted amendment to renumbered §219.45(c)(3)(C) inserts the word "plate" before the word "number" to clarify that the permittee must provide the department with the "license plate number" for the new trailer.

Subchapter E. Permits for Oversize and Overweight Unladen Lift Equipment Motor Vehicles

An adopted amendment to §219.60 replaces the word "cranes" with "unladen lift equipment motor vehicles" to be consistent with the terminology in Transportation Code, Chapter 623, Subchapters I and J. The department also adopts amendments to the following sections to replace terminology regarding a crane with terminology regarding an unladen lift equipment motor vehicle to be consistent with the terminology in Transportation Code, Chapter 623, Subchapter I and Subchapter J: §§219.61, 219.62, 219.63 and 219.64.

An adopted amendment to §219.61(a) deletes paragraph (4) regarding a trailer-mounted crane, and an adopted amendment to §219.62(d)(2)(B) deletes the mileage rate for a trailer-mounted

crane because Transportation Code, §623.181 and §623.191 say the permits are for an "unladen lift equipment motor vehicle," rather than for a trailer-mounted crane. An adopted amendment to §219.61 deletes prior subsection (g) in conjunction with the adopted amendment to move that language to the definition of "nondivisible load or vehicle" in §219.2.

An adopted amendment to the title for §219.62 replaces the term "Single Trip" with "Single-Trip" to be consistent with the term used in the text of §219.62. An adopted amendment to §219.62(b) adds a space between the colon and title 43 as follows: Figure 1: 43 TAC §219.62(f). An adopted amendment to §219.62(d) deletes paragraph (3) to remove outdated language regarding the calculation of the fee for a single-trip permit for the movement of an unladen lift equipment motor vehicle. Axles are no longer temporarily disregarded for the purposes of calculating fees for this single-trip permit. An adopted amendment to §219.62(d) also renumbers paragraph (4) due to the deletion of paragraph (3).

The department adopts §219.63 with changes at adoption to remove the proposed deletion of a space and the proposed addition of a space in the references to Figure 1: 43 TAC §219.62(f) that the department indicated as changes in the published proposal. An adopted amendment to §219.63(e) deletes paragraph (4) to remove outdated language regarding the calculation of the fee for a hubometer permit for the movement of an unladen lift equipment motor vehicle. Axles are no longer temporarily disregarded for the purposes of calculating fees for this hubometer permit.

Transportation Code, §623.145 and §623.195 require the board to consult with the Texas Transportation Commission prior to the adoption of certain rules regarding oversize and overweight permits for the operation of oil well servicing and drilling machinery and unladen lift equipment motor vehicles. To comply with these statutory requirements, the board consulted with the Texas Transportation Commission on the amendments to 43 TAC §§219.41 - 219.45 and 219.60 - 219.64. The department provided the proposed amendments to the Texas Transportation Commission through TxDOT's staff. The Texas Transportation Commission considered the proposed amendments at its public meeting on April 25, 2024, and entered a Minute Order to document compliance with Transportation Code, §623.145 and §623.195.

Subchapter F. Compliance

An adopted amendment to §219.81 deletes subsection (c) because the department does not have rulemaking authority under Transportation Code, Chapters 621 through 623 to prohibit a person from operating a vehicle on a highway or public road if the vehicle exceeds its gross weight registration. The vehicle registration weight requirements are enforced by law enforcement officers under statutes, such as Transportation Code, §§502.472, 621.002, 621.406, and 621.501.

The department adopts the repeal of §219.84 because the department replaced the remote permit system with TxPROS and the department does not require applicants to sign a contract to use TxPROS. The department adopts the repeal of §219.86 because it exceeds the scope of the department's rulemaking authority. Although Transportation Code, §623.146 and §623.196 contain language that is similar to the language in §219.86 for certain permits, the language in §219.86 applies to all permits. Not all permits under Chapter 219 are governed by Transportation Code, §623.146 and §623.196.

Subchapter G. Records and Inspections

An adopted amendment to §219.102(b)(2) deletes language that says the display of an image that includes permit information on a wireless communication device does not constitute effective consent for a law enforcement officer or any other person to access the contents of the wireless communication device except to view the permit information. The department does not have the statutory authority for this language in §219.102(b)(2)(B). However, the person who chooses to display an image of a permit on a wireless communication device can discuss the extent of their consent with the law enforcement officer or any other person prior to displaying an image of a permit on a wireless communication device. An adopted amendment to §219.102(b)(2) re-letters the remaining subparagraph due to the deletion of prior §219.102(b)(2)(B). An adopted amendment to §219.102(b)(2) also deletes language in prior subparagraph (D) that said a telecommunications provider may not be held liable to the operator of the motor vehicle for the failure of a wireless communication device to display permit information. The department does not have the statutory authority for the language in prior §219.102(b)(2)(D).

Subchapter H. Administrative Penalties and Sanctions

The department adopts the repeal of §219.123 because it repeats the language found in Transportation Code, §623.271(e). It is not necessary to repeat statutory language in rule.

SUMMARY OF COMMENTS.

No comments on the proposed amendments, new sections and repeals were received.

