

(3) SSPD - 24-hour shared attendant care.

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

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Karen Ray

Chief Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-3385



TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 206. MANAGEMENT

SUBCHAPTER E. ADVISORY COMMITTEES

The Texas Department of Motor Vehicles (department) proposes amendments to Chapter 206, Management, Subchapter E, Advisory Committees, §206.92, Definitions; and §206.93, Advisory Committee Operations and Procedures. The department also proposes new §206.94, Motor Vehicle Industry Regulation Advisory Committee (MVIRAC); §206.95, Motor Carrier Regulation Advisory Committee (MCRAC); §206.96, Vehicle Titles and Registration Advisory Committee (VTRAC); §206.97, Consumer Protection Advisory Committee (CPAC); §206.98, Customer Service Advisory Committee (CSAC); and §206.99, Use of Advisory Committees and Working Groups. In addition, the department proposes the repeal of §206.94, Household Goods Rules Advisory Committee (HGRAC); and §206.95, Motor Vehicle License Advisory Committee (MVLAC).

EXPLANATION OF PROPOSED AMENDMENTS, NEW SECTIONS, AND REPEALS

The proposed amendments to §209.92 and §206.93, and new §§206.94-206.99 implement the Sunset Advisory Commission's Recommendation 1.7, as stated in the Sunset Staff Report with Commission Decisions, 2018-2019, 86th Legislature. Recommendation 1.7 directs the department to establish, at a minimum, advisory committees related to motor vehicle industry regulation, motor carrier industry regulation, and vehicle titles and registration. The department was further directed to adopt rules regarding the purpose, structure, and use of advisory committees, including a number of specific requirements; and distinguish appropriate situations to use advisory committees versus working groups. By establishing the proposed advisory committees, the department anticipates a more structured opportunity for stakeholders and the public to provide input into rulemaking and policy development pertaining to significant issues.

The department is repealing §206.94, Household Goods Rules Advisory Committee (HGRAC); and §206.95, Motor Vehicle License Advisory Committee (MVLAC) because the specific work those advisory committees were formed to undertake has been completed, and future issues relating to household goods con-

cerns could be addressed by the Consumer Protection Advisory Committee.

The proposed amendments to §206.92, Definitions, add definitions for "member" and "presiding officer."

The proposed amendments to §206.93, Advisory Committee Operations and Procedures, delete most of the existing rule, and substitute the provisions regarding the purpose, use, and structure of advisory committees. Specifically, the amendments clarify: the procedure for board appointment of advisory committees; qualifications for advisory committee members, including a prohibition on board members from serving on an advisory committee, although board member input shall continue to be a valuable component of discussion before the board ultimately votes on a proposal; composition of committees, including balance between regulated industry, consumers of department services, and different geographical regions of the state; committee size and quorum requirements, member training requirements; required acceptance of public input and participation by advisory committees, required advisory committee compliance with the Open Meetings Act; reporting recommendations for advisory committees; required board consideration of advisory committee recommendations; reimbursement of advisory committee members; and expiration dates for advisory committees.

Proposed new §206.94, Motor Vehicle Industry Regulation Advisory Committee (MVIRAC), creates the MVIRAC to advise and make recommendations to the board or the executive director, as requested, on issues related to regulation of the motor vehicle industry.

Proposed new §206.95, Motor Carrier Regulation Advisory Committee (MCRAC), creates the MCRAC to advise and make recommendations to the board or the executive director, as requested, on issues related to regulation of the motor carrier industry.

Proposed new §206.96, Vehicle Titles and Registration Advisory Committee (VTRAC), creates the VTRAC to advise and make recommendations to the board or the executive director, as requested, on issues related to vehicle titles and registration.

Proposed new §206.97, Consumer Protection Advisory Committee (CPAC), creates the CPAC to advise and make recommendations to the board or the executive director, as requested, on investigation and enforcement issues, including but not limited to: vehicle titles and registration fraud; lemon law; the warranty performance program; and various other issues affecting consumers.

Proposed new §206.98, Customer Service Advisory Committee (CSAC), creates the CSAC to advise and make recommendations to the board or the executive director, as requested, on issues related to improving and enhancing customer service by the department, including, but not limited to: infrastructure; new customer service initiatives; policy and process improvements; and technology.

