



GOVERNOR GREG ABBOTT

To: Guillermo Treviño, Chair
Whitney Brewster, Executive Director
Tracey Beaver, General Counsel
Texas Department of Motor Vehicles

From: Erin Bennett, Director
Regulatory Compliance Division, Office of the Governor

Date: September 25, 2020

Subject: Proposed Title 43 Texas Administrative Code Sections 221.15, 221.19, and 221.111-221.114 (RCD Rule Review #2020-015)

I. Preface

The Texas Department of Motor Vehicles (“department”) proposed amended 43 TAC §§221.15, 221.19, 221.111, and 221.112, and proposed the repeal of 43 TAC §§221.113 and 221.114, to update business affiliation, criminal history, and other standards for salvage industry license holders.¹ The department submitted the proposed rules to the Regulatory Compliance Division (“division”) for review on June 29, 2020. The division invited public comments on the proposed rules for a 28-day period ending August 3, 2020, but received no comments. The department supplemented its submission to the division on September 21, 2020, with a change to proposed §221.112(16) clarifying when a person may be considered convicted of an offense. Consequently, the division analyzed this amended version of the proposed rule.

II. Analysis

Proposed §221.15 prescribes the content of applications for a salvage vehicle dealer license, and proposed §221.19 explains when license holders must notify the department of certain changes to business information. Following recommendations from the Texas Sunset Advisory Commission, the department proposed amendments to §§221.15 and 221.19 to clarify its consideration of the qualifications, criminal background, and disciplinary history of not only applicants and license holders, but also those who act in a representative capacity for or exert

¹ Rule Submission Memorandum from the Texas Department of Motor Vehicles (June 29, 2020), at 1 (on file with the Regulatory Compliance Division of the Office of the Governor); 45 Tex. Reg. 4311 (2020) (to be codified at 43 TAC §§221.15, 221.19, 221.111, and 221.112) (proposed June 26, 2020) (Tex. Dep’t. Motor Vehicles).

control over applicants or license holders through a business arrangement.² Section 2302.104, Texas Occupations Code, requires applicants to submit information to the department about business affiliates, officers, directors, and owners “to the extent sufficient to establish, to the satisfaction of the department, the business reputation and character of the applicant.” Proposed §§221.15 and 221.19 enable the department to identify individuals with the power to control or direct the management, policies, and activities of an applicant or license holder and ensure those individuals are not using the eligibility of another to bypass the department’s regulation.³ Thus, proposed §§221.15 and 221.19 are consistent with state policy.

Proposed §§221.111 and 221.112 specify the bases for denying an application for a license or renewal of a license, and for suspending, revoking, or assessing an administrative penalty against a license. Amendments to those rules update language regarding business relationships and the department’s evaluation of criminal history, detailed in proposed new §§211.2 and 211.3, pursuant to Section 2302.108 and Chapter 53, Texas Occupations Code.⁴ Additionally, proposed §221.111(a) clarifies that the denial of a license is authorized but not required for certain violations of statute or board rules, consistent with Section 2302.108(a), and proposed §221.111(c) reiterates the requirement in Section 2302.108(d) for a person to wait one year to reapply for a license after a revocation. Proposed §221.112(2), (12), and (13) also make clear that the department may consider violations or the avoidance of Chapter 2301 for disciplinary purposes, including laws related to the distribution of motor vehicles, consistent with the department’s duty to liberally construe that chapter in Section 2301.001(2). In addition, the department’s authority to consider punishment considered to be a conviction in proposed §221.112(16) reflects Section 53.021(d), as identified in the rule itself. The amendments to proposed §§221.111 and 221.112 are firmly grounded in the department’s regulatory authority and, thus, are consistent with state policy.

Finally, the proposed repeals of §§221.113 and 221.114 streamline the department’s regulations and are consistent with state policy. Currently, §221.113 reiterates the department’s duty to suspend or refuse to renew a salvage vehicle dealer’s license for failure to pay child support on receipt of an order pursuant to Section 232.008, Texas Family Code. That requirement is already established in statute, making the rule unnecessary. Similarly, the proposed repeal of §221.114 eliminates a duplicative provision mandating a waiting period before a person may reapply for a license after a revocation, which is now included in proposed §221.111(c).

III. Determination

² Sunset Advisory Commission Staff Report with Final Results: Texas Department of Motor Vehicles, *Recommendation 4.6* (2019), available at <https://www.sunset.texas.gov/public/uploads/files/reports/DMV%20Staff%20Report%20with%20Final%20Results.pdf>.

³ Agency Response to Request for Additional Information (July 23, 2020), at 1 (on file with the Regulatory Compliance Division of the Office of the Governor).

⁴ The division found proposed §§211.1-211.5 to be consistent with state policy. Regulatory Compliance Division Determination Letter for Proposed Title 43 Texas Administrative Code Sections 211.1-211.5 (RCD Rule Review #2020-013) (Sept. 25, 2020) (on file with the Regulatory Compliance Division of the Office of the Governor).

Based on the reasoning set forth above, proposed §§221.15, 221.19, 221.111, and 221.112, with the change submitted to the division, and the proposed repeal of §§221.113 and 221.114 are approved by the division and may be finally adopted.