

(3) the resident or the resident's legal guardian revokes in writing the authorization for the resident to use the self-release seat belt.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2017.

TRD-201705105

Karen Ray

Chief Counsel

Department of Aging and Disability Services

Effective date: January 1, 2018

Proposal publication date: October 6, 2017

For further information, please call: (512) 438-3334



TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 28. OVERSIZE AND OVERWEIGHT VEHICLES AND LOADS

SUBCHAPTER H. HIDALGO COUNTY REGIONAL MOBILITY AUTHORITY PERMITS

43 TAC §28.102

The Texas Department of Transportation (department) adopts amendments to §28.102, concerning Authority's Powers and Duties. The amendments to §28.102 are adopted without changes to the proposed text as published in the October 13, 2017, issue of the *Texas Register* (42 TexReg 5660) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

These amendments grant the Hidalgo County Regional Mobility Authority (HCRMA) additional authority to issue permits for the operation of oversize/overweight vehicles on a designated highway within the county and clarify the limits of that authority. Transportation Code, §623.363(a)(2) authorizes the Texas Transportation Commission (commission) to designate additional routes for which HCRMA may issue oversize and overweight permits. The statute requires that the commission consult with HCRMA prior to the designation. The department worked with HCRMA to identify additional routes that would benefit the HCRMA permitting process.

Amendments to §28.102, Authority's Powers and Duties, clarify that the purpose of the rule is to authorize the issuance of permits by the HCRMA for state-owned roads listed under Transportation Code, §623.363 and those routes identified and designated by the commission. The amendments add an additional route designated by the commission for which HCRMA is authorized to issue permits for the operation of oversize/overweight vehicles. The added route is: U.S. Highway 83 Business between its intersection with South Pleasantview Drive and the intersection of South Bridge Avenue. This addition expands HCRMA's permitting authority for the operation of the roadways within its

jurisdiction and allows HCRMA to provide more complete service to the motor carriers using the permits within Hidalgo County.

COMMENTS

No comments on the proposed amendments were received.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §623.369 authorizing the commission to adopt rules necessary to implement Subchapter S, Regional Mobility Authority Permits.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 623, Subchapter S.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 14, 2017.

TRD-201705156

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Effective date: January 3, 2018

Proposal publication date: October 13, 2017

For further information, please call: (512) 463-8630



PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 219. OVERSIZE AND OVERWEIGHT VEHICLES AND LOADS

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

43 TAC §§219.34 - 219.36

The Texas Department of Motor Vehicles (department) adopts new Chapter 219, Oversize and Overweight Vehicles and Loads, Subchapter C, Permits for Over Axle and Over Gross Weight Tolerances, §219.34, North Texas Intermodal Permit; §219.35, Fluid Milk Transport Permit; and §219.36, Intermodal Shipping Container Port Permit. Sections 219.35 and 219.36 are adopted without changes to the proposed text as published in the October 20, 2017, issue of the *Texas Register* (42 TexReg 5847) and will not be republished. Section 219.34 is adopted with changes to the proposed text and will be republished. The department amended §219.34 to decrease the permit fee from \$2,000 to \$1,000.

EXPLANATION OF ADOPTED NEW SECTIONS

The 85th Legislature, Regular Session, 2017, authorized three new permits for overweight vehicle combinations. The permits authorize certain vehicle combinations to exceed gross weight and axle weight limits, as long as the vehicle combination and the operator are in compliance with all of the applicable requirements

and restrictions. New §§219.34, 219.35, and 219.36 establish the requirements, restrictions, and procedures regarding these permits.

New §219.34 implements House Bill 2319, which added Transportation Code, §623.0172, Permit for Intermodal Shipping Container, to require the department to issue an annual permit for the international transportation of a sealed intermodal shipping container by a truck-tractor and semitrailer combination in portions of Bowie County, Texas.

New §219.35 implements Senate Bill 1383, which added Transportation Code, §623.401, Permit for Vehicles Transporting Fluid Milk, to authorize the department to issue an annual permit for the movement of fluid milk by certain truck-tractor and semitrailer combinations.

