

1                                   **PROPOSAL OF**

2                   **SUBCHAPTER C. PERMITS FOR OVER AXLE AND OVER GROSS WEIGHT TOLERANCES**

3                                   **43 TAC §219.31**

4  
5                                   **SUBCHAPTER H. ENFORCEMENT**

6                                   **43 TAC §219.126**

7  
8                                   **REPEAL OF**

9                                   **SUBCHAPTER F. COMPLIANCE**

10                                   **43 TAC §219.83**

11 **INTRODUCTION.** The Texas Department of Motor Vehicles (department) proposes amendments to Title  
12 43 TAC §219.31 and §219.126 concerning the movement of oversize or overweight vehicles, including the  
13 enforcement of motor vehicle size and weight limitations. The department also proposes the repeal of  
14 Title 43 TAC §219.83 concerning shipper's certificates of weight. The amendments are necessary to  
15 conform to amendments to Transportation Code §623.272 and §623.321 by House Bill 2620, 86th  
16 Legislature, Regular Session (2019). The repeal is necessary because it duplicates language found in  
17 Transportation Code §623.271 and §623.274. Also, some of the language in §219.83 is inconsistent with  
18 Transportation Code §623.274, which was also amended by House Bill 2620.

19 **EXPLANATION.** The proposal amends §219.31(a) to conform with Transportation Code §623.321 by  
20 authorizing the current timber permit to be used to transport equipment used to load timber on a vehicle.

21           The proposal amends §219.126 to conform with Transportation Code §623.272 because it adds  
22 that the department may also investigate and impose a fine on a shipper who does not provide a shipper's  
23 certificate of weight as required under Transportation Code §623.274(b).

1           The proposal repeals §219.83 because it duplicates language found in Transportation Code  
2 §623.271 and §623.274. Also, some of the language in §219.83 is inconsistent with Transportation Code  
3 §623.274.

4 **FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Linda M. Flores, Chief Financial Officer,  
5 has determined that for each year of the first five years the amendments and repeal will be in effect, there  
6 will be no fiscal impact to state or local governments as a result of the enforcement or administration of  
7 the proposal. Jimmy Archer, Director of the Motor Carrier Division, has determined that there will be no  
8 measurable effect on local employment or the local economy as a result of the proposal.

9 **PUBLIC BENEFIT AND COST NOTE.** Mr. Archer has also determined that, for each year of the first five  
10 years the amended and repealed sections are in effect, the public will benefit because the rules will be  
11 consistent with current statutes.

12           Anticipated Costs. Mr. Archer anticipates that there will be no costs to comply with these rules  
13 because the proposed amendments conform to Transportation Code §623.321 and §623.272 and do not  
14 create any additional requirement or cost on a regulated person. Also, the repeal duplicates language  
15 found in Transportation Code §623.271 and §623.274, and some of the language is inconsistent with  
16 Transportation Code §623.274.

17 **ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** As required by Government  
18 Code, §2006.002, the department has determined that the proposed amendments and repeal will not  
19 have an adverse economic effect on small businesses, micro-business, and rural communities because the  
20 proposal conforms the rules to statute and does not impose any additional requirements or cost on a  
21 regulated person. Therefore, the department is not required to prepare a regulatory flexibility analysis  
22 under Government Code, §2006.002.

1 **TAKINGS IMPACT ASSESSMENT.** The department has determined that no private real property interests  
2 are affected by this proposal and that this proposal does not restrict or limit an owner's right to property  
3 that would otherwise exist in the absence of government action and, therefore, does not constitute a  
4 taking or require a takings impact assessment under the Government Code, §2007.043.

5 **GOVERNMENT GROWTH IMPACT STATEMENT.** The department has determined that each year of the  
6 first five years the proposed amendments are in effect, the proposed rule:

- 7 will not create or eliminate a government program;
- 8 will not require the creation of new employee positions or the elimination of existing employee  
9 positions;
- 10 will not require an increase or decrease in future legislative appropriations to the department;
- 11 will not require an increase or decrease in fees paid to the department;
- 12 will not create new regulations;
- 13 will not expand existing regulations;
- 14 will repeal existing regulations;
- 15 will not increase the number of individuals subject to the rule's applicability; and
- 16 will not positively or adversely affect the Texas economy.

17 **REQUEST FOR PUBLIC COMMENT.**

18 If you want to comment on the proposal, submit your written comments by 5:00 p.m. CDT on ~~MM-DD,~~  
19 ~~YYYY~~September 21, 2020. A request for a public hearing must be sent separately from your written  
20 comments. Send written comments or hearing requests by email to [rules@txdmv.gov](mailto:rules@txdmv.gov) or by mail to Office  
21 of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If  
22 a hearing is held, the department will consider written comments and public testimony presented at the  
23 hearing.

1 **STATUTORY AUTHORITY.** The department proposes amendments under Transportation Code §623.002,  
2 which authorizes the Texas Department of Motor Vehicles Board (board) to adopt rules for the  
3 administration of Transportation Code Chapter 623; and Transportation Code §1002.001 which authorizes  
4 the board to adopt rules that are necessary and appropriate to implement the powers and the duties of  
5 the department.

6 **CROSS REFERENCE TO STATUTE.** Transportation Code §§ 623.272, 623.274, and 623.321.

7 **TEXT.**

8 **SUBCHAPTER C. PERMITS FOR OVER AXLE AND OVER GROSS WEIGHT TOLERANCES**

9 **43 TAC §219.31**

10 §219.31. Timber Permits.

