

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

INTRODUCTION. The commissioner of insurance adopts amended 28 TAC §34.815, concerning the sale of retail fireworks permits. The amendments to §34.815 implement House Bill 2259, 88th Legislature, 2023. The amendments are adopted without changes to the proposed text published in the February 2, 2024, issue of the *Texas Register* (49 TexReg 5).

REASONED JUSTIFICATION. Amendments to §34.815 are necessary to 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 specified that the Texas Department of Insurance (TDI) is required to enable the sale of retail fireworks permits through a web page that is linked from TDI's website.

Before 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manual process was also prone to data entry errors and required SFMO to process refunds for unused retail permits in an outdated and slow manner.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.

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Adopted 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 fireworks permit application 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.

The previous 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. The requirement that a retail permit be signed is deleted from the text and addressed in new subsection (d). Paragraphs (1) and (4) 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 fireworks rules are readily available online. Paragraphs (2), (3), and (6) are removed and their contents are included as new text in new subsections (e) - (g).

The previous 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 a 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 was previously addressed in subsection (b)(6); it is relocated here to facilitate the rule's clarity.

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

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 its previous place in subsection (b)(3) to facilitate the clarity of the rule.

SUMMARY OF COMMENTS. TDI provided an opportunity for public comment on the rule proposal for a period that ended on March 4, 2024. TDI did not receive any comments on the proposed amendments.

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STATUTORY AUTHORITY. The commissioner adopts amended §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.

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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.

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) Retail permits may be obtained at the department's website at www.tdi.texas.gov.
- (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.

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

Issued at Austin, Texas, on April 17, 2024.

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Jessica Barta, General Counsel
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Amended 28 TAC §34.815 is adopted.

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C Brown
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Cassie Brown
Commissioner of Insurance

Commissioner's Order No. 2024-8613