New §219.36 implements Senate Bill 1524, which added Transportation Code, §623.402, Issuance of Permit, to authorize the department to issue an annual permit for the movement of certain vehicle combinations transporting sealed intermodal shipping containers moving in international transportation.

COMMENTS AND RESPONSE

The department received comments from the following regarding the fee for the North Texas Intermodal Permit under §219.34: William L. Hale, P.E., Texas Department of Transportation (TxDOT); The Honorable James Carlow, Bowie County Judge; Colin T. Parrish, Statehouse Consultants, LLC; Ronnie Alexander, Domtar, Logistics and Distribution Services Manager, Ashdown Mill; Bob Grygotis, Domtar, General Manager, Ashdown Mill; and Tammy Waters, Domtar, Manager, Communications and Government Relations.

COMMENTS

The department asked TxDOT for their recommendation on the initial fee for this permit, based on Domtar's estimate that it will buy approximately 20 permits per year and will take approximately 1.5 trips per day, five days a week under each permit. In a letter dated October 19, 2017, TxDOT concluded that "a permit fee of \$200 is sufficient at this time to cover the anticipated increase in pavement and bridge consumption costs caused by the increased weight of permitted vehicles."

The Honorable James Carlow, Bowie County Judge, requested the department to set the permit fee at an amount: 1) that is proportionate to the short distance within the county; and 2) that aligns with similar permits in Texas.

Domtar representatives submitted four comments, requesting the department to adjust the proposed permit fee to align with the following: 1) the distance to be traveled, which is 2.5 miles; and 2) similar permits issued by the department. Mr. Parrish submitted a comment on behalf of Domtar in which he proposed a formula, which is based on the fee for the Intermodal Shipping Container Port Permit under §219.36, to come up with a \$500 fee for the North Texas Intermodal Permit. Mr. Parrish also stated that the legislature intended the permit fee to be set lower than \$2,000 "except in extreme circumstances or as a last resort," and that the fee for this permit will be "viewed as a precedent setting test case."

RESPONSE

The department reduced the permit fee in §219.34 from \$2,000 to \$1,000, which is a fair and reasonable fee for this annual permit. However, the department does not adopt the formula proposed by Mr. Parrish, we disagree with the argument that the

permit fee should be based on the distance of the road on which the permit is authorized, we disagree with the argument that the legislature intended the permit fee to be set lower than \$2,000 "except in extreme circumstances or as a last resort," and we don't intend to set a precedent on determining future permit fees.

Transportation Code, §623.0172(h) requires the department to initially set the fee for this permit in an amount not to exceed \$2,000. This section also says that beginning in 2022 on September 1 of each even-numbered year, the department shall set the fee for this permit based on the results of the study conducted by TxDOT in compliance with the requirements listed in §623.0172(l). Section 623.0172(l) does not list distance as a factor for TxDOT's study, which will be used to determine the future fee for this permit. In addition, §623.0172(h) says the future fee shall be set in an amount based on a reasonable estimate of the costs associated with the operation of the vehicles permitted under this section, "including any increase in the costs necessary to maintain or repair those highways." The legislature did not intend for the initial fee to set a precedent for the future fee for this permit because the legislature provided the factors on which the future fee must be based. Also, there is no language in §623.0172 that says the department must set the fee lower than \$2,000 "except in extreme circumstances or as a last resort."

Section 623.0172(e)(2) authorizes TxDOT to establish the route for this permit. TxDOT established the route as US 71/US 59 from the Arkansas state border to the eastbound entrance ramp for Interstate Highway 49 in Bowie County. Domtar stated that this portion of US 71 is 2.5 miles long. Although the authorized route is 2.5 miles long, the permit holder can travel on this 2.5-mile stretch of US 71 as many times as they want for an entire year because the North Texas Intermodal Permit is an annual permit. In addition, §623.0172(j) says the portion of the permit fee that is deposited into the state highway fund may only be used for transportation projects in the TxDOT district designated in the permit application. If the legislature intended the permit fee to only cover the maintenance costs for the 2.5-mile stretch of US 71, it would have written §623.0172(j) differently.