## SUBCHAPTER A. GENERAL PROVISIONS

### 43 TAC §§219.1, 219.2, 219.5, 219.7, 219.9

STATUTORY AUTHORITY. The department adopts amendments and new sections 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, §621.356, which authorizes the board to adopt rules prescribing the method of payment of a fee for a permit that is issued by the department for the operation of a vehicle and load or a combination of vehicles and load that exceed size or weight limitations; 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 as necessary to implement Transportation Code, Chapter 623; Transportation Code, §623.0171, which requires the department by rule to require an applicant for a permit for a ready-mixed concrete truck to designate the counties in which the applicant intends to operate; Transportation Code, §623.070, et seq. which authorize the department to issue a permit to an applicant to move certain equipment or commodities and prescribe the application requirements for such permits; Transportation Code, §623.074, which authorizes the department to adopt a rule to authorize an applicant to submit an application electronically and to require an application for certain permits to include the region or area over which the equipment is to be operated; Transportation Code, §623.076, which authorizes the board to adopt rules for the payment of a fee under Subchapter D of Transportation Code, Chapter 623

regarding heavy equipment; Transportation Code, §623.095(c), which authorizes the department to adopt rules concerning the requirements for a permit under §623.095(c) regarding an annual permit for a person authorized to be issued permits under Transportation Code, §623.094 for the transportation of new manufactured homes from a manufacturing facility to a temporary storage location not to exceed 20 miles from the point of manufacture; Transportation Code, §623.145, which requires the board, in consultation with the Texas Transportation Commission, to adopt rules to provide for the issuance of a permit under Subchapter G of Transportation Code, Chapter 623 regarding oil well servicing and drilling machinery; Transportation Code, §623.195, which requires the board, in consultation with the Texas Transportation Commission, to adopt rules to provide for the issuance of a permit under Subchapter J of Transportation Code, Chapter 623 regarding unladen lift equipment motor vehicles; Transportation Code, §623.342, which authorizes the board to adopt rules that are necessary to implement Subchapter R of Transportation Code, Chapter 623 regarding permits to deliver relief supplies during a major disaster; Transportation Code, §623.411, which authorizes the department to adopt rules that are necessary to implement Subchapter U of Transportation Code, Chapter 623, including rules governing the application for a permit under Subchapter U regarding intermodal shipping containers; Transportation Code, §623.427, which authorizes the department to adopt rules that are necessary to implement Subchapter V of Transportation Code, Chapter 623 regarding vehicles transporting fluid milk; 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; Transportation Code, §1001.009, which authorizes the board to adopt rules regarding the method of collection of a fee for any goods sold or services provided by the department, including the issuance of licenses and permits; 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 the preamble and in the rule text, which is incorporated herein by reference.

CROSS REFERENCE TO STATUTE. The adopted amendments and new sections implement Transportation Code, Chapters 621, 622, 623, 1001, and 1002; 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 June 28, 2024.

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Laura Moriaty
General Counsel
Texas Department of Motor Vehicles
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Proposal publication date: February 23, 2024
For further information, please call: (512) 465-4160

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## SUBCHAPTER B. GENERAL PERMITS

### 43 TAC §§219.11 - 219.15

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 as necessary to implement Transportation Code, Chapter 623; Transportation Code, §623.003, which requires the department to base the department's routing decision on information provided by TxDOT to the extent the department is required to determine a route under Transportation Code, Chapter 623; Transportation Code, §623.008, which authorizes the department to require a person operating under a permit issued by the department to use one or more escort flag vehicles and escort flaggers if required by TxDOT or for the safe movement over the roads of an oversize or overweight vehicle and its load; Transportation Code, §623.070, et seq. which authorize the department to issue a permit to an applicant to move certain equipment or commodities and prescribe the application requirements for such permits; Transportation Code, §623.072 which authorizes the department to determine the route of the equipment and the commodity on each state highway in the municipality if the municipality with a state highway in its territory does not designate a route; Transportation Code, §623.074, which authorizes the department to adopt a rule to require an application for certain permits to include the region or area over which the equipment is to be operated; Transportation Code, §623.095(c), which authorizes the department to adopt rules concerning the requirements for an annual permit for the transportation of new manufactured homes from a manufacturing facility to a temporary storage location not to exceed 20 miles from the point of manufacture; Transportation Code, §623.122 which authorizes the department to determine the route to be used by the equipment on the state highway in the municipality if the municipality with a state highway in its territory does not designate a route; Transportation Code, §623.128, which only authorizes a permit for the movement of portable building units to be used during daylight hours; Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Government Code, §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 the preamble and in the rule text, which is incorporated herein by reference.

CROSS REFERENCE TO STATUTE. The adopted amendments implement Transportation Code, Chapters 621, 622, 623, and 1002; and Government Code, Chapter 2001.

*§219.11. General Oversize/Overweight Permit Requirements and Procedures.*

(a) Purpose and scope. This section contains general requirements relating to oversize/overweight permits, including single-trip permits. Specific requirements for each type of specialty permit are provided for in this chapter.

(b) Motor carrier registration or surety bond. Unless exempted by law, prior to obtaining an oversize/overweight permit, an applicant permitted under the provisions of Transportation Code, Chapter 623, Subchapter D, must be registered as a motor carrier under Chapter 218 of this title (relating to Motor Carriers) or, if not required to obtain

a motor carrier registration, file a surety bond with the department as described in subsection (n) of this section.

