

Subchapter H. Storage and Sale of Fireworks
28 TAC §34.815

INTRODUCTION. The Texas Department of Insurance (TDI) proposes to amend 28 TAC §34.815, concerning retail fireworks sale permits. Section 34.815 implements House Bill 2259, 88th Legislature, 2023.

EXPLANATION. The proposed amendments to §34.815 enact changes in accordance with HB 2259, which revised Occupations Code §2154.202 by removing language providing for the purchase of retail fireworks permits from licensed manufacturers, distributors, or jobbers or directly from the State Fire Marshal's Office (SFMO) and specifying that TDI is required to enable the sale of retail fireworks permits through a webpage that is linked from TDI's website.

Prior to HB 2259, the Occupations Code allowed various methods for obtaining and distributing retail permits to sell fireworks. These permits could either be acquired directly from SFMO or purchased through distributors, manufacturers, or jobbers. They were typically sold in booklets containing 20 permits. However, these booklets, which included carbon copies of each retail permit sold, proved to be cumbersome for both the industry and SFMO. The information within these booklets had to be manually typed, causing delays in SFMO's receipt of information regarding firework sales. This manual process was also prone to data entry errors and required SFMO to process refunds for unused retail permits in an outdated and slow manner. To simplify and streamline this process, HB 2259 requires that retail firework permits be available for purchase through TDI's website, eliminating the need to obtain them from manufacturers, distributors, or jobbers.

The proposed amendments to the section are described in the following paragraphs.

Section 34.815. Proposed amendments revise and restructure §34.815 using plain language to implement HB 2259. Previously, the rule's steps to get a retail permit were interrupted by bulk storage rules, which added confusion, and the new structure will make the rule more understandable by providing a natural, sequential order of steps necessary to obtain a retail permit to sell fireworks that reflects the new requirements.

New subsection (b) specifies the requirement that an applicant have a sales tax permit number, which must be entered on the retail firework permit in order to receive a permit. This is an existing requirement currently addressed in subsection (b)(5), but the new text more clearly and plainly addresses it.

Current subsection (b) is redesignated as subsection (c), and the text of the subsection is revised to reflect the changes in how retail fireworks permits may now be obtained. In addition, the requirement that a retail permit be signed is deleted from the text and addressed in new subsection (d).

Paragraphs (1) and (4) of subsection (b) are removed, because this text pertains to fireworks sales permit purchases from manufacturers, distributors, or jobbers, which is no longer allowed, and because copies of Occupations Code Chapter 2154 and the firework rules are readily available online. Paragraphs (2), (3), and (6) of subsection (b) are removed and their contents are included as new text in new subsections (e) - (g).

Current subsection (c) is deleted because it relates to the purchase of retail fireworks permits in ways no longer allowed under HB 2259.

New subsection (d) provides that once issued, a retail permit be printed, signed, and posted in a visible place. The requirements to print and post the retail permit are new, reflecting that permits may now only be obtained through a website; this provides documentary evidence of the retail permit, similar to how participating manufacturers, distributors, or jobbers would formerly provide evidence of the valid issuance of a permit.

New subsection (e) provides that retail permits may be issued only to those individuals or groups engaged in the retail sale of fireworks. This requirement is currently addressed in subsection (b)(6); it is relocated here to facilitate the clarity of the rule.

New subsection (f) provides that bulk storage of Fireworks 1.4G must be done in compliance with 28 TAC §34.823. This provision is relocated from current subsection (b)(2) to facilitate the clarity of the rule.

New subsection (g) provides that Fireworks 1.4G must be sold only through permitted sites and within the selling periods defined in Occupations Code §2154.202. This provision is relocated from current subsection (b)(3) to facilitate the clarity of the rule.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Linda Villarreal, director of Licensing Administration, SFMO, has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments because of enforcing or administering the amendments, other than that imposed by the statute. Ms. Villarreal made this determination because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Ms. Villarreal does not anticipate any measurable effect on local employment or the local economy because of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Ms. Villarreal expects that administering the proposed amendments will have the public benefit of ensuring that TDI's rules conform to Occupations Code §2154.202 as amended by HB 2259. The proposed amendments streamline the permit sales process by providing for all retail fireworks permits to be sold online.

Ms. Villarreal expects that the proposed amendments will not increase the cost of compliance with Occupations Code Chapter 2154 because the amendments do not impose requirements beyond those in the statute. The statute as amended by HB 2259 requires the commissioner to provide for the sale of a retail fireworks permit through a website. TDI must also post a link to the retail sales permit website on its website. As a result, any cost associated with compliance does not result from the enforcement or administration of the proposed amendments.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed amendments will not have an adverse economic effect on small or micro businesses, or on rural communities. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal does not impose a possible cost on regulated persons. Therefore, no additional rule amendments are required under Government Code §2001.0045. In addition, the proposal is necessary to implement legislation, which is an exception under §2001.0045(c).