Although the statute for the Intermodal Shipping Container Port Permit under §219.36 says the permit is limited to 30 miles from the port authority or port of entry, the statute also says the permit may only be used on highways and roads approved by TxDOT. There is no guarantee that the Intermodal Shipping Container Port Permit will actually authorize the permit holder to travel on 30 miles of highways or roads. Also, §623.0172 does not say the fee for the North Texas Intermodal Permit should be based on the fee for the Intermodal Shipping Container Port Permit.

Although TxDOT recommended a fee of \$200, this estimate was based on Domtar's estimate that it will buy approximately 20 permits per year and will take approximately 1.5 trips per day, five days a week under each permit. TxDOT's estimate was based on the anticipated increase in pavement and bridge consumption costs caused by the increased weight of the permitted vehicles. As stated above, it does not appear that the legislature intended for the permit fee to only be used on the 2.5-mile stretch of US 71. In addition, Mr. Bob Grygotis, the General Manager for Domtar's Ashdown Mill, commented that they "are looking to grow the number of permits throughout 2018 as new business is secured."

Other permits are more expensive, such as a single-trip permit for an overwidth load, which costs \$60 regardless of the distance traveled. The overwidth load does not cause damage to the road like an overweight load. If a person needs to transport 1.5 loads

for five days a week, the cost will be \$450 for one week and \$23,400 for 52 weeks for an overwidth load under single-trip permits.

STATUTORY AUTHORITY

The new sections are adopted under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles (board) with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department under the Transportation Code; Transportation Code, §623.002, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 623; and more specifically, Transportation Code, §623.407(a), which requires the department to adopt rules that are necessary to implement Transportation Code, Chapter 623, Subchapter U, Vehicles Transporting Fluid Milk; and Transportation Code, §623.411(a), which requires the department to adopt rules that are necessary to implement Transportation Code, Chapter 623, Subchapter U, Intermodal Shipping Containers.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 621 and 623.

§219.34. North Texas Intermodal Permit.

(a) Purpose. This section prescribes the requirements, restrictions, and procedures regarding the annual permit for transporting an intermodal shipping container under the provisions of Transportation Code, §623.0172.

(b) Application for permit.

(1) To qualify for a North Texas intermodal permit, a person must submit an application to the department.

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

(A) name and address of the applicant;

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

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

(3) The application shall be accompanied by the total annual permit fee of \$1,000.

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

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

(d) Transfer of permit. A permit issued under this section may only be transferred once during the term of the permit from one vehicle to another vehicle in the permittee's fleet provided:

(1) the permitted vehicle is destroyed or otherwise becomes permanently inoperable, to an extent that it will no longer be utilized, and the permittee presents proof that the negotiable title or other qualifying documentation, as determined by the department, has been surrendered to the department; or

(2) the title to the permitted vehicle is transferred to someone other than the permittee, and the permittee presents proof that the negotiable title or other qualifying documentation, as determined by the department, has been transferred from the permittee.

(e) Restrictions pertaining to road conditions. Movement of a permitted vehicle is prohibited when road conditions are hazardous based upon the judgment of the operator and law enforcement officials. Law enforcement officials shall make the final determination regarding whether or not conditions are hazardous. Conditions that should be considered hazardous include, but are not limited to:

(1) visibility of less than 2/10 of one mile; or

(2) weather conditions such as wind, rain, ice, sleet, or snow.

(f) Curfew restrictions. The operator of a permitted vehicle must observe the curfew movement restrictions published by the department.

(g) Construction or maintenance areas. The permitted vehicle may not travel through any state highway construction or maintenance area if prohibited by the construction restrictions published by the department.

(h) Night movement. Night movement is allowed under this permit, unless prohibited by the curfew movement restrictions published by the department.

(i) Manufacturer's tire load rating. Permits issued under this section do not authorize the vehicle to exceed the manufacturer's tire load rating.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2017.

TRD-201705085

David D. Duncan

General Counsel

Texas Department of Motor Vehicles

Effective date: January 1, 2018

Proposal publication date: October 20, 2017

For further information, please call: (512) 465-5665

◆ ◆ ◆