(c) Permit application.

(1) An application for a permit shall be made in a form and by the method prescribed by the department, and at a minimum shall include the following, unless stated otherwise in this subchapter:

(A) name, customer identification number, and address of the applicant;

(B) name, telephone number, and email address of contact person;

(C) applicant's USDOT Number if applicant is required by law to have a USDOT Number;

(D) complete load description, including maximum width, height, length, overhang, and gross weight;

(E) complete description of vehicle, including truck year, make, license plate number and state of issuance, and vehicle identification number, if required;

(F) vehicle axle and tire information including number of axles, distance between axles, axle weights, number of tires, and tire size for overweight permit applications; and

(G) any other information required by law.

(2) Applications transmitted electronically are considered signed if a digital signature is transmitted with the application and intended by the applicant to authenticate the application.

(A) The department may only accept a digital signature used to authenticate an application under procedures that comply with any applicable rules adopted by the Department of Information Resources regarding department use or acceptance of a digital signature.

(B) The department may only accept a digital signature to authenticate an application if the digital signature is:

*(i)* unique to the person using it;

*(ii)* capable of independent verification;

*(iii)* under the sole control of the person using it; and

*(iv)* transmitted in a manner that will make it infeasible to change the data in the communication or digital signature without invalidating the digital signature.

(d) Maximum permit weight limits.

(1) General. An overweight permitted vehicle will not be routed over a load-restricted bridge when exceeding the posted capacity of the bridge, unless a special exception is granted by TxDOT, based on an analysis of the bridge performed by a TxDOT approved licensed professional engineer or by TxDOT. Any analysis by a non-TxDOT licensed professional engineer must have final approval from TxDOT.

(A) An axle group must have a minimum spacing of four feet, measured from center of axle to center of axle, between each axle in the group to achieve the maximum permit weight for the group.

(B) The maximum permit weight for an axle group with spacing of five or more feet between each axle will be based on an engineering study of the equipment conducted by TxDOT.

(C) A permitted vehicle will be allowed to have air suspension, hydraulic suspension, and mechanical suspension axles in a common weight equalizing suspension system for any axle group.

(D) The department may permit axle weights greater than those specified in this section, for a specific individual permit request, based on an engineering study of the route and hauling equipment performed by a TxDOT approved licensed professional engineer or by TxDOT. Any analysis by a non-TxDOT licensed professional engineer must have final approval from TxDOT.

(E) A permitted vehicle or combination of vehicles may not exceed the manufacturer's rated tire carrying capacity, unless expressly authorized in the language on the permit based on an analysis performed by a TxDOT approved licensed professional engineer or by TxDOT. Any analysis by a non-TxDOT licensed professional engineer must have final approval from TxDOT.

(F) If two or more consecutive axle groups have an axle spacing of less than 12 feet, measured from the center of the last axle of the preceding group to the center of the first axle of the following group, the maximum permit weight on the axle groups will be reduced by 2.5% for each foot less than 12 feet.

(2) Maximum axle weight limits. Maximum permit weight for an axle or axle group is based on 650 pounds per inch of tire width or the following axle or axle group weights, whichever is the lesser amount:

(A) single axle--25,000 pounds;

(B) two-axle group--46,000 pounds;

(C) three-axle group--60,000 pounds;

(D) four-axle group--70,000 pounds;

(E) five-axle group--81,400 pounds;

(F) axle group with six or more axles--determined by TxDOT based on an engineering study of the equipment, which will include the type of steering system used, the type of axle suspension, the spacing distance between each axle, the number of tires per axle, and the tire size on each axle; or

(G) trunnion axles--30,000 pounds per axle if the trunnion configuration has:

*(i)* two axles;

*(ii)* eight tires per axle;

*(iii)* axles a minimum of 10 feet in width; and

*(iv)* at least five feet of spacing between the axles, not to exceed six feet.

(3) Weight limits for load restricted roads. Maximum permit weight for an axle or axle group, when traveling on a load restricted road, will be based on 650 pounds per inch of tire width or the following axle or axle group weights, whichever is the lesser amount:

(A) single axle--22,500 pounds;

(B) two-axle group--41,400 pounds;

(C) three-axle group--54,000 pounds;

(D) four-axle group--63,000 pounds;

(E) five-axle group--73,260 pounds;

(F) axle group with six or more axles--determined by TxDOT based on an engineering study of the equipment, which will include the type of steering system used, the type of axle suspension, the spacing distance between each axle, the number of tires per axle, and the tire size on each axle;

(G) trunnion axles--54,000 pounds; and

(H) if two or more consecutive axle groups have an axle spacing of less than 12 feet, measured from the center of the last axle of the preceding group to the center of the first axle of the following group, the maximum permit weight on the axle groups will be reduced by 2.5% for each foot less than 12 feet.

(e) Permit issuance.

(1) General. Upon receiving an application in the form prescribed by the department, the department will review the permit application for the appropriate information and will then determine the most practical route based on information provided by TxDOT.

(2) Routing.