Proposed new §206.99, Use of Advisory Committee and Work Groups, provides that the board shall prioritize the use of advisory committees over workgroups in rulemaking on significant or controversial issues of public policy.

FISCAL NOTE

Linda M. Flores, Chief Financial Officer, has determined that for each of the first five years the amendments, new sections, and

repeals as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the proposed amendments, new sections, and repeals.

Sarah Swanson, Interim General Counsel, has determined that there will be no anticipated impact on local economies or overall employment as a result of enforcing or administering the proposed amendments, new sections, and repeals.

PUBLIC BENEFIT AND COST

Ms. Swanson has also determined that for each year of the first five years the amendments, new sections, and repeals are in effect, the public benefit anticipated as a result of enforcing or administering the amendments and new sections will be to increase opportunities for stakeholders and the public to provide input into rulemaking and policy development by the department, and provide clear rules on the structure and functioning of advisory committees. There are no anticipated economic costs for persons required to comply with the proposed amendments, new sections, or repeals. There will be no adverse economic effect on small businesses, micro-businesses, or rural communities.

TAKINGS IMPACT ASSESSMENT

The department has determined that this proposal affects no private real property interests and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action, and so does not constitute a taking or require a takings impact assessment under Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT STATEMENT

The department has determined that during the first five years the proposed amendments, new sections, and repeals are in effect, no government program would be created or eliminated. Implementation of the proposed amendments and new sections would not require the creation of new employee positions or elimination of existing employee positions. Implementation would not require an increase or decrease in future legislative appropriations to the department or an increase or decrease of fees paid to the department. Additionally, the proposed amendments, new sections, and repeals do not create a new regulation, or expand, limit, or repeal an existing regulation. The proposed amendments, new sections, and repeals do not affect the number of individuals subject to the rule's applicability and will not affect this state's economy.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments, new sections, and repeals may be submitted to Sarah Swanson, Interim General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731 or by email to rules@txdmv.gov. The deadline for receipt of comments is 5:00 p.m. on April 1, 2019.

43 TAC §§206.92 - 206.99

STATUTORY AUTHORITY

The amendments and new sections are proposed 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; and more specifically, Transportation Code, §1001.031, which provides that the board

shall retain or establish one or more advisory committees to make recommendations the board or the executive director.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 1001.

§206.92. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Advisory committee--Any committee created by the board to make recommendations to the board or to the executive director pursuant to Transportation Code, §1001.031.

(2) Board--The board of the Texas Department of Motor Vehicles.

(3) Department--The Texas Department of Motor Vehicles.

(4) Division director--The chief administrative officer in charge of a division of the department.

(5) Executive director--The chief executive officer of the Texas Department of Motor Vehicles.

(6) Member--An appointed member of an advisory committee created pursuant to this subchapter.

(7) Presiding officer--The elected presiding officer of an advisory committee created pursuant to this subchapter.

§206.93. Advisory Committee Operations and Procedures.

(a) Role of advisory committee. The role of an advisory committee under this subchapter is to provide advice and recommendations. Advisory committees shall meet and carry out their functions upon a request from the department or board for advice and recommendations on an issue(s).

(b) Appointment of advisory committee. The board shall appoint members to an advisory committee by selecting them from a list of potential members provided by the executive director. Each advisory committee shall elect from its members a presiding officer, who shall report the advisory committee's recommendations to the board. The executive director may designate a division or divisions of the department to participate with, or to provide subject-matter expertise, guidance, or administrative support to the advisory committee as necessary.

(c) Member qualifications. Members shall have knowledge about and interests in, and represent a broad range of viewpoints about, the work of the committee or applicable division(s). Board members shall not serve as advisory committee members.

(d) Composition of advisory committee. In making appointments to the advisory committee, the board shall, to the extent practical, balance the membership of the advisory committee to ensure representation of: industries or occupations regulated or indirectly regulated by the board, consumers of services provided by the board, and different geographical regions of the state.

(e) Committee size and quorum requirements. An advisory committee shall be composed of a reasonable number of members not to exceed 24 as determined by the board. A simple majority of advisory committee members will constitute a quorum. An advisory committee may only transact business when a quorum is present.