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed amendments are in effect, the proposed rule:

- will not create or eliminate a government program;
- will not require the creation of new employee positions or the elimination of existing employee positions;
- will not require an increase or decrease in future legislative appropriations to the agency;

- will not require an increase or decrease in fees paid to the agency;
- will not create a new regulation;
- will not expand, limit, or repeal an existing regulation;
- will not increase or decrease the number of individuals subject to the rule's applicability; and
- will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal 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. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on March 4, 2024. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

To request a public hearing on the proposal, submit a request before the end of the comment period to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030. The request for public hearing must be separate from any comments and received by TDI no later than 5:00 p.m., central time, on March 4, 2024. If TDI holds a public hearing, TDI will consider written and oral comments presented at the hearing.

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STATUTORY AUTHORITY. TDI proposes amendments to §34.815 under Occupations Code §2154.052(a) and (b), and Insurance Code §36.001.

Occupations Code §2154.052(a) provides that the commissioner will administer Occupations Code Chapter 2154 through the state fire marshal and may issue rules to administer the chapter.

Occupations Code §2154.052(b) provides that the commissioner adopt, and the state fire marshal must administer, rules necessary for the protection, safety, and preservation of life and property, including rules regulating the issuance of licenses and permits to persons engaged in manufacturing, selling, storing, possessing, or transporting fireworks in this state.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 34.815 implements Occupations Code §2154.202 and HB 2259.

TEXT.

§34.815. Retail Permits.

(a) A retail permit is required for each retail stand or other retail sales location.

(b) Prior to the issuance of a retail permit, an applicant must present evidence of a valid current sales tax permit issued by the state comptroller.

(c) [(b)] Retail permits may be obtained at the department's website at www.tdi.texas.gov. ~~[any time from any participating manufacturer, distributor, or jobber~~

~~holding a valid license to do business in Texas or from the state fire marshal and must be signed by the applicant prior to the permit becoming effective.]~~

~~[(1) A retail permittee must purchase Fireworks 1.4G only from a distributor or jobber licensed in this state.]~~

~~[(2) Bulk storage of Fireworks 1.4G by a retail permittee must be in compliance with §34.823 of this title (relating to Bulk Storage of Fireworks 1.4G).]~~

~~[(3) Fireworks 1.4G must be sold to the general public only at legally permitted retail fireworks sites and during the legal selling periods defined in the Occupations Code §2154.202.]~~

~~[(4) A copy of Occupations Code Chapter 2154 and the fireworks rules, or a condensed version thereof, must be provided to the purchaser of a retail permit by the participating licensee at the time the permit is issued. Copies of Occupations Code Chapter 2154 and the fireworks rules will be made available through the State Fire Marshal's Office.]~~

~~[(5) Prior to the issuance of a retail permit, the applicant must present evidence of a valid current sales tax permit issued by the state comptroller, and the sales tax permit number must be entered on the retail fireworks permit by the person issuing the permit.]~~

~~[(6) Retail permits may only be issued to individuals or groups engaged in the retail sales of fireworks.]~~

(d) The retail permit, once issued, must be printed, signed, and posted in a place visible to the public within the retail space to be effective.

(e) Retail permits will only be issued to individuals or groups engaged in the retail sale of fireworks.

(f) Bulk storage of Fireworks 1.4G by a retail permittee must be in compliance with §34.823 of this title (relating to Bulk Storage of Fireworks 1.4G).

(g) Fireworks 1.4G must be sold to the general public only at legally permitted retail fireworks sites and during the legal selling periods defined in the Occupations Code §2154.202.

~~[(c) Any licensee purchasing books of permits for sale to retail operators shall properly account for all permits received.]~~

~~[(1) The licensee who issues retail permits shall return books containing duplicate copies of each issued permit to the State Fire Marshal's Office within a week from the time the last permit in each book has been issued. All used and unused permits shall be returned no later than March 1 of each year.]~~

~~[(2) The returned copies in each book are considered the official record of retail permits sold.]~~

~~[(3) A licensee may exchange any unissued retail permit which has not been voided or otherwise rendered unusable for a new permit at the end of each year following expiration.]~~

CERTIFICATION.

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

Issued in Austin, Texas, on January 18, 2024.

DocuSigned by:
Jessica Barta
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Jessica Barta, General Counsel
Texas Department of Insurance