(A) A permitted vehicle will be routed over the most practical route available taking into consideration:

*(i)* the size and weight of the overdimension load in relation to vertical clearances, width restrictions, steep grades, and reduced capacity or load restricted bridges;

*(ii)* the geometrics of the roadway in comparison to the overdimension load;

*(iii)* sections of highways restricted to specific load sizes and weights due to construction, maintenance, and hazardous conditions;

*(iv)* traffic conditions, including traffic volume;

*(v)* route designations by municipalities in accordance with Transportation Code, §623.072;

*(vi)* load restricted roads; and

*(vii)* other considerations for the safe transportation of the load.

(B) When a permit applicant desires a route other than the most practical, more than one permit will be required for the trip unless an exception is granted by the department.

(3) Movement to and from point of origin or place of business. A permitted vehicle will be allowed to:

(A) move empty oversize and overweight hauling equipment to and from the job site; and

(B) move oversize and overweight hauling equipment with a load from the permitted vehicle's point of origin to pick up a permitted load, and to the permitted vehicle's point of origin or the permittee's place of business after dropping off a permitted load, as long as:

*(i)* the load does not exceed legal size and weight limits under Transportation Code, Chapters 621 and 622; and

*(ii)* the transport complies with the permit, including the time period stated on the permit.

(f) Refund of permit fees. A permit fee will not be refunded after the permit number has been issued unless such refund is necessary to correct an error made by the permit officer.

(g) Amendments. A permit may be amended for the following reasons:

(1) vehicle breakdown;

(2) changing the intermediate points in an approved permit route;

(3) extending the expiration date due to conditions which would cause the move to be delayed;

(4) changing route origin or route destination prior to the start date as listed on the permit;

(5) changing vehicle size limits prior to the permit start date as listed on the permit, provided that changing the vehicle size limit does not necessitate a change in the approved route; and

(6) correcting any mistake that is made due to permit officer error.

(h) Requirements for overwidth loads.

(1) Unless stated otherwise on the permit, an overwidth load must travel in the outside traffic lane on multi-lane highways, when the width of the load exceeds 12 feet.

(2) Overwidth loads are subject to the escort requirements of subsection (k) of this section.

(3) A permitted vehicle exceeding 16 feet in width will not be routed on the main lanes of a controlled access highway, unless an exception is granted by TxDOT, based on a route and traffic study. The load may be permitted on the frontage roads when available, if the movement will not pose a safety hazard to other highway users.

(4) An applicant requesting a permit to move a load exceeding 20 feet wide will be furnished with a proposed route. The applicant must physically inspect the proposed route to determine if the vehicle and load can safely negotiate it, unless an exception is granted based on a route and traffic study conducted by TxDOT. A permit application and the appropriate fee are required for every route inspection.

(A) The applicant must notify the department in writing whether the vehicle and load can or cannot safely negotiate the proposed route.

(B) If any section of the proposed route is unacceptable, the applicant shall provide the department with an alternate route around the unacceptable section.

(C) Once a route is decided upon and a permit issued, the permit may not be amended unless an exception is granted by the department.

(i) Requirements for overlength loads.

(1) Overlength loads are subject to the escort requirements stated in subsection (k) of this section.

(2) A single vehicle, such as a motor crane, that has a permanently mounted boom is not considered as having either front or rear overhang as a result of the boom because the boom is an integral part of the vehicle.

(3) When a single vehicle with a permanently attached boom exceeds the maximum legal length of 45 feet, a permit will not be issued if the boom projects more than 25 feet beyond the front bumper of the vehicle, or when the boom projects more than 30 feet beyond the rear bumper of the vehicle, unless an exception is granted by TxDOT, based on a route and traffic study.

(4) Maximum permit length for a single vehicle is 75 feet.

(5) A load extending more than 20 feet beyond the front or rearmost portion of the load carrying surface of the permitted vehicle must have a rear escort flag vehicle, unless an exception is granted by TxDOT, based on a route and traffic study.

(6) A permit will not be issued for an oversize vehicle and load with:

(A) more than 25 feet front overhang; or

(B) more than 30 feet rear overhang, unless an exception is granted by TxDOT, based on a route and traffic study.

(7) An applicant requesting a permit to move an oversize vehicle and load exceeding 125 feet overall length will be furnished with a proposed route. The applicant must physically inspect the proposed route to determine if the oversize vehicle and load can safely negotiate it, unless an exception is granted based on a route and traffic study conducted by TxDOT. A permit application and the appropriate fee are required for every route inspection.

(A) The applicant must notify the department in writing whether the oversize vehicle and load can or cannot safely negotiate the proposed route.

(B) If any section of the proposed route is unacceptable, the applicant shall provide the department with an alternate route around the unacceptable section.

(C) Once a route is decided upon and a permit issued, the permit may not be amended unless an exception is granted by the department.

(8) A permitted vehicle that is not overwidth or overheight, and does not exceed 150 feet overall length, may be moved in a convoy consisting of not more than four overlength permitted vehicles. A permitted vehicle that is not overwidth or overheight that exceeds 150 feet, but does not exceed 180 feet overall length, may be moved in a convoy consisting of not more than two overlength permitted vehicles. Convoys are subject to the requirements of subsection (k) of this section. Each permitted vehicle in the convoy must:

(A) be spaced at least 1,000 feet, but not more than 2,000 feet, from any other permitted vehicle in the convoy; and

(B) have a rotating amber beacon or an amber pulsating light, not less than eight inches in diameter, mounted at the rear top of the load being transported.

