

Preamble for Proposed Manufactured Housing Rules
Administrative Rules of the Texas Department of Housing and Community Affairs
10 Texas Administrative Code, Chapter 80

The Manufactured Housing Division of the Texas Department of Housing and Community Affairs (the “Department”) proposes to amend 10 Texas Administrative Code, Chapter 80, §§ 80.2, 80.21, 80.41, 80.73 and 80.95, relating to the regulation of the manufactured housing program. The rules are revised to comply with House Bill 2315 (86th Legislature, 2019 regular session) that amends the Manufactured Housing Standards Act and for clarification purposes.

10 Tex. Admin. Code § 80.2(26) was added to define a serious violation. Section 1201.605(c)(1) of the Texas Occupations Code allows the Department to use the seriousness of a violation to help determine the proper penalty amount. However, the term “seriousness of a violation” is vague. A definition will assist to determine how and when the department should consider a violation as serious when determining the penalty.

10 Tex. Admin. Code § 80.21(h) was amended to remove the rental community exception for drainage site preparation. The installer is responsible for proper site drainage where a new manufactured home is installed, pursuant to 24 CFR § 3285.203. The Code of Federal Regulation does not allow an exception for rental communities. The Code of Federal Regulation does not apply to the installation of used manufactured homes.

10 Tex. Admin. Code § 80.41 (g)(1)(B), (2)(D), (3)(D) were amended to clarify the exemption for retailer’s licenses. The Department wanted to clarify that this exemption only applies to the sale of up to three manufactured homes within a twelve (12) month period to ensure it was consistent with the statutory authority found in Section 1201.1025 of the Texas Occupations Code. Clarification was also needed to demonstrate the homes may not be sold until the letter of exemption is granted.

10 Tex. Admin. Code § 80.73(b)(3) was amended to clarify the timeline for conducting a proper warranty inspection. Pursuant to Section 1201.355 of the Texas Occupations Code, if a *proper* warranty service is not provided, and an inspection is requested the Department has thirty (30) days to conduct an inspection from the date the request is made. When a complaint is received it may not be a valid complaint within the Department’s jurisdiction. It must be determined that a proper warranty service was not provided within the warranty deadline. The thirty (30) day deadline to conduct an inspection should begin after the complaint is validated, to ensure Department’s resources are not wasted on inspections that are not within the Department’s jurisdiction.

10 Tex. Admin. Code § 80.95 was added to implement House Bill 2315 introduced during the 86th Texas Legislative Session. House Bill 2315, adopted in the 86th Texas Legislative Session, required the Department to adopt rules for the application for and automatic issuance of a Statement of Ownership for a federal governmental agency providing temporary housing in response to a natural disaster or other declared emergency. The addition of Section 1201.2071 of the Texas Occupations Code, Exemption for Certain Emergency Housing, will take effect September 1, 2019.

Joe A. Garcia, Executive Director of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs, has determined that for the first five-year period that the proposed rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering these sections. There will be no effect on small businesses, micro-businesses, or rural communities because of the proposed amendments. There are no anticipated economic costs to persons who are required to comply with the proposed rules.

Mr. Garcia also has determined that for each year of the first five years that the proposed rules benefit the public by providing clarification of procedures in order to comply with the Manufactured Housing Standards Act.

Mr. Garcia has also determined that for each year of the first five years the proposed rules are in effect there should be no adverse effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code § 2001.022.

Mr. Garcia has also determined that for each of the first five years the proposed rules are in effect, the proposed rules would not have a large government growth impact. The proposed rules do not create or eliminate a government program. Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the proposed rule does not require the increase or decrease in future legislative appropriations to the agency. The proposed rules do not require an increase or decrease in fees paid to the agency. The proposed rules do not create a new regulation. The proposed rules do not expand, limit, or repeal an existing regulation. The proposed rules do not increase or decrease the number of individuals subject to the rules applicability. The proposed rules do not positively or adversely affect this state's economy. This statement is made pursuant to the Administrative Procedures Act, Texas Government Code, § 2001.0221.

If requested, the Department will conduct a public hearing on this rulemaking, pursuant to the Administrative Procedure Act, Texas Government Code § 2001.029. The request for a public hearing must be received by the Department within 15 days after publication.

Comments may be submitted to Mr. Joe A. Garcia, Executive Director of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs, P. O. Box 12489, Austin, Texas 78711-2489 or by e-mail at mhproposedrulecomments@tdhca.state.tx.us. The deadline for comments is no later than 30 days from the date that these proposed rules are published in the *Texas Register*.