(f) Terms of service. Advisory committee members will serve terms of four years. A member will serve on the committee until the member resigns, is dismissed or replaced by the board, or the member's term expires.

(g) Member training requirements. Each member of an advisory committee must receive training regarding the Open Meetings Act, Government Code, Chapter 551, and the Public Information Act, Government Code, Chapter 552.

(h) Compliance with Open Meetings Act. The advisory committee shall comply with the Open Meetings Act, Government Code, Chapter 551.

(i) Public input and participation. The advisory committee shall accept public comments made in-person at advisory committee meetings or submitted in writing. Public comments made in writing should be submitted to the advisory committee five business days in advance of the advisory committee meeting with sufficient copies for all members.

(j) Reporting recommendations. Recommendations of the advisory committee shall be reported to the board at a board meeting prior to board action on issues related to the recommendations. The recommendations shall be in writing and include any necessary supporting materials. The presiding officer of the advisory committee or the presiding officer's designee may appear before the board to present the committee's advice and recommendations. This subsection does not limit the ability of the advisory committee to provide advice and recommendations to the executive director as necessary.

(k) Board use of advisory committee recommendations. In developing department policies, the board shall consider the written recommendations and reports submitted by advisory committees.

(l) Reimbursement. The department may, if authorized by law and the executive director, reimburse advisory committee members for reasonable and necessary travel expenses.

(m) Expiration dates for advisory committees. Unless a different expiration date is established by the board for the advisory committee, each advisory committee is abolished on the fourth anniversary of its creation by the board.

[(a) Unless a member resigns from an advisory committee, the member continues to serve on the committee until the member is dismissed or replaced by the board, or until the committee concludes all business or is disbanded. The executive director may designate a division of the department to participate with, or to provide subject-matter expertise, guidance, or administrative support to the advisory committee.]

[(b) A summary of the business undertaken by each advisory committee shall be prepared and filed with the board or the board's designee.]

[(c) All summaries and other records of each advisory committee proceeding are records of the board that may be subject to disclosure under the provisions of Government Code, Chapter 552.]

[(d) The department may, if authorized by law and the executive director, reimburse advisory committee members for reasonable and necessary travel expenses.]

[(e) In developing department policies, the board shall consider the recommendations submitted by advisory committees.]

[(f) The designated division shall report to the board on actions, including any advice and recommendations, of an advisory committee prior to board action on a pertinent issue. The chair of the advisory committee or the chair's designee may appear before the board prior to board action on a posted agenda item to present the committee's advice and recommendations.]

[(g) Unless a different expiration date is established by the board for the advisory committee, each advisory committee is abolished on the fourth anniversary of its creation by the board.]

§206.94. Motor Vehicle Industry Regulation Advisory Committee (MVIRAC).

(a) The MVIRAC is created to make recommendations, as requested by the department and board, on issues related to regulation of the motor vehicle industry.

(b) The MVIRAC shall comply with the requirements of §206.93 of this title (relating to Advisory Committee Operations and Procedures).

(c) The MVIRAC shall expire on July 7, 2023.

§206.95. Motor Carrier Regulation Advisory Committee (MCRAC).

(a) The MCRAC is created to make recommendations, as requested by the department and board, on issues related to motor carrier registration and motor carrier regulation.

(b) The MCRAC shall comply with the requirements of §206.93 of this title (relating to Advisory Committee Operations and Procedures).

(c) The MCRAC shall expire on July 7, 2023.

§206.96. Vehicle Titles and Registration Advisory Committee (VTRAC).

(a) The VTRAC is created to make recommendations, as requested by the department and board, on issues related to vehicle titles and registration.

(b) The VTRAC shall comply with the requirements of §206.93 of this title (relating to Advisory Committee Operations and Procedures).

(c) The VTRAC shall expire on July 7, 2023.

§206.97. Consumer Protection Advisory Committee (CPAC).

(a) The CPAC is created to make recommendations, as requested by the department and board, on investigation and enforcement issues, including but not limited to: vehicle titles and registration fraud; lemon law; the warranty performance program; and various other issues affecting consumers.

(b) The CPAC shall comply with the requirements of §206.93 of this title (relating to Advisory Committee Operations and Procedures).

(c) The CPAC shall expire on July 7, 2023.