(j) Requirements for overheight loads.

(1) Overheight loads are subject to the escort requirements stated in subsection (k) of this section.

(2) An applicant requesting a permit to move an oversize vehicle and load with an overall height of 19 feet or greater will be furnished with a proposed route. The applicant must physically inspect the proposed route to determine if the oversize vehicle and load can safely negotiate it, unless an exception is granted based on a route and traffic study conducted by TxDOT. A permit application and the appropriate fee are required for every route inspection.

(A) The applicant must notify the department in writing whether the oversize vehicle and load can or cannot safely negotiate the proposed route.

(B) If any section of the proposed route is unacceptable, the applicant shall provide the department with an alternate route around the unacceptable section.

(C) Once a route is decided upon and a permit issued, the permit may not be amended unless an exception is granted by the department.

(k) Escort flag vehicle requirements. Escort flag vehicle requirements are provided to facilitate the safe movement of permitted vehicles and to protect the traveling public during the movement of permitted vehicles. A permittee must provide for escort flag vehicles and law enforcement assistance when required by TxDOT. The requirements in this subsection do not apply to the movement of manufactured housing, portable building units, or portable building compatible cargo, unless stated otherwise in this chapter.

(1) General.

(A) Applicability. The operator of an escort flag vehicle shall, consistent with applicable law, warn the traveling public when:

*(i)* a permitted vehicle must travel over the center line of a narrow bridge or roadway;

*(ii)* a permitted vehicle makes any turning movement that will require the permitted vehicle to travel in the opposing traffic lanes;

*(iii)* a permitted vehicle reduces speed to cross under a low overhead obstruction or over a bridge;

*(iv)* a permitted vehicle creates an abnormal and unusual traffic flow pattern; or

*(v)* in the opinion of TxDOT, warning is required to ensure the safety of the traveling public or safe movement of the permitted vehicle.

(B) Law enforcement assistance. Law enforcement assistance may be required by TxDOT to control traffic when a permitted vehicle is being moved within the corporate limits of a city, or at such times when law enforcement assistance would provide for the safe movement of the permitted vehicle and the traveling public.

(C) Obstructions. It is the responsibility of the permittee to contact utility companies, telephone companies, television cable companies, or other entities as they may require, when it is necessary to raise or lower any overhead wire, traffic signal, street light, television cable, sign, or other overhead obstruction. The permittee is responsible for providing the appropriate advance notice as required by each entity.

(2) Escort requirements for overwidth loads. Unless an exception is granted based on a route and traffic study conducted by TxDOT, an overwidth load must:

(A) have a front escort flag vehicle if the width of the load exceeds 14 feet, but does not exceed 16 feet, when traveling on a two lane roadway;

(B) have a rear escort flag vehicle if the width of the load exceeds 14 feet, but does not exceed 16 feet, when traveling on a roadway of four or more lanes; and

(C) have a front and a rear escort flag vehicle for all roads, when the width of the load exceeds 16 feet.

(3) Escort requirements for overlength loads. Unless an exception is granted by TxDOT, based on a route and traffic study, overlength loads must have:

(A) a front escort flag vehicle when traveling on a two lane roadway if the vehicle exceeds 110 feet overall length, but does not exceed 125 feet overall length;

(B) a rear escort flag vehicle when traveling on a multilane highway if the vehicle exceeds 110 feet overall length, but does not exceed 125 feet overall length; and

(C) a front and rear escort flag vehicle at all times if the permitted vehicle exceeds 125 feet overall length.

(4) Escort requirements for overheight loads. Unless an exception is granted by TxDOT, based on a route and traffic study, overheight loads must have:

(A) a front escort flag vehicle equipped with a height pole to ensure the vehicle and load can clear all overhead obstructions for any permitted vehicle that exceeds 17 feet in height; and

(B) a front and rear escort flag vehicle for any permitted vehicle exceeding 18 feet in height.

(5) Escort requirements for permitted vehicles exceeding legal limits in more than one dimension. When a load exceeds more than one dimension that requires an escort under this subsection, front and rear escort flag vehicles will be required unless an exception is granted by TxDOT.

(6) Escort requirements for convoys. Convoys must have a front escort flag vehicle and a rear escort flag vehicle on all highways at all times.

(7) General equipment requirements. The following special equipment requirements apply to permitted vehicles and escort flag vehicles that are not motorcycles.

(A) An escort flag vehicle must be a single unit with a gross vehicle weight (GVW) of not less than 1,000 pounds nor more than 10,000 pounds.

(B) An escort flag vehicle must be equipped with two flashing amber lights; one rotating amber beacon of not less than eight inches in diameter; or alternating or flashing blue and amber lights, each of which must be visible from all directions while actively engaged in escort duties for the permitted vehicle.

