



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: November 16, 2020

Subject: Proposed Title 43 Texas Administrative Code Section 221.96 (RCD Rule Review #2020-018)

I. Syllabus

The Texas Department of Motor Vehicles (“department”) proposed new 43 TAC §221.96 to authorize its board to issue cease and desist orders to prohibit unlicensed persons from engaging in regulated salvage activities.¹ The department submitted the proposed rule to the Regulatory Compliance Division (“division”) for review on August 25, 2020. The division invited public comments on the proposed rule for a 30-day period ending September 25, 2020, but received no comments. The department supplemented its submission to the division on September 25, 2020, removing language from proposed §221.96(b) that permitted the issuance of cease and desist orders under additional circumstances.² The division analyzed this amended version of the proposed rule and found it to be consistent with state policy. As such, proposed §221.96, as supplemented, is approved for final adoption.

II. Analysis

Section 2302.355, Texas Occupations Code, was added by Senate Bill 604, 86th Legislature, Regular Session (2019), to allow the department’s board to issue a cease and desist order to a person who is not licensed under Chapter 2302 if the person is violating that chapter, or a rule or order adopted under that chapter. The department proposed §221.96 to implement its authority under Section 2302.355, but suggests the deterrent effects of cease and desist orders would

¹ Rule Submission Memorandum from the Texas Department of Motor Vehicles (Aug. 25, 2020), at 1 (on file with the Regulatory Compliance Division of the Office of the Governor); 45 Tex. Reg. 5902 (2020) (to be codified at 43 TAC §221.96) (proposed Aug. 21, 2020) (Tex. Dep’t. Motor Vehicles).

² Agency Response to Request for Additional Information (Sept. 25, 2020), at 1 (on file with the Regulatory Compliance Division of the Office of the Governor).

effectively limit the market to only licensed salvage dealers and could increase prices for salvage vehicles.³ Because such results affect competition pursuant to Section 57.105(d)(1) and (2), Texas Occupations Code, the department submitted proposed §221.96 to the division for review.⁴

Proposed §221.96(a) permits the board to issue a cease and desist order if it reasonably believes a violation of Chapter 2302, or a rule or order adopted under that chapter, has been committed by a person who is not licensed under that chapter. Although Section 2302.355 does not expressly require reasonable belief to issue a cease and desist order, this provision sets a minimum standard for board action that is similar to the standard required for other administrative actions taken by regulatory agencies.⁵ Thus, proposed §221.96(a) is consistent with state policy.

Proposed §221.96(b), as amended, provides that the board may issue a cease and desist order to stop a person from committing a violation, reflecting the scope of authority granted in Section 2302.355. That subsection also requires the department to give notice to the recipient of the opportunity for a hearing on the cease and desist order. Proposed §221.96(c) requires such a request to be in writing and filed with the department within 10 days after receipt of the order, or else provides that the order becomes final. Section 2302.355 requires the board to provide notice and an opportunity for a hearing before it may issue a cease and desist order, and Section 2001.051(1), Texas Government Code, prescribes a minimum 10-day period for reasonable notice of an opportunity for a hearing in a contested case. Because proposed §221.96(b) and (c) adhere to the scope and notice requirements in Section 2302.355, and properly allow time for recipients to contest a cease and desist order, they are consistent with state policy.

III. Determination

Based on the reasoning above, proposed new 43 TAC §221.96, with the change submitted to the division, is approved by the division and may be finally adopted.

³ Rule Submission Memorandum from the Texas Department of Motor Vehicles (Aug. 25, 2020), at 1 and 3.

⁴ *Id.* at 2-3.

⁵ Sec. 2001.174, Tex. Gov't Code; *see, e.g., AEP Tex. Cent. Co. v. Pub. Util. Comm'n*, 345 S.W.3d 60, 68 (Tex. 2011) (quoting *Tex. v. Pub. Util. Comm'n*, 344 S.W.3d 349, 355-356 (Tex. 2011)).