11 (a) Purpose. This section prescribes the requirements and procedures regarding the annual permit  
12 for the operation of a vehicle or combination of vehicles that will be used to transport unrefined timber,  
13 wood chips, [ø] woody biomass, or equipment used to load timber on a vehicle under the provisions of  
14 Transportation Code, Chapter 623, Subchapter Q.

15 (b) Application for permit.

16 (1) To qualify for a timber permit, a person must submit an application to the department.

17 (2) The application shall be in a form prescribed by the department and at a minimum,  
18 will require the following:

19 (A) name, address, telephone number, and email address (if requested) of the  
20 applicant;

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

22 (C) vehicle information, including vehicle year, make, license plate number and  
23 state of issuance, and vehicle identification number; and

1 (D) a list of timber producing counties described in Transportation Code,  
2 §623.321(a), in which the vehicle or combination of vehicles will be operated.

3 (3) The application shall be accompanied by:

4 (A) the total annual permit fee required by statute; and

5 (B) a blanket bond or irrevocable letter of credit as required by Transportation  
6 Code, §623.012, unless the applicant has a current blanket bond or irrevocable letter of credit on file with  
7 the department that complies with Transportation Code, §623.012.

8 (4) Fees for permits issued under this section are payable as required by §219.11(f) of this  
9 title (relating to General Oversize/Overweight Permit Requirements and Procedures).

10 (c) Issuance and placement of permit and windshield sticker; restrictions.

11 (1) A permit and a windshield sticker will be issued once the application is approved, and  
12 each will be mailed to the applicant at the address contained in the application.

13 (2) The windshield sticker shall be affixed to the inside of the windshield of the vehicle in  
14 accordance with the diagram printed on the back of the sticker and in a manner that will not obstruct the  
15 vision of the driver. Any attempt to remove the sticker from the windshield will render the sticker void  
16 and will require a new permit and sticker.

17 (3) A replacement sticker for a lost, stolen, or mutilated windshield sticker may be issued,  
18 provided that the permittee submits a request on a form approved by the department which shall include  
19 a statement, signed by the permittee, affirming that the sticker was lost, stolen, or mutilated. The  
20 replacement sticker shall only be valid for the permitted vehicle.

21 (d) Notification. The financially responsible party as defined in Transportation Code, §623.323(a),  
22 shall electronically file the notification document described by §623.323(b) with the department via the  
23 form on the department's website.

1 (e) Transfer of permit. An annual permit issued under this section is not transferable between  
2 vehicles.

3 (f) Amendments. An annual permit issued under this section will not be amended except in the  
4 case of department error.

5 (g) Termination of permit. An annual permit issued under this section will automatically  
6 terminate, and the windshield sticker must be removed from the vehicle:

7 (1) on the expiration of the permit;

8 (2) when the lease of the vehicle expires;

9 (3) on the sale or other transfer of ownership of the vehicle for which the permit was  
10 issued;

11 (4) on the dissolution or termination of the partnership, corporation, or other legal entity  
12 to which the permit was issued; or

13 (5) if the permittee fails to timely replenish the bond or letter of credit as required by  
14 Transportation Code, §623.012.

15 (h) Restrictions. Permits issued under this section are subject to the restrictions in §219.11(l) of  
16 this title.

17 **SUBCHAPTER H. ENFORCEMENT**

18 **43 TAC §219.126**

19 §219.126. Administrative Penalty for False Information on Certificate by a Shipper.

20 (a) The department may investigate and impose an administrative penalty on a shipper who does  
21 not provide a shipper's certificate of weight as required under Transportation Code §623.274(b) or  
22 provides false information on a shipper's certificate of weight that the shipper delivers to a person  
23 transporting a shipment.

1 (b) The notice and hearing requirements of §219.124 of this title (relating to Administrative  
2 Proceedings) apply to the imposition of an administrative penalty under this section.

3 (c) The amount of an administrative penalty imposed under this section is calculated in the same  
4 manner as the amount of an administrative penalty imposed under §219.121 of this title (relating to  
5 Administrative Penalties).

6 **SUBCHAPTER F. COMPLIANCE**

7 **43 TAC §219.83**

8 ~~[(a) For a shipper's certificate of weight to be valid, the shipper must:]~~

9 ~~[(1) certify that the information contained on the form used for the shipper's certificate  
10 of weight is accurate; and]~~

11 ~~[(2) deliver the certificate to the motor carrier or other person transporting the shipment  
12 before:]~~

13 ~~(A) the motor carrier or person applies for an overweight permit under this chapter; or]~~

14 ~~(B) the motor carrier or person begins to transport the shipment if the motor  
15 carrier or person does not apply for an overweight permit because of the information in the certificate.]~~

16 ~~[(b) A motor carrier who holds an annual envelope permit issued under this chapter may rely on  
17 the shipper's certificate of weight to determine whether the shipment requires an additional overweight  
18 permit.]~~

19 ~~[(c) It is an affirmative defense to an administrative enforcement action under this chapter for the  
20 failure of a person or the holder of a permit to obtain the required overweight permit that the person  
21 relied on a valid shipper's certificate of weight.]~~

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

3 Issued at Austin, Texas, on August 7, 2020.

4 /s/ Tracey Beaver  
5 Tracey Beaver, General Counsel

DRAFT