(C) An escort flag vehicle must display a sign, on either the roof of the vehicle, or the front and rear of the vehicle, with the words "OVERSIZE LOAD" or "WIDE LOAD." The sign must be visible from the front and rear of the vehicle while escorting the permitted load. The sign must meet the following specifications:

*(i)* at least five feet, but not more than seven feet in length, and at least 12 inches, but not more than 18 inches in height;

*(ii)* the sign must have a yellow background with black lettering;

*(iii)* letters must be at least eight inches, but not more than 10 inches high with a brush stroke at least 1.41 inches wide; and

*(iv)* the sign must be visible from the front or rear of the vehicle while escorting the permitted vehicle, and the signs must not be used at any other time.

(D) An escort flag vehicle must maintain two-way communications with the permitted vehicle and other escort flag vehicles involved with the movement of the permitted vehicle.

(8) Equipment requirements for motorcycles.

(A) An official law enforcement motorcycle may be used as a primary escort flag vehicle for a permitted vehicle traveling within the limits of an incorporated city, if the motorcycle is operated by a highway patrol officer, sheriff, or duly authorized deputy, or municipal police officer.

(B) An escort flag vehicle must maintain two-way communications with the permitted vehicle and other escort flag vehicles involved with the movement of the permitted vehicle.

(l) Restrictions.

(1) Daytime and nighttime movement restrictions.

(A) A permitted vehicle may be moved only during the daytime unless:

*(i)* the permitted vehicle is overweight only;

*(ii)* the permitted vehicle is traveling on an interstate highway and does not exceed 10 feet wide and 100 feet long, with front and rear overhang that complies with legal standards; or

*(iii)* the permitted vehicle meets the criteria of clause (ii) of this subparagraph and is overweight.

(B) An exception may be granted allowing nighttime movement, based on a route and traffic study conducted by TxDOT. Escort flag vehicles may be required when an exception allowing nighttime movement is granted.

(2) Holiday restrictions.

(A) Effective through January 10, 2025, the maximum size limits for a permit issued under Transportation Code, Chapter 623, Subchapter D, for holiday movement is 14 feet wide, 16 feet high, and 110 feet long, unless an exception is granted based on a route and traffic study conducted by TxDOT.

(B) The department may restrict holiday movement of specific loads based on TxDOT's determination that the load could pose a hazard for the traveling public due to local road or traffic conditions.

(3) Curfew restrictions. The operator of a permitted vehicle must observe the curfew movement restrictions published by the department.

(m) General provisions.

(1) Multiple commodities.

(A) When a permitted commodity creates a single overdimension, two or more commodities may be hauled as one permit load, provided legal axle weight and gross weight are not exceeded, and provided an overdimension of width, length or height is not created or made greater by the additional commodities. For example, a permit issued for the movement of a 12 foot wide storage tank may also include a 10 foot wide storage tank loaded behind the 12 foot wide tank provided that legal axle weight and gross weight are not exceeded, and provided an overdimension of width, length or height is not created.

(B) Subject to the restrictions in subparagraph (A) of this paragraph and the definition of a "nondivisible load or vehicle" in §219.2 of this title (relating to Definitions), an applicant requesting a permit to haul a dozer and its detached blade may be issued a permit, as a nondivisible load, if removal of the blade will decrease the overall width of the load, thereby reducing the hazard to the traveling public.

(2) Oversize hauling equipment. A vehicle that exceeds the legal size limits, as set forth by Transportation Code, Chapter 621, Subchapter C, may only haul a load that exceeds legal size limits unless otherwise noted in this subchapter, but such vehicle may haul an overweight load that does not exceed legal size limits, except for the special exception granted in §219.13(c)(3) of this title (relating to Time Permits).

(n) Surety bonds under Transportation Code, §623.075.

(1) General requirements. The surety bond must comply with the following requirements:

(A) be in the amount of $10,000;

(B) be filed on a form and in a manner prescribed by the department;

(C) be effective the day it is issued and expire at the end of the state fiscal year;

(D) include the primary mailing address and zip code of the principal;

(E) be signed by the principal; and

(F) have a single entity as principal with no other principal names listed.

(2) Non-resident agent. A non-resident agent with a valid Texas insurance license may issue a surety bond on behalf of an authorized insurance company when in compliance with Insurance Code, Chapter 4056.

(3) Certificate of continuation. A certificate of continuation will not be accepted.

(4) Electronic copy of surety bond. The department will accept an electronic copy of the surety bond in lieu of the original surety bond.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER C. PERMITS FOR OVER AXLE AND OVER GROSS WEIGHT TOLERANCES

### 43 TAC §§219.30 - 219.32, 219.34 - 219.36

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, §623.002, which authorizes the board to adopt rules as necessary to implement Transportation Code, Chapter 623; Transportation Code, §623.003, which requires the department to base the department's routing decision on information provided by TxDOT to the extent the department is required to determine a route under Transportation Code, Chapter 623; Transportation Code, §623.0171, which requires the department by rule to require an applicant for a permit for a ready-mixed concrete truck to designate the counties in which the applicant intends to operate; Transportation Code, §623.0171, which requires the department by rule to specify how 50 percent of the fee collected for a permit for a ready-mixed concrete truck shall be divided among and distributed to the counties designated in the permit application; Transportation Code, §623.0172, which prohibits the use of a permit issued under this section on routes for which TxDOT has not authorized the operation of a vehicle combination described by §623.0172(b); Transportation Code, §623.343, which authorizes the department to impose conditions on a permit holder to ensure the safe operation of a permitted vehicle and minimize damage to roadways, including requirements relating to vehicle routing, hours of operation, weight limits, and requirements for escort vehicles; Transportation Code, §623.405, which only authorizes a permit for an intermodal shipping container to be used on highways and roads approved by TxDOT; Transportation Code, §623.411, which requires the department to adopt rules that are necessary to implement Subchapter U of Transportation Code, Chapter 623, regarding intermodal shipping containers; Transportation Code, §623.424, which only authorizes a permit for fluid milk to be used on highways and roads approved by TxDOT; Transportation Code, §623.427, which requires the department to adopt rules that are necessary to implement Subchapter V of Transportation Code, Chapter 623 regarding vehicles transporting fluid milk; Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Government Code, §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 the preamble and in the rule text, which is incorporated herein by reference.