The amendments are proposed under §1201.052 of the Texas Occupations Code, which provides the Director with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and §1201.053 of the Texas Occupations Code, which authorizes the board to adopt rules as necessary and the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statutes, codes, or articles are affected by the proposed rules.

The agency hereby certifies that the proposed amendments have been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Proposed Manufactured Housing Rules

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§80.2. *Definitions.*

Terms used herein that are defined in the Code and the Standards Act have the meanings ascribed to them therein. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) - (25) (No change.)

(26) Seriousness of Violation – Pursuant to Section 1201.605(c)(1) of the Texas Occupations Code the Department shall assess a higher administrative penalty if the consumer harm or burden is great, as a result of the violation.

(27)~~(26)~~ Stabilization systems--A combination of the anchoring and support system. It includes, but is not limited to the following components:

(A) - (K) (No change.)

§80.21. *Requirements for the Installation of Manufactured Homes.*

(a) - (g) (No change.)

(h) Drainage: The Installer is responsible for proper site drainage where a new manufactured home is to be installed~~[unless the home is installed in a rental community]~~. The consumer is responsible for proper site drainage where a used manufactured home is to be installed unless the home is installed in a rental community. Drainage prevents water build-up under the home. Water build-up may cause shifting or settling of the foundation, dampness in the home, damage to siding and bottom board, buckling of walls and floors, delamination of floor decking and problems with the operation of windows and doors.

(i) - (j) (No change.)

§80.41. *License Requirements.*

(a) - (f) (No change.)

(g) Exemption for Retailer's License Requirement.

(1) Application for Exemption of Retailer's License Requirement.

(A) A person requesting exemption from the Retailer's licensing requirement of §1201.101(b) of the Occupations Code, shall submit the required application outlining the circumstances under which they are requesting exemption from licensure.

- (B) Applications should identify the HUD label or serial number(s) of up to three (3)~~[the]~~ homes being sold under the exemption;
 - (C) Applications will be processed within seven (7) business days after receipt of all required information.
- (2) The circumstances under which this exemption is granted are:
- (A) One-time sale of up to three (3) manufactured homes in a 12-month period as personal property;
 - (B) Non-profit entity transferring ownership of up to three (3) manufactured homes in a 12-month period; and/or
 - (C) No other manufactured homes have been purchased and resold in the previous twelve (12) months, even with a previous exemption.~~[and/or]~~
 - ~~[(D) — Other circumstances deemed appropriate by the Executive Director.]~~
- (3) Letter of Exemption.
- (A) Once granted, a Letter of Exemption from licensure will be issued by the Executive Director to the applicant.
 - (B) Letter of Exemption is valid only for the manufactured home(s) specified.
 - (C) Letter of Exemption is valid only for twelve (12) months.
 - (D) The homes may not be sold until the Letter of Exemption is granted.

§80.73. Procedures for Handling Consumer Complaints.

- (a) (No change.)
- (b) The Department shall make a consumer complaint home inspection upon request.
 - (1) - (2) (No change.)
 - (3) All complaints transferred to the field shall be inspected within 30 calendar days from the date the verified complaint was received. A complaint is deemed verified once it is established that the Department has jurisdiction over the matter. ~~[The Department will perform the inspection within thirty (30) calendar days from the date an inspection is requested.]~~
 - (A) The consumer, manufacturer, retailer, and installer, as applicable, shall be notified of the scheduled inspection.

- (B) The person conducting the inspection shall inspect all matters (relating to the home and/or the installation of the home) set forth in the complaint and any other items raised at the inspection.
- (C) The person conducting the inspection will issue a report of inspection, completed to reflect the findings of the inspection.

(c) - (i) (No change.)

§80.95. Recording Ownership for Emergency Housing.

- (a) A federal government agency that purchases a manufactured home to provide temporary housing in response to a natural disaster or other declared emergency may apply for a statement of ownership using the Statement of Ownership Application for Federal Governmental Agency.
- (b) The Department may also accept a Certificate to Obtain Title signed by the federal government agency or their authorized representative in lieu of the Statement of Ownership Application for Federal Governmental Agency.
- (c) The Department shall apply priority and special handling when an application for emergency housing in conjunction with a natural disaster or declared emergency, is received.
- (d) The Department may waive or refund any fees for emergency housing affiliated with a governor's executive order or proclamation that declares a state of disaster under Chapter 418 of the Government Code, in the affected area.