§206.98. Customer Service Advisory Committee (CSAC).

(a) The CSAC is created to make recommendations, as requested by the department and board, on issues related to improving and enhancing customer service by the department, including, but not limited to: infrastructure; new customer service initiatives; policy and process improvements; and technology.

(b) The CSAC shall comply with the requirements of §206.93 of this title (relating to Advisory Committee Operations and Procedures).

(c) The CSAC shall expire on July 7, 2023.

§206.99. Use of Advisory Committees and Working Groups.

In determining appropriate situations in which to utilize an advisory committee versus a working group, the department and the board shall

prioritize the use of advisory committees in rulemaking on significant or controversial issues of public policy. The department may form working groups to advise department staff. A working group is not a standing committee formed to advise the board, but a group formed by department staff on an as-needed basis.

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

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Sarah Swanson

Interim General Counsel

Texas Department of Motor Vehicles

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



43 TAC §206.94, §206.95

STATUTORY AUTHORITY

The repeals are proposed 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; and more specifically, Transportation Code, §1001.031, which provides that the board shall retain or establish one or more advisory committees to make recommendations to the board or the executive director.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 1001.

§206.94. *Household Goods Rules Advisory Committee (HGRAC).*

§206.95. *Motor Vehicle License Advisory Committee (MVLAC).*

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

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Sarah Swanson

Interim General Counsel

Texas Department of Motor Vehicles

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



CHAPTER 223. COMPLIANCE AND INVESTIGATIONS DIVISION

SUBCHAPTER A. FRAUD, WASTE, OR ABUSE

43 TAC §§223.1 - 223.3

The Texas Department of Motor Vehicles (department) proposes new Chapter 223, Compliance and Investigations Division, Sub-

chapter A, Fraud, Waste, or Abuse, §223.1, Purpose and Scope; §223.2, Definitions; and §223.3, Submission of Request.

EXPLANATION OF PROPOSED NEW CHAPTER

The new chapter implements the Sunset Advisory Commission's Recommendation 2.2, as stated in the Sunset Staff Report with Commission Decisions, 2018-2019, 86th Legislature. The recommendation requires the department to adopt rules to formalize the department's current "red flag" fraud warning system, further developing and implementing a clear and efficient path for county tax assessor-collectors to report suspected fraud, waste, or abuse of the registration and title system (RTS) by employees, dealers, and full service deputies; and to provide an option for a county to request action for suspected fraud or abuse, such as immediately suspending access to the RTS.

Section 223.1 outlines the purpose and scope of the subchapter, which is to prescribe the policies and procedures for county tax assessor-collectors to report suspected fraud, waste, or abuse related to motor vehicle title or registration to the department's Compliance and Investigations Division (CID).

Section 223.2 establishes definitions for the chapter.

Section 223.3 describes the general process for county tax assessor-collectors who wish to report suspected fraud, waste, or abuse to the CID. The rule explains that the CID will accept submissions for review related to public safety, public corruption, odometer fraud, and title fraud. The CID accepts submissions pertaining to other areas of concern on a case-by-case basis. The CID will maintain a policy that outlines the details of the submission process and make the policy available to county tax assessor-collectors in addition to posting the policy on the department website. The rule clarifies that in addition to a county tax assessor-collector's authority to suspend or terminate a county tax assessor-collector employee's or a full service deputy's access to the department's RTS, the county tax assessor-collector may request such action by the CID. The rule also clarifies that a request for investigation does not obligate the CID to conduct an investigation or to provide details of the investigation to the county tax assessor-collector.

FISCAL NOTE

Linda M. Flores, Chief Financial Officer, has determined that for each of the first five years the new chapter as proposed is in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the proposed new chapter.

Tim Menke, Director of the Compliance and Investigations Division, has determined that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed new chapter.

PUBLIC BENEFIT AND COST

Mr. Menke has also determined that for each year of the first five years the new chapter is in effect, the public benefit anticipated as a result of enforcing or administering the new chapter will be clarity for county tax assessor-collectors in knowing how to report suspected fraud, waste, or abuse to the CID. There are no anticipated economic costs for persons required to comply with the proposed new chapter. There will be no adverse economic effect on small businesses, micro-businesses, or rural communities.

TAKINGS IMPACT ASSESSMENT