CROSS REFERENCE TO STATUTE. The amendments implement Transportation Code, Chapters 621, 623, and 1002; and Government Code, Chapter 2001.

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## SUBCHAPTER D. PERMITS FOR OVERSIZE AND OVERWEIGHT OIL WELL RELATED VEHICLES

### 43 TAC §§219.41 - 219.45

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, §623.002, which authorizes the board to adopt rules as necessary to implement Transportation Code, Chapter 623; Transportation Code, §623.003, which requires the department to base the department's routing decision on information provided by TxDOT to the extent the department is required to determine a route under Transportation Code, Chapter 623; Transportation Code, §623.145, which requires the board, in consultation with the Texas Transportation Commission, to adopt rules to provide for the issuance of a permit under Subchapter G of Transportation Code, Chapter 623 regarding oil well servicing and drilling machinery, including rules regarding conditions on the route and time of movement; Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Government Code, §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 the preamble and in the rule text, which is incorporated herein by reference.

CROSS REFERENCE TO STATUTE. The adopted amendments implement Transportation Code, Chapters 621, 623, and 1002; and Government Code, Chapter 2001.

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## SUBCHAPTER E. PERMITS FOR OVERSIZE AND OVERWEIGHT UNLADEN LIFT EQUIPMENT MOTOR VEHICLES

### 43 TAC §§219.60 - 219.64

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, §623.002, which authorizes the board to adopt rules as necessary to implement Transportation Code, Chapter 623; Transportation Code, §623.003, which requires the department to base the department's routing decision on information provided by TxDOT to the extent the department is required to determine a route under Transportation Code, Chapter 623; Transportation Code, §623.181, which authorizes the department to issue an annual permit for the movement over a highway or road in this state of an unladen lift equipment motor vehicle that exceeds the maximum weight or width limitations prescribed by statute; Transportation Code, §623.195, which requires the board, in consultation with the Texas Transportation Commission, to adopt rules to provide for the issuance of a permit under Subchapter J of Transportation Code, Chapter 623 regarding trip permits for unladen lift equipment motor vehicles, including rules regarding conditions on the route and time of movement; Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Government Code, §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 the preamble and in the rule text, which is incorporated herein by reference.

CROSS REFERENCE TO STATUTE. The adopted amendments implement Transportation Code, Chapters 621, 623, and 1002; and Government Code, Chapter 2001.

*§219.63. Quarterly Hubometer Permits.*

(a) General information.

(1) Permits issued under this section are subject to the requirements of §219.61 of this title (relating to General Requirements for Permits for Oversize and Overweight Unladen Lift Equipment Motor Vehicles).

(2) A quarterly hubometer permit:

(A) is effective for three consecutive months;

(B) allows the unladen lift equipment motor vehicle to travel on all state-maintained highways; and

(C) allows the unladen lift equipment motor vehicle to travel on a state-wide basis.

(3) An unladen lift equipment motor vehicle permitted under this section must not exceed any of the following dimensions:

(A) 12 feet in width;

(B) 14 feet, 6 inches in height; or

(C) 95 feet in length.

(4) With the exception of unladen lift equipment motor vehicles that are overlength only, unladen lift equipment motor vehicles operated with a quarterly hubometer permit must be equipped with a hubometer. The permittee must maintain the hubometer in good working condition.

(5) An unladen lift equipment motor vehicle exceeding 175,000 pounds gross weight must:

(A) have front and rear escort flag vehicles to prevent traffic from traveling beside the unladen lift equipment motor vehicle as it crosses a bridge;

(B) cross all multi-lane bridges by centering the unladen lift equipment motor vehicle on a lane line;

(C) cross all two-lane bridges in the center of the bridge; and

(D) cross each bridge at a speed not greater than 20 miles per hour.

(6) The permitted unladen lift equipment motor vehicle must not cross a load-restricted bridge when exceeding the posted capacity of the bridge.

(7) The permit may be amended only to change the following:

(A) if listed on the permit, the hubometer serial number; or

(B) the license plate number.

(b) Maximum permit weight limits.

(1) The maximum permit weight for any single axle must not exceed 30,000 pounds or 850 pounds per inch of tire width, whichever is less.

(2) The maximum permit weight for any group of axles on an unladen lift equipment motor vehicle will be determined by calculating the "W" weight for the group, using the formulas in Figure 2: 43 TAC §219.62(f), "Maximum Permit Weight Formulas," and comparing the calculated "W" weight with the corresponding "W" weight that is established in Figure 1: 43 TAC §219.62(f), "Maximum Permit Weight Table."

