

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

PROPOSAL OF

SUBCHAPTER E. ADMINISTRATIVE PROCEDURES

43 TAC §221.96

INTRODUCTION. The Texas Department of Motor Vehicles (department) proposes to add Title 43 of the Texas Administrative Code (TAC) §221.96 concerning cease and desist orders. The proposed new section implements Senate Bill 604, 86th Legislature, Regular Session (2019), which amended Occupations Code Chapter 2302 by adding §2302.055 authorizing the department’s board (board) to issue cease and desist orders under the chapter.

EXPLANATION. Proposed new §221.96 permits the board to issue cease and desist orders if it appears that a violation of Occupations Code Chapter 2302, the department’s rules, or an order from the department under Occupations Code Chapter 2302 is occurring. Proposed new §221.96(a) clarifies that a cease and desist order may only be issued if the board reasonably believes a person who is not licensed under Occupations Code Chapter 2302 is violating that chapter or a rule or order adopted under that chapter. Proposed new §221.96(a) is necessary to clarify that license holders under Occupations Code Chapter 2302 cannot be issued a cease and desist order and corresponds to the language in Occupations Code §2302.055. License holders under Occupations Code Chapter 2302 include a general distinguishing number holder acting under Occupations Code §2302.009.

Proposed new §221.96(b) permits the board to require a person to cease and desist from committing a violation or from engaging in any practice regulated by the board as necessary to prevent the violation and requires that the order contain a notice that a request for a hearing may be filed. Proposed new §221.96(b) is necessary to outline what actions the board can require or prohibit using a cease and desist order. Proposed new §221.96(b) also ensures that notice of an opportunity for hearing is given.

1 Proposed new §221.96(c) permits a person to whom a cease and desist order is issued to file a
2 written request for a hearing before the board not later than the 10th day after the date of receipt of the
3 order. The written request for a hearing may be filed with the department electronically, through the
4 mail, or in person. The request may be in any written form, but should state that a hearing is requested.

5 Proposed new §221.96(c) clarifies that the order is final unless a request for hearing is timely filed.
6 Proposed new §221.96(c) is necessary to provide an opportunity for hearing while balancing the need for
7 quick resolution of the hearing and the finality of the order. The 10-day deadline for request for hearing
8 balances those needs providing time to respond while providing a timeline for efficient and timely
9 resolution.

10 **FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT.** Linda M. Flores, Chief Financial Officer,
11 has determined that for each year of the first five years the amendment will be in effect, there will be no
12 fiscal impact to state or local governments as a result of the enforcement or administration of the
13 proposal. Corrie Thompson, Director of the Enforcement Division, has determined that there will be no
14 measurable effect on local employment or the local economy as a result of the proposal.

15 **PUBLIC BENEFIT AND COST NOTE.** Ms. Thompson has also determined that, for each year of the first five
16 years the amended section is in effect, there are public benefits anticipated from the ability of the board
17 to issue cease and desist orders.

18 Anticipated Public Benefits. The public benefits anticipated as a result of the proposal include
19 expanding the administrative tools that the board has to prevent and limit violations of the Occupations
20 Code and the department's rules and providing individuals that are issued a cease and desist order notice
21 that they may be in violation of the law and a chance for a hearing.

22 Anticipated Costs to Comply With The Proposal. Ms. Thompson anticipates that there will be no
23 costs to comply with these rules.

1 **ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.** As required by the
2 Government Code, §2006.002, the department has determined that the proposed new section will not
3 have an adverse economic effect on small businesses, micro-businesses, or rural communities as a result
4 of implementing this rule. Therefore, the department is not required to prepare a regulatory flexibility
5 analysis under Government Code, §2006.002.

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

10 **GOVERNMENT GROWTH IMPACT STATEMENT.** The department has determined that during the first five
11 years the proposed new section is in effect, no government program would be created or eliminated.
12 Implementation of the proposed new section would not require the creation of new employee positions
13 or elimination of existing employee positions. Implementation would not require an increase or decrease
14 in future legislative appropriations to the department or an increase or decrease of fees paid to the
15 department. The proposed new section does not create a new regulation, or expand, or repeal an existing
16 regulation. Lastly, the proposed new section does not affect the number of individuals subject to the rule's
17 applicability and will not affect this state's economy.

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

1 **STATUTORY AUTHORITY.** The amendment is proposed under Transportation Code §1002.001 which
2 provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are
3 necessary and appropriate to implement the powers and the duties of the department; and more
4 specifically, Occupations Code §2302.255 which provides the board authority to issue a cease and desist
5 order prohibiting a person not licensed under Occupations Code Chapter 2302 from violating that chapter,
6 an administrative rule, or an order adopted under that chapter.

7 **CROSS REFERENCE TO STATUTE.** Occupations Code, §2302.255 and Transportation Code, §1002.001.

8 **TEXT**

9 **Subchapter E. Administrative Procedures**

10 **43 TAC §221.96**

11 §221.96. Cease and Desist Order.

12 (a) The board may issue a cease and desist order if the board reasonably believes a person who
13 is not licensed under Occupations Code Chapter 2302 is violating that chapter or a rule or order adopted
14 under that chapter.

15 (b) A cease and desist order may require a person to cease and desist from committing a violation
16 or from engaging in any practice regulated by the board as necessary to prevent the violation. The order
17 must contain a notice that a request for hearing may be filed under this section.

18 (c) A person to whom a cease and desist order is issued may file a written request for a hearing
19 before the board. The order is final unless a request for hearing is timely filed. The person must file the
20 hearing request not later than the 10th day after the date of receipt of the order.

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