



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 29, 2020

Subject: Proposed Title 43 Texas Administrative Code Sections 219.11(f) and 209.23
(RCD Rule Review #2020-017)

I. Syllabus

The Texas Department of Motor Vehicles (“department”) proposed amended 43 TAC §§219.11(f) and 209.23 to improve department efficiency by eliminating escrow accounts as payment methods for oversize or overweight permits.¹ The department submitted the proposed rules to the Regulatory Compliance Division (“division”) for review on August 25, 2020. The division invited public comments on the proposed rules for a 26-day period ending September 21, 2020, but received no comments. Because the department will preserve access to these permit types by continuing to make available multiple alternative methods of payment, the division has found both proposed §§219.11(f) and 209.23 to be consistent with state policy and approved the rules for final adoption.

II. Analysis

Section 1001.009, Texas Transportation Code, allows the department to determine the method of payment for all goods and services provided by the department, including oversize or overweight permits issued under Subtitle E, Title 7, Texas Transportation Code. Additionally, Section 621.351, Texas Transportation Code, specifically authorizes the department to establish one or more escrow accounts for the prepayment of fees for oversize or overweight permits. Pursuant to that authority, the department currently allows oversize or overweight permits to be purchased through two escrow accounts, one of which is administered by the department and the other,

¹ Rule Submission Memorandum from the Texas Department of Motor Vehicles (August 25, 2020), at 1 (on file with the Regulatory Compliance Division of the Office of the Governor); 45 Tex. Reg. 5869 and 5878 (to be codified at 43 TAC §§209.23 and 219.11) (2020) (proposed Aug. 21, 2020) (Tex. Dep’t. Motor Vehicles).

referred to as a permit account card, by a third party.² Customers may also purchase permits using other common payment methods.³

The department has proposed amendments to §§219.11(f) and 209.23 to eliminate escrow accounts as payment methods for oversize or overweight permits, because department staff must manually process and reconcile transactions relating to those accounts each month, risking human error in accounting.⁴ Eliminating escrow accounts will also encourage the use of electronic payment methods, increasing agency accuracy and efficiency.⁵ However, eliminating escrow accounts will require some customers to switch payment methods for oversize or overweight permits and possibly incur higher transaction fees as a result. Recognizing that switching payment methods may create barriers to certain customers' market participation, the department submitted proposed §§219.11(f) and 209.23 to the division, because they affect competition pursuant to Section 57.105(d)(1), Texas Occupations Code.⁶

Section 621.351 is discretionary but clearly supports options for customers purchasing oversize or overweight permits by explicitly authorizing the department to establish escrow accounts. In fiscal year 2020, only two percent of customers paid for oversize or overweight permits using an escrow account, but these customers purchased 259,960 permits, nearly 35 percent of all oversize or overweight permits purchased.⁷ Although proposed §§219.11(f) and 209.23 will necessitate a change in payment method for a large volume of oversize or overweight permits, nothing in the department's proposed rules affects customers' current ability to pay for oversize or overweight permits through numerous other payment methods, including payment by credit card, Automated Clearing House ("ACH"), check, money order, cashier's check, and cash.⁸

While the transaction costs for using a particular payment method vary depending on a customer's unique business practices and geographic location, the department has identified several payment methods that may cost less than escrow accounts. For example, a customer may pay with a check without incurring a transaction fee, or use the ACH, which has a modest transaction fee of only \$0.15 per transaction; by way of comparison, customers who use the third party-administered escrow account are charged \$1.00 for each transaction.⁹ Moreover, customers

² Rule Submission Memorandum from the Texas Department of Motor Vehicles (August 25, 2020), at 2.

³ *Id.*

⁴ *Id.* at 1; Administrative Record for Proposed 43 TAC §§219.11(f) and 209.23 (RCD Rule Review #2020-017), Transcript of August 6, 2020 Board Meeting, at 87 (Submitted August 25, 2020) (on file with the Regulatory Compliance Division of the Office of the Governor).

⁵ Rule Submission Memorandum from the Texas Department of Motor Vehicles (August 25, 2020), at 1.

⁶ *Id.* at 3.

⁷ Agency Response to Request for Additional Information (September 8, 2020), at 1-3 (on file with the Regulatory Compliance Division of the Office of the Governor).

⁸ Rule Submission Memorandum from the Texas Department of Motor Vehicles (August 25, 2020), at 2.

⁹ 45 Tex. Reg. 5879-80, 5963-64 (Economic Impact Statement and Regulatory Flexibility Analysis for proposed amendments to 43 TAC §§219.2, 219.11, 219.13-219.15, 219.42, 219.43, and 219.61-219.63) (2020) (proposed August 21, 2020) (Tex. Dep't. Motor Vehicles).

who are current escrow account holders will not be assessed fees by the department or third party for the termination of an escrow account.¹⁰

Therefore, while eliminating escrow accounts will require some customers to switch payment methods, the department has preserved access to oversize or overweight permits by continuing to make available multiple other cost-effective payment methods and ensuring that the elimination of escrow accounts results in minimal costs to current account holders. Thus, the elimination of escrow accounts as methods of payment for oversize or overweight permits in proposed §§219.11(f) and 209.23 is a measured exercise of the department's authority and is consistent with state policy.

III. Determination

Based on the reasoning set forth above, proposed amended 43 TAC §§219.11(f) and 209.23 are approved by the division and may be finally adopted.

¹⁰ Agency Response to Request for Additional Information (September 8, 2020), at 4.