(3) The maximum permit weight per inch of tire width for axles that are steerable must not exceed 950 pounds, and the maximum permit weight per inch of tire width for axles that are not steerable must not exceed 850 pounds.

(4) An unladen lift equipment motor vehicle that has any group of axles that exceeds the limits established by Figure 1: 43 TAC §219.62(f), "Maximum Permit Weight Table," and Figure 2: 43 TAC

§219.62(f), "Maximum Permit Weight Formulas," is not eligible for a permit under this section; however, it is eligible for a permit under §219.62 of this title (relating to Single-Trip Mileage Permits).

(c) Initial permit application and issuance.

(1) An application for an initial quarterly hubometer permit must be made in accordance with §219.61(b) of this title. In addition, the applicant must provide the current hubometer mileage reading and an initial $31 processing fee.

(2) Upon verification of the unladen lift equipment motor vehicle information and receipt of the permit fee, the department will provide a copy of the permit to the applicant, and will also provide a renewal application form to the applicant.

(d) Permit renewals and closeouts.

(1) An application for a permit renewal or closeout must be made on a form and in a manner prescribed by the department.

(2) Upon receipt of the renewal application, the department will verify the unladen lift equipment motor vehicle information, check mileage traveled on the last permit, calculate the new permit fee, and advise the applicant of the permit fee.

(e) Permit fees.

(1) Minimum fee. The minimum fee for a quarterly hubometer permit is either the calculated permit fee or $31, whichever is the greater amount.

(2) Fees for overlength unladen lift equipment motor vehicles. An unladen lift equipment motor vehicle that is overlength only is not required to have a hubometer. The fee for this permit is $31.

(3) Quarterly hubometer permit fee calculation. The permit fee for a quarterly hubometer permit is calculated by multiplying the hubometer mileage, the highway use factor, and the total rate per mile, and then adding the indirect cost share to the product.

(A) Hubometer mileage. Mileage for a quarterly hubometer permit is determined by the unladen lift equipment motor vehicle's current hubometer mileage reading minus the unladen lift equipment motor vehicle's hubometer mileage reading from the previous quarterly hubometer permit.

(B) Highway use factor. The highway use factor for a quarterly hubometer permit is 0.3.

(C) Total rate per mile. The total rate per mile is the combined mileage rates for width, height, and weight for the unladen lift equipment motor vehicle.

*(i)* The mileage rate for width is $.06 per mile for each foot (or fraction thereof) above legal width.

*(ii)* The mileage rate for height is $.04 per mile for each foot (or fraction thereof) above legal height.

*(iii)* The mileage rate for a single axle or any axle within a group that exceeds 20,000 pounds, but is less than or equal to 25,000 pounds, is calculated by multiplying $.045 times the amount by which the axle or axle group weight exceeds the legal weight for the axle or axle group and dividing the resultant figure by 1,000 pounds.

*(iv)* The mileage rate for a single axle or any axle within a group that exceeds 25,000 pounds, but is less than or equal to 30,000 pounds, is calculated by multiplying $.055 times the amount by which the axle or axle group weight exceeds the legal weight for the axle or axle group and dividing the resultant figure by 1,000 pounds.

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## SUBCHAPTER F. COMPLIANCE

### 43 TAC §219.81

STATUTORY AUTHORITY. The department adopts the amendment 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; Transportation Code, §623.002, which authorizes the board to adopt rules as necessary to implement Transportation Code, Chapter 623; Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Government Code, §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 the preamble and in the rule text, which is incorporated herein by reference.

CROSS REFERENCE TO STATUTE. The adopted amendment implements Transportation Code, Chapters 621, 622, 623, and 1002; and Government Code, Chapter 2001.

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### 43 TAC §219.84, §219.86

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; Transportation Code, §623.002, which authorizes the board to adopt rules as necessary to implement Transportation Code, Chapter 623; 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; and the statutory authority referenced throughout the preamble and in the rule text, which is incorporated herein by reference.

CROSS REFERENCE TO STATUTE. The adopted repeals implement Transportation Code, Chapters 621, 622, 623 and 1002.

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## SUBCHAPTER G. RECORDS AND INSPECTIONS

### 43 TAC §219.102

STATUTORY AUTHORITY. The department adopts the 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; Transportation Code, §623.002, which authorizes the board to adopt rules as necessary to implement Transportation Code, Chapter 623; Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Government Code, §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 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.

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## SUBCHAPTER H. ADMINISTRATIVE PENALTIES AND SANCTIONS

### 43 TAC §219.123

STATUTORY AUTHORITY. The department adopts the repeal 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; Transportation Code, §623.002, which authorizes the board to adopt rules as necessary to implement Transportation Code, Chapter 623; Transportation Code, §623.271, which requires the payment of an administrative penalty under §623.271 before the department may issue a permit under Transportation Code, Chapter 623 to a person who has been ordered to pay the administrative penalty and for the vehicle that is the subject of the enforcement order; Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Government Code, §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 adopted repeal implements Transportation Code, Chapters 621, 622, and 623; and Government Code, Chapter 2001.

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